

REVIEW PROCESS

Following an initial review of the complaint, the PHHPC will either investigate the complaint or send notice that it is dismissing the complaint. The PHHPC may dismiss a complaint or a portion of a complaint if issues raised in the complaint do not fall within the scope of Section 2801-b. The complainant and hospital may only provide information in addition to the complaint and response upon the request by or with the permission of the PHHPC. If such information is provided, a copy also must be sent to the opposing party.

All Section 2801-b information the PHHPC receives is kept confidential in accordance with the statute. The records of Section 2801-b proceedings are not admissible as evidence in any other action of any kind in any court or before any other tribunal, board, agency or person.

The PHHPC's Committee on Health Personnel and Interprofessional Relations conducts a review of the case and then recommends action to the full PHHPC. The PHHPC then considers the case and makes a determination. If the PHHPC finds cause for crediting the allegations of the complaint, the council advises both parties and directs the hospital to review its actions regarding the complainant's staff membership or professional privileges. Both parties are notified if the PHHPC does not credit a complaint. Notice of PHHPC determinations are provided by letter.

Neither party is permitted to appear at the proceedings and, in keeping with the statutory requirement of maintaining confidentiality, no publicly disclosable minutes are made of meeting discussions with Section 2801-b cases are presented or discussed at PHHPC meetings.

PRECEDENTS AND POLICY DECISIONS

Public Health Law Section 2801-b and Part 93 of 10 NYCRR provide complainants an opportunity for review of a hospital's decision. However, previous PHHPC policy decisions and court decisions have led to a number of restrictions on Section 2801-b review, including the following:

Petitions are considered premature and are not reviewed by the PHHPC if complainants have not first availed themselves of due process procedures within the hospital.

Complainants must exhaust the review process available under Section 2801-b before seeking court injunctive relief under Public Health Law Section 2801-c to compel restoration of privileges.

A hospital's decision to terminate solely nonclinical duties of a health practitioner does not fall under the scope of Section 2801-b.

A hospital is not required to institute a new clinical service department to accommodate the clinical expertise of an applicant who was denied professional privileges because no such service is offered by the hospital.

When professional liability (malpractice) insurance is a requirement listed in the hospital bylaws, the professional privileges of a health practitioner who does not have such coverage may be denied or terminated.



State of New York
Department of Health

Professional Privileges and Section 2801-b of the New York State Public Health Law

New York State
Department of Health

PROVISIONS OF THE LAW

Section 2801-b of the New York State Public Health Law gives physicians, dentists, podiatrists, optometrists, and licensed midwives (health practitioners) the right to file a complaint with the New York State Public Health and Health Planning Council (PHHPC) if they feel they have been treated improperly with respect to obtaining or retaining staff membership or professional privileges in a hospital. * (Part 93 of Title 10 of the Codes, Rules and Regulations of the State of New York [10 NYCRR Part 93] provides additional specifics with regard to the complaint process).

Under Public Health Law Section 2801-b, it is an improper practice for a hospital's governing body to do the following without stating a reason:

- refuse to act on a health practitioner's application for staff membership or professional privileges;
- deny or withhold a health practitioner's staff membership or professional privileges;
- exclude or expel a health practitioner from staff membership; or
- curtail, diminish or terminate a health practitioner's professional privileges.

Any reason provided by a hospital's governing body as justification for taking any action listed above must be related to standards of patient care or welfare, the objectives of the institution or the character and competency of the health practitioner.

*Hospitals as defined in Article 28 of the Public Health Law include, but are not limited to, general hospitals, diagnostic and treatment centers and nursing homes.

It is also improper practice for a hospital's governing body to deny or withhold staff membership or professional privileges to a podiatrist based solely on the practitioner's category or licensure.

COMPLAINT PROCEDURE

Health practitioners may personally, or through an attorney, file a verified complaint with the PHHPC if they believe they have been aggrieved by an improper practice, as defined in the law. The complaint should also include the following:

- the name and address of the complainant;
- the complainant's professional qualifications;
- a description of the professional privileges which are the subject of the complaint and a detailed description of the alleged improper practice;
- a detailed chronicle of events leading up to, during and after the alleged improper practice;
- copies of minutes and/or other records that may be pertinent to the complaint;
- the hospital's name and address and the name and address of the hospital's attorney, if known;
- an index of attachments or exhibits to the complaint, referencing page numbers;
- notarized verification by the complainant that the facts, as presented, are true to the best of the complainant's knowledge (complainants' attorneys can verify the complaint if the material allegations of the complaint are within the attorneys' personal knowledge, but that is not normally the case); and
- other relevant information.

At the same time the complaint is sent to the PHHPC, the complainant must send a copy of the entire complaint, including all attachments and related exhibits, to the hospital alleged to have committed the improper practice.

The original complaint together with six copies (including all attachments properly indexed and tabbed), and an affirmation that the hospital has been provided a copy of the entire complaint (including all attachments and related exhibits), should be sent to:

New York State Public Health and Health
Planning Council
New York State Department of Health
Empire State Plaza
Corning Tower, Room 1805
Albany, New York 12237

HOSPITAL RESPONSE

The hospital must:

- provide the PHHPC with a written response to the complaint within 30 days from its receipt of a notice from the PHHPC that it will investigate the complaint;
- provide the complainant with a complete copy of the hospital response at the time the hospital response is filed with the PHHPC;
- provide the PHHPC an affirmation stating that the hospital has provided the complainant with a copy of the entire hospital response; and
- treat its response to the complaint as confidential.

