

# ***MEDICAL STAFF BYLAWS***

## ***APPENDIX “A”***

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### **Deaconess Illinois Crossroads**

### **FAIR HEARING PLAN**

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<i>DEFINITIONS</i> .....	1
ARTICLE I .....	2
INITIATION OF HEARING .....	2
1.1 RECOMMENDATION OR ACTIONS .....	2
1.2 WHEN DEEMED ADVERSE.....	2
1.3 NOTICE OF ADVERSE RECOMMENDATION OR ACTION.....	3
1.4 REQUEST FOR HEARING .....	3
1.5 WAIVER BY FAILURE TO REQUEST A HEARING.....	3
ARTICLE II .....	5
HEARING PREREQUISITES.....	5
2.1 NOTICE OF TIME & PLACE FOR HEARING.....	5
2.2 STATEMENT OF ISSUES & EVENTS.....	5
2.3 PRACTITIONER'S RESPONSE .....	5
2.4 EXAMINATION OF EVIDENCE.....	5
2.5 APPOINTMENT OF HEARING COMMITTEE.....	5
2.6 PRE-HEARING CONFERENCE .....	7
ARTICLE III .....	8
HEARING PROCEDURE.....	8
3.1 PERSONAL PRESENCE.....	8
3.2 PRESIDING OFFICER .....	8
3.3 REPRESENTATION .....	8
3.4 RIGHTS OF THE PARTIES .....	8
3.5 PROCEDURE & EVIDENCE.....	9
3.6 OFFICIAL NOTICE.....	9
3.7 BURDEN OF PROOF .....	9

3.8	RECORD OF HEARING .....	9
3.9	POSTPONEMENT.....	9
3.10	PRESENCE OF HEARING COMMITTEE MEMBERS & VOTING.....	10
3.11	RECESSES & ADJOURNMENT .....	10
ARTICLE IV.....		11
HEARING COMMITTEE REPORT & FURTHER ACTION .....		11
4.1	HEARING COMMITTEE REPORT .....	11
4.2	ACTION ON HEARING COMMITTEE REPORT .....	11
4.3	NOTICE & EFFECT OF RESULT.....	11
ARTICLE V .....		13
INITIAL & PREREQUISITES OF APPELLATE REVIEW.....		13
5.1	REQUEST FOR APPELLATE REVIEW.....	13
5.2	WAIVER BY FAILURE TO REQUEST APPELLATE REVIEW .....	13
5.3	NOTICE OF TIME & PLACE FOR APPELLATE REVIEW.....	13
5.4	APPELLATE REVIEW BODY.....	13
ARTICLE VI.....		14
APPELLATE REVIEW PROCEDURE.....		14
6.1	NATURE OF PROCEEDINGS .....	14
6.2	WRITTEN STATEMENTS.....	14
6.3	PRESIDING OFFICER .....	14
6.4	ORAL STATEMENT.....	14
6.5	CONSIDERATION OF NEW OR ADDITIONAL MATTERS .....	14
6.6	PRESENCE OF MEMBERS & VOTING .....	14
6.7	RECESSES & ADJOURNMENT.....	15
6.8	ACTIONS TAKEN .....	15
6.9	CONCLUSION .....	15
ARTICLE VII.....		16
FINAL DECISION OF THE BOARD .....		16
ARTICLE VIII .....		17
GENERAL PROVISIONS.....		17
8.1	HEARING OFFICER APPOINTED & DUTIES .....	17
8.2	ATTORNEYS .....	17
8.3	NUMBER OF HEARINGS & REVIEWS .....	17
8.4	RELEASE .....	17
8.5	WAIVER.....	17

This Fair Hearing Plan is adopted in connection with the Medical Staff Bylaws and made a part thereof. The definitions and terminologies of the Bylaws also apply to the Fair Hearing Plan and proceedings hereunder.

### **DEFINITIONS**

The following definitions, in addition to those stated in the Medical Staff Bylaws or herein, shall apply to the provisions of this Fair Hearing Plan.

1. "Appellate Review Body" means the group designated pursuant to this Plan to hear a request for Appellate Review that has been properly filed and pursued by the Practitioner.
2. "Corporation" shall mean National Healthcare of Mt. Vernon, Inc.
3. "Hearing Committee" means the committee appointed pursuant to this Plan to hear a request for an evidentiary hearing that has been properly filed and pursued by a Practitioner.
4. "Parties" means the Practitioner who requested the hearing or Appellate Review and the body or bodies upon whose adverse action a hearing or Appellate Review request is predicated.
5. "Practitioner", for purposes of this Plan, means a physician, dentist, or podiatrist who has been granted clinical privileges at the Hospital.
6. "Special Notice" means written notification sent by certified or registered mail, return receipt requested, or delivered by hand with a written acknowledgment of receipt.

## **ARTICLE I**

### **INITIATION OF HEARING**

#### **1.1 RECOMMENDATION OR ACTIONS**

The following recommendations or actions shall, if deemed adverse pursuant to Article I, Section 1.2 of this Fair Hearing Plan (Plan), entitle the Practitioner affected thereby to a hearing:

- (1) Denial of initial staff appointment, unless based upon failure to submit a completed application or failure to meet the basic objective criteria for appointment;
- (2) Denial of reappointment, unless based upon failure to submit a completed application or failure to meet the basic objective criteria for appointment;
- (3) Suspension of staff membership for a period in excess of thirty (30) days, except automatic suspensions pursuant to the Medical Staff Bylaws;
- (4) Revocation of staff membership;
- (5) Denial of requested advancement of staff category, if such denial materially limits the physician's exercise of privileges;
- (6) Reduction of staff category due to an adverse determination as to a Practitioner's competence or professional conduct;
- (7) Limitation of the right to admit patients for a period in excess of thirty (30) days, unless based upon a reduction of staff category not related to an adverse determination as to a Practitioner's competence or professional conduct;
- (8) Denial of an initial request for particular clinical privileges, unless based upon failure to meet the basic objective criteria for the privileges requested;
- (9) Reduction of clinical privileges for a period in excess of thirty (30) days;
- (10) Permanent suspension of clinical privileges, except automatic suspensions pursuant to the Medical Staff Bylaws;
- (11) Permanent revocation of clinical privileges;
- (12) Terms of probation or consultation, if such terms of probation or consultation materially restrict the physician's exercise of privileges for more than thirty (30) days; and
- (13) Summary suspension of privileges or staff membership for a period in excess of fourteen (14) days.

#### **1.2 WHEN DEEMED ADVERSE**

A recommendation or action listed in Article I, Section 1.1 of this Plan shall be deemed adverse only if it is based upon competence or professional conduct, is Practitioner -specific and has been:

- (1) Recommended by the MEC; or
- (2) Taken by the Board contrary to a favorable recommendation by the MEC under circumstances where no right to hearing existed; or

- (3) Taken by the Board on its own initiative without prior recommendation by the MEC.

### **1.3 NOTICE OF ADVERSE RECOMMENDATION OR ACTION**

A Practitioner against whom an adverse recommendation or action has been taken pursuant to Article I, Section 1.1 of this Plan shall promptly be given special notice of such action. Such notice shall:

- (1) Advise the Practitioner of the basis for the action and his/her right to a hearing pursuant to the provisions of the Medical Staff Bylaws of this Plan;
- (2) Specify that the Practitioner has thirty (30) days following the date of receipt of notice within which a request for a hearing must be submitted except in the case of a suspension then in effect. In such case, the Practitioner shall be notified that he/she is entitled to an expedited hearing within fifteen (15) days of the action, but only if the Practitioner meets the requirements of Section 1.4 below;
- (3) State that failure to request a hearing within the specified time period shall constitute a waiver of rights to a hearing and to an Appellate Review of the matter;
- (4) State that upon receipt of this hearing request, the Practitioner will be notified of the date, time and place of the hearing, the grounds upon which the adverse action is based, a list of the witnesses expected to testify in support of the adverse action, and will be provided the right to inspect all pertinent information in the Hospital's possession with respect to the decision;
- (5) Provide a summary of the Practitioner's rights at the hearing; and
- (6) Inform the Practitioner if the recommended action may be reportable to the National Practitioner Data Bank and appropriate licensing agencies.

### **1.4 REQUEST FOR HEARING**

A Practitioner shall have thirty (30) days following his/her receipt of a notice pursuant to Article I, Section 1.3 to file a written request for a hearing except in the case of a suspension then in effect. In such circumstance, the Practitioner must request a hearing within two (2) business days of receipt of notice should he/she desire an expedited hearing as permitted by the Medical Staff Bylaws. Failure to submit such a request within two (2) business days shall be deemed a request by the Practitioner to comply with the time frames established by the Health Care Quality Improvement Act. Such request shall be delivered to the CEO either in person or by certified or registered mail.

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

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

- (1) An adverse recommendation or action by the Board, CEO or their designees, shall constitute acceptance of that recommendation or action. (Hereinafter, references to decisions by these entities or individuals shall be designated as decisions or actions of the Board); and
- (2) An adverse recommendation by the MEC or its designee shall constitute acceptance of that recommendation, which shall thereupon become and remain effective pending the final decision of the Board. The Board shall consider the MEC's recommendation at its next regular meeting

following the waiver. In its deliberations, the Board shall review all relevant information and material considered by the MEC and may consider all other relevant information received from any source. The Board's action on the matter shall constitute a final decision of the Board. The CEO shall promptly send the Practitioner special notice informing him/her of each action taken pursuant to this Article I, Section 1.5(2) and shall notify the Chief of Staff and the MEC of each such action.

## **ARTICLE II**

### **HEARING PREREQUISITES**

#### **2.1 NOTICE OF TIME & PLACE FOR HEARING**

Upon receipt of a timely request for hearing, the CEO shall deliver such request to the Chief of Staff or to the Board, depending on whose recommendation or action prompted the request for hearing. The CEO shall send the Practitioner special notice of the time, place and date of the hearing. The hearing will begin as soon as practicable, but no sooner than thirty (30) days from the date of the notice of time, place and date, unless an earlier hearing date has been specifically agreed to in writing by the parties; provided, however, that a hearing for a Practitioner who is under suspension then in effect shall, at the Practitioner's request, be held as soon as arrangements for it reasonably may be made, but not later than fifteen (15) days from the initiation of the summary suspension.

#### **2.2 STATEMENT OF ISSUES & EVENTS**

The notice of hearing required by Article II, Section 2.1 shall contain a concise statement of the Practitioner's alleged act or omissions, and a list by number of specific or representative patient records in question and/or the other reasons or subject matter forming the basis for the adverse recommendation or action which is the subject of the hearing. The notice shall further contain a list of witnesses expected to testify in support of the adverse recommendation or action, and the names of the Hearing Committee members and Presiding Officer, if known.

#### **2.3 PRACTITIONER'S RESPONSE**

Within ten (10) days of receipt of the notice of hearing under Section 2.1, the affected Practitioner shall deliver, by special notice, a list of witnesses expected to testify on his/her behalf at the due process hearing.

#### **2.4 EXAMINATION OF EVIDENCE**

The Practitioner may request that he/she be allowed to examine any documents to be introduced in support of the adverse recommendation. If the Practitioner so requests, the body initiating the adverse action shall also be entitled to examine all documents expected to be produced by the Practitioner at the hearing. The parties shall exchange such documents at a mutually agreeable time at least ten (10) days prior to the pre-hearing conference. Copies of any patient charts, which form the basis for the adverse action shall be made available to the Practitioner, at his/her expense, within a reasonable time after a request is made for same.

Neither the Practitioner, nor any other person acting on behalf of the Practitioner, may contact Hospital employees or individuals whose names appear on the Medical Executive Committee's or Board's witness list or in documents provided pursuant to this Section concerning the subject matter of the hearing, until the Hospital has been notified and has contacted the individuals about their willingness to be interviewed. The Hospital will advise the individual who requested the hearing once it has contacted such witnesses and confirmed their willingness to meet. Any witness may agree or decline to be interviewed by or on behalf of the Practitioner who requested a hearing.

#### **2.5 APPOINTMENT OF HEARING COMMITTEE**

##### **2.5(a) By Medical Staff**

A hearing occasioned by an adverse MEC recommendation pursuant to Article I, Section 1.2(1) shall be conducted by a Hearing Committee appointed by the Chief Executive Officer, after

consultation with the Chief of Staff, and composed of three (3) members of the Medical Staff. None of the Hearing Committee members shall be partners, associates, relatives or in direct economic competition with the affected individual. Should the Chief of Staff find it impossible to appoint a committee meeting the above requirements or otherwise find good cause to utilize practitioners outside the staff, he/she may, upon approval by the CEO, appoint an independent panel of three (3) practitioners meeting all requirements of this section with the exception of Medical Staff membership.

The affected individual shall have ten (10) days after notice of the appointment of the Hearing Committee members to object and identify in writing, any conflict of interest with any Hearing Committee members which the affected individual believes should disqualify the Hearing Committee member(s) from service. The failure of the affected individual to object and identify any conflict of interest as stated above shall constitute a waiver of any such right. Within seven (7) days of the receipt of the objections, the Chief Executive Officer shall determine whether such grounds asserted by the affected individual are sufficient for disqualification. The Chief of Staff shall be given a reasonable opportunity to comment. If a determination is made that a disqualification is appropriate, a replacement shall be appointed within seven (7) days of the determination. The Chief Executive Officer shall advise the affected individual accordingly. One (1) of the members so appointed shall be designated as Chairperson.

#### **2.5(b) By Board**

A hearing occasioned by an adverse action of the Board pursuant to Article I, Section 1.2(2) or 1.2(3) shall be conducted by a Hearing Committee appointed by the Chairperson of the Board and composed of three (3) people. At least one (1) Active Medical Staff member shall be included on this committee. Should the Board Chairperson find it impossible to appoint a committee meeting the above requirements or otherwise find good cause to utilize a practitioner outside the staff, he/she may, upon approval by the CEO, appoint a practitioner meeting all requirements of this section with the exception of Active Medical Staff membership. One (1) of the appointees to the committee shall be designated as Chairperson. If the matter concerns or arises from issues regarding a Practitioner's clinical competence or performance, the Hearing Committee must be composed of three (3) physicians who may or may not be members of the Hospital's Medical Staff.

The affected individual shall have ten (10) days after notice of the appointment of the Hearing Committee members to object and identify in writing, any conflict of interest with any Hearing Committee members which the affected individual believes should disqualify the Hearing Committee member(s) from service. The failure of the affected individual to object and identify any conflict of interest as stated above shall constitute a waiver of any such right. Within seven (7) days of the receipt of the objections, the Board Chairman shall determine whether such grounds asserted by the affected individual are sufficient for disqualification. If a determination is made that a disqualification is appropriate, a replacement shall be appointed within seven (7) days of the determination. The Board Chairman shall advise the affected individual accordingly. One (1) of the members so appointed shall be designated as Chairperson.

#### **2.5(c) Service on Hearing Committee**

A Medical Staff or Board member shall not be disqualified from serving on a Hearing Committee solely because he/she has participated in investigating the action or matter at issue. Employment by, or other contractual arrangement with, the Hospital or an affiliated entity will not preclude an individual from serving on the Hearing Committee.



## **2.6 PRE-HEARING CONFERENCE**

A pre-hearing conference shall be scheduled at least fourteen (14) days prior to the hearing. The Presiding Officer will require the Practitioner who requested the hearing and the MEC or Board, as appropriate, (or a representative of each, who may be counsel) to participate in a pre-hearing conference. All objections to exhibits or witnesses will be submitted, in writing, five days in advance of the pre-hearing conference. The Presiding Officer will not entertain subsequent objections unless the party offering the objection demonstrates good cause. At the pre-hearing conference, the Presiding Officer will resolve all procedural questions, including any objections to exhibits or witnesses. Evidence unrelated to the reasons for the recommendation or to the individual's qualifications for membership or the relevant clinical privileges will be excluded. The Presiding Officer will establish the time to be allotted to each witness's testimony and cross-examination. The parties will use their best efforts to develop and agree upon stipulations to provide for a more efficient hearing.

## **ARTICLE III**

### **HEARING PROCEDURE**

#### **3.1 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/her rights in the same manner and with the same consequence as provided in Article I, Section 1.5.

#### **3.2 PRESIDING OFFICER**

Either the Hearing Officer, if one is appointed pursuant to Article VIII, Section 8.1, or the Chairperson of the Hearing Committee shall be the Presiding Officer. The Presiding Officer shall act to maintain decorum and to assure that all participants in the hearing have a reasonable opportunity to present relevant oral and documentary evidence. He/She shall be entitled to determine the order of procedure during the hearing and shall make all rulings on matters of law, procedure and the admissibility of evidence.

#### **3.3 REPRESENTATION**

The Practitioner who requested the hearing shall be entitled to be accompanied and represented at the hearing by an attorney, a member of the Medical Staff in good standing, a member of his/her local professional society, or other individual of the physician's choice. The MEC or the Board, depending on whose recommendation or action prompted the hearing, shall appoint an individual to present the facts in support of its adverse recommendation or action, and to examine the witnesses. Representation of either party by an attorney at law shall be governed by the provisions of Article VIII, Section 8.2 of this Plan.

#### **3.4 RIGHTS OF THE PARTIES**

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

- (1) Call and examine witnesses;
- (2) Present evidence determined to be relevant by the Presiding Officer, regardless of its admissibility in a court of law;
- (3) Cross-examine any witness on any matter relevant to the issues;
- (4) Impeach any witness;
- (5) Rebut any evidence;
- (6) Have a record made of the proceeding, copies of which may be obtained by the physician upon payment of any reasonable charges associated with the preparation thereof; and
- (7) Submit a written statement at the close of the hearing at a time designated by the Presiding Officer and agreed upon by the parties.

If any Practitioner who requested the hearing does not testify in his/her own behalf, he/she may be called and examined as if under cross-examination.

### **3.5 PROCEDURE & EVIDENCE**

The hearing need not be conducted strictly according to rules of law relating to the examination of witnesses or presentation of evidence although these rules may be considered in determining the weight of the evidence. Any relevant matter upon which responsible persons customarily rely in the conduct of serious affairs shall be admitted, regardless of admissibility of such evidence in a court of law. Each party shall, prior to or during the hearing, be entitled to submit memoranda concerning any issue of law or fact, and such memoranda shall become part of the hearing record. The Presiding Officer may, but shall not be required to, order that oral evidence be taken only on oath or affirmation administered by any person designated by him/her and entitled to notarize documents in the state where the hearing is held. The Hearing Committee may question witnesses and the parties during the hearing.

### **3.6 OFFICIAL NOTICE**

In reaching a decision, the Hearing Committee may take official notice, either before or after submission of the matter for decision, of any generally accepted technical, medical or scientific matter relating to the issues under consideration and of any facts that may be judicially noticed by the courts of the state where the hearing is held. Parties present at the hearing shall be informed of the matters to be noticed and those matters shall be noted in the record of the hearing. Any party shall be given opportunity, on timely motion, to request that a matter be officially noticed and to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the Hearing Committee.

### **3.7 BURDEN OF PROOF**

- (1) When a hearing relates to initial appointment, advancement of staff category, or denial of an initial request for particular clinical privileges, the Practitioner who requested the hearing shall have the burden of proving, by clear and convincing evidence, that the adverse recommendation or action lacks any substantial factual basis or that the action is arbitrary, capricious or impermissibly discriminatory.
- (2) For the other matters listed in Article I, Section 1.1, the body whose adverse recommendation or action occasioned the hearing shall have the initial obligation to present evidence in support thereof; but the Practitioner thereafter shall be responsible for supporting his/her challenge to the adverse recommendation or action by a preponderance of the evidence that the grounds therefore lack any substantial factual basis or that the action is arbitrary, capricious or impermissibly discriminatory. The standards of proof set forth herein shall apply and be binding upon the Hearing Committee and on any subsequent review or appeal.

### **3.8 RECORD OF HEARING**

A record of the hearing shall be kept that is of sufficient accuracy to permit an informed and valid judgment to be made by any group that later may be called upon to review the record and render a recommendation or decision in the matter. The method of recording the hearing shall be by use of a court reporter.

### **3.9 POSTPONEMENT**

Request for postponement of a hearing shall be granted by agreement between the parties or the Hearing Committee only upon a showing of good cause and only if the request therefore is made as soon as is reasonably practical.

### **3.10 PRESENCE OF HEARING COMMITTEE MEMBERS & VOTING**

A majority of the Hearing Committee must be present throughout the hearing and deliberations. If a committee member is absent from a substantial portion of the proceedings, he/she shall not be permitted to participate in the deliberations of the decision.

### **3.11 RECESSES & ADJOURNMENT**

The Hearing Committee may recess the hearing and reconvene the same without additional notice for the convenience of the participants or for the purpose of obtaining new or additional evidence for consultation. Upon conclusion of the presentation of oral and written evidence, the hearing shall be closed. The Hearing Committee shall thereupon, at a time convenient to itself, conduct its deliberations outside the presence of the parties and without a record of the deliberation being made. Upon conclusion of its deliberations, the hearing shall be declared finally adjourned.

**ARTICLE IV**  
**HEARING COMMITTEE REPORT & FURTHER ACTION**

**4.1 HEARING COMMITTEE REPORT**

The Hearing Committee shall make a written report of its findings and recommendations in the matter within thirty (30) days of receiving written closing statements from the parties, or if no closing statements will be provided, then thirty (30) days after the hearing ends. The Hearing Committee shall forward the same, together with the hearing record and all other documentation considered by it, to the Board or the MEC for action consistent with Section 4.2 below. All findings and recommendations by the Hearing Committee shall be supported by reference to the hearing record and the other documentation considered by it. Recommendations must be made by a majority vote of the members and the committee may only consider the specific recommendations or actions of the Board or MEC. The Practitioner who requested the hearing shall be entitled to receive the written recommendations of the Hearing Committee, including a statement of the basis for the recommendation.

**4.2 ACTION ON HEARING COMMITTEE REPORT**

If the MEC initiated the action, and the Hearing Committee's report alters, amends or modifies the MEC's recommendation, the MEC shall take action on the Hearing Committee report no later than twenty-eight (28) days after receipt of same, and prior to any appeal by the Practitioner. If the MEC initiated the action and the Hearing Committee has not altered, amended or modified the MEC recommendation, or if the Board initiated the action and the action remains adverse to the Practitioner, the Practitioner shall be given notice of the right to appeal pursuant to Section 4.3(c) prior to final action by the Board. If the Board initiated the action, and the Hearing Committee recommendation is favorable to the Practitioner, the Board shall take action on the Hearing Committee's report no later than twenty-eight (28) days from receipt of same.

**4.3 NOTICE & EFFECT OF RESULT**

**4.3(a) Notice**

The CEO shall promptly send a copy of the result to the Practitioner by special notice, including a statement of the basis for the decision.

**4.3(b) Effect of Favorable Result to the Practitioner**

- (1) Adopted by the Board: If the Board's result is favorable to the Practitioner, such result shall become the final decision of the Board and the matter shall be considered finally closed.
- (2) Adopted by the Medical Executive Committee: If the MEC's result is favorable to the Practitioner, the CEO shall promptly forward it, together with all supporting documentation, to the Board for its final action. The Board shall take action thereon by adopting or rejecting the MEC's result in whole or in part, or by referring the matter back to the MEC for further consideration. Any such referral back shall state the reasons therefore, set a time limit within which a subsequent recommendation to the Board must be made, and may include a directive that an additional hearing be conducted to clarify issues that are in doubt. After receipt of such subsequent recommendation and any new evidence in the matter, and consultation with the Corporation as necessary, the Board shall take final action. The CEO shall promptly send the Practitioner special notice informing him/her of each action taken pursuant to this Article IV, Section 4.3(b)(2). Favorable action shall become the final decision of the Board, and the matter shall be considered finally closed.

- (3) Appeal by the Medical Executive Committee or Board: Notwithstanding the foregoing, if the Hearing Committee's report alters, amends or modifies the MEC's or Board's recommendation, the MEC or Board may request an Appellate Review as provided in Article V of this Plan.

**4.3(c) Effect of Adverse Result**

At the conclusion of the process set forth in Section 4.2, if the result continues to be adverse to the Practitioner in any of the respects listed in Article I, Section 1.1 of this Plan, the Practitioner shall be informed, by special notice of his/her right to request an Appellate Review as provided in Article V, Section 5.1 of this Plan. Said notice shall be delivered to the Practitioner no later than fourteen (14) days from the MEC action, or Hearing Committee report, as appropriate under Section 4.2.

**ARTICLE V**  
**INITIAL & PREREQUISITES OF APPELLATE REVIEW**

**5.1 REQUEST FOR APPELLATE REVIEW**

Either party shall have fourteen (14) days following his/her receipt of a notice pursuant to Article IV to file a written request for an Appellate Review. Such request shall be delivered to the CEO either in person or by certified or registered mail and may include a request for a copy of the report and record of the Hearing Committee and all other material, favorable or unfavorable, if not previously forwarded, that was considered in reaching the adverse result.

**5.2 WAIVER BY FAILURE TO REQUEST APPELLATE REVIEW**

A party who fails to request an Appellate Review within the time and manner specified in Article V, Section 5.1 shall be deemed to have waived any right to such review.

Such waiver shall have the same force and effect as that provided in Article I, Section 1.5 of this Plan.

**5.3 NOTICE OF TIME & PLACE FOR APPELLATE REVIEW**

Upon receipt of a timely request for Appellate Review, the CEO shall deliver such request to the Board. As soon as practicable, the Board shall schedule and arrange for an Appellate Review which shall be not less than twenty-one (21) days from the date of receipt of the Appellate Review request; provided, however, that an Appellate Review for a Practitioner who is under a suspension then in effect shall be held as soon as the arrangements for it may reasonably be made. At least ten (10) days prior to the Appellate Review, the CEO shall send the parties special notice of the time, place and date of the review. The time for the Appellate Review may be extended by the Appellate Review Body for good cause and if the request therefore is made as soon as reasonably practical.

**5.4 APPELLATE REVIEW BODY**

The Appellate Review Body shall be composed of the Board of Trustees or a committee of at least three (3) members of the Board of Trustees. One (1) of its members shall be designated as the Chairperson of the committee.

**ARTICLE VI**  
**APPELLATE REVIEW PROCEDURE**

**6.1 NATURE OF PROCEEDINGS**

The proceedings of the Appellate Review Body shall be in the nature of an Appellate Review based upon the record of the hearing before the Hearing Committee, and the committee's report, and all subsequent results and actions thereon. The Appellate Review Body also shall consider the written statements, if any, submitted pursuant to Article VI, Section 6.2 of this Plan and such other material as may be presented and accepted under Article VI, Sections 6.4 and 6.5 of this Plan. The Appellate Review Body shall apply the standards of proof set forth in Article III, Section 3.7.

**6.2 WRITTEN STATEMENTS**

The party seeking the review shall submit a written statement detailing the findings of fact, conclusions and procedural matters with which the party disagrees, and the party's reasons for such disagreement. This written statement may cover any matters raised at any step in the hearing process but may not raise new factual matters not presented at the hearing. The statement shall be submitted to the Appellate Review Body through the CEO at least seven (7) days prior to the scheduled date of the Appellate Review, except if such time limit is waived by the Appellate Body. A written statement in reply may be submitted by the other party, and, if submitted, the CEO shall provide a copy thereof to the party seeking review at least three (3) days prior to the scheduled date of the Appellate Review.

**6.3 PRESIDING OFFICER**

The Chairperson of the Appellate Review Body shall be the Presiding Officer. He/She shall determine the order of procedure during the review, make all required rulings, and maintain decorum.

**6.4 ORAL STATEMENT**

The Appellate Review Body, in its sole discretion, may allow the parties or their representatives to personally appear and make oral statements supporting their positions. If the Appellate Review Body allows one of the parties to make an oral statement, the other party shall be allowed to do so. Any party or representative so appearing shall be required to answer questions put to him/her by any member of the Appellate Review Body.

**6.5 CONSIDERATION OF NEW OR ADDITIONAL MATTERS**

New or additional matters or evidence not raised or presented during the original hearing or in the hearing report, and not otherwise reflected in the record shall not be introduced at the Appellate Review, except by leave of the Appellate Review Body. The Appellate Review Body, in its sole discretion, shall determine whether such matters or evidence shall be considered or accepted, following establishment of good cause by the party requesting the consideration of such matter or evidence as to why it was not presented earlier. If such additional evidence is considered, it shall be subject to cross examination and rebuttal.

**6.6 PRESENCE OF MEMBERS & VOTING**

A majority of the Appellate Review Body must be present throughout the review and deliberations. If a member of the Appellate Review Body is absent from a substantial portion of the proceedings, he/she shall not be permitted to participate in the deliberations or the decision.



## **6.7 RECESSES & ADJOURNMENT**

The Appellate Review Body may recess the review proceedings and reconvene the same without additional notice for the convenience of the participants or for the purpose of consultation. Upon the conclusion of oral statements, if allowed, the Appellate Review shall be closed. The Appellate Review Body shall thereupon, at a time convenient to itself, conduct its deliberations outside the presence of the parties. Upon the conclusion of those deliberations, the Appellate Review shall be declared finally adjourned.

## **6.8 ACTIONS TAKEN**

The Appellate Review Body may affirm, modify or reverse the adverse result or action taken by the MEC or by the Board pursuant to Article IV, Section 4.2 or Section 4.3(b)(2) or, in its discretion, may refer the matter back to the Hearing Committee for further review and recommendation to be returned to it within fourteen (14) days and in accordance with its instructions. Within seven (7) days after such receipt of such recommendations after referral, the Appellate Review Body shall make its final determination.

## **6.9 CONCLUSION**

The Appellate Review shall not be deemed to be concluded until all of the procedural steps provided herein have been completed or waived.

**ARTICLE VII**  
**FINAL DECISION OF THE BOARD**

- 7.1** No later than twenty-eight (28) days after receipt of the recommendation of the Appellate Review Body, or twenty-eight (28) days after waiver of Appellate Review, the Board shall consider the same and affirm, modify or reverse the recommendation. When a matter of Hospital policy or potential liability is presented, the Board shall consult with Corporation prior to taking action. The decision made by the full Board after receipt of the written recommendation from the Appellate Review Body will be deemed final, subject to no further appeal under the provisions of this Fair Hearing Plan. However, if the decision is based substantially on economic factors the final decision will not become effective until fifteen (15) days after notice to the Practitioner. In any event, the action of the Board will be promptly communicated to the Practitioner in writing by certified mail.

**ARTICLE VIII**  
**GENERAL PROVISIONS**

**8.1     HEARING OFFICER APPOINTED & DUTIES**

The use of a Hearing Officer to preside at an evidentiary hearing is optional. The use and appointment of such an officer shall be determined by the Board. A Hearing Officer may or may not be an attorney at law, but must be experienced in conducting hearings. He/She shall act as the Presiding Officer of the hearing and participate in the deliberations.

**8.2     ATTORNEYS**

If the affected Practitioner desires to be represented by an attorney at any hearing or any Appellate Review appearance pursuant to Article VI, Section 6.4, his/her initial request for the hearing should state his/her wish to be so represented at either or both such proceedings in the event they are held. The MEC or the Board may be represented by an attorney, regardless of whether the affected Practitioner is represented.

**8.3     NUMBER OF HEARINGS & REVIEWS**

Notwithstanding any other provision of the Medical Staff Bylaws or of this Plan, no Practitioner shall be entitled as of right to more than one (1) evidentiary hearing and Appellate Review with respect to an adverse recommendation or action.

**8.4     RELEASE**

By requesting a hearing or Appellate Review under this Fair Hearing Plan, a Practitioner agrees to be bound by the provisions of the Medical Staff Bylaws relating to immunity from liability in all matters relating thereto.

**8.5     WAIVER**

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