

A photograph of classical building columns, likely from a courthouse or government building, with a blue overlay on the right side containing the title.

Navigating Physician Behavior and Quality of Care Concerns: A Legal Perspective

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1

A close-up photograph of a person's hand, likely a patient, with a white medical device (possibly a pulse oximeter) attached to their index finger.

Managing Physician Investigations in Health Systems

- Physician investigations require a coordinated approach across multiple departments.
- Complaints can trigger regulatory, legal, or internal investigations that demand immediate attention and proper handling.
- All allegations must be thoroughly reviewed regardless of perceived merits, as proper investigation processes protect both the institution and involved parties.
- Investigations related to clinical competence and behavior directly impact patient care, regulatory compliance, legal exposure, and the financial health of the organization.

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2

Investigation Triggers: What Initiates Review?



External Triggers

Patient complaints filed through formal channels, malpractice claims claims initiated by patients or families, billing audits, and public legal issues including civil litigation or criminal charges involving physicians.



Internal Triggers

Reports from staff members, findings findings during routine compliance compliance rounds, and irregularities irregularities uncovered during regular quality audits or peer reviews reviews of clinical documentation. documentation.



Mandatory Response

Health systems need an effective process to respond to all allegations regardless of the source, preserving evidence, maintaining privilege, and documenting response steps from the moment an issue is identified.

Core Phases of Navigating Physician Behavior and Quality Concerns



Initial Review & Assessment

- Assessment of allegations to determine severity, credibility, and required response path.
- Identify which departments need immediate involvement and establish preliminary investigation scope.



Investigation & Intervention

- Perform structured, fair, comprehensive investigation with proper documents.
- Implement appropriate actions such as education, coaching, monitoring, or disciplinary measures.



Resolution & Monitoring

- Determine whether the concern is resolved, requires ongoing remediation, or must be escalated.
- Continual performance monitoring, document all outcomes, and ensure ensure compliance with internal policies and external reporting requirements. requirements.

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What is the role of Legal in managing physician behavior and quality of care concerns at your organization?



1. None
2. Handle litigation once a demand is received or a lawsuit is filed
3. Support Compliance and other departments when requested
4. Other

Legal Department – Physician Investigation Essential Functions



The legal department serves as the primary guardian of process integrity and defensibility throughout the process of navigating behavior and quality concerns. Their expertise helps navigate complex regulatory requirements while minimizing exposure to litigation risks that could damage both the institution and individual careers.

Legal: Managing Regulatory and Litigation Risks

Regulatory Interface

Coordinating responses to State Medical Board, Department of Health, and federal agencies (CMS, DOJ, etc.), including preparation of formal position statements and witness preparation for official proceedings.

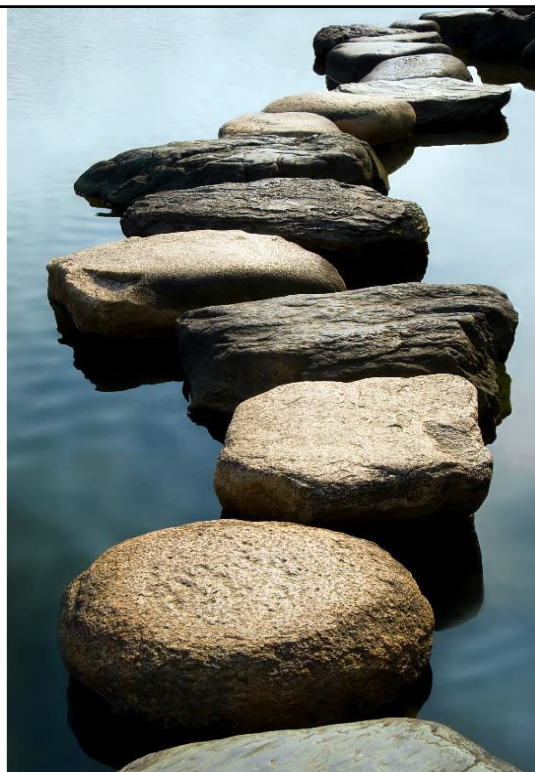
Legal Process Management

Responding to subpoenas, administrative hearings, and governmental inquiries with strategic approach to disclosure that protects privileged information while demonstrating good faith compliance.

Resolution Strategy

Providing counsel on settlement opportunities, litigation risks, and long-term implications of various remediation approaches, including potential National Practitioner Data Bank and State Medical Board reporting requirements.

7 Navigating Physician Behavior and Quality of Care Concerns | July 1, 2025



7

HR – Physician Investigation Essential Functions

Policy Alignment & Investigative Support

- Confirm alignment with HR policies, employment agreements, and corrective action protocols.
- Conduct or co-lead interviews, document findings, and evaluate behavioral concerns impacting workplace culture or safety.

Disciplinary Process & Performance Management

- Collaborate on action plans, support coaching or termination logistics, and manage internal communication with staff.

Physician Well-being

- Physician Executive/Wellness Committee supporting access to physician mental health resources and workplace/patient safety throughout the investigation process, including referrals to employee assistance programs (internal or external).

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8

HR: Coordination of Physician Investigations with Unions and Contract Requirements



Agreement & Contractual Compliance

Ensure adherence to collective bargaining agreements and physician employment contracts, including notice periods & representation rights



Strategic Communication

Coordinate sensitive and timely communications with union reps, medical staff services, legal, compliance.



Confidentiality Protection

Maintain confidentiality in line with HR policy and CBA terms.

Prevent retaliation and privacy breaches; maintain privilege, if available.

Human Resources must carefully navigate the unique obligations outlined in collective bargaining agreements and physician employment contracts during investigations. This includes adhering to specified timelines, notification requirements, representation rights, and procedural variations that may differ from standard HR protocols for non-contracted employees.

Medical Staff – Physician Investigation Essential Functions



Clinical Performance Oversight

Evaluate quality-of-care concerns and assess alignment with clinical standards of practice and peer expectations.



Peer Review Coordination

Lead or support peer review investigations; ensure appropriate specialty input and objective evaluation.



Credentialing & Corrective Action

Manage privileges, initiate performance improvement plans, or recommend corrective/disciplinary actions via MEC or fair hearing process.

Quality Concerns and Clinical Standards

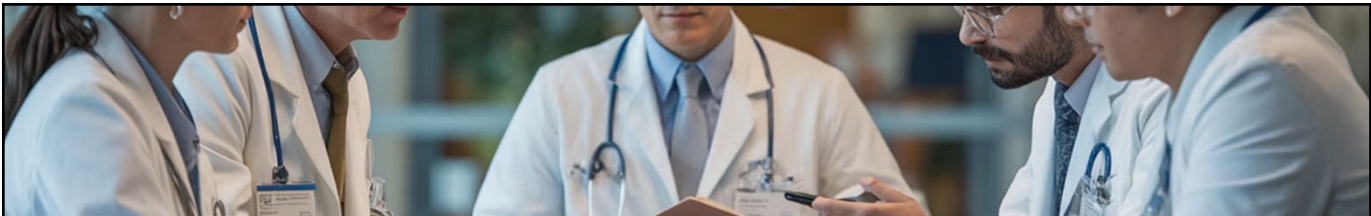


Clinical Quality Assessment

- Medical staff leaders bring crucial clinical expertise to investigations involving standard-of-care questions. They can evaluate whether the physician's actions align with accepted medical practice and institutional protocols.
- This assessment may include review of similar cases, consultation with external experts in the relevant field, and consideration of current medical literature to evaluate performance against appropriate benchmarks.

Privileging and Credentialing Review

- When investigations raise questions about physician competence, Medical Staff leadership should review the original and periodic privileging decisions and determine whether current privileges align with demonstrated skills and the Health System's standards.
- This process ensures physicians are only performing procedures and treatments that are medically necessary and for which they maintain current competency, directly protecting patient safety.



Medical Staff: Committee and Peer Review Roles



Committee Structure	Primary Responsibilities	Privilege Protection
Medical Executive Committee	Review and development of recommendations based on investigation findings	Maintains privilege under state law with proper documentation and processes followed
Peer Review Committee	Clinical case evaluation and quality of care/professional conduct assessment	Strong legal protection when following established procedures and applicable state law
Department Committees	Specialty-specific review and remediation planning	Variable protection based on committee purpose, adherence to documented processes and state law

Medical staff committees serve as the formal structure through which physician peers can review cases and professional conduct, provide clinical context, and recommend appropriate actions. The committee process ensures multiple perspectives are considered before significant decisions affecting a physician's practice are implemented.

Due Process and Physician Cooperation



Notification Requirements

- Physicians often must receive formal notification of investigations affecting their practice or employment status. This notification may include the nature of allegations, investigation process, and potential outcomes without premature judgments.
- Timing of notification is balanced between evidence preservation needs and transparency requirements, with legal counsel providing guidance on appropriate disclosure timing.

Participation Opportunities

- Fair process requires meaningful opportunities for the physician to respond to allegations through formal interviews, written statements, and provision of relevant evidence. This participation must be structured to avoid intimidation while ensuring complete information gathering.
- Documentation of all participation opportunities, whether accepted or declined, creates a record demonstrating commitment to fairness throughout the investigation process.

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When your organization investigates physician conduct, which path do you use most often?



1. Human Resources/Employment
2. Medical Staff/Peer Review process
3. Hybrid approach depending on case
4. It depends – but we're not always confident in our choice.

Medical Staff v. Employment Track



Use Medical Staff Process When:

- Concern relates to clinical competence, quality of care, or professional conduct affecting clinical privileges.
- Physician is credentialed only (not an employee).
- Privilege reporting anticipated (e.g., NPBD, state licensing board)
- You're using MEC, peer review, or fair hearing procedures.

Use Employment Track When:

- Concern involves behavior in the workplace, compliance with HR policies or contractual terms.
- Physician is employed or contracted by the system.
- Action may involve coaching, warning suspension, or termination under an employment agreement.
- Labor union or CBA obligations apply.

Independent vs. Employed Physicians



Employed Physicians

- Investigated under HR/employment policies in coordination with Legal and Compliance.
- Subject to progressive discipline, coaching plans, or termination per employment agreement or CBA.
- HR leads witness interviews, manages documentation in the employee file.
- May involve peer review for quality of care or clinical conduct, but HR governs employment outcome.
- Privileges may or may not be linked to employment termination depending on employment agreement and bylaws.

Independent / Privileged-Only Physicians

- Investigated through the medical staff process, including peer review, MEC review, and potential fair hearing.
- Not subject to HR policy enforcement.
- Legal and Compliance guide strategy but Medical Staff Services owns the process.
- Corrective action may include proctoring, suspension, or privilege revocation.
- Actions triggering NPDB or board reporting are more common in this group.

Compliance – Physician Investigation Essential Functions



Ensure Process Compliance

Align investigation procedures with internal policies and regulatory expectations; coordinate across departments.

Support Documentation & Disclosures

Maintain audit-ready records; guide reporting to regulators (e.g., OIG, CMS), when required.

Identify Regulatory Risk

Proactively identify potential violations of federal and state laws, accreditation standards, Stark, AKS, or billing irregularities.

Assess whether conduct implicates patient safety, billing integrity, or organizational compliance obligations.



Drive Corrective Action & Monitoring

Implement and track remediation plans; monitor for sustained compliance.

17 Navigating Physician Behavior and Quality of Care Concerns | July 1, 2025

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17

Compliance: Reporting and Disclosure



External Reporting

Preparing and submitting required reports to Centers for Medicare & Medicaid Services, state licensing boards, and other regulatory bodies based on investigation findings and legal obligations.



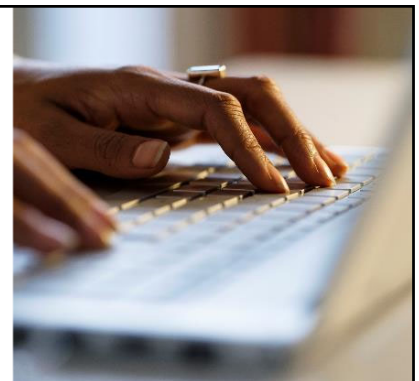
Action Plan Tracking

Implementing robust systems to monitor completion of all corrective action requirements, with escalation protocols for items that fall behind schedule.



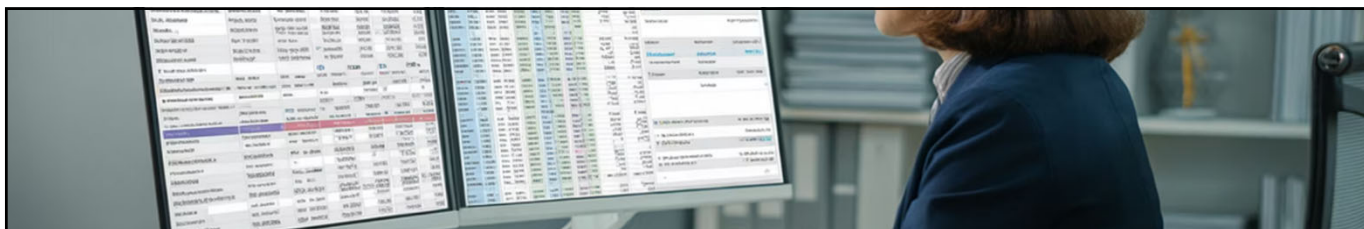
Follow-up Monitoring

Conducting post-remediation reviews to ensure issues have been resolved and implementing preventative measures for systemic problems identified during investigations.



18 Navigating Physician Behavior and Quality of Care Concerns | July 1, 2025

18



Revenue Cycle Team: Financial Risk and Billing Review

Billing Pattern Analysis

Revenue cycle teams conduct comprehensive reviews of billing patterns to identify potential compliance issues, including upcoding, unbundling, or services not supported by documentation. These analyses often involve statistical comparisons with peer physicians and specialty-specific benchmarks.

Financial Impact Assessment

When investigations reveal billing issues, revenue cycle experts calculate potential financial exposure including risk of recoupments, claims holds, and prospective revenue loss. This assessment guides decisions about self-disclosure and corrective action planning.

Compliance Verification

The team verifies adherence to payer-specific requirements and government regulations, ensuring all claims accurately reflect services provided and are properly documented according to current coding guidelines.

19 Navigating Physician Behavior and Quality of Care Concerns | July 1, 2025

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19

Revenue Cycle: Collaboration During Investigations



Preventative Billing Holds

When investigations identify potential billing issues, the revenue cycle team implements strategic billing holds on specific cases or service lines to prevent submission of questionable claims while the investigation proceeds. This proactive approach prevents compounding compliance issues.



Documentation Correction

Revenue cycle specialists work closely with compliance and clinical documentation specialists to identify and implement appropriate corrections to medical records and billing submissions, following strict regulatory guidelines for amendments.



Financial Continuity Planning

When a provider is suspended or terminated, revenue cycle teams assess the impact on accounts receivable, develop plans for managing outstanding claims, and implement strategies to minimize disruption to practice revenue.



20 Navigating Physician Behavior and Quality of Care Concerns | July 1, 2025

20

Intersection: Multi-Disciplinary Collaboration



Legal Counsel

Ensures the investigation is legally defensible and provides risk analysis and strategic guidance throughout investigation

Compliance

Protects organizational integrity by identifying regulatory risk, ensuring adherence to policies, and supporting necessary disclosures.



Human Resources

Manages employment aspects and labor rights while managing interpersonal dynamics and supporting fair resolution pathways.

Revenue Cycle

Quantifies billing and financial exposures. Focused on revenue protection.

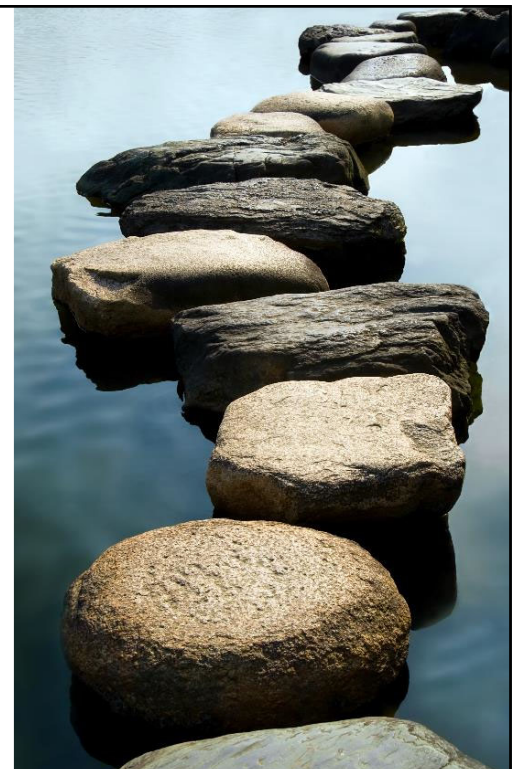
Medical Staff

Safeguards patient care standards and professional accountability through peer review and credentialing processes.

A collaborative approach may maximize privilege and prevent siloed decision-making that can create contradictory outcomes or unintended consequences.

Workflow Example: Timeline of a Typical Investigation of Behavior/Quality Concern

- 1 — **Days 1-3: Initial Intake & Triage**
 - Concern received (e.g., patient complaint, peer report, incident log).
 - Compliance lead performs initial triage to assess severity and potential impact.
 - Legal consulted early if privilege, regulatory risk, or reputational concerns arise.
- 2 — **Days 4-10: Fact Gathering & Stakeholder Notification**
 - Compliance and HR begin documentation review and interviews.
 - Initial medical record review (if quality-related) by appropriate clinician.
 - Core team (Legal, HR, Compliance, Medical Staff) aligned on scope and next steps.
- 3 — **Week 2: Early Risk Assessment & Pathway Decision**
 - Legal evaluates exposure and advises on privilege and risk strategy.
 - HR, Compliance determine whether to notify physician and review contract/CBA implications with Legal.
 - If clinical issues are involved, Medical Staff may be consulted if strategically helpful and not duplicative.
- 4 — **Weeks 3-4: Formal Review & Action Planning**
 - Multidisciplinary review of compiled findings and documentation.
 - Committees (MEC, compliance, etc.) consulted as needed.
 - Draft and implement action plan (e.g., coaching, monitoring, reporting, or formal discipline).



Determining the Right Action: From Findings to Resolution



Type of Concern	Examples	Potential Action
Low Level/Isolated Behavioral Issues	Inappropriate tone in meeting, late charting, first-time complaint	Verbal counseling or HR memo, coaching or mentoring
Patterned or Repeated Conduct	Multiple staff complaints, boundary-blurring, chronic tardiness, failure to follow protocol	Written warning or PIP, monitoring or coaching, joint HR + Medical Staff follow-up
Quality of Care or Clinical Competence Issues	Missed diagnoses, medication errors, deviation from clinical standards	Peer review, proctoring or CME, privilege modifications or summary suspension
High-Risk / Reportable Conduct	Substance abuse, retaliation, patient harm, allegations of fraud, license issues	Termination (if employed), MEC review, mandatory reporting

Determining the Right Action: From Findings to Resolution



- Match response to severity, pattern, and risk – not personality, reputation or political pressure
- Coordinate Legal, HR, Medical Staff, and Compliance on final recommendation and stay aligned
- Document findings, rationale, and process used for defensibility
- Consider reporting obligations (e.g., NPDB, licensing board, payers)

Poll



Which risk feels most challenging to manage in physician investigations?



1. Legal exposure (e.g., litigation, contract issues)
2. Patient safety risk (e.g., delayed action, ongoing harm)
3. Organizational culture impact (e.g., morale, precedent)
4. External reporting and regulatory consequences

Competing Priorities: Legal Risk, Patient Safety, and Organizational Culture



Legal/Regulatory Risk	Patient Safety	Organizational Culture
<ul style="list-style-type: none">• Obligations around contracts, privilege, and due process.• Preserve privilege and defensibility in case of litigation or reporting.• Avoid actions that could create additional liability or reputational risk.• Manage regulatory reporting obligations.	<ul style="list-style-type: none">• Timely intervention when care quality or safety is at risk.• Assess harm potential and care standards.• Peer review processes to evaluate competence and mitigate future risk.	<ul style="list-style-type: none">• Promote fairness, trust, and psychological safety.• Balance transparency with discretion.

Does our approach protect patients, uphold policy, fulfill our obligations, and reflect our values – simultaneously?

Lessons Learned: Case Examples



Medication Error Case Study

A compliance or Medical Staff lead investigation of serious medication errors – this may reveal systemic issues, individual physician negligence, or both. Legal will coordinate required external reporting while Medical Staff leadership may facilitate non-punitive system improvements. Employed physician may require education and other corrective actions. Key lesson: Look beyond involved individuals to identify potential process failures that create error-prone environments.



Documentation Deficiency Resolution

When revenue cycle identifies a pattern of inadequate documentation leading to denied claims, the investigation process should be initiated. Discipline may be necessary, but a collaborative approach involving targeted education and template revisions also could resolve the issue particularly if this is an isolated or new issue. Key lesson: Remediation can resolve knowledge-based errors and prevent the need for future discipline or other corrective actions.



Behavioral Complaint Management

Multiple reports of disruptive behavior are received about a physician who is both employed and privileged through the health system. HR initiates a workplace behavior investigation under employment policies and the physician's contract. In parallel, Medical Staff may assess whether the behavior impacts clinical care, professionalism, or team dynamics under the peer review process. Legal advises on privilege preservation, due process rights, and appropriate coordination. Key lesson: When a physician is both employed and privileged, align HR and Medical Staff tracks early to avoid inconsistent outcomes. Coordinated, well-documented interventions help ensure fairness, protect privilege, and support defensible decisions if corrective or disciplinary action is needed.

27 Navigating Physician Behavior and Quality of Care Concerns | July 1, 2025

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27

Lessons Learned: Case Examples



Unnecessary Care + Policy Violations

A physician is reported for performing high volumes of potentially unnecessary procedures and bypassing required system protocols (e.g., pre-auths, documentation). Compliance leads the review with Legal, HR, Revenue Cycle, and Medical Staff input. Billing exposure and clinical quality concerns are assessed in parallel. Key lesson: Allegations that straddle clinical judgment and policy violations require a coordinated strategy across departments. Early role clarity and structured documentation support both defensibility and appropriate physician accountability.



Retaliation + Peer Review

A physician undergoing peer review for quality-of-care concerns files a complaint alleging retaliation by department leadership and bias in the review process. The Medical Staff continues its clinical evaluation, while HR and Compliance investigate the retaliation claim. Legal reviews the peer review process for adherence to bylaws, due process, and privilege protections, and ensures the retaliation concerns are handled separately to protect integrity. Key lesson: When retaliation concerns arise during an ongoing peer review, the processes must be clearly separated but carefully coordinated. Maintaining transparency, fairness, and privilege in both tracks is essential to uphold credibility, protect against litigation, and support a defensible final outcome.

28 Navigating Physician Behavior and Quality of Care Concerns | July 1, 2025

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28

Key Takeaways



- ✓ Collaborative, Coordinated Response is Essential
- ✓ Documentation Builds Defensibility
- ✓ Track Selection Should Be Intentional
- ✓ Involve Legal Early
- ✓ Balance Risk with Culture and Safety

Questions

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31



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32