

Plata Physician

Professional Clinical

Practice Review,

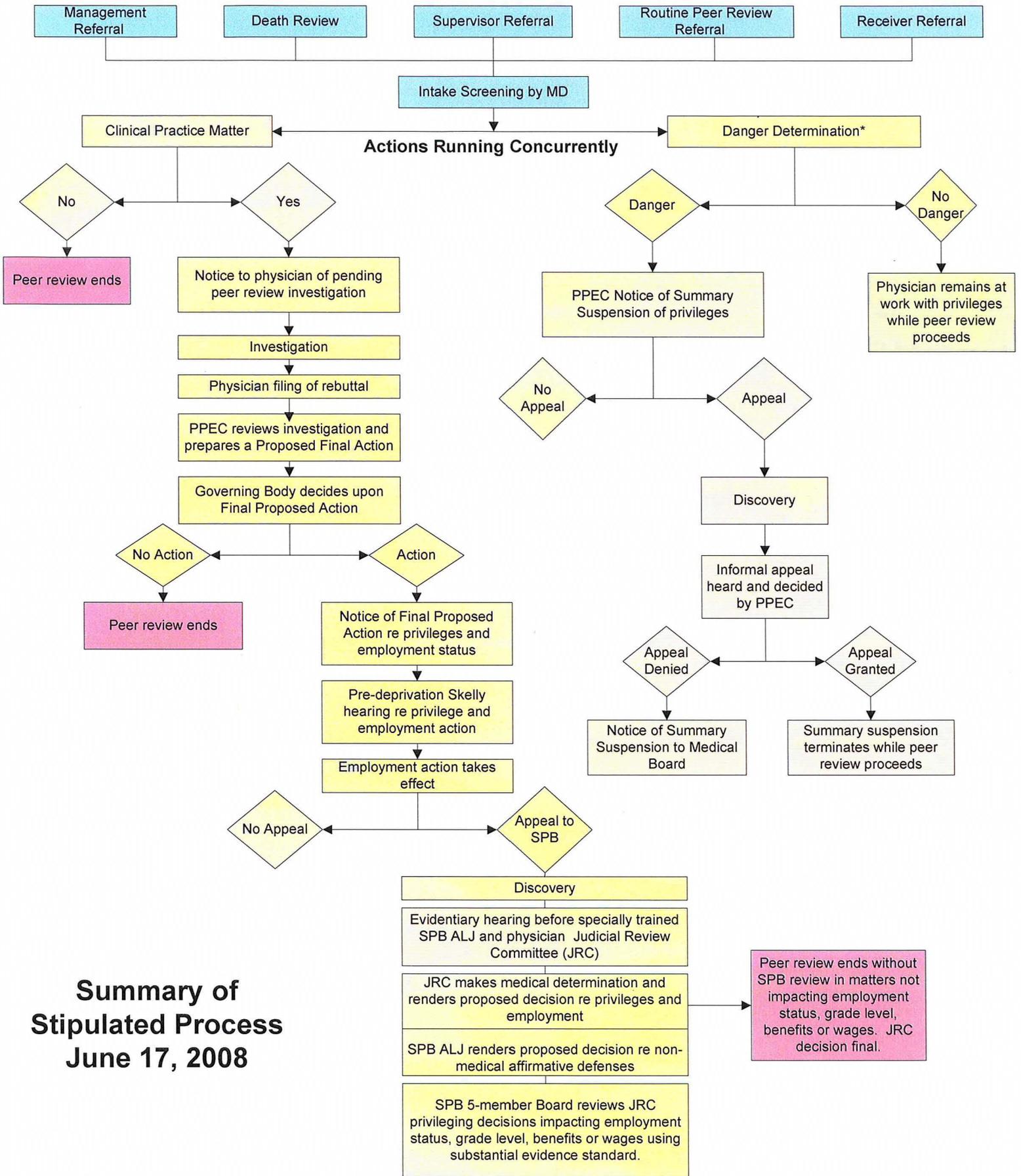
Hearing and

Privileging Procedures

Pursuant to
Order Approving, With Modifications,
Proposed Policies Regarding Physician Clinical Competency
July 9, 2008

Plata, et al. v. Arnold Schwarzenegger, et al.
Federal Court Case No. C01-1351

Breach of Professional Clinical Practice (*Plata* Physicians)



Summary of Stipulated Process June 17, 2008

*Standard: The clinical privileges of a practitioner shall be summarily suspended whenever, based on duties as assigned by management, the Professional Practices Executive Committee has credible information before it which supports a finding that the failure to summarily suspend privileges may result in an imminent danger to the health of any person.

Process may be terminated at any point as PPEC or Governing Body determine is appropriate. Summary suspension process may also be initiated at any point where information obtained that meets the standard.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION Plata Personnel Services and Staff Development	TOPIC: PLATA PROFESSIONAL CLINICAL PRACTICES PEER REVIEW and DISCIPLINARY HEARING POLICIES AND PROCEDURES OVERVIEW
	Court Ordered Process
	Published September 4, 2008

Application

These policies and procedures only apply to physicians in the California Department of Corrections and Rehabilitation (CDCR) adult institutions, and the regional and headquarters offices of the Division of Correctional Health Care Services (hereafter collectively referred to as "DCHCS" but also known as Prison Health Care Services). For purposes of this policy, the term "physician" does not include psychiatrists.

Overview

These policies and procedures shall be utilized to ensure a standardized mechanism to determine (1) when clinical privileges should be suspended, revoked or restricted; and (2) when remedial measures in lieu of or in addition to those impacting privileges are appropriate.

This process only applies to instances where clinical practices must be assessed to determine if they fall below appropriate standards of medical care, and where clinical misconduct may have occurred. It does not pertain to routine peer reviews.

This process does not substitute for supervisors' ordinary duty to monitor, train, evaluate and respond to all performance issues. The appointing powers' duty and authority (e.g., Receiver or designee) with regard to taking corrective or disciplinary action remains unaltered by these policies and procedures. Rather, these policies and procedures provide a forum that all clinical competency concerns must immediately be referred to for evaluation.

Performance issues that do not pertain to clinical competency will not be reviewed through this process. Any reasonable doubt should be resolved in favor of referring matters for an intake evaluation through this process.

Purpose

The purpose of this procedure is to further the goals of providing appropriate, objective, and systematic due process for practitioners consistent with Article VII of the California Constitution, Title 22 of the California Code of Regulations (CCR 22), the California Business and Professions Code (BPC), the Federal Health Care Quality Improvement Act of 1986 (42 USCA § 11101), collective bargaining agreements, applicable law governing suspension or restriction of privileges, reporting to the medical board, and the continuation of employment.

This process also provides for a single evidentiary hearing, the outcome of which simultaneously and correspondingly impacts both privileges and State employment.

The outcome of the evidentiary hearing shall be determined by a three-member judicial review committee (JRC) composed of independent and impartial physicians who shall by majority vote, make findings of fact based on the preponderance of evidence; make credibility determinations; and, render a decision concerning privileges, as well as employment to the extent that the findings of fact relating to the standard of care and privileging conclusions impact employment. The State Personnel Board (Board) shall review the JRC's employment decision based on the substantial evidence standard if the matter adversely impacts employment status, grade level, benefits, and/or wages. The Board shall simultaneously consider the administrative law judge's (ALJ's) decision regarding procedural issues and affirmative defenses, as well as the ALJ's recommendations as to whether substantial evidence supports the JRC's decision.

Objectives

This procedure will ensure that inmate-patients receive health care services from competent and qualified practitioners. It is also for purposes of:

1. Improving the quality of health care.
2. Reducing morbidity and mortality.

3. Providing a mechanism by which practitioners are systematically evaluated for professional competency and clinical privileges.

4. Preserving standards of medical practice and ensuring appropriate actions are taken to address practitioner competency through peer review, including remedial measures to rectify clinical practice deficiencies that PPEC determines do not rise to the level of substandard care requiring action pertaining to privileges.

5. Maintaining the confidentiality of peer review proceedings and records.

Confidentiality

It is essential that the proceedings and the records of the peer review body be maintained as confidential and not be available to unauthorized persons or organizations.

All persons participating in the peer review processes discussed in this policy shall adhere to these provisions regarding confidentiality. This confidentiality requirement shall, for example, apply to proceedings before administrative law judges, Judicial Review Committees and the 5 member State Personnel Board which shall close proceedings to the public and maintain under seal all records and documents to protect such records from public disclosure as set forth in Evidence Code section 1157 and for reasons of patient privacy.

Discovery and Testimony

California Code of Evidence Section 1157(a) generally provides that neither the proceedings nor the records of the peer review body shall be subject to discovery. Section 1157(b) further provides that no person in attendance at peer review body meetings shall be required to testify as to what transpired at the meeting. These prohibitions do not apply to statements made by the party to the action or proceedings, or to any person requesting hospital staff privileges. (Evid. Code § 1157(c).)

The records of the medical staff and its committees responsible for the evaluation and improvement of the quality of inmate-patient care shall be maintained as confidential where required by Evidence Code section 1157.

Access to such records shall be limited to duly appointed officers and committees of the medical staff for the sole purpose of discharging medical staff responsibilities and subject to the requirement of confidentiality where required by Evidence Code section 1157.

Information that is required to be disclosed as part of the Professional Clinical Practice Peer Review and Disciplinary Hearing Process (so that the Professional Practice Executive Committee, the Governing Body and their representatives, the subject physician and his/her representative, the judicial review committee and State Personnel Board may exercise their rights and discharge their duties) shall be maintained as confidential, except that it may be disclosed to the CDCR Statewide Medical Director, the federal court *Plata* Receiver (and his designees) for use in discharging the Receiver's duties and obligations, and as determined necessary during investigative processes prior to adverse action, rejections during probation and any applicable processes set forth by this policy, law or court order.

Conditions of Employment

Privileges are a condition of employment.

Scope of JRC and SPB Review

The Judicial Review Committee (JRC) shall decide privileging decisions that are appealed for an evidentiary hearing. The JRC shall also decide employment decisions adversely impacting employment status, grade level, benefits, and/or wages where those decisions are based on privileging conclusions and findings of fact relating to the standard of care.

The five member State Personnel Board shall review JRC decisions in matters adversely impacting employment status, grade levels, wages and/or benefits.

The Board shall also review proposed decisions from SPB administrative law judges concerning affirmative defenses, i.e., unlawful retaliation, unlawful bias, unlawful discrimination or conflict of interest.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION Plata Personnel Services and Staff Development	TOPIC:
	REFERRAL AND INTAKE
	Court Ordered Process
Published September 4,, 2008	

**PPEC and
Governing Body**

Professional Practice Executive Committee (PPEC) and Governing Body shall act exclusively in the interest of maintaining and enhancing quality patient care. (Business and Professions Code section 809.05(d).)

**Matters That Must
Be Referred**

Suspected substandard clinical practices and clinical misconduct shall be immediately referred to the PPEC Coordinator for peer review investigation.

This includes acts, demeanor or conduct reasonably likely to be detrimental to patient safety or the delivery of medical care. Examples include but are not limited to:

- **Disruptive Conduct:** Failure to work in harmony with others or evidence of disruptive behavior or conduct of such serious nature as to be detrimental to inmate-patient care.
- **Unethical Conduct:** Unethical behavior that is detrimental to inmate-patient care.
- **Failure to Practice Within Known Competencies:** Electing to engage in care practices requiring skills or knowledge beyond those possessed by the practitioner in willful disregard of the limits of the practitioner's competencies.
- **Failure to Notify:** Failing to notify appropriate authorities (e.g., management and PPEC) that substandard care is being provided by an individual, or that circumstances exist in particular instances that may result in preventing access to care or the delivery of appropriate levels of care by any individual.
- **Failure to Perform Required Standards of Care:** Failure to deliver care that is consistent with the degree of care, skill and learning expected of a reasonable and prudent practitioner acting in the same or similar circumstances (e.g. accuracy of diagnosis, appropriateness of therapy, timely and appropriate consultation, resource management and length of stay, timely transfer as needed for severity and acuity of illness, or medical decision making.)

Referral Sources

Any person may provide information to PPEC about the conduct, performance or competence of physicians, but concerns pertaining to substandard clinical practices and clinical misconduct should ordinarily be submitted to PPEC through the following avenues.

- **Management:** Health Care Managers, Regional Medical Directors, the Statewide Medical Director, Regional Administrators, and any other executive or manager.
- **Death Reviews:** Death Review Committee, the Suicide Prevention and Response Focus Improvement Team, and any death reviewer authorized by the PPEC to perform death reviews.
- **Physician Supervisors:** Chief Medical Officers and Chief Physician and Surgeons.
- **Other Clinical Practice Reviews:** the Quality Improvement in Correctional Medicine (QICM) Program, 10- and 60-Day Clinical Evaluations, QMAT Medical Officers, and local organized peer review.
- **Federal Court Receiver** and his designees.
- **Professional Practices Executive Committee**

Initiation by Governing Body

If PPEC fails to investigate or take disciplinary action contrary to the weight of the evidence, the Governing Body may direct PPEC to initiate an investigation or disciplinary action, after consultation with PPEC. No such action shall be taken in an unreasonable manner. (Business and Professions Code section 809.05(b))

Written Referrals

A referral for PPEC review must be in writing and supported by reference to specific activities or conduct alleged. If PPEC initiates the review it shall make an appropriate recording of the reasons.

A "Referral Form" is available and its use is encouraged but not mandatory. Referrals should include:

1. A concise statement about the incident, allegation or reasonable suspicion pertaining to the practitioner.

2. Any evidence supporting the suspicion of substandard clinical practice(s) to the extent that the evidence is known and/or presently available.
3. All relevant documentation insofar as it is known and available to the individual(s) making the referral.

Expediting Referrals

When a referral is being made for conduct that appears to require immediate action to protect life or well-being or to reduce an imminent likelihood of impairment to life, health or safety, the PPEC chairperson or designee (and PPEC Coordinator) shall be immediately contacted by telephone, and the written referral shall be submitted by facsimile.

Where to Submit Referrals

Referrals are sent to:

PPEC Coordinator
 Prison Health Care Services
 California Department of Corrections and Rehabilitation
 P.O. Box 942883
 Sacramento, CA 94283-001

The PPEC Coordinator shall make all reasonable efforts to provide the Intake Screening Physician with relevant information within three (3) business days of receiving the referral unless circumstances warrant expedited processing.

Intake Screening Physician

The Intake Screening Physician shall be a physician member of PPEC, as determined by the Statewide Medical Officer.

Timing of Intake Screening

The Intake Screening Physician will review all referrals within five (5) business days after receipt from the PPEC coordinator or sooner as warranted by circumstances surrounding the referral.

Criteria Applied by Intake Screening Physician & Potential Need for Summary Suspension

The Intake Screening Physician has two roles:

1. The Intake Screening Physician shall immediately call the PPEC Chairperson (i.e., Statewide Medical Officer or designee) when it appears summary suspension *must* be imposed because “the failure to take that action may result in an imminent danger to the health of any individual.” (Business and Professions Code § 809.5(a).)

2. The Intake Screening Physician is to prevent matters that do not bear upon the quality of medical care from being submitted to PPEC through this process. All doubts shall be resolved by the Intake Screening Physician in favor of advancing referral forward in the process.

Intake screening is neither for purposes of determining the adequacy of information received nor for passing judgment about suspected substandard clinical practices.

Result of Intake Screening

If the Intake Screening Physician determines the matter is not such that it may bear on the quality of medical care s/he shall make a record of his/her decision and provide the record to PPEC.

If the Intake Screening Physician determines the referral is consistent with the reasons for referral as set forth above, s/he shall forward the referral to PPEC.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION Plata Personnel Services and Staff Development	TOPIC: DANGER DETERMINATIONS, SUMMARY SUSPENSIONS and INFORMAL APPEALS OF SUMMARY SUSPENSIONS
	Court Ordered Process
	Published September 4, 2008

Purpose of Danger Determinations Danger determinations are to decide whether – based on the duties assigned by management -- failure to take immediate action may result in an imminent danger to the health of any individual.

Person/Entity Making Danger PPEC (or a member of PPEC) shall make danger determinations.

Danger Determination Requests Medical staff members shall immediately request that PPEC make a danger determination where the failure to take that action may result in an imminent danger to the health of any individual. (Business and Professions Code section 809.5(a).)

All medical managers and supervisors (e.g., Health Care Managers, Chief Medical Officers, Regional Medical Officers) shall immediately request that PPEC make a danger determination where the failure to take that action may result in an imminent danger to the health of any individual. **While waiting for PPEC to act, medical managers and supervisors must temporarily redirect practitioners to perform duties that prevent the prospect of imminent danger.** Practitioners may only be placed on paid administrative time off (ATO) with the approval of the Statewide Medical Officer under limited circumstances.

Timing of PPEC Danger Determination Except in emergency situations requiring action sooner, PPEC (or a member(s) of PPEC) shall generally make a danger determination within 24 hours after receiving a case referral, and again at any time during the peer review investigation and hearing process that it determines prudent.

Danger Determinations by Governing Body When PPEC Unavailable When members of PPEC (and their designees) are unavailable to summarily restrict or suspend privileges, the Governing Body (or designee) may immediately suspend privileges if a failure to suspend privileges is likely to result in an imminent danger to the health of any person, provided that before the suspension, reasonable attempts to contact said individuals is made.

Such suspensions are subject to ratification by PPEC. If ratification does not occur within two (2) working days, excluding weekends and holidays, the summary suspension shall terminate automatically. Under such circumstances the physician shall not, however, be assigned clinical duties until approved by the Statewide Medical Director (or designee). (Business and Professions Code section 809.5)

**Standard For
Danger
Determinations**

PPEC members making danger determinations shall immediately suspend or restrict clinical privileges (or ratify the same by the Governing Body) whenever -- based on duties assigned by management -- the failure to summarily suspend or restrict clinical privileges may result in an imminent danger to the health of any patient, prospective patient or other person. (Business and Professions Code section 809.5.)

When PPEC determines – based on the duties assigned by management -- there is no danger, the practitioner shall (1) receive a notice terminating any prior initial action that may be in effect; and, (2) receive a Notice of Pending Peer Review Investigation and remain at work while PPEC proceeds with its review and investigation.

**Notice of PPEC
Action**

When PPEC determines there is a danger, the practitioner shall be notified in writing that (1) his/her privileges have been restricted; or (2) his/her clinical privileges have been summarily suspended.

**Service of Notice
of PPEC Action re
Summary
Suspension**

The notification shall be served within three (3) business days of PPEC's decision to summarily suspend or restrict privileges.

**Content of Notices
of PPEC Action**

The Notice of PPEC Action pertaining to summary suspensions or privilege restrictions shall be personally served or served by overnight mail to the last known address of the practitioner, return receipt requested. Said notice shall include:

1. A statement of facts demonstrating that the suspension was necessary because failure to suspend or restrict the practitioner's privileges summarily could reasonably result in an imminent danger to the health of an individual. The statement of facts provided in this Notice of PPEC Action shall also include a summary of one or more particular incidents giving rise to the assessment of imminent danger;

2. A description of the appeal procedure to challenge the summary suspension and paid administrative time off, and instructions about how the appeal must be filed;
3. Notification of the practitioner's right to a representative at the informal appeal hearing;
4. Copies of the documents PPEC used for purposes of making its decision to summarily suspend or restrict privileges.
5. Notification to the practitioner about how to make an appointment to examine additional relevant documents that are in the possession or under the control of CDCR within five (5) calendar days from service of the Notice of PPEC Action.
6. A clear, bolded notification that any appeal from the summary suspension or restriction must be made within five (5) business days of service of the Notice of PPEC Action.
7. A clear, bolded notification that pursuant to the California Business and Professions Code section 805, summary suspensions lasting more than 14 days must be reported to the Medical Board.
8. Notice that the informal hearing will be recorded, and that the practitioner may make his/her own recording, of the informal hearing if an appeal is filed.

**Health Care
Manager
Notification**

A copy of the Notice of PPEC Action shall also be provided to the practitioner's Health Care Manager who shall be encouraged to contact the practitioner in person or by telephone to ensure that the practitioner received the notice.

Form of Appeal

The practitioner may appeal a summary suspension or restriction by informing the PPEC Coordinator (by telephone, electronic mail, or in person) of the appeal.

**Scheduling of
Informal Hearing**

Within two (2) business days of receiving a timely appeal regarding a restriction or summary suspension, the PPEC Coordinator shall schedule an informal appeal hearing on the matter.

Date of Informal Hearing	The informal hearing shall take place no later than ten (10) business days after the effective date of the restriction or summary suspension.
Consequences of Failing to Timely Appeal	Failing to appeal, and failing to file a timely appeal, shall result in the summary suspension continuing; and a notice of summary suspension to the Medical Board.
No Prejudice	Failing to appeal shall not be deemed an admission of the charges leading to summary suspension and shall not prejudice the practitioner's right to participate in the peer review investigation pertaining to the same matter or the practitioner's right to appeal any Final Proposed Action of the Governing Body.
Purpose of Informal Hearing	The informal hearing is to provide the practitioner with an opportunity to respond to the charges set forth in the notice.
Informal PPEC Hearing Officer	A physician-member of PPEC shall conduct the informal hearing upon appeal of privilege restrictions or suspensions, and at least one other PPEC member shall be present.
During the Hearing	<p>The practitioner may be accompanied by a representative.</p> <p>The informal hearing may be recorded by the practitioner and/or PPEC representative at their discretion.</p> <p>The suspended physician may make a statement concerning the issues under investigation, on such terms and conditions as PPEC may impose.</p> <p>No witness will present evidence and no witness testimony will be taken.</p> <p>The practitioner may provide the PPEC informal hearing officer with any relevant documents in his/her possession that s/he chooses to present.</p>
Hearing Decisions	A written informal hearing decision shall be rendered no more than 14 calendar days after the effective date of the summary suspension.

Appeal Granted If the appeal is granted and the summary suspension reversed, the practitioner shall have his/her privileges reinstated and shall remain at work during the course of the peer review process, provided no additional information is discovered that warrants a subsequent danger determination and the suspension of privileges.

Appeal Denied If the appeal is denied the summary suspension shall continue in effect and the practitioner shall remain on paid administrative leave during the peer review investigation process if approved by the Statewide Medical Officer or be assigned duties unrelated to the reasons for the summary suspension of privileges, unless the summary suspension is later terminated or modified by PPEC.

Report to Medical Board Pursuant to California Business and Professions Code section 805, a report shall be filed with the California Medical Board within 15 calendar days of any summary suspension of staff privileges that remains in effect for a period of more than 14 days.

Automatic Suspension or Limitation In the following instances, a member's privileges may be suspended or limited as described and appropriate action taken will be taken with regard to employment.

Physicians shall immediately notify the PPEC Coordinator of any known adverse action pending against his/her license or DEA certificate.

A hearing, if requested shall be limited to the question of whether the grounds for automatic suspension as set forth below have occurred.

1. **Revocation or suspension of license or credentials:** Whenever a practitioner's license or other legal credential authorizing practice in California is revoked or suspended, clinical privileges shall be automatically revoked as of the date such action becomes effective.

2. **Restriction:** Whenever a practitioner's license or other legal credential authorizing practice in California is limited or restricted by the applicable licensing or certifying authority, any clinical privileges which the practitioner has been granted which are within the scope of said limitation or restriction shall be automatically limited or restricted in a similar manner, as of the date such action becomes effective and throughout its term.

3. **Probation:** Whenever a practitioner is placed on probation by the applicable licensing or certifying authority, clinical privileges shall automatically become subject to the same terms and conditions of the probations as of the date such action becomes effective and throughout its term.
4. **DEA Certificate:** Whenever a practitioner's DEA certificate is revoked, limited or suspended, the member shall automatically and correspondingly be divested of the right to prescribe medications covered by the certificate, as of the date such action becomes effective and throughout its term.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION Plata Personnel Services and Staff Development	TOPIC: PPEC, PEER REVIEW INVESTIGATIONS & RECOMMENDATIONS
	Court Ordered Process
	Published September 4, 2008

Purpose of PPEC Investigations Peer review, fairly conducted, is essential to preserving the highest standards of medical practice. Peer review which is not conducted fairly results in harm both to patients and to medical practitioners. (Business and Professions Code section 809(a)(3)(4).)

Performed by Licentiates Professional Practice Executive Committee (PPEC) reviews, investigations and determinations shall be performed by licentiates.

PPEC Members PPEC shall be comprised of up to ten (10) members. Two of these members shall be physician nominees of the Union of American Physicians and Dentists (UAPD) who have been approved by the CDCR Statewide Medical Director (or designee) who shall be the PPEC chairperson.

PPEC reviews, PPEC investigations and PPEC determinations under this policy shall only be performed by physician members of PPEC (or physician designees), though other disciplines may be present and/or consulted.

Conflicts of Interest No PPEC member or alternate shall participate in any decision under the breach of professional clinical practice peer review process if s/he has a personal conflict of interest. A personal conflict is defined as a professional, financial or other obligation or interest that is likely to limit the member's ability to participate impartially in PPEC decision-making. All potential and actual conflicts of interest shall be disclosed by the member or alternate prior to participating in decision-making. PPEC members and the practitioner under review or investigation may raise potential conflicts of interest concerning other PPEC members to the PPEC chairperson who shall decide the matter.

Meetings PPEC shall meet at least twice each month unless there are no matters pending before it that require action.

The PPEC Coordinator shall endeavor to provide at least three (3) business days advance notice of regularly scheduled meetings by telephone, facsimile, email or regular mail.

Emergency meetings	Emergency meetings may be held as necessary, and reasonable efforts to contact all PPEC members shall be undertaken.
Means of Participating	Appearances and participation by telephone shall be permissible for both emergency and regularly scheduled meetings.
Designees	PPEC members may select standing alternates to act as their proxy at both regularly scheduled and emergency meetings, subject to the consent of the PPEC chairperson.
Voting	PPEC decisions concerning physicians shall be by majority vote of its physician membership.
Quorum	<p>For purposes of rendering decisions concerning recommendations for Proposed Final Actions, a quorum shall be defined as at least 50% of all PPEC physician members.</p> <p>The CDCR Statewide Medical Officer may permit alternate members to vote, provided they have been provided the ability to view all documents, exhibits and other materials relied upon by standing members of PPEC.</p>
Notice to Physician of Impending Peer Review	<p>Within five (5) business days of PPEC's decision to initiate a peer review investigation, the PPEC Coordinator will notify the practitioner by sending a "Notice of Pending Peer Review Investigation" to his or her last known home address, return receipt requested.</p> <p>Copies of documents reviewed by PPEC that triggered the initiation of investigation will be included with the notification.</p> <p>An informational copy of the notice will be sent to the practitioner's Health Care Manager.</p>
PPEC Assignments to Conduct Peer Review Investigations	<p>PPEC may conduct investigations of the practitioners' conduct or practice or may delegate the investigation.</p> <p>The PPEC shall designate authorized peer reviewers from sources including but not limited to:</p> <ul style="list-style-type: none"> • QMAT Physicians • Physicians affiliated with the University of California • Consulting physicians

When designating peer reviewer investigators, PPEC will take into consideration recent clinical practice and knowledge of the peer review process, and experience with medical care in correctional settings.

Sources of Information

The peer review investigations may consist of, but are not limited to the following:

- An examination of documents
- An investigation of the event in question.
- A pattern of practice review of the physician's patient charts to assess overall quality of clinical care.
- Interviews with staff possessing knowledge about the physician's clinical practices.
- Interviewing the subject practitioner

Interviewing Subject Practitioner

The subject practitioner shall be offered an opportunity to provide a response to the allegations to the investigator through a scheduled interview.

The practitioner may end the interview at any time.

If interviewed, the practitioner may be accompanied by a representative of his/her own choosing who shall not disrupt or interfere with the interview.

Contents of Peer Review Investigation Reports

The meeting may be recorded by both the interviewer and/or practitioner.

Peer review investigation reports shall contain the reviewer's findings, conclusions and recommendations.

Findings based on medical records and other written material or tangible items should be cross-referenced.

Clear explanations should be given as to why a clinical practice variation exists or does not exist.

Peer reviewers must analyze all reported incidents or cases for the following factors, if relevant:

- Clinical management
- Timeliness of medical interventions
- Adherence to the Department's critical pathways and/or other established guidelines or medically appropriate care and evaluation of any variations
- Medical record documentation
- Follow-up case management
- Professional conduct
- Patterns of practice
- Skills, knowledge, training and experience
- Any impediments (e.g., inability to get test results back, lack of access to patient) to the delivery of appropriate types and levels of care
- Possible impairment of the practitioner
- Such other factors as requested by the PPEC or which appear relevant to the peer review investigator.

Timelines for Completing Investigation Report

The peer reviewer must generally complete the peer review investigation and issue a report within ten (10) business days of being assigned to investigate the matter, unless an extension of time is granted by PPEC.

Distribution of Investigation Report

A copy of investigation report shall be sent to the PPEC Coordinator for distribution to PPEC members and service on the practitioner at his/her last known home address by overnight mail, return receipt requested.

Practitioner Right to File Rebuttal to Charges

Practitioner will have ten (10) calendar days to submit a written rebuttal regarding the investigation report to PPEC following service of the investigation report.

Scheduling PPEC Meeting

The PPEC Coordinator will schedule a review of the peer review investigation report at the next PPEC meeting after the practitioner's time to rebut has elapsed.

Practitioner Statement

PPEC may permit the practitioner to provide a statement concerning the issue(s) under investigation on such terms and conditions as PPEC may impose.

PPEC Actions

PPEC may take any of the following actions in response to the peer investigation report:

1. Request additional information by a specified date
2. Recommend remedial action to the Governing Body, including but not limited to: (a) education; (b) proctoring; (c) performance monitoring; and, (e) referral for physical or mental evaluation and/or treatment.
3. Recommend modification or restriction of clinical privileges, including but not limited to restricting privileges to prescribe particular medications and/or to perform particular procedures;
4. Issuing letters of admonition, censure, reprimand or warning, although nothing herein shall be deemed to preclude medical managers from issuing informal written or oral warnings outside of the mechanism for corrective action, nor shall it preclude the Receiver or appointing authority from taking adverse action.
5. Recommend that no action against the practitioner be taken.
6. Recommend clinical privileges be restricted
7. Recommend privileges be suspended
8. Recommend privileges be revoked.

Standard For Suspending or Revoking Privileges

Privileges shall be revoked and the physician shall be terminated if his/her conduct has fallen below the standard of care.

A practitioner's conduct falls below the required standard of care when the practitioner has failed to deliver care that is consistent with the degree of care, skill and learning expected of a reasonable and prudent practitioner acting in the same or similar circumstances.

**PPEC Request for
Proposed Final
Action by
Governing Body**

Upon voting to conclude a peer review investigation, PPEC will prepare a chronology of the major events in the peer review process; gather and maintain copies of all supporting documentation; and, retain a copy of its written recommendation and its Proposed Final Action submitted to the Governing Body.

Upon receipt from the PPEC Coordinator, the Governing Body Coordinator will schedule the Request for Proposed Final Action for the next Governing Body Meeting.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION Plata Personnel Services and Staff Development	TOPIC:
	GOVERNING BODY
	Court Ordered Process
Published September 4, 2008	

Responsibility The Governing Body shall act exclusively in the interest of maintaining and enhancing quality patient care.

Weight Given to PPEC In all peer review matters the Governing Body shall give great weight to the actions of PPEC when the voting members of the Governing Body in relation to the action being determined are all licensed medical practitioners.

When any of the voting members regarding a particular action are not licensed medical practitioners, the substantial evidence standard shall be used by the Governing Body when acting on determinations by PPEC. The Governing Body shall not act in an arbitrary or capricious manner.

Composition of Governing Body The Governing Body shall consist of the Receiver's Chief Medical Officer and other members appointed by the Receiver (or his designee).

Meetings The Governing Body shall meet monthly to consider PPEC recommendations regarding Proposed Final Actions. The Receiver's Chief Medical Officer or designee shall chair the meetings.

Directing PPEC to Act In those instances where PPEC's failure to investigate or initiate disciplinary action is contrary to the weight of the evidence, the Governing Body has the authority to direct PPEC to initiate an investigation or recommend disciplinary action, after consultation with PPEC. No such action shall be taken in an unreasonable manner. (Business and Professions Code section 809.05(c).)

When PPEC Fails to Act In the event PPEC fails to take action in response to a direction from the Governing Body, the Governing Body shall have the authority to take action against a licentiate. Such action shall only be taken after written notice to PPEC. (Business and Professions Code section 809.05(d).)

**Governing Body
Review of PPEC
Recommendations**

The Governing Body shall act upon PPEC's recommendations regarding a Proposed Final Action.

**Actions Available
to Governing Body**

The Governing Body may:

1. Accept the factual findings and recommendations of PPEC;
2. Accept the factual findings of PPEC but reject the inferences drawn from these factual findings and determine that a different final proposed action than that recommended is warranted; or,
3. Remand the matter to PPEC for additional investigation or deliberation. Under such circumstances PPEC shall be given a date by which the Governing Body expects the matter to be returned to it.

**Notice of Final
Proposed Action**

Once the Governing Body decides a Proposed Final Action it must serve the practitioner within five (5) business days regarding the decision.

The Notice of Final Proposed Action is a combined notice pertaining to privileges and employment.

The effective date of the Proposed Final Action insofar as it pertains to *employment* shall be no fewer than five (5) days after service of the Notice of Final Proposed Action. An action does not pertain to employment if it concerns only privileges (e.g., corrective measures including, but not limited to, non-permanent privilege restrictions, duty changes, training, and monitoring) and does not adversely impact employment status, grade level, benefits, and/or wages.

The Notice of Final Proposed Action shall be substantially in the following form:

1. The nature of the Final Proposed Action (e.g., privileges revoked and employment terminated).
2. The consequences of the action with regard to privileges, employment, and reporting to the Medical Board and/or to the National Practitioner Data Bank, as required or appropriate.

3. The effective date of the action insofar as it pertains to employment which shall be no fewer than five (5) days after service of the Notice of Final Proposed Action)
4. The reasons for action, including the acts and/or omissions with which the physician is charged.
5. A copy of all material relied upon by the Governing Body in making the decision
6. Notice of the right to respond and request a *Skelly* hearing before the effective date of the action where representation is permitted.
7. Instructions regarding when and how to appeal the Governing Body decision.
8. Notification that failing to appeal the Governing Body decision will result in the action taking effect and corresponding notification to the Medical Board.

Filing Copy of Final Proposed Action

A copy of the Notice of Final Proposed Action served on the practitioner shall be filed with the State Personnel Board, when it pertains to employment.

Skelly Officer

The *Skelly* Officer shall be selected by the Governing Body when the Notice of Final Proposed Action also impacts employment. The *Skelly* officer shall be a licensed physician.

Skelly Hearing

A *Skelly* hearing, if requested in a timely manner, shall be held before the effective date of the action.

Governing Body Rescinds Action

If, after considering the *Skelly* Officer's recommendation the Governing Body rescinds the Proposed Final Action, any summary suspension in effect shall be immediately terminated, a notice will be sent to the Medical Board, and the peer review process shall end.

Final Proposed Action Takes Effect

After considering the *Skelly* Officer's recommendation the Governing Body may affirm the action as noticed, or modify the action as noticed. The action insofar as it concerns *employment* shall be considered final and take effect (e.g., employment terminated).

Definition of Employment Action

An action does not pertain to or impact employment if it concerns only privileges (e.g., corrective measure including, but not limited

to, non-permanent privilege restrictions, duty changes, training, and monitoring) and does not adversely impact employment status, grade level, benefits, and/or wages.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION Plata Personnel Services and Staff Development	TOPIC: APPEALING FINAL PROPOSED ACTIONS TO JUDICIAL REVIEW COMMITTEE AND STATE PERSONNEL BOARD
	Court Ordered Process
	Published September 4, 2008

Deadline for Appeals Final Proposed Actions pertaining to privileges and/or employment must be appealed in writing and received by the State Personnel Board within 30 calendar days of service of the Notice of Final Proposed Action in order to acquire an evidentiary hearing before and administrative law judge and the judicial review committee.

Lodging Appeals Appeals for a hearing before an administrative law judge (ALJ) and the judicial review committee shall be in writing and must be delivered to or sent to:

Appeals Division
 State Personnel Board
 801 Capitol Mall
 Sacramento, CA 95814

A copy must be simultaneously served on the:

Professional Practices Executive Committee Coordinator
 Prison Health Care Services
 California Department of Corrections and Rehabilitation
 P.O. Box 94038 (Room 315)
 Sacramento, CA 95812

Effect of Failure to Appeal Failing to timely appeal shall be deemed as having failed to exhaust administrative remedies and having waived all rights to challenge the action, including but not limited to the judicial review committee, the State Personnel Board and actions brought in the superior court.

Representation The parties shall notwithstanding Business and Professions Code section 809.3(c) each be represented by the person(s) of their own choosing, including but not limited to an attorney.

Time and Place for Hearing Before Judicial Review Committee The State Personnel Board shall schedule (or cause to be scheduled) a hearing before an ALJ and the judicial review committee and within 30 days of the SPB's receipt of the notice of appeal, shall give notice to the parties of the time, place and date

of the hearing as required by Business and Professions Code § 809.1(c)(2).

Administrative Law Judge

State-employed ALJs shall preside over the hearings. SPB ALJs will be used after receiving special training in medical hearings.

Hearing Date

Scheduling a hearing date shall be as set forth in Business and Professions Code § 809.2(h) which generally states unless extended for good cause, the date for commencement of the hearing shall be not be more than 60 days after SPB's receipt of the appeal.

Conduct of Proceedings - Generally

An administrative law judge shall administer pre-hearing and hearing processes under terms and conditions ordinarily applicable to SPB disciplinary action hearings to ensure constitutionally appropriate due process. Hearing rights include but are not limited to the right to:

1. Be provided with all information made available to the trier of fact
2. Have a record made of the proceedings (excluding deliberations) available to both parties at their own expense.
3. To call, examine and cross-examine witnesses
4. To present and rebut evidence determined by the administrative law judge to be relevant; and,
5. To submit an oral or written statement at the close of the hearing.

Confidentiality

To the extent Evidence Code section 1157 is applicable on its own terms it shall apply to SPB and judicial review committee proceedings and records.

Role of Administrative Law Judge

The administrative law judge (ALJ) shall endeavor to ensure all participants have a reasonable opportunity to be heard and to present relevant oral and documentary evidence in an efficient and expeditious manner, and that proper decorum is maintained.

The ALJ shall have the authority and discretion to make all rulings on questions pertaining to matters of procedural law (e.g., the admissibility of evidence). The ALJ shall prepare a proposed decision concerning affirmative defenses (i.e., unlawful retaliation,

unlawful bias, unlawful discrimination or conflict of interest. The ALJ may also submit his/her own recommendations to the 5 member Board regarding whether there is substantial evidence to support the JRC's decision.

If the ALJ determines that either side at the hearing is not proceeding in an efficient and expeditious manner, the hearing officer may take such discretionary action as seems warranted by the circumstances.

The ALJ may participate in the JRC deliberations when requested to do so by the judicial review committee. However, clinical competency and privileging determinations, as well as employment decisions based on such determinations, shall be made exclusively the the judicial review committee.

The ALJ shall not be entitled to vote, comment or otherwise advise any person or entity regarding such matters as the merits of the case and remedy pertaining to privileges and employment decisions based on privileging conclusions and findings of fact relating to the standard of care. This prohibition does not preclude the ALJ from submitting his/her written recommendations to the 5 member Board regarding whether there is substantial evidence to support the JRC's decision.

Role of Judicial Review Committee

The scope of the judicial review committees' authority is by majority vote, to determine by a preponderance of the evidence, whether the nature of the action pertaining to privileges as set forth in the Notice of Final Proposed Action is reasonable and warranted (Business and Professions Code section 809.3(b)(3)) and whether the action pertaining to employment is therefore just and proper based on privileging conclusions and findings of fact relating to the standard of care.

All factual issues including determining the sufficiency of evidence which pertains to privileging and, therefore, employment determinations based on privileging conclusions and findings of fact relating to the standard of care shall be decided by a judicial review committee consisting of three (3) physicians. The ALJ may assist the panel of physicians in writing a decision that is grounded in the evidentiary record, as described above.

The judicial review committee decision shall be based on the evidence introduced at the hearing, including logical and reasonable inferences from the evidence and the testimony.

The judicial review committee may sustain, modify or reject in their entirety the privileging and employment actions based on

privileging conclusions and findings of fact relating to the standard of case.

Time and Content of Decisions

Within 30 days after submission of the case, the judicial review committee shall render a written decision. In matters adversely impacting employment status, grade levels, benefits and/or wages, the written judicial review committee decision shall be available to the ALJ who, within 30 days thereafter, shall complete preparation of his/her written proposed decision concerning any affirmative defenses along with written recommendations to the five member Board regarding whether there is substantial evidence to support the JRC's decision. Within 60 days after submission of the case, the JRC's decision the ALJ's proposed decision, and the ALJ's written recommendations to the five member Board regarding substantial evidence shall be delivered to the Board and simultaneously served on the parties. In matters that do not adversely impact employment status, grade levels, benefits and/or wages, SPB shall within 30 days after submission of the case serve the parties with the JRC's decision.

The JRC decision shall contain a concise statement of the reasons in support of the decision, including finding of fact and conclusions articulating the connection between the evidence produced at the hearing and the conclusion reached. (Business and Professions Code § 809.4(a)(1).) JRC decisions concerning privileges and employment shall be based on whether the appellant-practitioner's acts and/or omissions fell below the stand of care, as defined elsewhere in these policies and procedures.

Judicial Review Committee Selection for Hearing

The Board shall request a judicial review committee pool of at least five (5) primary care physicians through the California Medical Association Institute for Medical Quality. The institute shall be asked to provide the names of physicians familiar with correctional medicine to the extent reasonably possible.

In any matter concerning a non-primary care specialist, the California Medical Association Institute for Medical Quality shall provide the names of three (3) licensed practitioners in that area of specialty so that one may be selected as the third judicial review committee member instead of a primary care physician.

Alternative to CA Medical Association

In the event that the California Medical Association is unwilling or unable to provide this pool of independent physicians, the Governing Body and Union of American Physicians and Dentists will work together to establish an alternative method of selecting a physician pool from which the judicial review committee will be selected.

Matters Not Involving Specialty Care

In matters not involving specialty care physicians, the practitioner shall select one judicial review committee member from the pool and the Governing Body shall select one judicial review committee member from the primary care physician pool. The Governing Body and the practitioner shall then each alternately strike one name from the five (5) remaining primary care judicial review committee nominees until only one is left, with the first strike determined by coin toss.

Matters Involving Specialty Care

In matters involving specialty care physicians, the practitioner shall select one judicial review committee member from the pool and the Governing Body shall select one judicial review committee member from the primary care physician pool. The Governing Body and the practitioner shall then each alternately strike one name from the list of specialty providers and last remaining specialist shall serve as the third judicial review committee member. The first to strike shall be determined by coin toss.

Voir Dire

Judicial review committee members shall be subject to *voir dire* as provided for in Business and Professions Code section 809.2(c) except that it shall apply to both parties rather than just the licentiate.

State Personnel Board Scope and Standard of Review

The five member Board will only review JRC decisions adversely impacting employment status, grade levels, benefits and/or wages.

The JRC decision shall be final and binding upon the parties and not subject to five member Board review if the matter only concerns privileges (e.g., corrective measures including but not limited to privilege restrictions, duty changes, training, monitoring) and does not adversely impact employment status, grade level, benefits and/or wages.

The five (5) members Board will make its decision based on the record below, and will not conduct a trial de novo.

The five member Board shall apply the substantial evidence standard when reviewing JRC decisions. If the Board concludes there is substantial evidence that the practitioner's conduct falls below the standard of care as defined elsewhere in this policy, the JRC's privileging and employment decisions shall be affirmed. If the Board concludes there is not substantial evidence it shall remand the matter to the JRC for reconsideration along with a statement of the reasons. A copy of the Board's remand decision

shall be served upon the parties within 3 business days after the Board makes its remand decision.

The Board shall complete its review and render a final decision within 45 days of receiving JRC decisions.

The parties will be served with the five member Board's decision within 3 business days after it is rendered.

Licensing Actions

In those cases where privileges have been automatically suspended or revoked due to an action against the physician's license by the California Medical Board where there has been a corresponding non-cause separation, SPB review if requested shall be limited to the question of whether the action against the license occurred.

CALIFORNIA CODES
EVIDENCE CODE
SECTION 1157

1157. (a) Neither the proceedings nor the records of organized committees of medical, medical-dental, podiatric, registered dietitian, psychological, marriage and family therapist, licensed clinical social worker, or veterinary staffs in hospitals, or of a peer review body, as defined in Section 805 of the Business and Professions Code, having the responsibility of evaluation and improvement of the quality of care rendered in the hospital, or for that peer review body, or medical or dental review or dental hygienist review or chiropractic review or podiatric review or registered dietitian review or veterinary review or acupuncturist review committees of local medical, dental, dental hygienist, podiatric, dietetic, veterinary, acupuncture, or chiropractic societies, marriage and family therapist, licensed clinical social worker, or psychological review committees of state or local marriage and family therapist, state or local licensed clinical social worker, or state or local psychological associations or societies having the responsibility of evaluation and improvement of the quality of care, shall be subject to discovery.

(b) Except as hereinafter provided, no person in attendance at a meeting of any of those committees shall be required to testify as to what transpired at that meeting.

(c) The prohibition relating to discovery or testimony does not apply to the statements made by any person in attendance at a meeting of any of those committees who is a party to an action or proceeding of the subject matter of which was reviewed at that meeting, or to any person requesting hospital staff privileges, or in any action against an insurance carrier alleging bad faith by the carrier in refusing to accept a settlement offer within the policy limits.

(d) The prohibitions in this section do not apply to medical, dental, dental hygienist, podiatric, dietetic, psychological, marriage and family therapist, licensed clinical social worker, veterinary, acupuncture, or chiropractic society committees that exceed 10 percent of the membership of the society, nor to any of those committees if any person serves upon the committee when his or her own conduct or practice is being reviewed.

(e) The amendments made to this section by Chapter 1081 of the Statutes of 1983, or at the 1985 portion of the 1985-86 Regular Session of the Legislature, or at the 1990 portion of the 1989-90 Regular Session of the Legislature, or at the 2000 portion of the 1999-2000 Regular Session of the Legislature, do not exclude the discovery or use of relevant evidence in a criminal action.