

Colorado Professional Review Act Resources

COPIC worked with partners in the health care community to maintain the legal protections of peer review when the Colorado Professional Review Act (CPRA) was renewed as part of a sunset process in 2019. Under Colorado law, physician practices that follow a formal professional review process have the same legal protections as peer review activities at a hospital or other health care facility.

Professional review activities that are privileged and confidential under CPRA include evaluating the competence, professional conduct of, or the quality and appropriateness of patient care provided by a physician, physician assistant (PA), or advanced practice registered nurse (APRN) employed by or under contract with the practice to provide health care services. This can range from routine reviews of cases identified through screening by quality indicators to addressing concerns about a possible impaired provider.

COPIC has developed templates to assist practices in establishing a formal professional review process through appropriate policies and procedures. These templates are consistent with the requirements for professional review under state and federal law but should be reviewed by an attorney who can add information specific to the practice. The templates are also in a Word document format that allows them to be easily integrated and customized for your medical practice.

Colorado Professional Review Act—General Resources

Colorado Copiscope—4Q19 issue

This article provides an overview of the benefits of establishing a formal professional review process for physician practices. A copy of this article is included in this document.

Colorado Professional Review Act, C.R.S. § 12-30-201 *et seq.*

Available at

<https://advance.lexis.com/container?config=0345494EJAA5ZjE0MDIyYy1kNzZkLTRkNzktYTlxMS04YmJhNjBINWUwYzYKAFBvZENhdGFsb2e4CaPI4cak6laXLCWyLBO9&crd=0671a2a5-f1f6-4f9b-9b8f-9998eb2cbc98>

Getting prepared for professional review

Professional Review Checklist

This checklist includes the steps a practice should consider when establishing a formal professional review process including registration with the Colorado Department of Regulatory Agencies (DORA), developing professional review policies and procedures, and identifying the professional review activities the practice will include in its professional review program.

Confidentiality Agreement—Professional Review Participant

A confidentiality agreement should be signed by all professional review participants and be maintained on file with the practice. The agreement explains the privileged and confidential nature of professional review activities and the participant's obligations not to discuss or disseminate any information contained in protected health information or the professional review records outside of the professional review process.

Professional Review Policy and Procedure templates

COPIC provides the following templates of professional review policies and procedures for COPIC-insured practices to download and use.

Professional Review Policy and Fair Hearing/Corrective Action Policy

The template Professional Review Policy and Fair Hearing/Corrective Action Policy have the elements required under CPRA and the federal Health Care Quality Improvement Act to ensure the legal protections of professional review documents and the qualified immunity of professional review participants, but a practice may want to have legal counsel review these to make recommendations specific to the practice.

While it is very unlikely that a provider's care will rise to the level of reporting to the medical or nursing board, a practice's policy needs to address the due process requirements under CPRA, which includes a fair hearing. This allows for a fair hearing for the provider (a right to present his or her side on the issues and be represented by legal counsel) if a professional review committee recommends that the practice's governing board take an adverse professional review action.

Practitioner Behavior Policy

While a practice is not required to incorporate a practitioner behavior policy as part of its professional review policies and procedures, such a policy sets the expectation that those practicing with the practice group must treat others with respect, courtesy, and dignity and conduct themselves in a professional and cooperative manner. The policy provides guidance and direction to the practice, its board, and administration for addressing behaviors, including sexual harassment and other inappropriate workplace behaviors, that do not meet the expectations for practitioners, employees, and contractors.

Practitioner Health Policy

A practice is not required to incorporate a practitioner health policy as part of its professional review policies and procedures, however, such a policy provides overall guidance to the practice, its board, and administration for properly investigating and acting on concerns that a practitioner may have a potential impairment or inability to practice with reasonable care and skill. This includes physical, psychiatric, or emotional illness, including deterioration through the aging process or loss of motor skill, or excessive use or abuse of drugs, including alcohol.

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COLORADO'S PROFESSIONAL REVIEW ACT

What does it mean for physician practices?



This past year, COPIC worked with our partners in the medical community to maintain the critical protections of professional review (peer review) with DORA's sunset bill, SB 19-234. We supported DORA's recommendations to maintain the professional review process and protections under the Colorado Professional Review Act (CPRA) in their current form with some minor changes until 2030.

WHY IS PROFESSIONAL REVIEW IMPORTANT?

Professional review is ultimately a way to protect patients and improve the quality of patient care. CPRA allows a professional review committee established by an "authorized entity" to review/evaluate the (1) competence, (2) professional conduct of, or (3) the quality and appropriateness of care provided by a physician, physician assistant (PA), or advanced practice nurse (APN). The use of professional review committees is considered a way to assist the medical and nursing boards in meeting their responsibilities under the medical and nurse practice acts.

While most of us are familiar with peer review in the hospital setting, a professional services entity, including a physician practice, may establish a professional review committee under the law. When practices are asked, "Do you discuss cases regularly, have M&M, receive patient complaints, or have experience with a physician who may be impaired," often the answer is yes. But when asked whether a practice has a formal professional review process with policies in place to address these activities, often the answer is no.

Without the legal protections afforded by having these policies and procedures in place, conversations, emails, and

text messages about a patient's care, a patient complaint, or a provider's professional conduct are not protected under the professional review privilege. They may need to be disclosed in a subsequent lawsuit involving a patient's care.

WHAT DOES PROFESSIONAL REVIEW INVOLVE?

To claim the professional review privilege for discussions about a provider, a practice must have formal professional review policies and procedures in place that comply with CPRA. COPIC is developing a template policy, and will make this available, however, it should be reviewed by an attorney who can add information specific to the practice.

While it is very unlikely that a provider's care will rise to the level of reporting to the medical or nursing board, a practice's policy needs to address the due process requirements under CPRA. This allows for a fair hearing for the provider if a professional review committee recommends that the practice's governing board take an adverse professional review action. When the policies and procedures required by CPRA are in place, there are legal protections for all those who participate in the professional review activities.

CONTINUED ON PAGE 2

INSIDE



3
DEALING WITH POTENTIALLY DANGEROUS PATIENTS

5

WHAT'S WRONG WITH THIS NOTICE? SCAMS TARGETING PHYSICIANS



6
COLORADO CANDOR ACT RESOURCES

7

STATEWIDE SEMINARS

The practice will need to identify what professional review activities fall within the policy. Some examples include the review of:

- ✓ Patient safety incidents, including near-misses
- ✓ Unscheduled patient returns
- ✓ Patient complaints
- ✓ Cases identified through screening by quality indicators
- ✓ Reported unprofessional conduct
- ✓ Concerns regarding a possible impaired provider

IMPLEMENTING PROFESSIONAL REVIEW AT YOUR MEDICAL PRACTICE

Practices that have successfully utilized CPRA share common themes. Foremost, they have developed a culture of understanding that the purpose of professional review is not to hinder or punish practitioners. Instead, they believe it allows them to continually improve the quality of care, treatment, and services provided as well as protect the safety of the patients they treat to ensure the best possible outcomes.

When implementing professional review, it is important to dispel a common misunderstanding among physicians that all reviews of a physician under CPRA will be reported to the medical board under that individual's name.

The reality is that they are reported only if:

The findings of an investigation indicate that a provider is lacking in qualifications or competency, has provided substandard or inappropriate patient care, or has exhibited inappropriate professional conduct,

AND

The professional review committee recommends an action to adversely affect the provider's membership, affiliation, or privileges with the authorized entity,

AND

After a fair hearing process, the governing board takes a final professional review action that adversely affects the clinical privileges of the provider for more than 30 days or accepts the surrender or any restriction of clinical privileges while the provider is under investigation or in return for not conducting such an investigation or proceeding.

Recommendations for additional education where there is no final adverse action would not need to be reported. In other words, being reviewed does not necessarily mean you are being reported in any identifiable fashion, and, in the experience of most practices, the majority of reviews are reported in a de-identified, aggregated fashion. The

Additionally, the practice's governing board must register as a professional review entity with DORA. Register at www.dora.state.co.us/pls/prcweb/PRC.Logon

SB 19-234 gave authority to DORA's Division of Professions and Occupations to determine the information a governing board is required to report regarding de-identified information about professional review outcomes and investigations. This has not been determined through rulemaking at this time, but will need to be included as part of a governing board's annual report to DORA of de-identified professional review information.

reviews are for all intents and purposes, anonymous. Knowing this enhances the participation of clinicians. The following case study demonstrates how professional review and CPRA can facilitate the improvement of patient safety protocols within a practice.

CASE STUDY

A middle-aged patient complaining of persistent hacking cough a week after recovering from influenza was worked into a busy clinician's schedule during the afternoon. The patient was evaluated and treated with a codeine cough suppressant and told to return if symptoms worsened. Just five hours later, the patient felt much worse and went to the emergency department. The patient was diagnosed with bi-lobar pneumonia and admitted to the ICU due to hypoxia, hypotension, and presumed sepsis.

The professional review committee at the clinic reviewed the medical care and noted that vital signs had not been performed at the time of the clinic visit. Although there is no way to know definitively whether the vital signs would have been abnormal, they presumably would have been and could have provided a clue that the patient was more severely ill than he appeared. The committee investigated further and learned that vital signs had not been performed on nearly half of acute visits not just for this doctor, but clinic-wide. They discovered a workflow challenge for acute visits that made it difficult for medical assistants to check vital signs and this system failure was subsequently corrected. Now, nearly 100% of acute visits to the clinic have vital signs checked, which almost certainly has improved patient safety and outcomes.

In this case, and in many other examples, professional review protections have helped clinics identify and fix problems to prevent adverse outcomes. The medical literature is rich with examples where proactive

CONTINUED ON PAGE 3

COLORADO PROFESSIONAL REVIEW ACT (FROM PAGE 2)

professional review and a culture of patient safety has resulted in a reduction in medical liability claims. Many practices have found the protections under CPRA promote a culture of patient safety and continuous improvement, and when the practices work to educate their practitioners about how and why the professional review process works, they can help facilitate use of this valuable tool.

COPIC PEER REVIEW NETWORK—AN OPPORTUNITY TO PARTICIPATE AND SUPPORT PROFESSIONAL REVIEW

The COPIC Peer Review Network (CPRN) is a program designed to help medical facilities and practice groups address some of the challenges associated with professional review services. CPRN's goal is to create a network where you can share and connect with providers who are available to render professional review services. We are currently looking for facilities or groups performing

peer review in Colorado that may be interested in participating in this program.

For more information, visit **www.callcopic.com/patient-safety-risk-management/copic-peer-review-network** (username/password required to access this) or contact Mary C. Eichler at meichler@copic.com or (720) 858-6257.