

MEDICAL DISCIPLINE

Who has the power to discipline physicians?

The Medical Quality Assurance Commission (MQAC) is the state agency which has the power to discipline physicians. MQAC members are appointed by the governor. The MQAC is composed of thirteen physicians, two physician assistants, and six members of the public, at least two of which are from outside of the health care industry. Each congressional district has at least one physician member on the MQAC.¹

What are the grounds for discipline?

The Uniform Disciplinary Act identifies 25 kinds of unprofessional conduct for which a physician can be disciplined.² See **UNPROFESSIONAL CONDUCT** for a listing.

How does an MQAC investigation begin?

An MQAC investigation usually begins as a result of a patient complaint, a complaint by an impaired practitioner program, or a voluntary substance abuse monitoring program approved by the MQAC, a complaint by another health care provider, or a mandatory report of malpractice payments, adverse professional review actions, findings of unprofessional conduct, or improper billing practices.³

The MQAC reviews every complaint it receives, including anonymous complaints. If the MQAC determines it has jurisdiction over the subject of the complaint and receives a waiver of confidentiality from the complainant, if necessary, MQAC conducts an investigation of the complaint.⁴ The MQAC will consider any prior complaints, findings of fact, stipulations to informal dispositions and any other comparable actions when it decides whether or not to investigate a complaint.⁵

The MQAC must initiate an investigation when it receives information that a physician has been disqualified from participating in Medicare or the federal Medicaid program, and when there is a pattern of complaints, arrests, or other actions which may not have resulted in a formal judgment against the physician, but when considered together demonstrate a pattern of similar conduct that, without investigation, likely poses a risk to the safety of the physician's patients.⁶

When must an entity, organization or institution report unprofessional conduct?

¹ RCW 18.71.015.

² RCW 18.130.180.

³ RCW 18.130.080(1).

⁴ RCW 18.130.080(2).

⁵ *Id.*

⁶ RCW 18.130.080(3).

Under state law, a professional liability insurer is required to report to the MQAC all malpractice payments in excess of \$20,000, and the payment of three or more malpractice claims during a five-year period, made on behalf of a physician.⁷ This state law, however, effectively has been preempted by federal law which requires the reporting of any payment under a policy of insurance, self-insurance, or otherwise in settlement, partial settlement, or satisfaction of a judgment in a medical malpractice action or claim, on behalf of a physician to the National Practitioner Data Bank and the MQAC.⁸

Health care institutions, including hospitals,⁹ ambulatory surgery facilities, childbirth centers, nursing homes, chemical dependency treatment programs, drug treatment agencies, and public and private mental health treatment agencies, must report to the MQAC when a physician's privileges are restricted or terminated.¹⁰

Every physician, corporation, organization, health care facility, and state and local governmental agency that employs a physician shall report when the employed physician's services have been terminated or restricted based on a final determination that the physician has committed an act that may constitute unprofessional conduct, or may not be able to practice medicine with reasonable skill and safety due to a mental or physical condition.¹¹

Professional review organizations, including every peer review committee, quality improvement committee, or other similarly designated professional review organization, must report when it makes a determination that a physician has caused harm to a patient or placed a patient at unreasonable risk of harm, and when it has actual knowledge that the physician poses an unreasonable risk of harm due to a mental or physical condition – provided that such a report is not prohibited by state or federal law. Professional review organizations and individual physicians who are participating in such an organization, do not need to report during an investigation so long as the investigation is conducted in a timely manner.¹²

Medical associations and societies are required to report to the MQAC any findings of unprofessional conduct or inability to practice medicine with reasonable skill and safety made against a physician.¹³

Health care services contractors and disability insurers must report any billing impropriety and overutilization of medical services by a physician.¹⁴

Does a physician have to self-report?

A physician must self-report any conviction, determination, or finding that the physician has committed unprofessional conduct, information that the physician is unable to practice

⁷ RCW 18.71.350, WAC 246-16-240.

⁸ 42 U.S.C. §§ 11131, 11134.

⁹ RCW 70.41.210.

¹⁰ WAC 246-16-245.

¹¹ WAC 246-16-270.

¹² WAC 246-16-255.

¹³ WAC 246-919-730.

¹⁴ WAC 246-16-250.

medicine with reasonable skill and safety due to a mental or physical condition, or any disqualification from the federal Medicare or Medicaid program.¹⁵

Does a physician have a duty to report unprofessional conduct of another physician?

In some circumstances, yes. A physician must report another physician (or other licensed health care professional) when the physician has actual knowledge of any conviction, determination, or finding that another physician (or license holder) has committed an act that constitutes unprofessional conduct, or that the other physician (or license holder) may not be able to practice medicine (or relevant profession) with reasonable skill and safety due to a mental or physical condition.¹⁶

Physicians who are treating physicians currently enrolled in a drug or alcohol abuse treatment program through the Washington Physicians Health Program or other approved impaired practitioner program are not required to report their physician patient so as long as the physician patient actively participates in the treatment program and so as long as the physician patient's impairment does not constitute a clear and present danger to the public health, safety or welfare.¹⁷

Physicians who provide health care to another physician (or license holder) do not have to report the physician (or license holder) patient if the patient does not pose a clear and present danger to patients or clients.¹⁸

Physicians who are member of a professional review organization (which includes peer review committees, quality improvement committees, or other similarly designated professional review organizations) also are not obligated to report.¹⁹

How does a physician know if a complaint has been filed with the MQAC against the physician?

Usually the physician will be notified the MQAC receives a complaint, and MQAC has completed an initial assessment and determined it has jurisdiction over the matter and the matter warrants an investigation,²⁰ except where such notification would impede an effective investigation.²¹ During the initial investigatory phase, a physician is not entitled to the written or oral complaint or to information gathered during the investigation.²²

¹⁵ WAC 246-16-230.

¹⁶ WAC 246-16-235(1).

¹⁷ WAC 246-16-235(2)(c).

¹⁸ WAC 246-16-235(2)(b).

¹⁹ WAC 246-16-235(2)(a).

²⁰ WAC 246-14-040(1).

²¹ RCW 18.130.095(1)(a).

²² RCW 18.130.095(1)(a); RCW 42.56.360(1)(c).

When does an MQAC complaint become public knowledge?

Once the MQAC has assessed the complaint and determined that it is warranted, the existence of the complaint becomes a matter of public record.²³ The contents of the complaint, however, are not public until the Commission takes action or the case is closed, whichever occurs first.²⁴

Must a physician cooperate with a Department of Health investigator who calls for an interview?

The law requires a physician to cooperate with an investigation by submitting records requested by the investigator, submitting a written statement explaining the matter in the complaint, complying with subpoenas, and providing reasonable and timely access for the investigator to conduct a practice review at the facility where the physician practices. . Failure to cooperate with an investigation is itself grounds for discipline.²⁵ See UNPROFESSIONAL CONDUCT. There is no legal obligation to submit to an interview. If the physician decides to submit to an interview, the physician has a right to have an attorney present during an interview by the investigator.²⁶ It is advisable to seek legal advice from an attorney experienced in handling disciplinary matters as soon as a physician becomes aware of an investigation.

How should a physician respond to a written request to provide information to a Department of Health investigator?

A physician must respond to the request from the investigator.²⁷ It is advisable to seek legal advice before speaking to the investigator or sending any response to the investigator. Everything a physician says or writes to an investigator may be used against that physician.

Must a physician release patient records to the investigator?

Yes. Failure to respond to a records subpoena is grounds for discipline.²⁸ See UNPROFESSIONAL CONDUCT. It is advisable to seek legal advice, however, before releasing patient records.

What should a physician do if the physician receives an order to undergo a mental or physical examination?

Under certain circumstances, the MQAC has the authority to order a physician to undergo a mental and/or physical examination to determine if the physician is able to practice with reasonable skill and safety.²⁹ A physician must comply with the order or risk discipline. A physician receiving such an order should seek legal advice immediately.

²³ RCW 18.130.095(1)(a).

²⁴ Chapter 42.56 RCW, Public Records Act.

²⁵ WAC 246-919-620; RCW 18.130.180(8).

²⁶ WAC 246-10-108(1)(a).

²⁷ RCW 18.130.180(8).

²⁸ RCW 18.130.180(8).

²⁹ RCW 18.130.170(2)(a)

What happens after an investigation is complete?

After an investigation is complete, the file is sent to a member of the MQAC, called the reviewing commission member.

The reviewing commission member presents the case to the MQAC and the MQAC will vote on whether charges should be filed. At the time the MQAC votes, the name of the physician involved is known only to the reviewing commission member, who is not permitted to vote on whether to bring charges.

If the MQAC votes to bring charges against a physician, charges are issued and served on the physician and the formal disciplinary process begins.³⁰

What types of actions does the MQAC take against a physician?

The MQAC issues three different types of charges:

- A Statement of Allegations.³¹
- A Statement of Charges.³²
- An Order of Summary Suspension.³³

The least serious action the MQAC may take is issuing a Statement of Allegations. In these cases, the Commission issues a Statement of Allegations along with a Stipulation to Informal Disposition (STID). These documents are not public at this point of the process. If the physician agrees to the terms of the STID, the Statement of Allegations and the STID become public. Even though a Statement of Allegations and a STID are not formal disciplinary actions,³⁴ they are subject to public disclosure,³⁵ placed on the Department's web site, and reportable to the National Practitioner Data Bank (NPDB),³⁶ the Healthcare Integrity and Protection Data Bank (HIPDB),³⁷ and to the Physician Data Center of the Federation of State Medical Boards. See NATIONAL PRACTITIONER DATA BANK.

Often, the MQAC issues a Statement of Charges.³⁸ A Statement of Charges is a matter of public record³⁹ and an adverse outcome is reportable.⁴⁰

³⁰ RCW 18.130.090(1).

³¹ RCW 18.130.172.

³² RCW 18.130.090.

³³ RCW 18.130.050(8).

³⁴ RCW 18.130.172; WAC 246-14-090.

³⁵ RCW 18.130.172.

³⁶ 45 C.F.R. §§ 60.5(c), 60.9(a)(4).

³⁷ 45 C.F.R. §§ 61.3, 61.7(a)(3).

³⁸ RCW 18.130.090.

³⁹ RCW 18.130.172(a).

⁴⁰ 45 C.F.R. §§ 60.5(c), 60.9(a)(4).

Where serious concerns about public safety exist, the MQAC may issue an Order of Summary Suspension which automatically suspends the physician's license and prohibits him or her from practicing medicine.⁴¹ The Commission may also issue an Order of Summary Limitation which immediately limits or restricts a physician's practice.

What should a physician do if he or she is served with formal charges issued by the MQAC?

A physician has 20 days to respond to charges after being served with them.⁴² It is critical to respond promptly to such charges. Failure to do so may constitute a waiver of all rights to contest the charges and may result in a default.⁴³ It is advisable to seek legal advice regarding an appropriate response.

May a physician review the MQAC investigatory file when defending against formal charges?

Yes. Once there are formal charges, a physician has the right to see most of the investigatory file and conduct discovery similar to discovery conducted in a civil lawsuit.⁴⁴

How are disciplinary cases resolved?

Disciplinary cases may be resolved in several different ways:

- A physician may agree to the charges and submit to discipline.
- A physician may dispute the charges, but resolve the matter prior to hearing by a settlement.⁴⁵
- A physician may dispute the charges and the MQAC may decide to withdraw the charges.⁴⁶
- A physician may dispute the charges and the case may go to hearing.⁴⁷

⁴¹ RCW 18.130.050(8); RCW 18.130.130; RCW 18.130.135(4).

⁴² RCW 18.130.090(1).

⁴³ *Id.*

⁴⁴ WAC 246-10-402.

⁴⁵ RCW 18.130.098, WAC 246-10-401.

⁴⁶ WAC 246-10-022.

⁴⁷ RCW 18.130.090(1).; WAC 246-10-203.

What type of disciplinary actions may the MQAC take against a physician?

The types of disciplinary action the MQAC may take against a physician include:⁴⁸

- Revocation of the license.
- Suspension of the license for a fixed or indefinite term.
- Restriction or limitation of the practice.
- Requiring the satisfactory completion of a specific program of remedial education or treatment.
- Monitoring of the practice by a supervisor approved by the disciplining authority.
- Censure or reprimand.
- Requiring compliance with conditions of probation for a designated period of time.
- Requiring payment of a fine for up to \$5000 each violation.
- Denial of a license request.
- Corrective action.
- Requiring refund of fees billed to and collected from the patient.
- Surrender of the physician's license in lieu of other sanctions, which must be reported to the National Practitioners' Data Bank.

The MQAC can consider prior findings of fact, stipulations to informal disposition, and any other actions taken by in-state or out-of-state disciplinary authorities in determining imposition of sanctions for unprofessional conduct.⁴⁹

How does MQAC determine which sanctions to take against a physician?

Sanctions are selected to protect the public and, if possible, rehabilitate the physician.⁵⁰ The MQAC determines sanctions according to a table based on the nature of the unprofessional conduct⁵¹ and the severity of the unprofessional conduct.⁵² There are sanction schedules which

⁴⁸ RCW 18.130.160;

⁴⁹ RCW 18.130.160.

⁵⁰ WAC 246-16-800(2).

⁵¹ WAC 246-16-800(3)(a).

⁵² WAC 246-16-800(3)(b).

provide a range of sanction for practice below the standard of care,⁵³ sexual misconduct or contact,⁵⁴ physical and emotional abuse,⁵⁵ diversion of controlled substances or legend drugs,⁵⁶ substance abuse,⁵⁷ and criminal convictions.⁵⁸ If different acts of unprofessional conduct fall under more than one sanction schedule, or if there are multiple acts of unprofessional conduct under one schedule, the greater sanction is imposed.⁵⁹ More than one act of unprofessional conduct within one sanction schedule is considered an aggravating factor.⁶⁰

Does the MQAC take into account any other factors in determining disciplinary action?

Yes. The MQAC must determine any aggravating or mitigating factors before determining a sanction.⁶¹ When determining a sanction the MQAC starts in the middle of the range of disciplinary actions within a tier of the sanction schedule.⁶² Aggravating factors move the appropriate sanction toward the maximum end of the range,⁶³ while mitigating factors move the appropriate sanction toward the minimum end of the range.⁶⁴ The MQAC relies on a list of aggravating and mitigating factors related to the nature of the unprofessional conduct, the physician, conduct during the disciplinary process, and a number of general factors.⁶⁵

When is suspension or revocation of a physician's license imposed?

A physician's license may be suspended or revoked if the MQAC determines that the physician cannot practice medicine with reasonable skill or safety.⁶⁶ A physician's license may be permanently revoked when the MQAC determines that the physician can never be rehabilitated or can never regain the ability to practice safely.⁶⁷

Who learns of disciplinary actions taken against a physician?

Actions taken by the MQAC against a physician are public record.⁶⁸ Any person who inquires will receive information about disciplinary actions taken against a physician.

The MQAC sends out a Hospital/Public Disclosure Listing twice per month to all hospitals and persons requesting such information which summarizes actions taken against physicians in the previous two weeks.

⁵³ WAC 246-16-810.

⁵⁴ WAC 246-16-820.

⁵⁵ WAC 246-16-830.

⁵⁶ WAC 246-16-840.

⁵⁷ WAC 246-16-850.

⁵⁸ WAC 246-16-860.

⁵⁹ WAC 246-16-800(3)(a).

⁶⁰ *Id.*

⁶¹ WAC 246-16-800(3)(c).

⁶² WAC 246-16-800(3)(d).

⁶³ WAC 246-16-800(3)(d)(i).

⁶⁴ WAC 246-16-800(3)(d)(ii).

⁶⁵ WAC 246-16-890.

⁶⁶ WAC 246-16-800(2)(b)(i).

⁶⁷ WAC 246-16-800(2)(b)(ii).

⁶⁸ WAC 246-10-114.

In addition, the MQAC is required to report most adverse disciplinary actions to the National Practitioner Data Bank. The Commission also reports disciplinary actions and other state licensing boards.⁶⁹ **See NATIONAL PRACTITIONER DATA BANK.**

May a physician appeal actions taken by MQAC?

Yes.⁷⁰ MQAC decisions may be appealed to Superior Court. However, decisions of the MQAC carry a presumption of correctness and are difficult to overturn.

Is a physician immune from civil liability for a complaint made or information provided to the MQAC?

Generally, yes. A physician is immune from civil liability for reporting or providing information to the MQAC, provided the physician does so in good faith.⁷¹

Must a physician self-report any information to the MQAC?

Yes. A physician must self-report to the MQAC any conviction, and any determination or finding that the physician has committed unprofessional conduct or is unable to practice with reasonable skill or safety.⁷² A physician must also report any disqualification from federal Medicare or Medicaid programs.⁷³

Has the MQAC issued guidelines for pain management and how it will evaluate physicians' prescribing practices for pain?

Yes. **See PAIN MANAGEMENT.**

⁶⁹ 45 C.F.R. §§ 60.5(c), 60.9(a)(4).

⁷⁰ RCW 18.130.140; WAC 246-10-701.

⁷¹ RCW 18.130.080(6); RCW 18.130.070(3); RCW 18.130.175(7).

⁷² RCW 18.130.070(4)(a)(i).

⁷³ RCW 18.130.070(4)(a)(ii).