

	medical disciplinary cause or reason.
Affected Provider	Affected provider refers to those providers listed in the definition of “licentiate” in California Business and Professions Code 805, who are subject to an Adverse Action.
Board of Directors	“Board of Directors” refers to the Board of Directors of KHS.
Chief Medical Officer	The individual holding the title of Chief Medical Officer at KHS.
Medical Disciplinary Cause or Reason	The aspect of a provider’s competence or professional conduct that is reasonably likely to be detrimental to patient safety or to the delivery of patient care.
Participation, Approved to Participate	The approval granted to a provider by KHS to provide direct patient care to a member
Peer Review Body	Peer Review Body shall have the same meaning as defined in California Business and Professions Code section 805, and includes the committee or body within KHS whose action gave rise to the hearing (i.e., the Physician Advisory Committee, the Quality Improvement/ Utilization Management Committee, or the Board of Directors).

PROCEDURES:

1.0 APPLICABILITY OF POLICY AND PROCEDURES

1.1 Application

These Procedures are available to Affected Providers who are the subject of certain adverse credentialing decisions, disciplinary actions, or whose contractual agreement with KHS are denied, revoked, terminated, suspended, or reduced for a Medical Disciplinary Cause or Reason. See also *KHS Policy and Procedure #4.01-P: Credentialing* and *KHS Policy and Procedure #4.48-P- Provider Disciplinary Action*.

1.2 Adaptability of Procedures

The Board of Directors shall have the discretion to modify these Procedures as appropriate to ensure due process for Affected Providers.

1.3 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.

- A. Grounds for a Hearing: Except as otherwise specified herein, any one or more of the following actions or recommended actions taken for Medical Disciplinary Cause or Reason shall be deemed actual or potential Adverse Action and constitute grounds for a hearing:
 - a. denial of membership or network participation based on Medical Disciplinary Cause or Reason;
 - b. denial of renewal of membership or network participation Medical Disciplinary Cause or Reason;

- c. suspension of membership/participation which lasts more than 14-consecutive days based upon Medical Disciplinary Cause or Reason;
- d. suspension or reduction to perform patient care services for more than thirty 30-calendar days in any twelve (12)-month period for Medical Disciplinary Cause or Reason;
- e. termination of membership or network participation based on Medical Disciplinary Cause or Reason

1.4 Exceptions to Hearing Rights

- A. *Hearing rights do not apply to the removal of a provider from a medical-administrative position at KHS or loss of employment, participation solely as a result of removal from the medical-administrative position.*
- B. *Automatic Suspension or Limitation of Practice – Hearing rights are not afforded to a provider whose participation is revoked, suspended, or limited in accordance with terms of probation as a result of the revocation or suspension of the provider of services license, certification, registration, or legal authority to practice.*
- C. *Hearing rights are not afforded to a provider whose participation is terminated as a result of the provider being sanctioned, debarred, excluded, ineligible for participation in Medicare, Medi-Cal, the Office of Inspector General (OIG), System for Award Management (SAM.Gov) or the DHCS Restricted Provider List*
- D. *Hearing rights do not apply to providers who do not meet the minimum qualifications described in the credentialing requirements.*

2.0 INITIATION OF HEARING

2.1 Preliminary Notice of Adverse Action or Recommendation

The Affected Provider shall promptly be given written notice of any Adverse Action, proposed Adverse Action or recommendation. The written notice to the Affected Provider will be sent by certified mail with return receipt requested and will give notice of the following:

- A. Contain a description of the Adverse Action or professional review that has been taken or recommended, together with a general statement of the basis for the Adverse Action;
- B. Advise the Affected Provider of his/her right to a hearing pursuant to the provisions of this Policy;
- C. Specify that the Affected Provider’s request for a hearing must be delivered in person, or mailed by certified mail, and must be received by the Chief Medical Officer no more than 30 days following the date of the Affected 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 Adverse Action or recommendation
- E. State that after receipt of his/her request for a hearing, the Affected 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, if any;

- F. Contain a summary of the Affected Provider's rights in the hearing or provide a copy of the KHS Policy regarding Provider Hearing;
- G. Advise the Affected Provider that the Adverse 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 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 Provider's waiver of hearing rights shall constitute acceptance of the Adverse Action or recommendation.

3.0 HEARING COMMITTEE

3.1 Appointment of Hearing Committee

As determined by the Chief Medical Officer, Chief Executive Officer, or Peer Review Body, the hearing shall be conducted by:

- B. A hearing committee appointed by the Chief Medical Officer, Chief Executive Officer, or Peer Review Body composed of at least three or more individuals, who may (but need not be) KHS contracted providers; 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 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 providers 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 Medical Officer, Chief Executive Officer or Peer Review Body, 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 Medical Officer, Chief Executive Officer, or Peer Review Body shall schedule a hearing. The Chief Medical Officer, Chief Executive Officer or Peer Review Body shall send the Affected 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, via certified mail and return receipt requested. The hearing date shall not be less than 30 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 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 Provider as soon as reasonably possible under the circumstances; and provided, further, that the affected Provider shall be entitled to a continuance, if any such amendment substantially changes the scope of the hearing, or substantially affects the Affected 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 Provider shall have the right to inspect and copy, at his/her expense, any documentary information relevant to the charges that KHS 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 Provider has in his/her possession or control, as soon as practicable after the Affected 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 providers, other than the Affected 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 objected to 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/Failure to Appear

The personal presence of the Affected provider is required. If the Affected Provider fails to appear, fails to proceed at the hearing in an efficient and orderly manner, 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. The presiding officer 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, the presiding officer 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 Provider shall be entitled to be accompanied and represented at the hearing by a provider contracted with KHS, a member of his/her local professional society, or an attorney.

In no case may KHS be represented by an attorney unless the Affected Provider is represented by an attorney.

Notwithstanding the foregoing, and regardless of whether the Affected 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 committee and the presiding officer, to challenge the impartiality of any member of the hearing committee or the presiding officer
- B. To call, examine, and cross-examine witnesses;
- C. To introduce relevant evidence;
- D. To impeach any witness;
- E. To rebut any relevant evidence;
- F. To be provided with all the information submitted to the hearing committee; and
- G. To have a record made of the hearing in accordance with Section 5.6.

Whether or not the Affected Provider elects to testify, he/she may be called and examined. In addition, the hearing committee may examine all witnesses, including the Affected 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 Adverse Action or recommendation.

For purposes of this policy, "Initial applicant" shall be any provider who does not currently belong to the KHS provider network, whose application to become a KHS network provider was denied for Medical Disciplinary Cause or Reason.

Initial applicants shall bear the burden of persuading the hearing committee, by a preponderance of the evidence, of their qualifications for provider status. Initial applicants shall not be permitted to introduce information not previously produced in response to requests by the Chief Medical Officer, the Peer Review Body, or other KHS 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 Provider failed to comply with requests to produce documentary evidence, in a timely manner, or consented to the delay.

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

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 Medical Officer or the Chief Executive Officer shall send notice of the decision of the Board to the Affected 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 Credentialing 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 Provider **must exhaust the remedies afforded by these** Procedures before resorting to legal action against KHS or any of its officers, agents, or employees.

7.4 Reporting to Appropriate Authorities

KHS shall comply with the reporting requirements of the Medical Board of California and the NPDB as required by law. KHS Credentialing Manager, under the direction of the Chief Medical Officer, and/or Chief Executive Officer, will submit required reporting to appropriate authorities within the specified timeframes. The Affected Provider will be notified of the report and its contents as follows:

1. Within fifteen (15) days of a recommendation or final decision, when they are imposed or voluntarily accepted for a Medical Disciplinary Cause or Reason, an 805 Report must be filed with the Medical Board of California;
2. Within fifteen (15) days of a recommendation or final decision based on any of the following, an 805.01 will be filed with the Medical Board of California:
 - a. Incompetence, or gross or repeated deviation from the standard of care involving death or serious bodily injury to one (1) 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 (1) or more patients during a course of treatment or an examination.
3. Within thirty (30) days of the final decision, KHS must report to the NPDB.
- a. Reporting to appropriate authorities is not applicable in the following circumstances: If there is no instance of suspension, termination, restriction or revocation to report for quality reasons;
 - b. For automatic administrative terminations based on the practitioners or providers of service not meeting specific contractual obligation for participation in the network;

8.0 JUDICIAL REVIEW

The KHS 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.

REFERENCE:

Revisions 05-2022: Reviewed by Credentialing Manager and DSR Health Law to update hearing procedures with applicable and current State laws, including Business & Professions Code and NCQA Credentialing Standards. Removed all “practitioner/provider” reference using general term “provider” which encompasses both physicians and ancillary providers as recommended by DSR Health Law; added enhanced explanation of Scope of Hearing and added Exceptions to Hearing Rights; added Reporting to Appropriate Authorities language and required timeframes. Removed Attachments as the MBC 805 Report form changes periodically and current version must be used.

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.