

MEDICAL QUALITY ASSURANCE COMMISSION
Washington State Department of Health
2009 Annual Report
Washington State Legislature

Date: December 31, 2009

Subject: Medical Quality Assurance Commission (MQAC)
2009 UDA Information
Update on the Implementation of 4SHB1103

Presented by: Leslie M. Burger, MD, FACP, Chair
Maryella Jansen, Executive Director

Referred to: Washington State Legislature

Purpose and Make Up of Medical Quality Assurance Commission

The purpose of the Medical Quality Assurance Commission is to regulate the competency and quality of professional health care providers under its jurisdiction by establishing, monitoring, and enforcing qualifications for licensing, consistent standards of practice, continuing competency mechanisms, and discipline. Rules, policies, and procedures developed by the Commission must promote the delivery of quality health care to the residents of the state of Washington. (RCW 18.71.002) The Commission is governed by the following laws: RCW 18.71, (MD) RCW18.71A, (PA) RCW 18.130, (Uniform Disciplinary Act) RCW 70.02, (Medical Records) RCW 19.68, (Rebating by Practitioners) WAC 246-919, (MD Rules) and WAC 246-918 (PA rules).

The Commission consists of 13 physicians (one from each congressional district and four at-large), two physician assistants, and six public members. The Governor appoints members to four year staggered terms. The Secretary of the Department of Health appointed five physicians and three physician assistants to serve as pro tem members. Following is the list of current Commission members.

Commission Members

Frederick Dore Jr., MD	Term Began:	July 2003
Internal Medicine	Reappointment Expires:	June 2011
Congressional District 1		

Mark L. Johnson, MD General Surgeon Congressional District 2	Term Began Appointment Expires:	July 2008 June 2013
Leslie M. Burger, MD, FACP Internal Medicine Congressional District 3	Term Began: Appointment Expires:	July 2006 June 2010
William Gotthold, MD Emergency Medicine Congressional District 4	Term Began: Reappointment Expires	July 2006 June 2012
Samuel Selinger, MD Cardio/Thoracic Surgeon Congressional District 5	Term Began: Reappointment Expires:	June 2002 June 2010
Mimi E. Pattison, MD Palliative Care Congressional District 6	Term Began: Appointment Expires:	July 2008 June 2012
Susan Harvey, MD Obstetrics/Gynecology Congressional District 7	Term Began: Appointment Expires:	July 2005 June 2013
Thomas M. Green, MD Orthopedics Congressional District 8	Term Began: Appointment Expires:	July 2006 June 2010
Richard Brantner, MD Emergency Medicine Congressional District 9	Term Began: Appointment Expires:	Nov 2007 June 2011
Bruce J. Andison, MD Obstetrics/Gynecology At-Large Position	Term Began: Appointment Expires:	July 2008 June 2012
Bruce Cullen, MD Anesthesiology At Large Position	Term Began: Appointment Expires:	July 2006 June 2010
Anthony Robins, MD Orthopedics At Large Position	Term Began: Appointment Expires:	July 2007 June 2011
Anjan K. Sen, MD Neurosurgery At-Large Position	Term Began: Appointment Expires:	October 2007 July 2011

Ellen Harder, PA-C Physician Assistant Family Practice	Term Began: Reappointment Expires:	Jan 2005 June 2009
Athalia Clower, PA-C Physician Assistant Family Practice	Term Began: Appointment Expires:	July 2006 June 2010
Theresa J. Elders Public Member	Term Began: Appointment Expires:	July 2006 June 2010
Frank Hensley Public Member	Term Began Appointment	July 2006 June 2010
Judith Page, J.D. Public Member	Term Began: Reappointment Expires:	July 2003 June 2011
Michael Concannon, J.D. Public Member	Term Began: Appointment Expires:	July 2009 June 2013
Judy Tobin Public Member	Term Began: Re-appointment Expires:	April 2004 June 2011
Linda Ruiz, J.D. Public Member	Term Began: Appointment Expires	July 2006 June 2010

Pro Tem Members

David R. Benson, MD, OD	Richard Bunch, MD	John M. Corman, MD
Richard J. Eggleston, MD	Glen Harvey, PAC	Michael J. Murphy, MD
Gilbert Rodriguez, MD	Rocky Ruvalcaba, MD	Robert H. Small, MD
Cabell Tennis, JD	Brooke Thorner, MD	
Ruth Ballweg, PA-C	Theresa Vance, PA-C	

Management Staff

Maryella Jansen, Executive Director
 Beverly Teeter, Deputy Executive Director
 Julie Kitten, Program Manager
 George Heye, MD, Medical Consultant
 James H. Smith, Chief Investigator
 Michael Farrell, JD, Legal Manager
 Dani Newman, Disciplinary Manager

Assistant Attorneys General

Melissa Burke-Cain, AAG Advisor
 Kim O'Neal, AAG Chief Prosecutor
 Tracy Bahm, AAG Prosecutor
 Kristin Brewer, AAG Prosecutor
 Michael Hall, AAG Prosecutor

Commission Leadership

On July 17, 2009, the Commission elected the following officers: Leslie M. Burger, MD, FACP, as Chair; Marilyn (Mimi) Pattison, MD, as First Vice-Chair; and Frank Hensley, Public Member as Second Vice-Chair. Samuel Selinger, MD, is the Immediate Past Chair.

Leslie M. Burger, MD, FACP, has been a licensed physician in Washington State since 1985. He was appointed to the Medical Commission in 2006. Dr. Burger practiced most of his career as an Army Medical Corps officer and in the US Department of Veterans Affairs in Vancouver, Washington. He specialized in general internal medicine and infectious diseases both in federal government and private settings. As a practitioner, he has chaired committees that included credentialing, risk management, quality assurance, graduate education and institutional review. He was a clinical department chair, a teacher in academic medical centers, and a chief medical officer and CEO of hospitals and organizations. Dr Burger is active in working on the Commission's processes and procedures. He is the current chair of the Finance Committee.

Mimi Pattison, MD has been a licensed physician in Washington State since 1989. Dr. Pattison was appointed to the Commission in 2008. She was born and raised in Montana. She is a graduate of University of Washington and her residency and fellowship at University of Arizona. She is Board certified in Internal Medicine, Nephrology, and Hospice and Palliative medicine. Dr. Pattison has been in practice with the Franciscan Health System in Tacoma for 20 years and is currently the Medical Director for Hospice and Palliative Medicine. She stated that she is "Looking forward to the ongoing challenges of the work of the Medical Quality Assurance Commission as we enter our second year of the pilot."

Frank Hensley, Public Member was appointed to the Medical Commission in 2006. He has an extensive background on the legislative staff as a performance auditor, reviewing the effectiveness and efficiency of various state programs and organizations for the Legislative Budget Committee. Mr. Hensley has been involved in the Commission's major transition into the pilot project, specifically chairing the task group creating the interim Memorandum of Understanding a forerunner to a Joint Operating Agreement upon which his committee is currently working. He has been active with formal hearings and policy formulation. He was appointed by the Governor to the Governor's Veterans Affairs Advisory Committee. Mr. Hensley holds a Master's Degree in Business Administration and the rank of Captain in the Naval Reserve. He runs his own successful business financing real estate construction and development.

4SHB1103 (RCW 18.71.430)

In 2008, the legislature passed and the governor signed 4SHB 1103 (RCW 18.71.430) creating a pilot project for both the Medical and Nursing Care Quality Assurance Commissions. Under the pilot, the commissions were granted significantly greater authority over their budgets and personnel, as well as other powers to better accomplish their mission. The 5-year pilot will end in 2013. A report, due to the legislature in 2013, will compare the Commission's performance to its performance before the pilot, and to other boards, commissions and secretary-controlled programs. The pilot assigned 34 FTEs, including 6 attorneys and 10 investigators, to support the MQAC in its work.

In the first months of the pilot, the Commission co-located its staff, entered into a Memorandum of Agreement with the Department of Health, developed a strategic plan, developed performance measures, and produced its first budget. As shown under the accomplishments section below, the commission has significantly improved its performance.

Note: Update on the implementation of RCW 18.71.430 is attached to this document.

Funding Sources

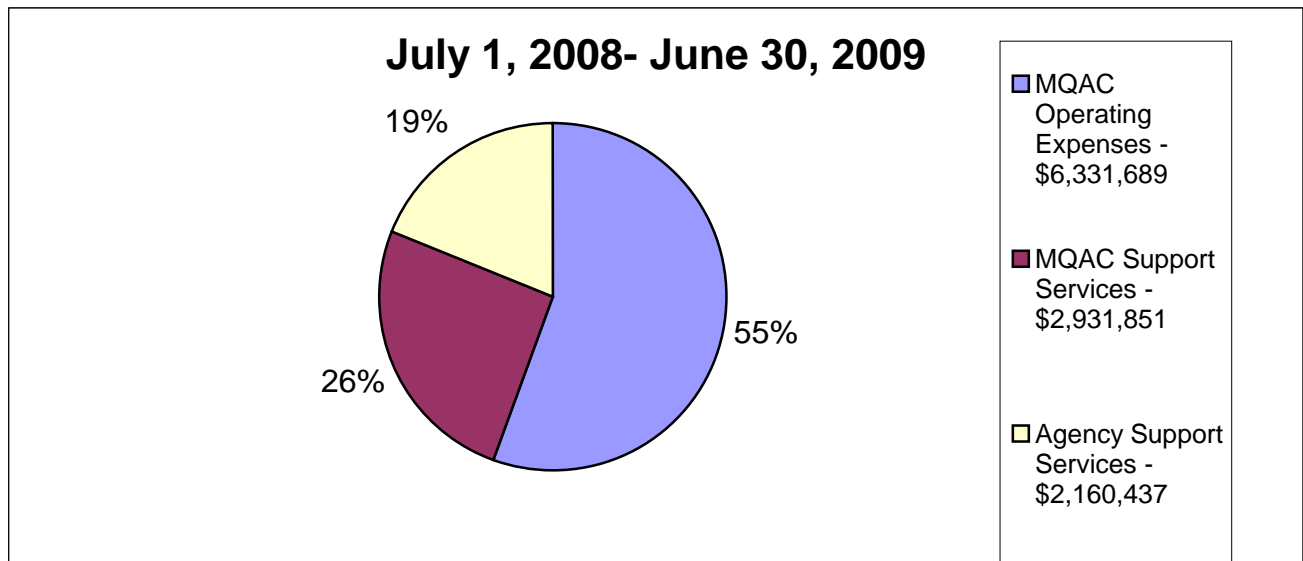
License application and renewal fees provide the primary source of revenue to fund the work of the Commission. Other revenue is generated from fines and cost recovery. From July 1, 2007, to June 30, 2009, the Commission collected \$12,503,669, including \$106,000 collected for fines and \$38,128 in cost recovery. The surcharge for the Washington Physician Health Program (WPHP) and the University of Washington medical library is deposited into different accounts. In 2008, the legislature increased the physician renewal licensing fees from \$475 to \$645 and the physician assistant renewal licensing fees from \$130 to \$170 every two years.

In the 2009 legislation session, HB1795 was passed to support the work of the WPHP. This law increased the surcharge on each year of renewal and all applications to \$50 for both physicians and physician assistants effective July 26, 2009. All surcharge funds collected are distributed to the WPHP account within 60 days.

The Commission ended the 2007-09 biennium within its budget authority.

Expenditure of Funds

Note: The source of the following information is the Medical Quality Assurance Commission Budget for July 1, 2007 through June 30, 2009.



MQAC Operating Funds provide for activities which include:

Licensing and license renewals;
Technical assistance and education by MQAC staff for MDs and PAs;
Administrative support to the Commission. The Commission meets every six weeks for two days, approximately 16 meeting days per year;
Contracting with the WPHP, a treatment and monitoring program for impaired practitioners;
Responding to public requests for public information;
Conducting complaint investigations, practice reviews and compliance audits;
Drug-related investigations;
Legal processing of investigated complaints, settlement opportunities, and prosecutorial services;
Monitoring MDs and PAs for compliance with disciplinary sanctions; and
Administrative support for rule and policy processes.

MQAC Support Services expenditures provide for:

Advice from the Attorney General's Office;
Tort claim services;
Licensing and disciplinary computer tracking systems;
Adjudicative Services Unit health law judges, who preside at hearings;
Public Disclosure Unit;
Volunteer Medical Worker Program (legislation in 2006); costs spread across health professions;
and
Multicultural Education Health Program (legislation in 2006); costs spread across health professions.

Agency Support Services expenditures provide for:

Health System Quality Assurance (HSQA) Assistant Secretary's Office, which provides management coordination of the activities between MQAC and the other health professions including regulation of facilities and related services; and Office of the Secretary, which provides infrastructure support, such as personnel, payroll, accounting, risk management, legislative activities, media coordination, and policy research and development.

Insurance and Legislated Mandates: Tort claim insurance premiums provide for the Attorney General's Office defense costs and potential settlements of tort claims. Legislation implementation expenditures are required when legislation is enacted, but cannot be funded from sources other than fees generated by licensing activities.

CREDENTIALING STATISTICS

The Commission currently regulates 24,698 MDs and 2,224 PAs.

	MD Application s Received	MD Licenses Issued Includes reinstated	PA Applications Received	PA Licenses Issued	PA Practice Plans Approve d	MD Limited Applications Received	MD Limited Licenses Issued
	1763	1706	221	213	563	442	550
RENEWAL STATISTICS							
	MD Limited Fellowship License	MD Limited Institutional License	MD License	MD Limited Residency License	Limited Teaching Research License	PA License	Total annual License Renewals
TOTAL	23	3	11685	676	65	1121	13573

Uniform Disciplinary Act Information

Complaints

During the past year (July 1, 2008 to June 30, 2009), the Commission received and assessed 1114 complaints. The Commission receives complaints from members of the public; mandatory medical malpractice reports of settlements; adverse action reports from medical societies, hospitals, medical service bureaus, and the professional standards review organization; and from federal, state, and local agencies. During this time period, the Commission closed 1118 complaints. To better understand the disciplinary process, please see the attached MQAC Compliant Flow-Chart.

Investigations

Of the 1114 complaints received during the past 12 months, the Commission referred 812 cases for an investigation. As of June 30, 2009 there were 192 cases under investigation. The Commission developed a focused investigation process that has significantly reduced the time to investigate some cases. Once the investigation is complete, the Commission reviews the file and either closes the case or orders some type of legal action.

Legal Action

There are two bases for taking action against a licensed health care provider:

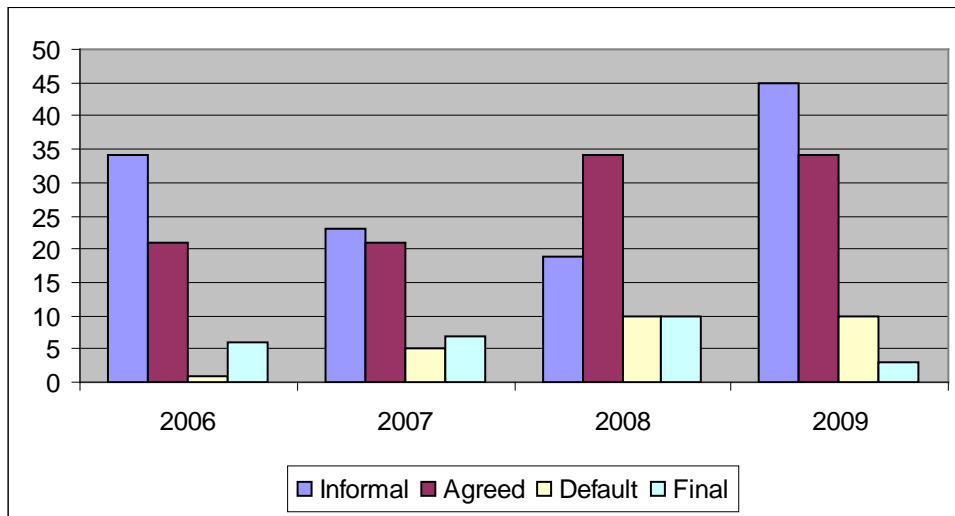
Unprofessional conduct. This includes providing negligent treatment, violation of drug laws, committing an act of moral turpitude, fraud, sexual misconduct or other conduct defined by statute.

Impairment. This is the inability to practice medicine with reasonable skill and safety by reason of a mental or physical condition.

During the period from July 1, 2008, to June 30, 2009, the Commission took the following legal actions:

Statement of Charges (SOC) Ordered	55	Default/waiver orders issued	10
Stipulation to Informal Disposition (STID) Ordered	63	Final orders issued after a Formal hearing	3
SOC served	49	SOC withdrawn	5
Amended SOC served	13	STIDs withdrawn	11
STIDs served	57	Summary actions	10
Amended STIDs served	5	Application denials served	10
Agreed Orders accepted	33	Applications denied	6
STIDs accepted	45	Cases Transferred to the Secretary	11

The following chart shows a comparison of the number of cases that resulted in disciplinary actions taken by the Commission over the last four years.



NOTE: The legal process can take 12 months or more to complete. Consequently, the number of closed cases and number of actions taken will not equal the number of complaints opened.

Compliance Activities

On July 1, 2009, the Commission was actively monitoring 169 practitioners to ensure compliance with Commission Orders. In the time period July 1, 2008 to June 30, 2009, 42 practitioners **successfully completed the terms of their orders and were released from their orders.**

Performance Measures

RCW 18.71.430 required the Commission to develop key performance measures in collaboration with the Nursing Care Quality Assurance Commission and the Secretary of the Department of Health. The Commission tracks the key performance measures on a quarterly basis. Note: MQAC Performance Measures are attached for review.

MQAC Accomplishments 2008-2009

In addition to establishing the pilot and demonstrating improvement in several performance measures as noted above, the Commission furthered its mission in several other areas.

Education

Commissioners met with several groups, including the WSMA, county medical societies, and the staff of hospitals throughout the year to inform them of the Commission's activities.

The Commission published a Patient Guide to send to complainants describing the

Commission's processes.

The Commission sent a brochure entitled "What Happens Next?" to MDs and PAs when they were notified that a complaint had been made against them.

The Commission sent a brochure entitled "Pain Management Guidelines" to interested persons upon request and placed it on the Commission's website for reference.

Communication

The Commission continued to further the working relationship with the Department of Health, the legislature, other state agencies, other state boards and commissions, Washington State Medical Association, and the University of Washington.

The Commission created an electronic LISTSERV to notify interested parties of rule processes, minutes and agendas. Our LISTSERV agenda and minutes address is: <http://listserv.wa.gov/archives/mqac-minutes-and-agendas.html> or the LISTSERV for rules and policies address is: www.listserv.wa.gov/mqac-rules. Currently there are about 303 interested persons on the Minutes and Agenda list serve and 372 interested persons on the Rules and Policies list serve.

The Department of Health Provider Credential Search for credentialed health care providers and facilities is available at:

https://fortress.wa.gov/doh/hpqa1/Application/Credential_Search/profile.asp

The Commission updated its website:

Visit the Web site to obtain the latest information about the Commission, policies and procedures, applications, renewal information, meeting schedules and fees. The Commission is reviewing information available on the Web site to better educate and inform practitioners.

[Medical Quality Assurance Commission](#)

Rule Making

Office-based Surgery: The Commission has filed the CR102 with the Code Revisers Office for the final rules hearing and adoption. The rule hearing is scheduled for January 14, 2010.

Non-surgical Medical Cosmetic Procedures: The Commission has filed the CR102 with the Code Revisers Office for a final rules hearing and adoption. The final rule hearing is scheduled for January 14, 2010.

Demographics: The Commission has filed a CR101, held a public meeting and drafted language to amend rules in order to allow the Commission to request demographic information at the time of renewal.

Retired Active Physicians: The Commission has filed a CR 101 to formally amend the rules regarding retired active physicians.

Background Check Temporary Practice Permits

The Commission was granted an emergency order for a temporary practice permit and is in the process of filing rules to allow individuals who have completed their applications without any negative information and have submitted the FBI fingerprint cards to DOH to be granted a temporary practice permit for 90 days and renewed for an additional 90 days if needed to complete the FBI background check. Emergency rules were filed to immediately allow for a temporary practice permit once the application was completed and the FBI fingerprint cards were returned to DOH.

Policies and Guidelines

The Commission has issued, revised or is in the process of revising the following policies, procedures and guidelines during the past 12 months:

- **MD2008-03--Treating Partners of Patients with Sexually Transmitted Chlamydia and Gonorrhea.** The Commission recognizes that the adequate treatment of sexually transmitted Chlamydia and gonorrhea infections has always been a difficult public health issue. When Chlamydia and gonorrhea are identified in a patient the adequate treatment and prevention of recurrence in the patient often depends on the treatment of the partner or partners who may not be available or agreeable to direct examination. This policy is regarding practitioners who provide antibiotics for the partner(s) of patients with Chlamydia and gonorrhea without a prior examination following some basic protocols.
- **MD 2009-01--Mandatory Investigations-**This policy and procedure is to ensure consistency in the decision to authorize an investigation.
- **MD2008-01--Credentialing of Physicians for Reentry after Not Practicing After an Extended Amount of Time.** The Commission receives applications from practitioners who have been out of practice for an extended period of time. The Commission wishes to have a consistent approach when processing these applications. The Commission interprets on a case-by-case basis may require any applicant who has not practiced for a period of two years or more to take and successfully pass the SPEX or any other examination deemed appropriate.
- **MD2008-02--Self-Treatment of Immediate Family Members.** The Commission believes that practitioners generally should not treat themselves or members of their immediate families. Professional objectivity may be compromised when an immediate family member or the practitioner is the patient; the practitioner's personal feelings may unduly influence his or her professional medical judgment, thereby interfering with the care being delivered. This policy is the Commission's guidance regarding self-treatment and/or prescribing for family members.
- **MD2008-04--Compliance Procedure Policy (Revised).** The Commission's policy establishes the processes for consistency in 1) compliance appearances, 2) waived compliance appearances, 3) modification of agreed orders, and 4) reinstatement of a practitioner.
- **Medical Quality Assurance By-Laws.** The Commission created a new set of by-laws and guiding principles.
- **MD2008-08--Reconsideration of Closed Complaints Policy (Revised).** On occasion a complainant may request to re-open and reconsider a case that is closed. The Commission revised its policy to establish consistent processes for reconsideration on a closed complaint.
- **MD2008-09--Referral of Sexual Misconduct Cases RCW 18.130.062,** which took

effect on June 12, 2008, governs the processing of sexual misconduct cases. That statute requires that each “board or commission shall review all cases and only refer to the secretary sexual misconduct cases that do not involve clinical expertise or standard of care issues.” This policy establishes the processes to comply with RCW18.130.062.

- **MD2009-01--Protocol for Pro Tem Appointments.** The Commission recognizes the growing complexity of specialized cases that are well beyond general scope of expertise of its members. In order to do the work of the Commission more effectively and efficiently, the Commission wishes to create a pool of pro tem members for the purposes of reviewing cases when the volume of cases justifies it and when there is a need for medical specialty expertise. This policy defines the process for pro tem member selection and orientation.
- **MD2009-02--Use of Notice of Correction** “Notice of Correction,” (NOC) found in RCW 43.05.100, is a mechanism for facilitating greater understanding of the statutes and agency rules and achieving compliance. The Commission may issue a NOC when it becomes aware of conditions that are not in compliance with applicable statutes and agency rules. This policy defines the process to be consistent in how it addresses the cases that are considered for a NOC.
- **MD2009-04--Policy on Telephone Closure Conference Calls.** The Commission has instituted a telephone conference call prior to each Commission meeting for only those cases a Reviewing Commission Member is recommending to close. These meetings are considered “Closed Sessions” according to the Open Public Meeting Act. This policy is to ensure consistency of the process.

NOTE: For copies of the above policies, procedures, or rules; please contact Julie Kitten, Program Manager at 360-236-2757 or by email to julie.kitten@doh.wa.gov.

Committees

Joint Operating Agreement Task Group

The law requires the Commission to collaboratively develop a Joint Operating Agreement within one year of the hiring of the Executive Director. The Commission’s task group developed the agreement which was submitted to the Secretary on December 4, 2009. The agreement is under review by the Secretary at this time.

Sanctioning Guidelines Task Group

The Sanction Schedule Rules Task Group worked with the other health professions and the Department of Health to collaboratively create rules that became effective January 1, 2009. The Commission is responsible to comply with the sanction rules. Since the rules went into effect, Commission orders have been 100% compliant with the rule.

Finance Task Group

The Commission’s Finance Task Group worked with Department of Health Budget and Financial Services staff to identify timelines, processes and requirements for submitting the Commission’s budget decision packages to the Office of Financial Management through the Secretary of Department of Health.

Medical Marijuana

In accordance with RCW 69.51A.070, MQAC receives and addresses petitions to add diseases or

conditions that might benefit from the use of medical marijuana. One petition was submitted between July 1, 2008 and June 30, 2009 requesting the Commission add Barrett's Esophagus and Celiac Disease as a condition for the use of medical marijuana. The petitioner withdrew his request. No hearing was held.

Another petition was received in July 2009 requesting to add bipolar disorder, severe depression and anxiety related disorders to the list of terminal or debilitating medical conditions that would benefit from the use of medical marijuana. Public testimony was heard on December 2, 2009 by a committee of the Medical Commission and the Board of Osteopathic Medicine and Surgery. The committee will make a recommendation to the Medical Commission and the Osteopathic Board in January 2010 to accept or reject the petitioner's request to add the medical conditions. The decision to accept or reject the petition will be announced at the Medical Commission Business Meeting on January 15, 2010.

In the 1998 initiative, the Washington voters approved patients to have a 60-day supply if their physician recommended it for their condition. However, the 2007 legislature passed ESSB 6032 which directed the Department of Health to write rules by July 1, 2008, defining a 60-day supply of medical marijuana and to report back to the legislature by July 1, 2008, on safe and effective methods of distributing medical marijuana. Information on the outcome of the research and rules process can be found on the Department of Health website. (<http://www.doh.wa.gov/hsqa/medical-marijuana/>).

MOAC Goals for 2009-2010

- Improve the processing and disposition of complaints.
- Broaden its communication and interaction with all stakeholders through meetings, presentations, focus groups, and reinstating a newsletter.
- Explore additional electronic enhancements for the licensing and disciplinary processes.
- Develop additional tools in the disciplinary process.
- Conduct research to improve regulatory effectiveness and patient safety.
- Research disciplinary recidivism among physicians and physician assistants and learn how to reduce the rate of recidivism.

Internal Relationships

The Commission and the Department of Health have worked collaboratively in implementing the pilot project. Under the direction of the Commission's executive director, a transition task group successfully completed the complex transition of staff and workload. The 2009-2011 Budget Decision Package was developed and submitted. A very special note of thanks is due for the cooperative spirit of the department's assistant secretary and chief administrator, its financial and human resources staff, and its strategic planning office.

The Commission will continue the collaborative partnership with the Department of Health to accomplish the goals of the Commission. The Commission is confident that the 2010 report will reflect that a Joint Operating Agreement is in place with the Department of Health confirming an interdependent relationship to enhance the mission of **both parties**.

Medical Quality Assurance Commission Performance Measures

1 Credentialing

- 1.1 Percent of health care credentials issued within 14 days of receiving all documents. .
- 1.2 Percent of applications in which a Notice of Decision on Application is issued within 30 days of the decision by the disciplinary authority to deny the license or grant the license with conditions.

2 Discipline

- 2.1 Percent of cases in which the intake and assessment steps were completed within 21 days.
- 2.2 Percent of cases in which the investigation step is completed within 170 days.
- 2.3 Percent of cases in which the case disposition step is completed within 140 days.
- 2.4 Percent of open cases currently in the investigation step that are over 170 days.
- 2.5 Percent of open cases currently in the case disposition step that are over 140 days.
- 2.6 Percent of Orders and STIDS that comply with sanction schedule rules.
- 2.7 Percent of cases involving sexual misconduct where the board or commission determines it does not involve standard of care or clinical expertise and transfers it to the Secretary within 14 days.

3 Personnel

- 3.1 Number of completed investigations versus number of investigators.
- 3.2 Number of completed investigations that are assigned to a staff attorney for legal review or production of documents versus number of staff attorneys.
- 3.3 Percent evaluations completed on time.

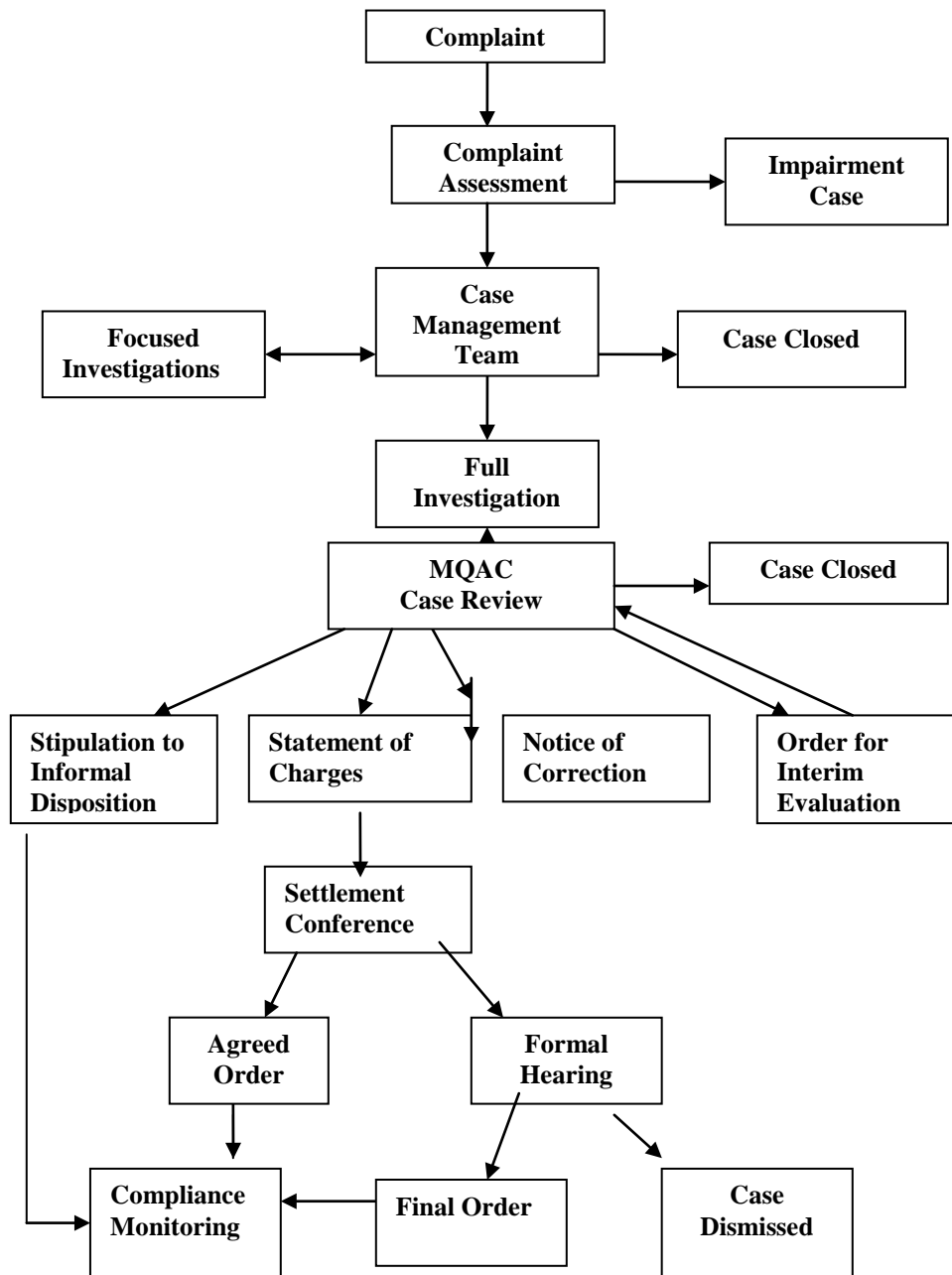
4 Budget

- 4.1 Operating expenditure versus the actual budget
- 4.2 Revenue generated versus operating expenditures.

5 Rulemaking and Legislation

- 5.1 Percent of rules in place within 18 month of filing the CR 101.
- 5.2 Percent of required reports submitted on time.

MQAC Complaint Flow-chart



High priority or summary action cases will get an RCM and Staff Attorney assigned immediately and the case will have an Emergency CMT process.