

**Genesee County
SYSTEM PROTOCOL**

DUE PROCESS AND DISCIPLINARY PROCEDURE

Initial Date: SEPTEMBER 2004

Revised Date: August 1, 2017

Section: 8-26

Due Process & Disciplinary Procedures

Purpose: To establish a fair and equitable method of applying remediation and/or discipline to licensees found to be violation of protocol.

I. Due Process

The **Complaint Investigation & Resolution Policy** establishes the initial steps of Due Process. Under that policy, a complaint will be investigated for validity and severity. Both individuals and agencies shall be notified of formal or sentinel reviews.

- A. The MCA will provide at least 4 business days' notice to affected providers and agencies prior to convening a special PSRO meeting.
- B. Subjects of a complaint will be provided an opportunity to review copies of all complaint/investigation related materials at the time of a special meeting with the exception of materials that would reveal the identity of an individual that provided information under the condition of anonymity. The subject individual or agency may request an opportunity to review the complaint/investigation related materials in advance of the special meeting with the exception of materials that would reveal the identity of an individual that provided information under the condition of anonymity.
- C. Any MCA suspension enacted as a measure to ensure the safety of the community or patients shall remain in effect pending sentinel event review and disposition.
- D. In the event of criminal charges being filed against a provider or agency related to acts of violence, diversion of medications, illegal possession of controlled substances, criminal sexual conduct, or other practice which may pose a threat to the community or patients, the MCA may act with suspension of MCA privileges without convening a special PSRO meeting.
 1. The individual or agency shall be notified of the suspension per the **Disciplinary Action and Appeal Policy**.
 2. If found guilty in a court of law, MCA privileges will be considered to be revoked.
 3. If found not guilty of charges, the individual or agency must provide copies of court documents, including transcripts, to the MCA.
 4. If a court case is dismissed based on procedural failings or errors, the MCA may decline to extend privileges if the conduct of the individual or agency may pose a threat to the community or patients.
- E. A subject licensee may request a postponement of up to thirty (30) calendar days of a special PSRO meeting in order to prepare his/her individual or agency response to the complaint. The subject licensee must submit a copy of all supporting documentation to the MCA at least one week (5 business days) prior to the postponed review meeting.
- F. The MCA is not a hiring entity and is not subject to collective bargaining. Union representation during MCA PSRO reviews is not permitted.
- G. The MCA's PSRO investigates incidents, complaints, personnel and agencies. While a deed or misdeed may be civil or criminal in nature, the MCA's PSRO is not an adjudicating body for either of these conditions. The

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PSRO is not subject to the rules and statutes which govern civil or criminal adjudication; as such, attorneys and legal representatives are not permitted in PSRO reviews.

- H. Recording, monitoring or any manner of duplicating a PSRO review is not permitted unless conducted by the PSRO entity and expressly for PSRO purposes.
- I. Disclosure of confidential PSRO materials¹ by individuals or agencies both before and after review shall be cause for possible suspension or revocation of MCA privileges, as well as possible statutory violations.
- J. The MCA may disclose non-specific information relating to discipline of individuals or agencies. Care must be taken to not compromise any confidential information.²
- K. Subject individuals or agencies may have agency representation at PSRO reviews provided PSRO standards are maintained.
- L. Individuals or agencies failing to appear for PSRO reviews waive their right to representation and are subject to the summary findings of the review body. Failure to appear also constitutes a violation as defined in the **Incident Classification Policy**.
- M. Subject individuals or agencies shall be notified of the findings of a PSRO review. If disciplinary action results, the individual or agency will be provided with any required remediation steps/actions and a copy of the **Disciplinary Action Appeal Policy**.
- N. In the event that a complaint/investigation involves both the function of an individual and the compliance of their agency or department, the requirement for a 4 business day notice of any special meeting shall apply, unless a postponement is granted to the individual.

II. Application of Disciplinary Action

- A. A primary function of disciplinary action is to ensure the protection and safety of the community and patients.
- B. The application of remediation and/or discipline is intended to promote improvement in clinical and operational performance.
- C. The MCA shall engage in a process to ensure that licensees maintain an appropriate level of clinical and operational performance.
- D. The review process outlined in the **Complaint Investigation Procedure** shall be utilized in assessing the remedial and/or disciplinary action required.
- E. MCAs should utilize Just Culture when applying or considering disciplinary action. There should be a balance between provider and system accountability.

III. Remediation

- A. The Medical Control Authority may issue an order of remediation to correct substandard clinical performance.

¹ MCL 331.533

² MCL 331.533

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- B. A defined time period for completion of remedial activity shall be stated in the order.
- C. Licensees shall be required to perform remedial activity under the supervision of an appointed proctor to correct an identified performance shortcoming.
- D. Notice of a remedial order, or the order itself, shall be forwarded to the licensee's employer (or MCA board in the case of an agency provider).
- E. A licensee shall be allowed only one opportunity for remediation of repetitive substandard performance in a twelve-month period. Subsequent episodes of substandard performance of the same nature occurring within the same twelve-month period shall be addressed under the disciplinary portion of this policy.
- F. Disciplinary action may be accompanied by assignment of additional remedial activity.

IV. Discipline

Disciplinary action may or may not be ascending in severity. In cases where misconduct (by action or omission), regardless of where the misconduct occurred, is determined to be reckless, willful, or criminal, ascending discipline may be bypassed with a more severe disciplinary action imposed.

A. Order of Disciplinary Action

- 1. An Order of Disciplinary Action (ODA) is a written document developed by the MCA and sent to a subject licensee for the purposes of clearly and plainly identifying the findings of the MCA, any disciplinary action and any required remediation.
- 2. ODAs include, but are not limited to, written reprimands, written notice of suspension, written notice of revocation, a letter of warning and a letter of reprimand.
- 3. The ODA must be delivered in a way that confirmed receipt by the licensee may occur.
- 4. The licensee that receives an ODA must provide a copy to all MCAs in which they are privileged.
- 5. Licensees receiving an ODA from another MCA must provide a copy of the ODA to this MCA.

B. Temporary Suspension of Privileges

- 1. The Medical Director may temporarily suspend a licensee's privileges in cases where there is a clearly definable risk to the public health and welfare. The Medical Control Authority shall review such action within three business days after the Medical Director's determination.
- 2. If a licensee's MCA privileges have been temporarily suspended from a licensee, the licensee shall not provide prehospital care until MCA privileges are reinstated.

C. Written Reprimand

- 1. A written reprimand shall be issued to a licensee stating
 - a. the details of the substandard performance
 - b. the remedial action, if required

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- c. the time allowed for completion of remedial action
 - d. the consequences for repetitive noncompliance
2. Notice of disciplinary action shall be forwarded to the licensee's employer (or MCA board in the case of an agency provider).
3. A copy of the **Disciplinary Action Appeal** policy shall be included in the notice to the licensee.

D. Probation

1. A probationary letter shall be issued to a licensee stating
 - a. the details of the substandard performance
 - b. the details of the probation
 - c. the remedial action required
 - d. the restriction of privileges, if applicable
 - e. the time of probationary period
 - f. the consequences for repetitive noncompliance
2. Notice of probationary action shall be forwarded to the licensee's employer (or MCA board in the case of an agency provider).
3. A copy of the **Disciplinary Action Appeal** policy shall be included in the notice to the licensee.

E. Suspension of Privileges

A licensee's medical privileges shall be suspended for a specified period of time.

1. A written notice of the suspension shall be issued to the licensee stating
 - a. the details of the substandard performance
 - b. the violation(s) of protocol and/or policy
 - c. the term of suspension
 - d. the remedial activity, if required
 - e. the time allowed for the completion of the remedial activity
2. Notice of disciplinary action shall be forwarded to the licensee's employer, if employed (or MCA board in the case of an agency provider).
3. A copy of the **Disciplinary Action Appeal** policy shall be included in the notice to the licensee.
4. If a licensee's MCA privileges have been suspended from a licensee, the licensee shall not provide prehospital care until the MCA privileges are reinstated.
5. The Medical Control Authority must notify the department within one (1) business day of the removal of medical control privileges from a licensee.

F. Revocation of Privileges

1. The notice of revocation shall state the violation(s) of protocol and/or policy.
2. Notice of disciplinary action shall be forwarded to the licensee's employer (or MCA board in the case of an agency provider).

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3. A copy of the **Disciplinary Action Appeal** policy shall be included in the notice to the licensee.
4. The Medical Control Authority must notify the department within one (1) business day of the removal of medical control privileges from a licensee.
5. Within one (1) business day of the removal of medical control privileges, the Medical Control Authority must notify all other Medical Control Authorities which it knows, or has reason to believe, have granted the licensee or agency Medical Control privileges.

G. Financial Penalties

The MCA may not apply financial penalties to individuals, per this policy. No such prohibition exists within statute; however, a MCA wishing to establish individual financial penalties must purposely develop an addendum to this policy.

H. PSRO Communications

PSRO protected entities may share PSRO information with other PSRO entities for the following purposes³:

1. To advance health care research or health care education.
2. To maintain the standards of the health care professions.
3. To protect the financial integrity of any governmentally funded program.
4. To provide evidence relating to the ethics or discipline of a health care provider, entity, or practitioner.
5. To review the qualifications, competence, and performance of a health care professional with respect to the selection and appointment of the health care professional to the medical staff of a health facility.

V. Alleged violations of administrative or operational protocol requirements by an EMS agency shall be resolved as follows:

- A. The Medical Control Authority will notify the department chief or agency official of the alleged protocol violation.
- B. Details of the alleged violation, and any response received from the EMS agency, will be presented to the MCA designated PSRO review body at their next meeting. The agency involved will be notified of and may attend the meeting and present any information it believes pertinent.
- C. If the PSRO discussion will take place at an otherwise open meeting, the committee must go into closed session for PSRO purposes, prior to discussion. The predesignated PSRO of the MCA will then meet in closed session to perform the PSRO review. All parties not principal to the PSRO review shall be excluded from such a closed session review. No record of

³ MCL 331.532

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PSRO reviews shall be entered into the general minutes except to state that the committee entered/exited closed session for a PSRO review.

- D. The PSRO of the MCA will review the alleged violation and by majority vote of the members present decide a course of action. Any sanction imposed shall follow the guidelines below:
1. Severity of the violation will determine the level of sanction to be imposed.
 - a. A violation is considered "minor" if it involves administrative infractions, including but not limited to, failure to timely file reports.
 - b. A violation is considered "serious" if it involves intentional operational issues, including but not limited to, a failure to provide staffing as required by statute.
 - c. An otherwise minor violation that is frequent or recurring may be considered by the Medical Control Authority to be "serious" for purposes of this section.
 2. If a minor protocol violation is determined by the Medical Control Authority to have occurred, a letter of warning will be sent to the EMS agency.
 3. If an initial serious violation or a second minor protocol violation within a six month period is determined to have occurred, a letter of reprimand will be sent and the EMS agency may be required to submit, within 15 days, a written statement of actions it will take to prevent future protocol violations.
 4. At the discretion of the Medical Control Authority, notice of these actions may be made public.
 5. A MCA may assess restrictions or limitations upon a licensed life support agency for non-compliance with protocols.
- E. If a third or more frequent minor protocol violation is determined by the Medical Control Authority to have occurred within a period of 18 months, or if the violation is a second serious violation within 18 months, the Medical Control Authority may suspend or revoke its medical control oversight for the EMS agency. The EMS agency shall not provide pre-hospital care until medical control is reinstated. At its discretion, the Medical Control Authority may take any other action within its authority to prevent further protocol violations. Notice of this action shall be made public.
- F. An EMS agency may appeal a decision of the Medical Control Authority. The EMS Agency must follow the **Disciplinary Action Appeal** policy.
- VI. A licensee must notify the MCA of disciplinary action from the State of Michigan.