



St. Anthony's
MEMORIAL HOSPITAL
EFFINGHAM, ILLINOIS

MEDICAL STAFF BYLAWS

Volume III: Investigation, Remedial Action, and Fair Hearing Procedure

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COLLEGIAL INTERVENTION

It is the policy of the Medical Staff leadership of the Hospital to work collegially with its Members to assist them in delivering safe quality medical care, to continually improve their clinical skills, to comply with Medical Staff and Hospital Policies, and to meet all performance expectations as established from time to time by the Medical Staff. Medical Staff Policies, including those on Peer Review, performance improvement, conduct, and health describe some of the collegial interventions available to Medical Staff leaders in working with practitioners whose clinical performance or professional conduct is problematic.

Collegial intervention, although not obligatory, may include meeting with the Physician Partnership Committee, letters of warning or concern, Notice that the Physician's conduct shall be monitored for a period of time and/or that similar conduct in the future shall be reported to the Medical Executive Committee (MEC) for a formal Peer Review investigation. Collegial intervention may result in a voluntary agreement to attend meetings or educational courses, obtain consultations, or other appropriate action.

Collegial intervention is not considered disciplinary action and shall not entitle a Physician to a fair hearing or appeal. The results of the collegial intervention shall be documented and signed by the participants. The document shall be retained in the practitioner's peer review file in a secure manner. The document may be reviewed by the practitioner involved and Medical Staff leaders (as appropriate)

The provisions of the Medical Staff Bylaws, Volume III describe the steps that the Medical Staff and Hospital shall take when collegial intervention fails or is insufficient to protect the well being of patients, practitioners, colleagues, or the Hospital.

When appropriate, nothing in these Bylaws, the Principles of Partnership Policy, the Medical Staff Rules and Regulations, or Hospital Policies shall prohibit initial informal efforts by Clinical Service Chiefs, Medical Staff leadership, or Hospital Administration to improve or correct the level of care provided by practitioners, prior to or instead of proceeding through a formal Peer Review process.

ARTICLE I INVESTIGATIONS

1.1 Criteria for Initiation

Any person may provide information to any Member of the Medical Executive Committee (MEC) about the conduct, performance, or competence of Medical Staff Members. When reliable information indicates a practitioner may have exhibited acts, demeanor, or conduct, reasonably likely to be:

- a) detrimental to patient safety or to the delivery of quality patient care within the Hospital;
- b) unethical or illegal;

- c) contrary to the Medical Staff Bylaws, Rules & Regulations, Hospital or Medical Staff Policies and procedures;
- d) harassing or intimidating;
- e) disruptive of Hospital or Medical Staff operations;
- f) below professional standards of care;
- g) harmful to the reputation of the Hospital and/or Medical Staff.

A request for an investigation or action against a Practitioner may be made by the MEC or the Hospital CEO (or designee) in collaboration with the President of the Medical Staff. The purpose of an investigation is to determine if a MEC recommendation to the Board for Remedial Action is warranted or determine what additional information should be gathered or collegial interventions attempted prior to making such a recommendation. Routine Peer Review and performance monitoring (e.g. focused and ongoing professional practice evaluation) shall not be considered "investigations" as described in this Article.

1.2 Initiation

A request for an investigation shall include reference to specific activities, concerns, or conduct alleged to warrant the investigation. If the MEC authorizes the investigation, it shall make a record of this action in its minutes. The MEC shall notify the Physician that a formal investigation will be initiated and that physician will be given access to all relevant information.

1.3 Procedure

If the MEC authorizes an investigation, it shall be assigned to a designated subcommittee or Medical Staff committee. The MEC may utilize external Peer Review if it believes such a step is warranted to conclude its investigation. Strong consideration should be given to use external Peer Review if any of the following circumstances exist:

- a) the MEC, Peer Review Committee and the Credentials Committee are presented with ambiguous or conflicting recommendations from Medical Staff reviewers or committees, or where there does not appear to be a strong consensus for a particular recommendation.
- b) there is a reasonable probability that litigation may result in response to an MEC recommendation regarding the Practitioner under review;
- c) there is no one on the Medical Staff with expertise in the subject under review, or when the only Physicians on the Medical Staff with the requisite expertise are direct competitors, partners, or associates of the Practitioner under review.

The investigation shall proceed within ten (10) calendar Days following the date the MEC determines that it is warranted. The Practitioner shall be given an opportunity to provide information to the subcommittee or Medical Staff committee designated by the MEC to conduct

the investigation. The MEC may conduct interviews with individuals knowledgeable about the Practitioner under review to gain a clear understanding of all pertinent aspects of the issue. However, such investigation shall not constitute a “fair hearing” and therefore, appeals do not apply. Regardless of the status of any investigation, the MEC shall retain authority to take whatever action it feels may be warranted by the circumstances to protect patients, Practitioner, colleagues, and the Hospital, including suspension or limitation of Clinical Privileges.

1.4 Completion of Formal Investigation

The subcommittee or Medical Staff committee designated by the MEC to conduct the investigation shall strive to conclude the investigation within sixty (60) Days. Where the MEC believes it is necessary, an investigation can be extended for an additional sixty (60) day period or longer by mutual agreement of the MEC and the Practitioner.

A written report of the investigation findings shall be submitted to the MEC as soon as possible, but no later than sixty (60) Days after the conclusion of the investigation. The report may include recommendations for appropriate Remedial Action. The MEC shall then determine if the report is complete and sufficient to make a determination whether Remedial Action should be recommended. When it makes this decision, the MEC shall indicate in its minutes that the investigation is completed and notify the Practitioner involved.

Any external Peer Review reports shall be made part of the Hospital’s Peer Review process and copies shall be provided to the MEC, the Peer Review Committee and the Practitioner under investigation. Any response to the external Peer Review reports that are made (within thirty (30) Days) by the MEC, the Peer Review Committee or the Practitioner under investigation, shall be forwarded to the Board for consideration.

1.5 Reporting to the National Practitioner Data Bank (NPDB) and Regulatory Agencies

If the Practitioner under investigation resigns membership or withdraws Clinical Privileges while an investigation is underway, a report shall be made in accordance with the requirements of the National Practitioner Data Bank. Reports regarding investigations and Remedial Actions shall also be made to State regulatory agencies as required under State regulations and statutes.

1.6 Medical Executive Committee Action

Within thirty (30) Days after the conclusion of the investigation, the MEC may without limitation:

- a) Determine no Remedial Action is necessary;
- b) Defer action if it believes more information is needed. However, such deferral should not be longer than one hundred twenty (120) Days from the formal recommendation for an investigation.
- c) Issue letters of reprimand or warning. In the event such letters are issued, the affected Physician may make a written response, which shall be placed in the Physician’s file.

- d) Recommend the imposition of terms of probation or special limitation upon continued Medical Staff membership or exercise of Clinical Privileges, including, without limitation, requirements for co-admissions and co-management of patients, mandatory consultation, or monitoring;
- e) Recommend suspension, revocation, or probation of Medical Staff membership;
- f) Recommend denial, restriction, modification, reduction, suspension or revocation of Clinical Privileges;
- g) Recommend reduction of Medical Staff membership status or limitation of any prerogatives directly related to the Physician's delivery of patient care;
- h) Take other actions deemed appropriate by the MEC.

ARTICLE II
IMPOSITION OF SUMMARY SUSPENSION OF
CLINICAL PRIVILEGES OR MEMBERSHIP

2.1 Authority to Summarily Suspend Clinical Privileges

The President of the Medical Staff or if not available, another Member of the Medical Executive Committee, in consultation with the Hospital CEO (or designee) or the Board Chairperson (or designee) shall have the authority to temporarily suspend all or a portion of the Clinical Privileges of a Medical Staff Member whenever they perceive a reasonable possibility that the continued practice of the Physician constitutes an immediate danger to the public, including patients, visitors and Hospital employees and staff and can document or provide other reliable information relevant thereto. Unless otherwise indicated, this suspension shall take place immediately. The suspension may be rescinded by the same authorized individuals in the event that the condition causing the suspension is no longer in effect. The President of the Medical Staff, the Medical Executive Committee, the Hospital CEO (or designee), the Board Chairperson, and the affected Physician shall be promptly informed.

2.1.1 Medical Executive Committee (MEC) Action

Within seven (7) Days of the date a summary suspension is imposed, the MEC shall review the suspension to recommend whether it should be affirmed, lifted, expunged, or modified. The Physician will be invited to present a statement as to why the suspension should be lifted, expunged or modified and answer any questions the MEC may have.

2.2 Procedural Rights

If the MEC affirms the suspension, the physician shall be entitled to a fair hearing in accordance with Article V.

A request for a fair hearing does not serve to reinstate suspended privileges.

2.3 Assignment of Patients

Where any or all of the Clinical Privileges of a Member are terminated, revoked, or restricted, such that she/physician can no longer treat all or some of his patients at the Hospital for any period of time, such patients who are then in the Hospital shall be assigned for the period of such termination, revocation, or restriction to another qualified Physician by the President of the Medical Staff, or, in his absence, by the Chair of the affected Physician's Clinical Service. Where feasible, the wishes of the patient shall be considered in choosing a substitute Physician.

ARTICLE III

AUTOMATIC SUSPENSION, LIMITATION, OR VOLUNTARY RELINQUISHMENT OR RESIGNATION OF MEDICAL STAFF MEMBERSHIP AND/OR CLINICAL PRIVILEGES

This article addresses automatic suspensions and limitations on membership and Clinical Privileges and voluntary resignations/relinquishments of membership and Clinical Privileges when these occur for administrative reasons relating to failure to meet eligibility requirements of membership or comply with additional requirements for membership or Clinical Privileges found in the Bylaws and Medical Staff Policies and procedures. The actions described in 3.3 through 3.7 are not considered professional review actions, are not based on determinations of competence or unprofessional conduct; however, consistent with the Hospital Licensing Act, Members have the right to request a fair hearing. If so requested, the fair hearing shall be held within fifteen (15) Days after the suspension and completed without delay. The time period during which the suspension remains in effect shall be identified. The suspension shall be effective until such time as the error or problem has been resolved, i.e., medical record completed, liability insurance replaced, etc. The scope of any fair hearing is limited to a determination as to whether the facts on which the decision was made are or are not accurate. The Medical Executive Committee (MEC) shall work with the Physician to resolve issues prior to triggering a fair hearing.

3.1 Suspension or Revocation of License

A Physician with Clinical Privileges, whose license in this or another state is suspended, shall be immediately suspended from practicing in the Hospital pending final resolution and outcome by the applicable licensing agency. During this time the Physician shall be considered ineligible for Medical Staff membership or Clinical Privileges and shall not be entitled to a fair hearing. If the licensing agency reinstates the Physician without any limitations or conditions, the suspension may be lifted. If the licensing agency reinstates the Physician's license with limitations or

conditions, the suspension shall remain in effect pending a recommendation from the MEC for action by the Board.

If the Physician's license, certification, or other legal credential authorizing clinical practice in this or another state is revoked, the Physician shall immediately and automatically lose Medical Staff membership and/or Clinical Privileges at the Hospital. This shall not be considered a professional review action, but an administrative action for noncompliance with the Medical Staff eligibility requirements for membership and/or Clinical Privileges. The Physician shall not be entitled to a fair hearing.

3.2 Suspension or Revocation of Federal DEA or State Controlled Substance License

A Physician whose Federal Drug Enforcement Administration (DEA) license or State Controlled Substance license is relinquished, revoked or suspended shall immediately and automatically be divested of his privilege to prescribe drugs covered by such number/licenses within the Hospital. This is not a professional review action (unless conduct or competence-related) and the Physician shall not be entitled to procedural due process as described in this procedure. As soon as possible, the Credentials Committee shall investigate the facts under which the Medical Staff Member's Federal DEA or State controlled substance license was revoked or suspended, and may recommend to the MEC further Remedial Action if indicated.

3.3 Failure to Participate in an Evaluation or Assessment

A Physician who fails or refuses to participate in an evaluation or assessment of his or her qualifications for Medical Staff membership and/or Clinical Privileges as requested by the MEC shall be automatically suspended. If, within thirty (30) Days of the suspension, the Physician agrees to and participates in the evaluation or assessment, the Physician may be reinstated. After thirty (30) Days, the Physician shall be deemed to have voluntarily resigned his or her Medical Staff membership and/or Clinical Privileges.

3.4 Conviction of a Felony

A Physician who has been convicted of, or pled "guilty" or "no contest" or its equivalent to a felony in any jurisdiction shall automatically relinquish Medical Staff membership and Clinical Privileges. Such relinquishment shall become effective immediately upon such conviction, or plea, regardless of whether an appeal is filed. Such relinquishment shall remain in effect until the matter is resolved by subsequent action of the Board or through Remedial Action, if necessary.

3.5 Suspension for Failure to Complete Medical Records

Suspension of clinical privileges related to medical records shall be imposed in accordance with the Medical Records Completion policy.

3.6 Failure to Maintain Liability Insurance

A Physician's appointment and/or Clinical Privileges shall be immediately suspended for failure to maintain the minimum amount of professional liability insurance required by the Bylaws. Affected Members may request reinstatement during a period of ninety (90) Days following suspension upon presentation of proof of the required amounts of insurance. Thereafter, such Members shall be deemed to have voluntarily resigned from the Medical Staff and must reapply for membership and/or Clinical Privileges.

3.7 Exclusion from Federal or State Insurance Programs or Conviction of Insurance Fraud

If a Physician appears on the list of "Excluded Individuals/Entities" maintained by the HHS Office of Inspector General, is excluded from any Federal insurance program, or convicted of violations of the Federal False Claims Act or of insurance fraud the Physician shall be deemed to have voluntarily relinquished Medical Staff membership and/or Clinical Privileges.

3.8 Failure to Notify Hospital of Changes in Information

A Physician who fails to notify the President of the Medical Staff and the Hospital CEO (or designee), in writing, of any of the following changes, corrections, updates, and modifications, shall be automatically suspended:

- a) revocation of privileges at any hospital or healthcare facility (must be reported within five (5) Days);
- b) revocation of state health care professional license or federal drug enforcement agency license (must be reported within five (5) Days);
- c) lapse in professional liability coverage required by a healthcare entity, healthcare plan or hospital (must be reported within five (5) Days);
- d) conviction of a felony (must be reported within five (5) Days);
- e) any other change in the information on the State of Illinois Health Care Professional Credentialing/Recredentialing and Business Data Gathering Form (Chapter A) (must be reported within forty-five (45) Days) (This suspension shall be approved by the Medical Staff President);

The suspension may be lifted by the MEC when the Physician provides adequate documentation evidencing resolution of the circumstances that triggered the suspension. Failure to provide the information shall be considered a voluntary resignation of Medical Staff membership and/or Clinical Privileges.

ARTICLE IV
REPORTING REQUIREMENTS

4.1 **Reporting to the National Practitioner Data Bank**

Professional review actions based on reasons related to professional competence or conduct adversely affecting Clinical Privileges for longer than thirty (30) Days or voluntary surrender or restriction of Clinical Privileges while under, or to avoid, investigation must be reported to the National Practitioner Data Bank (“NPDB”). The report must be made to the NPDB within fifteen (15) Days of the final decision of the action. Summary suspensions lasting longer than thirty (30) Days must be reported to the NPDB within fifteen (15) Days of the Medical Executive Committee (MEC) action. A copy of the NPDB report shall be forwarded to the State Medical Board as required by the NPDB.

4.2 **Reporting to State Agencies**

Actions affecting Clinical Privileges shall be reported to the appropriate State licensing board or other state regulatory agencies consistent with State law.

ARTICLE V
INITIATION OF FAIR HEARING

5.1 **Notice to Physician**

A Physician affected by an adverse action listed in Section 5.2, as recommended by the MEC, shall promptly be given Special Notice. This Notice shall include a description of the adverse recommendation and the reasons for it, and a copy of the Medical Staff Bylaws, Article III, Investigation, Remedial Action and Fair Hearing and Appeal Procedure. The Special Notice shall also inform the Physician that the Remedial Action or recommendation, if finally adopted by the Board, may result in a report to the state licensing authority (or other applicable state agencies) and the National Practitioner Data Bank..

5.2 **Grounds for Fair Hearing**

- a) Denial of initial appointment or reappointment to the Medical Staff;
- b) Revocation of appointment to the Medical Staff;
- c) Denial or revocation of some or all requested Clinical Privileges;
- d) Suspension or restriction of some or all Clinical Privileges for any other reason unrelated to clinical competence or professional conduct;
- e) Requirement for mandatory consultation;

- f) Applies to Physicians granted temporary privileges if a report to the National Practitioner Data Bank is required.

5.2.1 The following shall **not** constitute grounds for a fair hearing (this list is not all inclusive):

- a) having a letter of guidance, warning, or reprimand issued to the Physician or placed in the credentials or performance file of the Physician;
- b) automatic relinquishment of Clinical Privileges or membership as described in Article III;
- c) an application for appointment or reappointment is untimely or incomplete;
- d) a decision not to process an application pursuant to procedure for expedited Board consideration;
- e) assignment to a particular Medical Staff Clinical Service or category;
- f) failure to process a request for a clinical privilege when the Physician does not meet the eligibility requirements;
- g) focused Peer Review (including external review) or a formal investigation;
- h) determination that an applicant for membership does not meet the requisite qualifications or criteria for membership;
- i) termination of any contract with or employment by the Hospital consistent with the terms of the contract or employment agreement;
- j) any recommendation voluntarily accepted by the Physician as a result of peer review;
- k) any requirement by the MEC or Board to complete an educational assessment;
- l) any requirement by the MEC or Board to undergo a mental or physical evaluation to determine ability to perform the Clinical Privileges requested;
- m) appointment or reappointment for a duration of less than twenty-four (24) months;
- n) actions taken by the Physician's licensing agency or any governmental/regulatory agency.

5.3 Expedited Review Committee

In the event the action recommended by the Medical Executive Committee (MEC), if approved by the Board, would result in an adverse action, the Board Chairperson shall appoint an Expedited Review Committee. The Physician shall be afforded an opportunity to meet with this committee. The Expedited Review Committee shall then present its findings and recommendations to the Board for action. In the event the Board action is adverse, the Board shall provide a detailed report of its findings to the Physician. The Physician shall have thirty (30) Days following the Date of Receipt of the report to request a fair hearing.

5.4 Physician's Request for Fair Hearing

A physician's request for a fair hearing shall be made by means of written Special Notice delivered either in person or by certified or registered mail to the Hospital CEO (or designee) within thirty (30) Days following the receipt of Special Notice of a Remedial Action or recommendation.

5.5 Waiver of Fair Hearing by the Physician

A Physician who fails to request a fair hearing within thirty (30) Days and in the manner specified above waives any right to a fair hearing to which physician might otherwise have been entitled. Such waiver in connection with a decision or proposed decision by the Board shall constitute acceptance of such decision, which shall become effective as the final decision of the Board and shall be reported if required by law.

The Physician may also waive the right to a fair hearing by delivering a signed waiver to the Hospital CEO (or designee).

5.6 Stay of Adverse MEC Recommendation or Board Decision

A request for a fair hearing does not automatically result in a stay of any adverse recommendation of the MEC or Adverse Decision of the Board, including the imposition of a summary suspension. Such recommendation or decision shall remain effective pending the final decision of the Board.

ARTICLE VI
FAIR HEARING PROCESS

6.1 **Notice of Time and Place for Fair Hearing**

Upon receipt of a timely request for fair hearing, the Hospital CEO (or designee) shall inform the President of the Medical Staff, MEC and Board. Within thirty (30) Days after receipt of the request the Hospital CEO (or designee) shall schedule a fair hearing. At least thirty (30) Days prior to the fair hearing, the Physician shall be sent a Special Notice of the date, time, and place of the fair hearing, together with a statement of the matters to be considered and a list of witnesses (if any) expected to testify at the fair hearing on behalf of the Medical Executive Committee (MEC) or Board. The fair hearing date shall commence not less than thirty (30) Days nor more than sixty (60) Days from the Date of Receipt of the request for fair hearing, unless the affected Physician and Hospital CEO (or designee) mutually agree to an earlier date. Once the date is set, the Hospital CEO (or designee) and Physician shall mutually agree to any change in the fair hearing date, however, neither party may change the date more than one time.

6.2 **Statement of Issues and Events**

As part of the Special Notice of the fair hearing, a written statement of the acts or omissions which support the decision to impose or recommend a Remedial Action against the Physician shall be provided. Any medical records or other information or data which form the basis for the action shall also be provided. This statement and the list of supporting information may be amended at any time, including during the fair hearing, if the additional material is relevant to the appointment or Clinical Privileges of the Physician requesting the fair hearing.

6.3 **Limited Right of Discovery**

There shall be no right to discovery except as specifically provided in these Bylaws.

1. The Hospital CEO (or designee) shall provide the names of any Board fair hearing committee members, fair hearing officer, or presiding officer to the Physician requesting the fair hearing within five (5) Days of their appointment.
2. The Hospital or Physician shall have the right to require up to ten (10) Days before the scheduled date of the fair hearing, production of any documents or charts that are to be used as evidence at the fair hearing.
3. The Hospital CEO (or designee), and the Physician, consistent with 6.1, shall have the right to request, by Special Notice, a list of witnesses who shall give testimony or evidence in support of the Physician at the fair hearing. A party receiving such request shall, within ten (10) Days of receipt of the request, furnish a list, in writing, of the names and addresses of the individuals, to the extent then reasonably known, who shall be called as witnesses on behalf of the Physician or on behalf of the Hospital and a brief summary of the nature of the anticipated testimony.

4. There shall be no right to discover the name of any individual who has produced evidence relating to the charges made against the Physician who requested the fair hearing unless such individual is to be called as a witness at the fair hearing or unless the deposition or other written statement of such individual is to be evidence at the fair hearing.
5. There shall be no right to the discovery of credentials or quality files of other Members of the Medical Staff, or Peer Review Committee minutes or minutes of any other Medical Staff committee or activity unless specifically created and limited to addressing the competence and/or conduct concerns of the Physician requesting the fair hearing.

6.4 Board Fair Hearing Committee, Presiding Officer, Fair Hearing Officer

6.4.1 Appointment of Fair Hearing Committee Members

The Board Chairperson and the Medical Staff President, shall appoint a Board fair hearing committee composed of five (5) persons who are qualified to serve. Two (2) Active Medical Staff Members and two (2) non-Medical Staff Board members shall be included on this committee. The fifth member may be a Physician on the Medical Staff, an active or retired judge or attorney, experienced Physician executive, experienced human resources director, or any individual deemed by the Hospital CEO to have the capacity to manage the fair hearing effectively and efficiently. The presiding officer shall be appointed pursuant to Section 6.4.2.

The Physician requesting the fair hearing shall be notified by the Hospital CEO (or designee) the names of the Board fair hearing committee members. The Physician shall have five (5) Days from receipt of Special Notice to state, in writing to the Hospital CEO (or designee), any objections to any appointee. The Physician requesting the fair hearing is not entitled to veto any appointee's participation.

6.4.2 Presiding Officer

The Board fair hearing committee members shall agree on and appoint a Presiding Officer to chair the committee, set procedure for the fair hearing, and conduct all business before the committee.

Any costs of using the Presiding Officer shall be shared by the Hospital and the Physician who requests the fair hearing.

6.4.3 Qualification of Board Fair Hearing Committee Members

Physician Members of the Board fair hearing committee shall be licensed Physicians who are Active Medical Staff Members, who shall not have previously participated in the deliberations on the matter involved. At least one (1) Physician of the Board fair hearing committee shall be of the same or similar specialty.

Knowledge of the matter involved shall not preclude a person from serving as a member of the Board fair hearing committee. No member of the Board fair hearing committee may be a direct competitor of the Physician under review.

6.4.4 Fair Hearing Officer in Lieu of a Board Fair Hearing Committee

The Board Chairperson, after consultation with the Hospital CEO (or designee) and the President of the Medical Staff, may appoint a single Fair Hearing Officer in lieu of a fair hearing committee where the issue triggering the fair hearing is unprofessional conduct rather than professional competency. The Fair Hearing Officer may be a lawyer, Physician executive, retired judge or other individual familiar with due process. The Fair Hearing Officer may not be legal counsel to the Hospital, any individual who is in direct economic competition with the Physician requesting the fair hearing, and cannot have been previously involved in the deliberations triggering the fair hearing.

The Fair Hearing Officer shall not act as a prosecuting officer or as an advocate for either side at the fair hearing. In the event that a Fair Hearing Officer is appointed instead of a fair hearing committee, all references in this Investigation, Remedial Action and Fair Hearing Procedure to “fair hearing committee” or “Presiding Officer” shall be deemed to refer instead to the Fair Hearing Officer, unless the context would clearly require otherwise.

The cost of utilizing a Fair Hearing Officer shall be shared by the Hospital and the Physician who requests the fair hearing.

ARTICLE VII **FAIR HEARING PROCEDURE**

7.1 Personal Presence

The personal presence of the Physician who requested the fair hearing shall be required. A Physician who fails, without good cause, to appear and proceed at such fair hearing shall be deemed to have waived his rights and thereby to have voluntarily accepted the Remedial Action that triggered the fair hearing.

7.2 Presentation

The fair hearings provided for in these Bylaws are quasi-judicial in nature, focused on resolution of matters bearing on professional conduct or competency. Accordingly, the presiding officer shall have the discretion to limit the role of legal counsel for both sides. The person requesting the fair hearing shall be permitted to have his case presented at the fair hearing by a Member, in good standing, of the Medical Staff. Where this is the case, the Hospital shall appoint a representative from the Medical Staff to present its recommendation and to examine witnesses. The foregoing shall not be deemed to deprive the Physician or Hospital of the right to utilize legal counsel at his own expense in preparation for the fair hearing and such counsel may be present at the fair hearing, advise his client, and participate in resolving procedural matters.

7.3 Presiding Officer

The Presiding Officer shall act to ensure that all participants in the fair hearing have a reasonable opportunity to be heard and to present appropriate oral and documentary evidence subject to reasonable limits on the number of witnesses and duration of direct and cross examination, applicable to both sides, as may be necessary to avoid cumulative or irrelevant testimony or to prevent abuse of the fair hearing process. The Presiding Officer shall act to ensure that decorum is maintained throughout the fair hearing and to prohibit conduct or presentation of evidence that is cumulative, excessive, irrelevant, abusive, or that causes undue delay. The Presiding Officer shall be entitled to determine the order of procedure during the fair hearing, and shall have the authority and discretion, in accordance with these Bylaws, to make all rulings on all matters of procedure, including the admissibility of evidence. The Presiding Officer may conduct argument by counsel on procedural points and may do so outside the presence of the fair hearing committee. The Presiding Officer may, in his sole discretion, set reasonable time limits on the duration of the fair hearing, testimony by witnesses, or arguments by parties to the fair hearing. Unless extenuating circumstances exist, it is expected that both sides shall have equal time to present their case. In an attempt to respect the time commitment of all fair hearing participants, the approximate time the fair hearing is expected to last shall be estimated at the pre-hearing conference.

In addition, the Presiding Officer shall act in such a way that the Board fair hearing committee in formulating its recommendations considers all information reasonably relevant to the continued appointment or Clinical Privileges of the individual requesting the fair hearing. The presiding officer may seek legal counsel when physician feels it is appropriate.

7.4 Fair Hearing Officer

Where a Fair Hearing Officer is employed instead of a Board fair hearing committee, the Fair Hearing Officer shall have the same authority as a Presiding Officer to determine the manner in which the fair hearing shall be conducted and rule on all matters of procedure and evidence.

7.5 Pre-Fair Hearing Conference

The Presiding Officer or Fair Hearing Officer may require a representative (who may be counsel) for the individual and for the Medical Executive Committee (MEC) to participate in a pre-fair hearing conference. To the degree practicable, pre-fair hearing conferences shall occur at least ten (10) Days prior to a fair hearing. At the pre-fair hearing conference, the Presiding Officer or Fair Hearing Officer shall resolve all procedural questions, including any objections to exhibits or witnesses and the time to be allotted to each witness's testimony and cross-examination.

7.6 Record of Fair Hearing

The Board fair hearing committee shall maintain a complete record of the fair hearing by having a certified court reporter present to make a record of the fair hearing. The cost for the certified court reporter shall be born by the Hospital. The Presiding Officer may, but shall not be required to, order that evidence shall be taken only upon oath or affirmation administered by any person entitled to notarize documents in Illinois. The record of the fair hearing may be requested by the Physician requesting the fair hearing and shall be forwarded to him by the Hospital upon payment of reasonable reproduction costs and payment of all outstanding fees owed to the Hospital, including any fees for compensation of a Fair Hearing Officer.

7.7 Rights of Parties

The Physician shall have a limited right, as determined by the Presiding Officer, to inquire as to possible biases of the Board fair hearing committee. Inquiry shall not be allowed into the medical qualifications or expertise of any such Physician.

During a fair hearing, subject to the provisions of this Article VII, each of the parties shall have the right to:

- a) call and examine witnesses
- b) introduce exhibits
- c) cross-examine any witness on any matter relevant to the issues
- d) impeach any witness
- e) rebut any evidence
- f) representation by counsel who may call, examine, and cross examine witnesses and present the case.

If the Physician who requested the fair hearing does not testify on his own behalf, such Physician may be called and examined as if under cross-examination.

7.8 Admissibility of Evidence

The fair hearing shall not be conducted according to legal rules of evidence relating to the examination of witnesses or presentation of evidence. Any relevant evidence may be admitted by the Presiding Officer if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the admissibility of such evidence in a court of law, unless such evidence is deemed by the Presiding Officer to be cumulative. Hearsay evidence is admissible and shall be sufficient to support the decision of the Board fair hearing committee.

7.9 Official Notice

The Presiding Officer shall have the discretion to take official Notice of any generally accepted technical or scientific matter relating to the issues under consideration or of any other matter that may be judicially noticed by the courts of the state. Participants in the fair hearing shall be informed of the matters to be officially noticed, and such matters shall be noted in the record of the fair hearing. Any party shall have the opportunity, upon timely request, to request that a matter be officially noticed or to refute the noticed matters by relevant evidence or by written or oral presentation of authority in a manner determined by the Board fair hearing committee. Reasonable or additional time shall be granted, if requested, to present written rebuttal of any evidence admitted on official Notice.

7.10 Burden of Production or Proof

In all cases in which a fair hearing is conducted, it shall be incumbent on the Board to come forward initially with evidence in support of its action or decision. Thereafter, the burden shall shift to the Physician who requested the fair hearing to come forward with evidence in his support.

After all the evidence has been submitted by both parties, the Board fair hearing committee shall recommend in favor of the Board unless it finds that the individual who requested the fair hearing has proved with a preponderance of the evidence that the recommendation which prompted the fair hearing was arbitrary, capricious, or appears to be unfounded or not supported by credible evidence. It is the burden of the Physician requesting the fair hearing to demonstrate that physician satisfies, on a continuing basis, all criteria for initial appointment, reappointment, and/or Clinical Privileges, and that physician complies with all Medical Staff and Hospital Bylaws, Rules & Regulations, Policies and procedures.

7.11 Presence of Board Fair Hearing Committee Members and Vote

A majority of the members of the Board fair hearing committee must be present throughout the hearings and deliberations; provided; however, that, at the discretion of the Presiding Officer, if a member is absent from an insubstantial part of the fair hearing, such member may be allowed to read the transcript of the missed proceedings and, after doing so, may thereafter participate in the deliberations of the Board fair hearing committee.

7.12 Recesses and Conclusions

The Presiding Officer may recess the fair hearing and reconvene the same at any time for the convenience of the participants, without additional Notice. Upon conclusion of the presentation of oral and written evidence, the fair hearing shall be closed. The Board fair hearing committee shall then conduct its deliberations outside the presence of either party to the fair hearing.

7.13 Postponements and Extension

Postponements and extensions of time beyond the times expressly permitted in these Bylaws may be requested by anyone, but shall be permitted only if the Board fair hearing committee, or the Presiding Officer acting on its behalf, determines that good cause has been shown.

ARTICLE VIII
FAIR HEARING COMMITTEE REPORT AND FURTHER ACTION

8.1 Fair Hearing Committee Report

Within thirty (30) Days after the conclusion of the fair hearing, the Board fair hearing committee shall make a detailed written report signed by each fair hearing committee member and setting forth separately each charge against the Physician, a summary of the evidence that supports or rebuts such charges, its findings on each fact at issue, and recommendations based on such findings with respect to the matter. This report, together with the fair hearing record and all other documentation considered by it, shall then be forwarded to the Board. All findings and recommendations by the Board fair hearing committee shall be supported by reference to the fair hearing record and relevant documentation considered by the fair hearing committee. If the fair hearing committee's decision is not unanimous, a minority report or reports may be issued. The Physician requesting the fair hearing shall be provided the Board fair hearing committee's written recommendation and statement of the basis for it by Special Notice. The Physician may also, upon request inspect all pertinent information in the Hospital's possession regarding the decision.

8.2 Action on Fair Hearing Committee Report

Within thirty (30) Days after receipt of the report of the Board fair hearing committee, the Board shall make a decision in the matter. The Board shall indicate its action in writing, and shall transmit a copy of its decision to the Physician, including a statement of the basis for the decision.

8.3 Notice and Effect of Results

The Notice of the action taken by the Board shall be given to the President of the Medical Staff, Hospital CEO (or designee) and, by Special Notice, to the involved Physician.

8.3.1 Effect of Favorable Result

1. Adopted by the Board

If the Board's action is favorable to the Physician, such action shall constitute the final decision of the Board and the matter shall be considered finally closed. The Physician shall be provided with written Notice of the final Adverse Decision by the Board.

2. Effect of Adverse Action

If the action of the Board or Medical Executive Committee (MEC) continues to be adverse to the Physician, the Special Notice required shall inform the Physician of his or her right to request an appellate review by a external panel appointed by the Board Chairperson.

ARTICLE IX
INITIATION AND PREREQUISITE OF APPELLATE REVIEW

9.1 Request for Appellate Review

If the results of the fair hearing are adverse to the Physician, within thirty (30) Days after receipt of the results, the Physician may request in writing an appellate review by the Board. Such request shall be delivered to the Hospital CEO (or designee) either in person or by certified or registered mail. The written request for an appeal shall also include a brief statement of the reasons for appeal.

9.2 Waiver by Failure to Request Appellate Review

If such appellate review is not requested within the time and in the manner specified in Section 9.1., the Physician shall be deemed to have waived his right to appeal and to accept the action so noticed, and it shall thereupon become final and effective immediately.

9.3 Notice of Time and Place

In the event of any appeal to the Board, the Board shall, within thirty (30) Days after the receipt of such Notice of appeal, schedule and arrange for an appellate review. The time for appellate review may be extended by the Board for good cause.

9.4 Appellate Review Body

The Board Chairperson shall appoint an adhoc Appellate Review Committee of two (2) individuals from the community who are former Hospital Board members and one (1) active Member of the Medical Staff. The Board Chairperson shall designate one of the Appellate Review Committee members as the Presiding Officer. Members of the appellate review panel (the "Review Panel") may not be direct competitors of the Physician under review and should not have participated in any formal investigation or deliberations leading to the recommendation for Remedial Action under consideration.

ARTICLE X
APPELLATE REVIEW PROCEDURE

10.1 Grounds for Appeal

The grounds for appeal to the Board shall be limited to the following:

- a) There was substantial failure to comply prior to the fair hearing with the provisions contained in the Medical Staff Bylaws or this Investigation, Remedial Action and Fair Hearing Procedure so as to deny basic fairness or reasonable due process; or
- b) the recommendation(s) of the MEC was made arbitrarily, capriciously, or with prejudice; or
- c) the recommendation of the Medical Executive Committee (MEC) and/or Board fair hearing committee was not supported by the fair hearing record.

10.2 Written Statements

Each party shall have the right to present a written statement in support of its position on appeal, provided that such statement is submitted to the Appellate Review Panel at least fifteen (15) Days prior to the date of the appellate review meeting. A copy shall be provided of each submitted written statement to the opposing party at least seven (7) Days prior to the date of the appellate review.

10.3 Submission of Additional Evidence

The Appellate Review Panel may, but is not required to, accept additional oral or written evidence subject to the same cross-examination and admissibility provisions adopted at the fair hearing panel proceedings. Such additional evidence shall be accepted only if the party seeking to admit it can demonstrate that it is new, relevant evidence and that any opportunity to admit it at the fair hearing was denied.

10.4 Action

The Appellate Review Panel may affirm, modify or reverse the action which is the subject of the appeal, or refer the matter back to the Board fair hearing committee or to the MEC for further review and recommendation. If the matter is referred back to the MEC for further review and recommendation, the MEC shall promptly conduct its review and make its recommendations to the Board or the Board fair hearing committee, in accordance with the instructions given to the MEC by the Appellate Review Panel. This further review process shall in no event exceed thirty (30) Days in duration, except as the parties may otherwise stipulate.

ARTICLE XI
FINAL DECISION OF THE BOARD

11.1 Final Board Decision

Within thirty (30) Days after the conclusion of the proceeding before the Board, the Board shall render a final decision in writing and shall deliver copies thereof to the Medical Executive Committee (MEC) and, by Special Notice, to the Physician. This decision shall be effective immediately and shall not be subject to further review.

ARTICLE XII
GENERAL PROVISIONS

12.1 Exhaustion of Administrative Remedies

By applying for membership on the Medical Staff or for Clinical Privileges, each applicant agrees that, in the event of any Remedial Action or decision with respect to his medical staff membership and/or Clinical Privileges, the applicant or Member shall exhaust the administrative remedies afforded by the Medical Staff Bylaws, including this Procedure, before resorting to formal legal action.

12.2 Limit of One Appellate Review

Except as otherwise provided in this section, no applicant or Member shall be entitled as a matter of right to more than one appellate review in total before the Board or the Appellate Review Committee of the Board on any single matter which may be the subject of an appeal.

12.3 Waiver

If at any time after receipt of Special Notice of an adverse recommendation, action or result, a Physician fails to make a required request or appearance or otherwise fails to comply with this Investigation, Remedial Action and Fair Hearing Procedure, or to proceed with the matter, physician shall be deemed to have consented to such adverse recommendation, action, or result and to have voluntarily waived all rights to which physician might otherwise have been entitled under the Medical Staff Bylaws then in effect or under this Procedure with respect to the matter involved.