DEPARTMENT OF THE NAVY
BUREAU OF MEDICINE AND SURGERY
2300 E STREET NW
WASHINGTON DC 20372-5300

IN REPLY REFER TO
BUMEDINST 6320.67A CH-1
BUMED-00L
12 Sep 2001

BUMED INSTRUCTION 6320.67A CHANGE TRANSMITTAL 1

From: Chief, Bureau of Medicine and Surgery
To: Ships and Stations Having Medical Department Personnel

Subj: ADVERSE PRIVILEGING ACTIONS, PEER REVIEW PANEL PROCEDURES, AND HEALTH CARE PROVIDER REPORTING

Ref: (a) SECNAVINST 6320.23

Encl: (1) Revised Page 2 of the Basic Instruction; Revised Pages 2 and 4 of Enclosure (6); and Revised Pages 3, 5, 6, 9, and 13 through 16 of Enclosure (7)

1. Purpose. Conforms the role of a provider's attorney or other representative at a peer review hearing consistent with the guidance established in reference (a), which entitles a provider to be represented by an attorney and directly address the peer review hearing panel and witnesses. Eliminates the restrictions put on the role of a recorder and who can be a recorder consistent with reference (a). Please note wherever you encounter BUMED (MED-03L) in the instruction, it has been disestablished and incorporated into BUMED (MED-00L), Staff Judge Advocate.

2. Action. Remove and replace the following with like-numbered pages of enclosure (1).

a. Page 2 of basic instruction.

b. Pages 2 and 4 of enclosure (6).

c. Pages 3, 5, 6, 9, and 13 through 16 of enclosure (7).

3. Retain. For record purposes, keep this change transmittal in front of the basic instruction.

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Deputy

Available at:
http://navymedicine.med.navy.mil/instructions/external/external.htm

clinical support staff not required to obtain privileges per reference (c). Report clinical support staff, who are released due to physical impairment or disability or who commit misconduct as outlined in enclosure (2), to Bureau of Medicine and Surgery (BUMED) (MED-00L) for review and possible reporting to licensing or certification boards. Reference (d) governs trainees in Navy graduate medical education programs.

4. Definitions. Terms used in this instruction are defined in enclosure (1).

5. Policy

a. General

(1) Credentials review and clinical privileging processes provide Navy treatment facilities and their professional staff the means to control and improve the quality of health care to patients. Practitioners who cannot provide safe, quality, patient care must not be permitted to engage in direct patient care activities. The procedures established by this instruction afford a mechanism to promptly and equitably assess allegations of practitioner misconduct or impairment and take adverse privileging action when necessary; or, in the case of clinical support staff, establish reporting requirements for practitioner misconduct, physical disability, or impairment.

(2) The adverse privileging peer review panel process shall be an unbiased evaluation, by a panel of clinically privileged medical experts, of a provider's ability to provide competent, safe patient care. Although it is not intended to be an adversarial legal proceeding, due to the implications an adverse action may have, the respondent is entitled to be represented by an attorney or other personal representative at the panel proceedings. The attorney may directly address the hearing panel and witnesses.

(3) Practitioners who have a potentially infectious disease or who are undergoing treatment or evaluation for a temporary medical condition not requiring a medical board under reference (e) will be temporarily reassigned to non-direct patient care activities. This administrative reassignment is not an adverse action.

(a) The limitation of privileges of a practitioner infected with the HIV virus, solely based upon a risk of disease transmission to a patient, is considered administrative and is

(e) For employees of Government contractors, the final action will be reported to the Government contractor for action consistent with the rights of the Government under the contract.

(f) For personal service contractors or providers working under the terms of a partnership agreement, or MCSC providers working in Navy MTFs, the final action may be the basis for terminating the contract or agreement.

(5) The right to appear at a peer review panel hearing, with the following rights at such hearing:

(a) The right to be present.

(b) The right to be represented by an attorney or other personal representative at the hearing. The attorney or representative shall have the right to address the panel or witnesses directly.

(c) The right to present evidence.

(d) The right to make a statement to the peer review panel.

(6) The right to waive any of the above hearing rights, including the right to a peer review panel hearing. In such case, the provider may submit written matters for the panel's consideration.

(7) Failure to respond to the letter of notification within 7 days constitutes a waiver of the right to appear at the peer review hearing. An extension of this 7-day period may be granted by the privileging authority for good cause.

(8) Failure to appear at the hearing after receiving notice about the time, date, and location of the hearing constitutes a waiver of the right to appear unless the privileging authority grants a continuation of the hearing date.

(9) Of the right to have reasonable opportunity to consult with counsel or other advisor before electing or waiving hearing rights. Absent unusual circumstances, 7 days will normally be considered a reasonable opportunity.

b. Exhibit 6-1 is a sample letter of notification and advice of rights.

SAMPLE NOTICE OF CLINICAL PRIVILEGES SUMMARY SUSPENSION AND ADVICE OF RIGHTS LETTER

From: Commanding Officer, Naval Hospital, _____
To: (Respondent)

Subj: NOTICE OF CLINICAL PRIVILEGES SUMMARY SUSPENSION AND ADVICE OF RIGHTS

Ref: (a) SECNAVINST 6320.23
(b) BUMEDINST 6320.67A
(c) BUMEDINST 6010.18

1. I have determined there is sufficient evidence to indicate you (may have committed an act of misconduct) (may be impaired). Accordingly, per references (a) and (b), all of your clinical privileges at Naval Hospital, _____ are summarily suspended, effective immediately. (This sample provides for a total summary suspension of privileges. If only a partial summary suspension is invoked, the specific clinical privileges affected must be identified.) Authority to engage in any off-duty remunerative employment is hereby withdrawn.

2. The grounds of the summary suspension are as follows:

(Include the specific misconduct or impairment upon which the summary suspension is based. These should be specific allegations that clearly identify the misconduct or impairment.)

3. In cases of partial summary suspension, all clinical privileges could be revoked based upon peer review panel recommendations. Your staff appointment could also be terminated.

4. Per references (a) and (b), you have the right:

a. To appear at a peer review panel hearing.

b. To be represented by counsel or any other personal representative at the peer review panel hearing.

c. To present evidence at the peer review panel hearing.

d. To make a statement to the peer review panel.

To appeal any permanent adverse privileging action taken against you as a result of the peer review hearing.

closed deliberations of the peer review panel. The recorder may be a Judge Advocate General Corps (JAGC) officer or any other officer whose responsibilities are to address the panel, present documentary evidence, and present witnesses. While a JAGC officer assigned to the privileging authority's staff judge advocate's office may act as a recorder, the same JAGC officer cannot provide posthearing advice to the privileging authority on that same case.

d. The privileging authority may appoint a non-voting legal advisor to advise the chairperson of the peer review panel on procedural or evidentiary issues. The role of the legal advisor is to be neutral. The legal advisor should not become involved in aspects of the hearing other than procedural or evidentiary issues. The legal advisor shall either be on standby and available in person or by telephone during the panel hearing, or be present in the hearing room. The legal advisor will not actively participate in the closed deliberations of the peer review panel. The legal advisor may be an MTF SJA or other JAGC officer and should be drawn from a command different from that of the privileging authority.

e. Exhibit 7-2 is a sample peer review panel appointing letter.

5. Peer Review Panel Hearing Procedures

a. Presiding Officer. The chairperson of the peer review panel presides at the hearing and rules on all matters of procedure and evidence. The chairperson may seek advice from the legal advisor (if appointed) before ruling on such issues.

b. Rules of Evidence. The rules of evidence for courts-martial and other judicial proceedings do not apply. Oral and written matter not admissible in a court of law may be considered by the peer review panel, subject only to reasonable restrictions on relevance, materiality, competence, and cumulativeness.

c. Witnesses. Any witness who is reasonably available and whose testimony will add materially to issues before the peer review panel will be invited to appear at the hearing. No peer review panel member can be a witness in a panel hearing to which he or she is assigned as a member.

(1) Witnesses not within the immediate geographic area of the site of the peer review panel hearing are not reasonably available. Written statements of witnesses not reasonably

6. Provider's Rights at a Peer Review Hearing

a. Right to Counsel or Representative. The provider has a right at the peer review hearing to be represented by an attorney or other personal representative. The attorney or other representative may address the panel on behalf of the provider. The provider may hire a civilian attorney or other person at his or her own expense, or if a member of the Armed Forces, may request military counsel be appointed. Military counsel will only be appointed if the requested counsel's commanding officer or reporting senior determines, at his or her sole discretion, that such counsel is reasonably available.

b. Right to Challenge for Cause. The provider or provider's representative may challenge members of the peer review panel for cause only. The provider or provider's representative must state specifically the grounds for any challenge(s) issued.

(1) Panel members. Cause for removal of a member of the peer review panel exists if a member has a predisposed attitude toward the outcome of the hearing or has acted as preliminary inquiry officer, investigating officer, or advisor to the privileging authority in the matter under review. Mere knowledge of the facts of a case is not sufficient grounds for removal.

(2) Ruling authority. Except for a challenge to the chairperson, the remaining members of the peer review panel, by majority vote in the absence of the challenged member, determine the validity of a challenge. The privileging authority determines the validity of a challenge to the chairperson.

c. Right to Question Witnesses. The provider or provider's representative may question any witness who testifies before the peer review panel.

d. Right to Call Witnesses. The provider or provider's representative may call witnesses to testify on behalf of the provider. If a witness is unwilling to appear voluntarily, the provider may request the privileging authority to seek to obtain the presence of the witness per paragraph 5c above. In such cases, the provider must provide the privileging authority with a synopsis of the expected testimony of the witness, its relevance to the proceeding, and substantiate why written or recorded testimony is insufficient. The privileging authority may refuse any untimely witness request submitted after the time required for prehearing disclosure of information under paragraph 3 of this enclosure. In determining whether to obtain the presence of

a requested witness, the privileging authority will apply the standards of paragraph 5c of this enclosure.

e. Right to Submit Documentary Evidence. The provider or provider's representative may submit written or recorded evidence to the peer review panel.

f. Right to Testify. The provider may make a statement to the peer review panel. If the provider elects to make such a statement, he or she may be questioned by the members of the peer review panel.

7. Record Summary. The peer review hearing must be recorded by a reliable recording device. No recording device, other than that used by the recorder or secretary to assist preparation of the record summary or verbatim transcript, will be permitted in the hearing. A record summary of the hearing must be prepared and authenticated by the chairperson of the peer review panel. For those cases where an appeal is filed, a verbatim transcript of the peer review hearing must accompany the appeal package to BUMED (MED-00L).

8. Peer Review Panel Deliberations

a. The peer review panel will meet to review the information and to deliberate in every case where a summary suspension of clinical privileges has occurred, regardless whether the provider has appeared at a hearing, submitted written matters, or waived all rights. Peer review panel deliberations will be held in closed session.

b. The peer review panel must make findings of fact for each allegation of misconduct or impairment. The standard of proof for such findings is a preponderance of the evidence; that is, it is more likely than not the particular fact is true, partially true or untrue.

c. For each allegation, the peer review panel must reach a specific conclusion, based upon relevant facts, that the allegation is true, partially true, or untrue. (No other terms may be substituted for "true," "partially true," or "untrue.") In reaching this conclusion, the standard of proof is a preponderance of the evidence.

d. Based upon its findings and conclusions, the peer review panel must make a recommendation, by majority vote, to the privileging authority the provider's privileges either be reinstated or initially granted, denied, reduced, suspended, or

SAMPLE LETTER OF NOTIFICATION OF HEARING

From: Commanding Officer, Naval Hospital, _____
To: Provider

Subj: NOTICE OF HEARING

Ref: (a) BUMEDINST 6320.67A

Encl: (1) List of witnesses and synopsis of expected testimony
(2) (Documents to be considered by peer review panel)

1. Per reference (a), you are hereby informed your peer review hearing will be held at (location) on (date and time).

2. You are advised failure to appear on your part, absent good cause, constitutes a waiver of appearance.

3. You are advised the witnesses listed in enclosure (1) will appear before the peer review panel.

4. You are advised the documents attached as enclosures (2) through (x) will be considered by the peer review panel.

5. You are advised you will have the following rights at the peer review hearing:

a. The right to be represented by counsel or any other personal representative.

b. The right to challenge any member of the peer review panel for cause.

c. The right to question witnesses.

d. The right to call witnesses.

e. The right to submit documentary evidence.

f. The right to testify.

6. You are reminded at least 7 days before the scheduled date of the peer review hearing you must provide the names of any witnesses you intend to call at the hearing with a brief synopsis of their expected testimony. At that time you must also provide copies of all documents you intend to offer for consideration by the peer review panel. You are further advised if you require my

consideration). This panel will make findings of fact and will make recommendations to the commanding officer concerning the (medical or dental) clinical privileges to be maintained by the respondent at this command. If this panel recommends adverse action as defined by BUMEDINST 6320.67A, the reasons for that action will be stated along with the type of action recommended.

CHRP: (Provider), I will now discuss with you your rights in connection with this hearing. If you have any questions about any of these rights, do not hesitate to ask me. If you wish, you may discuss your questions with your (counsel or representative). Commanding Officer, Naval (Hospital or Dental Clinic), letter of (date) provided you notice of clinical privileges summary suspension and advice of rights for this peer review hearing. That letter will be made Exhibit 2 of the panel report. BUMEDINST 6320.67A provides 30 days must elapse between the time you received actual notice of your rights at this hearing and when the hearing starts, unless you agree to an earlier date. This is to ensure you have ample opportunity to prepare your case to respond to the allegations. (As applicable: (You were given a copy of Exhibit 2 more than 30 days ago. The hearing may proceed.) or (You were given a copy of Exhibit 2 less than 30 days ago. The hearing may not start before (date) unless you agree. Do you wish to waive your right to the full 30-day period and proceed now or do you prefer to reschedule the hearing to start (date)?)

First, you have the right to appear before this panel with or without counsel or personal representative. If you are represented, your counsel or personal representative may directly address this panel on your behalf.

Second, you may challenge any voting member of this panel for cause; that is, by showing a member cannot render a fair, impartial decision. Cause for removal of a member exists if a member has a predisposed attitude toward the outcome of the hearing. Mere knowledge of the facts of a case is not sufficient cause for removal. You or your representative may question any panel member to determine whether a basis for challenge exists.

Third, you may examine any and all documentary evidence available to the panel that has a bearing on any matter relevant to this hearing. In this regard, I want to advise you the instruction establishing the peer review hearing process provides at least 10 days before the hearing you were to be provided:

1. Written notice of the specific date, time, and place of the hearing.

2. Any documentary evidence concerning the allegations against you to be considered at the hearing.

3. Names and addresses of witnesses to be called to testify at the hearing and the matters their testimony will cover. Did you receive this information at least 10 days before the hearing?

(Note: If respondent did not, the reason for the delay in providing the information should be stated for the record and the following stated: Since you did not receive all of the above information in a timely manner, you have a right to request delay of the hearing until (date). Do you wish to proceed with the hearing today or wish to instead start the hearing on (date)? Any information not previously made available to you will now be provided.)

(Note: As a matter of practice, all relevant information should be provided to the provider well in advance of the hearing date and, as new information becomes known or available, it should be promptly shared with the provider.)

Fourth, you may submit an oral or written statement on your own behalf or you may choose to remain silent. If you choose to testify, you will be subject to questioning by the panel members.

Fifth, you may call witnesses to testify on your behalf.

Sixth, you may submit documentary evidence you wish the panel to consider. This includes, but is not limited to, depositions, sworn or unsworn statements, affidavits, and stipulations. This also includes depositions of witnesses not reasonably available to appear at the hearing and other witnesses unwilling to appear voluntarily. BUMEDINST 6320.67A required you disclose any documentary evidence you wanted the panel to consider at least 7 days before the hearing. I may, upon a showing of good cause, allow you to introduce information to this panel you did not previously disclose; however, I will also consider granting reasonable delay to allow other documents or witnesses to be located and available to the panel if relevant to address issues or matters your evidence raises.

Lastly, you or your representative may question any witnesses who appear before the panel.

Your failure to invoke any of these rights is not a bar to the peer review proceedings or to the panel findings or recommendations.

There are some procedural rules in connection with this hearing I will now explain to you.

First, these proceedings are administrative in nature. The rules of evidence do not apply. The panel may consider information that might not be admissible in a court of law, so long as the information is relevant to matters before this panel.

Second, if you have any objections to any matters introduced, or to any of the proceedings of this panel, you may state your objection and the reasons for it. No formal ruling will be made to your objection. The objection will be noted in the summary of the hearing for reviewing authorities to consider.

Third, if you desire a postponement or continuance of this hearing, you must submit your request to the commanding officer via this panel. Your request may be granted only upon a showing of good cause.

Do you have any questions concerning your rights or procedures before this panel?

RESP: ((Questions) or (The respondent has no questions.))

CHRP: Any voting members of the peer review panel who are aware of any matter which would prevent them from rendering an objective, independent, fair, and impartial decision based only on the evidence presented at this hearing should now state such matter.

(Panel members' response(s))

CHRP: At this time, do you or your representative wish to question any voting member of this panel in relation to any matter that may constitute grounds for challenging the member?

RESP: ((Questions) or (The respondent has no questions.))

CHRP: Do you or your representative have any challenge to any voting member of the panel?

RESP: ((Challenge(s) or (The respondent has no challenge(s).))

CHRP: At this point, we will hear from the recorder who will provide a brief statement of the allegations that require this hearing.

(Note: The recorder should make a brief statement reviewing the facts and circumstances that led to the hearing, including a recitation of the actions taken previously by the commanding officer or the panel in the subject case.)

CHRP: Does respondent or respondent's representative desire to make an opening statement?

RESP: (Opening Statement)

(Note: The opening statement may be made now or before presentation of respondent's case.)

CHRP: At this time, the panel will receive such documents as are pertinent to this hearing.

(Note: Besides documents normally entered as exhibits at the hearing as they are received as evidence, all documents are relevant to the proceedings and concern events that have occurred before the start of the hearing should be made exhibits to the record. Items to consider include the appointing letter, the letter of clinical privileges summary suspension, the notice to respondent of the hearing date, correspondence concerning witness requests, requests for delays in the hearing date, and any waiver of any right by respondent.)

REC: The following documents are submitted for the panel's consideration.

Exhibit 1 is the convening order for this hearing.

Exhibit 2 is a letter from the commanding officer to the respondent notifying him or her of summary action taken with respect to his or her privileges.

Exhibit 3 ... etc.

CHRP: Are there any objections to the panel's consideration of these exhibits?

RESP: ((Objection) or (There is no objection.))