



*Best Practices for*

# Employment Practices Liability Reporting

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Leading health care organizations commit to creating a culture of safety and professionalism. Codes of conduct and employment policies guide the expected behaviors in support of that culture.

Organization leaders expect consistent, fair, timely, and just responses to violations of those codes and policies to ensure that everyone feels safe and respected when at work and that any implemented remedial steps produce the desired results.

This guidance document describes best practices for facilitating a consistently fair response to inappropriate employee conduct.

As your association liability insurance carrier, CRICO is committed to reducing risks related to employment liability and any downstream effects on patient safety and reputation.

The following recommendations—compiled by representatives from Risk Management, Human Resources, and General Counsel—outline a strategy to facilitate consistent, time-sensitive, closed-loop processes when workplace behavior falls below expectations. That group acknowledges the complexities in developing, implementing, and sustaining a set of best practices that address professional conduct, and the importance of doing so.

## Widely Variable Practice

Reporting processes for complaints of unprofessional behavior vary across and within CRICO member organizations. These processes are dependent on available resources to capture and communicate concerns (e.g., reporting systems, reports to managers and human resources, involvement of medical staff leadership).

Member organizations also exhibit wide variability in responding to, trending, and sharing behavior complaints. A 2021 survey of CRICO members demonstrates that 60 percent of the respondents notify departmental chiefs when a complaint of unprofessional behavior is received; 52

percent notify Human Resources; and 15 percent notify the General Counsel. How, or if, reports are effectively and consistently triaged to the various departments is, generally, unclear.

Follow up of these reports is also variable: 85 percent of the respondents have mechanisms in place for follow up; 33 percent use trended data to inform improvement efforts. This variability exposes an opportunity to identify practices that allow for a fair, prompt, consistent, and well-coordinated response to complaints of unprofessional behavior.

## Prominent Vulnerabilities

- Lack of centralized processes to coordinate complaint management, consistent response, documentation, trend-analysis, and follow up
- Inconsistent management of complaints depending on role and employment status of the complaint respondent (e.g., non-licensed employees, non-employed personnel, licensed professionals, trainees, members of the medical staff)
- Inconsistent use of report/complaint data (e.g., aggregate trending, leadership reporting, credentialing processes)
- Fear of retaliation by individuals who report

The above risks can be exacerbated by high turnover of staff in Human Resources and management teams. The response to reported events requires triage, and the associated plans for response are often dictated by the frequency and/or severity of the complaint. For example, a potentially criminal complaint of sexual or physical assault requires a more immediate response than other behavior complaints; repeat complaints by the same individual, generally, requires effective tracking mechanisms and escalating interventions.

## Suggested Practice

In conjunction with the experts convened in 2021, CRICO encourages its member organizations to consider the following recommendations for the optimal reporting of and response to a behavior complaint. As complaints may arise from clinicians, non-clinical employees—as well as from patients, families, or visitors—all permutations should be considered when using any of these practices.

### PROCESSES

Processes include cataloging and documenting available reporting options, effectively and repeatedly communicating them with clarity, and then identifying the response team or responsible department(s) that will manage complaints. In addition, processes for evaluation, investigation, and follow-up communication should be addressed.

- Catalog and clearly communicate all ways in which complaints of unprofessional conduct may be reported
- Determine if all complaints will be addressed by one response team, or if different types of complaints will be addressed by different response teams
- Iterate clear timelines for complaint management and develop strategies to comply with them
- Ensure medical staff bylaws include due process for complaint management and follow these processes consistently. Differentiate processes related to behavior versus performance management.
- Develop guidelines for closed-loop communication with the complainant, setting realistic expectations related to the follow up and remediation by the organization

### MANAGEMENT OF COMPLAINTS

Response teams will manage complaints and provide formal response and follow up based on established timelines. Response teams should assign clear roles and responsibilities based on the type of complaint.

- Identify the appropriate response team members, which may include clinical staff leadership (e.g., CMO, CNO), Human Resources and/or Employee Relations, risk professionals, patient advocates, and General Counsel
- Develop and coordinate formal responses to individual complaints
- Protect potentially discoverable information to maintain any attorney-client privileges
- Identify roles/individuals who will have access to information reported and discovered during the review and response processes
- Agree to criteria for when the General Counsel, as opposed to Human Resources/Employee Relations, should manage investigation of the complaint
- Establish a prompt timeline for completion of the investigation and remedial steps, if needed, and the party responsible for each step in the complaint response

### COMPLAINT AND RESPONSE DOCUMENTATION

Create standard operating procedures for required documentation, noting desired file location and compliance with privacy requirements (e.g., patient safety evaluation system, Human Resources/personnel, credentialing, medical staff bylaws). Human Resources documents are not peer review-protected and do not ordinarily fall under attorney/client privilege.

- Provide clear guidance for complaints that include both medical incidents and professional conduct and where more than one party may have an obligation or jurisdiction to respond
- Only document objective facts
- Refrain from documenting assumptions, opinions, credibility assessments, internal commentary
- Allow document access to only those with the need to know

When developing standard operating procedures, factor in required reporting to licensing organizations and regulatory bodies (for additional information in Massachusetts, refer to the boards of registration Medicine or Nursing.)

### TRENDING AND SHARING FINDINGS

Complaint findings and resolutions must be aggregated and analyzed to identify trends, vulnerabilities, and potential actions to address risks. Sharing reports regularly with

executive boards and committees will drive organizational support and improvement over time. As a standard practice, organizations should:

- Use internal event reporting processes to examine system and patient safety issues
- Develop trended data based on role, department, and themes to inform interventions and future educational needs, related to specific types of allegation (e.g., racial discrimination, harassment, inappropriate behavior, violence)
- Follow a standard cadence of reporting out to the Medical Executive Committee and other governance bodies (e.g., Patient Care Assessment Committee, Board of Directors)
- Establish buy-in and commitment to address remediation, as appropriate

## Conclusion

Consistency in responding to and resolving concerns and complaints of unprofessional behavior is integral to ensuring a culture of safety and a positive work environment for all workforce members. The development of reliable processes for timely investigation and follow up with the complainant is essential. As with patient safety events, tight processes around professional behavioral

issues build trust in the reporting system and leadership response, keeping the flow of communication open. Finally, aggregating complaint findings and resolutions to identify trends, address recurrent problems, and report to the appropriate leadership and governing committees will assist ongoing improvement.

## ABOUT THIS DOCUMENT

Based on management's recommendation and input from CRICO members, development of an Employment Practices Liability (EPL) program began in 2020.

Since that time, groundwork was completed to understand member EPL vulnerabilities, meetings were held to increase member stakeholder awareness related to EPL risks and CRICO EPL program objectives, and a basic taxonomy design and analysis of five years of closed EPL claims were shared.

One aspect of our work includes the development of best practices to address areas of risk. *Best Practices for Employment Practices Liability Reporting* is the first in a series developed with member stakeholders. Please, visit our [EPL web page](#) for more information regarding EPL risks.

## Resources

### [A Culture of Respect Part 1](#)

available at [https://journals.lww.com/academicmedicine/Fulltext/2012/07000/Perspective\\_\\_A\\_Culture\\_of\\_Respect\\_Part\\_1\\_\\_The.10.aspx](https://journals.lww.com/academicmedicine/Fulltext/2012/07000/Perspective__A_Culture_of_Respect_Part_1__The.10.aspx)

### [A Culture of Respect Part 2](#)

available at [https://journals.lww.com/academicmedicine/Fulltext/2012/07000/Perspective\\_\\_A\\_Culture\\_of\\_Respect\\_Part\\_2\\_11.aspx](https://journals.lww.com/academicmedicine/Fulltext/2012/07000/Perspective__A_Culture_of_Respect_Part_2_11.aspx)

### [Promoting Professionalism by Sharing a Cup of Coffee](#)

available at <https://www.myamericannurse.com/wp-content/uploads/2017/05/ant5-Coffee-417b.pdf>

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