

Statutes and Regulations Relevant to Physician Health

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PHYSICIAN HEALTH SERVICES, INC.

A Massachusetts Medical Society corporation

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Board of Registration in Medicine Regulations
243 CMR 2.07(23)

(Exception to Mandatory Reports)

(23) Exception for Reports to the Board under M.G.L. c. 112, § 5F.

(a) Requirements for Reporting Exception to Apply. A health care provider (reporter), as defined by M.G.L. c. 111, § 1, who is required to report a physician to the Board pursuant to M.G.L. c. 112, § 5F, is exempt from filing such a report if all three of the following conditions are present:

1. Reasonable Basis to Believe Impairment. The reporter has a reasonable basis to believe that the physician is or has been impaired by, dependent upon or misusing alcohol or drugs such that a report could be required under M.G.L. c. 112, § 5F, and that the physician has not violated any other Board statute or regulation as set forth in M.G.L. c. 112, § 5 or 243 CMR 1.00 through 3.00; and

2. No Allegation of Patient Harm. The physician's involvement with alcohol or drugs has not involved an allegation of patient harm; and

3. Confirmation of Compliance with the Treatment Program. The physician is currently in compliance with a drug or alcohol program, and the reporter obtains direct confirmation from such drug or alcohol program, within 30 days of acquiring the Reasonable Basis to Believe under 243 CMR 2.07(23)(a), that the physician is in compliance with such program. If the reporter fails to obtain direct confirmation from such program or if the physician at any time fails to comply with such program, the exception to the reporting requirement set forth in 243 CMR 2.07(23) ceases and the health care provider must report the impairment as required by M.G.L. c. 112, § 5F.

(b) Requirements for drug or alcohol program to qualify for 243 CMR 2.07(23).

1. The drug or alcohol program must be approved by a majority vote of the Board. Approval may be withdrawn, at any time, for cause, by majority vote of the Board and with reasonable advance notice to the program of the reasons for the proposed withdrawal of approval and an opportunity to dispute such reasons. However, nothing herein shall be construed to provide a right to an adjudicatory hearing pursuant to M.G.L. c. 30A.

2. The drug or alcohol program requires as a condition of the physician's participation that the physician consent, pursuant to 42 CFR 1, subpart A, part 2, subsection C, to disclosure of relevant information to the Board, under any of the following conditions:

a. If the physician fails to correct, within a reasonable period of time, a failure to provide documentation of his or her continuing freedom from unauthorized substance use;

- b. If the physician is known by the program to be in a state of unauthorized substance use, or if the physician is in a state of unauthorized substance use after signing his or her contract with the program;
 - c. If the program has a reasonable basis to believe that the physician, for any reason, cannot render professional services without undue risk to the public;
 - d. If the physician revokes consent to disclose information to the Board during the course of his or her contract with the program; or
 - e. If the physician terminates his or her contract with the program for any reason other than his or her successful recovery, in which the program concurs.
3. The drug or alcohol program requires that the physician consent to confirmation to the reporter, pursuant to federal regulations, that the physician is participating in the program, to the extent that the reporter needs such confirmation pursuant to 243 CMR 2.07(23)(c).

**This regulatory language, updated March 22, 2012, is provided for convenience. Please consult current regulatory language and legal counsel before any action is taken or decision is made in reliance on the language above.*

Peer Review Committee Definition **M.G.L. c. 111, § 1**

GENERAL LAWS OF MASSACHUSETTS

Section 1. Definitions

Section 1. The following words as used in this chapter, unless a different meaning is required by the context or is specifically prescribed, shall have the following meanings:

“Health care provider”, any doctor of medicine, osteopathy, or dental science, or a registered nurse, social worker, doctor of chiropractic, or psychologist licensed under the provisions of chapter one hundred and twelve, or an intern, or a resident, fellow, or medical officer licensed under section nine of said chapter one hundred and twelve, or a hospital, clinic or nursing home licensed under the provisions of chapter one hundred and eleven and its agents and employees, or a public hospital and its agents and employees.

“Medical peer review committee” or “committee”, a committee of a state or local professional society of health care providers, including doctors of chiropractic, or of a medical staff of a public hospital or licensed hospital or nursing home or health maintenance organization organized under chapter one hundred and seventy-six G, provided the medical staff operates pursuant to written by-laws that have been approved by the governing board of the hospital or nursing home or health maintenance organization or a committee of physicians established pursuant to section 12 of chapter 111C for the purposes set forth in subsection (f) of section 203, which committee has as its function the evaluation or improvement of the quality of health care rendered by providers of health care services, the determination whether health care services were performed in compliance with the applicable standards of care, the determination whether the cost of health care services were performed in compliance with the applicable standards of care, determination whether the cost of the health care services rendered was considered reasonable by the providers of health services in the area, the determination of whether a health care provider’s actions call into question such health care provider’s fitness to provide health care services, or the evaluation and assistance of health care providers impaired or allegedly impaired by reason of alcohol, drugs, physical disability, mental instability or otherwise; provided, however, that for purposes of sections two hundred and three and two hundred and four, a nonprofit corporation, the sole voting member of which is a professional society having as members persons who are licensed to practice medicine, shall be considered a medical peer review committee; provided, further, that its primary purpose is the evaluation and assistance of health care providers impaired or allegedly impaired by reason of alcohol, drugs, physical disability, mental instability or otherwise. “Medical peer review committee” shall include a committee of a pharmacy society or association that is authorized to evaluate the quality of pharmacy services or the competence of pharmacists and suggest improvements in pharmacy systems to enhance patient care; or a pharmacy peer review committee established by a person or entity that owns a licensed pharmacy or employs pharmacists that is authorized to evaluate the quality of pharmacy services or the competence of pharmacists and suggest improvements in pharmacy systems to enhance patient care.

**Note: Additional definitions contained in M.G.L. c. 111, § 1 have been excluded from this excerpt*

***This statutory and regulatory language, updated December 5, 2011 is provided for convenience. Please consult current statutory language and legal counsel before any action is taken or decision is made in reliance on the language above.*

Peer Review Confidentiality
M.G.L. c. 111, § 204

GENERAL LAWS OF MASSACHUSETTS

Section 204. Confidentiality of proceedings, reports and records; exceptions; immunity

(a) Except as otherwise provided in this section, the proceedings, reports and records of a medical peer review committee shall be confidential and shall be exempt from the disclosure of public records under section 10 of chapter 66 but shall not be subject to subpoena or discovery, or introduced into evidence, in any judicial or administrative proceeding, except proceedings held by the boards of registration in medicine, pharmacy, social work, or psychology or by the department of public health pursuant to chapter 111C, and no person who was in attendance at a meeting of a medical peer review committee shall be permitted or required to testify in any such judicial or administrative proceeding, except proceedings held by the boards of registration in medicine, pharmacy, social work or psychology or by the department of public health pursuant to chapter 111C, as to the proceedings of such committee or as to any findings, recommendations, evaluations, opinions, deliberations or other actions of such committee or any members thereof.

(b) Documents, incident reports or records otherwise available from original sources shall not be immune from subpoena, discovery or use in any such judicial or administrative proceeding merely because they were presented to such committee in connection with its proceedings. Nor shall the proceedings, reports, findings and records of a medical peer review committee be immune from subpoena, discovery or use as evidence in any proceeding against a member of such committee to establish a cause of action pursuant to section eighty-five N of chapter two hundred and thirty-one; provided, however, that in no event shall the identity of any person furnishing information or opinions to the committee be disclosed without the permission of such person. Nor shall the provisions of this section apply to any investigation or administrative proceeding conducted by the boards of registration in medicine, pharmacy, social work or psychology or by the department of public health pursuant to chapter 111C.

(c) A person who testifies before such committee or who is a member of such committee shall not be prevented from testifying as to matters known to such person independent of the committee's proceedings, provided that, except in a proceeding against a witness to establish a cause of action pursuant to section eighty-five N of chapter two hundred and thirty-one, neither the witness nor members of the committee may be questioned regarding the witness' testimony before such committee, and further provided that committee members may not be questioned in any proceeding about the identity of any person furnishing information or opinions to the committee, opinions formed by them as a result of such committee proceedings, or about the deliberations of such committee.

(d) A court or administrative body may place reasonable restrictions on the use which may be made of the information obtained hereunder so as to maintain, so far as necessary or practicable, the confidentiality of such information.

(e) No proceeding, report or record of a medical peer review committee obtained hereunder and disclosed in an action pursuant to section eighty-five N of chapter two hundred and thirty-one or a proceeding before an administrative body, shall be subject to subpoena or discovery, or introduced into

evidence in judicial or administrative proceedings other than those proceedings or investigations specified in subsections (a) and (b).

**This statutory and regulatory language, updated February 9, 2012 is provided for convenience. Please consult current statutory language and legal counsel before any action is taken or decision is made in reliance on the language above.*

Immunity for Providing Information to Peer Review Committee
M.G.L. c. 111, § 203

GENERAL LAWS OF MASSACHUSETTS

Section 203. Provider misconduct; medical peer review

- (a) The by-laws of every licensed or public hospital and the by-laws of all medical staffs shall contain provisions for reporting conduct by a health care provider that indicates incompetency in his specialty or conduct that might be inconsistent with or harmful to good patient care or safety. Said by-laws shall direct a procedure for investigation, review and resolutions of such reports.
- (b) Whenever, following review by a medical peer review committee of a licensed or public hospital determination is reached that a health care provider's privileges should be suspended in the best interests of patient care, such committee shall immediately forward the recommendation to the executive committee of the medical staff and the institution's board of trustees for action. A provider whose privileges are suspended shall be entitled to notice and a prompt hearing following suspension, in accordance with the institution's medical staff by-laws.
- (c) An individual or institution, including a licensed or public hospital, physician credentialing verification service operated by a society or organization of medical professionals for the purpose of providing credentialing information to health care entities, or licensed nursing home reporting, providing information, opinion, counsel or services to a medical peer review committee, or participation in the procedures required by this section, shall not be liable in a suit for damages by reason of having furnished such information, opinion, counsel or services or by reason of such participation, provided, that such individual or institution acted in good faith and with a reasonable belief that said actions were warranted in connection with or in furtherance of the function of said committee or the procedures required by this section.
- (d) Every licensed hospital, as a condition of licensure, and every public hospital shall be required to participate in risk management programs established by the board of registration in medicine pursuant to section five of chapter one hundred and twelve; provided, however, that licensed or public hospitals which participate in pre-existing risk management programs may be exempted by regulations of the board from the requirements of this paragraph.
- (e) Every licensed nursing home shall: (i) request from every physician providing medical care in the nursing home said physician's name and license number; (ii) upon initial appointment of its medical director or physician advisor and biennially thereafter, inquire from a hospital where the physician has staff privileges and spends the greatest portion of his time, the status of said physician's staff privileges, or if the physician has no such staff privileges, make such reasonable inquiry, as the board of registration in medicine by regulation may require, into the physician's employment history and malpractice claims experience; (iii) report to said board any disciplinary action which the nursing home takes against any physician providing medical care in the nursing home; the nursing home shall report to the board any disciplinary action within thirty days of the occurrence of the reportable action; the report shall include a statement detailing the nature and circumstances of the action, its date, and the reasons for it; the nursing home shall file an annual disciplinary summary with the board; the annual disciplinary summary shall be filed no later than January thirty-first for each previous calendar year. The annual disciplinary summary shall summarize the reports submitted for the previous calendar year; the annual

disciplinary summary shall be sent by certified or registered mail, and it shall be under oath; if the nursing home submitted no reports for the previous calendar year, then the annual disciplinary summary shall state that no reports were required; and (iv) simultaneously send to said board a copy of any report sent to the department of public health pursuant to the provisions of sections seventy-one and seventy-two, whenever any such report indicates incompetency of a physician or other conduct by a physician that seriously affects a nursing home patient's health and safety. The types of incidents reported under this section, shall be jointly determined by the department of public health and the board of registration in medicine and may be set forth in regulations promulgated by the board.

(f) Every service, EMS first responder, emergency medical technician, every trauma center and regional EMS council licensed, certified or designated pursuant to chapter 111C, every physician providing medical direction under said chapter and every hospital affiliated with any such service shall participate in continuous quality improvement programs established under chapter 111C by the state medical director or by a regional medical director and conducted under said chapter by a medical peer review committee to review and evaluate the necessity, quality and effectiveness of the emergency medical care and specialty care services, including, without limitation, trauma care services in the commonwealth.

(g) A licensed pharmacy may establish a pharmacy peer review committee to evaluate the quality of pharmacy services or the competence of pharmacists and suggest improvements in pharmacy systems to enhance patient care. The committee may review documentation of quality-related activities in a pharmacy, assess system failures and personnel deficiencies, determine facts, and make recommendations or issue decisions in a written report that can be used for contiguous quality improvement purposes. A pharmacy peer review committee shall include the members, employees, and agents of the committee, including assistants, investigators, attorneys, and any other agents that serve the committee in any capacity.

**This statutory and regulatory language, updated February 9, 2012 is provided for convenience. Please consult current statutory language and legal counsel before any action is taken or decision is made in reliance on the language above.*

Immunity for Committee Members
M.G.L. c. 231, § 85N

GENERAL LAWS OF MASSACHUSETTS

Section 85N. Liability of licensed members of certain professional societies and committees for damages resulting from official acts.

No member of a professional society or of a duly appointed committee thereof, or a duly appointed member of a committee of a medical staff of a licensed hospital or a health maintenance organization licensed under the provisions of chapter one hundred and seventy-six G shall be liable in a suit for damages as a result of his acts, omissions or proceedings undertaken or performed within the scope of his duties as such committee member, provided that he acts in good faith and in the reasonable belief that based on all of the facts the action or inaction on his part was warranted; nor shall an individual be liable in a suit for damages as a result of acts, omissions or proceedings undertaken or performed within the scope of his duties to a nonprofit corporation, the sole voting member of which is a professional society having as members persons who are licensed to practice medicine; provided, however, that such individual acts in good faith and in the reasonable belief that based on all of the facts the action or inaction on his part was warranted.

For the purposes of this section “professional society” shall mean a society having as members persons who are licensed or admitted to practice in the field of law, medicine, chiropractic, optometry, psychiatry or psychology, dentistry, accounting, engineering, land surveyor, as set forth in section eighty-one D of chapter one hundred and twelve, architecture or social work.

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**Mandatory Reporting of Physicians, Exemption from Reporting
M.G.L. c. 112, § 5F**

GENERAL LAWS OF MASSACHUSETTS

Section 5F. Reports of violations by health care providers; discrimination; liability of employers; exemption.

Any health care provider, as defined in section one of chapter one hundred and eleven, shall report to the board any person who there is reasonable basis to believe is in violation of section five, or any of the regulations of the board, except as otherwise prohibited by law.

No employer or duly authorized agent of an employer shall discharge, refuse to hire or in any other manner discriminate against an employee because the employee has made a report to the board as required under this section, or has testified or in any manner cooperated with an inquiry or proceeding pursuant to this chapter, unless the employee knowingly participated in a fraudulent proceeding. Any person claiming to be aggrieved by a violation of this section may initiate proceedings in the superior court department of the trial court for the county in which the alleged violation occurred. An employer found to have violated this paragraph shall be exclusively liable to pay to the employee lost wages, shall grant the employee suitable employment, and shall reimburse such reasonable attorney fees incurred in the protection of rights granted by this section. The court may grant whatever equitable relief it deems necessary to protect rights granted by this section. The board may, by regulation, exempt a health care provider from the reporting obligation under this section, as to a physician who is in compliance with the requirements of a drug or alcohol program satisfactory to the board, or who has successfully concluded such a program subsequent to the actions or circumstances as to which reporting would otherwise be required.

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