



**Medical Staff Bylaws**  
**Part II: Investigations, Corrective Action,**  
**Hearing and Appeal Plan**  
9-12-05

**Part II: Investigations, Corrective Action, Hearing and Appeal Plan**

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## SECTION 1. INVESTIGATION AND CORRECTIVE ACTION

- 1.1 **Criteria for Initiation:** Any person may provide information to any member of the Medical Executive Committee (MEC) about the conduct, performance, or competence of medical staff members. When reliable information indicates a member may have exhibited acts, demeanor, or conduct, reasonably likely to be (1) detrimental to patient safety or to the delivery of quality patient care within the Hospital; (2) unethical; (3) contrary to the Medical Staff Bylaws, associated manuals, Medical Staff policies and/or any Rules and Regulations; (4) harassing or intimidating to colleagues, patients and their families, or staff; (5) disruptive of hospital or medical staff operations; or (6) below applicable professional standards, a request for an investigation or action against such member may be initiated by the Chief of Staff, a Clinical Service Chief, the CEO of the Hospital, the Chief Medical Officer of the Hospital, the Governing Board of the Hospital, or the Medical Executive Committee (MEC).
- 1.2 **Initiation:** A request for an investigation must be submitted by one of the above parties to the MEC through the Chief of Staff and supported by reference to specific activities or conduct alleged. If the MEC initiates the request, it shall make an appropriate record of the reasons
- 1.3 **Investigation:** If the MEC concludes an investigation is warranted, it shall direct an investigation to be undertaken. In the event the Governing Board believes the MEC has incorrectly determined an investigation unnecessary, it may direct the MEC to proceed with an investigation. The MEC may conduct the investigation itself, or may assign the task to an appropriate medical staff officer, medical staff clinical service, or standing or ad hoc committee of the medical staff, or refer out to an external peer review consultant, in each case so long as the composition and functioning of such investigative body qualifies for protection under applicable New Mexico peer review statutes. If the investigation is delegated to an officer or committee other than the MEC, such officer or committee shall proceed with the investigation in a prompt manner and shall forward a written report of the investigation to the MEC as soon as practicable. The report may include recommendations for appropriate corrective action. The member shall be notified that the investigation is being conducted and shall be given an opportunity to provide information in a manner and upon such terms as the investigating body deems appropriate. The individual or body investigating the matter may, but is not obligated to, conduct interviews with persons involved, however, such investigation shall not constitute a "hearing" as that term is used in the hearing and appeal plan, nor shall the procedural rules with respect to hearings or appeals apply. Despite the status of any investigation, at all times the MEC shall retain authority and discretion to take whatever action may be warranted by the circumstances including suspension, termination of the investigative process; or other action.
- 1.3.1 An External Peer Review Consultant should be considered only when any applicable attorney-client privilege and any applicable New Mexico peer review privileges can be preserved, and only when:
- a. Litigation seems likely; an outside review is almost always the best course of action in these circumstances. Every step should be taken to avoid even the appearance that the outside reviewers are being asked to achieve a certain result.
  - b. The hospital is faced with ambiguous or conflicting recommendations from the medical staff committees, or where there does not appear to be a strong consensus for a particular recommendation. In these circumstances it may be wise for the MEC or even the Governing Board to retain an objective external reviewer.
  - c. There is no one on the medical staff with expertise in the subject under review, or when the only physicians on the medical staff with that expertise are direct competitors, partners, or associates of the physician under review.

- 1.4 **Medical Executive Committee Action:** As soon as practicable after the conclusion of the investigation the MEC shall take action that may include, without limitation:
- 1.4.1 Determining no corrective action is taken, and if the MEC determines there was not credible evidence for the complaint in the first instance, making a note of that determination in the member's file.(revised11/12)
  - 1.4.2 Deferring action for a reasonable time where circumstances warrant.
  - 1.4.3 Issuing letters of admonition, censure, reprimand, or warning, although nothing herein shall be deemed to preclude service chairs from issuing informal written or oral warnings outside of the mechanism for corrective action. In the event such letters are issued, the affected member may make a written response, which shall be placed -in the member's file, but in no event shall such letters be considered an adverse action entitling the member to a hearing under this Fair Hearing Plan.
  - 1.4.4 Recommending the imposition of terms of probation or special limitation upon continued medical staff membership or exercise of clinical privileges, including, without limitation, requirements for co-admissions, mandatory consultation, or monitoring.
  - 1.4.5 Recommending denial, restriction, modification, reduction, suspension or revocation of clinical privileges.
  - 1.4.6 Recommending reductions of membership status or limitation of any prerogatives directly related to the member's delivery of patient care.
  - 1.4.7 Recommending suspension, revocation, or probation of medical staff membership.
  - 1.4.8 Taking other actions deemed appropriate under the circumstances.
- 1.5 **Subsequent Action:** If the MEC recommends corrective action, that recommendation shall be transmitted to the Governing Board. The recommendation of the MEC shall become final unless the member requests a hearing, in which case the final decision shall be determined as set forth in this Hearing and Appeal plan.
- 1.6 **Automatic Suspension Or Limitation:** In the following instances, the member's privileges or membership will be suspended or limited as described, which action shall be final without a right to hearing or further review, except where a bona fide dispute exists as to whether the circumstances have occurred.
- 1.6.1 **Licensure:**
    - a. **Revocation and Suspension:** Whenever a member's license or other legal credential authorizing practice in this or other state is revoked or suspended, medical staff membership and clinical privileges shall be automatically revoked as of the date such action becomes effective.
    - b. **Restriction:** Whenever a member's license or other legal credential authorizing practice in this or other state is limited or restricted by the applicable licensing or certifying authority, any clinical privileges which the member has been granted at Women's Hospital which are within the scope of said limitation or restriction shall be automatically limited or restricted in a similar manner, as of the date such action becomes effective and throughout its term.
    - c. **Probation:** Whenever a member is placed on probation by the applicable licensing or

certifying authority, his or her membership status and clinical privileges shall automatically become subject to the same terms and conditions of the probation as of the date such action becomes effective and throughout its term.

- d. **Medicare, Medicaid, CHAMPUS, and/or other Federal Programs:** Whenever a member is sanctioned or barred from the Medicare, Medicaid, CHAMPUS or other federal programs, medical staff membership and clinical privileges shall be automatically revoked as of the date such action becomes effective.

1.6.2 **Controlled Substance:**

- a. Whenever a member's DEA certificate is revoked, limited, or suspended, the member shall automatically and correspondingly be divested of the right to prescribe medications covered by the certificate, as of the date such action becomes effective and throughout its terms.
- b. **Probation:** Whenever a member's DEA certificate is subject to probation, the member's right to prescribe such medications shall automatically become subject to the same terms of the probation, as of the date such action becomes effective and throughout its term.

1.6.3 **Medical Record Completion Requirements:** Penalties for failure to satisfy these requirements shall be delineated in Medical Staff Rules and Regulations or Policies and Procedures.

1.6.4 **Professional Liability Insurance:** Failure to maintain professional liability insurance in the amount required by state regulations and, sufficient to cover the clinical privileges granted shall result in immediate automatic suspension of a members' clinical privileges. If within 90 days of the delinquency the member does not provide evidence of required professional liability insurance (including tail coverage for any period prior during which insurance was not maintained), the member shall not be considered for reinstatement and shall be considered to have voluntarily resigned from the Medical Staff. The medical staff office must be notified by the member immediately of any change in professional liability insurance carrier or coverage.

1.6.5 **Medical Staff Dues/special assessments:** Failure to promptly pay medical staff dues or any special assessment shall be grounds for automatic suspension of a member's appointment. If within (90) ninety days after written warning of the delinquency the member does not remit such payments the member shall be considered to have voluntarily resigned membership on the Medical Staff.

1.6.6 **Medical Executive Committee Deliberation:** As soon as practicable after action is taken or warranted as described in Section 1.6.1 through Section 1.6.5, the MEC shall convene to review and consider the facts, and may recommend such further corrective action as it may deem appropriate following the procedure generally set forth in the Section 1.3.

1.6.7 **Felony Indictment or Conviction.** A Medical Staff member who has been indicted, convicted of, or pled "guilty" or "no contest" or its equivalent to a felony or to a misdemeanor involving a charge of moral turpitude in any jurisdiction shall be suspended automatically by the Chief of Staff or CEO. Such suspension shall become effective immediately upon such indictment, conviction or plea, regardless of whether an appeal is filed. Such suspension shall remain in effect until the matter is resolved by subsequent action of the Governing Board or through corrective action, if necessary

1.7 Precautionary Restriction Or Suspension:

- 1.7.1 **Criteria For Initiation:** Whenever a member's conduct appears to require that immediate action be taken to protect the life or well-being of patient(s) or to reduce a substantial and imminent likelihood of significant impairment of the life, health, safety of any person, or when any Medical Staff Officer and the CEO determine that there is a need to carefully consider any event, concern or issue which, if confirmed, has the potential to effect patient or employee safety, the effective operation of the institution, or to impair the reputation of the medical staff or institution then the CEO, the Chief of Staff, the CMO of the Lovelace-Sandia Health System, the MEC may restrict or suspend the medical staff membership or clinical privileges of such member as a precaution. Unless otherwise stated, such precautionary restriction or suspension shall become effective immediately upon imposition and the person or body responsible shall promptly give written notice to the member, the MEC, the CEO and the Governing Board. The restriction or suspension 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 precautionary restriction or suspension, the member's patients shall be promptly assigned to another member by the Chief of Staff or designee, considering where feasible, the wishes of the effected practitioner and patient in the choice of a substitute member.
- 1.7.2 **Medical Executive Committee Action:** As soon as practicable after such precautionary restriction or suspension has been imposed, a meeting of the MEC shall be convened to review and consider the action and if necessary begin the investigation process as noted in 1.3. Upon request, the member may attend this meeting at the discretion of the MEC and make a statement concerning the issues under investigation, on such terms and conditions as the MEC may impose, although in no event shall any meeting of the MEC, with or without the member, constitute a "hearing" within the meaning defined in the hearing and appeal plan, nor shall any procedural rules with respect to hearing and appeal apply. The MEC may modify, continue, or terminate the precautionary restriction or suspension, but in any event it shall furnish the member with notice of its decision.
- 1.7.3 **Procedural Rights:** Unless the MEC promptly terminates the precautionary restriction or suspension prior to or immediately after reviewing the results of the investigation described in 1.3, the member shall be entitled to the procedural rights afforded by the hearing and appeal plan once the restrictions or suspension last more than 14 days.
- 1.8 **Disciplinary Suspension:** The MEC may, with approval of the CEO and the Chair of the Governing Board, institute a disciplinary suspension of a member for a period not to exceed fourteen (14) days. A disciplinary suspension may be instituted only under the following circumstances:
- 1.8.1 When the action that has given rise to the suspension relates to the practitioner behavior (or disruptive practitioner) policy of the Medical Staff or to requirements for emergency coverage.
- 1.8.2 When the action(s) have been reviewed by the MEC and only when the MEC has determined that one or more of the above policies has been violated.
- 1.8.3 When the practitioner has received at least two written warnings within the last twelve (12) months regarding the conduct in question. Such warnings must state the conduct or behavior that is questioned and specify or refer to the applicable policy, and state the consequence of repeat violation of the policy.

- 1.8.4 When the affected practitioner has been offered an opportunity to meet with the MEC prior to the imposition of the disciplinary suspension. Failure on the part of the practitioner to accept the MEC offer of a meeting will constitute a violation of the medical staff Bylaws regarding "special meetings" and will not prevent the MEC from issuing the disciplinary suspension.

(Note that because a disciplinary suspension may not exceed fourteen days it will not entitle the affected practitioner to a fair hearing under these bylaws).

- 1.9 Disciplinary Suspension and provision for coverage of existing hospitalized patients:
  - 1.9.1 A disciplinary suspension will take effect after the practitioner has been given an opportunity to either arrange for his/her patients currently at the hospital to be cared for by another qualified practitioner or until he/she has had an opportunity to provide needed care prior to discharge. During this period, the practitioner will not be permitted to schedule any elective admissions, surgeries, or procedures.
  - 1.9.2 The Chief of Staff or designee will determine details of the extent to which the practitioner may continue to be involved with hospitalized patients prior to the effective date of the disciplinary suspension.

## **SECTION 2. INITIATION AND NOTICE OF HEARING**

- 2.1 **Initiation of Hearing:** An applicant or an individual holding a medical staff appointment shall be entitled to request a hearing whenever an unfavorable recommendation with regard to his or her competence or professional conduct has been made by the MEC or the Governing Board. Hearings will be triggered by the following actions, unless unrelated to the competence or professional conduct of the affected:
  - 2.1.1 Denial of medical staff appointment or reappointment;
  - 2.1.2 Revocation of medical staff appointment;
  - 2.1.3 Denial or restriction of requested clinical privileges;
  - 2.1.4 Reduction in or limitation of clinical privileges;
  - 2.1.5 Involuntary revocation of clinical privileges;
  - 2.1.6 Application of a mandatory concurring consultation or co-admitting requirement, or an increase in the stringency or a pre-existing mandatory concurring consultation or co-admitting requirement, when such requirement applies to an individual Medical Staff member, as opposed to the Medical Staff generally; and
  - 2.1.7 Suspension of staff appointment or clinical privileges, but only if such suspension is for more than fourteen (14) days and is not caused by the member's failure to complete medical records or any other reason unrelated to competence or professional conduct, including without limitation any voluntary relinquishment or automatic suspension of Medical Staff membership or clinical privileges under these Bylaws.
  - 2.1.8 Actions in 1.4.4 through 1.4.7 to the extent not already covered by this section.
- 2.2 **Hearings are not triggered by the following actions, or by any other actions unrelated to the competence or professional conduct of the affected practitioner:**

- 2.2.1 Issuance of a letter of guidance, warning, or reprimand;
  - 2.2.2 Imposition of a requirement for proctoring (i.e. observation of the practitioner's performance by a peer in order to provide information to a medical staff peer review committee) with no restriction on privileges;
  - 2.2.3 Deferral of a request for privileges not central or directly related to the applicant's prior training and practice;
  - 2.2.4 Automatic relinquishment or voluntary resignation of appointment or privileges;
  - 2.2.5 Precautionary or disciplinary suspension which does not exceed fourteen days;
  - 2.2.6 Denial of a request for leave of absence, or for an extension of a leave;
  - 2.2.7 Determination that an application is incomplete;
  - 2.2.8 Determination that an application will not be processed due to misstatement or omission, whether intentional or not;
  - 2.2.9 Decision not to expedite an application
  - 2.2.10 A determination that an Applicant for membership or specific privileges does not meet the requisite qualifications/criteria for membership or those specific privileges; and/or
  - 2.2.11 Ineligibility to request membership or privileges because a relevant specialty is closed under a Medical Staff Development plan or covered under an exclusive provider agreement
- 2.3 **Notice of Recommendation:** When a precautionary suspension lasts more than 14 days or when a recommendation is made, which, according to this plan entitles an individual to request a hearing prior to a final decision of the Governing Board, the affected individual shall promptly (but no longer than 5 days) be given notice by the CEO, in writing, certified mail, return receipt requested. This notice shall contain:
- 2.3.1 A statement of the recommendation made and the general reasons for it;
  - 2.3.2 Notice that the individual has the right to request a hearing on the recommendation within thirty (30) days of receipt of this notice or, with respect to with respect to a summary suspension or other suspension related to the competence or professional conduct of the affected practitioner, within thirty (30) days after the fourteenth day that the suspension has been in effect, if later.
  - 2.3.3 Notice that the recommendation, if finally adopted by the Governing Board, will result in a report to the state licensing authority (or other applicable state agencies) and the National Practitioner Data Bank; and
  - 2.3.4 A statement that the individual shall receive a copy of Section 4.5 of this manual outlining the rights of both sides in the hearing.
  - 2.3.5 A statement that, after receipt of the hearing request, the affected practitioner will be notified of the date, time and place for the hearing
  - 2.3.6 A statement that, if the affected practitioner fails to request a hearing within thirty (30) days after the affected practitioner's receipt of the notice (or, in the case of a summary suspension or other suspension related to the competence or professional conduct of the



affected practitioner, within thirty (30) days after the fourteenth (14th) day that the suspension has been in effect, if later), the affected practitioner shall be deemed to have waived all hearing and appeal rights under these Bylaws and to have accepted the recommendation contained in the notice.

- 2.4 **Request for Hearing:** Such individual shall have (30) thirty days following the date of the receipt of such notice within which to request the hearing. The request shall be made in writing to the hospital CEO or designee. In the event the affected individual does not request a hearing within the time and in the manner required by this policy, the individual shall be deemed to have waived the right to such hearing and to have accepted the recommendation made, and such recommended action shall thereupon become effective immediately upon final Governing Board action.
- 2.5 **Notice of Hearing and Statement of Reasons:** The CEO shall schedule the hearing and shall give written notice, certified mail return receipt requested, to the person who requested the hearing. The notice shall include:
- 2.5.1 The time, place and date of the hearing;
  - 2.5.2 A proposed list of witnesses (as known at that time, but which may be modified) who will give testimony or evidence in support of the MEC, (or the Governing Board), at the hearing;
  - 2.5.3 The names of the hearing panel members and presiding officer or hearing officer, if known; and
  - 2.5.4 A statement of the specific reasons for the recommendation. This statement, and the list of supporting patient record numbers and other information, may be amended or added to at any time, even during the hearing so long as the additional material is relevant to the continued appointment or clinical privileges of the individual requesting the hearing, and that individual and the individual's counsel have sufficient time to study this additional information and rebut it.

The hearing shall begin as soon as practicable, but no sooner than (30) thirty days after the notice of the hearing unless an earlier hearing date has been specifically agreed to in writing by the parties.

- 2.6 **Witness List:** At least (15) fifteen days before the hearing, the individual requesting the hearing shall provide a written list of the names and addresses of the individuals expected to offer testimony or evidence on the affected individual's behalf. The list of witnesses who will testify in support of the MEC recommendation (or the Governing Board action) will include a brief summary of the nature of the anticipated testimony. The witness list of either party may, in the discretion of the presiding officer, be supplemented or amended at any time during the course of the hearing, provided that notice of the change is given to the other party. The presiding officer shall have the authority to limit the number of witnesses.

## **SECTION 2A. SETTLEMENTS**

At any time following receipt of notice of a recommendation or action which would entitle an affected practitioner to request a hearing under this Fair Hearing Plan, the affected practitioner may ask the MEC to discuss voluntary settlement or resolution of the matter. On such a request and subject to the affected practitioner's waiver of time requirements in order to allow such discussions to proceed, the MEC may authorize one or more of its members to conduct confidential discussions with the affected practitioner, provided that the MEC shall not be obligated to conduct such discussions if it concludes that the request is interposed primarily for delay or that a settlement is not feasible. If the affected practitioner and the MEC reach a written agreement which could settle the matter, the MEC shall promptly notify the CEO and the Governing Board. Any such written settlement agreement shall include an acknowledgment by the affected practitioner that he or she voluntarily waives his or her hearing and appeal rights under these

Bylaws, that the settlement is entered into voluntarily, that he or she will waive all claims relating in any way to the matter against Hospital, the Medical Staff, and all Medical staff and Hospital personnel, and that the settlement will be reported to the National Practitioner's Data Bank and applicable State agencies if the settlement results in any limitations on the affected practitioner's membership or ability to exercise clinical privileges, or as may otherwise be required. Any such proposed settlement shall be subject to the approval of the Governing Board.

### **SECTION 3. HEARING PANEL AND PRESIDING OFFICER OR HEARING OFFICER**

#### **3.1 Hearing Panel:**

- 3.1.1 When a hearing is requested, the CEO, acting for the Governing Board and after considering the recommendations of the Chief of Staff (and those of the chairperson of the Governing Board, if the hearing is occasioned by a Governing Board determination) shall appoint a hearing panel that shall be composed of not less than (3) three members chosen from the medical staff. No individual appointed to the hearing panel shall have actively participated in the consideration of the matter involved at any previous level. Knowledge of the matter involved shall not preclude any individual from serving as a member of the hearing panel. The composition of the hearing panel must at all times be such as to qualify for the protections of any applicable New Mexico peer review laws.
- 3.1.2 Any objection to any member of the hearing panel or to the hearing officer or presiding officer shall be made in writing within (10) ten days of receipt of notice to the CEO who shall resolve the objection. While the individual who is the subject of the hearing may object to a panel member, he or she is not entitled to veto that member's participation. Final authority to appoint panel members will rest with the CEO.
- 3.1.3 The hearing panel shall not include any individual who is in direct economic competition with the affected person, or who has acted as a fact-finder or investigator with respect to the matter, or who is professionally associated with or related to the affected individual. Such appointment shall include designation of the chairperson or the presiding officer.

#### **3.2 Presiding Officer:**

- 3.2.1 In lieu of a hearing panel chairperson, the CEO and Chief of Staff may appoint an attorney at law as presiding officer. Such presiding officer will not act as a prosecuting officer, or as an advocate for either side at the hearing. The presiding officer may participate in the private deliberations of the hearing panel and be a legal advisor to it, but shall not be entitled to vote on its recommendation.
- 3.2.2 If no presiding officer has been appointed, a chairperson of the hearing panel shall be appointed by the CEO to serve as the presiding officer, and shall be entitled to one (1) vote.
- 3.2.3 The Presiding Officer (or Hearing Panel Chairperson) shall:
  - a. Act to insure that all participants in the hearing have a reasonable opportunity to be heard and to present oral and documentary evidence subject to reasonable limits on the number of witnesses and duration of direct and cross examination, applicable to both sides, as may be necessary to avoid cumulative or irrelevant testimony or to prevent abuse of the hearing process;
  - b. Prohibit conduct or presentation of evidence that is cumulative, excessive, irrelevant, abusive or that causes undue delay;
  - c. Maintain decorum throughout the hearing;

- d. Determine the order of procedure throughout the hearing;
- e. Have the authority and discretion, in accordance with this policy, to make rulings on all questions which pertain to matters of procedure and to the admissibility of evidence;
- f. Act in such a way that all information reasonably relevant to the continued appointment or clinical privileges of the individual requesting the hearing is considered by the hearing panel in formulating its recommendations;
- g. Conduct argument by counsel on procedural points outside the presence of the hearing panel unless the panel wishes to be present; and
- h. Legal counsel to the hospital may advise the presiding officer.

### **3.3 Hearing Officer:**

- 3.3.1 As an alternative to the hearing panel described in Section 3.2 of this manual, the CEO, after consulting with the Chief of Staff (and chairperson of the Governing Board if the hearing was occasioned by a Governing Board determination) may instead appoint a hearing officer to perform the functions that would otherwise be carried out by the hearing panel. The hearing officer may be an attorney.
- 3.3.2 The hearing officer may not be any individual who is in direct economic competition with the individual requesting the hearing, and shall not act as a prosecuting officer or as an advocate to either side at the hearing. In the event a hearing officer is appointed instead of a hearing panel, all references in this Article to the “hearing panel” or “presiding officer” shall be deemed to refer instead to the hearing officer, unless the context would clearly otherwise require.

## **SECTION 4. PRE-HEARING AND HEARING PROCEDURE**

### **4.1 Provision of Relevant Information:**

- 4.1.1 There is no right to formal “discovery” in connection with the hearing. The presiding officer, hearing panel chairperson, or hearing officer shall rule on any dispute regarding discovery and may impose any safeguards, including denial or limitation of discovery to protect the peer review process and to assure a reasonable and fair hearing. In general, the individual requesting the hearing shall be entitled, upon specific request, to the following, subject to a stipulation signed by both parties that such documents shall be maintained as confidential consistent with all applicable state and federal peer review and privacy statutes and shall not be disclosed or used for any purpose outside of the hearing:
  - a. Copies of, or reasonable access to, all patient medical records supporting the MEC’s recommendation, at his or her expense;
  - b. Reports of experts relied upon by the MEC;
  - c. Copies of redacted relevant committee or service minutes, subject to denial or limitation to protect the peer review process, to the extent permitted by law;
  - d. Copies of any other documents relied upon by the MEC or the Governing Board;
  - e. No information regarding other practitioners shall be requested, provided or considered; and,

- f. Evidence unrelated to the reasons for the recommendation or to the individual's qualifications for appointment or the relevant clinical privileges shall be excluded.
- 4.1.2 Prior to the hearing, on dates set by the presiding officer or agreed upon by counsel for both sides, each party shall provide the other party with all proposed exhibits. All objections to documents or witnesses to the extent then reasonably known shall be submitted in writing in advance of the hearing. The presiding officer shall not entertain subsequent objections unless the party offering the objection demonstrates good cause.
  - 4.1.3 Prior to the hearing, on dates set by the presiding officer, the individual requesting the hearing shall, upon specific request, provide the Credentials Committee or MEC (or the Governing Board) copies of any expert reports or other documents upon which the individual will rely at the hearing.
  - 4.1.4 There shall be no contact by the individual who is the subject of the hearing with hospital employees appearing on the hospital's witness list concerning the subject matter of the hearing; nor shall there be contact by the hospital with individuals appearing on the affected individual's witness list concerning the subject matter of the hearing, unless specifically agreed upon by that individual or his or her counsel.
- 4.2 **Pre-Hearing Conference:** The presiding officer may require a representative for the individual and for the hospital's MEC (or the Governing Board) to participate in a pre-hearing conference. At the pre-hearing conference, the presiding officer shall resolve all procedural questions, including any objections to exhibits or witnesses, and determine the time to be allotted to each witness's testimony and cross-examination.
  - 4.3 **Failure to Appear:** Failure, without good cause, of the individual requesting the hearing to appear and proceed at such a hearing shall be deemed to constitute a waiver of all hearing and appeal rights and a voluntary acceptance of the recommendations or actions pending, which shall then be forwarded to the Governing Board for final action.
  - 4.4 **Record of Hearing:** The hearing panel shall maintain a record of the hearing by a reporter present to make a record of the hearing or a recording of the proceedings. The cost of such reporter shall be borne by the hospital, but copies of the transcript shall be provided to the individual requesting the hearing at that individual's expense. The hearing panel may, but shall not be required to, order that oral evidence shall be taken only on oath or affirmation administered by any person designated by such body and entitled to notarize documents in the State of New Mexico.
  - 4.5 **Rights of Both Sides:**
    - 4.5.1 At a hearing both sides shall have the following rights, subject to reasonable limits determined by the presiding officer:
      - a. To call and examine witnesses to the extent available
      - b. To introduce exhibits
      - c. To cross-examine any witness on any matter relevant to the issues and to rebut any evidence;
      - d. Representations by counsel who may call, examine, and cross examine witnesses and present the case. Both sides shall notify the other of the name of that counsel at least (10) ten days prior to the date of the hearing; and
      - e. To submit a written statement at the close of the hearing.
    - 4.5.2 Any individuals requesting a hearing who do not testify in their own behalf may be called and examined as if under cross-examination.

- 4.5.3 The hearing panel may question the witnesses; call additional witnesses or request additional documentary evidence.
- 4.6 **Admissibility of Evidence:** The hearing shall not be conducted according to rules of evidence. Hearsay evidence shall not be excluded merely because it may constitute hearsay. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the admissibility of such evidence in a court of law.
- 4.7 **Burden of Proof:** The hearing panel shall recommend in favor of the MEC (or the Governing Board) unless it finds that the individual who requested the hearing has proved by clear and convincing evidence that the recommendation which prompted the hearing was arbitrary, capricious, or is unfounded or not supported by credible evidence. It is this individual's burden to demonstrate that he or she satisfies, on a continuing basis, all criteria for initial appointment, reappointment, and clinical privileges and fully complies with all medical staff and hospital policies (revised 11/12).
- 4.8 **Post-Hearing Memoranda:** Each party shall have the right to submit a post-hearing memorandum, and the hearing panel may request such a memorandum to be filed, following the close of the hearing.
- 4.9 **Official Notice:** The presiding officer shall have the discretion to take official notice of any matters, either technical or scientific, relating to the issues under consideration. Participants in the hearing shall be informed of the matters to be officially noticed and such matters shall be noted in the record of the hearing. Either party shall have the opportunity to request that a matter be officially noticed or to refute the noticed matter by evidence or by written or oral presentation of authority. Reasonable additional time shall be granted, if requested by either party, to present written rebuttal of any evidence admitted on official notice.
- 4.10 **Postponements and Extensions:** Postponements and extensions of time beyond any time limit set forth in this policy may be requested by anyone but shall be permitted only by the presiding officer or the CEO on a showing of good cause.
- 4.11 **Persons to be Present:** The hearing shall be restricted to those individuals involved in the proceeding. Administrative personnel may be present as requested by the CEO or the Medical Staff President.
- 4.12 **Order of Presentation:** The Governing Board or the MEC, depending on whose recommendation prompted the hearing initially, shall first present evidence in support of its recommendation. Thereafter, the burden shall shift to the individual who requested the hearing to present evidence.
- 4.13 **Basis of Recommendation:** the hearing panel shall recommend in favor of the MEC unless it finds that the individual who requested the hearing has proved, by clear and convincing evidence, that the recommendation that prompted the hearing was arbitrary, capricious, or not supported by credible evidence.
- 4.14 **Adjournment and Conclusion:** The presiding officer may adjourn the hearing and reconvene the same at the convenience and with the agreement of the participants. Upon conclusion of the presentation of evidence by the parties and questions by the hearing panel, the hearing shall be closed.
- 4.15 **Deliberations and Recommendation of the Hearing Panel:** Within (20) twenty days after final adjournment of the hearing, the hearing panel shall conduct its deliberations outside the presence of any other person (except the presiding officer, if one is appointed) and shall render a recommendation, accompanied by a report, which shall contain a concise statement of the reasons for the recommendation.

- 4.16 **Disposition of Hearing Panel Report:** The hearing panel shall deliver its report and recommendation to the CEO, who shall forward it, along with all supporting documentation, to the Governing Board for further action. The CEO shall also send a copy of the report and recommendation, certified mail, return receipt requested, to the individual who requested the hearing, and to the MEC for information and comment.

## **SECTION 5. APPEAL TO THE GOVERNING BOARD**

- 5.1 **Time for Appeal:** Within (10) ten days after notice of the hearing panel's recommendation, either the member or the MEC may appeal the recommendation. The request for appellate review shall be in writing, and shall be delivered to the CEO either in person or by certified mail, and shall include a brief statement of the reasons for appeal and the specific facts or circumstances which justify further review. If such appellate review is not requested within ten (10) days as provided herein, both parties shall be deemed to have accepted the recommendation involved, and the hearing panel's report and recommendation shall be forwarded to the Governing Board for final action.
- 5.2 **Grounds for Appeal:** The grounds for appeal shall be limited to the following:
- 5.2.1 There was substantial failure to comply with fair hearing plan and/or the Hospital Medical Staff Bylaws prior to the hearing so as to deny a fair hearing; or
  - 5.2.2 The recommendation of the hearing panel was made arbitrarily, capriciously or with prejudice; or
  - 5.2.3 The recommendation of the hearing panel was not supported by substantial evidence based upon the hearing record.
- 5.3 **Time, Place and Notice:** Whenever an appeal is requested as set forth in the preceding Services, the chairperson of the Governing Board shall schedule and arrange for an appellate review as soon as arrangements can be reasonably made, taking into account the schedules of all individuals involved. The affected individual shall be given notice of the time, place and date of the appellate review. The chairperson of the Governing Board for good cause may extend the time for appellate review.
- 5.4 **Nature of Appellate Review:**
- 5.4.1 The Chairperson of the Governing Board shall appoint a review panel composed of members of the Governing Board to consider the information upon which the recommendation before the Governing Board was made.
  - 5.4.2 The review panel may accept additional oral or written evidence subject to the same of cross-examination or confrontation provided at the hearing panel proceedings. Such additional evidence shall be accepted only if the party seeking to admit it can demonstrate that it is new, relevant evidence and that the party had good cause for not presenting it earlier. If such additional evidence is considered, it shall be subject to cross examination and rebuttal. (revised 11/12)
  - 5.4.3 Each party shall have the right to present a written statement in support of its position on appeal. In its sole discretion, the review panel may allow each party or its representative to appear personally and make a time-limited (30) thirty-minute oral argument. The review panel shall recommend final action to the Governing Board.
  - 5.4.4 The Governing Board may affirm, modify or reverse the recommendation of the review panel or, in its discretion, refer the matter for further review and recommendation, or make

its own decision based upon the Governing Board's ultimate legal responsibility to grant appointment and clinical privileges.

- 5.5 **Final Decision of the Governing Board:** Within (30) thirty days after receipt of the review panel's recommendation, the Governing Board shall render a final decision in writing, including specific reasons for its action, and shall deliver copies thereof to the affected individual and to the chairpersons of the Credentials Committee and MEC, in person or by certified mail, return receipt requested.
- 5.6 **Further Review:** Except where the matter is referred for further action and recommendation, the final decision of the Governing Board following the appeal shall be effective immediately and shall not be subject to further review. Provided, however, if the matter is referred for further action and recommendation, such recommendation shall be promptly made to the Governing Board in accordance with the instructions given by the Governing Board. This further review process and the report back to the Governing Board shall in no event exceed (45) forty-five days in duration except as the parties may otherwise stipulate.
- 5.7 **Right to One Appeal Only:** No applicant or medical staff appointee shall be entitled as a matter of right to more than (1) one hearing or appellate review on any single matter which may be the subject of an appeal. In the event that the Governing Board ultimately determines to deny medical staff reappointment to an applicant, or to revoke or terminate the medical staff appointment and/or clinical privileges of a current appointee, that individual may not apply within (5) five years for medical staff appointment or for those clinical privileges at this hospital unless the Governing Board provides otherwise.

Adopted by:

\_\_\_\_\_  
Chief of Staff

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

\_\_\_\_\_  
Chief of Executive Officer

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

\_\_\_\_\_  
Chairman, Governing Board

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Date: