

INLAND EMPIRE HEALTH PLAN

PEER REVIEW PROCESS AND LEVEL II APPEAL

Reduction, Suspension or Termination of Practitioner Status

(Adopted April 14, 1997)

(Amended January 2023)

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PEER REVIEW PROCESS AND LEVEL II APPEAL Reduction, Suspension or Termination of Practitioner Status

Purpose:

- A. To provide:
 - 1. A mechanism for peer review of IEHP Providers of Service (Practitioners);
 - 2. A process for Practitioners (as defined below under section B, “Scope”) to appeal negative peer review recommendations, decisions and actions for any reason related to quality of care, non-quality of care, and/or other professional conduct issues including, but not limited to, denial, reduction, suspension or termination of practitioner status, as requested by the Inland Empire Health Plan (IEHP) Peer Review Subcommittee, the IEHP Quality Management (QM) Committee, or the IEHP Chief Medical Officer ; and
 - 3. A mechanism for appropriate final action.

Scope:

- A. The following policies and procedures apply to all health care professionals participating or requesting participation as a Practitioner for IEHP (Practitioners), including, but not limited to, the following licentiates: Physicians (MD), Osteopathic Physician (DO), Podiatrists (DPM), Pharmacists (Pharm D or RPh), Oral Surgeons (DDS or DMD), Optometrists (OD), Chiropractors (DC), Audiologists, Clinical Psychologists, (PhD), Nurse Practitioners (NP), Physician Assistants (PA), Certified Nurse Midwives (NM), Licensed Midwives, Physical Therapists (PT), Occupational Therapists (OT), and Speech/Language Therapists (S/LT), Psychiatrists, Psychologists, Master Level Clinical Nurses, Licensed Clinical Social Workers (LCSW), Marriage, Family and Child Counselors (MFCC/MFT), Licensed Professional Clinical Counselor (LPCC) and other behavioral health professionals licensed to provide behavioral health services in the state of California.

Policy:

- A. A Practitioner’s status or participation may be denied, reduced, suspended or terminated for any lawful reason, including, but not limited to, a lapse in basic qualifications such as licensure, insurance, or required medical staff privileges or admission coverage at an IEHP contracted hospital; a determination by IEHP that the Practitioner cannot be relied upon to deliver the quality or efficiency of patient care required by IEHP; a determination by IEHP that the Practitioner cannot be relied upon to follow IEHP’s clinical or business guidelines or directives; or a change in IEHP’s business needs.
- B. A Practitioner may appeal any adverse peer review Level I Review recommendation, decision or action by IEHP that is based on quality of care, non-quality of care, and/or other professional conduct issues that impact his or her participation status with IEHP, including denial, reduction, suspension, or termination of participation status with IEHP, in accordance with the Level II Appeal procedures, as provided herein. A Practitioner may not appeal a recommendation, decision or action based on reasons unrelated to quality of care, non-quality of care, and/or other professional conduct issues. For example, there is no right to appeal if any application is denied or not processed because the applicant fails to provide requested

information. Additionally Level II Appeal procedures are not available for initial adverse credentialing decisions upheld by the IEHP Peer Review Subcommittee or IEHP Credentialing Subcommittee.

Procedure:

A. Final Authority

IEHP, as a health care service plan, is defined as a peer review body under applicable law. Certain peer review functions have been delegated to the IEHP Peer Review Subcommittee and the IEHP Credentialing Subcommittee. The IEHP Peer Review Subcommittee serves as the final level of review and is the final authority in credentialing and peer review decisions. The IEHP Peer Review Subcommittee has delegated the hearing of any Level II Appeal to a Judicial Hearing Committee (JHC).

B. Judicial Hearing Committee

Whenever a Level II Appeal is required pursuant to this document “Peer Review Process and Level II Appeal” the Chief Medical Officer shall appoint a JHC consisting of at least three (3) IEHP Practitioners, and alternates as appropriate (“JHC Members”). The JHC shall be Practitioners from within the IEHP network who shall gain no direct financial benefit from the outcome and are neither in direct economic competition nor professionally associated (including in a referral relationship) with the subject of the hearing. None of the JHC Members may have acted as an accuser, investigator, fact-finder or initial decision maker, or otherwise actively participated in consideration of the matter that forms the subject of the appeal prior to the recommendation or action. JHC Members also should not have participated in the care of the patients (if any) whose care forms the subject of the appeal. Where feasible, the JHC shall include at least one Practitioner who practices in the same specialty as the Practitioner who requested the hearing. The Chief Medical Officer shall designate a Chairperson who shall handle pre-hearing matters and preside until a hearing officer, as described in the Hearing Officer Section 4, is appointed. The JHC shall make findings of fact and issue a recommended decision for action by the Peer Review Subcommittee.

C. Request for a Level II Appeal

Notice of the right to a Level II Appeal shall be sent as provided in Level I Review, Section 9 (Request for a Level II Appeal). The Practitioner shall have thirty (30) days following the date of receipt of a notice of an adverse recommendation, decision or action resulting from a Level I Review to request a formal Level II Appeal. The request must be submitted in writing, directed to the IEHP Chief Medical Officer, and must be received at IEHP within the prescribed period. If the Practitioner does not request a formal hearing within the time and in the manner prescribed, the Practitioner shall be deemed to have accepted the recommendation, decision, or action involved, and shall be deemed to have waived all administrative appellate review rights, and the recommendation, decision, or action may be forwarded to the Peer Review Subcommittee,

D. Hearing Officer

1. Selection

The Peer Review Subcommittee or its designee shall appoint a hearing officer to preside at the JHC hearing. The hearing officer shall be an attorney at law who has been admitted to practice before the courts of this State for at least five (5) years prior to appointment, and who is qualified by knowledge and experience to preside over a quasi-judicial peer

review hearing. The hearing officer shall gain no direct financial benefit from the outcome of the hearing. The hearing officer must not act as a prosecuting officer, or as an advocate for IEHP, Peer Review Subcommittee, the body whose action prompted the hearing, or the Practitioner. If requested by the JHC, the hearing officer may participate in the deliberations of the JHC and be legal advisor to it, but he/she shall not be entitled to vote. The hearing officer may be a hearing officer for either Riverside or San Bernardino counties, provided he or she meets the other criteria established by this subsection. The hearing officer will be sent a letter of appointment by the Peer Review Subcommittee.

The Practitioner shall have the right to a reasonable opportunity to voir dire any JHC member and the hearing officer, and the right to challenge the impartiality of any JHC member and the hearing officer. Such challenges to the impartiality of any JHC member or the hearing officer shall be ruled on by the hearing officer.

2. Duties

The duties of the hearing officer shall be to preside over the hearing, including any pre-hearing and/or post-hearing procedural matters; to rule on the challenges to the impartiality of JHC members and/or the hearing officer; to rule on requests for access to information and/or relevancy; rule on requests for continuances; to rule on evidentiary and burden of proof issues; to prepare the written report and recommendation of the JHC; and to perform such other functions as may be necessary or appropriate to facilitate completion of a fair hearing process as expeditiously as possible.

E. Scheduling of Appeal/Notice of Hearing

Upon the selection of the JHC, the Level II Appeal shall be scheduled at a time and place mutually agreeable to the Practitioner and to IEHP. The Practitioner shall be given notice of the time, place and date of the hearing. IEHP shall make its best efforts to ensure that the date of the commencement of the hearing shall be not less than thirty (30) days nor more than sixty (60) days from the date that IEHP receives the request for a Level II Appeal. The time frames set forth herein may be shortened or extended for a reasonable time by mutual written agreement of the parties (or by the Chairperson of the JHC if the hearing officer has not been appointed yet) upon a showing of good cause in accordance with Section K below. The peer review process shall be completed within a reasonable time after the Practitioner receives notice of a final proposed action or an immediate suspension or restriction of clinical privileges, unless the JHC issues a written decision that the Practitioner failed to comply with the discovery provision herein, or consented to the delay in the proceedings.

F. Notice of Charges

A Notice of Charges shall be sent to the Practitioner along with the Notice of Hearing, further specifying, as appropriate, the acts or omissions with which the Practitioner is charged. This Notice of Hearing also shall provide a list of the patient records, if any, which are to be discussed at the hearing, if that information has not been provided previously.

Witness lists (see Section H) shall be amended as soon as possible when additional witnesses are reasonably known or anticipated. A failure by either party to comply with this requirement, shall be good cause to postpone the hearing.

G. Discovery:
Rights of Discovery and Copying

The Practitioner may inspect and copy (at his/her own expense) any documentary information relevant to the charges that the IEHP Peer Review Subcommittee has in its possession or under its control, as soon as practicable after the receipt of the Practitioner's request for a Level II Appeal. The IEHP Peer Review Subcommittee shall have the right to inspect and copy (at its own expense) any documentary information relevant to the charges that the Practitioner has in his/her possession or control, as soon as practicable after the Practitioner's receipt of the IEHP Peer Review Subcommittee's request for such documents.

This right of discovery and copying does not create or imply an obligation to modify or create documents in order to satisfy a request for information. The right to inspect and copy by either party does not extend to confidential information referring solely to individually identifiable Practitioners, other than the Practitioner under review. Failure to comply with reasonable discovery requests at least ten (10) days prior to the Level II Appeal hearing shall be good cause for a continuance of the Level II Appeal hearing.

1. Limits on Discovery

The Hearing Officer, upon the request of either side, may impose safeguards including, but not necessarily limited to, the denial of a discovery request. The Hearing Officer when ruling upon requests for access to information and determining the relevancy thereof shall, among other factors, consider the following:

- a. Whether the information sought may be introduced to support or defend the charges;
- b. Whether the information is "exculpatory" in that it would dispute or cast doubt upon the charges or "inculpatory" in that it would prove or help support the charges and/or recommendation;
- c. The burden on the party of producing the requested information; and
- d. Other discovery requests the party has previously made or has previously resisted.

H. Pre-Hearing Witness List and Document Exchange

At least (10) working days prior to Level II appeal hearing, the parties shall exchange lists of the names of witnesses expected to be called at the hearing and copies of all documentation expected to be introduced in the evidence at the hearing. A failure to comply with this rule shall be good cause for the hearing officer to grant a continuance. Repeated failures to comply shall be good cause for the hearing officer to limit introduction of any documents or witnesses not provided or disclosed to the other side in a timely manner.

I. Representation

Level II Appeals are provided for the purpose of addressing issues of professional conduct or competence in health care. Practitioner is required to notify IEHP if they intend to be represented by legal counsel. Accordingly, neither the Practitioner nor the peer review body whose decision prompted the hearing may be represented by an attorney at the hearing unless a majority of the JHC members, in their discretion, permit both sides to be so represented. In no case may the IEHP Peer Review Subcommittee be represented by an attorney if the Practitioner is not so represented. The foregoing shall not be deemed to deprive any party of its right to the assistance of an attorney for the purpose of preparing for the hearing. When attorneys are not allowed in the hearing, the Practitioner and the IEHP Peer Review Subcommittee each may be represented at the hearing by a licensed Practitioner who is not an attorney.

J. Failure to Appear

Failure, without good cause, of the Practitioner to appear and proceed at the Level II Appeal shall be deemed to constitute voluntary acceptance of the recommendation or action involved and it shall thereupon become the final action of the IEHP Peer Review Subcommittee.

K. Postponements and Extensions

After a timely request for a hearing has been received as described above, postponements and extensions of time beyond the times expressly permitted in this Level II Appeal Process may be effected upon written agreement of the parties or granted by the hearing officer (or the Chairperson of the JHC if the hearing officer has not been appointed yet) on a showing of good cause and subject to the hearing officer's discretion to assure that the hearing proceeds and is completed in a reasonably expeditious manner under the circumstances.

L. Record of the Hearing

A record of the Level II Appeal shall be produced by using a certified court reporter to record the hearing (an audio tape recording of the proceedings may be made in addition). The Practitioner shall be entitled to receive a copy of the transcript upon paying his or her share of the court reporter's fees, and the reasonable cost for preparing the transcript. Oral evidence shall be taken under oath administered by the court reporter.

M. Rights of the Parties

Both parties shall have the following rights, which shall be exercised in an efficient and expeditious manner and within reasonable limitations imposed by the hearing officer:

1. To be provided with all of the information made available to the JHC;
2. To have a record made of the proceedings as provided herein;
3. To call, examine and cross-examine witnesses;
4. To present and rebut evidence determined by the hearing officer to be relevant; and
5. To submit a written statement at the close of the hearing.

The Practitioner may be called by the IEHP Peer Review Subcommittee's representative and examined as if under cross-examination. The JHC may interrogate the witnesses, or call additional witnesses, as the JHC deems appropriate. Each party has the right to submit a written statement at the close of the Level II Appeal. The JHC may request such a statement to be filed following the conclusion of the presentation of oral testimony.

N. Rules of Evidence

Rules relating to the examination of witnesses and the presentation of evidence in courts of law shall not apply in any hearing conducted herein. Any relevant evidence, including hearsay, shall be admitted by the hearing officer if it is evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs. A Practitioner shall not be permitted to introduce information not produced upon request of the peer review body during the underlying peer review, application, or other credentialing process, unless the Practitioner establishes that the information could not have been produced previously in the exercise of reasonable diligence.

O. Basis of Recommended Decision

The recommended decision of the JHC shall be based on, but may not be limited to, the evidence produced at the hearing and any written statements submitted to the JHC.

P. Burden of Going Forward and Burden of Proof

In all Level II Appeals, the IEHP Peer Review Subcommittee shall have the burden of initially presenting evidence to support its recommendation, decision or action.

1. If the IEHP Peer Review Subcommittee's recommendation is to deny initial IEHP affiliation, the Practitioner shall bear the burden of persuading the JHC, by a preponderance of the evidence, that he/she is sufficiently qualified to be awarded such affiliation in accordance with the professional standards of IEHP. This burden requires the production of information that allows for an adequate evaluation and resolution of reasonable doubts concerning the Practitioner's qualifications, subject to the IEHP Peer Review Subcommittee's right to object to the production of certain evidence as provided herein. A Practitioner shall not be permitted to introduce information not produced upon request of the peer review body during the application process, unless the initial applicant establishes that the information could not have been produced previously in the exercise of reasonable diligence.
2. If the IEHP Peer Review Subcommittee's action involves the termination of existing IEHP participation; or the suspension, reduction or limitation of privileges to perform patient care services, the IEHP Peer Review Subcommittee shall have the burden of persuading the JHC, by a preponderance of the evidence that its action is reasonable and warranted. The term "reasonable and warranted" means within the range of reasonable and warranted alternatives available, and not necessarily that the action is the only measure or the best measure that could be taken in the opinion of the JHC.

Q. Preparation of Recommended Findings of Fact, Recommended Conclusions of Law and Recommended Decision

Within a reasonable time after the final adjournment of the Level II Appeal hearing, the JHC shall issue a decision that shall include finding of fact and conclusions of law articulating the connection between the evidence produced at the hearing and the result. A copy shall be sent to the IEHP Chief Medical Officer, the Practitioner involved, and the IEHP Chief Executive Officer. Final action shall be taken by the Peer Review Subcommittee, as provided below.

There shall be no right of further appeal to the Peer Review Subcommittee following a formal Level II Appeal. The Practitioner shall receive a written decision of the Peer Review Subcommittee, including a statement of the basis for the decision, which shall be sent via FedEx. The notice shall contain a statement that there is no right of appeal the final decision of the Peer Review Subcommittee.

R. Reports

IEHP shall comply with the reporting requirements of the California Business and Professions Code, the Federal Health Care Quality Improvement Act, the National Practitioner Data Bank (NPDB), and any other applicable law regarding adverse peer review actions.

IEHP shall comply with the reports required by MBOC whenever a peer review body makes a final decision or recommendation regarding the disciplinary action, resulting in a final proposed action to be taken against a licentiate based on the peer review body's determination, following formal investigation of the licentiate that any of the facts listed below have occurred, regardless of whether a hearing is held pursuant to Section 809.

MBOC requires reports whenever: a licentiate's application for staff privileges or membership

is denied or rejected for a medical disciplinary cause or reason; a licentiate's membership, staff privileges, or employment is terminated or revoked for a medical disciplinary cause or reason; restrictions are imposed or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of thirty (30) days or more for any 12-month period, for a medical disciplinary cause or reason; and/or a licentiate's resignation or leave of absence from membership, staff, or employment following notice of impending investigation based on information indicating medical disciplinary cause or reason.

MBOC requires an 805 report whenever a peer review body makes a final decision or recommendation regarding the disciplinary action, resulting in a final proposed action to be taken against a licentiate based on the peer review body's determination, following formal investigation of the licentiate that any of the facts listed below have occurred, regardless of whether a hearing is held pursuant to Section 809:

IEHP complies with all reporting requirements of the Medical Board of California, the Dental Board of California, the Osteopathic Medical Board of California, the Board of Podiatric Medicine, the California Board of Behavioral Sciences, the Board of Psychology, and the Physician Assistant Board, and other licensing agencies, and National Practitioners Data Bank (NPDB) as required by law. IEHP also complies with the reporting requirements of the California Business and Professions Code and the Federal Health Care Quality Improvement Act regarding adverse credentialing decisions. IEHP notifies the Practitioner of such reporting and its contents in writing.

1. Actions that are reported to the Medical Board of California, the Dental Board of California, the Osteopathic Medical Board of California, the Board of Podiatric Medicine, the California Board of Behavioral Sciences, the Board of Psychology, the Physician Assistant Board, other licensing agencies, and National Practitioners Data Bank (NPDB) as applicable and required by law, include a decision to deny or reject a Practitioner's application for staff privileges or membership for a medical disciplinary cause or reason; a decision to terminate or revoke a Practitioner's membership, staff privileges or employment for a medical disciplinary cause or reason; restrictions imposed or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of thirty (30) days or more for any twelve (12) month period, for a medical disciplinary cause or reasons; and/or a Practitioner's resignation or leave of absence from membership, staff, or employment following notice of impending investigation based on information indicating medical disciplinary cause or reason.
2. An 805.01 will be filed, if a recommendation or final decision based on any of the following:
 - a. Incompetence, or gross or repeated deviation from the standard of care involving death or serious bodily injury or to one or more patients in such a manner as to be dangerous or injurious to any person or the public.
 - b. The use of, or prescribing for or administering to him/herself, any controlled substance; or the use of any dangerous drug, as defined in Section 4022, or of alcoholic beverages, to the extent or in such a manner as to be dangerous or injurious to the licentiate, or any other persons, or the public, or to the extent that such impairs the ability of the licentiate to practice safely.

- c. Repeated acts of clearly excessive prescribing, furnishing or administering of controlled substances or repeated acts of prescribing, dispensing, or furnishing of controlled substances without good faith effort prior examination of the patient and medical reason therefore.
- d. Sexual misconduct with one or more patients during a course of treatment or an examination.

S. Confidentiality

All peer review records and proceedings held pursuant to this procedure shall be confidential and protected to the fullest extent allowed by Section 1157 of the California Evidence Code, and any other applicable State and/or Federal law.

T. Privileges and Immunities

All activities conducted pursuant to this Level II Appeal Process are in reliance on the privileges and immunities afforded by the Federal Health Care Quality Improvement Act (42 USC Section 11101, et seq.) California Business and Professions Code Section 805, et seq. and the California Civil Code Sections 43.7, 43.8 and 47(b)(4) and (c).

U. Severability

This document and the various parts, sections and clauses thereof are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid, such unconstitutionality or invalidity shall affect only that part, sentence, paragraph, section or clause of this document, or person or entity; and shall not affect or impair any of the remaining provisions, parts, sentences, paragraphs, sections or clauses of this document, or its application to other persons or entities.

V. Applicability

This document shall be applicable to all peer review Level II Appeals and shall be controlling.

W. Costs of Hearing

1. The costs associated only with the conduct of the Level II Appeal hearing, excluding the costs listed in subsection 2 below, shall be divided equally between the Practitioner and IEHP. Such costs shall include, but not limited to, the costs of the certified shorthand reporter and rental of a hearing room, if applicable.
2. The costs to be divided between the practitioner and IEHP shall not include the costs, fees, and any other charges associated with legal representation of either party; the cost of the JHC, if any; the costs of discovery; the costs of preparation for the hearing; mileage costs for either party or witnesses; witness fees; or the costs of obtaining copies of the hearing transcripts or tapes. Except for the costs of the hearing officer and JHC, which shall be borne by IEHP, each party shall bear its own costs for these items individually.

X. Exhaustion of Administrative Remedies

1. A Practitioner shall be required to exhaust the administrative remedies herein prior to seeking judicial review of the actions of the IEHP Peer Review Subcommittee.