

# **MAJOR HOSPITAL**

**MEDICAL STAFF BYLAWS:**

**Corrective Action and Fair Hearing  
Manual**

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## **PREAMBLE**

The Governing Board of Major Hospital, its Medical Staff, and any committees thereof, in order to conduct professional peer review activities, hereby constitute themselves as peer review and professional review bodies as these terms are defined and used by Indiana state and federal law, including but not limited to, the Indiana Peer Review Statute (See I.C. §34-30-15-1 *et. seq.*) and the Health Care Quality Improvement Act of 1986. These committees claim all privileges and immunities afforded to them by all applicable federal and state statutes. The purpose of this Corrective Action and Fair Hearing Manual (also referred to herein as the "Plan") is to establish procedures relating to preliminary review, investigation, corrective action, and administrative actions involving physicians and other health care providers who have applied for, or who otherwise maintain, Medical Staff membership and/or clinical privileges at the Hospital. This Plan is also intended to provide a mechanism through which due process, including hearing and appeal procedures when applicable, may be provided to physicians and other health care providers at the Hospital. In order to ensure peer review participants are afforded all available privileges, protections, and immunities, the Hospital intends for this Plan to comply with all applicable laws and regulations, including the Indiana Peer Review Statute and the federal Health Care Quality Improvement Act of 1986.

## **DEFINITIONS**

Unless otherwise indicated, the definitions set forth in the Medical Staff Governance and Organization Manual apply to this Corrective Action and Fair Hearing Plan, as if set forth fully herein.

### **ARTICLE 1: PROCEDURE FOR CORRECTIVE ACTION INVOLVING MEMBERS**

#### **Section 1.1 Applicability**

The corrective action procedures that are described in this Article shall pertain exclusively to members of the Medical Staff. These provisions shall not apply to NPPs. Corrective action procedures applicable to NPPs are set forth elsewhere in this manual. Further, as set forth in Section 1.1 of the Governance and Organization Manual, the membership and/or clinical privileges (as applicable) of any practitioner who renders professional services at or on behalf of the Hospital, either as an employee or independent contractor, or as an employee or independent contractor of an entity with whom the Hospital contracts, shall do so subject to the terms and conditions of employment and/or the contract (as applicable), which shall take priority over these Bylaws. Accordingly, if the terms of employment and/or contract (as applicable) permit the limitation, restriction, reduction, removal, suspension, termination, or resignation of Medical Staff membership and/or clinical privileges in a manner that is inconsistent with, obviates the need for, avoids, or waives the procedures for corrective action and fair hearings (as contained in this Corrective Action and Fair Hearing Manual), the terms of the employment and/or contract (as applicable) shall take priority and control.

##### **1.1.1 Criteria for Initiation**

When information reasonably indicates that a member of the Medical Staff has not met the standard of care expected of such members at the Hospital, has been disruptive to the delivery of quality health care or to Hospital operations, has violated the Medical Staff Bylaws or other Medical Staff policies or procedures, has violated Hospital policies or procedures, has violated applicable federal and/or state law, and/or has otherwise behaved or performed in a manner that has or may have an adverse impact on the quality of care provided at the Hospital, on the wellbeing of other team members or individuals at the Hospital, or on the Hospital's licensure, accreditation or certification status, any individual may submit a complaint or report regarding such matters, request that an investigation of

such matters be conducted, and/or request that corrective action be considered or taken (collectively referred to hereafter as "requests" or "requests for corrective action").

The following is a representative, but not exclusive, list of circumstances that may give rise to a request for corrective action:

- (a) Concern regarding a member's clinical or professional competence;
- (b) Concern regarding a member's care of a particular patient or patients;
- (c) Potential violation(s) of the Medical Staff's Code of Conduct or related professional conduct policy(s);
- (d) Concern that a member may have practiced, or may be practicing, beyond an authorized scope of practice and/or beyond the clinical privileges granted by the Governing Board;
- (e) Potential violation(s) of professional ethics as outlined by the code of ethics that govern a member's profession or specialty;
- (f) Concern regarding the mental, emotional or physical health of a member, including substance abuse and impaired behavior;
- (g) Concern regarding conduct by a member that may be disruptive or detrimental to the efficient and/or safe operation of the Hospital or the delivery of quality patient care, including compliance program related matters;
- (h) Concern that a member has failed, or will fail, to timely or appropriately participate in call coverage responsibilities;
- (i) Concern regarding the unauthorized release of patient or peer review information;
- (j) Potential violation(s) of the Medical Staff Bylaws or other Medical Staff policies or procedures;
- (k) Potential violation(s) of Hospital policies or procedures; or
- (l) Potential violation of Indiana state or federal law or regulation, or pertinent accreditation standards.

### **1.1.2 Requests for Corrective Action**

Requests for corrective action should be, when reasonably possible, initially submitted in writing to the Medical Executive Committee ("MEC") by way of the Chief of Staff, with a copy provided to the CEO and CMO. The request should contain a brief statement of the conduct or activities that constitute the basis for the request. Upon receiving a request, the MEC (as a committee or by way of one or more MEC members authorized by the committee) will conduct a preliminary review of the matter in a manner deemed appropriate by the MEC (or authorized designee(s)) under the circumstances. Preliminary reviews are considered to be administrative in nature. Preliminary reviews are not intended to constitute investigations. At the conclusion of its preliminary review, the MEC (or authorized designee(s)) may determine that:

- (a) The nature of the request could reasonably result in corrective action that may or may not adversely affect the member's Medical Staff membership and/or clinical privileges. In such case, the MEC may determine that a formal investigation of the request, including the alleged basis for the request, is appropriate.
- (b) Summary restriction or suspension, while the request for corrective action is investigated, is appropriate, in which case the procedures set forth in Section 1.2, below, shall be followed.
- (c) No investigation is warranted under the circumstances. A determination that an investigation is not warranted, however, does not preclude the MEC (or other peer review committee at the Hospital) from maintaining a record of the request, related communications with the member, or other information obtained during the preliminary review.

### **1.1.3 Investigative Procedure and MEC Action**

- (a) If the MEC (or authorized designee(s)) concludes following a preliminary review that a formal investigation is warranted, the MEC shall proceed with such investigation, which shall be concluded within a reasonable period.
- (b) The MEC may investigate the matter on its own or appoint and direct an ad hoc committee to investigate the matter (See Section 1.1.4, below, regarding the use of an investigating ad hoc committee). The MEC (or ad hoc committee) may also delegate particular tasks and/or aspects of the investigation to particular committee members or other designees working on behalf of the committee.
- (c) Regardless of the status of any ad hoc committee investigation, the MEC shall at all times retain authority and discretion to take whatever action may be warranted by the circumstances, including the investigative process.
- (d) In the event the matter has undergone Focused Professional Practice Evaluation ("FPPE"), and such evaluation gave rise to the request for corrective action, the MEC (or ad hoc committee) may consider this evaluation, and if deemed by the MEC (or ad hoc committee) to be reliable, may adopt some or all of the FPPE findings as part of its investigation of the request for corrective action.
- (e) The member subject of the investigation shall be notified that a formal investigation is being conducted and shall also be given an opportunity to provide information in a manner and upon such terms as the MEC (or ad hoc committee) deems appropriate.
- (f) As part of its investigation, the MEC (or ad hoc committee) may in its discretion:
  - (i) Review documentation that it determines to be reasonably related to the matter(s) subject of the investigation; such documentation may, by way of example, include medical records, incident reports and/or occurrence reports, external peer review records or reports, assessments, prior peer review history/file contents, witness statements or notes, committee minutes, and/or other documentation the MEC (or ad hoc committee) determines to be reasonably related to the matter(s) subject of the investigation;

- (ii) Conduct interviews with the member subject of the investigation and/or any other relevant individuals; however, such interview(s) shall not constitute a "hearing" as that term is used in this Plan, nor shall the procedural rules with respect to hearings or appellate review apply; when an interview is conducted with the member subject of the investigation, the member shall be informed of the general nature of the request for corrective action and shall be invited to provide information that is responsive, or otherwise relevant to, the request; the member shall not be entitled to have legal counsel present, or participate during any meetings or discussions occurring during the investigative process; the member's failure to meaningfully participate in the investigation, including participation in requested interviews, may be grounds for further adverse or administrative action;
- (iii) Require the member to undergo a fitness for practice evaluation, competency assessment, and/or other health assessment(s) (collectively "health assessment") by a health care professional(s) identified by, or otherwise approved by, the MEC (or ad hoc committee);
  - a. all such health assessments shall be at the member's expense (unless the CEO (or designee) agrees otherwise);
  - b. the MEC (or ad hoc committee) will identify the nature and scope of the requested assessment, which may include (but not be limited to) comprehensive physical examination, psychological testing, cognitive testing, drug and alcohol testing, and/or other testing recommended by the MEC, ad hoc committee (if any), or by the health care professional(s) performing the assessment;
  - c. the MEC (or ad hoc committee) will inform the member of the time period within which the assessment must occur, and will provide the member with all appropriate authorizations and/or releases required to permit the MEC and/or other peer review committees at the Hospital to discuss with the health care professional(s) the reasons for the assessment and to allow the health care professional(s) to discuss and report the results of the assessment to the MEC and other peer review committees at the Hospital; and
- (i) Take such other actions and make such other requests that the MEC (or ad hoc committee) determine to be reasonable and appropriate in order to perform the investigation.
- (g) The MEC shall complete its investigation within a reasonable period of time (as determined by the MEC) and shall thereafter prepare a summary of its finding(s) and recommendation(s). Investigation summaries may be in any form, including but not limited to committee minutes.
- (h) If the MEC delegates the investigation to an ad hoc committee, then within a reasonable period of time (as determined by the MEC), the ad hoc committee shall complete its investigation and prepare/submit a written summary of its finding(s) and recommendation(s) to the MEC. Investigation summaries may be in any form, including but not limited to committee minutes. Thereafter, the MEC may accept

the investigation as complete, conduct further investigation itself, or direct the ad hoc committee to conduct further investigation and report to the MEC accordingly.

- (i) In all circumstances, the MEC shall keep the CEO and CMO informed regarding the status of any investigation, findings, and/or recommendation for corrective action.
- (j) Given the confidential nature of peer review investigations, individuals in attendance at such meetings are prohibited from making audio or video recordings at such meetings unless authorized to do so in writing by the Chief of Staff and CEO, provided however, that meetings may (in the discretion of the Chief of Staff) be recorded for the purpose of creating meeting minutes. Such recordings, if any, shall be erased following the adoption of the meeting minutes.
- (k) Nothing in these Bylaws prevents the Governing Board from investigating requests for corrective action, taking over such an investigation from the MEC, or taking corrective action without first seeking and/or obtaining a recommendation from the MEC. In conducting such investigation, the Board shall perform its investigation, and have the same rights, as those set forth above. However, if the action to be taken by the Governing Board is of a nature that would give rise to the hearing and appellate rights set forth in this Plan, the Governing Board must extend those rights to the member prior to taking any final action.

#### **1.1.4 Ad Hoc Investigating Committee**

If the MEC decides to appoint an ad hoc committee to investigate a request for corrective action, the Chief of Staff shall appoint at least three (3) members of the Medical Staff in good standing to serve on the ad hoc committee. These individuals may, but are not required, to be members of the MEC.

#### **1.1.5 Professional Information Sharing**

The Hospital and its affiliated health care entities participate in professional information sharing, which may include the exchange of peer review information. Each applicant and practitioner, as a condition of applying for, receiving and/or maintaining Medical Staff membership and/or clinical privileges at the Hospital (as applicable), acknowledges the Hospital's information sharing policy, in its current form, and elects to participate. Information exchanged pursuant to the information sharing policy may form the basis for a request for corrective action and/or an adverse action. Information may also be exchanged as part of the preliminary review and/or investigation processes set forth herein.

#### **1.1.6 MEC Action**

Following receipt and consideration of an investigation summary and recommendation for corrective action from an ad hoc committee, or following completion of its own investigation, the MEC shall take one or more of the following actions:

- (a) Determine that corrective action is or is not warranted;
- (b) Implement corrective action that does not give rise to the fair hearing and appellate rights set forth in this Plan;

- (c) Recommend that the member's Medical Staff status and/or clinical privileges be reduced, restricted, revoked, terminated or suspended for a designated period;
- (d) Recommend requirements for mandatory consultation in specified cases;
- (e) Recommend or implement (as applicable) a probationary period during which certain conditions must be satisfied;
- (f) Recommend or implement (as applicable) a period of (or extended period of) Focused Professional Practice Evaluation;
- (g) Issue a letter of instruction, admonishment, reprimand or warning to the member;
- (h) Direct that additional information be submitted to the MEC or that further evaluation and/or investigation occur; and/or
- (i) Recommend or take such other action as it determines is appropriate under the circumstances.

The MEC's action(s) along with information regarding the member's hearing and appellate rights, if any, shall be sent to the member by Special Notice as more fully described in Section 2.1.2, below. In the event the MEC takes action that does not give rise to hearing and appellate rights, then the MEC should promptly notify the Governing Board as more fully described in Section 1.1.7(c), below.

#### **1.1.7 Procedural Rights**

For purposes of this Plan, an "adverse action" shall mean any action or recommendation taken by the MEC or Governing Board with respect to an applicant or member that reduces, restricts, suspends, revokes, denies, terminates or fails to renew the Medical Staff membership and/or clinical privileges of the applicant or member (as applicable).

- (a) The following actions are not considered adverse actions and do not entitle a member or applicant to those procedural rights set forth in Article 2, unless otherwise provided in this Plan:
  - (i) Retrospective review;
  - (ii) Routine concurrent review or monitoring;
  - (iii) Required physical or psychological/psychiatric examinations;
  - (iv) Required continuing education, training, or consultation for purposes of ongoing education;
  - (v) Routine Ongoing Professional Practice Evaluation and routine Focused Professional Practice Evaluation required for new or additional clinical privileges;
  - (vi) Instruction, admonishments, reprimands or initial or final warnings;
  - (vii) Voluntary reductions of Medical Staff membership or clinical privileges;

- (viii) Determination that an application is incomplete, inaccurate or untimely;
  - (ix) Determination that an application will not be processed due to misstatement or omission;
  - (x) Any action or recommendation that is an Administrative Action or that otherwise does not require hearing or appellate rights as set forth in the Indiana Peer Review Statute;
  - (xi) Any action or recommendation where an applicant or member does not or no longer meets the minimum objective criteria for Medical Staff membership or clinical privileges, as contained in Sections 1.2 and 1.3 of the Governance and Organization Manual; or
  - (xii) Any other action or recommendation not reducing, restricting, suspending, revoking, denying or failing to renew an applicant's or member's membership or clinical privileges.
- (b) If the MEC takes any action that is an adverse action, the member subject of the adverse action shall be entitled to those procedural rights provided in Article 2, below. If the member is entitled to a hearing and fails to timely request a hearing pursuant to Section 2.1.3, below, then the member shall be deemed to have waived his/her right to a hearing, and the recommendation of the MEC shall be forwarded to the Governing Board for action pursuant to Section 1.1.8, below.
  - (c) If the MEC takes any action described in Section 1.1.6, above, that is not an adverse action, the MEC's action shall be transmitted via Special Notice by the Chief of Staff to the member and carried out accordingly. The MEC shall also provide a report of its action, by way of the Chief of Staff or designee, to the Governing Board. The Governing Board may or may not, in its discretion, elect to take additional/different action pursuant to the processes set forth herein.

### **1.1.8 Governing Board Action**

- (a) At its next regularly scheduled meeting after receiving the MEC's action and/or report, unless additional time is reasonably required, the Governing Board shall review and take such action as it determines to be appropriate, if any. However, if the member is entitled to and has timely requested a hearing pursuant to Section 2.1.3, below, then the Governing Board should take no final action until the matter is resubmitted to the Governing Board after a hearing or appeal, if applicable. If the MEC's action does not entitle the member to a hearing, but the Governing Board takes action that does entitle the member to a hearing, then the CEO shall promptly inform the member by Special Notice, and he or she shall be entitled to a hearing in accordance with Article 2, below. If the basis for any recommendation to the Governing Board relies wholly or in part on an external peer review, the Governing Board shall consider the findings of the external peer review along with any written response(s) provided by the MEC and/or the member prior to taking final action.
- (b) If the Governing Board determines that the MEC has failed to act in a timely or appropriate manner in processing a request for corrective action, the Governing Board may take action on its own initiative after consulting with and notifying the MEC of its intent to do so.

## **Section 1.2 Summary Restriction/Suspension**

### **1.2.1 Criteria for Initiation**

- (a) Whenever the conduct or continuation of practice of a Medical Staff member constitutes, or may result in, an immediate danger to patients, Hospital personnel or the general public, any two (2) or more of the following individuals (operating as an ad hoc peer review committee, by a majority vote) shall have the authority to summarily restrict or suspend (collectively referred to herein as "suspend") all or part of a member's clinical privileges and/or Medical Staff membership: the Chief of the applicable Clinical Department (or designee(s)), the Chief of Staff (or designee), the CEO (or designee), the CMO (or designee), or any member of the MEC. Unless otherwise stated, the summary suspension shall become effective immediately upon imposition.
- (b) A summary suspension should not be implemented unless there is documentation or other reliable information that an immediate danger may exist. Such documentation and/or information must be available at the time the decision to summarily suspend the member is made.
- (c) The individuals authorized herein to initiate a summary suspension, as well as the MEC (and any ad hoc investigating committee), are hereby authorized to require that a member undergo an immediate health assessment (in the same fashion as described in Section 1.1.3(f)(iii), above), either before or immediately after imposing a summary suspension, when such individuals, in their sole discretion, are concerned with the member's ability to safely and/or competently care for patients,
- (d) Following a determination to initiate summary suspension, the CEO (or designee) shall promptly notify the member of the summary suspension by Special Notice, with a copy also provided to the Chief of Staff, CMO, and the Chief of the applicable Clinical Department. The notice shall contain a general statement of the reason(s) for summary suspension.
- (e) In the event of a summary suspension, the member's patients then hospitalized (if any) shall be assigned to the Clinical Department Chief (or a designee). The Clinical Department Chief (or a designee) will assume responsibility for the care of the patient(s) or may designate an appropriate substitute practitioner who has agreed to assume care of the patients. The desires of the patient shall be considered, when feasible, in choosing a substitute practitioner.

### **1.2.2 Duration and Investigation**

- (a) Summary suspensions may be limited in duration and shall remain in effect for the period stated or, if none, until resolved as set forth herein. Unless otherwise indicated by the terms of the summary suspension, the member's patients shall be promptly assigned (as applicable) to another member by the Chief of Staff (or designee), considering where feasible, the wishes of the patient in the choice of a substitute.
- (b) During the summary suspension, the MEC (or ad hoc committee) shall conduct an investigation to determine the need for a recommendation for further adverse action (as set forth in Section 1.1, above). However, whenever a summary

suspension has been imposed (even when an ad hoc committee has been appointed to conduct an investigation), within fourteen (14) days after the summary suspension has been imposed, the MEC must convene to review and consider the summary suspension, and determine whether to continue, modify, or terminate the summary suspension. The MEC, in its sole discretion, may request/require the member to attend such meeting (in the same fashion as set forth in Section 1.1., above) in order to provide information regarding matters related to the summary suspension and the MEC's (or ad hoc committee's) investigation. Consistent with Section 1.1, above, the MEC's meeting, with or without the member's participation, shall not constitute a "hearing" within the meaning of this Plan, nor shall any such procedural rules apply.

- (c) If the summary suspension is terminated within fourteen (14) days of its imposition, there shall be no right to a hearing with specific respect to the summary suspension.
- (d) If the MEC fails to terminate, or otherwise determines to continue, the summary suspension beyond fourteen (14) days, and/or recommends other adverse action (as described in Section 1.1.7, above), the member shall be afforded the right to a hearing, and provided with Special Notice, as set forth in Article 2, below.

### **Section 1.3 Informal Resolution and Collegial Intervention**

Nothing set forth in this Corrective Action and Fair Hearing Manual is intended to dissuade the use of collegial intervention, when deemed appropriate under the circumstances, to address and/or resolve concerns regarding patient care, behavior or conduct. Complaints or concerns regarding patient care, clinical competency, or professional conduct of a member of the Medical Staff may be (but are not required to be) initially referred to and addressed by the appropriate Clinical Department Chief (or designee), CMO, or Chief of Staff. Documentation of such complaints, concerns, and intervention, however, should be maintained in the member's confidential peer review file.

## **ARTICLE 2: PROCEDURES FOR HEARING AND APPEAL**

Those applicants or members entitled to the hearing and appeal procedures under this Plan are subject to the procedures set forth in this Article 2. This Article 2 does not apply to NPPs or applicants that are NPPs.

### **Section 2.1 Hearing**

#### **2.1.1 Grounds for Hearing**

Applicants and members (together referred to in this Article 2 as "providers") shall be entitled to the hearing and appeal procedures set forth in this Article 2 if the MEC or Governing Board determine that adverse action should be taken.

Summary suspensions and those administrative actions that trigger hearing rights shall be handled in accordance with Sections 1.2 and Article 3, respectively, and where appropriate, Article 2 of this Plan.

### 2.1.2 Notice of Adverse Recommendation or Action

- (a) The Chief of Staff, on behalf of the MEC or Governing Board, as applicable, shall give Special Notice to the provider of any adverse action that requires hearing and/or appellate review rights to be extended pursuant to this Article. The Special Notice shall state:
- (i) The action taken or proposed to be taken;
  - (ii) The reason(s) for the action taken or proposed to be taken;
  - (iii) That the provider has the right to request a hearing on the action or proposed action, as applicable;
  - (iv) That the provider has thirty (30) days after receipt of the notice within which to submit a request for a hearing and that the request must satisfy the conditions of Section 2.1.3;
  - (v) A summary of the provider's rights in the hearing;
  - (vi) That failure to request a hearing within the requisite time period, and in the proper manner, constitutes a waiver of rights to any hearing or appellate review, if applicable, on the matter that is the subject of the notice; and
  - (vii) That upon the Chief of Staff's receipt of the provider's hearing request, the provider shall be notified via special notice of the date, time and place of hearing, which shall not be less than thirty (30) days nor more than ninety (90) days after the notice (except as otherwise set forth in this Plan), and which shall include a list of the witnesses expected to testify at the hearing on behalf of the MEC or Board, as applicable.

### 2.1.3 Request for a Hearing/Waiver

A provider shall have thirty (30) days after receiving a Special Notice under Section 2.1.2 to submit a written request for a hearing. A written request for a hearing is "submitted" when it is received by the Chief of Staff, with copy to the CEO and CMO, either by way of hand delivery or by certified or registered mail.

If the provider does not submit a request for hearing within the time and in the manner specified above, he or she shall be deemed to have waived his or her right to hearing, and if the matter has not already been submitted to the Governing Board, it shall be forwarded to the Governing Board for final action.

**By the act of requesting a hearing or appellate review under this Plan, a provider affirms his or her agreement to be bound by the provisions of the Medical Staff Bylaws and therefore this Plan, including but not limited to, those provisions relating to immunity and release from liability.**

#### 2.1.4 Appointment of the Hearing Committee

In the event a provider requests a hearing pursuant to Section 2.1.3, above, the Chief of Staff and the CEO shall jointly appoint a Hearing Committee composed of three (3) members of the Active Medical Staff. The Chief of Staff and the CEO shall appoint one (1) member of the Hearing Committee to serve as the Chairperson.

- (a) **Hearing Committee Composition.** Knowledge of the matter involved shall not preclude a Medical Staff member from serving on the Hearing Committee, but a Medical Staff member who previously considered and voted on the matter, has a family, professional or business relationship with the provider requesting the hearing that makes it inappropriate for such person to serve, or is in direct economic competition with the provider shall not be eligible to serve on the Hearing Committee. In the event it is not practicable to appoint a Hearing Committee from the Hospital's Active Medical Staff, the Chief of Staff and the CEO may appoint one or more members from another hospital, who are of good reputation and willing to serve on the Hearing Committee.
- (b) **Opportunity to Object.** The Chief of Staff shall notify the provider of the composition of the Hearing Committee. The provider shall have an opportunity to object to any of the proposed members of the Hearing Committee if he or she can identify an objective basis as to why the individual(s) should not participate. The provider must deliver any such objection to the Chief of Staff and CEO within seven (7) days of the provider receiving notice of the Hearing Committee composition. The Chief of Staff and the CEO shall appoint an individual(s) to replace the contested proposed member(s), if they determine that just cause for removal has been established by the provider.
- (c) **Presiding Officer.** The use of a Hearing Officer to act as the Presiding Officer at the hearing is optional and is to be determined by the CEO and Chief of Staff. If appointed, the Hearing Officer should be an attorney at law, and if reasonably possible, have experience in conducting such hearings. A Hearing Officer is not a voting member of the Hearing Committee. Rather, a Hearing Officer shall assist and counsel the Hearing Committee members, as requested, in connection with the proceeding and shall assist with preparation of the Hearing Committee's Report. Where a Hearing Officer is not appointed, the Chairperson of the Hearing Committee shall act as the Presiding Officer. The Presiding Officer shall conduct the hearing, any pertinent pre-hearing matters, maintain decorum, and rule on all evidentiary and witness matters. The Presiding Officer shall ensure that all participants have a reasonable opportunity to present relevant oral and documentary evidence and shall determine the order of procedure at the hearing.

#### 2.1.5 Hearing Committee Action

A simple majority of the members of the Hearing Committee shall constitute a quorum. Each member of the Hearing Committee must attend at least a majority of the hearing dates and must review hearing transcripts and records for those meetings that were missed in order to participate and vote on the hearing proceedings.

#### 2.1.6 Time, Place and Notice of Hearing

- (a) The Chief of Staff shall schedule and convene a hearing no sooner than thirty (30) days following receipt of the provider's request. However, if the adverse action or

decision triggering the hearing is (or includes) a summary suspension, then the Member under summary suspension, as part of his or her written Request for Hearing, may expressly waive the thirty (30) day notice requirement and make a written request that the hearing be commenced sooner than thirty (30) days. In such event, the Chief of Staff (in his or her sole discretion and if determined to be reasonably possible and practicable to do so) may schedule the hearing for a date sooner than thirty (30) days following the Notice of Hearing.

- (b) The Chief of Staff will provide Special Notice to the provider of the date, time, and place of the hearing, and a list of the witnesses expected to testify at the hearing on behalf of the MEC or Governing Board (as applicable). The date and time of the hearing may thereafter be extended upon mutual agreement of the parties, by request of the Hearing Committee, or upon request by a party to, and approval by, the Hearing Committee or Presiding Officer (as applicable).

### **2.1.7 Witnesses and Documents**

- (a) No later than ten (10) days prior to the hearing (or five (5) days if the hearing is commenced sooner than thirty (30) days following the Notice of Hearing due to a summary suspension), the parties shall each furnish to the other a final written list of witnesses to be called at the hearing. Neither the provider, nor any legal counsel or other person on behalf of the provider, shall contact Hospital employees or medical staff committee members appearing on the witness list of the MEC or Governing Board (as applicable) concerning the subject matter of the hearing, unless specifically and mutually agreed upon by and among the provider, MEC, and/or the Governing Board (as applicable).
- (b) There is no right to discovery in connection with the hearing. Each party, however, shall provide the other party, no later than ten (10) days before the hearing (or five (5) days if the hearing is commenced sooner than thirty (30) days following the Notice of Hearing due to a summary suspension) with copies of all documents that the Party intends to offer as evidence (as either substantive evidence or demonstrative evidence). The Presiding Officer may address, and rule upon, any objections or other issues raised in connection with the exchange of documents or the admissibility of the documents (see Section 2.1.8(c), below).
- (c) Consistent with the foregoing, neither the MEC nor the Governing Board are under any obligation to make witnesses available to the provider (or his/her legal counsel) prior to the hearing.
- (d) Further, and notwithstanding the provider's right to cross examine witnesses that are offered by the MEC or Governing Board at the hearing (as set forth in Section 2.1.8, below), neither the MEC nor the Governing Board are under any obligation to require/compel any witnesses to appear at the hearing on behalf of provider. The MEC or Governing Board (as applicable) may, however, communicate to its employees and/or committee members (as applicable) that such a request has been made by the provider, and that it is within the employee/committee member's sole discretion to appear or not appear at the hearing as a witness on behalf of the provider. Provider expressly agrees that neither the MEC nor the Governing Board have the authority to compel participation of witnesses at a hearing (beyond the subject provider's participation), and therefore, that the foregoing manner of communicating the provider's request is reasonable, fair, and appropriate under the circumstances.

- (e) All documents shall be treated by the parties as confidential peer review information, shall not be disclosed to third parties that are not involved in the hearing, and shall remain subject to the applicable peer review protections available under Indiana state and federal law. Unless the parties agree otherwise, or unless a party demonstrates good cause for its noncompliance as determined by the Presiding Officer, a party will not be permitted to utilize documents or information at the hearing that have not been timely disclosed to the other party.
- (f) The MEC and/or Governing Board may additionally require the provider and his/her legal counsel to execute a confidentiality and nondisclosure agreement prior to the Hospital disclosing copies of peer review documents. Such an agreement, in the Hospital's discretion, may contain terms common to such agreements, including but not limited to, the right to prompt injunctive relief and other damages for any violation of the agreement, as well as the right to compensation for attorney fees and other related litigation expenses.

### 2.1.8 Hearing

- (a) **Right to Counsel.** The MEC or the Governing Board (as applicable), and the provider, are each entitled to representation by legal counsel and/or another person of choice who may present evidence, and call, examine and cross-examine witnesses. If the provider is represented by legal counsel, such legal representation is at his or her sole expense. The CEO shall appoint legal counsel to represent the MEC and/or Board.
- (b) **Hearing Procedure.** The Presiding Officer shall conduct the hearing. The MEC or Governing Board (as applicable) shall present its evidence first. The provider shall then present his or her evidence. Both parties shall be given the opportunity for cross-examination or rebuttal as deemed appropriate by the Presiding Officer.
- (c) **Admissibility of Evidence.** The hearing shall not be conducted according to rules of law or procedures relating to the examination of witnesses or presentation of evidence, nor any other established trial rules. Any relevant evidence shall be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely on the conduct of serious affairs, regardless of the admissibility of such evidence in a court of law. By way of example, the peer review record or records maintained or obtained by the Hospital (or a peer review committee at the Hospital) that are related to the provider are admissible (irrespective of length or duration) to the extent such information was relied upon by the peer review committee(s) in arriving at its recommendation or action. Evidence or testimony that is not relevant and/or is repetitious in the determination of the Presiding Officer may be excluded. The Hearing Committee may ask questions of the witnesses and may, on its own initiative, request the presence of expert or other witnesses, as it deems appropriate. All determinations of evidentiary appropriateness shall be made by the Presiding Officer. If the provider does not testify on his or her own behalf, he or she may be called and examined by the MEC or Governing Board as if under cross-examination.
- (d) **Burden of Proof.** It is the provider's burden to demonstrate, by clear and convincing evidence, that there is no reasonable basis for the MEC's or Governing Board's adverse recommendation or decision.
- (e) **Record of Hearing.** The Hearing Committee shall maintain a record of the hearing by a court reporter who is present during the proceedings. The Hearing

Committee shall require evidence to be taken only on sworn oath or affirmation administered by any person authorized to administer such oaths in the State of Indiana. Each party shall be entitled, at its own expense, to receive a copy of the hearing transcript.

- (f) **Written Statement.** The provider shall have the right to submit a written statement setting forth proposed findings to the Hearing Committee for its consideration in final deliberations. Such statement is due to the Hearing Committee, with a copy provided to the Chief of Staff, within seven (7) days following receipt of the hearing transcript by each party, unless otherwise extended by agreement of the parties. Whether or not the provider submits a statement, the MEC or Governing Board (whichever is applicable), will also be given the opportunity to submit a written statement setting forth proposed findings to the Hearing, which shall be due to the Hearing Committee seven (7) days following the deadline for the provider to submit a statement, unless otherwise extended by agreement of the parties. Written Statements shall be submitted in a manner consistent with special notice. Any written statements submitted pursuant to this provision shall be considered part of the Hearing Record.

#### **2.1.9 Failure to Appear and Respond**

If the provider fails to appear at the hearing or timely respond after notice and without sufficient cause as determined by the Hearing Committee, the provider will be deemed to have waived the right to a hearing. In such event, the matter will be promptly forwarded to the Governing Board for final action.

#### **2.1.10 Adjournment and Decision**

The Presiding Officer may adjourn and reconvene the hearing at the convenience of the participants without special notice. The hearing is closed upon conclusion of the presentation of oral and written evidence, and receipt of the hearing transcript and any written submissions that are timely made pursuant to Section 2.1.8(f), above. The Hearing Committee shall thereafter conduct its deliberations in private.

Within thirty (30) days of closing the hearing, unless additional time is reasonably required, the Hearing Committee shall issue its findings and recommendation to the parties by special notice. If the Hearing Committee finds that the provider has not met his or her burden of proof, then it shall recommend that the action taken by the MEC or the Governing Board (as applicable) be initiated or affirmed (as applicable). If the Hearing Committee finds that the provider has met his or her burden of proof, then it shall either recommend to the Governing Board that the action taken by the MEC or the Governing Board (as applicable) not be taken or affirmed (as applicable), or alternatively, the Hearing Committee may refer the matter back to the MEC (if the action originated with the MEC) for additional consideration and final recommendation.

If the Hearing Committee refers the matter back to the MEC for further consideration, the MEC shall have ten (10) days following its next regularly scheduled meeting, unless additional time is reasonably required, to complete its review and make a final recommendation and report to the Governing Board. The MEC's report must include the hearing record and the Hearing Committee's written findings and recommendation. A copy of the MEC's report and recommendation shall be provided to the provider by special notice.

## **Section 2.2 Appeal Procedure/Miscellaneous Provisions**

### **2.2.1 Right to an Appeal**

Either party shall have ten (10) days after receiving Special Notice of an adverse recommendation under Section 2.1.10, above, to request appellate review. A request for appellate review must be made in writing and either delivered personally or sent by certified mail, return receipt requested, to the CEO within ten (10) days after the party's receipt of the special notice.

If such appellate review is not requested within ten (10) days as provided herein, the party shall be deemed to have waived the right to an appellate review, and the CEO shall forward the Hearing Committee's recommendation to the Board, together with the hearing record, the hearing committee report and any other documentation considered, for final review and action by the Board.

The grounds for appellate review shall be limited to those circumstances where a party asserts:

- (a) A substantial failure to comply with this Plan; or
- (b) That the findings and recommendation of the Hearing Committee or final recommendation of the MEC were not consistent with the standards for burden of proof as set forth in Section 2.1.8(d), above.

The Appellate Review Body shall be the Governing Board or a designated committee of the Governing Board.

### **2.2.2 Time Frame for Review**

The CEO shall deliver a copy of a timely and proper request for appellate review to the Chairperson of the Governing Board. As soon as practicable, the Board shall schedule and arrange for an appellate review. At least fifteen (15) days prior to the appellate review, the CEO shall send Special Notice to the parties of the time, place, and date of the appellate review. This time may be extended by the Appellate Review Body for good cause as determined in its sole discretion. If the provider subject of the appeal is subject to a summary suspension or other applicable administrative action, the appellate review will be held as soon as the arrangements may reasonably be made. The CEO or other Governing Board representative will notify the parties of the date, time and place of the appellate review.

### **2.2.3 Procedure for Appellate Review**

Appellate review shall be based upon the hearing record, the Hearing Committee's report, the permitted written statements and any permitted oral statements.

- (a) **Written Statements.** The party requesting appellate review may submit a written statement detailing the basis for the appeal, within the permitted scope of review, as set forth in Section 2.2.1, above. The statement shall be submitted to the Appellate Review Body by way of the CEO at least fourteen (14) days prior to the appellate review. A copy shall also be provided to the opposing party. The opposing party shall be permitted to submit a responsive, written statement at least seven (7) days prior to the appellate review. Any such responsive statement

shall also be submitted to the Appellate Review Body by way of the CEO. Parties shall serve written statements and copies to opposing parties in the same manner required for special notice.

- (b) **Presiding Officer of Appellate Review Body.** The chairperson of the Appellate Review Body shall be the presiding officer. The presiding officer shall determine the order of procedure during the review, make all required rulings and maintain decorum throughout the appellate review process.
- (c) **Oral Statements.** The Appellate Review Body, in its sole discretion, may require or allow the Parties or their legal counsel/representatives to personally appear and make oral statements in favor of their positions. Any party wishing to make an oral statement is required to submit a written request to make an oral statement at the same time the party submits the party's written statement. A failure to make such written request operates as a waiver. If a written request is timely made by a party, the Appellate Review Body will determine, in its sole discretion, whether to permit oral statements and will advise the parties by way of Special Notice of its determination. Any party or legal counsel/representative appearing to make an oral statement shall be required to answer questions posed by any member of the Appellate Review Body.
- (d) **Consideration of new or additional matters.** New or additional matters or evidence not raised or presented during the hearing before the Hearing Committee and not otherwise reflected in the hearing record may be introduced at the appellate review only in the discretion of the Appellate Review Body and only if the party requesting consideration of the matter or evidence shows that it could not have been discovered using reasonable due diligence in time for the hearing before the Hearing Committee. The requesting party shall provide, through the CEO, a written, substantive description of the new matter or evidence to the Appellate Review Body and the opposing party at least seven (7) days prior to the scheduled date of the appellate review.
- (e) **Powers and Scope of Review.** The Appellate Review Body shall have all the powers granted to the Hearing Committee and any additional powers that are reasonably appropriate or necessary for the discharge of its responsibilities. The duty of the Appellate Review Body is not, however, to re-hear the matter but to assure that the provider's hearing before the Hearing Committee was in substantial compliance with the Plan, and that the recommendation pending before the Appellate Review Body is supported by the evidence and consistent with the requisite burden of proof. It shall be the burden of the party requesting the appeal to demonstrate that these standards were not met.
- (f) **Recesses and Adjournment.** The Appellate Review Body may recess and reconvene the proceedings without additional notice for the convenience of the participants or for the purpose of obtaining new or additional evidence or consultation. At the conclusion of the oral statements, if permitted, the appellate review shall be closed. The Appellate Review Body shall thereafter deliberate in private. The appellate review shall be adjourned at the conclusion of those deliberations.
- (g) **Appellate Review Determination.** Following its deliberation, the Appellate Review Body may determine to adopt, modify, or reject the recommendation(s) of the Hearing Committee, or it may refer the matter to the Hearing Committee for

further review. In the event the Appellate Review Body reaches a final determination, the Governing Board shall serve notice of final action as set forth in Section 2.2.4, below.

#### **2.2.4 Final Action**

The Governing Board, upon reaching any final determination pursuant to this Plan, shall deliver Special Notice of final action to the provider and the MEC.

#### **2.2.5 Reapplication following Final Adverse Action**

Reapplication following a final, adverse action is addressed in Section 1.4.8 of the Credentialing Manual.

#### **2.2.6 Substantial Compliance/Bylaws not a Contract**

As set forth in Section 11.2 of the Governance and Organization Manual, the Medical Staff Bylaws are intended to create a framework to ensure compliance with pertinent Indiana state and federal law, and accreditation requirements, and to ensure entitlement to all immunities and protections set forth in the pertinent State peer review statutes and the Federal Health Care Quality Improvement Act. Therefore, strict compliance by the MEC, Medical Staff committees, and Governing Board with the procedures and timelines set forth in these Bylaws is not required. Rather, the MEC, Medical Staff committees and Governing Board, as applicable, should endeavor to substantially comply with the provisions set forth in this Corrective Action and Fair Hearing Manual and elsewhere in the Medical Staff Bylaws. These Bylaws are not intended in any fashion to create a legal contract.

Nothing in this provision, however, negates a provider's strict obligation to comply with the deadlines set forth in the Bylaws, including the timing requirements to request a hearing, request appellate review, or to initiate action as set forth in this Plan. A failure by a provider to make a timely request for hearing or appeal, or to timely initiate action, shall result in a waiver, without exception, as provided for in this Plan.

#### **2.2.7 Right to Only One Hearing and Appeal**

A provider is entitled to only one (1) hearing and one (1) appeal with respect to the subject matter that is the basis of the adverse action triggering the right to such hearing and appeal, regardless of whether the action is by the MEC, the Governing Board or a combination of their acts.

#### **2.2.8 Exhaustion of Administrative Remedies**

Any provider entitled to a hearing and appeal agrees to follow and exhaust, or otherwise voluntarily waive, the procedures and remedies afforded by this Plan as a prerequisite to the provider pursuing any temporary or permanent injunctive relief, and/or any other type of litigation or legal action, if any, that may be available to the provider.

### **ARTICLE 3: ADMINISTRATIVE ACTIONS INVOLVING MEMBERS**

#### **Section 3.1 License to Practice**

Each member shall at all times maintain a current and valid license to practice his/her profession in the State of Indiana. In the event a member's license is revoked, suspended,

not renewed, restricted or limited or if the member's license is placed on probation, he/she shall immediately notify the Chief of Staff, CMO, and CEO.

- (a) **Revocation of License.** Whenever a member's license to practice in Indiana is revoked, the member's Medical Staff membership and clinical privileges at the Hospital shall automatically terminate. Such termination shall be effective the same date as the revocation of the license. The member shall have no right to a hearing, and no notice to the member is required, as a prerequisite to termination.
  
- (b) **Suspension or Nonrenewal of License.** Whenever a member's license to practice in Indiana is suspended or not renewed, the member's Medical Staff membership and clinical privileges at the Hospital shall be automatically suspended. The suspension shall be effective the same date as the suspension or non-renewal of the license (as applicable). The member shall remain suspended until the member provides reliable evidence to the MEC and CEO that the underlying suspension of the license is lifted or that the license is appropriately renewed (as applicable). In the event the member's license remains suspended or not renewed for a period greater than sixty (60) days, and unless the Governing Board determines that there is good cause to delay automatic termination, the member's membership and clinical privileges at the Hospital shall automatically terminate effective sixty-one (61) days after the suspension or non-renewal of the license. The member shall have no right to a hearing, and no notice to the member is required, as a prerequisite to either suspension or termination of the member's Medical Staff membership and clinical privileges. In the event a licensure suspension is lifted prior to the expiration of sixty (60) days and a member's corresponding medical staff suspension is also lifted, nothing herein precludes the MEC (or any other individual) from initiating a request for corrective action, as set forth in Section 1.1. herein, resulting from circumstances related to the licensure suspension or nonrenewal.
  
- (c) **Restriction or Limitation of License.** Whenever a member's license to practice in Indiana is restricted or limited, the member's Medical Staff membership and clinical privileges shall be automatically and immediately restricted/limited in accordance with the underlying licensure restriction or limitation (as applicable). The restriction/limitation of Medical Staff Membership and clinical privileges shall be effective the same date as the restriction/limitation of the license (as applicable). The member shall remain restricted/limited until the member provides reliable evidence to the MEC and CEO that the underlying restriction/limitation of the license is lifted. In the event the member's license remains limited/restricted for a period greater than sixty (60) days, and unless the Governing Board determines that there is good cause to delay automatic termination, the member's membership and clinical privileges at the Hospital shall automatically terminate effective sixty-one (61) days after the suspension or non-renewal of the license. The member shall have no right to a hearing, and no notice to the member is required, as a prerequisite to either the restriction/limitation or termination of the member's Medical Staff membership and clinical privileges. In the event a licensure restriction/limitation is lifted prior to the expiration of sixty (60) days and a member's corresponding medical staff restriction/limitation is also lifted, nothing herein precludes the MEC (or any other individual) from initiating a request for corrective action, as set forth in Section 1.1. herein, resulting from circumstances related to the licensure restriction/limitation.

- (d) **Probation of License.** Whenever a member's license to practice in Indiana is placed on probation, the matter is automatically deemed a request for corrective action and should be promptly forwarded to the MEC for review as set forth in Section 1.1 herein.
- (e) **License to Practice in a State other than Indiana.** Whenever a member's license to practice in any state other than Indiana is revoked, suspended, restricted, limited, or placed on probation, the matter is automatically deemed a request for corrective action and should be promptly forwarded to the MEC for review as set forth in Section 1.1 herein.

### **Section 3.2 DEA Registration/ Indiana Controlled Substance Registration**

Unless otherwise exempt pursuant to the Bylaws, members are required to maintain a current and valid Federal Drug Enforcement Administration ("DEA") registration (with appropriate registration in Indiana) and Indiana controlled substance registration. In the event a member's Federal or Indiana registration is revoked, suspended, non-renewed, restricted or limited, or if the member's registration is placed on probation, he/she shall immediately notify the Chief of Staff, CMO, and CEO.

- (a) **Revocation, Suspension or Non-renewal of Registration.** Whenever a member's Federal DEA or Indiana controlled substances registration is revoked, suspended or not renewed ("non-renewal" also refers to and includes a failure to appropriately obtain, register or maintain registration), and to the extent DEA registration and Indiana CSR is required to fully exercise the member's clinical privileges at the Hospital, the member's Medical Staff membership and clinical privileges at the Hospital shall be automatically suspended. The suspension shall be effective the same date that the Federal DEA or Indiana controlled substances registration is revoked, suspended, not renewed, or otherwise not valid (as applicable). The member shall remain suspended until the member provides reliable evidence to the MEC and CEO that the underlying revocation or suspension is lifted or that the registration is appropriately renewed/obtained (as applicable). In the event the member's Federal DEA or Indiana controlled substances registration is revoked, suspended or not renewed/obtained for a period greater than sixty (60) days, and unless the Governing Board determines that there is good cause to delay automatic termination, the member's membership and clinical privileges at the Hospital shall automatically terminate effective sixty-one (61) days after the effective date of the suspension. The member shall have no right to a hearing, and no notice to the member is required, as a prerequisite to either suspension or termination of the member's Medical Staff membership and clinical privileges. In the event a revocation, suspension or non-renewal is resolved prior to the expiration of sixty (60) days and a member's corresponding medical staff suspension is also lifted, nothing herein precludes the MEC (or any other individual) from initiating a request for corrective action, as set forth in Section 1.1. herein, resulting from circumstances related to the revocation, suspension or nonrenewal of the Federal DEA or Indiana controlled substances registration.
- (b) **Restriction or Limitation of Registration.** Whenever a member's Federal DEA or Indiana controlled substances registration is restricted or limited, the member's Medical Staff membership and clinical privileges shall be automatically and immediately restricted/limited in accordance with the underlying restriction or limitation or registration (as applicable). The restriction/limitation shall be effective the same date that the Federal DEA or Indiana controlled substances registration

restricted/limited. The member shall remain restricted/limited until the member provides reliable evidence to the MEC and CEO that the underlying restriction/limitation is lifted. In the event the member's Federal DEA or Indiana controlled substances registration is restricted/limited for a period greater than sixty (60) days, and unless the Governing Board determines that there is good cause to delay automatic termination, the member's membership and clinical privileges at the Hospital shall automatically terminate effective sixty-one (61) days after the restriction/limitation. The member shall have no right to a hearing, and no notice to the member is required, as a prerequisite to restriction/limitation or termination of the member's Medical Staff membership and clinical privileges. In the event a restriction/limitation is resolved prior to the expiration of sixty (60) days and a member's corresponding medical staff restriction/limitation is also lifted, nothing herein precludes the MEC (or any other individual) from initiating a request for corrective action, as set forth in Section 1.1. herein, resulting from circumstances related to the restriction/limitation of the Federal DEA or Indiana controlled substances registration.

- (c) **Probation of Registration.** Whenever a member's Federal DEA or Indiana controlled substances registration is placed on probation, the matter is automatically deemed a request for corrective action and should be promptly forwarded to the MEC for review as set forth in Section 1.1 herein.
- (d) **Controlled Substances Registration in a State other than Indiana.** Whenever a member's Federal DEA or Indiana controlled substances registration in any state other than Indiana is revoked, suspended, restricted, limited or placed on probation, the matter is automatically deemed a request for corrective action and should be promptly forwarded to the MEC for review as set forth in Section 1.1 herein.

### **Section 3.3 Medicare/Medicaid Sanctions**

Members shall at all times remain eligible to participate in the Medicare and Medicaid programs. In the event that a member's Medicare and/or Medicaid participation is revoked, suspended, revoked, limited or placed on probation or if he/she receives notice of any investigation or possible disciplinary action, the member shall immediately notify the Chief of Staff, CMO, and CEO.

- (a) **Revocation, Suspension, Restriction or Limitation of Participation.** Whenever a member's eligibility to participate in the Medicare and/or Medicaid programs is revoked, suspended, restricted or limited, the member's Medical Staff membership and clinical privileges at the Hospital shall be automatically suspended. The suspension shall be effective the same date that the member's eligibility to participate in the Medicare and/or Medicaid programs is revoked, suspended, restricted or limited. The member shall remain suspended until the member provides reliable evidence to the MEC and CEO that the underlying revocation, suspension, restriction or limitation has been lifted. In the event the member's eligibility to participate in the Medicare and/or Medicaid programs is revoked, suspended, restricted or limited for a period greater than sixty (60) days, and unless the Governing Board determines that there is good cause to delay automatic termination, the member's membership and clinical privileges at the Hospital shall automatically terminate effective sixty-one (61) days after the revocation, suspension, restriction or limitation. The member shall have no right to a hearing, and no notice to the member is required, as a prerequisite to either

suspension or termination of the member's Medical Staff membership and clinical privileges. In the event a revocation, suspension, restriction or limitation is resolved prior to the expiration of sixty (60) days and a member's corresponding medical staff suspension is also lifted, nothing herein precludes the MEC (or any other individual) from initiating a request for corrective action, as set forth in Section 1.1. herein, resulting from circumstances related to the revocation, suspension, restriction or limitation of the member's eligibility to participate in the Medicare and/or Medicaid programs.

- (b) **Probation of Participation.** Whenever a member's eligibility to participate in the Medicare and/or Medicaid programs is placed on probation, the matter is automatically deemed a request for corrective action and should be promptly forwarded to the MEC for review as set forth in Section 1.1 herein.

### **Section 3.4 Criminal Arrest, Charge or Conviction**

Members of the Medical Staff are required to conduct themselves in a manner that is befitting of their profession. This requirement includes the expectation that members will not engage in criminal activity. In the event a member is arrested, charged with, or convicted of any crime, he/she shall immediately notify the Chief of Staff, CMO, and CEO.

- (a) **Suspension.** In the event a member has been arrested or formally charged with:
- (i) a felony level crime;
  - (ii) a crime against another person or persons, such as murder, rape, assault or other similar crime;
  - (iii) a crime that placed a patient at immediate risk, such as a malpractice suit that results in a conviction of criminal neglect or misconduct;
  - (iv) a financial crime, such as extortion, embezzlement, income tax evasion, insurance fraud or other similar crime; or
  - (v) any crime that would result in mandatory exclusion from the Medicare or Medicaid programs;

the Governing Board, following recommendation by the MEC, may elect to administratively suspend the member's Medical Staff membership and clinical privileges at the Hospital pending resolution of the underlying arrest and/or charge. The member shall have no right to a hearing, and no notice to the member is required, as a prerequisite to suspending the member's Medical Staff membership and clinical privileges. In the event a suspension is ultimately lifted, the member may in the discretion of the pertinent Clinical Department Chief and MEC, be required to comply with a plan for FPPE. **Additionally, and irrespective of whether the member is administratively suspended pursuant to this provision, nothing herein precludes the MEC (or any other individual) from initiating a request for corrective action, as set forth in Section 1.1. herein, resulting from facts or circumstances related to the arrest, charge, or alleged criminal behavior, even when such arrest or charge has not yet, or does not ever, result in conviction.**

- (b) **Termination.** In the event a member is convicted by a judge or jury of a crime identified in Section 3.4(a), above, the member's Medical Staff membership and clinical privileges at the Hospital shall immediately terminate. The member shall have no right to a hearing, and no notice to the member is required, as a prerequisite to termination of the member's Medical Staff membership and clinical privileges.

### Section 3.5 Medical Record Completion

- (a) **General.** Members shall at all times comply with the prevailing Medical Staff Policy on medical record completion, which shall set forth the review and notification process regarding patient chart deficiency and delinquency. To the extent the provisions set forth in this Section 3.5 conflict with the Medical Staff Policy on medical record completion, this Section 3.5 shall govern. A member whose clinical privileges are suspended because of delinquent charts must arrange in a timely manner for the appropriate transfer of care of his/her admitted patients to another appropriately privileged practitioner. A member may request a written waiver of these requirements in advance of extended planned vacations or professional absences, provided any such waiver will not result in medical records in question being noncompliant with laws and accreditation standards applicable to Hospital.
- (b) **Requirements.** A medical history and physical must be completed and documented for each patient no more than 30 days prior to or 24 hours after hospital admission or registration, but prior to surgery or a procedure requiring anesthesia services. When a medical history and physical examination has been completed within 30 days before admission or registration, an updated medical record entry must be completed and documented in the patient's medical record within 24 hours after admission or registration, but prior to surgery or a procedure requiring anesthesia services. All operations performed shall be fully described by the operating surgeon in an operative summary. The discharge summary will be completed within 7 days of discharge to ensure continuity of care. The Discharge Summary must document the patient's condition at discharge, discharge instructions and follow-up care required. A Discharge Summary or a Short Stay must be done on patients that are admitted and/or have surgery as this is not considered a minor or uncomplicated stay. For normal newborns with uncomplicated deliveries or for patients hospitalized for less than 48 hours with only minor problems (uncomplicated), a Progress Note may substitute for a Discharge Summary. Co-signatures by an MD/DO are required on all history and physicals, discharge summaries, short stay notes and progress notes completed by physician assistants and nurse practitioners. All medical records shall have documented completion within 30 days following discharge. Incomplete and delinquent records are monitored and reported to the physician and Administration by Health Information.
- (c) **Suspension.** In the event a member is provided with notice of a delinquent record(s) and the member thereafter fails within fifteen (15) days to appropriately complete the record(s), the CEO, CMO, or Chief of Staff, or any of their respective designees, may provide the affected Member and the MEC with written notice that member's admitting privileges have been automatically suspended because of his or her delinquent records. The member shall have no right to a hearing as a prerequisite to the suspension of the member's Medical Staff membership and clinical privileges.

- (d) **Termination.** If a member is suspended more than three times during any twelve (12) month period for medical record delinquency, and unless the Governing Board finds good cause to make an exception, the member's Medical Staff membership and clinical privileges at the Hospital shall automatically terminate, effective the same date as the suspension triggering termination. The member shall have no right to a hearing, and no notice is required, as a prerequisite to the termination of the member's Medical Staff membership and clinical privileges.
- (e) **Voluntary Withdrawal.** A member who remains suspended by the terms of this Section and/or the applicable Medical Staff Policy on medical record completion for more than sixty (60) days shall be deemed to have voluntarily withdrawn his or her Medical Staff membership and clinical privileges, without right of appeal or hearing. In such event, the member may reapply for Medical Staff membership or clinical privileges as a new applicant, pursuant to the procedures set forth in the Medical Staff Credentialing Manual.

### **Section 3.6 Failure to Maintain Professional Liability Insurance**

Members shall at all times maintain professional liability insurance in the form, amounts, and limits established by the Governing Board (including any requisite participation as a "qualified healthcare provider" within the meaning and intent of Indiana's Medical Malpractice Act). In the event that a member fails to maintain the required insurance and/or the limits of coverage are reduced below the requisite amounts, the member shall immediately notify the Chief of Staff and CEO.

- (a) **Suspension.** Whenever a member fails to maintain professional liability insurance in the form, amounts and limits required by the Governing Board, the member's Medical Staff membership and clinical privileges at the Hospital shall be automatically suspended. The member shall have no right to a hearing, and no notice is required, as a prerequisite to the suspension of the member's Medical Staff membership and clinical privileges. The member shall remain suspended until the member provides reliable evidence to the MEC and CEO that the member has obtained professional liability insurance in the form, amounts and limits required by the Governing Board.
- (b) **Voluntary Withdrawal.** In the event the member remains suspended pursuant to this Section for a period greater than sixty (60) days, and unless the Governing Board determines that there is good cause to make an exception, the member shall be deemed to have voluntarily withdrawn his or her Medical Staff membership and clinical privileges, without right of appeal or hearing. In such event, the member may reapply for Medical Staff membership or clinical privileges as a new applicant, pursuant to the procedures set forth in the Medical Staff Credentialing Manual.

### **Section 3.7 Failure to Successfully Complete Hospital-Sponsored Training Programs Related to Electronic Medical Record (EMR) and/or Related Clinical System Implementation, or other Hospital Required Training Programs; Refusal to Utilize EMR**

Members are required to successfully and timely complete Hospital-sponsored training programs related to EMR and clinical system implementation, or other Hospital required (non-optional) training programs, pass any related program examination or opt-out examination, and submit required program documentation as required by Section 1.3 of

the Medical Staff Governance and Organization Manual. Members are also required to utilize the EMR as required by Section 1.3 of the Medical Staff Governance and Organization Manual.

- (a) **Suspension.** Whenever a member fails/refuses for more than thirty (30) days following a written reminder/request to complete Hospital sponsored training programs related to EMR or related clinical system implementation, or any other Hospital required (non-optional) training programs, pass any related program examination or opt-out examination, submit required program documentation as required by Section 1.3 of the Medical Staff Governance and Organization Manual, and/or utilize the EMR as required by Section 1.3 of the Medical Staff Governance and Organization Manual, the member's Medical Staff membership and clinical privileges at the Hospital may be, in the discretion of the MEC or Governing Board, administratively suspended. The member shall have no right to a hearing, and no notice is required, as a prerequisite to the suspension of the member's Medical Staff membership and clinical privileges. The member shall remain suspended until such time as the member provides reliable evidence to the MEC and CEO that the member has fully completed the outstanding program and/or program documentation, and/or has appropriately committed to use of EMR, as applicable.
- (b) **Voluntary Withdrawal.** In the event the member remains suspended pursuant to this Section for a period greater than sixty (60) days, and unless the Governing Board determines that there is good cause to make an exception, the member shall be deemed to have voluntarily withdrawn his or her Medical Staff membership and clinical privileges, without right of appeal or hearing. In such event, the member may reapply for Medical Staff membership or clinical privileges as a new applicant, pursuant to the procedures set forth in the Medical Staff Credentialing Manual. However, the applicant must complete any program and/or program documentation (as applicable) that gave rise to the prior voluntary withdrawal before the applicant is eligible to reapply.

### **Section 3.8 Failure to Maintain Eligibility or Satisfy Responsibilities**

Members are required, at all times, to meet the minimum objective criteria for Medical Staff membership and clinical privileges, as set forth in Section 1.2 of the Medical Staff Governance and Organization Manual.

- (a) **Suspension.** Whenever a member fails to meet, or is determined to no longer meet, any of the minimum objective criteria for Medical Staff membership or clinical privileges at the Hospital, as set forth in Section 1.2 of the Medical Staff Governance and Organization Manual, and unless such eligibility criteria are addressed elsewhere in this Section 3, the member's Medical Staff membership and clinical privileges at the Hospital shall be immediately suspended. The member shall have no right to a hearing, and no notice is required, as a prerequisite to the suspension of the member's Medical Staff membership and clinical privileges. The member shall remain suspended until such time as the member provides reliable evidence to the MEC and CEO that the member has fully satisfied the minimum objective criteria for Medical Staff membership or clinical privileges at the Hospital that gave rise to the suspension.
- (b) **Voluntary Withdrawal.** In the event the member remains suspended pursuant to this Section for a period greater than sixty (60) days, and unless the Governing Board determines that there is good cause to make an exception, the member shall be deemed to have voluntarily withdrawn his or her Medical Staff membership

and clinical privileges, without right of appeal or hearing. In such event, the member may reapply for Medical Staff membership or clinical privileges as a new applicant, pursuant to the procedures set forth in the Medical Staff Credentialing Manual.

### **Section 3.9 Failure to Undergo Health Assessment, Provide Requested Information, and/or to Appear**

Members of the Medical Staff are required to provide certain expirable items and other information to the Hospital and Medical Staff, and may also be required to undergo health assessment(s) and/or to appear for special meetings when requested.

- (a) **Expirables.** In the event a member fails to timely provide the Hospital with a current and/or updated copy of his/her Indiana license to practice or other legal credential required for practice, Indiana Controlled Substance Registration, Federal DEA certificate, proof of professional liability insurance coverage and limits, or any other expirable item required by the Medical Staff Bylaws and/or Medical Staff policies, the member's Medical Staff membership and clinical privileges at the Hospital may be immediately suspended. The member shall have no right to a hearing, and no notice is required as a prerequisite to the suspension of the member's Medical Staff membership and clinical privileges. The member shall remain suspended until such time as the member provides reliable evidence to the MEC and CEO that the member has appropriately provided the expirable item.
- (b) **Health Assessment.** In the event a member fails to promptly comply with an authorized request that the member undergo a health assessment (as set forth in Section 1.1.3(f)(iii), above, and as required elsewhere in this Plan and the Medical Staff Bylaws), the member's Medical Staff membership and clinical privileges at the Hospital may be immediately suspended. The member shall have no right to a hearing, and no notice is required as a prerequisite to the suspension of the member's Medical Staff membership and clinical privileges. The member shall remain suspended until such time as the member meaningfully complies with all aspects of the requested health assessment.
- (c) **Information Requested by MEC or Governing Board/Special Meetings.** If the MEC (or designee) or the Governing Board (or designee) requests, in writing, that a member provide information and/or appear for a meeting that is relevant to a peer review investigation, Hospital risk management activity or process, credentialing process, OPPE, or FPPE, and the member fails to provide such information within thirty (30) days of the written request, or fails (without good cause) to appear for the requested meeting, the member's Medical Staff membership and clinical privileges at the Hospital may be, in the discretion of the MEC or Governing Board, administratively suspended. The member shall have no right to a hearing, and no notice is required, as a prerequisite to the suspension of the member's Medical Staff membership and clinical privileges. The member shall remain suspended until such time as the member provides the requested information.
- (d) **Voluntary Resignation.** In the event the member remains suspended pursuant to this Section for a period greater than sixty (60) days, and unless the Governing Board determines that there is good cause to make an exception, the member shall be deemed to have voluntarily resigned his or her Medical Staff membership and clinical privileges, without right of appeal or hearing. In such event, the

member may reapply for Medical Staff membership or clinical privileges as a new applicant, pursuant to the procedures set forth in the Medical Staff Credentialing Manual. However, the applicant must provide any expirable or information that gave rise to the prior voluntary withdrawal before the applicant is eligible to reapply.

### **Section 3.10 Exclusive Contracting**

The Hospital may determine to enter into exclusive agreements with individuals, groups, or entities. The Hospital's determination to do so may administratively impact the ability of one or more members or NPPs to exercise clinical privileges at the Hospital.

- (a) **Exclusivity Policy.** Notwithstanding anything herein that could be construed to the contrary, application for initial membership or clinical privileges related to Hospital facilities or services covered by exclusivity agreements will not be accepted or processed unless submitted in accordance with the existing contract or agreement with the Hospital. Similarly, the Medical Staff membership and clinical privileges of any currently privileged practitioner at the Hospital, who renders services made subject of an exclusive agreement, but who is not a party to or subject of that agreement, shall automatically/administratively terminate as of the effective date of the exclusive agreement. In such event, the practitioner shall be eligible to reapply as an initial applicant upon the expiration or termination of the exclusive agreement
- (b) **Qualifications.** A practitioner who is providing or intends to provide specified professional services pursuant to a contract or a letter of agreement with the Hospital must meet the same qualifications, must be processed in the same manner, and must fulfill all obligations of membership and clinical privileges, as applicable to the practitioner, as any other applicant, member or NPP.
- (c) **Effect of Contract Expiration or Termination.** In the event a practitioner maintains membership and/or clinical privileges at the Hospital pursuant to an exclusive agreement, then the terms of the exclusive agreement may require that the practitioner's membership and/or clinical privileges, as applicable, will expire or terminate upon the termination of the agreement and/or upon the termination of the practitioner's participation pursuant to such agreement. In this event, the exclusive agreement shall take priority over any process set forth in these Bylaws. However, if the exclusive agreement does not address such termination, or otherwise require such termination, then termination of the exclusive agreement, alone, will not affect the practitioner's membership or clinical privileges, as applicable.

### **Section 3.11 Quality Measures following Administrative Action**

In the event a member is restricted for any period of time from exercising, in full or in part, a particular clinical privilege or privileges, the MEC may (following input from the appropriate Clinical Department Chief) require the member to satisfy a FPPE or other similar quality review process in order to ensure the member is capable of exercising the clinical privilege or privileges in manner that meets the Hospital's expectations

for safety and competency. Given the routine administrative nature of FPPE and related quality processes, the imposition of such requirements does not give rise to any right to hearing or appeal.

## **ARTICLE 4: PROCEDURES FOR ADMINISTRATIVE AND CORRECTIVE ACTION INVOLVING NON-PHYSICIAN PRACTITIONERS**

### **Section 4.1 No Entitlement to Medical Staff's Corrective Action and Fair Hearing Plan**

NPPs are not members of the Medical Staff, and therefore, are not entitled to the procedures and rights set forth in Articles 1 through 3 of this Plan. This Article 4 shall set forth the administrative and corrective action provisions applicable to NPPs, as well as any applicable rights to review. This section shall not apply to NPPs that are employed by the Hospital. NPPs that are employed by the Hospital shall be subject to the Hospital's Human Resource processes. In the event that an NPP is not employed by the Hospital, but is under contract with the Hospital, the terms of the contract shall take priority over the provisions contained in this Article.

### **Section 4.2 Administrative Action**

The MEC or Governing Board, or their respective designees, may administratively suspend the clinical privileges of an NPP whenever the NPP:

- (a) No longer meets an eligibility criteria that is set forth in Credentialing Manual or the clinical privileges extended to the NPP;
- (b) Fails to timely provide an expirable item, fails to promptly comply with a request to undergo a health assessment (as further defined in Section 1.1.3, above, for members), or otherwise fails to promptly provide the MEC or Governing Board with information that is reasonably requested;
- (c) Fails to meaningfully participate and/or timely complete any Hospital required program, training or documentation; or fails to appropriately utilize the EMR;
- (d) Is arrested, charged with or convicted of any crime set forth in Section 3.4(a), above;
- (e) Fails to timely complete medical records;
- (f) Fails to timely pay any applicable dues, assessments or fines;
- (g) Is no longer eligible to exercise clinical privileges by virtue of an exclusive contract; or
- (h) Fails to comply with any other administrative requirement applicable to NPPs at the Hospital.

In the event an NPP fails to appropriately correct any circumstance or matter giving rise to an administrative suspension within thirty (30) days of the effective date of the suspension, the NPP shall be deemed to have voluntarily withdrawn his or her clinical privileges, without any right of appeal or hearing. In such event, the NPP may reapply for clinical privileges as a new applicant, if the circumstance or matter giving rise to the prior administrative suspension is corrected, and pursuant to the procedures set forth in the Medical Staff Credentialing Manual.

### **Section 4.3 Summary Suspension**

Any two of the following individuals (operating as an ad hoc peer review committee and also on behalf of MEC) are authorized to summarily suspend or restrict the clinical privileges of an NPP when the two individuals, in good faith, determine that the NPP represents, or may represent, an immediate danger to patients, Hospital personnel or the general public: Chief of the applicable Clinical Department (or designee(s)), the Chief of Staff (or designee), the CEO (or designee), the CMO (or designee) or any member of the MEC.

In the event an ad hoc peer review committee imposes a summary suspension of an NPP's clinical privileges, the matter will be forwarded to the MEC. The MEC will then (at its next regularly scheduled meeting, unless it decides to meet sooner) determine whether to continue, modify or discontinue the summary suspension/restriction. If the MEC determines to continue, in any form, the summary suspension/restriction, it shall do so in conjunction with an investigation that is conducted consistent with Section 4.4, below.

### **Section 4.4 Corrective Action, Investigation and Review**

- (a) Any complaint or concern regarding the clinical competence or professional conduct of an NPP may be referred to the MEC for review. The MEC will review the matter and determine whether to conduct an investigation or, alternatively, to direct the matter to be handled pursuant to applicable Hospital policy.
- (b) In the event the MEC determines to investigate the matter, the MEC shall either investigate the matter itself or shall request that the matter be investigated by a standing committee of the Medical Staff or an ad hoc committee consisting of at least three (3) practitioners at the Hospital (either such committee is referred to herein as the "Investigating Committee").
- (c) The Investigating Committee, like the MEC, will have the authority to review relevant documents, interview individuals, and (if approved by the MEC and CEO) to retain external consultants or peer reviewers.
- (d) The MEC or Investigating Committee, as applicable, will provide the NPP with a written notice generally describing the complaints or concerns being investigated and will also provide the NPP with access to any medical records related thereto.
- (e) The MEC or Investigating Committee, as applicable, will thereafter permit the NPP an opportunity to meet with the committee and provide information relevant to the complaint or concern giving rise to the investigation.
- (f) The MEC or Investigating Committee, as applicable, will complete its investigation as soon as reasonably possible and will prepare a written report of its general findings and recommendations, a copy of which will be provided to the NPP, the CEO, and the CMO. If an Investigating Committee conducts the investigation, it shall forward its written report of findings and recommendations to the MEC. The MEC may adopt none, some, or all of the report and recommendations. The MEC may also request that the Investigating Committee conduct further investigation or the MEC may elect to conduct further investigation itself.
- (g) If the MEC's final recommendations for action (if any) will restrict or preclude the NPP from exercising his or her clinical privileges, the matter shall be forwarded to the Governing Board for final review and action. If the MEC's final

recommendations for action (if any) will not materially restrict or preclude the NPP from exercising his or her clinical privileges, the MEC will implement the recommendation as its final action.

- (h) When applicable, the Governing Board (or designee) will meet and consider the MEC's written report of findings and recommendations. The Governing Board (or designee), may conduct any additional investigation that it deems reasonably necessary. Otherwise, if satisfied with the written report, the Governing Board will make a final determination regarding what action, if any, should be taken. The Governing Board will provide notice of its determination to the NPP and MEC.

**ARTICLE 5: AMENDMENT AND ADOPTION**

**Section 5.1 Amendment**

This Corrective Action and Fair Hearing Manual may be amended or repealed, in whole or in part, pursuant to the process and procedures set forth in the Governance and Organization Manual.

**Section 5.2 Medical Staff**

This Corrective Action and Fair Hearing Manual was recommended to the Governing Board by the Medical Staff and adopted by the Governing Board in accordance with and subject to the Medical Staff Bylaws.

By: \_\_\_\_\_  
Chief of Staff

Date: \_\_\_\_\_

**Section 5.3 Governing Board**

This Corrective Action and Fair Hearing Manual was approved and adopted by consent of resolution of the Governing Board after considering the Medical Staff's recommendation and in accordance with and subject to the Hospital's Bylaws.

By: \_\_\_\_\_  
Chairperson, Governing Board

Date: \_\_\_\_\_

**Section 5.4 Record of Revisions**

<b>Date</b>	<b>Article/Section Modified</b>
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