

General Policy and Procedure

Due Process Administrative Policy

The Due Process Administrative Policy, adopted by the Washtenaw/Livingston Medical Control Board, provides a process for review and resolution of complaints generated as a result of system use, which shall generally be referred to as disciplinary complaints, as well as other actions of the Medical Control Board. A complaint may be received from a hospital, an ambulance service, a consumer, a Medical Control Board member, the EMS Medical Director, the state Department, any other community or other individual source, or any individual aggrieved by an action of the Board. This policy is applicable to all such complaints pertaining to emergency medical services personnel or entities within the Washtenaw/Livingston Medical Control Authority.

Aggrieved Party Definition

Any person or entity who seeks review of a Medical Control Board action shall be considered an “aggrieved party” under this policy. Additionally, any person or entity against whom the EMS Medical Director or Medical Control Board takes disciplinary or remedial action against, or withdraws or refuses medical oversight of, or against whom a complaint is made to the Board, shall have the rights of an “aggrieved party” under this policy.

Actions on Complaints

All complaints regarding any emergency medical services personnel or entities (hereinafter "the aggrieved party") shall be referred to the EMS Medical Director for initial review. The EMS Medical Director ("the Director") shall inform the Michigan Department of Community Health’s EMS Division (MDCH) of all known facts surrounding the complaint when a breach of standards, protocols, or operational procedures has occurred that, in his or her determination, seriously affects public health, safety, or the welfare of individuals receiving emergency care or services that result in a suspension or revocation of privileges.

At any point prior to or in the process of investigating the complaint, the Director may withdraw medical oversight from an individual, agency, or other entity if the Director, in the exercise of his or her sole discretion, determines that a threat to public health or safety is presented by the situation in question. If such oversight is withdrawn, the Director shall inform MDCH of such action in writing within seven (7) days. Any such withdrawal may, at the election of the Director, remain in effect until the matter is decided by the Disciplinary Review Committee (DRC) of the Washtenaw/Livingston Medical Control Board ("the Board").

The EMS Medical Director shall process the complaint by:

1. Referring the matter to the Medical Control Board for initial decision, or if medical oversight has been withdrawn; to the DRC or
2. Contacting the specific agency or hospital involved for investigation and/or action, and at any time thereafter presenting the complaint to the Board for an initial decision under the expedited hearing process of this policy.

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3. Contacting the specific agency or hospital involved for investigation and/or action. If the EMS Medical Director feels the results of the investigation is acceptable and/or the action of the agency or hospital involved is appropriate the matter shall be considered resolved. No additional notification is necessary if the matter is resolved.

In situations in which the Director has withdrawn medical oversight from an affected person, the complaint shall be submitted to the DRC for initial decision no later than 30 days after the withdrawal of such oversight.

In the absence of the EMS Medical Director, the Deputy Director may act in place of the EMS Medical Director under this paragraph. Any action by the Deputy Director shall preclude the Deputy Director from sitting on any subsequent Disciplinary Review Committee in regards to the complaint at issue.

Disciplinary Review Committee Hearing

For complaints related to an action of an individual, agency, or other entity subject to medical control, where the Medical Director has either 1) withdrawn medical oversight or sanctioned an individual or 2) determined that such action may be warranted, a Disciplinary Review Committee shall be appointed to review the complaint and prior action of the Medical Director in regards to the Complaint, if any.

The Disciplinary Review Committee (DRC) shall consist of five members, appointed by the Medical Control Board, at least two of whom shall be physicians, and all of whom shall be members of the Medical Control Board and/or the Medical Control Advisory Body. The Disciplinary Review Committee shall be chaired by the Deputy Director, unless the Deputy Director is precluded from participation on the Committee due to prior action on the complaint or unavailability, in which case the chair will be a physician member of the DRC who is selected by vote of the DRC at the commencement of its proceedings. In addition to the minimum two physicians, the DRC shall, for those questions relating to prehospital provider or agency incidents, include at least one

member who shall be licensed as a paramedic. In no event may a member of the DRC be an employee of an entity which is a complaining party, involved in a complaint, or employed by the same entity which employees the aggrieved party.

The hearing before the DRC shall be conducted according to the following procedure:

1. Presentation of complaint by complaining party and/or EMS Medical Director
2. Questioning, by the DRC, of complaining party and/or EMS Medical Director
3. Questioning, by the DRC, of any witnesses offered by the complaining party and/or EMS Medical Director
4. Presentation of defense by aggrieved party, if any
5. Questioning, by the DRC, of aggrieved party, unless a privilege is claimed
6. Questioning, by the DRC, of any witnesses offered by the aggrieved party
7. Questioning, by the DRC, of any witnesses requested by the DRC
8. Deliberation by the DRC
9. Decision of the DRC, which shall be by affirmative majority vote on a properly made and seconded motion.
10. Rendering of decision by the DRC, which may be done at the time of the hearing or subsequently in writing.

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The DRC may direct that witnesses to be presented by either party, other than the parties themselves, be sequestered prior to their questioning. No rules of evidence shall apply to the DRC hearing, save for those set by the DRC in its discretion, and the DRC chair may suspend Robert's Rules of Order as need be to undertake this hearing. The DRC hearing shall be recorded via audiotape equipment. This audiotape is used to draft the minutes for the meeting and is not required to be maintained by the Medical Control Authority.

The DRC's hearing shall be an open hearing, subject to closure by the chair when mandatory by law to avoid violation of applicable patient privacy laws.

The standard for the DRC's decision shall be as follows:

The burden of proof for the hearing shall be on the complaining party and EMS Medical Director. Based on the information gathered and available for review, the DRC shall initially determine whether a violation of any minimum medical care standard, protocol, or operational procedure has occurred. If the DRC initially determines that such a violation has occurred, the DRC shall determine 1) whether the sanction previously determined by the EMS Medical Director, if any, should be continued and 2) what, if any, additional sanction may be necessary in light of the gravity of the violation, as assessed in the DRC's discretion.

The DRC's decision may be given orally, by the chair, at the conclusion of the hearing or may, if the DRC so directs by vote, be reduced to writing by the DRC's designee.

A written decision will be sent to the aggrieved party or the complaining party by U.S. registered mail, postmarked no later than 14 days after the date of the DRC's hearing.

Appeal of DRC Determination to the Medical Control Board

Either the aggrieved party or the complaining party or EMS Medical Director may appeal the decision of the DRC to the entire Medical Control Board by notifying the Board, in writing, by U.S. registered mail, postmarked no later than 14 days after the delivery of the DRC's decision to the aggrieved party.

Upon receipt of such a timely appeal, the appeal shall be placed upon the agenda for the next Medical Control Board meeting, notwithstanding any other publication deadline for such meetings.

Appeal Procedure Before Medical Control Board

In an appeal of any decision of the DRC to the Medical Control Board, the appeal will be conducted according to the following procedure:

1. Statement by the DRC chair or designee as to the facts found by the DRC and its decision and determinations.
2. Statement by the complaining party and/or EMS Medical Director.
3. Statement by the aggrieved party.
4. Questioning, by the Medical Control Board, in its discretion if any member so wishes, of the DRC chair or designee, the complaining party, the EMS Medical Director, and/or the aggrieved party.
5. Deliberation by the Medical Control Board.

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6. Decision of the Medical Control Board, which shall be by affirmative vote on a properly made and seconded motion.

The appeal of any decision of the DRC to the Medical Control Board shall be heard in open session, subject to closure by the chair when mandatory by law to avoid violation of applicable patient privacy laws.

Beyond the Board questioning detailed in paragraph 4 above, no testimony or witness statements shall be taken by the Board at the appeal hearing, though the DRC chair or designee may present, and/or be questioned on, information learned from any such testimony as the Board deems appropriate for inquiry.

If the EMS Medical Director (or the Deputy Director in his or her absence) has participated in presenting the complaining case to the DRC, he or she shall abstain from the vote of the Medical Control Board on the appeal of the DRC decision.

Board members who were members of the DRC may vote on the appeal of the DRC hearing to the Medical Control Board *provided* that a majority of the Medical Control Board members voting on the appeal of a DRC hearing to the Medical Control Board are not members of the DRC.

The standard of review for the Medical Control Board's determination on the appeal hearing shall be whether or not the DRC 1) erred as to its finding regarding a violation of any minimum medical care standard, protocol, or operational procedure occurred and 2) if so, whether the DRC failed to assess a sanction or sanction(s) at a level warranted by the gravity of the violation.

Expedited Hearing Process for Disciplinary Related Questions Not Requiring Referral to the DRC

It is the intent of this policy that all questions which have or might result in a withdrawal of medical oversight or sanctioning of an individual be referred to the DRC process. Some questions, however, may from their face be determined by the Director to be of a type which would not be expected to lead to a withdrawal of medical oversight or sanctioning of an individual but warrant Board review.

In such cases, the Director will cause the matter to be placed on the agenda of a regular Board meeting, notifying the complaining party and aggrieved party of the time, date, and place of such meeting. The Board will then address the question according to the following procedure:

1. Statement by the Director as to the origin of the complaint and results of Director's investigation thereof.
2. Presentation by the complaining party, if desired.
3. Presentation by the aggrieved party, if desired.
4. Questioning by the Board, if desired, of the Director, complaining party, and or aggrieved party.
5. Deliberation by the Board.
6. Decision of the Medical Control Board, which shall be by affirmative vote on a properly made and seconded motion.

Based on the information gathered and available for review, the Board shall initially determine whether a violation of any minimum medical care standard, protocol, or operational procedure has occurred. If the Board initially determines that such a violation has occurred, the Board shall determine

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1) whether an action short of withdrawal of medical oversight or the sanctioning of an individual would be sufficient to remedy the situation and, if so and 2) what particular actions, short of withdrawal of medical oversight or the sanctioning of an individual, should be undertaken. If the Board determines that withdrawal of medical oversight or the sanctioning of an individual might, on the information presented, be indicated, the Board shall refer the matter to the DRC process for formal resolution.

Based on the above standard, the Medical Control Board may make one of three decisions regarding the complaint:

- a. To take no action.
- b. To take action short of withdrawal of medical oversight or sanctioning of an individual (actions of this sort would be, for example, to require submission of documentation of additional quality assurance information, to direct that a specific protocol be re-examined, or to issue a letter to an aggrieved party reiterating the need for compliance with a specific protocol).
- c. To determine that withdrawal of medical oversight or sanctioning of an individual might, on the information presented, be indicated, and thus to refer the matter to the DRC process for formal resolution, directing that the DRC shall commence its hearing within 30 days.

The Board's addressing of a question under this procedure shall be held before the Board in open session, subject to closure by the chair when mandatory by law to avoid violation of applicable patient privacy laws. If the Board determines that the matter shall be referred to the DRC process, this action itself is not reviewable and, rather, the aggrieved party's remedy shall lie in being afforded the notice and opportunity to be heard in the DRC process. Any other Board action under this paragraph shall be appealable as a Board action not related to the DRC process.

A written decision will be sent to the aggrieved party or the complaining party by U.S. registered mail, postmarked no later than 14 days after the date of the Board's review.

Appeal of Board Decision or Appeal Following DRC Process

Once the Board has issued its decision on an appeal from the DRC process, the aggrieved party may pursue any appellate rights he/she/it may have with the state Department under the Michigan Emergency Medical Services Act and administrative regulations deriving therefrom.

Appeal for Reconsideration of any Non-DRC Related Action of the Board

For any action of the Medical Control Board not arising from the DRC process, a written request for appeal may be submitted to the Board by any aggrieved party by U.S. registered mail, postmarked no later than 30 days after the decision of the Board from which appeal is sought. Any action from which a timely appeal is not received shall become final and no longer reviewable under this policy.

Upon receipt of a timely written request for appeal by an affected person or agency, the Board shall schedule an appellate hearing on the initial action. The affected person or agency shall be notified of the date, time, and place of the appellate hearing and of the right to appear and present information, as deemed appropriate by the Board, at the hearing. A copy of this policy shall be provided with the notification.

In an appeal of any of the Medical Control Board unrelated to a DRC matter, the appeal will be conducted according to the following procedure:

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1. Statement by the Board chair as to the past decision, timely receipt of the appeal, and matters at issue.
2. Presentation by the aggrieved party, which may include oral statements and documentation and exhibits, if desired.
3. Questioning, by the Medical Control Board, in its discretion, of the aggrieved party and any witnesses offered by the aggrieved party.
4. Deliberation by the Medical Control Board.
5. Decision of the Medical Control Board, which shall be by affirmative vote on a properly made and seconded motion.

The appellate hearing shall be held before the Board in open session, subject to closure by the chair when mandatory by law to avoid violation of applicable patient privacy laws.

Based on the information presented to the Medical Control Board, the Board may take the following actions:

- a. Affirm the original decision of the Medical Control Board.
- b. Modify the original decision of the Medical Control Board respecting existing protocol constraints.
- c. Reverse the original decision of the Medical Control Board.

The Board's decision may be given orally, by the chair, at the conclusion of the hearing or may, if the Board so directs by vote, be reduced to writing by the Board's designee.

A written decision will be sent to the aggrieved party or the complaining party by U.S. registered mail, postmarked no later than 14 days after the date of the Board's hearing.

After the appeal has been heard, and finally decided, the affected person or agency may appeal the final decision of the Board to the Department [which is currently the Department of Community Health but shall, within this policy, be whatever state Department is responsible for Emergency Medical Services by law, regardless of the nomenclature assigned to the Department at any given time.]

Appearance of Counsel at Appeals and Hearings

In all hearings before the DRC and appeals to the Medical Control Board thereof, as well as appeals of non-disciplinary actions of the Medical Control Board, the aggrieved party shall be entitled to counsel, at said party's own expense and of his/her/its own choosing, if he/she/it so wishes. Counsel for the aggrieved party may participate, in the aggrieved party's stead, in presenting the aggrieved party's position to the DRC and/or Medical Control Board.

The DRC and/or Medical Control Board may, in its discretion, direct that its counsel be present at any hearing under this policy, and may solicit the advice of same during said hearing in its discretion. If the DRC or Board's counsel is present at any proceeding, counsel shall be given a copy of this policy and, by receipt thereof, is put on notice that for purposes of all proceedings under this policy, counsel's client is the DRC and/or Board, as applicable, and counsel's duty to same is to the DRC/Board as a whole, rather than to the EMS Medical Director as chair.