

**MEDICAL STAFF BYLAWS  
BAYSTATE MEDICAL CENTER, INC.  
APPENDIX 3 - CORRECTIVE ACTIONS AND FAIR HEARINGS**

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**MEDICAL STAFF BYLAWS  
BAYSTATE MEDICAL CENTER, INC.  
APPENDIX 3 - CORRECTIVE ACTIONS AND FAIR HEARINGS**

**PART ONE: CORRECTIVE ACTION**

**1.1 CRITERIA FOR INITIATING CORRECTIVE ACTION REQUEST**

A corrective action request may be initiated concerning a practitioner whenever a practitioner with membership or clinical privileges engages in, demonstrates, or exhibits demeanor, behavior, performance, clinical competence, or other acts or conduct, either within or outside the Medical Center, and the same is or is reasonably likely to be one or more of the following:

- (a) Contrary to or inconsistent with the bylaws, policies, procedures, standards, rules, or regulations of the Medical Staff or Medical Center, or applicable policies of Baystate Health, Inc.;
- (b) Detrimental to patient safety or to the delivery of quality or efficient patient care in the Medical Center;
- (c) Contrary to or inconsistent with the qualifications for and obligations of Medical Staff membership as set forth in the Medical Staff Bylaws, including the failure to accept, perform, or fulfill any on-call coverage assignments, responsibilities, or obligations within any department, division, service, or other subunit; or
- (d) Disruptive to Medical Center operations.

A corrective action request concerning a practitioner may be initiated by any of the following:

- (1) Medical Staff President,
- (2) Chair of any department or chief of any division in which the practitioner holds membership or exercises clinical privileges,
- (3) Any standing or special committee of the Medical Staff or chair thereof,
- (4) Office of the CEO, or
- (5) Board of Trustees.

**1.2 CORRECTIVE ACTION REQUEST AND NOTICE**

All corrective action requests must be submitted in writing to the Medical Staff Executive Committee and supported by reference to the specific acts or conduct that constitutes the grounds for the request. The Medical Staff President, as soon as reasonably practicable, notifies the

Office of the CEO in writing of all requests and shall notify the practitioner involved by special notice of any such request.

Such other policies or procedures with respect to initiation of corrective action requests may be adopted in compliance with the Medical Staff Bylaws and relevant law, including the regulations of Massachusetts Board of Registration in Medicine, as may be amended from time to time.

### **1.3 DISCRETIONARY INVESTIGATION**

The Medical Staff Executive Committee may either make a recommendation concerning the request consistent with Section 1.4 below or direct that investigation concerning the grounds for the corrective action request be undertaken. The Medical Staff Executive Committee may conduct such investigation itself or assign this task to a Medical Staff or department officer, a division, a standing or special committee, or any other component of the Medical Staff. This investigative process is not a hearing or appellate review as those terms are described in this Appendix 3, Corrective Actions and Fair Hearings. It may include a review of documents, and it may include consultation with the practitioner involved and with the individual or group making the request and with other individuals who may have knowledge of the events or circumstances involved. If the investigation is accomplished by a group or individual other than the Medical Staff Executive Committee, that group or individual must forward a written report of the investigation to the Medical Staff Executive Committee as soon as is practicable after the assignment to investigate has been made. The Medical Staff Executive Committee may at any time within its discretion and shall, at the request of the Board of Trustees, terminate the investigative process and proceed as provided below.

### **1.4 MEDICAL STAFF EXECUTIVE COMMITTEE RECOMMENDATION**

As soon as practicable after the conclusion of the investigative process, if any, the Medical Staff Executive Committee shall consider such corrective action request. The Medical Staff Executive Committee may, without limitation, reject the request for corrective action or recommend any corrective action including, but not limited to, the following:

- (a) An oral warning or a letter of reprimand;
- (b) An individual medical or psychiatric evaluation or treatment;
- (c) A requirement of retrospective review of cases or other review of professional performance or behavior;
- (d) A requirement of prior or concurrent consultation or direct supervision;
- (e) A limitation of the right to admit patients;
- (f) A reduction, suspension, revocation, termination, or other adverse change concerning all or any part of the clinical privileges granted; and

- (g) A reduction, suspension, revocation, termination, or other adverse change concerning Medical Staff membership.

The Medical Staff Executive Committee may include as part of its recommendation a requirement that compliance with or satisfaction of the recommended corrective action be a condition of the practitioner's continued Medical Staff membership and clinical privileges, that the practitioner's failure to comply with or satisfy any such condition shall result in the automatic termination of the practitioner's Medical Staff membership and clinical privileges, and that the practitioner shall not be entitled to further hearing and appellate review rights under this Appendix 3, Corrective Actions and Fair Hearings, as to any such automatic termination.

## **1.5 PROCEDURAL RIGHTS**

A Medical Staff Executive Committee recommendation pursuant to Section 1.4 above, that is an adverse recommendation as defined in Section 4.1 below shall entitle the practitioner to the procedural rights contained in this Appendix 3, Corrective Actions and Fair Hearings. As soon as reasonably practicable, the Medical Staff Executive Committee shall provide written notice of the adverse recommendation to the Office of the CEO.

A Medical Staff Executive Committee recommendation that does not trigger the right to a fair hearing under Section 4.1 below, or is otherwise favorable to the practitioner, shall be transmitted to the Board of Trustees together with all supporting documentation. Thereafter, the procedure in subparagraph (a) of Section 1.5.8 of Appendix 2, Credentialing Procedures, is applicable.

If, in the determination of the Board of Trustees, the Medical Staff Executive Committee fails to act in timely fashion in processing and recommending action on a request for corrective action, the procedure in subparagraph (b) of Section 1.5.8 of Appendix 2, Credentialing Procedures, is applicable.

## **PART TWO: SUMMARY SUSPENSION**

### **2.1 CRITERIA FOR IMPOSING SUMMARY SUSPENSION**

Summary suspension of a practitioner's Medical Staff membership or all or any portion of a practitioner's clinical privileges, or both, may be imposed whenever the failure to take such action may result in an imminent danger to the life, health, or safety of any individual or otherwise whenever a practitioner's acts or conduct require that immediate action be taken:

- (a) To protect the life of any patient;
- (b) To reduce the substantial likelihood of injury or damage to the health or safety of any patient, employee, or other person at the Medical Center; or
- (c) For the continued effective operation of the Medical Center.

Any of the following or their respective designated representatives has the authority to summarily suspend the Medical Staff membership or all or any portion of the practitioner's clinical privileges, or both:

- (1) Medical Staff President,
- (2) Department Chair or Division Chief,
- (3) Office of the CEO,
- (4) Medical Staff Executive Committee, or
- (5) Board of Trustees.

A summary suspension of Medical Staff membership or all or any portion of a practitioner's clinical privileges, or both, is effective immediately upon imposition, and the individual or group imposing the summary suspension is to follow it up promptly by giving special notice of the suspension to the practitioner. A suspended practitioner's patients then in the Medical Center must be assigned to another practitioner by the applicable Department Chair or Division Chief or their designees, considering the wishes of the patients where feasible in choosing a substitute practitioner. Any individual or body with the authority to impose a summary suspension under this section also may recommend, at the time the summary suspension is imposed, other corrective action concerning the practitioner, up to and including termination of the practitioner's Medical Staff membership or all or any portion of the practitioner's clinical privileges, or both.

## **2.2 MEDICAL STAFF SUMMARY SUSPENSION REVIEW COMMITTEE**

As soon as possible but, in any event, within three (3) business days after a summary suspension is imposed, a Medical Staff Summary Suspension Review Committee, composed of the Office of the CEO, one of the general officers of the Medical Staff designated by the Medical Staff President, a member of the Board of Trustees, and the Chair of the Credentials Committee, or his or her designee, convenes to review and consider the terms of the summary suspension. The Medical Staff Summary Suspension Review Committee shall advise the Board of Trustees, or a committee thereof, to continue, modify, or terminate the terms of the summary suspension. The Medical Staff Summary Suspension Review Committee also may recommend additional corrective action concerning the practitioner, up to and including termination of the practitioner's Medical Staff membership or all or any portion of the practitioner's clinical privileges, or both. The Board of Trustees, or a committee thereof, may, in addition to acting on the summary suspension, take other corrective action concerning the practitioner, up to and including termination of the practitioner's Medical Staff membership or all or any portion of the practitioner's clinical privileges, or both. Action by the Board of Trustees, or a committee thereof, to continue the summary suspension or to take any other adverse action as defined in Section 4.1 of this Appendix 3, Corrective Actions and Fair Hearings, entitles the practitioner to the procedural rights contained in this Appendix 3.

## **PART THREE: AUTOMATIC SUSPENSION, AUTOMATIC TERMINATION, AND OTHER AUTOMATIC DISCIPLINARY ACTION**

### **3.1 GENERALLY**

Whenever any of the circumstances specified in this Part Three occur, the practitioner must immediately report it to the Medical Staff President, the Office of the CEO, or his or her Department Chair. Failure to so report, without good cause, is grounds for automatic termination of Medical Staff membership and clinical privileges.

In addition to any other provision of the Medical Staff Bylaws that calls for automatic suspension, automatic termination, automatic application withdrawal, or other automatic disciplinary action with respect to a practitioner's Medical Staff membership or clinical privileges, the provisions of this Part Three shall constitute grounds for the imposition of automatic suspension, automatic termination, or other automatic disciplinary action.

A record of any automatic suspension, automatic termination, or other automatic disciplinary action imposed concerning a practitioner shall be made a permanent part of the practitioner's credentials file.

### **3.2 LICENSE TO PRACTICE**

- (a) *Revocation/Non-renewal:* Whenever a practitioner's license to practice in the Commonwealth of Massachusetts is revoked or not renewed by the Commonwealth, his or her Medical Staff membership and clinical privileges are immediately and automatically terminated.
- (b) *Restriction:* Whenever a practitioner's license is limited or restricted in any way, those clinical privileges which he or she has been granted that are within the scope of the limitation or restriction are immediately and automatically similarly limited or restricted. If the Medical Center has any question concerning the scope of any such limitation or restriction or its effect on the practitioner's Medical Staff membership or clinical privileges, the practitioner's Medical Staff membership and clinical privileges are immediately and automatically suspended, or held in abeyance, until such question is resolved to the satisfaction of the Medical Center.
- (c) *Lapse/Expiration:* Whenever a practitioner's license lapses or expires, his or her Medical Staff membership and clinical privileges are immediately and automatically suspended, or held in abeyance, until the Member provides documentation sufficient to demonstrate to the satisfaction of the Medical Center that the license has been reinstated.
- (d) *Suspension:* Whenever a practitioner's license is suspended, his or her Medical Staff membership, clinical privileges, and voting and office holding prerogatives are immediately and automatically suspended effective upon and for the term of such license suspension.

- (e) *Resignation/Surrender:* Whenever a practitioner resigns or surrenders his or her license to practice in the Commonwealth of Massachusetts, his or her Medical Staff membership and clinical privileges are immediately and automatically terminated.
- (f) *Probation:* Whenever a practitioner is placed on probation by his or her licensing authority, his or her voting and office holding prerogatives are immediately and automatically suspended effective upon and for the term of such license probation.
- (g) *Voluntary Agreement Not to Practice:* Whenever a practitioner enters into a voluntary agreement not to practice with his or her licensing authority, his or her Medical Staff membership, clinical privileges, and voting and office holding prerogatives are immediately and automatically suspended, or held in abeyance, effective upon and for the term of such voluntary agreement not to practice.

As soon as reasonably practicable after a practitioner's license is revoked, not renewed, lapsed, expired, restricted, suspended, placed on probation, or subject to a voluntary agreement not to practice, the Medical Staff Executive Committee convenes to review and consider the facts concerning such adverse licensure action. If the Medical Staff Executive Committee recommends corrective action in addition to the automatic disciplinary actions set forth above in this Section 3.2, further proceedings concerning such recommended corrective action shall be consistent with this Appendix 3, Corrective Actions and Fair Hearings.

Any automatic action taken concerning a practitioner under this section remains in effect unless and until the practitioner requests, and the Medical Center grants, reinstatement. Upon the termination or completion of any of the adverse licensure actions described in this section, the practitioner may request reinstatement of his or her Medical Staff membership or clinical privileges or both, or, in the case of a license probation, the reinstatement of his or her voting and office holding prerogatives. A request for reinstatement shall be in writing and sent to the Office of the CEO, with a copy to the practitioner's Department Chair. When requesting reinstatement, the practitioner shall provide evidence of a currently valid license to practice that is not subject to any conditions or restrictions that adversely affect, or are inconsistent with, the practitioner's ability to have Medical Staff membership or to exercise clinical privileges at the Medical Center. When processing a request for reinstatement, the Medical Center may require the practitioner to provide other or further information or documents to demonstrate the practitioner's continued satisfaction of the minimum or threshold qualifications for Medical Staff membership and clinical privileges; the practitioner's ability to fulfill all duties, responsibilities, and obligations of membership; or the practitioner's ability safely and competently to exercise all of the clinical privileges requested to be reinstated. If the practitioner's appointment expired during the term of the adverse licensure action, the practitioner must complete the full application for initial appointment when requesting reinstatement. The procedures in Part Two of Appendix 2, Credentialing Procedures, as applicable, are followed in evaluating and acting on the reinstatement request.



### 3.3 DRUG ENFORCEMENT ADMINISTRATION

- (a) *Revocation/Non-renewal/Surrender:* Whenever a practitioner's Drug Enforcement Administration (DEA) or Massachusetts controlled substances registration is revoked or not renewed by DEA or the Commonwealth of Massachusetts, or is surrendered by the practitioner, he or she is immediately and automatically divested of his or her right to prescribe medications covered by the registration.
- (b) *Restriction:* Whenever a practitioner's use of his or her DEA or Massachusetts controlled substances registration is restricted or limited in any way, his or her right to prescribe medications covered by the registration is immediately and automatically similarly limited or restricted.
- (c) *Suspension:* Whenever a practitioner's DEA or Massachusetts controlled substances registration is suspended, he or she is immediately and automatically divested of his or her right to prescribe medications covered by the registration effective upon and for the term of such suspension.
- (d) *Probation:* Whenever a practitioner is placed on probation, insofar as the use of his or her DEA or Massachusetts controlled substances number is concerned, his or her right to prescribe medications covered by the registration is immediately and automatically placed on probation effective upon and for the term of such probation.
- (e) *Lapse:* Whenever the DEA or Massachusetts controlled substances registration of a practitioner lapses solely for administrative reasons, the practitioner's Medical Staff membership and clinical privileges are immediately and automatically suspended unless the practitioner signs a statement waiving the practitioner's right to prescribe and dispense controlled substances, which statement of waiver shall be effective upon the lapse of the DEA or Massachusetts controlled substances registration and shall expire thirty (30) days after its effective date. Unless the practitioner provides to the Medical Center a current, valid DEA or Massachusetts controlled substances registration prior to the expiration of the statement of waiver, the practitioner's Medical Staff membership and clinical privileges are immediately and automatically suspended effective upon the expiration of the statement of waiver. With regard to controlled substance registrations issued by the Commonwealth of Massachusetts only, upon a showing by the practitioner that the lapse in the controlled substance registration resulted from actions or inactions of the Commonwealth, and not as a result of the actions or inactions of the practitioner, the Office of the CEO may determine in its sole discretion to allow the practitioner to sign one (1) or more additional thirty (30)-day statements of waiver.

A practitioner whose Medical Staff membership and clinical privileges are suspended pursuant to this Section 3.3(e) may request reinstatement of membership and clinical privileges by sending a written notice to the chair of the department in which he or she held membership, to the Medical Staff President,

and to the Office of the CEO, along with a copy of the current DEA or Massachusetts controlled substances registration and a written statement explaining the circumstances of the lapse of the DEA or Massachusetts controlled substances registration and any restrictions on the DEA or Massachusetts controlled substances registration. Further action shall proceed in accordance with the procedures set forth in Appendix 2, Credentialing Procedures, as applicable.

As soon as reasonably practicable after a practitioner's controlled substances registration is revoked, not renewed, surrendered, restricted, suspended, made probationary, or lapses, the Medical Staff Executive Committee convenes to review and consider the facts concerning such adverse DEA or Commonwealth of Massachusetts action. If the Medical Staff Executive Committee recommends corrective action in addition to the automatic disciplinary actions set forth in this Section 3.3, further proceedings concerning such recommended corrective action shall be consistent with this Appendix 3, Corrective Actions and Fair Hearings.

### **3.4 MEDICAL RECORDS**

Practitioners must complete timely all medical records and must satisfy all other medical record obligations in accordance with the rules and regulations of the Medical Staff. Failure of a practitioner to complete timely all medical records or otherwise to satisfy any medical record obligation may result in the automatic suspension of his or her Medical Staff membership and clinical privileges consistent with the rules and regulations of the Medical Staff and also may result in corrective action proceedings consistent with these Medical Staff Bylaws.

A practitioner whose Medical Staff membership or clinical privileges in whole or in part has been automatically suspended or otherwise automatically adversely affected by operation of any provision of this Section 3.4 or the rules and regulations of the Medical Staff is not entitled to the hearing and appellate review rights provided in this Appendix 3, Corrective Actions and Fair Hearings.

### **3.5 PROFESSIONAL LIABILITY**

For failure to maintain a demonstrated adequate amount of professional liability insurance as required by the Medical Staff Bylaws, a practitioner's Medical Staff membership and clinical privileges are immediately and automatically suspended.

A practitioner whose Medical Staff membership and clinical privileges are suspended pursuant to this Section 3.5 may request reinstatement of membership and clinical privileges by sending a written notice to the chair of the department in which he or she held membership, to the Medical Staff President, and to the Office of the CEO, along with a certified copy of the insurance certificate from the insurance company or other written statement of good cause, if any, for the requested reinstatement of membership and privileges, and a written statement explaining the circumstances of the previous insurance being canceled or not renewed and any limitations on the new policy. Further action shall proceed in accordance with the procedures set forth in Appendix 2, Credentialing Procedures, as applicable.

### **3.6 ELIGIBILITY TO PARTICIPATE IN FEDERAL HEALTH CARE PROGRAMS**

Whenever a practitioner is excluded from participation in or otherwise ineligible to submit claims to any federal health care program, including Medicare or Medicaid, his or her Medical Staff membership and clinical privileges are immediately and automatically suspended.

A practitioner whose Medical Staff membership and clinical privileges are suspended pursuant to this Section 3.6 may request reinstatement of membership and clinical privileges by sending a written notice to the chair of the department in which he or she held membership, to the Medical Staff President, and to the Office of the CEO, along with a certified copy of the notice of his or her reinstatement of eligibility to participate in federal health care programs or other written statement of good cause, if any, for the requested reinstatement of membership and privileges. Further action shall proceed in accordance with the procedures set forth in Appendix 2, Credentialing Procedures, as applicable.

## **PART FOUR: INITIATION OF HEARING**

### **4.1 TRIGGERING EVENTS**

#### **4.1.1 Adverse Recommendations or Adverse Actions**

Subject to the exceptions set forth in Section 4.1.3 below or in any other provision of the Medical Staff Bylaws, the following recommendations or actions, when deemed adverse under Section 4.1.2 below, entitle the practitioner to a hearing upon request made in accordance with Section 4.3 below:

- (a) Denial of initial appointment to the Medical Staff;
- (b) Denial of requested Medical Staff category or requested department, division, service, or other clinical subunit affiliation;
- (c) Denial of requested clinical privileges;
- (d) Denial of reappointment to the Medical Staff;
- (e) Reduction, suspension, revocation, or termination of Medical Staff membership;
- (f) Reduction, suspension, revocation, or termination of clinical privileges;
- (g) Summary suspension of Medical Staff membership or clinical privileges, provided that the summary suspension has first been reviewed by the Medical Staff Summary Suspension Review Committee and by the Board of Trustees in accordance with Part Two above and provided further that the action of the Board of Trustees under said Part Two is to continue the suspension or to take other action that would entitle the practitioner to request a hearing under this Section 4.1.1;

- (h) Restriction of clinical privileges, including imposition of a requirement of prior or concurrent consultation or direct supervision; and
- (i) Any action or actions concerning Medical Staff membership or clinical privileges, alone or in combination, for which, in the opinion of the Office of the CEO, the Medical Center is required by law or these Medical Staff Bylaws to make a report to the Massachusetts Board of Registration in Medicine, the Massachusetts Board of Registration in Dentistry, the Massachusetts Board of Registration in Podiatry, or the National Practitioner Data Bank.

#### **4.1.2 When Deemed Adverse**

A recommendation or action listed in Section 4.1.1 above is deemed adverse to the practitioner only when it has been:

- (a) Recommended by the Medical Staff Executive Committee; or
- (b) Taken by the Board of Trustees under circumstances where no prior right to a hearing existed.

#### **4.1.3 Exceptions to Hearing Rights**

- (a) Notwithstanding any other provision in the Medical Staff Bylaws, the following recommendations or actions, without limitation, do not entitle the practitioner to a hearing:
  - (1) The imposition of a monitoring or consultation requirement or any other condition or limitation imposed upon initial appointment or grant of increased privileges or during a provisional period;
  - (2) The termination of any contract between the practitioner and the Medical Center or affiliated entity or other entity or the removal of a practitioner from a medico-administrative office within the Medical Center;
  - (3) A decision not to (a) provide a requested application to a practitioner, (b) accept an application from a practitioner, or (c) process a practitioner's application for membership or clinical privileges because the practitioner does not satisfy the minimum or threshold criteria for such membership or privileges (*e.g.*, failure to satisfy the requirement concerning board certification or failure to satisfy a requirement that a practitioner has performed a specific type or number of procedures);
  - (4) Any other recommendation or action not listed in Section 4.1.1 above, including but not limited to any recommendation or action

that does not affect or otherwise concern a practitioner's Medical Staff membership or clinical privileges; and

- (5) Any action or actions, alone or in combination, for which, in the opinion of the Office of the CEO, the Medical Center is not required by law or these Medical Staff Bylaws to make a report to the Massachusetts Board of Registration in Medicine, the Massachusetts Board of Registration in Dentistry, the Massachusetts Board of Registration in Podiatry, or the National Practitioner Data Bank; and
- (b) Notwithstanding any other provision in the Medical Staff Bylaws, a recommendation or action listed in Section 4.1.1 above does not entitle the practitioner to a hearing when it:
  - (1) Is voluntarily imposed or accepted by the practitioner;
  - (2) Is automatically imposed pursuant to any provision of the Medical Staff Bylaws;
  - (3) Is recommended or taken with respect to the Medical Staff or one or more departments, divisions, services, or other clinical subunits generally, and is not recommended or taken with respect to, on account of, or otherwise concerning the actions or inactions of any particular practitioner or practitioners; or
  - (4) Arises from the denial of any application or request of the practitioner because such application or request was not made in accordance with the provisions of the Medical Staff Bylaws.

## **4.2 NOTICE OF ADVERSE ACTION**

The Office of the CEO, within ten (10) business days after receiving written notice of an adverse action or adverse recommendation that triggers the right to a hearing pursuant to Section 4.1 above shall give the practitioner special notice thereof. The notice shall:

- (a) State the reasons for the adverse recommendation or adverse action and of his or her right to a hearing upon a timely and proper request in accordance with Section 4.3 below;
- (b) Specify that the practitioner has thirty (30) days after receiving the notice within which to submit a request for a hearing and that the request must satisfy the conditions of Section 4.3 below;
- (c) State that failure to request a hearing within the time and the manner specified in Section 4.3 below constitutes a waiver of the right to a hearing and to appellate review on the matter that is the subject of the notice and that the recommendation

or action involved shall thereupon become effective immediately, subject, if applicable, to the final action of the Board of Trustees; and

- (d) Reference this Appendix 3, Corrective Actions and Fair Hearings, and provide the practitioner with a copy of or access to such Appendix.

### **4.3 REQUEST FOR HEARING**

The practitioner shall have thirty (30) days after receiving the notice given pursuant to Section 4.2 above to file a written request for a hearing. The request shall be delivered to the Office of the CEO by special notice. If the practitioner wishes to be represented by an attorney at the hearing, his or her request for hearing shall so state.

### **4.4 WAIVER BY FAILURE TO REQUEST A HEARING**

As of the end of the thirty (30) day period specified in Section 4.3 above, a practitioner who has failed to request a hearing shall have waived his or her right to any hearing or any appellate review to which he or she might otherwise have been entitled. Such waiver shall apply only to the adverse recommendation or adverse action that is the subject of the notice given pursuant to Section 4.2 above. The effect of a waiver is as follows:

#### **4.4.1 After Adverse Recommendation by the Medical Staff Executive Committee**

A waiver after an adverse recommendation by the Medical Staff Executive Committee shall constitute acceptance by the practitioner of the recommended action, which shall immediately become and remain effective, subject to the final action of the Board of Trustees. The Board of Trustees shall consider the recommended action at its next regularly scheduled meeting following the waiver. If the Board of Trustees accepts the recommended action or takes action less adverse to the practitioner than the recommended action, such recommended action thereupon shall immediately become the final action of the Board of Trustees. The Office of the CEO, as soon as reasonably practicable, shall give the practitioner special notice of the final action and shall notify the Medical Staff President of such final action. If the Board of Trustees takes action more adverse to the practitioner than the recommended action, such Board of Trustees action shall be treated as a new adverse action under Section 4.1 above. The practitioner shall be given special notice, pursuant to Section 4.2 above of the new adverse action and of his or her right to a hearing upon a timely and proper request in accordance with Section 4.3 above.

#### **4.4.2 After Adverse Action by the Board of Trustees**

A waiver after adverse action by the Board of Trustees shall constitute acceptance by the practitioner of the action, which shall immediately become the final action of the Board of Trustees, without further action by the Board of Trustees. The Office of the CEO, as soon as reasonably practicable, shall give the practitioner special notice of the final action and shall notify the Medical Staff President of such final action.

## **PART FIVE: HEARING PREREQUISITES**

### **5.1 NOTICE OF HEARING**

Upon receiving a timely and proper request for hearing in accordance with Section 4.3 above, the Office of the CEO shall schedule a hearing. At least thirty (30) days prior to the hearing, the Office of the CEO shall give the practitioner special notice stating the time, date, and place of the hearing and a list of the witnesses (if any) expected to testify at the hearing on behalf of the body whose adverse action or adverse recommendation gave rise to the request for hearing under Section 4.3. Notwithstanding the above, the Office of the CEO may schedule a hearing within a time period and with a notice period different from the above only upon the express, mutual agreement of the practitioner and the Office of the CEO. The body whose adverse action or adverse recommendation gave rise to the request for a hearing under Section 4.3 shall use its best efforts to identify witnesses expected to testify on its behalf for inclusion in the notice of hearing and shall be entitled to supplement the list of witnesses in accordance with Section 5.4 below.

### **5.2 STATEMENT OF ISSUES AND EVENTS**

The special notice of hearing given pursuant to Section 5.1 above shall state the reasons for the adverse recommendation or adverse action that gave rise to the request for hearing under Section 4.3 above. Such notice shall include a description of any alleged acts or omissions of the practitioner and a list of the specific or representative patient records in question, if any.

### **5.3 APPOINTMENT OF HEARING PANEL**

When a hearing has been requested in accordance with Section 4.3 above, the Office of the CEO, after considering any recommendations of the President of the Medical Staff or of the Chair of the Board of Trustees, shall appoint a Hearing Panel, which shall be composed of at least three (3) members. The Hearing Panel is, and shall be deemed to be, a committee of the Medical Staff of the Medical Center that operates pursuant to these Medical Staff Bylaws. The Hearing Panel is, and shall be deemed to be, a medical peer review committee as that term is defined under relevant law. The proceedings, reports, and records of the Hearing Panel, including all information, testimony, exhibits, and documents presented to the Hearing Panel, shall be confidential and privileged to the extent provided by relevant law. The Office of the CEO shall designate a Chair of the Hearing Panel. The following are eligible for membership on a Hearing Panel:

- (a) Members of the Medical Staff, except for any such Member, who, in the determination of the Office of the CEO:
  - (1) Initiated the request for corrective action or otherwise made any report or complaint which resulted in the adverse recommendation or adverse action that gave rise to the request for hearing under Section 4.3 above;
  - (2) Was a member of any committee, panel, or other group when such committee, panel, or other group conducted interviews, heard testimony, considered evidence, or undertook any review, recommendation, or action

with respect to the adverse recommendation or adverse action that gave rise to the request for hearing under Section 4.3 above;

- (3) Has a direct, personal interest in the outcome of the hearing; or
  - (4) Is in direct economic competition with the practitioner.
- (b) Practitioners not members of the Medical Staff who, in the determination of the Office of the CEO:
- (1) Are not and have not, within the preceding five (5) years, been employees, directors, officers, or administrators of or legal counsel to the Medical Center;
  - (2) Have no spouse, parent, or child who is an employee, Medical Staff member, director, officer, or administrator of or legal counsel to the Medical Center;
  - (3) Have no direct, personal interest of the outcome of the hearing; or
  - (4) Are not in direct economic competition with the practitioner.

Knowledge of the reasons or subject matter forming the basis for the adverse recommendation or adverse action that gave rise to the request for hearing under Section 4.3 above, shall not preclude a Medical Staff member or other person from serving as a member of the Hearing Panel.

#### **5.4 LIST OF WITNESSES**

Unless otherwise directed by the Hearing Officer, each party, at least seven (7) days prior to the scheduled date for commencement of the hearing, shall give the other party, by special notice, a list of the names of the individuals who, as far as is then reasonably known, will give testimony or other evidence in support of that party at the hearing. Such list shall be amended, as soon as possible, when additional witnesses are identified. The Hearing Officer may permit a witness who has not been listed in accordance with this Section 5.4 to testify, if the Hearing Officer finds that the failure to list such witness was justified, that such failure did not prejudice the party entitled to receive such list, or that the testimony of such witness will materially assist the Hearing Panel in making its report.

### **PART SIX: HEARING PROCEDURE**

#### **6.1 PERSONAL PRESENCE**

The personal presence of the practitioner is required throughout the hearing, unless such personal presence is excused for any specified time by the Hearing Panel. The presence of the practitioner's counsel or any representative does not constitute the personal presence of the practitioner. A practitioner who fails, without good cause, to be present throughout the hearing, unless so excused, or who fails to proceed at the hearing in accordance with this Appendix 3,



Corrective Actions and Fair Hearings, may be deemed by the Hearing Panel to have waived his or her right to a hearing with the same consequences as provided in Section 4.4 above.

## **6.2 HEARING OFFICER AND DUTIES**

The Office of the CEO shall appoint an impartial Hearing Officer. The Hearing Officer may not be legal counsel to the Medical Center. The Hearing Officer shall preside at the hearing, shall maintain decorum, and shall assure that all participants have a reasonable opportunity to present relevant evidence. Subject to the provisions of this Appendix 3, Corrective Actions and Fair Hearings, the Hearing Officer shall determine the order of procedure for presenting evidence and argument during the hearing. The Hearing Officer shall have the authority, in the Hearing Officer's sole discretion, to set reasonable time limits for the presentation of evidence and argument during the hearing. The Hearing Officer shall have the authority and discretion to make all rulings on matters of law, procedure, and the admissibility of evidence. The Hearing Officer shall not act as a prosecuting officer or as an advocate for any party to the hearing. The Hearing Officer may participate in the deliberations of the Hearing Panel and may be legal advisor to it, but the Hearing Officer shall not be entitled to vote. The Hearing Officer shall use best efforts to resolve all matters of procedure and evidence prior to the commencement of the hearing and, in this regard, may make reasonable demands of the parties, such as requiring participation in prehearing conferences (either in person, by telephone, or by other means of communications), pre-marking of exhibits, or submission of prehearing briefs or memoranda. In the temporary absence of the Hearing Officer, the Chair of the Hearing Panel shall have all the duties and powers of the Hearing Officer, except that the Chair is entitled to vote.

## **6.3 REPRESENTATION**

The practitioner may be accompanied and represented at the hearing by a Medical Staff member in good standing, by a member of his or her local professional society, or by an attorney. To represent the body whose adverse action or adverse recommendation gave rise to the request for hearing under Section 4.3 above, the Office of the CEO may appoint one of the body's members or any other individual, who may be an attorney, regardless of whether the practitioner is represented by an attorney. The Office of the CEO may appoint legal counsel, who may be legal counsel to the Medical Center, to act as legal advisor to the Hearing Panel and the Hearing Officer. Such legal counsel may attend any Hearing Panel proceedings or deliberations but shall not be entitled to vote. The fact that the legal advisor to the Hearing Panel and the Hearing Officer is legal counsel to the Medical Center shall not preclude another member of such counsel's firm from representing the body whose adverse action or recommendation gave rise to the request for hearing under Section 4.3 above.

## **6.4 RIGHTS OF PARTIES**

During the hearing, each party shall have the following rights, subject to the rulings of the Hearing Officer on matters of law, procedure, and the admissibility of evidence, and provided that such rights shall be exercised in a manner so as to permit the hearing to proceed efficiently and expeditiously:

- (a) To call and examine witnesses,
- (b) To introduce exhibits or other evidence,
- (c) To cross-examine and impeach any opposing witness,
- (d) To rebut any evidence introduced by an opposing party, and
- (e) To submit a written statement at the close of and prior to the adjournment of the hearing.

If the practitioner does not testify in his or her behalf, he or she may be called and examined as if under cross-examination. If the Hearing Panel determines that any party is proceeding in an obstructive manner, it may take whatever action it deems warranted by the circumstances, including deeming the practitioner to have waived his or her right to a hearing with the same consequences as provided in Section 4.4 above.

## **6.5 PROCEDURE AND EVIDENCE**

The process set forth in this Appendix 3, Corrective Actions and Fair Hearings, is intended to resolve, within the Medical Center itself, matters bearing on the professional conduct, competency, and character of practitioners at the Medical Center in an expeditious and informal manner and is not intended to be conducted as a formal legal proceeding. The hearing need not be conducted according to rules of law relating to the examination of witnesses or presentation of evidence. In the discretion of the Hearing Officer, any relevant matter upon which reasonable persons customarily rely in the conduct of serious affairs may be considered by the Hearing Panel, regardless of the admissibility of such evidence in a court of law. Each party shall have the right to file a memorandum of points and authorities, and the Hearing Panel may require such memoranda to be filed at a time specified by the Hearing Panel. The Hearing Panel may examine the witnesses or call additional witnesses if it deems appropriate. Exhibits admitted into evidence before the Hearing Panel shall be identified as the Hearing Officer may direct so that the parties and the Hearing Panel will be able to refer to them in some convenient manner. The Hearing Panel also may consider all other information that can be considered under the Medical Staff Bylaws in connection with credentialing matters. The Hearing Officer, and each party, shall take reasonable and appropriate measures to safeguard the confidentiality of all proceedings, reports, and records, including all information, testimony, exhibits, and documents, concerning the hearing. The Hearing Officer shall have the authority, in the Hearing Officer's sole discretion, to designate a convenient and secure location where the Hearing Panel members may review, during the period of any adjournment of the hearing, or otherwise at the discretion of the Hearing Officer, exhibits, documents, or other information concerning the hearing.

## **6.6 BURDEN OF PRODUCTION AND BURDEN OF PROOF**

### **6.6.1 Burden of Production**

With respect to all triggering adverse recommendations or adverse actions, the body whose adverse recommendation or adverse action gave rise to the request for hearing under Section 4.3 above shall have the burden of coming forward with evidence.

### **6.6.2 Burden of Proof**

With respect to all triggering adverse recommendations or adverse actions, the practitioner has the burden of proving by a preponderance of the evidence that the adverse recommendation or adverse action lacks any substantial factual basis or is otherwise arbitrary, unreasonable, or capricious.

## **6.7 HEARING RECORD**

Some form of record of the hearing shall be kept. The Hearing Panel shall select the method to be used for making the record, such as court reporter, tape recording, or detailed transcription of the proceedings. The cost of attendance of any court reporter or of otherwise making a record of the hearing shall be borne by the Medical Center. The record of the hearing shall include by attachment or reference any exhibits admitted into evidence. A copy of the record may be obtained by the practitioner upon payment of any reasonable fees associated with its preparation. The Hearing Panel may but shall not be required to order that oral evidence be taken only on oath or affirmation administered by any person lawfully authorized to administer such oath or affirmation.

## **6.8 POSTPONEMENT**

Requests for postponement or continuance of a hearing may be granted by the Hearing Officer or the Hearing Panel only upon a timely showing of good cause.

## **6.9 PRESENCE OF HEARING PANEL MEMBERS AND DELIBERATIONS**

A majority of the Hearing Panel shall be present throughout the hearing and deliberations. If a Hearing Panel member is absent from any part of the hearing or deliberations, the Hearing Officer, in his or her discretion, may rule that such Hearing Panel member may not further participate in the hearing or deliberations or in the report of the Hearing Panel. The Hearing Panel, at a time convenient to itself, shall conduct its deliberations outside the presence of the parties.

## **6.10 RECESSES AND ADJOURNMENT**

The Hearing Panel may recess and reconvene the hearing for the convenience of the participants without special notice and with such written or oral notice as it may deem appropriate. Upon conclusion of the presentation and submission of oral or written evidence, the hearing shall be adjourned.

## **PART SEVEN: HEARING PANEL REPORT AND FURTHER PROCEDURES**

### **7.1 HEARING PANEL REPORT**

As soon as reasonably practicable after the adjournment of the hearing, the Hearing Panel shall make a written report of its findings and recommendation, including the basis thereof, with such reference to the hearing record or other matters considered as it deems appropriate. If the practitioner sustains his or her burden of proof under Section 6.6 above, the Hearing Panel shall

recommend in favor of the practitioner; in all other cases, the Hearing Panel shall recommend against the practitioner. The Hearing Panel shall forward its written report, along with the record and other documentation, to the body whose adverse recommendation or adverse action gave rise to the request for hearing under Section 4.3 above. The practitioner also shall be given a copy of the report by special notice.

## **7.2 DETERMINATION OF RESULT**

As soon as reasonably practicable after receiving the Hearing Panel report, the body whose adverse recommendation or adverse action gave rise to the request for hearing under Section 4.3 above shall consider the Hearing Panel report, and such body shall determine its result, which may be to affirm, modify, or reverse its recommendation or action. It shall transmit the result, together with the hearing record, the Hearing Panel report, and any other documentation considered, to the Office of the CEO.

## **7.3 EFFECT OF RESULT**

The result of the Medical Staff Executive Committee or of the Board of Trustees under Section 7.2 above shall be deemed adverse to the practitioner only when such result is to recommend or take any recommendation or action that would entitle the practitioner to request a hearing under Section 4.1 above. Any result to recommend or take any recommendation or action that would not entitle the practitioner to request a hearing under Section 4.1 above shall be deemed favorable to the practitioner.

### **7.3.1 Effect of Result of Medical Staff Executive Committee**

- (a) *Favorable Result:* When the result of the Medical Staff Executive Committee under Section 7.2 above is favorable to the practitioner, the Office of the CEO, as soon as reasonably practicable, shall forward the result, together with all supporting documentation, to the Board of Trustees for its action. The Board of Trustees shall consider any such favorable result of the Medical Staff Executive Committee at the next regularly scheduled meeting of the Board of Trustees. The Board of Trustees may adopt or reject the favorable result of the Medical Staff Executive Committee, in whole or in part, or it may refer the matter back to the Medical Staff Executive Committee for further consideration. Any such referral shall state the reasons therefore, and shall set a time within which the Medical Staff Executive Committee shall make its subsequent recommendation. When, following a referral back to the Medical Staff Executive Committee, the Medical Staff Executive Committee makes a subsequent recommendation adverse to the practitioner, such subsequent recommendation shall be treated as an adverse result of the Medical Staff Executive Committee pursuant to subparagraph (b) of Section 7.3.1 below. When the Board of Trustees adopts any favorable result of the Medical Staff Executive Committee, such favorable result of the Medical Staff Executive Committee shall immediately become the final action of the Board of Trustees. When the Board of Trustees rejects any favorable

result of the Medical Staff Executive Committee and, instead, takes action that is adverse to the practitioner, such action shall be treated as an adverse result of the Board of Trustees under subparagraph (b) of Section 7.3.2 below, and the practitioner shall be entitled to appellate review upon a timely and proper request in accordance with Section 8.1 below.

- (b) *Adverse Result:* When the result of the Medical Staff Executive Committee under Section 7.2 above or following a referral back under subparagraph (a) of Section 7.3.1 above is adverse to the practitioner, the practitioner shall be entitled to appellate review, upon a timely and proper request in accordance with Section 8.1 below.

### **7.3.2 Effect of Result of the Board of Trustees**

- (a) *Favorable Result:* When the result of the Board of Trustees under Section 7.2 above is favorable to the practitioner, it shall immediately become the final action of the Board of Trustees.
- (b) *Adverse Result:* When the result of the Board of Trustees under Section 7.2 above is adverse to the practitioner, the practitioner shall be entitled to appellate review, upon a timely and proper request in accordance with Section 8.1 below.

## **7.4 NOTICE OF RESULT OR FINAL ACTION**

The Office of the CEO, as soon as reasonably practicable, shall give the practitioner special notice of each of the following:

- (a) Any favorable or adverse result of the Medical Staff Executive Committee, including the basis thereof, under Section 7.3.1 above;
- (b) Any referral by the Board of Trustees back to the Medical Staff Executive Committee pursuant to subparagraph (a) of Section 7.3.1 above, and the subsequent recommendation of the Medical Staff Executive Committee following such referral; and
- (c) Any adverse result or final action of the Board of Trustees, including the basis thereof, under Section 7.3 above.

Whenever the Office of the CEO, pursuant to this Section 7.4, gives the practitioner special notice of any adverse result, such special notice shall inform the practitioner of his or her right to appellate review upon a timely and proper request in accordance with Section 8.1 below. Whenever the Office of the CEO, pursuant to this Section 7.4, gives the practitioner special notice of any final action of the Board of Trustees, the Office of the CEO shall notify the Medical Staff President of such final action.

## **PART EIGHT: INITIATION AND PREREQUISITES OF APPELLATE REVIEW**

### **8.1 REQUEST FOR APPELLATE REVIEW**

A practitioner shall have thirty (30) days after receiving special notice of an adverse result given pursuant to Section 7.4 above to file a written request for appellate review. The request shall be delivered to the Office of the CEO by special notice. If the practitioner wishes to be represented by an attorney at any appellate review appearance that may be granted pursuant to Section 9.5 below, his or her request for appellate review shall so state. To represent the body whose adverse result under Section 7.3 above gave rise to the request for appellate review, the Office of the CEO may appoint one of the body's members or some other individual; such individual may be an attorney only if the practitioner is represented by an attorney.

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

A practitioner who fails to request appellate review within the time and in the manner specified in Section 8.1 above shall have waived any right to appellate review and shall be deemed to have accepted the adverse result that was the subject of the notice under Section 7.4 above and that gave rise to the right to request appellate review under Section 8.1 above. Upon such waiver by the practitioner of the right to appellate review, any adverse result of the Board of Trustees shall immediately become the final action of the Board of Trustees without further action by the Board of Trustees, and any adverse result of the Medical Staff Executive Committee shall immediately become and remain effective, subject to the final action of the Board of Trustees. The Board of Trustees shall consider the adverse result of the Medical Staff Executive Committee at the next regularly scheduled meeting of the Board of Trustees. If the Board of Trustees accepts the result of the Medical Staff Executive Committee or takes action less adverse to the practitioner than the result of the Medical Staff Executive Committee, such Board of Trustees action thereupon shall become the final action of the Board of Trustees. The Office of the CEO, as soon as reasonably practicable, shall give the practitioner special notice of the final action and shall notify the Medical Staff President of the final action. If the Board of Trustees takes action more adverse to the practitioner than the result of the Medical Staff Executive Committee, the action of the Board of Trustees shall be treated as a new adverse result of the Board of Trustees under subparagraph (b) of Section 7.3.2 above, and the practitioner shall be given special notice, pursuant to Section 7.4 above, of the new adverse result and of his or her right to appellate review upon a timely and proper request in accordance with Section 8.1 above.

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

When the practitioner has requested appellate review in accordance with Section 8.1 above, the Office of the CEO shall deliver the request to the Chair of the Board of Trustees. As soon as reasonably practicable, the Chair of the Board of Trustees shall schedule an appellate review. At least thirty (30) days prior to the appellate review, the Office of the CEO shall give the practitioner special notice of the time, date, and place of the appellate review. Notwithstanding the above, the Office of the CEO may schedule an appellate review within a time period and with a notice period different from the above only upon the express, mutual agreement of the practitioner and the Office of the CEO.

## **8.4 REVIEW PANEL**

The Chair of the Board of Trustees shall appoint a Review Panel, which shall be composed of at least three (3) individuals to conduct the appellate review requested under Section 8.1 above. The Review Panel is, and shall be deemed to be, a committee of the Medical Staff of the Medical Center that operates pursuant to these Medical Staff Bylaws. The Review Panel is, and shall be deemed to be, a medical peer review committee as that term is defined under relevant law. The proceedings, reports, and records of the Review Panel, including all information, statements, exhibits, and documents presented to the Review Panel, shall be confidential and privileged to the extent provided by relevant law. The Review Panel members shall be members of the Board of Trustees or other reputable persons not employed by the Medical Center or affiliated entities. The Chair of the Board of Trustees shall designate a Chair of the Review Panel. The Office of the CEO may appoint legal counsel, who may be legal counsel to the Medical Center, to act as legal advisor to the Review Panel. Such legal advisor may attend any appellate review proceedings or deliberations, but shall not be entitled to vote. The fact that the legal advisor to the Review Panel is legal counsel to the Medical Center shall not preclude another member of such counsel's firm from representing the body whose adverse result gave rise to the request for appeal in accordance with Section 8.1 above.

## **PART NINE: APPELLATE REVIEW PROCEDURE**

### **9.1 NATURE OF PROCEEDINGS**

The Review Panel may consider the hearing record, the Hearing Panel report, the adverse result that gave rise to the request for appellate review under Section 8.1 above, any written statements submitted in accordance with Section 9.4 below, any oral statements allowed under Section 9.5 below, and any additional material that may be presented and accepted in accordance with Section 9.6 below. The Review Panel may consult with legal counsel appointed pursuant to Section 8.4 above regarding any questions of law.

### **9.2 POSTPONEMENT**

Requests for postponement or continuance of the appellate review may be granted by the Review Panel or its Chair only upon a timely showing of good cause.

### **9.3 CHAIR OF THE REVIEW PANEL AND DUTIES**

The Chair of the Review Panel shall preside over the proceedings of the Review Panel and shall determine matters of procedure, make all required rulings, and maintain decorum during the appellate review.

### **9.4 WRITTEN STATEMENTS**

The practitioner may submit to the Review Panel, through the Office of the CEO, a written statement detailing the findings of fact, conclusions, and procedural matters with which he or she disagrees and the reasons for such disagreement. The written statement shall be submitted to the Office of the CEO at least fifteen (15) business days prior to the scheduled date of commencement of the appellate review, unless the Review Panel or its Chair designates

another time for the submission of the written statement. The body whose adverse result gave rise to the request for appellate review under Section 8.1 above may also submit a written statement to the Review Panel, through the Office of the CEO, at least three (3) business days prior to the scheduled date of commencement for the appellate review, unless the review panel or its Chair designates another time for the submission of the written statement. If represented by counsel, the parties also shall send to counsel for each other party, by special notice on the date of submission to the Office of the CEO, a copy of any such written statement. If the parties are not represented by counsel, the Office of the CEO shall provide to each other party a copy of any such written statements.

## **9.5 PERSONAL APPEARANCE AND ORAL STATEMENT**

The Review Panel in its discretion may, but is not required to, request or permit the parties or their representatives to appear personally and make oral statements in support of their positions. The Chair of the Review Panel shall have the authority, in his or her sole discretion, to set reasonable time limits for the presentation of such oral statements. The Review Panel may question any party or representative appearing before it. In its discretion, the Review Panel may elect to create a record of appellate review and, if it so elects, shall select the method to be used for making the record; the costs of making any such record shall be borne by the Medical Center.

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

New or additional matters or evidence not contained in the Hearing Panel report or not otherwise reflected in the record of the hearing may be introduced at the appellate review only in the discretion of the Review Panel and only if the Review Panel determines that the party requesting consideration of the new or additional matters or evidence has shown that such matters or evidence could not have been discovered with due diligence in time for the initial hearing. The requesting party shall provide to the Review Panel, through the Office of the CEO, and to the other party, a written, substantive description of the new or additional matters or evidence prior to its being introduced at the appellate review. Any such new or additional matters or evidence shall be subject to the same rights of cross-examination, impeachment, and rebuttal provided at the hearing pursuant to Section 6.4 above.

## **9.7 PRESENCE OF REVIEW PANEL MEMBERS AND REPORT**

A majority of the Review Panel shall be present throughout the appellate review and deliberations. If a Review Panel member is absent from any part of the appellate review or deliberations, the Chair of the Review Panel, in his or her discretion, may rule that the Review Panel member shall not be permitted to further participate in the appellate review or deliberations or in the report of the Review Panel. The Review Panel, at a time convenient to itself, shall conduct its deliberations outside the presence of the parties.

## **9.8 RECESSES AND ADJOURNMENT**

The Review Panel may recess and reconvene the proceedings for the convenience of the participants without special notice and with such written or oral notice as it may deem appropriate. Upon receipt of any materials submitted to it and after the conclusion of any oral statements, the appellate review shall be adjourned.



## **9.9 REVIEW PANEL REPORT**

As soon as reasonably practicable after adjournment, the Review Panel shall make a written report of its findings and recommendation, including the basis thereof, with such reference to the appellate review record or other matters considered as it deems appropriate. The Review Panel shall recommend that the Board of Trustees affirm, modify, or reverse the adverse result that gave rise to the request for appellate review under Section 8.1 above. The Review Panel shall not recommend to reverse such adverse result unless it finds that the practitioner has proven by the preponderance of evidence that the adverse result lacked any substantial factual basis or was otherwise arbitrary, unreasonable, or capricious. The Review Panel shall transmit its report to the Board of Trustees for final action.

## **9.10 FINAL ACTION BY THE BOARD OF TRUSTEES**

As soon as reasonably practicable after receiving the report of the Review Panel transmitted pursuant to Section 9.9 above, the Board of Trustees may take final action, or in its discretion, may refer the matter back to the Review Panel for further review and recommendation to be returned to the Board of Trustees in accordance with its instructions within such reasonable period of time as the Board of Trustees may specify. The Office of the CEO shall give the practitioner special notice of any referral by the Board of Trustees back to the Review Panel. As soon as reasonably practicable after receipt of a report following any referral back to the Review Panel under this Section 9.10, the Board of Trustees shall take final action. The Office of the CEO shall give the practitioner special notice, and the Medical Staff President notice, of the final action of the Board of Trustees.

# **PART TEN: GENERAL PROVISIONS REGARDING HEARINGS AND APPELLATE REVIEWS**

## **10.1 NUMBER OF HEARINGS AND APPELLATE REVIEWS**

Notwithstanding any other provision of the Medical Staff Bylaws, no practitioner shall be entitled to more than one hearing or to more than one appellate review with respect to any single subject matter that is the basis of an adverse recommendation or adverse action triggering the right to a hearing under Section 4.1 above. Whenever a question arises as to what constitutes such a single subject matter, the question shall be submitted to and resolved by the Office of the CEO, whose determination shall be final.

## **10.2 EXCLUSIVE REMEDY AND EXHAUSTION OF REMEDIES**

Whenever any adverse recommendation or adverse action listed in Section 4.1.1 above is recommended or taken, the practitioner shall be entitled only to the remedies afforded by this Appendix 3, Corrective Actions and Fair Hearings, and shall exhaust such remedies. By requesting a hearing or appellate review under this Appendix 3, the practitioner agrees that any final action of the Board of Trustees following such hearing or appellate review shall be final and binding on the practitioner. By requesting a hearing or appellate review under this Appendix 3, the practitioner also acknowledges and reaffirms his or her agreement to abide by the Medical Staff Bylaws, including Article X concerning immunity from liability and releases. In addition, the practitioner waives any objection to the failure of the Medical Center to comply with

requirements of this Appendix 3, unless such failure is material and deprives the practitioner of a fair opportunity for hearing or appellate review.

### **10.3 SPECIAL NOTICE**

A practitioner shall promptly notify the Office of the CEO of any changes in his or her mailing address, and any practitioner who fails to so notify the Office of the CEO shall have waived any objection concerning a delay in or failure of any special notice under this Appendix 3, to reach the practitioner.

If the practitioner is represented at any stage of the hearing or appellate review proceedings by an attorney, then any special notice required to be given to the practitioner under this Appendix 3 may be given, instead, to the practitioner's attorney.

For purposes of this Appendix 3, Corrective Actions and Fair Hearings, any notice sent by special notice shall be deemed received by the addressee on the date that such special notice was personally delivered to such addressee, or, if delivered by certified mail, return receipt requested, such notice shall be deemed received by the addressee on the date of delivery reflected on the return receipt for such mail, provided, however, that unless an earlier time is reflected on such return receipt, any notice sent by certified mail, return receipt requested, shall be deemed received by the addressee forty-eight (48) hours after being deposited, postage pre-paid, in the United States mail.

### **10.4 STANDARDS FOR PROFESSIONAL REVIEW ACTIONS**

All of the provisions contained in this Appendix 3, Corrective Actions and Fair Hearings, are intended to comply with the standards for professional review actions set forth in the Health Care Quality Improvement Act, 42 U.S.C. § 11111.

February 14, 2023