

Disputes about the professional conduct of a Contracted Medical Practitioner engaged under a Medical Services Agreement Policy MP 0083/18

## Procedure for investigating matters relating to the professional conduct of a CMP

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### 1. Definitions

**Decision Maker:** The senior officer (however titled) who has been delegated responsibility for a particular unprofessional conduct investigation process. Any senior officer may be designated by the Chief Executive as a Decision Maker for unprofessional conduct investigation processes involving specified classes of Contracted Medical Practitioners or on a case by case basis as the circumstances require. In the absence of any contrary designation the Principal Administrator is the Decision Maker.

**Health Care Facility or Health Care Facilities or HCF:** A place or places (however titled) in which a medical practitioner undertakes clinical practice including, but not limited to, a hospital, a mental health facility and community health services under the control of a Health Service Provider.

**Principal Administrator:** The senior officer (however titled) with responsibility for the general management of a Health Care Facility or group of Health Care Facilities. Principal Administrators are commonly but not exclusively titled Executive Director or Regional Director.

**Principal Medical Administrator or PMA:** The medical practitioner (however titled) with delegated responsibility for clinical governance and oversight of credentialing matters for a Health Care Facility or a group of Health Care Facilities. Any salaried medical practitioner may be designated by the Chief Executive as a PMA for the purposes of this Policy. PMAs are commonly but not exclusively titled Executive Director of Medical Service or Executive Director of Clinical Services. A PMA appointed for the purposes of the Credentialing and Defining Scope of Clinical Practice for Medical Practitioners Standard is a PMA for the purposes of this Procedure.

### 2. Introduction

#### Medical Services Agreement

A Medical Service Agreement (**MSA**) is a commercial contract for services between a Health Service Provider (**HSP**) and an independent contractor, who is a Contracted Medical Practitioner (**CMP**), engaged to provide medical and other services at a particular Health Care Facility (**HCF**).

In the event of an inconsistency between this Procedure and the MSA, the MSA prevails.

In the event of an inconsistency between all Laws, this Procedure and the MSA, the relevant Law prevails.

A reference in this Procedure to a particular part of an MSA is for illustrative purposes and made in reference to the generic **Fee For Service Medical Services Agreement Template no subcontractors** template published under the

Engagement of Medical Practitioners under Contracts for Services Policy (MP 0079/18).

This Procedure must be read in conjunction with the entirety of the express terms of the individual MSA which applies. The terms of the MSA may vary from the generic template cited above.

### **Relationship between CMP and Health Service Provider**

A CMP is a member of the clinical staff of a HSP at the HCF at which medical and other services are provided.

At Section 6 of the *Health Services Act 2016 (HSA)*, a staff member is defined:

“**staff member**, of a health service provider, means —

- (a) an employee in the health service provider;
- (b) a person engaged under a contract for services by the health service provider;”

A CMP is not an employee. A CMP is engaged under a contract for services.

Those parts of the HSA which apply only to an employee do not apply to a CMP.

### **Application of the HSA**

1. The HSA imposes certain obligations on CMPs as staff members.

145. Duty of staff member to report certain criminal conduct and misconduct findings

- (1) A staff member who is charged with having committed, or is convicted or found guilty of, a serious offence must, within 7 days of the charge being laid or the conviction, report that fact in writing to the staff member’s responsible authority.
- (2) A staff member who has a misconduct finding made against them under the *Health Practitioner Regulation National Law (Western Australia)* must, within 7 days of receiving notice of the finding —
  - (a) report that fact to the staff member’s responsible authority; and
  - (b) provide the person to whom the report is made with a copy of the finding.
- (3) In subsection (2) —

**misconduct finding** includes a finding of unsatisfactory professional performance, unprofessional conduct or professional misconduct.

2. The HSA imposes certain obligations on a HSP in relation to CMP staff members set out in the *Reporting of Criminal Conduct and Professional Misconduct Policy MP 0043/16*.

### **Application of the MSA**

1. A MSA in the standard format prescribed by *Engagement of Medical Practitioners under Contracts for Services Policy MP 0079/18* includes the following definitions:

**Best Practice** means practices, methods and acts undertaken in accordance with that degree of skill, diligence, prudence and foresight that would

reasonably be expected from a professional, reputable and prudent Medical Practitioner undertaking similar work and practices, under the same or similar circumstances or conditions.

**Credentialed or Credentialing** means the formal process used to verify the qualifications, experience and professional standing of Medical Practitioners for the purpose of forming a view about their competence, performance and professional suitability to provide safe, high quality health care services within specific organisation environments.

**Hospital Policies** means any policies, codes, procedures, protocols and standards (as amended, superseded or replaced from time to time), applicable to the HSP and / or Hospitals in connection with the provision of Medical Services, or the care of Public Patients at HSP hospitals, which are notified, or have been notified or are made available to the Contractor from time to time.

**Serious, Negligent or Wilful Misconduct** means wilful or deliberate behaviour that is inconsistent with the continuation of this Agreement. This may include conduct that causes serious and imminent risk to the health or safety of a person or the reputation or viability of the HSP or health care facility.

**Unprofessional Conduct** means professional conduct that is of a lesser standard than that which might reasonably be expected of the Contractor by the public or the Contractor's professional peers, and includes:

- (a) a contravention by the Contractor of the National Law, whether or not the Contractor has been prosecuted for, or convicted of, an offence in relation to the contravention;
- (b) a contravention by the Contractor of:
  - (i) a condition to which the Contractor's registration was subject; or
  - (ii) an undertaking given by the Contractor to the Medical Board;
- (c) the conviction of the Contractor for an offence under another Act, the nature of which may affect the Contractor's suitability to continue to practise the profession;
- (d) providing a person with health services of a kind that are excessive, unnecessary or otherwise not reasonably required for the person's wellbeing;
- (e) influencing, or attempting to influence, the conduct of another registered health practitioner in a way that may compromise patient care;
- (f) accepting a benefit as inducement, consideration or reward for referring another person to a health service provider or recommending another person use or consult with a health service provider;
- (g) offering or giving a person a benefit, consideration or reward in return for the person referring another person to the practitioner or recommending to another person that the person use a health service provided by the Contractor;
- (h) referring a person to, or recommending that a person use or consult, another health service provider, health service or health product if the Contractor has a pecuniary interest in giving that referral or recommendation, unless the Contractor discloses the nature of that

interest to the person before or at the time of giving the referral or recommendation; and

- (i) conduct or behaviours toward the public or a Contractor's peers that are inconsistent with the WA Health Code of Conduct and professional codes, guidelines and policies set by the Medical Board.

**Unsatisfactory Professional Performance** means the knowledge, skill or judgment possessed, or care exercised by, the Contractor in the provision of the Medical Services is below the standard reasonably expected of a Medical Practitioner of an equivalent level of training or experience.

2. **In a standard format MSA a CMP agrees to:**

4.5 Obligation to Notify

Subject to clause 4.6 the Contractor must notify Health Service Provider in accordance with Hospital Policies, or in any event, within five Business Days of any matter of which he or she is aware and about which a prudent Medical Practitioner should reasonably believe Health Service Provider should be notified, including, but not limited to, (as to both the Contractor and any Subcontractor):

- (a) adverse patient incidents;
- (b) verbal or written complaints received;
- (c) requests by the Coroner for medical reports;
- (d) threats of legal action or any writ, subpoena or summons received;
- (e) referrals to the Health and Disability Services Complaints Office;
- (f) matters of which the Medical Practitioner would be obliged to inform their medical defence organisation, indemnity fund or insurer;
- (g) if medical indemnity protection has been removed or has lapsed;
- (h) if Credentialing or Scope of Clinical Practice has been reduced, limited, suspended or revoked at any other Hospital or health service (public or private);
- (i) notifications or referrals to the Medical Board or the State Administrative Tribunal or any such similar bodies in other jurisdictions;
- (j) any investigation by a relevant college or professional body;
- (k) a misconduct finding (including a finding of unsatisfactory professional performance, unprofessional conduct or professional misconduct) being made against them under the Health Practitioner Regulation National Law (Western Australia);
- (l) cautions issued, fines imposed or reprimands given by the Medical Board or the State Administrative Tribunal any such similar bodies in other jurisdictions;
- (m) undertakings given to the Medical Board or the State Administrative Tribunal any such similar bodies in other jurisdictions as to good behaviour, or registration as a Medical Practitioner being made conditional, suspended, removed or lapsing;

- (n) charges with or convictions of any criminal offence involving dishonesty or punishable by imprisonment in any jurisdiction;
- (o) actual, potential, or perceived conflicts of interest; or
- (p) any communicable illness or disease that would interfere with the treatment of patients at the Hospital or presents risk to patients or other people at the Hospital.

#### 4.6 Obligation to Co-operate

- (a) If requested by Health Service Provider, the Contractor must provide, and must ensure any Subcontractor provides, as soon as reasonably practicable, all relevant details and documents relating to any matters of which Health Service Provider is notified under clause 4.5 or otherwise becomes aware; and
- (b) the Contractor must take, and must ensure any Subcontractor takes, all reasonable steps to assist the Health Service Provider in inquiring into, and resolving, any complaint, dispute or other difficulty arising under or in connection with this Agreement.

### 3. Procedural Fairness

HSPs must afford CMPs procedural fairness in dealing with disputes about professional conduct and enforcing the terms of an MSA relating to the professional conduct of a CMP.

There are three main principles of Procedural Fairness: bias rule, hearing rule and evidence rule.

#### Bias Rule

- The Decision Maker and Investigator act fairly and without bias.
- The Decision Maker and Investigator do not hold, or are not perceived to hold, a vested or direct personal interest in the outcome of the process.

#### Hearing Rule

- The Respondent is provided with notice of any allegation(s) against them, given a reasonable opportunity to respond to those allegation(s) or decisions affecting him or her, and their response is genuinely considered.

#### Evidence Rule

- Decisions are based on logically probative evidence.
- Irrelevant considerations are not taken into account in making the decision.

### 4. Investigating matters relating to the professional conduct of a CMP

When investigating a matter of professional conduct of a CMP, a HSP must take the following steps.

#### PHASE 1: PRELIMINARY ASSESSMENT OF INFORMATION

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| <b>Step 1</b> | A complaint or information received alleging unprofessional conduct by a CMP must be reported to the Principal Medical Administrator ( <b>PMA</b> ). The PMA must consider the circumstances of the conduct and comply with any reporting requirements including those under the HSA and the requirements of the Medical Board of Australia ( <b>Medical Board</b> ).  |  |
| <b>Step 2</b> | The PMA identifies the appropriate Decision Maker in accordance with the HSP Authorisations and Delegation Schedule and remits the matter to the Decision Maker.   |  |
| <b>Step 3</b> | The Decision Maker undertakes a preliminary assessment of the information available. If necessary a Decision Maker may direct that further information be obtained. Such direction should be confirmed in writing.   |  |
| <b>Step 4</b> | <p>If the Decision Maker finds there are reasonable grounds to suspect unprofessional conduct:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Ensure compliance with <i>Mandatory Policy 0043/16 Reporting of Criminal Conduct and Professional Misconduct Policy</i>.</li> <li><input type="checkbox"/> Exercise, <b>Rights of HSP in Specified Circumstances</b> (restrict, make conditional, vary or suspend the provision of Services by the CMP) as prescribed in the <b>Clause 6.6 of the MSA</b>.</li> <li><input type="checkbox"/> The Decision Maker may at any time refer a question on exercising <b>Rights of HSP in Specified Circumstances</b> to the Principal Medical Administrator for advice. The Decision Maker must consider but is not obliged to accept the advice of the PMA.</li> </ul> <p><b>Go to Phase 2</b></p> | <p><b>OR</b></p> <p>If the Decision Maker does not find reasonable grounds to suspect unprofessional conduct:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Document the final decision.</li> <li><input type="checkbox"/> Ensure compliance with <i>Mandatory Policy 0043/16 Reporting of Criminal Conduct and Professional Misconduct Policy</i>.</li> </ul> <p><b><u>Process Ends</u></b></p> |

**Note**

At any stage in this Phase the Decision Maker may seek advice from the from the Credentialing Committee. The Decision Maker must consider but is not obliged to accept the advice of the Credentialing Committee.

**PHASE 2: COMMENCING THE PROFESSIONAL CONDUCT INVESTIGATION PROCESS**

**The Decision Maker:**

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| <b>Step 1</b> | <p>Informs the CMP in writing of the suspected unprofessional conduct which includes:</p> <ul style="list-style-type: none"> <li>(i) The suspected unprofessional conduct;</li> <li>(ii) Particulars of the allegation(s);</li> <li>(iii) Appropriate document(s) relevant to the allegation(s);</li> <li>(iv) Providing an opportunity to respond in writing (not less than 7 days);</li> <li>(v) Confirming the right to seek advice or support from a legal or other representative;</li> <li>(vi) Confirming the action that may apply if the suspected unprofessional conduct is substantiated.</li> <li>(vii) A copy of this Policy.</li> <li>(viii) A copy of the MSA.</li> </ul> |
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| <b>Step 2</b> | <p>Considers any response provided by the CMP and determines whether the response:</p> |
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| <b>Step 3</b> | <b>(A)</b>   | <b>(B)</b> | <b>(C)</b>   |
|               | <ul style="list-style-type: none"> <li><input type="checkbox"/> does not satisfactorily address the allegation(s); and/or</li> <li><input type="checkbox"/> more information or further clarification is required</li> </ul> <p>Seek more information in writing from the CMP; and</p> <p><b>Return to Phase 2: Step 3</b></p> | <b>OR</b>  | <ul style="list-style-type: none"> <li><input type="checkbox"/> requires further investigation;</li> </ul> <p><b>Go to Phase 3</b></p>   |
|               |  | <b>OR</b>  | <ul style="list-style-type: none"> <li><input type="checkbox"/> satisfactorily addresses the allegation(s); and/or</li> <li><input type="checkbox"/> admissions made; and/or</li> <li><input type="checkbox"/> no further information required.</li> </ul> <p><b>Go to Phase 4</b></p> |

**Note** | At any stage in this Phase the Decision Maker may seek advice from the PMA or from the Credentialing Committee about any response provided by the CMP. The Decision Maker must consider but is not obliged to accept the advice of the PMA or the Credentialing Committee.

**PHASE 3: PROFESSIONAL CONDUCT INVESTIGATION**

**The Decision Maker:**

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| <b>Step 1</b> | <p>Determines the scope of the Professional Conduct Investigation and appoints an investigator in writing.</p> |
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**Step 2** | Informs the CMP in writing of the decision to proceed to a Professional Conduct Investigation and identifies the appointed investigator.

**Note** | The Decision Maker may appoint a panel of persons to conduct the investigation.

**The investigator:**

**Step 3** | Conducts the Professional Conduct Investigation in accordance with the determined scope.

**Step 4** | Submits their finding that the allegation(s) are substantiated or not substantiated within the agreed investigation scope and based on the available evidence.

**The Decision Maker:**

**Step 5** | Receives and considers the written investigation report.

**Step 6** | Remits the investigation report to the Credentialing Committee for advice as to any finding that the allegation(s) are substantiated or not substantiated.

**Step 7** | Receives and considers the advice of the Credentialing Committee.

**Note** | The Decision Maker must consider but is not obliged to accept the advice of the Credentialing Committee.

**PHASE 4: CONCLUDING THE PROFESSIONAL CONDUCT INVESTIGATION PROCESS**

**The Decision Maker:**

**Step 1** | Based on all the information available, proposes to find on the Balance of Probabilities that the suspected unprofessional conduct has been:

Substantiated (in part or full) and proposes termination of the MSA or alternative appropriate action

**OR**

Not substantiated and:

- (i) Advises CMP in writing;
- (ii) Documents the final decision; and
- (iii) Complies with any reporting requirements.

**Process Ends**

**Step 2** | Advises the CMP in writing of the proposed finding, any proposed action, and provides the CMP with an opportunity to respond in writing prior to a decision being made. The CMP must be given at least 7 days to provide a response to the proposed finding and proposed action.

**Step 3** | Considers any response provided by the CMP, including any issues cited in mitigation.

**Step 4** | Advises the CMP in writing of the decision and any action to be taken.

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| <b>Step 5</b> | <p style="text-align: center;"><b>(A)</b></p> <p>If the decision is to terminate the CMP's MSA.</p> <p style="text-align: center;"><b>Go to Step 6</b></p>  | <p style="text-align: center;"><b>(B)</b></p> <p>If the decision is not to terminate the CMP's MSA and no other action is to be taken;</p> <p style="text-align: center;"><b>Go to Step 7</b></p> | <p style="text-align: center;"><b>(C)</b></p> <p>If the decision is not to terminate the CMP's MSA and other action is to be taken;</p> <p style="text-align: center;"><b>Go to Step 8</b></p> |
| <b>Step 6</b> | Initiates the process for termination pursuant to <b>Clause 6.4 of the MSA.</b><br><b>Go to Step 9</b>  |   |  |
| <b>Note</b>   | The process for initiating termination must be in accordance with the HSP Authorisations and Delegation Schedule  |   |  |
| <b>Step 7</b> | Advises the CMP in writing of the decision.<br><b>Go to Step 9</b>  |   |  |
| <b>Step 8</b> | Advises the CMP in writing of the decision and action to be taken.<br>Initiates action  |   |  |
| <b>Note</b>   | Where the action to be taken includes restricting, making conditional, varying or suspending the provision of Services by the CMP or the Scope of Practice of the CMP <b>Clause 6 of the MSA</b> applies. |   |  |
| <b>Step 9</b> | Document the outcome of the Professional Conduct Investigation Process and comply with all record keeping and reporting requirements.<br><b><u>Process Ends</u></b>                                       |   |  |