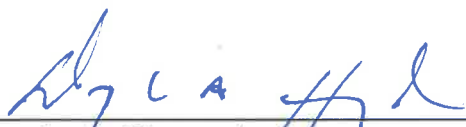




KERN HEALTH SYSTEMS

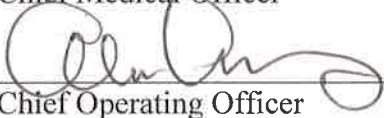
KERN HEALTH SYSTEMS					
POLICY AND PROCEDURES					
SUBJECT: Provider Hearings			POLICY #: 4.35-P		
DEPARTMENT: Provider Relations					
Effective Date: 06/1998	Review/Revised Date: 2/6/2017	DMHC		PAC	
		DHCS		QI/UM COMMITTEE	
		BOD		FINANCE COMMITTEE	



 Douglas A. Hayward
 Chief Executive Officer

Date 2/6/17

 Chief Medical Officer



 Chief Operating Officer

Date _____

Date 2/3/17



 Director of Provider Relations

Date 2/2/17

POLICY:

Practitioners/Providers subject to certain adverse credentialing or disciplinary actions have the right to a fair Hearing. To define and outline the Kern Health Systems (KHS) hearing process and procedures for providers who are subject to certain adverse actions.

DEFINITIONS:

Affected Practitioner/Provider	A practitioner/provider who is the subject of a proposed adverse action or recommendation. In the case of an individual, it shall have the same meaning as licentiate, as that term is used in section 805 and 805.01 of the Business and Professions Code.
Medical Disciplinary Cause or Reason	The aspect of a Practitioner/provider's competence or professional conduct that is reasonably likely to be detrimental to patient safety or to the delivery of patient care.
Peer Review Body	The committee or body whose action gave rise to the hearing (i.e. the

PROCEDURES:

1.0 APPLICABILITY OF POLICY AND PROCEDURES

1.1 Application

These procedures are available to health care practitioners/providers who are the subject of certain adverse credentialing or disciplinary actions, as described in *KHS Policy and Procedure #4.01-P: Credentialing* and *KHS Policy and Procedure #2.04-P- Provider Disciplinary Action*.

1.2 Adaptability of Procedures

The Board of Directors shall have the discretion to modify these procedures as appropriate to assure due process for all health care Practitioners/Providers.

1.3 Medical Board Reporting

Some of the provisions are applicable only in cases where Kern Health Systems has taken or recommended actions involving physicians, dentists, podiatrists, and clinical psychologists and that require a report to the Medical Board of California. Where this is the case, an annotation has been added as follows:

The following provision applies only where a report to the Medical Board of California may be required. The provision to which this annotation applies appears in boxed text, like this example.

- A. Serious quality findings of the KHS Board of Directors must be reported to the California Medical Board. These findings include but are not limited to those set forth in the California Business and Professions Code Section 805 and 805.01.
- B. At the direction of the KHS Board the KHS Medical Director will coordinate the completion of the Medical Board 805 and or 805.01 reporting form. (See attachment A for directions on 805 and or 805.01 form completion.)

1.4 Scope of Hearing

The scope of any hearing conducted pursuant to these Procedures shall be limited to consideration of the proposed action or recommendation and the rights set forth in Section 5.3, below.

2.0 INITIATION OF HEARING

2.1 Preliminary Notice of Adverse Action or Recommendation

The affected practitioner/provider shall promptly be given written notice of any proposed adverse action or recommendation. Such notice shall do all of the following:

- A. Contain a description of the action taken or recommended, together with a general statement of the basis for the action
- B. Advise the affected practitioner/provider of his/her right to a hearing pursuant to the provisions of the Procedures
- C. Specify that the affected practitioner's/provider's request for a hearing must be delivered in person, mailed by certified or registered mail, and must be received by the Chief Executive Officer no more than 30 days following the date of the affected practitioner's/provider's receipt of the preliminary notice as shown on the United States Postal Service receipt or proof of service
- D. State that failure to request a hearing within the specified time period shall constitute a waiver of rights to a hearing on the matter and consent to the proposed action or recommendation
- E. State that after receipt of his/her request for a hearing, the affected practitioner/provider will be notified of the date, time, and place of the hearing, and additional information regarding the grounds upon which the adverse action is based
- F. Contain a summary of the affected practitioner's/provider's rights in the hearing
- G. Advise the affected practitioner/provider that the action or recommendation, if adopted, shall be reported to the Medical Board of California pursuant to Business and Professions Code Section 805, 805.01, and National Practitioner Data Bank .

2.2 Parties

If a hearing is requested, the affected practitioner/provider and the Peer Review Body shall be parties to the hearing.

2.3 Effect of Waiver by Failure to Request a Hearing

An affected practitioner's/provider's waiver of hearing rights shall constitute acceptance of the adverse action or recommendation, pending final decision of the Board of Directors.

3.0 HEARING COMMITTEE

3.1 Appointment of Hearing Committee

As determined by the Chief Executive Officer, the hearing shall be conducted by:

- A. A Quorum of the Board of Directors or committee composed of at least three actively contracted providers of which two must be the same specialty of the affected provider.
- B. A hearing committee appointed by the Chief Executive Officer and composed of at least three individuals, who may (but need not be) Kern Family Health Care of at least three individuals, who may (but need not be) Kern Family Health Care Practitioners; or the hearing may be conducted before an arbitrator or arbitrators selected by a process mutually acceptable to the Peer Review Body and the affected practitioner/provider.

If a committee is appointed, one of the appointees shall be designated as presiding officer of the hearing committee.

If the hearing is to be conducted by an arbitrator or arbitrators, references to the hearing committee shall be deemed to refer to the arbitrator(s).

3.2 Qualification of Hearing Committee Members

The hearing committee shall be composed of individuals who have not acted as an accuser, investigator, fact-finder, or initial decision maker in the same matter; and who shall gain no direct financial benefit from the outcome of the hearing.

3.3 Hearing Officer

At the discretion of the Chief Executive Officer, a hearing officer may be appointed to assist the hearing committee. The hearing officer shall be an attorney experienced in conducting or participating in administrative hearings. He/She shall gain no contingent financial benefit from the outcome of the hearing, shall not act as a prosecuting officer or advocate, and shall not be entitled to vote. The hearing officer shall act in an impartial manner.

4.0 PREHEARING MATTERS

4.1 Notice of Time and Place for Hearing

Within 10 days after receipt of a request for a hearing, the Chief Executive Officer shall schedule a hearing. The Chief Executive Officer shall send the affected practitioner/provider notice of the time, place, and date of the hearing, together with a Notice of Charges, as described in Section 4.2, and a copy of these Procedures. The hearing date shall not be less than 30 days nor more than 60 days from the date of receipt of the request.

4.2 Notice of Charges

The Peer Review Body shall prepare a Notice of Charges consisting of a statement of the affected practitioner's/provider's alleged acts or omissions, a list of any patient records in question, and a description of the other reasons or subject matter forming the basis for the adverse action that is the subject of the hearing.

The Peer Review Body may amend its Notice of Charges; provided, however, that such amendment shall be provided to the affected practitioner/provider as soon as reasonably possible under the circumstances; and provided, further, that the affected practitioner/provider shall be entitled to a continuance, if any such amendment substantially changes the scope of the hearing, or substantially affects the affected practitioner's/provider's ability to adequately prepare for the hearing.

4.3 Witness Lists

Within five days of a request for witnesses, each party shall forward to the other party its list of witnesses (if any) who are expected to testify at the hearing. This provision shall not preclude the testimony of additional witnesses whose participation was not reasonably anticipated; however, the parties shall notify each other as soon as they become aware of such additional witnesses.

Failure to provide the name of any witness at least 10 days prior to the date at which the witness is to testify shall, subject to the provisions of Section 5.7, below, constitute good cause for a continuance.

4.4 Discovery Rights

The affected practitioner/provider shall have the right to inspect and copy, at his/her expense, any documentary information relevant to the charges that Kern Health Systems has in its possession or under its control, as soon as practicable after delivery of his/her request for a hearing.

The Peer Review Body shall have the right to inspect and copy, at its expense, any documentary information relevant to the charges that the affected practitioner/provider has in his/her possession or control, as soon as practicable after the affected practitioner's/provider's receipt of the Peer Review Body's request thereof.

The failure by either party to provide access to this information at least 30 days before the hearing, and subject to the provisions of section 5.7, below, shall constitute good cause for a continuance.

The parties' right to inspect and copy does not extend to confidential information referring to individually identifiable Practitioners/Providers, other than the affected practitioner/provider under review and does not create or imply any obligation to modify or create documents in order to satisfy a request for information.

The presiding officer shall rule on any contested requests for access to information. In making such rulings, the presiding officer may impose safeguards to protect the peer review process and promote justice. In making such rulings and determining the relevancy of the requested information, the presiding officer shall among other factors, consider the following:

- A. Whether the information sought may be introduced to support the charges;
- B. The exculpatory or inculpatory nature of the information sought;
- C. The burden imposed on the party in possession of the information sought;
- D. Any previous requests for access to information submitted or resisted by the parties to the same proceeding. Each party shall provide the other party with all documents expected to be produced at the hearing. Failure to provide these documents to the other party at least 10 days before the commencement of the hearing shall constitute good cause for a continuance.

4.5 Prehearing Motions

The parties may file prehearing motions to resolve such procedural matters as the presiding officer determines may properly be resolved outside the presence of the full hearing committee. Such motions shall be in writing and shall state the relief requested, all relevant factual information, and any supporting authority. The moving party shall deliver a copy of the motion to the opposing party, who shall have five working days to submit a written response to the presiding officer, with a copy to the

moving party. The presiding officer shall determine whether to allow oral argument on any such motions. The presiding officer's ruling shall be in writing and shall be provided to the parties promptly upon its rendering. All motions, responses, and rulings thereon shall be entered into the hearing record by the presiding officer.

5.0 HEARING PROCEDURES

5.1 Personal Presence

The personal presence of the affected practitioner shall be required. If the affected practitioner/provider fails to appear and proceed or refuses to be called and to answer questions as a witness, he/she shall be deemed to have waived his/her rights in the same manner and with the same consequence as provided in Section 2.3, above.

5.2 Role of the Presiding Officer

The presiding officer shall maintain decorum and assure that all participants in the hearing have a reasonable opportunity to present relevant oral and documentary evidence in an efficient and expeditious manner. He/she shall be entitled to determine the order of procedure during the hearing and shall make all rulings on matters of law, procedure, and the admissibility of evidence, including but not limited to:

- A. Challenges to the impartiality of any of the hearing committee members or to the presiding officer; and
- B. Requests for access to information.

If the presiding officer determines that either party is not proceeding in an efficient and expeditious manner, he/she may take such action and enter such orders as seem warranted by the circumstances including entry of an order terminating either party's participation in the hearing.

5.3 Rights of the Parties

5.3.1 Representation

The affected practitioner/provider shall be entitled to be accompanied and represented at the hearing by a practitioner member of Kern Family Health Care, a member of his/her local professional society, or an attorney.

In no case may the health plan (KHS) be represented by an attorney unless the practitioner is represented by an attorney.

Notwithstanding the foregoing, and regardless of whether the affected practitioner/provider has legal Representation at the hearing, the parties shall have the right, at their own expense, to assistance of legal counsel to prepare for the hearing.

5.3.2 Additional Rights

During a hearing, each of the parties has the right:

- A. To question the hearing panel and the presiding officer, to challenge the impartiality of any member or the presiding officer and to challenge compliance with these Procedures;
- B. To call and examine witnesses;

- C. To introduce relevant evidence;
- D. To cross-examine any witness on any matter relevant to the issues;
- E. To impeach any witness;
- F. To rebut any relevant evidence;
- G. To be provided with all the information provided to the hearing committee; and
- H. To have a record made of the hearing in accordance with Section 5.6.

Whether or not the affected practitioner/provider elects to testify, he/she may be called and examined as if under cross-examination. The hearing committee may examine all witnesses, including the affected practitioner/provider.

5.4 Procedure and Evidence

The hearing need not be conducted according to formal rules of evidence. Any relevant evidence upon which reasonable persons customarily rely in the conduct of serious affairs shall be admitted, regardless of the admissibility of such evidence in a court of law. Although hearsay evidence is admissible, the hearing committee may not base a decision solely on hearsay. The presiding officer may order that oral evidence be taken only on oath or affirmation.

5.5 Burden of Producing Evidence; Burden of Proof

The Peer Review Body shall have the initial obligation to present evidence in support of its action or recommendation.

"Initial applicant" shall be any practitioner/provider who does not currently hold practitioner/provider status. Applicants seeking new clinical privileges will be deemed initial applicants with respect to those new clinical privileges.

Initial applicants shall bear the burden of persuading the hearing committee, by a preponderance of the evidence, of their qualifications for practitioner/provider status. Initial applicants shall not be permitted to introduce information not previously produced in response to requests by the Medical Director, the Peer Review Body, or other Kern Health Systems committees during the application process, unless the initial applicant establishes that the information could not, in the exercise of reasonable diligence, have been produced previously.

Except as provided above for initial applicants, the Peer Review Body shall bear the burden of persuading the hearing committee, by a preponderance of the evidence, that the action or recommendation is reasonable and warranted.

5.6 Record of Hearing

A record of the hearing shall be made. If a certified shorthand reporter is used, the cost of the reporter shall be borne by Kern Health Systems and the cost of the transcript shall be borne by the requesting party or shall be shared by the parties, if both desire a copy.

5.7 Continuance or Postponement and Completion of the Hearing

Requests for continuance or postponement of a hearing may be granted by the presiding officer upon a showing of good cause. The hearing shall be completed within a reasonable time unless the presiding officer issues a written decision finding that the affected practitioner/provider failed to comply with requests to produce documentary evidence, in a timely manner, or consented to the delay. The presiding officer shall have the discretion to terminate the hearing proceedings upon a finding that the affected practitioner/provider has repeatedly failed to comply with rulings or to cooperate toward an orderly and expeditious completion of the hearing.

5.8 Presence of Hearing Committee Members and Vote

A majority of the hearing committee must be present throughout the hearing and deliberations. No committee member shall participate in deliberations or vote on the decision unless and until he/she has read the entire transcript of the portion of the hearing from which he/she was absent.

5.9 Hearing Committee Report

Within 30 days after submission of the matter to the hearing committee for decision, the hearing committee shall render a written decision. The decision shall include the hearing committee's findings of fact and conclusions. It shall be delivered to the parties and to the Board of Directors, in cases where the Board was not the hearing committee.

6.0 FINAL DECISION OF THE BOARD OF DIRECTORS

When the hearing committee is a quorum of the Board of Directors, the report of the hearing committee shall constitute the final decision of the Board. In all other cases, the report of the hearing committee shall constitute a recommendation which the Board shall either adopt or modify. Before modifying the report, the Board may take such additional evidence and conduct such additional proceedings consistent with these Procedures as the Board deems appropriate. The Board's decision shall include findings of fact and conclusions. The Chief Executive Officer shall send notice of the decision of the Board to the affected practitioner/provider (by personal delivery, certified or registered mail) and to the Peer Review Body. The decision of the Board shall be immediately effective and final.

7.0 GENERAL PROVISIONS

7.1 Closed Sessions

Except as otherwise agreed by the parties, all hearings shall be conducted in closed session.

7.2 Reports and Records

The Provider Relations Manager shall maintain files on all hearing and appeals, and shall report all action to the Physician Advisory Committee and Quality Improvement/Utilization Management Committee, as applicable, in a manner sensitive to patient and practitioner confidentiality.

7.3 Exhaustion of Remedies

The affected practitioner/provider **must exhaust the remedies afforded by these**

Hearing Policy and Procedures before resorting to legal action against Kern Health Systems or any of its officers, agents, or employees.

8.0 JUDICIAL REVIEW

The Kern Health Systems Board of Directors has adopted the provisions of section 1094.6 of the California Code of Civil Procedure, and the Board's decisions are reviewable, if at all, only in accordance with the provisions of that statute.

ATTACHMENTS:

- Attachment A – *Credentialing Training Manual: How to Complete an 805 Report*

REFERENCE:

Revision 2016-12: Reviewed by Provider Relations Manager. Added 805.01 language and clarified attorney representation and quorum requirements per NCQA standards. **2014-04:** Routine revision to update policy. Attachment A revised to remove names and replace them with titles. **Revision 2012-11:** Policy 2.39-P re-numbered to 4.35-P, removed from QI to Provider Relations due to nature of policy. **Revision 2006-08:** Revised per CEO request. **2002-04:** Annual revision. **Revision 2000-08:** Approved by DHS 10/30/01. **Formerly #2.05:** Number changed to 2.39-P during 03/06 review. **#4.18:** Number changed to 2.05 during 02/02 review. Policy included in QI Plan.

Credentialing Training Manual
HOW TO COMPLETE AN 805 REPORT

An 805 Report will need to be filled out by Kern Health Systems (KHS) Director of Compliance when KHS terminates or suspends a provider for quality deficiencies.

The 805 Report is self-explanatory, fill in the necessary items such as the reporting entity (KHS), address, person sending the report on, etc.

The item to be checked under number 9 (Type of Action) is in Section A, "Termination or revocation of membership", this will be checked when KHS has terminated a provider. If suspension occurs the checked item will be in Section D.

Any information reviewed by the Peer Review Subcommittee and/or Board Meeting will need to be attached to the 805 Report for further clarification as to why the provider has been terminated. This will answer number 10 of the 805 Report.

The KHS Medical Director will need to sign the 805 Report. If the Medical Director is not available, the Chief Executive Officer will need to sign.

A copy of the 805 Report will need to be placed in the provider credentialing file and the provider will receive written notification of the contents of the report.

The 805 Report needs to be completed and reported to the Medical Board 15 days after the effective date of the termination.

The 805 Report is mailed to the address listed on the top of the form.