

# **FAIR HEARING PLAN**

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# ARTICLE I

## APPLICATION OF REVIEW PROCEDURES

### 1.1 **SCOPE**

This Plan provides methods for review, hearing, and appeal of certain types of recommendations made or actions taken with respect to Staff membership and/or clinical privileges. Two types of formal hearings are provided; basic and special. A "basic hearing" is a hearing conducted by the Executive Committee, a subcommittee of the Executive Committee or committee appointed by the Board and used simplified rules of procedure (Article III). A "special hearing" is conducted by a specially appointed ad hoc committee or a hearing officer (Article IV). An Affected Practitioner is entitled to only one type of hearing; the selection of the type of hearing is determined by the nature of the recommendation or action involved.

### 1.2 **DEFINITIONS**

The following definitions shall apply to this Plan:

**ADMINISTRATION:** means the executive and administrative organization of the hospital.

**ADMINISTRATOR:** means the individual appointed by the Board to act on its behalf in the overall administrative management of the Hospital.

**AFFECTED PRACTITIONER:** means a Staff Member or Initial Applicant as to whom a Staff or Board recommendation was made or action taken.

**BOARD:** means the Board of Trustees of Guam Memorial Hospital Authority, who have overall responsibility for the conduct of the hospital, including the medical staff.

**BYLAWS:** means the Bylaws of the Staff.

**EXECUTIVE COMMITTEE:** means the Executive Committee of the Medical Staff.

**INITIAL APPLICANT:** means a physician, dentist, podiatrist or other qualified health care professional making application for initial appointment to the Medical-Dental Staff.

**PMS:** means the President of the Medical Staff

**SPECIAL NOTICE:** means written notification by registered mail or certified mail, return receipt requested, or personal delivery by a Hospital employee designated by the Administrator, subject 5.9.

**STAFF:** means the organized Medical-Dental Staff of the Hospital.

**STAFF MEMBER:** means a physician, dentist, podiatrist or other qualified health care professional who is a member of the Staff.

### 1.3 **WHEN BASIC OR SPECIAL HEARING PROCEDURES DO NOT APPLY**

When the formal (basic or special) hearing procedures delineated in this Plan do not apply to a recommendation or action, any Medical-Dental-Podiatry Staff or Initial Applicant member who believes he/she is aggrieved by any such action or recommendation of the Executive Committee or Board may seek review of the action or recommendation by submitting a written statement taking exception to such action or recommendation and specifying the reason therefor.

The statement shall be read or furnished to whichever body made the recommendation or took action, and made a part of the Staff Member's or Initial Applicant's permanent file. The statement may also request an opportunity to appear before the Executive Committee or Board to informally discuss his/her position on the action, which request may be granted in the discretion of the Executive Committee or Board. After review the Board may also, in its sole discretion, direct a basic or special hearing be held (even though one is not required), to review and make recommendations concerning the underlying matter at issue.

## ARTICLE II

### ADVERSE RECOMMENDATION OR ACTION

#### 2.1 NOTICE OF RECOMMENDATION OR ACTION

When a recommendation is made or action taken by the Executive Committee or the Board which, according to this Plan, entitles an Affected Practitioner to a basic hearing (3.1) or special hearing (4.1) prior to a final decision of the Board on this recommendation or action, the Affected Practitioner shall be promptly given Special Notice by the Administrator. This Special Notice shall contain:

- A. A statement of the recommendation made and the general reasons for it;
- B. A statement that the Affected Practitioner has the right to request a hearing on the recommendation within 30 days of this receipt of the notice;
- C. A statement of the kind of hearing (basic or special) to which the Affected Practitioner is entitled; and
- D. A copy of this Plan, unless it has already been provided to the Affected Practitioner.

#### 2.2 REQUEST FOR HEARING

The Affected Practitioner shall have thirty (30) days following the date of the receipt of such notice within which to request a hearing. The request shall be made by a writing delivered in person or by certified mail to the Administrator.

#### 2.3 WAIVER BY FAILURE TO REQUEST A HEARING

An Affected Practitioner who fails to request a formal hearing within the time and in the manner specified in 2.2 waives any right to such hearing and to any possible appellate review. When such waiver is in connection with:

- A. a proposed or actual adverse action by the Board, it shall constitute acceptance of the action, which shall thereupon become effective as the final decision of the Board;
- B. an adverse recommendation or action by the Executive Committee, it shall constitute acceptance of that recommendation, which shall thereupon become and remain effective pending the final decision of the Board. In this event, the Board shall consider the Executive Committee's recommendation at its next regular meeting following waiver. In its deliberations, the Board shall review and consider the recommendation and supporting documentation of the Executive Committee and may consider any other relevant information received from any source. The Board's action on the matter shall constitute the final decision of the Board.

## **ARTICLE III**

### **BASIC HEARING PROCEDURES**

#### **3.1 APPLICATION OF BASIC HEARING PROCEDURES**

The basic hearing procedures as set forth in Article III of this Plan shall apply to the following recommendations or actions:

- A. Automatic suspension of Staff Membership or clinical privileges due to loss of licensure; governmentally authorized prescribing authority; or conviction of any felon or any crime arising out of professional practice.
- B. Denial of a request by an active, associate, courtesy or consulting category member to obtain clinical privileges which are not ordinarily possessed by professionals of like training, experience, Staff category and Staff Membership duration.
- C. Denial of a requested change Staff category;
- D. Issuance of a letter of reprimand without any reduction or limitation on the exercise of clinical privileges;
- E. Imposition of a consultation requirement of more than thirty (30) days or the duration of hearing and appeal proceedings regarding Staff Membership or clinical privileges, or the duration of provisional status, whichever is longer;
- F. Non-reappointment to the Staff by reason of failure to document financial responsibility/professional liability insurance requirement compliance. (However, a hearing based on this action shall be limited to the issue of whether financial responsibility compliance has been documented by the Staff Member).

#### **3.2 NOTICE OF TIME AND PLACE FOR HEARING**

Upon receipt of a timely and proper request for a basic hearing, the Administrator shall, after consultation with PMS or the Board, depending on the body whose recommendation or action prompted the request for hearing, promptly schedule and arrange for the hearing. At least seven (7) days prior to the hearing date, the Administrator shall notify the Affected Practitioner of the date, time and place of the commencement of the hearing by Special Notice. The hearing date ordinarily should not be less than thirty (30) nor more than forty-five (45) days from the date of receipt of the request for hearing.

#### **3.3 STATEMENT OF REASON**

If the reason(s) for the action or recommendation have not already been stated to the Affected Practitioner, he/she may request that such reasons be provided in his/her request for hearing. Such a request for reasons shall be responded to by letter from the Administrator, mailed or delivered to the Affected Practitioner at least three (3) days before the scheduled date for the hearing. The statement of reasons may be amended at any time, provided that Affected Practitioner is given a reasonably sufficient opportunity to prepare to meet any added reasons.



### **3.4 APPOINTMENT OF HEARING COMMITTEE**

#### **3.4-1 By Medical Staff.**

A hearing occasioned by recommendation of the Executive Committee shall be conducted by:

- A. a quorum of the Executive Committee; or
- B. a subcommittee of no less than three physicians, dentists, or podiatrists at least one of which persons must be a member of the Executive Committee, appointed by the PMS to conduct the hearing.

The PMS, who shall not be a member of the committee, shall appoint a member of the committee to serve as its chair.

#### **3.4-2 By Board.**

A hearing occasioned by adverse action of the Board shall be conducted by a hearing committee appointed by the Board. This committee shall be composed of not less than three members, at least one of whom shall be a physician, dentist or podiatrist. The Chairperson of the Board, who shall not be a member of the hearing committee, shall designate a member of the committee to serve as its chair.

#### **3.4-3 Service on Hearing Committee.**

A Staff or Board member shall not be disqualified from serving on a hearing committee merely because of prior participation in the investigation of the underlying matter at issue or because of knowledge of facts involved. In any event, all members of a hearing committee shall be required to consider and decide the case with good faith objectively.

#### **3.4-4 Notice to Affected Practitioner.**

The administrator shall notify the Affected Practitioner of the hearing committee's composition.

### **3.5 APPEARANCE AND REPRESENTATION**

#### **3.5-1 Appearance of Affected Practitioner.**

The Affected Practitioner requesting the hearing must be present for the hearing; his/her failure to appear at the date and time set forth in the notice and proceed with the hearing shall constitute a waiver of the right to a hearing.

#### **3.5-2 Representation. At any basic hearing:**

- A. The Affected Practitioner shall represent him/herself.
- B. If the hearing committee is the Executive Committee or a subcommittee thereof, the PMS may, in his/her discretion, appoint him/herself or another Staff Member to represent the position adverse to the Affected Practitioner.
- C. If the hearing committee is a committee appointed by the Board, the Chairperson of the Board may, in his/her discretion, appoint a person to represent the position adverse to the Affected Practitioner.

- D. A person assigned to represent the interest adverse to the Affected Practitioner shall be called to "Advocate".
- E. Neither the Affected Practitioner nor the Advocate may participate in deliberations of the hearing committee.

### **3.6 HEARING CONDUCT AND EVIDENCE**

#### **3.6-1 Hearing Conduct.**

The Chairperson of the hearing committee shall be the presiding officer. The presiding officer shall act to maintain decorum and to assure that all participants in the hearing have a reasonable opportunity to present relevant oral and documentary evidence. The presiding officer shall determine the order of procedure during the hearing and shall make all rulings on matters of law, procedure and the considerations of evidence. The presiding officer may also promulgate hearing rules consistent with 5.4.

The hearing shall be conducted in such a manner that both the Affected Practitioner and the Advocate, if any, has an opportunity to have his/her position fairly heard and considered. Members of the hearing committee may ask questions of the Affected Practitioner and the Advocate, if any.

#### **3.6-2 Evidence.**

The Affected Practitioner and the Advocate, if any, may submit to the hearing committee for consideration:

- A. Written statements, letters and documents, which are relevant to the subject matter of the hearing, including relevant portions of the file maintained by the Hospital regarding the Affected Practitioner.
- B. Oral statements by the Affected Practitioner, a person representing him/her and the Advocate (if any).
- C. Only when deemed essential to a meaningful hearing, the presiding officer may, in his/her discretion, authorize the appearance, examination and cross-examination of witnesses, consistent with supplemental hearing rules; unless, so authorized, neither the Affected Practitioner nor the Advocate shall have a right to present witnesses, or cross-examine in person.

Evidence admitted in the hearing need not strictly meet the requirements of admissibility of a court of law, and the hearing committee may consider any evidence customarily relied upon by responsible persons in the conduct of serious affairs.

### **3.7 BURDEN OF PROOF**

The Affected Practitioner shall have the burden of proof and must demonstrate that the action or recommendation is:

- A. Arbitrary;
- B. Capricious; and/or
- C. Based on inaccurate or insufficient information through no fault of the Affected Practitioner.

### **3.8 RECORDING OF HEARING**

The hearing shall be recorded by minutes prepared by a recording secretary selected by the Administrator, which minutes shall be subject to approval and amendment by the hearing committee. Other means of recording (e.g., electronic tape or court stenographer) shall be used only at the request or with the consent of the hearing committee.

### **3.9 RECOMMENDATION**

#### **3.9-1 Notice.**

Within thirty (30) days after completion of the hearing, the hearing committee shall meet, deliberate, and then issue its report in writing to the Administrator. The report shall be submitted by the Administrator to the PMS or Board (as appropriate), the Advocate (if any), and to the Affected Practitioner (by Special Notice).

#### **3.9-2 Action on Recommendation**

- A. If the hearing committee was a subcommittee of the Executive Committee, its report shall be submitted to the Executive Committee for consideration. Thereafter, the Executive Committee shall make its final recommendation, subject to approval by the Board.
- B. If the hearing committee was the Executive Committee as a whole, the hearing committee report shall become the final recommendation of the Executive Committee, subject to Board action.
- C. If the hearing committee was one appointed on behalf of the Board, its report shall become its final recommendation, subject to Board action. If timely requested, final Board action may be subject to reconsideration on appeal.

### **3.10 APPEAL**

If, following a basic hearing pursuant to this Article, the Affected Practitioner believes that the hearing committee's recommendation was arbitrary, capricious, or lacks any evidence in support, which shall be the sole grounds for appeal, he/she may, within fifteen (15) days of receipt of notice of the recommendation, submit a written appeal of the recommendation consisting of not more than ten (10) pages of text (not including exhibits) concisely stating the basis therefor to the Administrator.

If such an appeal is filed, the hearing committee, a representative thereof, or the Advocate, if any, may submit a written response in opposition within fifteen (15) days after the appeal is received. The appeal shall be considered by the Board which shall, within forty-five (45) days after receipt of the appeal, take one of the following actions:

- A. Refer the matter back to the hearing committee for further review or supplemental findings: if this is done, the hearing committee shall respond in writing to the Board request within fifteen (15) days of request, and the Board shall then take the actions in (b), (c) or (d) below within thirty (30) days after receipt of the response; or
- B. Uphold the recommendation of the hearing committee and take final action accordingly; or
- C. Reverse the recommendation of the hearing committee, with or without the requirement that

further hearings be conducted by the hearing committee; or

- D. Reverse the recommendation of the hearing committee and require a special hearing be held in accordance with the provisions of Article IV of this Plan.

The Administrator shall advise in writing the Affected Practitioner, by Special Notice of the outcome of the appeal.

## **ARTICLE IV**

### **SPECIAL HEARING PROCEDURES**

#### **4.1 APPLICATION OF SPECIAL HEARING PROCEDURES**

The special hearing procedures as set forth in Article IV of this Plan shall apply to the following recommendations or actions:

- A. Non-reappointment to the Staff, except when because of: failure to timely submit a recredentialing form; or to document financial responsibility; or timely request reinstatement following an expiration of leave of absence.
- B. Denial, involuntary reduction or suspension of clinical privileges of active, associate, courtesy or consulting category member which are ordinarily possessed by Staff member of like or similar training and Staff duration, for fifteen (15) days or more;
- C. Revocation or suspension of Staff Membership except when because of: failure to timely submit a recredentialing form; or to document financial responsibility; or to timely request reinstatement following expiration of a leave of absence;
- D. Denial of an initial application for appointment to the Staff, except when because of: the application being incomplete; the application containing material inaccuracies; or any reason unrelated to the competence or professional conduct of the Initial Applicant;
- E. Such other recommendations or actions as the Board may direct in its discretion, after consultation with the Executive Committee.

#### **4.2 TIME AND PLACE FOR HEARING**

##### **4.2-1 Scheduling the Hearing.**

Upon the receipt of a timely and proper request for a special hearing, the Administrator shall promptly schedule and arrange for the hearing. The hearing date shall ordinarily be not less than thirty (30) days nor more than sixty (60) days from the date of receipt of the request for hearing.

##### **4.2-2 Shortened Time Limit for Hearing.**

A hearing for a Staff Member who is under suspension then in effect may be held in less than thirty (30) days after the request is made, provided such Staff Member's request for the hearing includes a specific request that the hearing be held in less than thirty (30) days; in the event such a special request for a shorter period is made by a Staff Member who is under suspension, the hearing shall be held as soon as the arrangement and preparations for it may reasonable be

made and requirements for same met, subject to 4.2-3 below.

#### 4.2-3 Lengthened Time Limit for Hearing.

If the Affected Practitioner objects to the composition of an ad hoc hearing committee, or a determination is made that an alternate hearing officer shall conduct the hearing, the sixty (60) days maximum limitation shall be deemed waived by the Affected Practitioner.

In such event, the hearing shall be held as soon as the arrangement and preparations for it may reasonable be made and the requirements for same met. The Administrator shall advise those involved in the hearing process of changes necessitated by such objections.

### **4.3 HEARING NOTICE, RESPONSE AND WITNESS LISTS**

#### 4.3-1 Hearing Notice.

The Administrator shall issue a notice of hearing by Special Notice to the Affected Practitioner and by a suitable means of notice to other involved in the hearing process. The notice of hearing shall specify:

- A. Time and Location - The scheduled date, scheduled time and location of the hearing, as well as a statement of reasons and list of witnesses (as provided in 4.2-2 and 4.2-3).
- B. Statement of Reasons - As applicable, a statement of the alleged acts or omissions of a Staff member, a list by number of the specific or representative patient charts in question and/or other reasons or subject matter forming the basis for the adverse recommendation or action which is the subject of the hearing.
- C. List of Witnesses - A list of witnesses, if any, that the body which took or proposed adverse action (or its designated representative) believes will be called as witnesses to testify in support of the recommendation or action at the time of the hearing.

#### 4.3-2 Response and List of Witnesses of Affected Practitioner.

Within fourteen days (14) after receipt of the notice of hearing, the Affected Practitioner shall furnish to the Administrator his/her written response to the Statement of Reasons and a list of the individuals (and their addresses) who may or will be called as witnesses in support of the Affected Practitioner's position at the time of the hearing.

#### 4.3-3 Amendments.

The statement of reasons, the response, or the list of witnesses of either party may be amended at any time by the party furnishing them, provided that the opposite party is given a reasonable period in which to prepare to meet the substance of the amendments to the statement of reasons or the substance of testimony of additional witnesses. For the purpose of this provision, a time period of one week or more, shall be presumed to be "reasonable period". The permissibility of a shorter period of notice shall be subject to the discretion of the presiding officer for the hearing.

### **4.4 APPOINTMENTS TO HEARING COMMITTEE**

#### 4.4-1 Hearing Committee, Presiding Officer and Notice.

- A. The Administrator, acting for the Board, after considering the recommendations of the PMS (and that of the Chairperson of the Board, if the hearing is occasioned by a Board determination) shall appoint a hearing committee which shall generally be

composed of not less than three members.

The committee shall be composed of Staff appointees who shall not have actively participated in the consideration of the matter involved at any previous level, or of physicians or laypersons not connected with the Hospital or a combination of such persons. The committee shall not include any individual who is in direct economic competition with the Affected Practitioner or any individual who is professionally associated with or related to the Affected Practitioner.

- B. Designation shall also be made of the presiding officer of the hearing committee who may, but need not be a voting member of the committee, e.g., an attorney may be appointed as presiding officer to participate in committee deliberations and assist in the preparation of the hearing committee report, but not have a vote for or against adoption of the final hearing committee report. The appointments are subject to the further requirements and procedures of this section.
- C. Notice of the hearing committee composition shall be given, either as part of the Notice of Hearing or by late special Notice to the Affected Practitioner.

#### 4.4-2 Service on Hearing Committee.

A Staff Member or other person appointed to serve on an ad hoc hearing committee shall not be disqualified from serving on a hearing committee merely because of knowledge of underlying facts or because of participation in an earlier hearing involving the same Affected Practitioner.

However, if after objection timely submitted, the Administrator, in his/her good faith discretion, determines that there is reasonable evidence to support the conclusion that a proposed member of the hearing committee is either in direct economic competition with the Affected Practitioner or could not decide the matter with good faith objectively, the proposed member of the hearing committee shall be removed and, as appropriate, replaced before the hearing.

#### 4.4-3 Questions to Hearing Committee.

Within seven (7) days after the Affected Practitioner is given notice of those who are proposed to serve on the hearing committee, the such Affected Practitioner shall be entitled to submit reasonable written questions of not more than 10 in number limited to the issues of direct economic competition or bias to all or any one or more of the proposed hearing committee members through the Administrator.

The Administrator shall, in his/her good faith discretion, determine whether questions are reasonable and relevant to the issues of direct economic competition or bias, and shall strike such questions which are unreasonable or irrelevant.

The questions, except those which are deemed by the Administrator to be unreasonable or irrelevant, will then be submitted to the proposed hearing committee member(s) to whom directed, who shall then submit his/her responses(s) within thirty (30) days to the Administrator. The Administrator shall in turn forward the answers on a prompt basis to the Affected Practitioner and the PMS or Board Chairperson, depending upon the body which took the action or made the recommendation which is the subject of the hearing.

#### 4.4-4 Objections to Proposed Hearing Committee Members.

Within seven (7) days after receipt of notice of the proposed hearing committee membership or, if the procedure set forth in 4.4-3 was elected by the Affected Practitioner, seven (7) days after his/her receipt of the responses to the written questions, the Affected Practitioner shall be entitled to submit his/her written objections, if any, to those proposed members of the hearing committee which he/she believes are in direct economic competition with him/her or are so biased against him/her as to prevent a fair hearing if they serve as a hearing committee member. Such objections, if any will be reviewed by the Administrator who shall determine in his/her good faith discretion as to whether or not the objections are meritorious.

- A. If none of the objections are deemed to be meritorious by the Administrator, he/she shall so advise the Affected Practitioner, in writing, and the hearing committee shall be constituted in the manner proposed.
- B. If the Administrator determines that the objections to any or all of the hearing committee membership have substance, he/she shall confer with the PMS or the Chairperson of the Board, depending upon the body who recommendation or action is the subject of the hearing, as to possible alternative proposed members of the hearing committee.
  - 1. If the PMS or Chairperson of the Board believes that there are other alternative persons who may satisfactorily meet the requirements of membership on the hearing committee, the process set forth in 4.3-3 and this 4.3-4 regarding written questions and objections, shall be repeated as necessary until an appropriate hearing committee can be constituted.
  - 2. If, however, the PMS or Chairperson of the Board believes that there is no person available at the Hospital or in the community, who meets the committee membership requirements for participation on a hearing committee, the requirements of 4.4-1 shall not apply.

#### 4.4-5 Alternate Hearing Officer.

If by reason of objections to proposed membership which are determined to be valid by the Administrator, a hearing committee of at least three (3) volunteer persons as provided in 4.4-1 cannot be constituted, the Administrator shall be empowered to appoint a single person to serve as hearing officer (who may, but need not be a Staff Member) where:

- A. In good faith discretion of the Administrator, such person is not in direct economic competition with, and has no known bias towards the Affected Practitioner; and
- B. The Administrator has consulted with the Affected Practitioner and the PMS or Board Chairperson (depending upon which body prompted the hearing) regarding the appointment of such person(s) and the Administrator has, in his/her good faith discretion, taken into account the legitimate objections, or preferences of the Affected Practitioner and the PMS or Board Chairperson as well as the availability of a qualified person to serve as hearing officer.
- C. As a part of the appointment process, in lieu of consultation provided in (b) above, the Administrator may, in his/her sole discretion, provide the Affected Practitioner and the PMS or Board Chairperson with a list, by name, of two (2) or more prospective hearing officers from which one person may be appointed by the Administrator to serve as hearing officer.

If submitted, the Affected Practitioner and the PMS or Board Chairperson, may submit objections and the reasons in writing to the Administration within seven (7) days of receiving the list. If objections are timely made and meritorious in the judgment of the Administrator, this process may be repeated until a mutually satisfactory hearing officer can be selected or the procedures of (b) above utilized.

#### 4.4-6 Notice of Appointment of Hearing Officer.

Notice of the appointment a hearing officer shall be promptly given to the Affected Practitioner. Such notice shall include the estimated fee and expenses of the hearing officer, if any.

- A. If a fee and expense are required by the hearing officer for his/her services as such, the cost will be equally borne by the Hospital and the Affected Practitioner and an advance of one-half the estimated costs shall be sent to the hearing officer by the Affected Practitioner within 14 days from notice of the hearing officer's appointment.
- B. If, and only if, the Affected Practitioner who requested the hearing can demonstrate such poverty that he/she is unable to pay his/her portion of the hearing officer's fee, if any, the entire fee for the hearing officer shall be borne by the Hospital.

However, in order to establish this poverty sufficient to relieve the Affected Practitioner of his/her obligation to pay half the fee and expenses for such hearing officer, the Affected Practitioner must provide, upon request, financial information which the Administrator deems necessary to make the determination include personal and business income tax returns for the preceding two years, financial statements prepared regarding his/her practice (including any professional corporation or partnership owned in whole or in part by him/her) and a statement of assets under oath.

#### 4.4-7 Substituted Reference to Hearing Officer.

In the event a hearing officer is appointed instead of a hearing committee, all references in this Article to the "hearing committee" or "presiding officer" shall be deemed to refer instead to the hearing officer, unless the context would clearly otherwise required.

#### 4.4-8 Waiver of Rights.

In the event the Affected Practitioner fails to, within seven (7) days after notice to timely submit written questions or raise objections to proposed members of the hearing committee or to a proposed alternate hearing officer, he/she shall be deemed to have waived his/her right to submit such questions and/or make objections to the composition of the hearing committee or the selection of an alternate hearing officer.

Further, a failure of the Affected Practitioner to timely submit financial information upon request to the Administrator necessary to establish a claim of poverty with regard to payment of the hearing officer, shall constitute a waiver of any right to have the Hospital pay the full amount of a hearing officer's fee.

The failure to timely submit one-half of the estimated fees and expenses of a hearing officer, if one is appointed, shall be deemed to be a waiver of the right to any hearing, unless an exception based on poverty is granted.



In addition, the failure of the Affected Practitioner to pay his/her share of the finally determined fees of the hearing officer, after the hearing, shall result in the withholding of any clinical privileges the Affected Practitioner holds, until such obligation is paid.

#### **4.5 PERSONAL PRESENCE**

The personal presence of the Affected Practitioner shall be required. An affected Practitioner who fails without good cause to appear and to proceed at such hearing shall be deemed to have waived such rights or review in the same manner and with the same consequence as provided in 2.4 and 5.2.

#### **4.6 PRESIDING OFFICER**

The presiding officer shall act to maintain decorum and to assure that all participants in the hearing have a reasonable opportunity to present appropriate oral and documentary evidence. The presiding officer shall determine the order of procedure during the hearing and shall make all rulings on the matters of law, procedure, and the considerations of evidence. If the hearing is conducted by a single hearing officer as provided in 4.4 he/she shall serve as the presiding officer.

#### **4.7 REPRESENTATION AND APPOINTMENT OF ADVOCATE**

The Affected Practitioner who requested the hearing shall be entitled to be accompanied and represented at the hearing by a member of the Staff in good standing or by a member of his/her local professional society.

The Executive Committee or Board, as may be applicable, shall appoint a person to present the facts in support of its adverse recommendation referred to as the "Advocate". The Advocate may present evidence but, even if an Executive Committee or Board member, shall not participate in deliberations nor vote on the matter at issue. Representation of either party by an attorney at law shall be governed by the provisions of 5.1.

#### **4.8 RIGHTS OF PARTIES**

During a hearing, each of the parties shall have the right to:

- A. Call and examine witnesses;
- B. Cross-examine witnesses called by the other party;
- C. Introduce exhibits;
- D. Question witnesses on matters relevant to the issues; and
- E. Rebut any evidence.

If the Affected Practitioner does not testify, he/she may be called and examined as if under cross-examination.

#### **4.9 PROCEDURE AND EVIDENCE**

The hearing will not be conducted according to rules of law relating to the examination of witnesses or presentation of evidence. Any relevant matter upon which responsible persons customarily rely in the conduct of serious affairs shall be admitted, regardless of the admissibility of such evidence in a court of law.

Each party shall, prior to, during, at the close of or if specifically requested and authorized by the presiding officer, within seven (7) days of the hearing, be entitled to submit memoranda concerning any issue of procedure, fact, or conclusions drawn from fact, and such memoranda shall become part of the hearing record.

The presiding officer may, but shall not be required, to order that oral evidence be only taken on oath or affirmation.

#### **4.10 MATTERS CONSIDERED**

In addition to relevant evidence formally presented at the hearing, the hearing committee shall be entitled to consider any pertinent material contained on file in the Hospital and all other information which can be considered in connection with applications for appointments or reappointments to the Staff and a request for clinical privileges. In this respect, to facilitate the hearing efficiency, subject medical charts, investigative reports, pertinent correspondence, committee minutes, and the statement of reasons, may be furnished by the Administrator in his/her discretion, to the hearing committee provided the Affected Practitioner is advised same have been furnished to the hearing committee and may challenge its relevancy at the hearing.

The hearing committee shall be entitled to conduct independent review research and interviews, or retain an independent consultant to do so, but may utilize the products of such in its decision, only if the Affected Practitioner and Advocate are aware of such, and have an opportunity to rebut any information so gathered.

#### **4.11 BURDEN OF PROOF**

The Advocate shall have the initial obligation to present evidence in support of the subject recommendation or action. The Affected Practitioner shall thereafter be responsible for supporting a challenge to the adverse recommendation or action by convincing evidence that:

- A. the grounds therefor are not supported by the evidence; or
- B. the conclusions drawn therefrom are arbitrary or capricious.

#### **4.12 RECORD OF HEARING**

A record of the hearing shall be made by a certified court stenographer (reporter). The Affected Practitioner shall be entitled to a copy of the record upon payment of the costs for a duplicate copy.

**4.13 DELIBERATIONS AND RECOMMENDATION OF THE HEARING COMMITTEE OR HEARING OFFICER**

4.13-1 Deliberations.

Upon conclusion of the presentation of evidence, the hearing shall be closed. Within 30 days after thereafter, the hearing committee, outside the presence of any other person, shall conduct deliberations and consider the admitted evidence.

4.13-2 Contents of Report.

The hearing committee shall prepare a report which shall contain a concise statement of recommendations and the reasons justifying the recommendations made. This report shall be delivered to the Administrator.

**4.14 DISPOSITION OF HEARING COMMITTEE REPORTS**

Upon its receipt, the Administrator shall forward the hearing committee report and recommendation, along with all supporting documentation, to the Board for further action.

The Administrator shall also send a copy of the report and recommendation by Special Notice to the Affected Practitioner.

A copy of the report of the hearing shall be delivered by the Administrator to anybody other than the Board that made the adverse recommendation for informational purposes.

**4.15 NOTICE AND EFFECT OF RESULTS**

4.15-1 Effect of and Action Upon Favorable Hearing Committee Report.

If the hearing committee's report pursuant to 4.13 is favorable to the Affected Practitioner, the Administrator shall promptly forward it, together with all supporting documentation, to the Board for its final action.

- A. The Board may, before taking final action thereon, refer the matter back to the hearing committee or the Executive Committee for further consideration or information. Any such referral back shall state the reasons therefor, set a time limit within which a subsequent recommendation to the Board must be made, and may include a directive that an additional hearing or other review be conducted to clarify issues that are in doubt. After receipt of such subsequent recommendation and any new evidence in the matter, the Board shall take final action.
- B. If the Board's action on the matter is favorable to the Affected Practitioner it shall become the final decision of the Board, and the matter shall be closed.
- C. If the Board's action would result in any of the recommendations or actions listed in 1.3 or 1.4, the Special Notice shall inform the Affected Practitioner of a right to request an appellate review by the Board as provided in 4.18 of this Plan, as if the hearing committee's report had been adverse.

In such circumstances, the Board's tentative position adverse to the Affected Practitioner shall be represented by a person, selected by the Chairperson of the Board for appellate review.

All references in 4.14 through 4.26, of this Plan to the "hearing committee" would

instead refer to the Board, as the context requires.

#### 4.15-2 Effect of Adverse Hearing Committee Report.

If the report and recommendation of hearing committee pursuant to 4.16 is adverse to the Affected Practitioner in any of the respects listed in 1.3 or 1.4, Special Notice shall be given of the report and recommendation and his/her right to request appellate review by the Board as provided in 4.16 of this Plan.

#### **4.16 REQUEST FOR APPELLATE REVIEW**

An Affected Practitioner shall have 10 days following receipt of a notice pursuant to 4.15-1 (c) or 4.15-2, to file a written request for an appellate review. Such request shall be delivered to the Administrator either in person or by certified mail and may include a request for a copy of the report and record of the hearing committee and all other material, favorable or unfavorable, which was considered in making the adverse action or result.

#### **4.17 WAIVER BY FAILURE TO REQUEST APPELLATE REVIEW**

An Affected Practitioner who fails to request an appellate review within the time and in the manner specified in 4.18 waives any right to such review. Such waiver shall have the same force and effect as that provided in 2.4 and 5.2 of this Plan.

#### **4.18 NOTICE OF TIME AND PLACE FOR APPELLATE REVIEW**

Upon receipt of a timely request for appellate review, the Administrator shall deliver such request to the Board. The Board shall schedule and arrange for an appellate review which shall be not more than 45 days from the date of receipt of the appellate review request; provided, however, that an appellate review for a Staff Member who is under a suspension then in effect shall be held as soon as the arrangements and preparations for it may reasonably be made. The Administrator shall send the Affected Practitioner notice of the time, place and date of the review.

The time for the appellate review may be extended by the Board for good cause.

#### **4.19 APPELLATE REVIEW BODY**

The Board shall be the appellate review body; one Board member shall be designated as chairperson of the appellate review proceedings.

#### **4.20 NATURE OF APPELLATE REVIEW PROCEEDINGS**

The appellate review proceedings of the Board shall be an appellate review based solely upon the record of the hearing before the hearing committee, that committee's report, and all subsequent results and actions thereon. The Board shall also consider the written statements as may be presented and accepted under this Article.

#### **4.21 WRITTEN STATEMENTS**

The Affected Practitioner shall submit a written statement detailing those findings of fact, conclusions and procedural matters with which he/she disagrees, and the reason for such disagreement. This written statement may cover any matters raised at any step in the hearing process.

The statement shall be submitted to the Board through the Administrator at least five days prior to the scheduled date of the appellate review. A written statement in reply may be submitted by the Executive Committee, or if Board action is being appealed, the person selected by the Board to take the position adverse to the Affected Practitioner. If submitted, the Administrator shall provide a copy thereof to the Affected Practitioner at least two (2) days prior to the scheduled date of the appellate review.

#### **4.22 PRESIDING OFFICER**

The chairperson of the appellate review proceedings shall be presiding officer for any appellate hearing and shall determine the order of procedure during the review, make all required rulings, and maintain decorum.

#### **4.23 ORAL STATEMENT**

The Board in its sole discretion, may allow the parties or their representatives to personally appear and make oral statements in favor of their positions. Any party or representative so appearing shall be required to answer questions put by any member of the Board.

#### **4.24 CONSIDERATION OF NEW OR ADDITIONAL MATTERS**

Subject to 5.3 below, new or additional matters or evidence not raised or presented during the original hearing or in the hearing report and not otherwise reflected in his/her record shall be introduced at the appellate review only under unusual circumstances. The Board in its sole discretion, shall determine whether such matters or evidence shall be considered or accepted.

#### **4.25 RECESSES AND ADJOURNMENT**

The Board may recess the review proceedings and reconvene the same without additional notice for the convenience of the participants or for the purpose of obtaining new or additional evidence or consultation. Upon the conclusion of oral statements, if allowed, the proceedings shall be closed.

The Board shall thereupon, at a time convenient to itself, conduct its deliberations outside the presence of the parties. Upon the conclusion of those deliberations, the appellate review shall be declared adjourned.

#### **4.26 ACTION TAKEN BY BOARD ON APPEAL**

The Board may affirm, modify or reverse the adverse results or action taken by the hearing committee or officer pursuant to 4.16 or 4.17, or, in its discretion, may refer the matter back to the hearing committee or officer for further review and recommendation to be returned to it within 45 days and in accordance with its instructions. Within 15 days after receipt of such recommendation after referral, the Board shall make its final decision.

#### **4.27 FINAL BOARD ACTION AFTER APPELLATE REVIEW**

Unless the matter is referred back to a hearing committee or officer pursuant to 4.16, within 15 days, after the conclusion of the appellate review, including referrals back to the hearing committee or officer, the Board shall render its decision in the matter in writing and shall send notice thereof to the Affected Practitioner by Special Notice, to the PMS, and to the Executive Committee.

#### **4.28 HEALTH CARE QUALITY IMPROVEMENT ACT OF 1986**

Those actions or recommendations which entitle an Affected Practitioner to a special hearing pursuant to Article IV, are those matters the Hospital and Staff reasonably believe represent "professional review action" and "professional review activity" which may "adversely affect" a "physician" pursuant to the Health Care Quality Improvement Act of 1986. In this respect, it is the intent and purpose of this Plan that the initiation and conduct of professional review actions hereunder comply with all material respects with the provisions of 412 of the Act.

### **ARTICLE V**

#### **GENERAL PROVISIONS APPLICABLE TO BASIC AND SPECIAL HEARINGS**

#### **5.1 ATTORNEYS**

##### 5.1-1 The Parties

(a) Basic Hearings

If the Affected Practitioner desires to be represented by an attorney at any basic hearing or at any appellate review pursuant to the provisions of Article III of this Plan, the request for such hearing or appellate review must so state. The hearing committee or appellate review body shall, in its sole discretion, determine whether to permit such representation at the hearings. If and only if it allows the Affected Practitioner to be so represented, the Executive Committee or the Board may also be represented by an attorney at the hearing.

(b) Special Hearings

If the Affected Practitioner desires to be represented by an attorney at any special hearing or at any appellate review appearance pursuant to the provisions of Article IV of this Plan, the request for such hearing or appellate review must so state. The Affected Practitioner shall have an unqualified right to be represented by an attorney at any such special hearing or appellate review appearance. If the Affected Practitioner chooses to be so represented, the Executive Committee or the Board may also be represented by an attorney at the hearing.

Notwithstanding the foregoing, an attorney may be contacted at appropriate times during the proceedings by any party for advice, provided such contact does not unduly interfere with the conduct of a hearing as determined by the presiding officer.

### 5.1-2 The Hearing or Appellate Review Body or Administrator.

A hearing or appellate review body may, in its discretion, consult with legal counsel at any stage of the proceedings for advice on appropriate hearing conduct or the drafting of its report (s). Hospital counsel may serve as counsel to the Hospital, the hearing committee and the Advocate in the same proceeding.

### **5.2 WAIVER**

If at any time after receipt of Special Notice of an adverse recommendation, action or result, an Affected Practitioner fails to make a required request or appearance or otherwise fails to comply with this Plan, the Affected Practitioner shall be deemed to have consented to such adverse recommendation, action or result and to have voluntarily waived all rights under the Bylaws then in effect or under this Plan with respect to the matter involved.

### **5.3 INDEPENDENT CONSULTANTS**

At any stage of hearing proceedings, a hearing committee or the Board may retain an independent consultant, who may or may not be a member of the Staff. The consultant may be provided with medical records, films, slides, reports, or such other materials he/she and the requesting body may deem appropriate for his/her review. The consultant shall present a written or oral report to the requesting body which shall be made available to the parties. A consultant so elected should not be deemed a witness for any of the parties, but an independent advisor whose opinions represent evidence which may be considered.

### **5.4 SUPPLEMENTAL HEARING RULES**

The presiding officer of any hearing or appellate review body may promulgate, with or without the advice of legal counsel, hearing rules to supplement those contained in this Plan. Such rules shall be fundamentally fair to all parties and generally consistent with the provisions of this Plan.

The supplemental rules may set forth order of presenting evidence and oral statements as well as time limits for evidence and oral statements as well as time limits for presentations.

When feasible, the presiding officer may in his/her discretion arrange a pre-meeting with the parties (or their representatives) to decide upon such rules or ask the parties (or their representatives) to meet and propose rules subject to his/her approval.

When such rules are promulgated by the presiding officer, they shall be furnished to the parties before the hearing. Written objections by any of the parties shall be considered and, when deemed meritorious, amendments shall be made in the rules to address the objections.

### **5.5 NUMBER OF REVIEWS**

Notwithstanding any other provision of the Bylaws or of this Plan, no Affected Practitioner shall ever be entitled as a right to more than one hearing and appellate review with respect to an adverse recommendation or action.

Further, the Executive Committee and the Board need not conduct additional hearings or reviews upon reapplication or request for reconsideration by an Affected Practitioner, absent a clear and convincing indication of new or additional information which has a substantial probability of changing the outcome of the previous hearing or appeal.

## **5.6 RELEASE**

By requesting a hearing or appellate review under this Plan, the Affected Practitioner agrees to be bound by the provisions of the Bylaws, this Plan, and the Rules and Regulations, in all matters relating thereto.

## **5.7 ADJOURNMENTS AND TIME LIMIT MODIFICATION**

Any procedural rule or time limit specified in this Plan may be modified or waived by agreement between the presiding officer of the hearing committee, and the Affected Practitioner, duly authorized designate of any of them.

The Board, the presiding officer or a hearing committee may, with discretion grant an extension of any time limits when required for fundamental fairness to any party, to obtain new evidence or for consultation. An Affected Practitioner who requests an extension of any time limit or adjournment which is granted, waives any right to insist on another time limits specified herein being complied with.

## **5.8 GOOD FAITH-ALTERNATIVE SPECIAL NOTICE**

### **5.8-1 Good Faith.**

In addition to those duties imposed in the Bylaws, it shall be the duty of each Staff Member or Initial Applicant who requests a formal hearing to act with utmost good faith before and during the hearing process. Such good faith shall include, but not be limited to, timely compliance with requirements, cooperation in the receipt of required notices, and the exercise of procedures in this Plan without intent to cause undue delay.

In addition to other automatic hearing and appeal right waivers for non-compliance with time limits or appearance requirements, upon a finding by a hearing committee, hearing officer, or the Board that an Affected Practitioner is not acting or has not acted in good faith with regard to the hearing process of this Plan, the hearing committee, hearing officer or Board may limit or deem waived the Affected Practitioner's rights to hearing, appeal, or use of particular procedures in a hearing or appeal.

### **5.8-2 Alternative Mailing.**

If, in attempting to give Special Notice, postal authorities, despite reasonable efforts, are unable to deliver or obtain signature on a return receipt for registered or certified mail, or a representative of the Hospital, despite reasonable efforts, is unable to make personal delivery, at the designated place of mail delivery for the Affected Practitioner, such Special Notice may alternatively given by regular mail that is mailed at least five days before any deadline to the last home address and last office address provided by the Affected Practitioner to Administration.

### **5.8-3 Time Limits Constructive Receipt.**

For the purpose of time limits of this Plan, if the mailing procedure of 5.9-2 is used, the document mailed shall be deemed to have been received at the time the first attempt at registered or certified mail by postal authorities or personal delivery by Hospital personnel was attempted, as documented by the written statement of either.

This presumption of receipt shall be binding on the Affected Practitioner, even if it means rights to hearing, appeal, or objection are waived by failure to comply with time limits. This presumption may be overcome only by a clear and convincing showing to the presiding officer that the failure to make delivery or sign a receipt, was due to error, neglect, or unreasonable delay, of the postal authorities or Hospital representatives, and not the Affected Practitioner.



#### 5.8-4 Designated Place of Mail Delivery.

The designated place of mail delivery shall be the office address last provided by the Affected Practitioner to Administration and any person who signs a receipt for mail there shall be deemed as authorized by the Affected Practitioner to do so.

In the event of his/her absence, each Affected Practitioner shall either: (a) authorize his/her office staff members to receive and sign receipts for mail on his/her behalf, or alternatively, (b) if his/her office shall be closed for more than two successive business days or he/she does not wish his/her behalf, he/she must in a writing sent by certified mail to the Administrator, designate the name and address of an alternate place of delivery (e.g., a law or accounting firm) and provide a statement that any person who receives and signs for mail there is authorized to do so on his/her behalf.

#### 5.8-5 Purpose Good Faith.

The purpose of the foregoing provisions of 5.8-2, 5.8-3 and 5.8-4 are to assure reasonable efforts to give required notices and proceed forward with requested hearings are not thwarted or delayed by refusal to accept delivery, refusal to sign receipts, office closure, absence from the community, or the bad faith on the part of an Affected Practitioner.

### 5.9 **CONSOLIDATION**

If two or more hearing and/or appeals with respect to the same Staff Member are proceeding simultaneously, (e.g., summary suspension and non-reappointment), the Board, at the request of the affected Staff Member, the Administration, PMS, or the Executive Committee, may order the two proceedings consolidated into a single hearing or appeal. In this respect, the Board shall have the authority to suspend or modify time limits and take whatever action most reasonably and fairly to all concerned to accommodate the consolidation.

## ARTICLE VI

### AMENDMENT AND APPLICATION

#### 6.1 **AMENDMENT**

This Plan which is an appendix to the Bylaws may be amended or repealed, in whole or in part, by a resolution of the Staff recommended to and adopted by the Board subject always to the Bylaws of the respective bodies.

#### 6.2 **APPLICATION**

Any matter subject to review or hearing pursuant to the Bylaws after adoption of this Plan by the Board shall be governed by its terms; prior review and hearing procedures shall be deemed superseded by the terms of this Plan.