



THOMAS L. GARTHWAITE, M.D.
Director and Chief Medical Officer

COUNTY OF LOS ANGELES
DEPARTMENT OF HEALTH SERVICES
313 N. Figueroa, Los Angeles, CA 90012
(213) 240-8101

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November 2, 2005

TO: Each Supervisor

FROM: Thomas L. Garthwaite, M.D.
Director and Chief Medical Officer

SUBJECT: **LOS ANGELES COUNTY AUTHORITY TO REFUSE AN EMPLOYEE'S
RESIGNATION WHEN THE EMPLOYEE'S DISCHARGE IS BEING
CONSIDERED OR PROCESSED**

On August 30, 2005, your Board asked that the Director of Health Services (DHS) work with County Counsel and report back to the Board on the following questions:

1. Discussion with the Chief Administrative Office's Employee Relations and collective bargaining units about the potential of amending existing County rules affecting employee working conditions in the event an employee decides to resign when the employee's discharge is being considered or processed for all County departments, including changes in County rules for nonrepresented positions;
2. Development of an implementation plan with timelines on the creation of an administrative process to provide any information about a former County employee who has been discharged in response to requests from a prospective employer;
3. To ensure that the appropriate reports are made and that the Medical Directors at all County hospitals are aware of the rules governing mandatory and discretionary reporting;
and
4. Implementation of steps to allow the hospital medical staffs to consider restricting or revoking clinical staff privileges for ethical breaches or other causes not directly impacting care or the delivery of services.

County Counsel will respond to questions #1 and #2 under a separate cover. This report responds to #3 and #4.

With respect to reporting by each hospital, DHS has prepared a memorandum, (copy attached) which reminds each medical director of the instances in which federal and state reporting are

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required. In addition, DHS worked with County Counsel to research those instances where discretionary reporting could yield disciplinary action by the Medical Board of California, as reporting in other circumstances would not be productive. An addendum of offenses that could lead to sanctions by the Medical Board was developed from this research, and will be provided to each facilities Medical Director.

With respect to imposing medical staff discipline in circumstances not directly effecting patient care, DHS and County Counsel reviewed the language in the existing Bylaws of the Professional Staff Associations at each hospital. Each of these bylaws currently contains language which requires the Association members to "strictly abide" by the various medical societies' ethical codes of conduct.

The bylaws also contain language describing a corrective action process that may be requested by any officer of the Association, a department chair, a committee chair, the Chief Executive Officer or the Chief Medical Officer, Health Services. This corrective action process may be initiated whenever a practitioner with clinical privileges engages in any act, statement or demeanor, or professional conduct, either within or outside the Medical Center, which is or is reasonably likely to be (1) detrimental to patient safety or to the delivery of quality patient care, (2) disruptive or deleterious to the operations of the Medical Center or improper use of Medical Center resources, (3) below applicable professional standards or at most of the hospitals, and (4) contrary to the Association's bylaws, rules or regulations.

This language allows the Medical Directors the latitude to initiate the corrective action process in response to ethical breaches not directly impacting care or the delivery of services. While this corrective action process can result in lesser actions against an offending physician or other PSA member, it may, in appropriate circumstances, result in the revocation of a provider's privileges or even PSA membership. Such action which would then result in mandatory reporting to the Medical Board of California.

DHS has prepared the attached memorandum to the Medical Directors, instructing them to ensure that they implement these steps to allow for revoking or restricting clinical privileges, reporting those restrictions, as required, to the medical board and encouraging them to consider discretionary reporting for those actions identified as citable offenses.

If you have any questions or need additional information, please let me know.

TLG:ls
508:018

Attachments

c: Chief Administrative Office
County Counsel
Executive Officer, Board of Supervisors



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November 2, 2005

TO: Medical Directors

FROM: Thomas L. Garthwaite, MD 
Director and Chief Medical Officer, Health Services

SUBJECT: **REPORTING PRACTITIONER ETHICAL BREACHES AND OTHER
CONDUCT TO THE STATE AND FEDERAL GOVERNMENTS**

The following outlines the circumstances under which reporting members of your Professional Staff Associations ("PSA") is either required or permitted under both state and federal law. It is important for you to be familiar with these rules and assure that your organizations comply with them.

I. State Reporting Requirements

California's Business and Professions Code Sections 803.2 and 805 describe various instances where reporting to the Medical Board of California or other licensing agency is required. These instances include the following:

- Upon judgment, arbitration award or settlement of a malpractice claim over \$30,000 (refer to policy 311.3)
- Within 15 days after the effective date of any of the following that occur as a result of an action of a peer review body:
 - A licentiate's application for staff privileges or membership is denied or rejected for a medical disciplinary cause or reason.
 - A licentiate's staff membership, 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 30 days or more for any 12-month period, for a medical disciplinary cause or reason.

- Within 15 days after any of the following occur if the practitioner had been given notice of an impending investigation, or the denial or rejection of an application for staff membership, privileges or the renewal of membership or privileges for a medical disciplinary cause or reason:
 - Resignation or leave of absence from membership, or employment.
 - The withdrawal or abandonment of a licentiate's application for staff privileges or membership.
 - The request for renewal of those privileges or membership is withdrawn or abandoned.
- *Reports made pursuant to these requirements carry a special immunity with them; therefore, concern over possible liability for making such a report should not deter you from complying with these legally imposed requirements.*

Your facility Bylaws contain language allowing you to initiate corrective action proceedings for providers who do not "strictly abide" by certain medical societies' ethical codes. These proceedings may result in a determination that privileges should be revoked or restricted, or that membership in the Association be terminated. If any of these outcomes occur, a reporting obligation under Business and Professions Code Section 805 is created.

In addition, your Bylaws also provide for the immediate termination of privileges upon a member's resignation or termination from County employment. Should this occur, the medical staff loses its authority to take an action against a practitioner's privileges. However, such an action may continue to be appropriate, in some cases, to formally establish the existence of dangerous or improper practices by a member. In order to preserve the PSA's ability to take an action against a provider in such circumstances, the Medical Executive Committee may, in its sole discretion, move to stay the automatic termination. However, this action must be taken prior to the effective date of the termination; it cannot be done once County employment has ended. Thus, it is essential that you institute procedures to assure that the Medical Executive Committee is immediately informed of potential terminations or resignations.

Effective immediately, you are expected to ensure that your medical staff is familiar with those instances where mandatory reporting to the Medical Board of California is required and to ensure that appropriate reporting is accomplished.

There are other instances where reporting to the Medical Board of California is not mandatory; however, due to the nature of the offense (e.g. a serious ethical breach) discretionary reporting should be considered. Discretionary reporting is encouraged for

those actions which could lead the Medical Board to impose sanctions. A list of sanctionable offenses is attached. (Addendum A)

II. Federal Reporting Requirements

In addition to the actions which must be reported under California law, the federal law involving the National Practitioner Data Bank also imposes mandatory reporting requirements. In most cases, federal law requires the hospital to report to the National Practitioner Data Bank and the state medical board under the same circumstances as state law requires a report to the Medical Board. However, there are additional circumstances under federal law which the hospital must file a report.

Reports to the National Practitioner Data Bank must be made in the following circumstances:

- Malpractice payments, whether made as a result of a settlement, arbitration award or judgment on behalf of a physician or dentist regardless of amount, where the physician or dentist is both "named" in the complaint and "named" in the settlement, judgment or award. The determination of who is "named" should be made in consultation with legal counsel.
- Any action by the PSA which adversely affects a physician or dentists' clinical privileges for more than 30 days.
- The voluntary acceptance by a physician or a dentist of restrictions on privileges while the person was under an investigation related to professional competence or conduct.
- The surrender of privileges by a physician or dentist (which would include the resignation of membership) while the person was under an investigation related to professional competence or conduct.
- The surrender of privileges or their voluntary restriction in order to avoid an investigation related to professional competence or conduct.

Any action in the last four bullet points must simultaneously be reported to the Medical Board, as required by federal law, even though it may not be reportable under Business and Professions Code Section 805. You should work with Human Resources and the DHS Audit and Compliance Division to assure that, in any instance where a physician is the subject of an investigation; you are notified early in the investigation. You must then consider whether the investigation is likely to yield an outcome that should be addressed

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by the PSA as a disciplinary matter. If it is, you should take the appropriate steps to preserve the facility's ability to take an action (e.g. notify the Medical Executive Committee to stay the automatic termination of privileges). This includes ensuring that physicians who are the subject of investigations likely to result in a need for corrective actions are given proper notice of the impending investigation in order to comply with the criteria listed under bullet three on page one of this memorandum. This might also include ensuring that the results of the investigation are referred to the medical director for action by the PSA.

Should you have any questions or need further information, please contact Bruce Chernof, MD, Laura Sarff, RN or me.

TLG:BC:ls

C: Bruce Chernof, MD
Sachi Hamai
Paula Packwood
Susan Moser
Sharon Ryzak
Anita D. Lee, Esq.
Laura Sarff, RN

Synopsis of Offenses for which the Medical Board of California
May Cite and Fine

This is a synopsis of the types of offences for which the Medical Board of California is authorized to issue a citation (which also may include imposition of a fine or an abatement order) pursuant to 16 Cal. Code Regs. Section 1364.11. These offenses are based on various statutes, including the Business & Professions Code, the Health and Safety Code and the Penal Code, as well as, Titles 16 and 17 of the California Code of Regulations.

Citations may be issued for the following actions:

- Unlawful use of license, practicing without a license, making false statements to procure a license, or allowing someone to use your license
- Engaging in business relationships that include kickbacks, billing irregularities and making false claims
- Failure to attest to health section data at time of death on death certificate, failure to timely complete a death certificate or birth certificate
- Failure to report infectious diseases to the health officer, including TB and household contacts of persons with TB
- Failure to comply with informed consent for sterilization
- Failure to get informed consent as required for breast cancer patients and silicone implants
- Making false statements in the medical record with fraudulent intent
- Violation of professional confidence
- Failure to maintain adequate and accurate records of services
- Inappropriate supervision of physician assistants
- Failure to adhere to CME requirements
- Failure to report child abuse

The medical staff is asked to consider whether one of these citable offenses has occurred when deliberating as a peer review body, and when deciding whether to make a discretionary report to the Medical Board.