

**Southern Maine Medical Center**

**CORRECTIVE ACTION & FAIR HEARING  
MANUAL**

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Approved by:  
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Hospital Board of Directors: May 3, 2010

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Corrective Action & Fair Hearing Manual**

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# CORRECTIVE ACTION & FAIR HEARING MANUAL

## Introduction

It is the policy of the Medical Staff of the Southern Maine Medical Center to work collegially with its members to assist them in delivering safe and good quality medical care, to continually improve their clinical skills, to comply with Medical Staff and Hospital policies, and to meet all performance expectations as established from time to time by the Medical Staff and Hospital. Medical Staff policies, including those on peer review, performance improvement, professional conduct, and physician health and impairment describe some of the collegial interventions available to Medical Staff leaders in working with colleagues whose clinical performance or professional conduct is problematic. The provisions of this manual describe the steps that the Medical Staff and Hospital will undertake when such collegial efforts fail or are insufficient to protect the well being of patients, staff, and colleagues, or to assure the effective and efficient operating of the Hospital. In particular, Article V of this manual is designed to provide a fair hearing and appeals process for members of and applicants to the Medical Staff.

## ARTICLE I

### INVESTIGATIONS

- 1.1 **Criteria for Initiation:** Any person or committee may provide information to any member of the Medical Executive Committee (MEC) or other Medical Staff leader 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 or illegal; (3) contrary to the Medical Staff Bylaws and its associated manuals, Hospital or Medical Staff rules, regulations, and/or policies; (4) harassing or intimidating to staff, colleagues, patients or their families; (5) disruptive of Hospital or Medical Staff operations; (6) below applicable professional standards as established or determined by the Medical Staff; (7) or a misrepresentation, falsification, or significant omission of information requested as part of the Hospital's credentialing and peer review processes, a request for an Investigation or action against such member may be initiated by the Medical Staff President, Medical Executive Committee (MEC), Chief Medical Officer, or Hospital CEO. The purpose of an Investigation is to determine if an MEC recommendation to the Board for Corrective Action is warranted or determine what additional information should be gathered or collegial interventions attempted prior to making such a recommendation. **Routine** peer review and performance monitoring (e.g. focused and ongoing professional practice evaluation) will not be considered "Investigations" as described in this Article.
  
- 1.2 **Initiation:** A request for an Investigation must be submitted by one of the above parties to the MEC and supported by reference to the specific activities, concerns or conduct alleged to warrant the Investigation. If the MEC authorizes the Investigation it shall make a record of this action in its official minutes. An Investigation will be automatically initiated by the MEC whenever it affirms that a Practitioner should be subject to a precautionary suspension as described in Article II of this Corrective Action and Fair Hearing Manual.

1.3 **Procedure:** If the MEC concludes an Investigation is warranted, it shall direct an Investigation to be undertaken. In the event the Hospital 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, standing or ad hoc committee of the medical staff, or engage an external peer review consultant to carry out the task. Strong consideration should be given to use of external peer review if any of the following circumstances is present:

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

If the Investigation is delegated to an individual or entity other than the MEC, the Investigation shall proceed in a prompt manner and a written report of the Investigation findings will be submitted 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 knowledgeable about the practitioner under review, however, such Investigation shall not constitute a “hearing” as that term is used in this Corrective Action and Fair Hearing Manual, 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 it feels may be warranted by the circumstances to protect the Hospital, its staff and its patients, including suspension or limitations on the exercise of Privileges.

1.4 **Completion of Investigation**

When the individual or entity carrying out the Investigation submits its written report the MEC will determine if it is complete and sufficient for the MEC to make a determination whether Corrective Action should be recommended. When it makes this decision the MEC will indicate in its minutes that the Investigation is completed and so notify the Practitioner involved. If the Investigation is triggered by imposition of a precautionary suspension, the results of the Investigation should be submitted to the MEC for consideration within 14 days from the suspension’s imposition. In all other cases, the Investigation should be concluded within 90 days or as soon as practicable. If the MEC believes extenuating circumstances require a longer period to complete the Investigation, it may authorize up to an additional 90 days in which to receive a written report.

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

If the Practitioner under Investigation resigns membership or Privileges while the Investigation is underway, or if the Practitioner resigns membership or Privileges in order to avoid an Investigation, the MEC will inform the Medical Staff office and a report will be made in accordance with the requirements governing such reporting to the federal National Practitioner Data Bank. Reports regarding Investigations and Corrective Actions will be made to state regulatory agencies as required under state regulations and statutes.

1.6 **Medical Executive Committee Action:** The MEC shall authorize a record of the Investigation be placed in the Practitioner’s medical staff peer review file along with any actions the MEC undertakes as a result. As soon as practicable after the conclusion of the Investigation the MEC shall take action that may include, without limitation:

- 1.6.1 Determining no Corrective Action be taken.
- 1.6.2 Deferring action if the MEC believes more information is needed. However, such deferral should be consistent with the timelines described in 1.4 above.
- 1.6.3 Issuing letters of admonition, censure, reprimand, or warning, although nothing herein shall be deemed to preclude Medical Staff or Hospital leaders from issuing informal written or oral warnings outside of the mechanism for Corrective Action. In the event such letters are issued, the affected Practitioner may make a written response, which shall be placed in the Practitioner's Medical Staff peer review file.
- 1.6.4 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 and co-management of patients, mandatory consultation, or monitoring.
- 1.6.5 Recommending denial, restriction, modification, reduction, suspension or revocation of clinical Privileges.
- 1.6.6 Recommending reductions of membership status or limitation of any prerogatives directly related to the member's delivery of patient care.
- 1.6.7 Recommending suspension, revocation, or probation of Medical Staff membership.
- 1.6.8 Taking other actions deemed appropriate under the circumstances.

## ARTICLE II

### **IMPOSITION OF PRECAUTIONARY OR DISCIPLINARY SUSPENSION OF PRIVILEGES OR MEMBERSHIP**

#### 2.1 AUTHORITY TO SUSPEND PRIVILEGES

The President of the Medical Staff, the Chair of the Credentials Committee, Hospital CMO, the Hospital CEO or the Board of Directors shall each have the authority to suspend all or any portion of the clinical Privileges of a Medical Staff appointee or Practitioner holding Privileges whenever he/she perceives a reasonable possibility that failure to do so may pose danger to the health and/or safety of any individual or to the orderly operations of the Hospital. Such precautionary suspension shall be deemed an interim action and not a professional review action. It shall not imply a final finding of responsibility for the situation that caused the suspension. Unless otherwise indicated, this suspension will take place immediately and the Chief of Staff, Hospital CEO, Board Chair, and the affected Practitioner will be promptly informed. The imposition of the suspension will be affirmed by the MEC as soon as practicable but in no more than 10 (ten) days.

Suspension undertaken to protect the well-being of patients are considered precautionary in nature and will be described as 'precautionary suspensions'. The term 'precautionary suspension' should be considered synonymous with the term 'summary suspension' as this terminology is used in state and federal statutes and regulations.

#### 2.2 ASSIGNMENT OF PATIENTS

Where any or all of the Privileges of a Medical Staff member or Practitioner are terminated, revoked, or restricted, such that she/he can no longer treat all or some of his/her patients at the Hospital for any period of time, such patients who are then in the Hospital shall be assigned for the period of such termination,

revocation, or restriction to another Practitioner by the Medical Staff President or designee. Where feasible, the wishes of the patient shall be considered in choosing a substitute Practitioner.

### 2.3 INTERVIEW

When a Practitioner has had Privileges or membership status temporarily suspended, the Practitioner will be afforded an interview with the Medical Executive Committee if so requested. The interview shall not constitute a hearing, shall be informal in nature, and shall not be conducted according to the procedural rules provided with respect to hearings under this Corrective Action and Fair Hearing Manual. Request to meet with the Medical Executive Committee must be made within five (5) business days of notification of the precautionary suspension of Privileges or membership. Request must be made in writing and delivered to the President of the Medical Staff or designee within the designated timeframe. Meeting with the Executive Committee will be scheduled as soon as practicable after imposition of the suspension.

### 2.4 MEDICAL EXECUTIVE COMMITTEE ACTION

No more than fourteen (14) days after the imposition of a precautionary suspension, the Medical Executive Committee shall recommend to the Hospital Board whether the suspension should be modified, continued or terminated, including whether further Corrective Action should be taken or whether there is a need for further Investigation. Unless the precautionary suspension was imposed by action of the Hospital Board, such recommended action by the MEC shall take immediate effect and remain in effect pending a final decision by the Board. The MEC shall give special notice to the affected Medical Staff member of its recommendations as soon as possible or within five (5) days of the adoption of such recommendation.

### 2.5 PROCEDURAL RIGHTS OF PRACTITIONERS SUBJECT TO PRECAUTIONARY SUSPENSION

Whenever a Practitioner has been suspended for unprofessional conduct or concerns about clinical competence for more than fourteen days, or when the MEC makes a recommendation for suspension of more than fourteen days the Practitioner will be entitled to request a fair hearing as described below in Article 6 of this manual.

### 2.6 DISCIPLINARY SUSPENSION

The MEC may, with approval of the Hospital CEO and the Chair of the Board or designees, institute one or more disciplinary suspensions of a Practitioner for a cumulative period up to but not to exceed fourteen (14) consecutive days in a calendar year. A disciplinary suspension may be instituted under the following circumstances:

- When the action that has given rise to the suspension relates to non-compliance with a Medical Staff or Hospital policy on professional conduct; and,
- When the affected Practitioner is provided an opportunity to meet with the MEC as soon as practicable following the suspension to explain his noncompliance with expected professional conduct. Failure on the part of the Practitioner to accept the MEC request of a meeting will constitute a violation of the Medical Staff Bylaws regarding “special meetings” described in Section 8.8 of the Medical Staff Bylaws.

## ARTICLE III

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

This article addresses automatic suspensions and limitations on membership and Privileges and voluntary resignations/relinquishments of membership and Privileges when these occur for administrative reasons relating to failure to meet eligibility requirements of membership or comply with additional requirements for membership or Privileges found in the Medical Staff Bylaws and Medical Staff manuals. These are

not considered professional review actions, are not based on determinations of competence or unprofessional conduct, and are not entitled to the hearing or appeal procedures provided under these Bylaws and described in this manual.

### 3.1 REVOCATION OR SUSPENSION OF LICENSE

A Medical Staff member or Practitioner with Privileges, whose license, certification, or other legal credential authorizing practice in the State of Maine is suspended, the Practitioner shall be immediately suspended from practicing in the Hospital pending final resolution and outcome by the licensing agency. During this time the Practitioner will be considered ineligible for Medical Staff membership or Privileges and will not be entitled to the procedural due process rights provided in this manual. If the licensing agency reinstates the Practitioner without any limitations or conditions, the suspension will be lifted. If licensing agency reinstates Practitioner's license with limitations or conditions, suspension will remain in effect pending an interview with Credentials Committee and recommendation from the Medical Executive Committee for action by the Hospital Board.

If license, certification, or other legal credential authorizing clinical practice in the State of Maine is revoked, the Practitioner shall immediately and automatically lose Medical Staff membership and/or Privileges at the Hospital. This will not be considered a professional review action, but an administrative action for noncompliance with the Medical Staff eligibility requirements for membership and/or Privileges. The Practitioner shall not be entitled to the procedural due process rights outlined in this manual.

### 3.2 CONVICTION OF A FELONY

A Practitioner who has been convicted of, or entered a plea of guilty or no contest to a felony or a misdemeanor relating to controlled substances, illegal drugs, insurance or health fraud, or violence, will be immediately and automatically suspended from practicing in the Hospital. Such suspension shall not entitle the affected Medical Staff member or Practitioner with Privileges to a hearing and the procedural rights of this manual of the Medical Staff Bylaws.

### 3.3 SUSPENSION FOR FAILURE TO COMPLETE MEDICAL RECORDS

A temporary suspension of Privileges to admit new patients or to schedule new procedures shall be imposed for failure to complete medical records within the time periods established by the MEC. Such suspension shall not apply to patients already admitted or scheduled at the time of the suspension, to emergency patients, or to attendance at imminent deliveries. Temporary suspension shall be lifted upon completion of the delinquent records. The temporary suspension shall become an automatic permanent suspension for failure to complete all medical records within sixty calendar days. However, affected Practitioners may request reinstatement during a period of thirty calendar days following permanent suspension if all delinquent records have been completed. Thereafter, such Practitioners shall be deemed to have voluntarily resigned from the Medical Staff and must reapply for membership and Privileges.

### 3.4 FAILURE TO ATTEND SPECIALLY NOTICED MEETING WHEN REQUESTED

A Practitioner, who fails to appear at a meeting where his or her special appearance is required under Section 8.8 of the Medical Staff Bylaws, shall automatically be suspended from exercising all clinical Privileges unless he/she can establish good cause to the satisfaction of the President of the Medical Staff for missing the meeting. Failure to appear for a rescheduled meeting on more than one occasion shall be considered a voluntary resignation from the Medical Staff. Unless the Practitioner was under formal Investigation at time of this voluntary resignation, there will be no entitlement to the fair hearing and appeals procedures provided in this manual.

### 3.5 REVOCATION OR SUSPENSION OF DEA NUMBER

A Medical Staff member whose Drug Enforcement Administration (DEA) number is revoked or suspended shall immediately and automatically be divested of his privilege to prescribe drugs covered by such number/license within the Hospital. This is not a professional review action and the Practitioner shall not be entitled to procedural due process as described in this manual. As soon as practicable, the Executive Committee shall investigate the facts under which the Staff member's DEA number was revoked or suspended, and may take further Corrective Action if indicated.

### 3.6 FAILURE TO MAINTAIN LIABILITY INSURANCE

A Practitioner's Medical Staff appointment and/or Privileges shall be immediately suspended for failure to maintain the minimum amount of professional liability insurance required by the Board. Affected Practitioners may request reinstatement during a period of ninety calendar days following suspension upon presentation of proof of adequate insurance. Thereafter, such Practitioners shall be deemed to have voluntarily resigned from the staff and must reapply for Medical Staff membership and/or Privileges.

### 3.7 EXCLUSION FROM FEDERAL OR STATE INSURANCE PROGRAMS OR CONVICTION FOR INSURANCE FRAUD

If a Practitioner appears on the list of Excluded Individuals/Entities" maintained by the HHS Office of Inspector General, or is excluded from any federal insurance programs, the Practitioner shall be considered to have automatically resigned from Medical Staff membership and/or Privileges. Similarly, any Practitioner convicted of violations of the federal False Claims Act or of insurance fraud shall be considered to have automatically relinquished his Medical Staff membership and/or Privileges.

### 3.8 FAILURE TO PARTICIPATE IN AN EVALUATION OR ASSESSMENT

A Practitioner who fails or refuses to participate in an evaluation or assessment of his or her qualifications for Medical Staff membership and/or Privileges as required under these Bylaws shall be automatically suspended. Such evaluations or assessments can be to determine clinical competence, physical fitness to exercise Privileges, or to evaluate the Practitioner's behavioral/mental health and must be undertaken with professionals identified by or acceptable to the President of the Medical Staff or MEC. If, within thirty days of the suspension the Practitioner agrees to and participates in the evaluation or assessment, the Practitioner shall be reinstated. After thirty days, the Practitioner will be deemed to have voluntarily resigned his or her Medical Staff membership and/or Privileges.

### 3.9 FAILURE TO BECOME BOARD CERTIFIED OR TO MAINTAIN BOARD CERTIFICATION

Where applicable under these Bylaws, whenever a Practitioner's time period in which to become board certified expires without achieving certification, that individual will not be eligible for reappointment of membership and/or Privileges.. Where applicable under these Bylaws, where a Practitioner does not maintain board certification in at least one specialty, that individual will not be eligible for reappointment of membership and/or Privileges. Such ineligibility may be waived at the discretion of the Board after consideration of the relevant quality and access implications..

### 3.10 FAILURE TO NOTIFY HOSPITAL OF DISCIPLINARY OR FINAL MALPRACTICE ACTIONS

A Practitioner who knowingly fails to notify the President of the Medical Staff and the CEO in writing within ten (10) days of any of the following shall be automatically suspended:

- if his/her Privileges in any Hospital have been revoked or limited in any way;
- if proceedings have been initiated to revoke or limit Privileges in any way at another health care facility or institution;
- if a professional malpractice action has been resolved in an adverse outcome;

- if there is a change in his/her license (including any consent decrees or probation imposed by a state board of medicine) to practice medicine or prescribe drugs in any state;
- if removed or not renewed as an insurance plan provider due to quality of care issues;
- if any state or federal agency or agent commences a formal investigation involving the Practitioner,  
or
- if he fails to notify the Hospital of any action taken by any state Medical Board against the Practitioner.

The suspension shall be lifted by the MEC when the Practitioner provides adequate documentation to the MEC of the circumstances that triggered the suspension. Failure to provide this information in fourteen (14) days will be considered a voluntary resignation from Medical Staff membership and/or Privileges.

### 3.11 FAILURE TO RETURN FROM A LEAVE OF ABSENCE

If a Practitioner granted a leave of absence (LOA) does not request reinstatement or an extension before the LOA expires, he or she will be considered to have voluntarily resigned his or her Medical Staff membership and/or Privileges.

## ARTICLE IV

### ADDITIONAL EXCEPTIONS TO HEARING RIGHTS

#### 4.1 IMPACT OF EXCLUSIVE CONTRACTS

Privileges can be reduced or terminated as a result of a decision by the Hospital Board to limit the exercise of clinical Privileges to Practitioners engaged by the Hospital under the terms of an exclusive contract. If a Practitioner holding Privileges is not a party to such an exclusive contract, his or her Privileges covered by the exclusive contract will automatically terminate as of the effective date of the exclusive contract. If the member of the Medical Staff so affected loses all Privileges as a result of the implementation of an exclusive contract, he or she will be considered to have automatically relinquished membership on the Medical Staff. These actions are not considered professional review actions and are not based on a determination of incompetence or unprofessional conduct. There is no right to a hearing or appeal of the loss of Privileges or membership resulting from implementation of an exclusive contract.

#### 4.2 IMPACT OF PRIVILEGE ELIGIBILITY REQUIREMENTS OR CLOSURE OF SERVICES

Where a Practitioner is not eligible to apply for or must relinquish a Privilege because he does not meet or no longer meets the established criteria for that Privilege as established by the MEC and Board, the Practitioner will not be entitled to a hearing or appeal. Where a Practitioner is not eligible to exercise a Privilege in a particular location or on a particular service of the Hospital because a Medical Staff or Board policy makes him ineligible to do so, the Practitioner will not be entitled to a hearing or appeal under the Medical Staff Bylaws.

## ARTICLE V

### REPORTING REQUIREMENTS

#### 5.1 REPORTING TO THE NATIONAL PRACTITIONER DATA BANK

Professional review actions based on reasons related to professional competence or conduct adversely affecting clinical Privileges for longer than thirty (30) days or voluntary surrender or restriction of clinical Privileges while under, or to avoid, Investigation must be reported to the National Practitioner

Data Bank (“NPDB”). The report must be made to the NPDB within fifteen (15) days of the final decision of the Board of Directors. Precautionary suspensions lasting longer than thirty (30) days must be reported to the NPDB within fifteen (15) days of the Medical Executive Committee action. The Practitioner involved will be notified prior to its submission that a data bank report is required and will be made. A copy of the NPDB report will be forwarded to the state Medical Board.

## 5.2 ADDITIONAL REPORTING REQUIREMENTS

Reports of professional review actions will be made to state and regulatory entities as required by federal and state laws or regulations.

# ARTICLE VI

## INITIATION OF HEARING

### 6.1 GROUND FOR HEARING

Except as otherwise provided in these Bylaws, a recommendation by the MEC for one or more of the following adverse actions or their imposition, if based on a determination of clinical incompetence or unprofessional conduct, shall constitute grounds for a hearing:

- Denial of initial appointment to the Medical Staff ;
- Denial of reappointment to the Medical Staff;
- Revocation of appointment to the Medical Staff;
- Denial of some or all requested clinical Privileges;
- Revocation of some or all clinical Privileges;
- Suspension of some or all Privileges for more than 14 days; or
- Restriction of some or all Privileges for more than 14 days (e.g. mandatory concurring consultation requirement, or an increase in the stringency or a pre-existing mandatory concurring consultation requirement, when such requirement only applies to an individual Medical Staff member.)

The following will **not** constitute grounds for a hearing:

- Having a letter of guidance, warning, or reprimand issued to the Practitioner or placed in the credentials or performance file of the Practitioner;
- Automatic relinquishment of Privileges or membership as described in Article III above;
- Imposition of a precautionary or disciplinary suspension that does not last for more than fourteen days;
- Denial of a request for a leave of absence or for an extension of a leave of absence;
- Determination by the Hospital that an application for appointment or reappointment is untimely or incomplete for failure to submit all requested information;
- A decision not to process an application under the available procedures for expedited review;
- Imposition of a proctoring or monitoring requirement where such does not include a restriction on Privileges;
- Failure to process a request for a Privilege when the applicant/member does not meet the eligibility requirements to hold that Privilege;
- Conduct of focused peer review (including external peer review) or a formal Investigation;
- Requirement to appear for a special meeting under the provision of the Medical Staff Bylaws;
- Termination or limitation of temporary Privileges unless for demonstrated incompetence or unprofessional conduct;
- Determination that an applicant for membership does not meet the requisite qualifications or criteria for membership;

- Ineligibility to request membership or Privileges or continue the exercise of Privileges because a relevant specialty is closed under a Medical Staff development plan adopted by the Board or covered under an exclusive provider agreement approved by the Board;
- Termination of any contract with or employment by the Hospital;
- Any recommendation voluntarily accepted by the member as a result of collegial peer review;
- Removal or limitation of emergency department call obligations;
- Any requirement by the MEC or Board to complete an educational assessment;
- Any requirement by the MEC or Board to undergo a mental, behavioral, or physical evaluation to determine fitness for practice;
- Appointment or reappointment for a duration of less than 24 months;
- Notification that the Practitioner is on probation or is being granted a conditional reappointment where such conditions or probation do not restrict or terminate the Practitioner's Privileges;
- Actions taken by the affected Practitioner's licensing agency or any other governmental agency or regulatory body.

## 6.2 NOTICE TO PRACTITIONER

A Practitioner with respect to whom adverse action listed in Section 6.1 above has been taken shall promptly be given special notice thereof by the President of the Medical Staff or, if such notice was prompted by action of the Hospital Board, by the Chair of the Hospital Board. This special notice will include a description of the adverse action and the reasons for it, a copy of this Corrective Action and Fair Hearing Manual, and an offer to provide the Practitioner a hearing. The notice will also inform the Practitioner that the adverse action or recommendation, if finally adopted by the Board, may result in a report to the state licensing authority (or other applicable state agencies) and the National Practitioner Data Bank. The Practitioner shall have thirty (30) days following the date of receipt of such notice within which to request a hearing.

## 6.3 PRACTITIONER'S REQUEST FOR HEARING

A Practitioner's request for a hearing shall be made by means of written special notice delivered either in person or by certified or registered mail to the Hospital CEO.

## 6.4 WAIVER OF HEARING BY THE PRACTITIONER

A Practitioner who fails to request a hearing within the time required and in the manner specified waives any right to a hearing to which he/she might otherwise have been entitled. Such waiver in connection with:

- a) a decision or proposed decision by the Hospital Board shall constitute acceptance of such decision, which shall thereupon become effective as the final decision of the Hospital Board and will be reported as required by law.
- b) a recommendation by the Medical Executive Committee shall constitute acceptance of such recommendation, which shall thereupon become and remain effective pending the final decision of the Hospital Board and which will be reported as required by law.

The Practitioner may also waive the right to a hearing by signed statement submitted to the Hospital CEO.

## 6.5 STAY OF ADVERSE DECISION

A request for a hearing does not automatically operate to stay any adverse recommendation of the Medical Executive Committee or adverse decision of the Hospital Board, including the imposition of a

precautionary suspension, and such recommendation or decision shall remain effective pending the final decision of the Hospital Board.

## **ARTICLE VII**

### **HEARING PREREQUISITES**

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

Upon receipt of a timely request for hearing, the Hospital CEO shall inform the President of the Medical Staff, MEC and Hospital Board. Within thirty (30) days after receipt of such request, the CEO, shall schedule and arrange for a hearing. At least thirty (30) days prior to the hearing, the Practitioner will be sent a special notice of the time, place, and date of the hearing, together with a statement of the matters to be considered and a list of witnesses (if any) expected to testify at the hearing on behalf of the MEC and the Hospital Board. The hearing date shall be not less than thirty (30) days nor more than sixty (60) days from the date of receipt of the request for hearing, unless the affected Practitioner and Hospital CEO mutually agree to a different date. Once the date is set the Hospital CEO and Practitioner shall mutually agree to any change in the hearing date, however, neither party may change the date more than one time.

#### **7.2 STATEMENT OF ISSUES AND EVENTS**

As part of or together with the notice of the hearing, there shall be provided a written statement, in concise language, of the acts or omissions which support the decision to impose or recommend an adverse action against the Medical Staff member or Practitioner, and the identification of any medical records (by chart or patient number where available) or other information or data which form the basis for the action. This statement and the list of supporting information may be amended or enhanced at any time, including during the hearing if the additional material is relevant to the continued appointment or clinical Privileges of the Practitioner requesting the hearing and that Practitioner and his/her counsel have sufficient time to study the material and rebut it.

#### **7.3 LIMITED RIGHT OF DISCOVERY**

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

- a) The Hospital CEO will provide the names of any hearing panel members, hearing officer, or presiding officer to the Practitioner requesting the hearing within five days of their appointment.
- b) Either party shall have the right to require up to twenty-four (24) hours before the scheduled date of the hearing, production of any documents or charts that are to be used as evidence at the hearing,
- c) The Hospital CEO shall have the right to request, by special notice, a list of witnesses who will give testimony or evidence in support of the opposing party at the hearing. A party receiving such request shall, within ten (10) days of receipt of the request, furnish a list, in writing, of the names and addresses of the individuals, to the extent then reasonably known, who will be called as witnesses on his behalf and a brief summary of the nature of the anticipated testimony.
- d) There shall be no right to discover the name of any individual who has produced evidence relating to the charges made against the Practitioner who requested the hearing unless such individual is to be

called as a witness at the hearing or unless the deposition or other written statement of such individual is to be evidence at the hearing.

- e) There shall be no right to the discovery of credentials or quality files of other members of the Medical Staff, or peer review minutes of any Medical Staff committee or activity unless specifically created and limited to addressing the competence and/or conduct concerns of the Practitioner requesting the hearing.

#### 7.4 HEARING PANEL, PRESIDING OFFICER, HEARING OFFICER

##### 7.4.1 APPOINTMENT OF HEARING PANEL MEMBERS

The Hospital CEO, after consultation with the President of the Medical Staff, shall appoint a Hearing Panel and a Presiding Officer or a Hearing Officer. A Hearing Panel shall be composed of not fewer than three (3) voting members who meet the qualifications below. If the Presiding Officer is not a physician, he/she will not have voting Privileges on the panel. The Practitioner requesting the Hearing will be notified of the Hearing Panel members appointed by the CEO and will have 5 days from receipt of notice to lodge in writing with the CEO any objections to any appointee. Final authority to appoint panel members, a Presiding Officer, or a Hearing Officer will rest with the Hospital CEO and the Practitioner requesting the hearing is not entitled to veto any appointee's participation.

##### 7.4.2 QUALIFICATION OF MEMBERS

Voting members of the Hearing Panel shall be licensed physicians who shall not have previously participated in the deliberations on the matter involved. If the Practitioner requesting the hearing is other than an MD/DO, at least one (1) member of the Hearing Panel shall be of the same specialty and need not be a Medical Staff member or a privileged Practitioner at the Hospital.

Knowledge of the matter involved shall not preclude a person from serving as a member of the Hearing Panel. No member of the Hearing Panel may be a direct competitor of the member under review. The Hospital CEO shall have discretion to determine whether a potential panel member is a direct competitor of the member under review.

##### 7.4.3 PRESIDING OFFICER

The Hospital CEO, after consultation with the President of the Medical Staff, will appoint a Presiding Officer to chair the panel, set procedure for the Hearing, and conduct all business before the panel. If this individual is not a licensed physician, he/she will not be a voting member of the panel but may take part in its deliberations and support it in an advisory capacity. The Presiding Officer may be a physician on the Medical Staff, an active or retired judge or attorney, experienced physician executive, experienced human resources director, or any individual deemed by the CEO to have the capacity to manage the Hearing effectively and efficiently.

##### 7.4.4 HEARING OFFICER

The Hospital CEO, after consultation with the President of the Medical Staff, may appoint a single Hearing Officer in lieu of a Hearing Panel where the issue triggering the Hearing is unprofessional conduct rather than clinical incompetence. The Hearing Officer may be a lawyer, physician executive, or other individual familiar with due process. The Hearing Officer may not be legal counsel to the Hospital, any individual who is in direct economic competition with the Practitioner requesting the Hearing, and cannot have been previously involved in the deliberations triggering the Hearing. The Hearing Officer will not act as a prosecuting officer or as an advocate for either side at the Hearing. In the event that a Hearing Officer is appointed instead of a Hearing Panel, all references in this Corrective Action and Fair Hearing Manual to "Hearing Panel" or "Presiding Officer" shall be deemed to refer instead to the Hearing Officer, unless the context would clearly require otherwise.

The cost of utilizing a Hearing Officer will be born by the Hospital.

## ARTICLE VIII

### HEARING PROCEDURE

#### 8.1 PERSONAL PRESENCE

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

#### 8.2 PRESENTATION

The hearings provided for in these Bylaws are for the purpose of intra professional resolution of matters bearing on professional conduct or competency. Accordingly, the presiding officer shall have the discretion to limit the role of legal counsel for either side. This means that the presiding officer may rule that the person requesting the hearing shall be required to have his case presented at the hearing only by a Practitioner who is licensed to practice medicine in the State of Maine and who, preferably, is a member in good standing of the Medical Staff. Where this is the case the Hospital shall appoint a representative from the Medical Staff to present its recommendation and to examine witnesses. The foregoing shall not be deemed to deprive the Practitioner or Hospital of the right to utilize legal counsel, at their own expense, in preparation for the hearing and such counsel may be present at the hearing, advise his or her client, and participate in resolving procedural matters.

#### 8.3 PRESIDING OFFICER

The Presiding Officer shall act to ensure that all participants in the hearing have a reasonable opportunity to be heard and to present appropriate oral and documentary evidence subject to reasonable limits on the number of witnesses and duration of direct and cross examination, applicable to both sides, as may be necessary to avoid cumulative or irrelevant testimony or to prevent abuse of the Hearing process. The Presiding Officer shall act to ensure that decorum is maintained throughout the Hearing and to prohibit conduct or presentation of evidence that is cumulative, excessive, irrelevant, abusive, or that causes undue delay. The Presiding Officer shall be entitled to determine the order of procedure during the Hearing, and shall have the authority and discretion, in accordance with these Bylaws, to make all rulings on all matters of procedure, including the admissibility of evidence. The Presiding Officer may conduct argument by counsel on procedural points and may do so outside the presence of the Hearing Panel.

In addition, the Presiding Officer will act in such a way that the Hearing Panel, in formulating its recommendations, considers all information reasonably relevant to the continued appointment or clinical Privileges of the individual requesting the Hearing. The Presiding Officer may seek legal counsel when he or she feels it is appropriate and may use the Hospital legal counsel for such advice.

#### 8.4 HEARING OFFICER

Where a Hearing Officer is employed instead of a Hearing Panel this individual shall have the same authority as a Presiding Officer to determine the manner in which the Hearing will be conducted and rule on all matters of procedure and evidence.

#### 8.5 PRE-HEARING CONFERENCE

The Presiding Officer or hearing officer may require a representative (who may be counsel) for the individual and for the Medical Executive Committee to participate in a pre-hearing conference. At the pre-hearing conference, the Presiding Officer or Hearing Officer shall resolve all procedural questions, including any objections to exhibits or witnesses and the time to be allotted to each witness's testimony and cross-examination.

#### 8.6 RECORD OF HEARING

The Hearing Panel shall maintain a complete record of the hearing by having a certified court reporter present to make a record of the hearing. The cost for the certified court reporter shall be born by the Hospital. The presiding officer may, but shall not be required to, order that evidence shall be taken only upon oath or affirmation administered by any person entitled to notarize documents in Maine. The record of the hearing may be requested by the Practitioner requesting the hearing and will be forwarded to him/her by the Hospital upon payment of reasonable reproduction costs.

#### 8.7 RIGHTS OF PARTIES

The Practitioner shall have a limited right, as determined by the Presiding Officer, to inquire as to possible biases of the Hearing Panel. The Presiding Officer has discretion to respond to such inquiries in a manner he believes will provide for fair deliberations. Inquiry shall not be allowed into the medical qualifications or expertise of hearing panel members.

During a hearing, in accordance with procedures established by the Presiding Officer, each of the parties shall have the right to:

- a. call and examine witnesses
- b. introduce exhibits
- c. cross-examine any witness on any matter relevant to the issues
- d. impeach any witness
- e. rebut any evidence

If the Practitioner who requested the hearing does not testify in his/her own behalf, such Practitioner may be called and examined as if under cross-examination. Either party has the right to submit a written statement at the close of the hearing.

#### 8.8 ADMISSIBILITY OF EVIDENCE

The hearing shall not be conducted according to rules of law relating to the examination of witnesses or presentation of evidence. Any relevant evidence may be admitted by the presiding officer if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the admissibility of such evidence in a court of law, unless such evidence is deemed by the presiding officer to be cumulative. Hearsay is admissible and shall be sufficient to support the decision of the Hearing Panel. The Hearing Panel may question witnesses or call additional witnesses if it deems appropriate.

#### 8.9 OFFICIAL NOTICE

The Presiding Officer shall have the discretion to take official notice of any generally accepted technical or scientific matter relating to the issues under consideration or of any other matter that

may be judicially noticed by the courts of the State of Maine. 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. Any party shall have the opportunity, upon timely request, to ask that a matter be officially noticed or to refute the noticed matters by relevant evidence or by written or oral presentation of authority in a manner determined by the Hearing Panel. Reasonable or additional time shall be granted, if requested, to present written rebuttal of any evidence admitted on official notice.

#### 8.10 BURDEN OF PRODUCTION OR PROOF

##### 8.10-1 Burden of Production

In all cases in which a hearing is conducted, it shall be incumbent on the body whose action or decision prompted the hearing (i.e. the MEC or Hospital Board) to come forward initially with evidence in support of its action or decision. Thereafter, the burden shall shift to the Practitioner who requested the hearing to come forward with evidence in his/her support.

##### 8.10-2 Burden of Proof

In all cases in which a hearing is conducted, after all the evidence has been submitted by both parties, the Hearing Panel shall rule against the Practitioner who requested the hearing unless it finds that such person has proved, by clear and convincing evidence, that the factual allegations against the Practitioner are untrue in total or in substantial part or unless it concludes, based on its findings of fact that the action of the entity whose decision prompted the hearing was arbitrary, unreasonable, or appears to be unfounded or unsupported by credible evidence. It is the burden of the Practitioner requesting the hearing to demonstrate that he or she satisfies, on a continuing basis, all criteria for initial appointment, reappointment, and/or clinical Privileges, and that he/she complies with all Medical Staff and hospital policies.

#### 8.11 PRESENCE OF PANEL MEMBERS AND VOTE

A majority of the members of the Hearing Panel must be present throughout the hearings and deliberations; provided; however, that, at the discretion of the presiding officer, if a member is absent from an insubstantial part of the hearing, such member may be allowed to read the entire transcript of the proceedings and, after doing so, may thereafter participate in the deliberations of the Panel.

#### 8.12 RECESSES AND CONCLUSIONS

The presiding officer may recess the hearing and reconvene the same at any time for the convenience of the participants, without additional notice. Upon conclusion of the presentation of oral and written evidence, the hearing shall be closed. The Hearing Panel shall then conduct its deliberations outside the presence of either party to the hearing.

#### 8.13 POSTPONEMENTS AND EXTENSION

Postponements and extensions of time beyond the times expressly permitted in these Bylaws may be requested by anyone, but shall be permitted only if the Hearing Panel, or its presiding officer acting on its behalf, determines that good cause has been shown.

### **ARTICLE IX**

#### **HEARING PANEL REPORT AND FURTHER ACTION**

##### 9.1 HEARING PANEL REPORT

Within ten (10) days after the conclusion of the hearing, the Hearing Panel shall make a detailed written report signed by each Panel member and setting forth separately each charge against the

Practitioner, a summary of the evidence that supports or rebuts such charges, its findings on each fact at issue, and recommendations based on such findings with respect to the matter. This report, together with the hearing record and all other documentation considered by it, will then be forwarded to the body whose recommendation or decision prompted the hearing (MEC or Board). All findings and recommendations by the hearing Panel shall be supported by reference to the hearing record and relevant documentation considered by the committee. If the Panel's decision is not unanimous, a minority report or reports may be issued. The Practitioner requesting the hearing has the right to receive the written recommendation of the Panel, including a statement of the basis for the recommendation.

## 9.2 ACTION ON HEARING PANEL REPORT

Within thirty (30) days after receipt of the report of the Hearing Panel, the Executive Committee or Hospital Board, as the case may be, shall consider the same and affirm, modify or reverse its previous recommendation, decision or proposed decision in the matter. It shall indicate its action in writing, and shall transmit a copy of its written recommendation together with the hearing record, the report of the Hearing Panel, and all other relevant documentation, to the Medical Executive Committee or Hospital Board. The Practitioner requesting the hearing has the right to receive the written decision of the MEC or Hospital Board, including a statement of the basis for the decision.

## 9.3 NOTICE AND EFFECT OF RESULTS

9.3-1 The notice of the action taken shall be given to the President of the Medical Staff and, by special notice, to the affected Practitioner.

9.3-2 Effect of Favorable Result:

a) Adopted by the Board

If the Hospital Board's action is favorable to the Practitioner, such action shall constitute the final decision of the Board and the matter shall be considered finally closed.

b) Adopted by the Executive Committee

If the Executive Committee's action is favorable to the Practitioner, it shall be promptly forwarded, together with all supporting documentation, to the Board for its decision. The Board shall either adopt or reject the Executive Committee's recommendation, in whole or in part, or refer the matter back to the Executive Committee for further reconsideration. Any such referral shall include a statement of the reasons therefore and set a time limit within which a subsequent recommendation to the Board must be made. After receipt of such subsequent recommendation, the Board shall render its decision. The Practitioner will be sent a special notice informing him or her of each action taken. A favorable decision shall constitute the final action of the Board, and the matter shall be considered finally closed. If the Board's decision is adverse, the special notice shall inform the Practitioner of his or her right to request an appellate review by the Board as provided in this Corrective Action and Fair Hearing Manual.

9.3-3 Effect of Adverse Action

If the action of the Hospital Board or Executive Committee continues to be adverse to the Practitioner, the special notice required shall inform the Practitioner of his or her right to request an appellate review by the Hospital Board.

## **ARTICLE X**

### **INITIATION AND PREREQUISITE OF APPELLATE REVIEW**

#### 10.1 REQUEST FOR APPELLATE REVIEW

Within ten (10) days after receipt of the notice given, the Practitioner who requested the hearing may request in writing an appellate review by the Hospital Board. Such request shall be delivered to the Hospital CEO/designee either in person or by certified or registered mail. The written request for an appeal shall also include a brief statement of the reasons for appeal.

#### 10.2 WAIVER BY FAILURE TO REQUEST APPELLATE REVIEW

If such appellate review is not requested within the time and in the manner specified in Section 10.1. the Practitioner shall be deemed to have waived his right to appeal and to accept the action so noticed, and it shall thereupon become final and effective immediately.

#### 10.3 NOTICE OF TIME AND PLACE

In the event of any appeal to the Hospital Board, the Board shall, within thirty (30) days after the receipt of such notice of appeal, schedule and arrange for an appellate review. The Hospital Board shall cause the Practitioner to be given special notice of the time, place and date of the appellate review. The date of the appellate review shall be not less than fourteen (14) days nor more than sixty (60) days from the date of receipt of the request for appellate review; provided, however, that when a request for appellate review is made by a member who is under a suspension which is then in effect, the appellate review shall be held as soon as the arrangements may reasonably be made and not more than thirty (30) days from the date of receipt of the request for appellate review. The time for appellate review may be extended by the Hospital Board for good cause.

#### 10.4 APPELLATE REVIEW BODY

The Board shall determine whether the appellate review shall be conducted by the Board as a whole or by an Appellate Review Committee of not less than three (3) members of the Board appointed by the Chairman of the Board. The Chairman of the Hospital Board or designee shall be the presiding officer and shall have the same responsibilities as the presiding officer at the initial hearing. If such Committee is appointed, the Board shall delegate to such Committee full authority to render a final decision on behalf of the Board. Members of the review panel may not be direct competitors of the Practitioner under review and should not have participated in any formal Investigation or deliberations leading to the recommendation for Corrective Action under consideration.

### **ARTICLE XI**

#### **APPELLATE REVIEW PROCEDURE**

##### 11.1 GROUND FOR APPEAL

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

There was substantial failure to comply prior to the hearing with the provisions contained in the Medical Staff Bylaws/Corrective Action and Fair Hearing Manual so as to deny basic fairness or reasonable due process; or

The recommendation of the hearing panel was made arbitrarily, capriciously, or with prejudice; or

The recommendation of the hearing panel was not supported by substantial evidence based upon the hearing record.

In making this assessment the Hospital Board will consider the record of the hearing before the hearing panel and any written statements submitted by parties to the hearing.

##### 11.2 WRITTEN STATEMENTS

Each party shall have the right to present a written statement in support of its position on appeal, provided that such statement is submitted to the Board or the Committee of the Board, at least fifteen (15) days prior to the date of the appellate review, unless otherwise provided by the Board or the Committee of the Board. A copy shall be provided of each submitted written statement to the opposing party at least seven (7) days prior to the date of the appellate review.

### 11.3 SUBMISSION OF ADDITIONAL EVIDENCE

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

### 11.4 ORAL STATEMENT

The Hospital Board or the Committee of the Board may, at its sole discretion, allow the parties and/or their representatives to personally appear and make a time limited thirty (30) minute oral argument. Any party or representative so appearing shall be required to answer questions put to him by any member of the Appellate Review Committee. This time restriction may be extended at the sole discretion of the presiding officer of the appellate review body.

### 11.5 RECESSES AND ADJOURNMENT

At the conclusion of the oral argument, if allowed, the appellate review shall be closed. The Hospital Board or the Committee of the Board, may thereupon, at a time convenient to itself, conduct deliberations outside the presence of the parties and their representatives. At the conclusion of those deliberations, the appellate review shall be declared finally adjourned.

### 11.6 ACTION

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

## **ARTICLE XII**

### **FINAL DECISION OF THE BOARD**

#### 12.1 FINAL BOARD DECISION

Within ten (10) days after the conclusion of the proceeding before the Hospital Board or the Committee of the Board, the Hospital Board or the Committee of the Board shall render a final decision in writing and shall deliver copies thereof to the Executive Committee and, by special notice, to the Practitioner. This decision shall be effective immediately and shall not be subject to further review.

## **ARTICLE XIII**

### **GENERAL PROVISIONS**

#### 13.1 EXHAUSTION OF ADMINISTRATIVE REMEDIES

By applying for membership on the Medical Staff or for Privileges, each applicant agrees that, in the event of any adverse action or decision with respect to the Medical Staff membership and/or Privileges, the applicant or Medical Staff member shall fully exhaust the administrative remedies afforded by the Medical Staff Bylaws, including this Manual, before resorting to formal legal action.

### 13.2 LIMIT OF ONE APPELLATE REVIEW

Except as otherwise provided in this Section, no applicant or member shall be entitled as a matter of right to more than one appellate review in total before the Hospital Board or the Committee of the Board on any single matter which may be the subject of an appeal, without regard to whether such subject is the result of action by the Executive Committee or the Hospital Board, or the Committee of the Board or a combination of actions by such bodies.

### 13.3 WAIVER

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

## **ARTICLE XIV**

### **ADOPTION AND AMENDMENT**

#### 14.1 AMENDMENT

This Corrective Action & Fair Hearing Manual of the Bylaws may be amended or repealed, in whole or in part, as described in Article XI of the Medical Staff Bylaws.