

6.8. DISQUALIFICATION OF HEALTH CARE PROVIDERS. -- The following rules are promulgated for the purpose of assisting the administrator of the Medical Advisory Board, the health care providers, and the Medical Advisory Board in the consideration and resolution of complaints against health care providers formally brought to the attention of the Medical Advisory Board.

(A) *Procedure*. -- Formal proceedings before the Medical Advisory Board are neither civil nor criminal in nature, but are quasi-judicial administrative proceedings. The proceedings shall conform generally to these rules and to such other rules of procedure as may be adopted by the Medical Advisory Board, as authorized by G. L. 1956 §§ 28-30-22(b)(3) and (e).

(B) The Medical Advisory Board may receive a complaint regarding allegations of misconduct by a health care provider through the submission of a properly filed complaint as described in W.C.C. – R.P. 6.8(C).

(C) *Complaint*. –

(1) Time of Filing. -- A complaint shall be filed within one (1) year from the date of the occurrence of the alleged violation or misconduct. The date of receipt by the administrator and not the date of deposit in the mail, shall be determinative.

(2) Place of Filing. -- A complaint shall be filed at the Medical Advisory Board, Attn.: Office of the Administrator, Workers' Compensation Court, One Dorrance Plaza, Providence, RI 02903.

(3) Contents. -- A complaint shall contain, as a minimum, the following information:

- (a) The full name and address of the person/entity making the complaint.
- (b) The full name and address of the person against whom the charge is made.
- (c) A concise statement of the facts that form the basis for the complaint.
- (d) Identification of the specific medical protocols and/or statutes which are alleged to have been violated.
- (e) The date(s) of the alleged violation(s), or if the alleged violation(s) is of a continuing nature, the dates between which said continuing violation(s) has/have occurred.

(4) Review. -- Upon receipt of a complaint in accordance with the foregoing requirements, the administrator of the Medical Advisory Board shall review the complaint to determine whether the allegations are within the Medical Advisory Board's authority to investigate.

- (a) If the complaint does not fall within the Medical Advisory Board's jurisdiction, the charge shall be dismissed and notice of the dismissal shall be

sent to the complainant. The initial complaint and response shall be filed in a “not opened” complaint file and maintained in the Medical Advisory Board Office.

- (b) If the complaint does fall within the Medical Advisory Board’s jurisdiction, a case file shall be established.

(D) *Procedure.* --

(1) Notice letter. -- A letter shall be sent, return receipt requested, to the health care provider stating that a complaint or referral has been received by the Medical Advisory Board and identifying the alleged violation(s). A copy of the complaint shall also be enclosed.

(2) Response. -- The respondent shall submit a written response within fourteen (14) business days of receipt of the notice letter.

- (a) The Medical Advisory Board will proceed with an investigation whether or not a response is submitted by the health care provider.

- (b) The respondent may include in her/his response a request that a conference be held on the issue of mitigation.

(3) Pleadings. -- Pleadings shall be limited to a petition for discipline (i.e., complaint or referral) and response thereto.

(4) Preliminary Investigations. -- The administrator shall conduct a preliminary investigation into matters under the Medical Advisory Board’s jurisdiction. Such investigation shall be designed to obtain adequate information upon which the Medical Panel can determine whether a violation finding may be warranted.

(5) Medical Panels. --

- (a) The chairperson of the Medical Advisory Board shall appoint and designate a Medical Panel comprised of three (3) members of the Medical Advisory Board to review each complaint.

- (b) The Medical Panel shall meet to review the results of the administrator’s preliminary investigation.

- (c) The respondent may appear before the Medical Panel to discuss the case and may be accompanied by legal counsel.

- (d) Subsequent to their review, the Medical Panel shall vote as to whether or not a violation has occurred.

- (i) If the vote is unanimous, finding a violation, then the Medical Panel shall state its findings and sanctions and draft an Order which shall be transmitted to the administrator.
- (ii) If the vote is not unanimous, no sanctions shall be levied and the complaint shall be dismissed.
- (e) The administrator shall advise the respondent, pursuant to W.C.C. – R.P. 6.8(E)(6)(a), of the findings of the Medical Panel and any sanctions ordered.

(E) *Disqualification or Suspension Appeal.* --

(1) Time to Appeal. –

- (a) If an Order of the Medical Panel disqualifies or suspends a health care provider, s/he may appeal the Order to the Medical Advisory Board within ten (10) working days of the entry of the Order by the administrator. The appeal shall be in writing and mailed, return receipt requested, to the administrator of the Medical Advisory Board. The date of receipt by the Medical Advisory Board and not the date of mailing shall be determinative.
- (b) If no appeal is taken, the Order shall be considered a Final Order of the Medical Advisory Board.

(2) Form. -- The appeal shall contain, at a minimum, the following information:

- (a) the full name and address of the health care provider requesting the appeal;
- (b) a concise statement of facts and the reasons for the appeal;
- (c) a copy of the Medical Panel's Order.

(3) Review on Appeal. – Members of the Medical Panel shall not participate with the Medical Advisory Board in reviewing the appeal.

(4) Representation. --

- (a) When a respondent appears on her/his own behalf before the Medical Advisory Board in a formal proceeding, s/he shall file with the Medical Advisory Board an address at which any notice or other written communication may be served upon her/him as well as their telephone number.
- (b) When a respondent is represented by counsel before the Medical Advisory Board in a formal proceeding, counsel shall file with the Medical Advisory Board a written notice of appearance which shall state counsel's name, Rhode

Island attorney registration number, address and telephone number, and the name and address of the respondent on whose behalf counsel appears. The notice of appearance shall also contain the caption and file number of the subject proceeding. Any additional notice or other written communication required to be served on or furnished to a respondent shall be sent to counsel of record at counsel's address in lieu of transmission to the respondent.

(5) Continuances. --

- (a) The chairperson or an acting chairperson of the Medical Advisory Board may grant extensions of time in a formal proceeding where the continuance is for good cause, will not result in undue delay, and the failure to grant a continuance will result in undue hardship.
- (b) No more than two (2) continuances will be granted to either the respondent or the administrator of the Medical Advisory Board absent good cause shown.

(6) Service. --

- (a) *By Medical Advisory Board.* -- Orders, notices and other documents originating with the Medical Advisory Board, including all forms of Medical Advisory Board action and other documents designated by the Medical Advisory Board for this purpose, shall be signed by the chairperson and served by first class mailing, to the person at their address of record, except when service by another method shall be specifically required by these rules.
- (b) *By Respondent.* -- All pleadings, briefs, and other documents filed by respondent with the Medical Advisory Board in formal proceedings shall be served upon the office of the administrator of the Medical Advisory Board. Such service shall be made by delivery in person or by first class mailing with postage prepaid.
- (c) *Effect of Service Upon Counsel.* -- When a respondent is represented by counsel, service upon such counsel shall be deemed to be service upon the respondent.
- (d) *Date of Service.* -- The date of service shall be the day when the document served is deposited in the United States mail or is delivered in person; except as to pleadings or other documents required or permitted to be filed with the Medical Advisory Board as provided in W.C.C. – R.P. 6.8(C)(1), (D)(2) and (E)(1)(i). A postmark shall be determinative of the day of deposit in the United States mail.
- (e) *Proof of Service.* -- When service is required to be made, there shall accompany and be attached to the original, a certificate of service substantially in the following form:

Certificate of Service

I hereby certify that I have this day served by (indicate method of service) the foregoing document upon all parties of record in this proceeding.

Dated this _____ day of _____, 20__.

Signature

(7) Appearances. -- The Medical Advisory Board requires counsel for all parties to enter their appearance.

(8) Order of Procedure. -- In proceedings upon a petition for discipline, the administrator of the Medical Advisory Board shall have the burden of proof, shall indicate the specific acts of misconduct alleged, the specific protocols violated and all other evidence demonstrating a violation of the Rhode Island General Laws. The administrator may also present rebuttal evidence. These proceedings shall not be open to the public; however, the final order and decision of the Medical Advisory Board are available for viewing in accordance with subsection (10) herein.

(a) *Presentation by the Parties*. --

(i) General Rule. -- The respondent and the administrator of the Medical Advisory Board shall have the right to present relevant facts and arguments in support of their respective positions. The proceedings shall proceed with all reasonable diligence and with the least practicable delay.

(ii) Objections. -- Any objections to the admission of factual material or any procedural objections shall be on the record and the grounds upon which the objection is based shall be specifically stated. The Medical Advisory Board Chairperson or her/his designee shall rule on all objections made.

(b) *Witnesses*. -- The chairperson of the Medical Advisory Board or her/his designee may limit the number of witnesses who may be heard in order to eliminate unduly repetitious or cumulative testimony without prejudice to the substantive rights of any party.

(c) *Additional Evidence*. -- At the hearing, the chairperson of the Medical Advisory Board or her/his designee may authorize any participant to file specific documentary evidence as a part of the record within a fixed time.

(d) *Transcript*. -- Hearings shall be recorded by a reporter designated by the Medical Advisory Board. The transcript shall include a verbatim report of the

hearings with no omissions and shall be the sole official transcript of the proceeding.

- (i) After the close of the record, no additional evidence or document shall be considered.
- (ii) Corrections in an official written transcript may be allowed only in order to conform to the evidence presented at the hearing. No corrections shall be made to an official written transcript of the hearing, except as provided in this section. Transcript corrections agreed to by all parties may be incorporated into the record if and when approved by the Medical Advisory Board at any time during the hearing or after the close of the hearing.
- (iii) The Medical Advisory Board will cause to be made available a stenographic record of all Medical Advisory Board hearings of appeal under W.C.C. – R.P. 6.8. A respondent requesting a copy of the transcript may obtain a copy at their own expense.

(e) *Stipulations.* -- The participants may stipulate to any relevant facts or to the authenticity of any documents. Stipulations shall be binding on the participants.

(f) *Evidence.* –

- (i) Admissibility. -- The petition for discipline and answer shall not be considered as evidence unless offered and received as evidence in accordance with these rules.
- (ii) Objections to Evidence. -- In the event there is an objection to any evidence being proffered, objections shall be on the record and the grounds upon which the objection is based shall be specifically stated. The chairperson of the Medical Advisory Board or her/his designee shall rule on all objections made.

(g) *Conferences.* -- Conferences between the participants to expedite the proceeding may be held at any time prior to or during hearings.

(9) Filing or Determination. -- The Medical Advisory Board shall submit a written decision of its action setting forth the specific violations found and the sanctions to be assessed, if any.

- (a) Copies of the decision of the Medical Advisory Board shall be served on the respondent and the Administrator of the Medical Advisory Board.

- (b) Upon receipt of the decision of the Medical Advisory Board, the administrator of the Medical Advisory Board shall advise the respondent of any sanctions ordered.
- (c) The Final Order of the administrator shall be sent by first class mailing to the respondent, the complainant, and to the appropriate licensing authority.
- (d) The Medical Advisory Board may file a petition the Workers' Compensation Court to enforce any Final Order.

(10) Access to Records. -- All investigatory records of the Medical Advisory Board shall not be open to the public. Records of the Final Order and Decision of the Medical Advisory Board are available to members of the public at the office of the administrator of the Medical Advisory Board.

(11) Appeal to the Workers' Compensation Court. -- The respondent may file an appeal of the Medical Advisory Board's decision to disqualify or suspend as provided by statute with the Workers' Compensation Court following the procedure set forth in W.C.C. – R.P. 2.30.