

How (and Why) Physician Health Committees Work: Legal Counsel's Overview of their Role and Function

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Required by California Law

Hospital licensing requirements – Title 22, CCR 70703(d)

The medical staff by-laws, rules, and regulations shall include, but shall not be limited to, provision for the performance of the following functions: executive review, credentialing, medical records, tissue review, utilization review, infection control, pharmacy and therapeutics, and **assisting the medical staff members impaired by chemical dependency and/or mental illness to obtain necessary rehabilitation services.**

These functions may be performed by individual committees, or when appropriate, all functions or more than one function may be performed by a single committee. Reports of activities and recommendations relating to these functions shall be made to the executive committee and the governing body as frequently as necessary and at least quarterly.

Required by Joint Commission

- TJC Standards, **MS.11.01.01**:
 - The medical staff implements a process to identify and manage matters of individual health for licensed independent practitioners which is separate from actions taken for disciplinary purposes.
 - **Purpose is rehabilitation & support, not disciplinary.**

Medical Staff Goals re Physician Health

- 1. Facilitate rehabilitation rather than discipline – encourage better health and/or recovery of “optimal professional functioning” by making a non-punitive and welcoming, yet still effective, environment in which to do so.
- 2. All is geared with a constant eye on protection of patients. If patient protection may be jeopardized, measures outside of the PWBC must be implemented, i.e., MEC involvement.

Joint Commission Elements of Performance

Medical Staff “process design” should address the following (EPs 1-10):

1. Education of licensed independent practitioners and other organization staff about illness and impairment recognition issues specific to licensed independent practitioners (at-risk criteria).
2. Self referral by a licensed independent practitioner.
3. Referral by others and maintaining informant confidentiality.
4. Referral of the licensed independent practitioner to appropriate professional internal or external resources for evaluation, diagnosis, and treatment of the condition or concern.
5. Maintenance of confidentiality of the licensed independent practitioner seeking referral or referred for assistance, except as limited by applicable law, ethical obligation, or when the health and safety of a patient is threatened.

Joint Commission Elements of Performance (cont' d.)

6. Evaluation of the credibility of a complaint, allegation, or concern.
7. Monitoring the licensed independent practitioner and the safety of patients until the rehabilitation is complete and periodically thereafter, if required.
8. Reporting to the organized medical staff leadership instances in which a licensed independent practitioner is providing unsafe treatment.
9. Initiating appropriate actions when a licensed independent practitioner fails to complete the required rehabilitation program.
10. The medical staff implements its process to identify and manage matters of individual health for licensed independent practitioners.

PWBC Is Not Your Average Medical Staff Committee

- PWBC must define itself as a safe and trustworthy environment for physicians who need its support.
- PWBC must encourage “self-referrals,” those who identify they have a problem and see the PWBC as a place to get it
- PWBC must “walk the line,” however, because its primary duty, like every committee, is patient safety.
- PWBC can engage in agreements with a self-referring medical staff member to follow through on various pathways to health. Works fine as long as everyone keeps to the bargain, and/or as long as the physician remains safe.
- PWBC must take steps if the bargain is broken, and/or patient safety becomes a question → Must contact the Chief of Staff/MEC.

If PWBC Is First to Receive Information of Concern

- For situations where a information is directed to the PWBC about a physician by, e.g., an employee or another physician, rules are different → *this is not a self-referral situation.*
- If information indicates potential for patient harm, or violations of bylaws or Rules & Regulations (e.g., behavioral complaints) → PWBC chair or designee(s) from the committee may try to garner more information about the complaint – might it be credible?
 - PWBC should not undertake a “full-blown” investigation. Minimal activity, such a phone call or two, to the complainant and/or to the doctor himself or herself.
 - PWBC should notify the Chief of Staff of any possible validity to the complaint, and determine if the PWBC should continue with fact-finding or someone else of the Chief’ s/MEC’ s choosing.

If PWBC is First to Receive Information of Concern (cont' d)

- PWBC has limited authority on fact-finding. Does not have carte-blanche, for example, to review a credentials file or prior complaints on its own. Needs approval and “need to know” first (both of those things).
- PWBC has no authority to summarily suspend a physician to protect patients.
- PWBC can advise, and consult with, the Chief of Staff on any one matter. When in doubt about the potential for harm to patients, confer with the Chief of Staff.
- It is a mistake to educate hospital and physician staff that the PWBC is somehow a “safer” or better place to send a complaint about a physician rather than the Chief of Staff, computer complaint system, Department Chair, etc.
- The “safety” of patients is what complaint-handling is about first and foremost.
- Identity of complainants should be protected no matter where the complaint is lodged.

Self-Referrals to the PWBC

- Physicians coming to the PWBC voluntarily – Heaven bless 'em....
- GOALS: Cooperation, evaluation, support, doing what is needed to bring the physician back to health; making sure current or future health status does not threaten patient safety.
- If physician stops cooperating, and question of safety arises, then PWBC must notify Chief of Staff for possible further investigation or action.
 - Goals of confidentiality for self-referrals cannot be met when the physician terminates the cooperative relationship with PWBC.

Referrals to PWBC by MEC

- MEC can turn a physician's monitoring over to the PWBC as part of a larger plan of discipline, or as an alternative to discipline.
- Once on the MEC's radar, the physician may agree this route is the best alternative, but still be reluctant.
- The "stick & carrot" approach: The Physician's failure to cooperate, or to succeed, may lead to discipline. The physician's success may lead to a better life, and a lesser chance of further MEC attention (or even MBC attention!).
- PWBC role here is just as critical as in any other kind of referral.
- PWBC must make regular reports to the MEC, *identifying this physician* and giving general synopsis of level of cooperation, progress/lack of progress.
- Physician's identity is obviously not confidential as to the MEC.

PWBC Record Keeping

- PWBC records are peer review records, protected from involuntary disclosure as peer review information under California Evidence Code Section 1157.
- Records are subject to subpoena by the Medical Board, however. But there must be "good cause" for the Medical Board to obtain them. They should only be released upon service of a bona fide investigational subpoena. Legal counsel should be consulted!
- Records need not be detailed. However they must give adequate information for the Committee to revisit and understand the issue(s) for which the physician came to the Committee, and chronology and progress.
- Must contain adequate information to assess the physician's status in recovery and compliance with the elements in any contract or agreement with PWBC.

PWBC Record Keeping

(cont' d.)

- Records must be stringently password-protected and electronically secure, or maintained in locked quarters, available only to specifically authorized persons.
- PWBC members should not remove records from the hospital, nor retain them offsite.
- Records should be retained indefinitely, preferably as long as the physician practices in the hospital, plus five years. (CMA Guidelines.)
- Disclosure of PWBC information outside of the Well-being Committee should be made only to another peer review body in order to assist that body with its physician evaluation activities, and at the written request of the individual involved or with the advice of legal counsel.