

**LANGLEY PORTER PSYCHIATRIC  
HOSPITAL  
UNIVERSITY OF CALIFORNIA  
SAN FRANCISCO MEDICAL STAFF**

**INVESTIGATIONS, CORRECTIVE ACTIONS,  
AND FAIR HEARING PLAN**

Approved on 02/09/2023 by the Medical Staff Executive Committee  
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## **DEFINITIONS**

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Unless otherwise stated, the definitions that apply to the terms set forth in this Investigations, Corrective Actions and Fair Hearing Plan are the same definitions set forth in the Medical Staff Bylaws. For brevity this Plan will sometimes be referred to as the Fair Hearing Plan.

## **ARTICLE 23 INVESTIGATION AND CORRECTIVE ACTION**

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### **23.1 Role of the Medical Staff**

The Medical Staff is responsible for overseeing the quality of medical care, treatment and services delivered by its Members to patients of Langley Porter Psychiatric Hospital (LPPH). Investigation and corrective actions as described in this Plan apply to those Members holding privileges at LPPH. The following provisions are designed to achieve performance improvement through collegial peer review and educative measures whenever possible, but with recognition that, when circumstances warrant, the Medical Staff is responsible to embark on formal investigation and discipline necessary to achieve and assure quality of care and patient safety. For Members providing services at clinical affiliated network locations, refer to location specific Policies to determine applicability of this Plan.

### **23.2 Types of Corrective Actions**

There are formal and informal corrective actions. Formal corrective actions may be taken for a “medical disciplinary” cause or reason (meaning that aspect of an applicant’s or Member’s competence or professional conduct that is reasonably likely to be detrimental to patient safety or to the delivery of patient care). Formal corrective actions may include termination, suspension, restriction, limitation, or conditions placed upon the continued exercise of membership and/or clinical privileges. Informal corrective actions are warnings, fines or measures taken to correct or improve the concerning matters, but do not constitute restrictions or discipline on Membership or clinical privileges. Automatic actions on membership and/or privileges that are not taken for a medical disciplinary cause or reason shall be deemed administrative actions.

### **23.3 Preliminary Review of Concerns**

Anyone who has any question or concern regarding the quality or safety of care provided by, or the conduct of, a Member of the Medical Staff, may report the question or concern on electronic platform, and/or to the President, Chief Medical Officer, or the applicable Chief of Clinical Service. The recipient of the question/concern, or his or her designee, may initiate a preliminary review of the question/concern and/or refer the question/concern to the President of the Medical Staff. A preliminary review does not constitute an investigation as defined in Business and Professions Code Section 805 et sec. If a formal investigation is requested, such request shall be made electronically or in writing to the President of the Medical Staff along with reference to the specific activities or conduct prompting the request.

## **23.4 Time Frames for Investigations**

- 23.4.1 The MSEC is authorized to determine the parameters for any investigation including the timeliness for responses. Regardless of the status of any investigation, the MSEC is authorized to take and implement any action required by the circumstances, including summary action (summary suspension or summary restriction) of privileges at any time, in the exercise of its discretion pursuant this Article. Unless the action of the MSEC constitutes grounds for a hearing as defined in this Plan, the action will become effective upon the decision of the MSEC. If the corrective action does not constitute “grounds for hearing,” as that term is defined in this Plan, that action shall not entitle the Member to a hearing.
- 23.4.2 The time frames established in this Plan for the conduct of investigations and corrective actions are intended to guide the good faith and diligent exercise of responsibilities. However, failure to meet a time limitation as stated in this Plan shall not affect the authority of the MSEC to take such action as deemed warranted under the circumstances.

## **23.5 Investigation**

If there is a determination that a concern regarding the quality or safety of care provided by, or the professional conduct of a Member of the Medical Staff, requires an investigation to further determine the facts, the MSEC may, on its own or through delegation to a committee, conduct an investigation. Such committee can include a committee of the LPPH Medical Staff or a committee of the UCSF Medical Staff comprised of one or more representatives from LPPH.

- 23.5.1 Interview: Interviews of the Member or witnesses conducted by the MSEC, its delegate(s) or committees, shall neither constitute nor be deemed a hearing, shall be preliminary in nature, and shall not be conducted according to the procedural or evidentiary rules applicable with respect to hearings. Unless good cause is established, failure of a Member to participate in an interview when so requested shall constitute a failure by the Member to cooperate and comply with the Bylaws, and will provide a basis for discipline as determined by the MSEC.
- 23.5.2 Confidentiality: To maintain confidentiality, participants in the investigative and corrective action process shall limit their discussion of the matters involved only in formal avenues provided in these Bylaws for peer review and discipline.

## **23.6 Informal Corrective Measures**

Following a preliminary review of any question/concern or an investigation, the Member's Department Chair/Service Chief or the MSEC may take informal action, including but not limited to letters of admonition, warning, censure or reprimand, recommended monitoring or coaching, monetary fine, or other plan for

improvement as determined by the facts. These informal actions do not constitute discipline of the Member, and do not entitle the Member to hearing rights. The informal corrective measure will be documented in the Member's peer review file. MSEC approval is not required for such informal actions taken by the Department Chair/Service Chief, although the actions may be reported to the MSEC.

### **23.7 Notice of Informal Corrective Measures**

If any recommendation for informal action is made following preliminary review or following investigation, the Member will be so advised upon the conclusion of the review or investigation, if any, and approval by the MSEC, if any.

### **23.8 Formal Corrective Measures**

#### **23.8.1 Referral for Formal Investigation or Formal Corrective Action**

Any person may provide information to the Department Chair/Service Chief, the President of the Medical Staff, or the Chief Executive Officer of LPPH about the conduct, performance, or competence of a Member that he/she believes warrants an investigation.

#### **23.8.2 Triggering Formal Investigation or Corrective Action**

A formal investigation may be initiated whenever reliable information indicates a Member may have exhibited acts, demeanor or conduct, either within or outside of LPPH locations, which is reasonably likely to be:

- 23.8.2.1 Detrimental to patient safety or to the delivery of quality patient care within LPPH or its clinics or facilities.
- 23.8.2.2 Breach of patient privacy and confidentiality
- 23.8.2.3 Actions contrary to Medical Staff Bylaws, Plans, Rules, Regulations and Policies. This shall include, but not be limited to, failure to disclose or update information pertinent to and necessary in the evaluation of a Member's qualifications for appointment or reappointment to the Medical Staff
- 23.8.2.4 Violation of specific Policies, Rules and Regulations of the LPPH or of this Medical Staff. This shall include, but is not be limited to, failure to adhere to approved admitting and discharge policies, failure to comply with responsibilities relative to consultation and call, violation of the [LPPH Code of Conduct](#), the [UCSF Medical Center Professional Code of Conduct Policy 1.02.22](#), and the [LPPH Conflict of Interest Policy](#).

- 23.8.2.5 Unethical behavior. This includes unethical behavior as described in the [American Medical Association Code of Medical Ethics](#), the [University of California Standards of Ethical Conduct](#) and the [University of California Statement of Ethical Values](#), as applied by the Medical Ethics Committee or the [Medical Staff Committee on Professionalism](#);
  - 23.8.2.6 Care Below Applicable Standards. This shall include, but not be limited to, incompetence, other unprofessional conduct, failure to adhere to patient care policies of LPPH, clinical performance below the standards of practice established by the clinical Department, provision of sub-optimal and/or sub-standard care as determined by the clinical Department, substantial or consistent misdiagnosis, and/or a demonstrated lack of clinical competence as determined by the clinical Department;
  - 23.8.2.7 Misconduct. Inappropriate behavior towards patients and peers, co-workers or LPPH employees may be deemed disruptive. Disruptive behavior involving or affecting, whether directly or indirectly, the delivery of patient care, quality of care and/or patient safety, or interferes with LPPH operations or Medical Staff functions is actionable. This shall include, but not be limited to, abandonment of a patient, failure to maintain professional and/or therapeutic boundaries, unethical behavior, falsification of records, intimidation of others, retaliation, sexual misconduct in violation of UC Sexual Harassment and Sexual Violence Policy, violation of General Responsibilities of Membership, violation of the [LPPH Medical Staff Conduct Guidelines](#), or the [UCSF Medical Center Professional Code of Conduct Policy 1.02.22](#).
  - 23.8.2.8 Improper use of LPPH Resources as determined by LPPH.
- 23.8.3 Notice of Formal Investigation.

If a formal investigation is initiated, the Member shall be notified via secure electronic platform that an investigation is being conducted and the concerns being investigated and shall be given an opportunity to provide information in a manner and upon such terms as the investigating body deems appropriate. The Member may be provided an opportunity to appear before an investigatory committee, such as the Physician Review Board. Neither this appearance nor the investigation referred to herein, shall constitute a hearing. The Member will have no right to legal representation at the appearance before the investigating body but may consult with his/her personal counsel in advance of the appearance, if he/she so desires. This appearance shall be preliminary in nature, and none of the procedures contained in this Plan with respect to hearings shall apply. If a formal investigation is not initiated, the President of the Medical Staff will document the request and the reason(s)

why an investigation was not warranted and submit this documentation to the Office for Medical Staff Affairs and Governance.

23.8.4 Procedure for Formal Investigation.

- 23.8.4.1 Preliminary Review (Departmental). When information of possible clinical concerns or misconduct about a Member of his/her Department comes to the attention of the Department Chair/Service Chief, he/she may conduct a preliminary review of the matter, which is an informal inquiry, either directly or by delegation. The Department Chair/Service Chief shall keep the President of the Medical Staff apprised of all reports of potentially significant problems, as well as of any reviews or investigations conducted as a result thereof. The Department Chair/Service Chief shall advise the President of the Medical Staff of any conclusion reached as a result of any preliminary review undertaken by the Department. If the Department Chair/Service Chief concludes that there appear to be grounds for invoking a formal investigation which may result in corrective action, he/she must submit a written or electronic request for such an investigation to the President of the Medical Staff, with reference to specific activities or concerns.

If information is provided to the President of the Medical Staff, within fifteen (15) days of receipt of the request to undertake an investigation, excluding weekends and holidays, the President of the Medical Staff in conjunction with the MSEC shall take action. This action may include informal measures as described hereinabove. If a formal investigation is deemed warranted, the President or delegee shall assign the conduct of a formal investigation to a standing committee of the LPPH Medical Staff, or the LPPH/UCSF Physician Review Board (PRB), provided, however, that if there is a conflict or if the President of the Medical Staff is for any reason unable to so assign, the chair of the Credentials Committee shall have the responsibility to assign the matter to the appropriate committee. This time frame may be extended for good cause by the President of the Medical Staff or delegee. The investigation may include an interview of the subject Member and/or witnesses, at the discretion of the investigating body.

23.8.5 Completion of Formal Investigation.

- 23.8.5.1 Following a completed investigation, a written report of findings and recommendations, if any, by the investigating body will be made to the President of the Medical Staff within thirty (30) days of receipt of the assignment. The President of the Medical Staff may authorize extension of this time period for good cause.
- 23.8.5.2 Within ten (10) days of receipt of the report of findings and recommendations, the President of the Medical Staff shall notify the

affected staff Member in writing or secure platform of the completed investigation and shall furnish the Member with a summary of the findings and recommendations, if any.

- 23.8.5.3 The President of the Medical Staff shall provide the written report of the investigating body's findings and recommendations to the MSEC for consideration at its next regularly scheduled meeting or at a meeting to be held no later than thirty-five (35) days after the next regularly scheduled meeting.
- 23.8.5.4 Despite the status of any investigation, at all times the MSEC shall retain authority and discretion to take whatever action may be warranted by the circumstances, including summary suspension, termination of the investigative process, deferral, or other action.
- 23.8.5.5 When a Member receives notice of a pending investigation, such shall demark the point at which a "pending investigation" is deemed to have commenced within the meaning of Business & Professions Code Section 805(c). When a Member receives notice of closure of an investigation, such shall demark completion of that investigation as to the known concerns investigated at that time.

### **23.9 Formal Corrective Action**

Formal corrective action may be taken to address an applicant's or Member's clinical competence or professional conduct that is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

### **23.10 Notice of Formal Corrective Action**

As soon as practicable after decision to take action, if any, the MSEC shall determine whether it will interview the Member. Such interview, if held, does not constitute a hearing and no hearing rights apply. Following the interview, if one is held, the MSEC will inform the Member regarding the Board's final proposed action, including, without limitation:

- 23.10.1 Determine that no corrective action is to be taken. In this case, the information is removed from the Member's credentialing file; provided, however, this information may be retained with the records of the MSEC, and may be revisited and reintroduced to the Member's file at a later date if future circumstances reasonably demonstrate a recurrence of past problems;
- 23.10.2 Defer action for a reasonable time where circumstances warrant;
- 23.10.3 Recommend the imposition of terms of probation or special limitation upon continued Medical Staff membership or exercise of clinical privileges, including, without limitation, requirements for co-admissions, mandatory consultation, or monitoring;

- 23.10.4 Recommend restriction, reduction, modification, suspension, termination, or revocation of privileges. If suspension of privileges is recommended, the terms and duration of the suspension and the conditions, if any, that must be met before the suspension is ended shall be stated to the Member;
- 23.10.5 Recommend to the Governance Advisory Council that an already-imposed summary suspension of privileges, as described in this Article, be terminated, modified, or sustained;
- 23.10.6 Issue letters of admonition, censure, reprimand or warning, although nothing herein shall be deemed to preclude Department Chairs, Service Chiefs, Committee Chairs or the MSEC from issuing informal written or oral warnings outside the mechanism for corrective action. In the event such letters are issued, the affected Member may make a written response which shall be placed in the Member's file;
- 23.10.7 Refer the Member to the UCSF/LPPH Physician Well-Being Committee or Committee on Professionalism or other committee or entity for evaluation, training and follow-up, as appropriate; or
- 23.10.8 Take other appropriate action including referring the member to an Intermediary Review Council (IRC)
- 23.10.9 In all instances where the MSEC decides to take formal or informal action, the decision shall be transmitted to GAC with a copy to the Chief Medical Officer.

### **23.11 Procedural Rights**

- 23.11.1 Any action which, pursuant to these provisions constitutes grounds for a hearing under Business and Professions Code Section 805, shall entitle the affected Member to the procedural rights contained in Article 24. Except for summary suspensions, any adverse recommendation shall be held in abeyance until the Practitioner has waived or exercised his/her rights under Article 24.
- 23.11.2 If the MSEC recommends an action that is a ground for a hearing under this Fair Hearing Plan, the President of the Medical Staff shall give the Practitioner notice of the adverse recommendation and of the right to request a hearing. The Governance Advisory Council may be informed of the recommendation but shall take no action until the Practitioner has either waived his or her right to a hearing or exhausted all procedural rights set forth in Article 24.
- 23.11.3 Despite the status of a pending action, at all times the MSEC shall retain authority and discretion to take or recommend whatever action may be warranted by the circumstances, including summary suspension, termination of the investigation process, or other action.

## **23.12 Initiation by the Governance Advisory Council**

- 23.12.1 The Medical Staff acknowledges that the Governance Advisory Council must act to protect the quality of medical care provided and the competency of its Medical Staff, and to ensure the responsible governance of LPPH in the event that the Medical Staff fails in any of its substantive duties or responsibilities.
- 23.12.2 If the MSEC fails to investigate or initiate corrective action, and the Governance Advisory Council determines that its failure to do so is contrary to the weight of the evidence then available, the Governance Advisory Council may, after consulting with the MSEC, direct the MSEC to investigate or initiate corrective action. The MSEC will inform the Governance Advisory Council of its action in response to such a directive. If the MSEC fails to act after a directive from the Governance Advisory Council, the Governance Advisory Council may, in furtherance of Governance Advisory Council's ultimate responsibilities and fiduciary duties, initiate corrective action in accordance with this Fair Hearing Plan, after written notice to the MSEC of the action it has taken. The action by the Governing Advisory Council shall become effective as the final decision of the Governance Advisory Council.
- 23.12.3 Nothing in this section shall prevent imposition of a summary suspension or summary restriction at any time that circumstances appear to warrant.

## **23.13 Summary Actions**

### **23.13.1 Criteria for Summary Suspension or Summary Restriction.**

Notwithstanding anything to the contrary herein, a member's clinical privileges may be summarily suspended or restricted where the failure to take such action may result in imminent danger to the health or safety of any patient, prospective patient, employee, member of the Medical Staff, or other person, or to prevent the disruption of operations of LPPH. Any two (2) of the following individuals/entities shall have the authority to summarily suspend a member's privileges: the Chief Medical Officer, the President of the Medical Staff (or designee), the Chancellor or designee, and/or the MSEC. The President must be concurrently notified of the decision to summarily suspend the Member.

### **23.13.2 Imposition of Summary Action.**

- 23.13.2.1 Unless otherwise stated, summary restriction or suspension ("summary action") shall be effective immediately upon imposition, provided, however, that a summary restriction or suspension imposed by persons other than the MSEC, is ratified by the MSEC within two (2) days of its imposition, or it shall terminate automatically
- 23.13.2.2 The summary suspension or restriction may be limited in duration and shall remain in effect for the period stated or, if unlimited in duration,

until otherwise resolved. The President of the Medical Staff or responsible Department Chair or designee, shall provide for alternative medical coverage for patient care with, if practical, the wishes of the patients taken into consideration.

- 23.13.2.3 Within three (3) days, excluding weekends and holidays, of imposition of a summary action, the Member shall be provided with written notice of such summary action and its duration. This initial notice shall include a statement of facts known at that time, explaining why the summary action was necessary. The written notice shall also inform the Member that: (1) he/she has the right to an informal interview upon timely request; (2) if a summary suspension or restriction remains in effect for more than fourteen (14) days, the action will be reported to the Medical Board of California as required pursuant to Business and Professions Code Section 805; and (3) the suspension could be reportable to the National Practitioner Data Bank.

23.13.3 MSEC Review.

Within one (1) week after such summary action has been ratified, a meeting of the MSEC shall be convened to review and consider the action. Upon MSEC's request, the Member may attend and make a statement concerning the presenting issues, on such terms and conditions as the MSEC may impose, although in no event shall any meeting of the MSEC, with or without the Member, constitute a "hearing" within the meaning of this Fair Hearing Plan, the Member shall not be represented by counsel, nor shall any evidentiary or procedural rules apply. The MSEC may thereafter continue, modify or terminate the terms of the summary action. The MSEC shall give the Member special notice of its decision, within three (3) days after the decision is reached, excluding weekends and holidays, which shall include the information specified in this Fair Hearing Plan, if the action is adverse.

23.13.4 Procedural Rights.

- 23.13.4.1 Unless the MSEC terminates the summary action prior to the 14th day, and if the summary action constitutes a suspension or restriction of clinical privileges required to be reported to the Medical Board of California, pursuant to Business and Professions Code Section 805, the Member shall be entitled to procedural rights afforded by this Plan, including requesting a hearing on the matter according to the procedural rights outlined in Article 24.

In the event that following a summary action, the MSEC determines that an investigation is warranted, the MSEC shall direct an investigation to be conducted promptly in accordance with this Plan. Except as otherwise determined by the MSEC, the summary action shall remain in effect until a final decision by the appropriate judicial or quasi-

judicial body and all applicable procedural rights contained in this Article have been exhausted. Unless a postponement is concurred in by the affected Member and the President of the Medical Staff, or an extension is granted by the Arbitrator/Hearing Officer on a showing of good cause, any hearing after investigation shall begin as soon as possible but no longer than forty-five (45) days from the date of imposition of the summary action.

## **ARTICLE 24 FAIR HEARING PROCEDURE**

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### **24.1 Definitions**

Except as otherwise provided in this Article, the following definitions shall apply under this Article:

- 24.1.1 “Body whose decision prompted the hearing” refers to the MSEC in all cases where the MSEC or authorized Medical Staff Officers, Members or committees took the action or rendered the decision that resulted in a hearing being requested. It refers to the Governance Advisory Council in all cases where the Governance Advisory Council or its authorized officers, directors or committees took the action or rendered the decision that resulted in a hearing being requested.
- 24.1.2 “Final Action” refers to the recommended final actions described in this Article, which shall become final only after the hearing rights set forth in this Article have either been exhausted or waived.
- 24.1.3 “Investigation” is considered ongoing through formal corrective action until a final decision is reached, and all internal appeal mechanisms have been exhausted.
- 24.1.4 “Practitioner” or “Member” refers to the Practitioner, Member or applicant who is entitled to and has requested a hearing pursuant to this Plan.
- 24.1.5 “Substantial compliance” refers to technical, insignificant or non-prejudicial deviations from the procedures set forth in this Plan which shall not be grounds for invalidating the action taken.

### **24.2 General Provisions**

#### **24.2.1 Intent.**

The intent of these hearing and appellate review procedures is to provide for a fair review of decisions that adversely affect Members (as described below) and at the same time to protect the peer review participants from liability. It is further the intent to establish flexible procedures which do not create burdens that will discourage the Medical Staff and Governance Advisory Council from carrying out peer review. Accordingly, discretion is granted to the Medical Staff and Governance Advisory Council to create a hearing process that provides for the least burdensome level of formality in the process and yet still provides a fair review, and to interpret the Bylaws and Plans in that light. The Medical Staff, Governance Advisory Council, and their officers, committees, and agents hereby constitute themselves as peer review bodies under the Federal Health Care Quality Improvement Act of 1986 and the California peer review hearing laws, and claim all privileges and immunities afforded by the federal and state laws.

### **24.3 Grounds for Hearing**

Except as otherwise specified in this Article, any one or more of the following actions or recommended actions by a peer review body shall be deemed an adverse action and shall constitute grounds for a hearing only if the actions or recommended actions will be reportable under Business & Professions Code Section 805 to the Medical Board of California:

- 24.3.1 Denial of initial applications for Medical Staff membership and/or privileges for a medical disciplinary cause or reason.
- 24.3.2 Denial of Medical Staff reappointment and/or renewal of privileges for a medical disciplinary cause or reason.
- 24.3.3 Revocation, termination, suspension, restriction (whether voluntarily accepted or involuntarily imposed), of Medical Staff membership, privileges or employment, for a cumulative total of 30 days or more in any 12-month period, for a medical disciplinary cause or reason, if reportable under Business and Professions Code, § 805.
- 24.3.4 Any other “medical disciplinary” action or recommendation that must be reported to the Medical Board of California under Business & Professions Code § 805.

### **24.4 Hearing Based of Action Prompted by Governance Advisory Council.**

If the hearing is based upon an adverse action prompted by the Governance Advisory Council, to which hearing rights apply, the chair of the Governance Advisory Council shall fulfill the functions assigned in this section to the President of the Medical Staff and shall assume the role of the MSEC. In such case, the Governance Advisory Council, at its discretion, will determine whether appellate review will take place.

### **24.5 Notice of Action or Proposed Action.**

In all cases where action has been taken or a recommendation has been made as set forth above, the Member or applicant shall be given special notice of the action or recommendation and of the right to request a hearing pursuant to this Article. The notice must state:

- 24.5.1 What recommendation or action has been proposed or taken against the Member or applicant;
- 24.5.2 Whether the proposed action, if adopted, must be reported under Business and Professions Code Section 805;
- 24.5.3 That the Member or applicant may request a hearing of the dispute pursuant to this Article and that the hearing must be requested, in writing or

electronically, within ten (10) days from the date of the Notice of Action or Notice of Proposed Action;

- 24.5.4 That, if requested, the Member or applicant has the hearing rights described in this Article. The Member or applicant will be given a copy of the Fair Hearing Plan.

#### **24.6 Arbitration in Matters of Unprofessional Conduct for which the Member is Entitled to a Hearing**

- 24.6.1 As an alternative to the Hearing Panel with a Hearing Officer, for matters limited to issues involving professional conduct, unless otherwise determined by the President of the Medical Staff, the hearing will take place before an Arbitrator selected in the same manner as described herein for the selection of Hearing Officers. All duties, responsibilities and powers referenced above regarding Hearing Officers and Hearing Panels shall apply to the Arbitrator, except that in this circumstance, the Arbitrator shall make the decision.

#### **24.7 Request for Hearing**

- 24.7.1 The request for a hearing shall be made in electronically and in writing and sent by certified or registered mail, return receipt requested, or electronically with confirmed receipt to the President of the Medical Staff, copied to the Director of the Office of Medical Staff Affairs and Governance.
- 24.7.2 The Member or applicant shall state, in writing in his/her request for hearing and his/her intentions with respect to attorney representation. No peer review body shall be represented at the hearing by an attorney if the Member or applicant is not so represented. Notwithstanding the foregoing, and regardless of whether the Member or applicant elects to have attorney representation at the hearing, each party shall have the right to consult with legal counsel to prepare for a hearing or an appellate review.
- 24.7.3 In the event the Member or applicant does not request a hearing in the time and in the manner described in this Article, he/she shall be deemed to have waived any right to a hearing and to have accepted the action or the recommendation of the MSEC and it shall thereupon become the final action or recommendation of the MSEC. Such final action or recommendation shall be considered by the Governance Advisory Council within forty-five (45) days of its receipt and shall be given great weight by the Governance Advisory Council, although it is not binding on the Governance Advisory Council.
- 24.7.4 Notice of Hearing and Notice of Charges: After the Member or applicant timely requests a hearing, the MSEC shall provide the Member with a Notice of Hearing and Notice of Charges providing: (1) the reasons for the final proposed action, including the acts or omissions with which the Member or applicant is charged, and (2) the place, time, and date of the hearing. The

Notice shall be hand delivered or sent via certified mail, return receipt requested, to the Member or applicant at the address supplied by him/her to the Medical Staff office.

- 24.7.5 Unless otherwise stipulated by the parties, or extended by the Hearing Officer, in non-summary actions, the date of commencement of the hearing shall be not less than thirty (30) days or more than sixty (60) days from the date of receipt of the request for hearing by the President of the Medical Staff.
- 24.7.6 However, when the request is received from a Member who is under summary suspension, the hearing should be scheduled to commence on a date not more than forty-five (45) days from the date of receipt of the request, unless extended for good cause by the President of the Medical Staff or by the Hearing Officer or Arbitrator, if one has been appointed.

#### **24.8 Mediation (Between the MSEC and a Practitioner)**

- 24.8.1 Mediation is a confidential process in which a neutral person facilitates communication between the MSEC and a Member or applicant to assist them in reaching a mutually acceptable resolution of a peer review or other controversy in a manner that is consistent with the best interests of LPPH operations, patient safety and/or quality of care. Parties to a dispute are encouraged to consider mediation whenever it appears reasonably likely to contribute to a productive resolution of a dispute. There is no right to mediation, and it need not be pursued if either party is unable or unwilling to proceed collaboratively and expeditiously. The cost of mediation will be borne equally between the parties.
- 24.8.2 If a Member or applicant and the MSEC do agree to mediation, all deadlines and time frames in this Article shall be suspended while the mediation is in process, and the Member or applicant agrees that no damages may accrue as a result of any delays attributable to the mediation.
- 24.8.3 Mediation may be terminated at any time, at the request of either party.
- 24.8.4 The MSEC is responsible for maintaining and amending the Policies, Rules and Regulations outlining appropriate procedures for initiating and conducting mediation.

#### **24.9 Hearing Participants**

- 24.9.1 Hearing Officer.

The Hearing Officer shall be an attorney at law, qualified to preside over a quasi-judicial hearing, but an attorney regularly utilized by LPPH for legal advice regarding its affairs and activities shall not be eligible to serve as the Hearing Officer, except as otherwise stipulated by the parties.

24.9.2 Arbitrator.

In lieu of a Hearing Officer and a Hearing Panel, an Arbitrator may be selected in the same manner described related to selection of a Hearing Officer. The Arbitrator shall have all the same powers as the Hearing Officer and Hearing Panel. Unless otherwise stipulated, the Arbitrator and arbitration shall be conducted in accordance with this Article and California Business and Professions Code § 809, not in accordance with the California Arbitration Act.

24.9.3 Selection of Hearing Officer/Arbitrator.

Unless the parties agree otherwise, the parties shall be afforded a reasonable opportunity to participate in the selection of the Hearing Officer/Arbitrator, as follows:

- 24.9.3.1 The Practitioner shall be provided a list of three (3) potential Hearing Officers/Arbitrators, meeting the criteria in this Article;
  - 24.9.3.2 The Practitioner shall then have five (5) calendar days (excluding Saturdays, Sundays and legal holidays), to accept any of the listed potential Hearing Officers/Arbitrators, or to propose three (3) other names of potential Hearing Officers/Arbitrators who meet the criteria in this Article;
  - 24.9.3.3 If the Practitioner is represented by counsel, the parties' counsel may meet and confer in an attempt to reach accord in the selection of a Hearing Officer/Arbitrator from the two parties' lists;
  - 24.9.3.4 If the parties are not able to reach agreement on the selection of a Hearing Officer/Arbitrator within five (5) calendar days (as described in subsection 24.8.3.2) of receipt of the Practitioner's proposed list, the President of the Medical Staff in conjunction with the Office of Legal Affairs shall select an individual from the composite list.
- 24.9.4 Unless the Hearing Officer/Arbitrator is selected by stipulation of the parties, he/she shall be subject to reasonable voir dire.
- 24.9.5 Authority of Hearing Officer/Arbitrator.

- 24.9.5.1 The Hearing Officer/Arbitrator shall not act as a prosecuting officer or as an advocate for the Medical Staff, LPPH or the Chancellor, and shall gain no direct financial benefit from the outcome. The Hearing Officer may participate in the deliberations of the Hearing Panel, but shall not be entitled to vote. The Hearing Officer/Arbitrator shall act to assure that all participants in the hearing have a reasonable opportunity to be

heard, to present all oral and documentary evidence, and to ensure that decorum is maintained. The Hearing Officer/Arbitrator shall be entitled to determine the order of or procedure for presenting evidence and argument during the hearing and shall have the authority and discretion to make all rulings on questions which pertain to matters of law, procedure, and the admissibility of evidence that are raised prior to, during or after the hearing. This shall include, but not be limited to, deciding when evidence may or may not be introduced; addressing witness issues including disputes regarding expert witnesses; setting reasonable schedules for timing and/or completion of all matters related to the hearing; granting continuances; ruling on disputed discovery requests; and ruling on challenges to him/herself or to the Hearing Panel. When no attorney represents the parties at the hearing, the Hearing Officer/Arbitrator shall have authority to set schedules, settle disputes, rule upon questions of evidence, witnesses and hearing procedure, and will make all rulings necessary to ensure a fair and efficient process.

- 24.9.5.2 If the Hearing Officer/Arbitrator determines that either party in a hearing is not proceeding in an efficient and expeditious manner, or fails to schedule or appear without good cause, the Hearing Officer/Arbitrator may take such discretionary actions as seem warranted by the circumstances. However, only a Hearing Panel or Arbitrator has the right to issue terminating sanctions and shall only do so in writing, to the MSEC for the MSEC's approval. The MSEC's decision to approve/disapprove the terminating sanction shall be appealable to the Governance Advisory Council. The appeal must be requested within ten (10) days of the terminating sanction and the scope of the appeal shall be limited to reviewing the appropriateness of the terminating sanction. The appeal shall be conducted in general accordance with the provisions of this Article.
- 24.9.6 Hearing Panel.
- 24.9.6.1 When a hearing is requested before a Hearing Panel, the President of the Medical Staff shall appoint a Hearing Panel which shall be composed of not less than three (3) voting Members who shall gain no direct financial benefit from the outcome and who shall not have acted as accuser, investigator, fact finder, initial decision maker or otherwise have not actively participated in the consideration of the matter leading up to the recommendation or action. Knowledge of the matter involved shall not preclude a Member of the Medical Staff from serving as a part of the Hearing Panel.
- 24.9.6.2 The President may appoint Members from Attending Medical Staff or other Medical Staff categories as the President deems appropriate.

- 24.9.6.3 The Hearing Panel shall include, when feasible, at least one Member who has the same healing arts licensure as the Member who requested the hearing and, if feasible, who practices in the same specialty as said Member.
- 24.9.6.4 Alternate Hearing Panelists may be appointed by the President, subject to voir dire by the parties, who meet the standards described above and who can serve if Hearing Panelist(s) become(s) unavailable.

## **24.10 Pre-Hearing/Arbitration Matters**

### 24.10.1 Representation.

The Member or applicant requesting the hearing may be represented, at his/her expense, by a Member of the Medical Staff or legal counsel of his/her choice; however, the Member or applicant requesting the hearing must notify the President of the Medical Staff, in writing, of his/her intention to be so represented no later than ten (10) days after submission of the request for a hearing. If the Member or applicant is represented by an attorney, the MSEC may also be represented by an attorney, but the MSEC may not be represented by an attorney if the Member or applicant is not. When attorneys are not allowed, both parties may be represented at the hearing only by a medical Member licensed to practice in the State of California who is not also an attorney.

### 24.10.2 Voir Dire.

Except as provided herein, the affected Member or applicant shall have the right to a reasonable opportunity to voir dire the Hearing Panel and any Hearing Officer/Arbitrator, and the right to challenge the impartiality of any potential Hearing Panel panelist or Hearing Officer/Arbitrator. Challenges to the impartiality of any Hearing Panel panelist shall be ruled on by the Hearing Officer. Challenges to the impartiality of the Hearing Officer/Arbitrator shall be ruled on by the President of the Medical Staff, in consultation with the Office of Legal Affairs.

### 24.10.3 Pre-Hearing Conduct.

The parties shall cooperate as reasonably necessary to facilitate timely and efficient commencement of the hearing. This shall include, but is not limited to, timely exchange of prehearing documents, timely disclosure of requested witness lists, and timely raising and resolving such matters as can reasonably be resolved prior to actual commencement of the hearing, as further described below.

### 24.10.4 Access to and Exchange of Documents.

The Member or applicant shall have a right to inspect and copy, at his/her expense, any documentary information relevant to the charges that the MSEC has in its possession or under its control, as soon as practicable after the receipt of the Member or applicant's request for a hearing. Similarly, the MSEC shall have the right to inspect and copy, at its expense, any documentary information relevant to the charges that the Member or applicant has in his or her possession or control as soon as practicable after receipt of the MSEC's request. Additionally, both parties shall exchange all documents that they intend to offer into evidence at the hearing/arbitration at least thirty (30) days prior to the commencement of the hearing/arbitration. If a party fails to provide documents within ten (10) days prior to the commencement of the hearing/arbitration, the Hearing Officer/Arbitrator, in his/her discretion, may for good cause grant a continuance to provide documents or preclude the admission of documents that have not been timely produced. The right to inspect and copy by either party does not extend to information about individually identifiable licentiates other than the affected Member or applicant. The Hearing Officer/Arbitrator shall consider and rule upon any request for access to information and may impose any safeguards that the protection of the peer review process and justice require.

24.10.5 Exchange of Witness Lists.

Each party shall have the right to present witnesses. Each party is responsible for producing its own witnesses that it has identified. If either party, by notice to the other, requests a list of witnesses, the recipient, within the sooner of fifteen (15) days from the receipt of the request or ten (10) days prior to the hearing, shall furnish to the other a list of the names and addresses of the individuals, so far as is then reasonably known, who will give testimony or evidence at the hearing/arbitration. The parties will cooperate in scheduling and updating the Hearing Officer/Arbitrator of scheduled witness testimony. If a party fails to provide names and addresses of witnesses in the time and/or manner described above, the Hearing Officer/Arbitrator at his/her discretion may for good cause grant a continuance or preclude the testimony of witnesses whose names have not been disclosed. Nothing in the foregoing shall preclude the testimony of additional witnesses whose possible participation was not reasonably anticipated, including rebuttal witnesses. The parties shall notify each other as soon as they become aware of the possible participation of such additional witnesses.

24.10.6 Effect of Noncooperation.

As noted above, the failure to disclose the identity of a witness or to produce copies of all documents expected to be introduced at the hearing at least ten (10) days prior to the commencement of the hearing/arbitration shall, at the Hearing Officer/Arbitrator's discretion, constitute good cause for a continuance or preclusion of the undisclosed witnesses and/or documents. The Hearing Officer/Arbitrator, at his/her discretion, may allow said evidence

or testimony if it could not have been reasonably discovered and made available to the other party prior to the hearing. The parties shall notify each other as soon as they become aware of the relevance or participation of such additional documents or witnesses. The Hearing Officer/Arbitrator may confer with both sides to encourage an advance mutual exchange of documents which are relevant to the issues to be presented at the hearing/arbitration. Repeated acts of noncooperation are subject to a finding of failure to schedule or appear and a basis for termination of the proceedings as determined by the process detailed above.

24.10.7 Timely Notification of Issues.

It shall be the duty of the Member or the applicant and the President of the Medical Staff, or his/her designee, to exercise reasonable diligence in notifying the Hearing Officer/Arbitrator (or if the Hearing Officer/Arbitrator has not yet been appointed, the Chair of the Hearing Panel) of any pending or anticipated procedural disputes as far in advance of the scheduled hearing as possible, in order that the Hearing Officer/Arbitrator may make pre-hearing decisions concerning such matters. Reconsideration of any pre-hearing decisions may be made at the hearing, as determined by the Hearing Officer/Arbitrator.

24.10.8 Limits on Discovery.

Except as specifically provided in this Article, there shall be no right to conduct discovery in connection with any hearing, and no Member or applicant shall be permitted access to or to introduce any evidence of any peer review records, minutes or other documents or information relating to any other Member of the Medical Staff, or any actions taken or not taken with regard to any other Member of the Medical Staff. Where no requested documents exist, there is no obligation to create or modify documents in order to satisfy a request for information. The Member or applicant requesting a hearing shall, however, be entitled to any documents relied on by the MSEC or Governance Advisory Council in making any recommendation or decision, any documents to be introduced at the hearing/arbitration, and any medical records relied on or to be introduced at the hearing/arbitration. If applicable, production of documents does not constitute a waiver of the peer review protections afforded under Evidence Code Sections 1156 and 1157 or other applicable privileges and protections.

24.10.9 Rulings on Discovery Disputes.

- 24.10.9.1 **Objections to the Introduction of Evidence:** Any party may object to the introduction of the evidence that was not timely provided during an appointment, reappointment or privilege application review or during corrective action despite the requests for such information. The information will be barred from the hearing by the Hearing

Officer/Arbitrator unless the responding Party can prove he or she previously acted diligently and could not have timely submitted the information in response to the request. The failure to timely request information constitutes a waiver.

24.10.9.2 **Procedural Disputes:** The parties shall be entitled to file motions as deemed necessary to give full effect to rights established by this Article and to resolve such procedural matters. In the event of a hearing, the Hearing Officer/Arbitrator shall resolve the procedural dispute outside the presence of the Hearing Panel. Such motions shall be in writing and shall specifically state the motion, all relevant factual information, and any supporting authority for the motion. The Hearing Officer/Arbitrator shall set the schedule and determine whether to allow oral argument on any such motions. The Hearing Officer/Arbitrator's ruling shall be in writing and shall be provided to the parties promptly upon its rendering. All motions, responses and rulings thereon shall be entered into the hearing record by the Hearing Officer/Arbitrator.

24.10.10 Postponements and Extensions.

Postponements and extensions of time beyond the times expressly permitted in this Article in connection with the hearing/arbitration process may be requested by any party and may be permitted by the Hearing Officer/Arbitrator or the Hearing Panel upon on a showing of good cause, or upon the stipulation of the parties.

**24.11 Hearing/Arbitration**

24.11.1 Commencement of Hearing/Arbitration.

The commencement of the hearing is considered the voir dire of the first potential panel member, or in the case of an arbitrator, the voir dire of the arbitrator.

24.11.2 Record of Hearing.

A court reporter shall be present to make a record of the hearing/arbitration proceedings and the pre-hearing/pre-arbitration proceedings if deemed appropriate by the Hearing Officer/Arbitrator. The cost of attendance of the court reporter shall be borne equally by the MSEC and the Member or applicant. The cost of receiving a copy of the transcript shall be borne by the party requesting it and will be payable directly to the court reporter. The Hearing Officer/Arbitrator may, but shall not be required to, order that oral evidence shall be taken only on oath administered by any person lawfully authorized to administer such oath. Except as next provided, the Member or applicant shall maintain the confidentiality of the hearing record and the protections of California Evidence Code Section 1157 are not waived. The Member or applicant may introduce the hearing record into a judicial

proceeding challenging the final action taken or any procedural rulings that may be made by the Hearing Officer/Arbitrator; provided, however, that the MSEC may request a protective order/injunction as deemed necessary to protect the interests of peer review.

24.11.3 Rights of Both Sides at Hearing.

Within reasonable limitations, both sides at the hearing/arbitration shall have the right to: (1) call and cross-examine witnesses on any matter relevant to the charges; (2) present and rebut evidence determined by the Hearing Officer/Arbitrator to be relevant to the charges; and (3) submit a written statement at the close of the hearing if so requested. The hearing shall be confidential and closed to the public.

24.11.4 Rules of Evidence.

Judicial rules of evidence and procedure relating to the conduct of the hearing/arbitration, examination of witnesses and presentation of evidence do not apply to a hearing conducted under this Plan. Any relevant evidence may be admitted by the Hearing Officer/Arbitrator if it is the sort of evidence upon 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. The parties may object to the introduction of evidence that was not timely produced. The Hearing Officer/Arbitrator shall bar such evidence unless the party clearly demonstrates that he or she previously acted diligently and could not have previously produced it. The Hearing Panel/Arbitrator may examine the witnesses or call additional witnesses if it/he/she deems it appropriate. When ruling upon requests for access to information and the relevancy thereof, the Hearing Officer/Arbitrator shall consider the following:

- 24.11.4.1 Whether the information sought may be introduced to defend or support the charges.
- 24.11.4.2 The exculpatory or inculpatory nature of the information sought, if any.
- 24.11.4.3 The burden imposed on the party in possession of the information sought, if access is granted.
- 24.11.4.4 Any previous requests for access to information submitted or resisted by the parties to the same proceeding.

24.11.5 Continuances.

Continuances may be granted by the Hearing Officer/Arbitrator upon agreement of the parties or upon a showing of good cause.

24.11.6 Failure to Schedule or Appear.

A finding by the Hearing Panel or Arbitrator of the Member or applicant's failure, without good cause, to personally attend and to proceed at a hearing/arbitration in an efficient and orderly manner, shall be deemed to constitute voluntary acceptance of the recommendations or actions involved. In the event the Member or applicant fails to personally attend or proceed prior to the selection of the Arbitrator/Hearing Officer, the MSEC will make the determination. The final recommendations or actions shall be considered by the Governance Advisory Council within forty-five (45) days. Except as otherwise agreed by the parties, failure to appear and proceed shall be presumed if the Member or applicant requesting the hearing is unwilling to agree to any proffered commencement dates within sixty (60) days of the initial request for hearing, or any continuation dates within a thirty (30) day period from the most recent day of hearing (i.e., unless agreed by the parties, the hearing must commence within sixty (60) days, and additional hearing dates must be conducted within thirty (30) days), unless the Hearing Panel /Hearing Officer/Arbitrator are not available to convene within this time frame.

24.11.7 Burden of Presenting Evidence and Proof.

24.11.7.1 At the hearing/arbitration, the body whose decision prompted the hearing/arbitration shall have the initial duty to present evidence for each case or issue in support of its action or recommendation. The Member or applicant shall be obligated to present evidence in response.

24.11.7.2 An applicant for membership and/or privileges shall bear the burden of persuading the Hearing Panel/Arbitrator, by a preponderance of the evidence, that he or she is qualified for membership and/or the denied privileges. A Member or applicant must produce information which allows for adequate evaluation and resolution of reasonable doubts concerning his or her current qualifications for membership and privileges, including information requested from the Applicant during the application/credentialing process.

24.11.7.3 Except as provided above for applicants for membership and/or privileges, throughout the hearing/arbitration, the body whose decision prompted the hearing/arbitration shall bear the burden of persuading the Hearing Panel/Arbitrator by a preponderance of the evidence, that its action or recommendation was reasonable and warranted at the time the action or recommendation was taken.

24.11.8 Presence of Hearing Panel Members and Vote.

When before a Hearing Panel, a majority of the Hearing Panel must be present throughout the hearing and deliberations. Upon stipulation of the parties or upon the ruling of the Hearing Officer/Arbitrator and concurrence by the Hearing Panel, if any, the proceedings may be held remotely via electronic

access with audio and visual means in a manner sufficient to satisfy the requirements of a videotaped deposition. In unusual circumstances when a Hearing Panel Member must be absent from any part of the proceedings, he or she shall not be permitted to participate in the deliberations or the decision until he or she has read the entire transcript or has viewed the videotaped recording of the portion of the hearing from which he or she was absent. The final decision of the Hearing Panel must be sustained by a majority vote of the panelists on the Hearing Panel. Alternate Hearing Panel panelist(s) do not vote unless they are replacing a sitting panelist, and they participated in the deliberations of the Hearing Panel.

24.11.9 Adjournment and Conclusions.

The Arbitrator or the Hearing Officer, only after consultation with the Hearing Panel, may adjourn the hearing/arbitration and reconvene the same without special notice at such times and intervals as may be reasonable and warranted, with due consideration for reaching an expeditious conclusion to the hearing/arbitration. Final adjournment shall be when the Hearing Panel has concluded its deliberations or, in the case of an arbitration, upon submission of the matter to the Arbitrator.

24.11.10 Decision.

The decision shall be based upon the preponderance of the evidence presented at the hearing. "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it.

Within thirty (30) days after the final adjournment of the hearing/arbitration, the Hearing Panel/Arbitrator shall render a final written decision which shall contain a concise statement of the reasons justifying the decision made. The decision shall be based upon the simple majority of the panelists of the Hearing Panel's/the Arbitrator's findings of fact and conclusions articulating the connection between the evidence produced at the hearing/arbitration and the decision reached. The decision shall be delivered to the Credentials Committee, the MSEC, the Medical Staff Office, the Chief Executive Officer of LPPH, and the Chancellor. At the same time, a copy of the decision shall be delivered to the applicant or Member who requested the hearing, either in person or by registered or certified mail, return receipt requested. Both the Member or applicant and the body whose decision prompted the hearing/arbitration shall be provided a written explanation of the procedure for appealing the decision, if any.

24.11.11 Appeal.

The decision of the Arbitrator/Hearing Panel shall be final, subject only to the right of appeal, if any.

## **24.12 Appeal Procedure**

### **24.12.1 Appellate Review Committee.**

If an appeal is to be conducted, an Appellate Review Committee shall hear all appeals and be comprised of the Chancellor or the Chancellor's designee and two (2) additional members from the Governance Advisory Council or Members of the Medical Staff who have not been involved in any aspect of the peer review hearing to date and who are selected by the Chancellor or his/her designee.

Knowledge of the matter involved shall not preclude any person from serving as a member of the Appellate Review Committee so long as that member did not take part in a prior investigation or hearing on the same matter. The Chancellor or his/her designee may select an attorney to assist the Appellate Review Committee in the proceeding. That attorney may function as an Appellate Hearing Officer, with comparable authority to that described for the Hearing Officer pursuant to this Article. That attorney shall not be entitled to vote with respect to the appeal. The Appeal Review Committee shall have such powers as are necessary to discharge its responsibilities. Ultimate authority with regard to the Appeal Review Committees decision lies with the Governance Advisory Council.

### **24.12.2 Time for Requesting Appeal.**

Within twenty (20) days after receipt of the decision of the Hearing Panel/Arbitrator, either party may request an appellate review by an Appellate Review Committee. A written request for such review shall be delivered either in person or by certified or registered mail, return receipt requested, to the Chancellor. If such appellate review is not requested within such period, the Hearing Panel/Arbitrator's action(s) or recommendation(s) shall thereupon become the final action(s) or recommendation(s) of the Medical Staff. The Appellate Review Committee shall consider the decision within forty-five (45) days and shall give the Hearing Panel/Arbitrator's recommendation(s) great weight in coming to its own determination.

### **24.12.3 Grounds for Appeal.**

If appeal rights are provided, a written request for an appeal shall include an identification of the grounds for appeal and a clear and concise statement of the facts in support of the appeal. The grounds for appeal from the hearing shall be: (a) substantial non-compliance with the procedures required by the Bylaws and/or this Plan, or applicable law, which has created demonstrable prejudice; or (b) the decision was arbitrary, capricious, or not supported by the evidence based upon the hearing record or such additional information as may be permitted pursuant to this Plan. In no event shall the decision of hearing panel/arbitrator be set aside or reversed on the grounds of improper

admission or rejection of evidence, or for any error in matters of notice or procedure, unless, after an examination of the entire cause, including all of the evidence, the Appellate Review Committee shall be of the opinion that the error complained of has resulted in a miscarriage of justice.

24.12.4 Time, Place, and Notice.

The Chancellor or his/her designee will, within thirty (30) days after receipt of the request for appeal, schedule and arrange for an appellate review if he/she determines that valid grounds for review have been stated. The Chancellor, or his/her designee, shall cause the parties to be given notice of the time, place, and date of the appellate review or that the request for appellate review is denied. The date of appellate review shall not be 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 from a Member who is under suspension which is then in effect, the appellate review should commence within forty-five (45) days from the date the request for appellate review was received. The time within which appellate review will be held may be extended by the Appellate Review Committee for good cause.

24.12.5 Appellate Review Procedure.

- 24.12.5.1 The proceeding by the Appellate Review Committee shall be in the nature of an appellate review, based upon the record before the Hearing Panel/Arbitrator.
- 24.12.5.2 Each party shall have the right to be represented by legal counsel or any other representative designated by that party in connection with the appeal.
- 24.12.5.3 The Appellate Hearing Officer may establish reasonable time frames for the appealing party to submit a written statement and for the responding party to respond.
- 24.12.5.4 Each party has the right to appear personally and to make oral argument. Arguments must be based upon the following, if applicable:
  - 24.12.5.4.1 Substantial non-compliance with the procedures required under this Fair Hearing Plan which has created demonstrable prejudice;
  - 24.12.5.4.2 The decision was not supported by the evidence based upon the record or such additional information as may be permitted under this Plan; or
  - 24.12.5.4.3 The action taken was arbitrary or capricious.

- 24.12.5.5 The Appeal Review Committee may accept additional oral or written evidence, subject to a foundational showing that such evidence could not have been made available to the Hearing Panel/Arbitrator in the exercise of reasonable diligence and, if allowed, will be subject to the same rights of cross-examination or confrontation provided at the hearing.
  - 24.12.5.6 The appealing party shall submit a written statement concisely stating the specific grounds for appeal. In addition, the responding party shall have the right to present a written statement in the appealing party's position on appeal.
  - 24.12.5.7 The Appeal Review Committee may then, at a time convenient to itself, deliberate outside the presence of the parties.
- 24.12.6 Final Decision.
- 24.12.6.1 The Appellate Review Committee may affirm, modify, reserve the decision or remand the matter for further review by the Hearing Panel/Arbitrator or any other body designated by the Appellate Review Committee.
  - 24.12.6.2 The Appeal Review Committee shall give great weight to the Hearing Panel/Arbitrator's recommendation(s) and shall not act arbitrarily or capriciously. Unless the Appeal Review Committee elects to conduct a de novo review, the Appeal Review Committee shall sustain the factual findings of the Hearing Panel/Arbitrator if they are supported by substantial evidence. The Appeal Review Committee may, however, exercise its independent judgment in determining whether a Member or applicant was afforded a fair hearing, and whether the decision is reasonable and warranted in light of the supported findings.
  - 24.12.6.3 Final adjournment shall not occur until the Appellate Review Committee has completed its deliberations. Within thirty (30) days of adjournment of the Appeal Review Committee, a final decision will issue by written or electronic means. The final decision of the Appeal Review Committee shall be effective immediately upon issue.
  - 24.12.6.4 The Appellate Review Committee shall deliver copies of the decision to the parties and to the MSEC either electronically, in person or by certified or registered mail, return receipt requested. The decision shall specify the reasons for the action taken, and shall provide findings of fact and conclusions articulating the connection between the evidence produced at the hearing and the appeal (if any), and the decision reached, if such findings and conclusions differ from those of the Hearing Panel/Arbitrator.

24.12.6.5 The Appeal Review Committee may remand the matter to the Hearing Panel/Arbitrator or any other body the Appeal Review Committee designates for reconsideration or may refer the matter to the full Governance Advisory Council for review. If the matter is remanded for further review and recommendation, the further review shall be completed within thirty (30) days unless the parties agree otherwise or for good cause as determined by the Appeal Board.

### **24.13 Right to One Hearing**

No Practitioner or applicant shall be entitled to more than one evidentiary hearing and one appellate review on any matter that was the subject of an adverse action or recommendation.

### **24.14 Exhaustion of Remedies**

An aggrieved Medical Staff Member must follow the applicable procedures set forth in the Bylaws and Plans prior to resorting to legal action

### **24.15 Intra-Organizational Remedies**

The hearing and appeal rights established in this Article are quasi-judicial rather than legislative in structure and function. The hearing panelists, officers and/or arbitrators have no authority to adopt or modify rules and standards or to decide questions about the merits or the substantive validity of the Bylaws, Plans, Rules, Regulations or Policies; however, the Governance Advisory Council may, in its sole discretion, entertain challenges to the merits or substantive validity of the Bylaws, Plans, Rules, Regulations or Policies and may decide those questions. If the only issue in a case is whether a Bylaw, Plan, Rule, Regulation or Policy is lawful or meritorious, the Member is not entitled to a hearing or appellate review. In such cases, the Member must submit his or her challenge first to the Governance Advisory Council and only thereafter may he or she seek judicial intervention by a Petition for Writ of Administrative Mandamus.

### **24.16 Exceptions to Hearing Rights**

#### **24.16.1 Exclusive Contracts.**

The reduction, termination or denial of Membership and/or privileges as a result of an exclusive contract arrangement shall not entitle any Member to a hearing under this Fair Hearing Plan.

#### **24.16.2 Advanced Practice Providers.**

Advanced Practice Providers are not entitled to the hearing rights set forth in this Article except as required by law.

24.16.3 Failure to Meet the Minimum Qualifications.

Practitioners shall not be entitled to any hearing or appellate review rights if their membership, privileges, applications or requests are denied because of their failure to have a current California license to practice medicine, , clinical psychology; to maintain an unrestricted Drug Enforcement Administration certificate (when it is required under the Bylaws, Plans or Rules); to maintain professional liability insurance as required by the Bylaws, Plans or Rules; or to meet any of the other basic standards specified in this Plan, the Credentialing Plan or the Bylaws, or failure to file a complete application to the satisfaction of the Credentials Committee.

24.16.4 Failure to Meet Minimum Activity Requirements.

Practitioners and applicants shall not be entitled to the hearing and appellate review rights if their membership or privileges are denied, restricted or terminated or their Medical Staff categories are changed or not changed because of a failure to meet the minimum activity requirements set forth in the Medical Staff Bylaws, Plans, Rules, Regulations and Policies. In such cases, the only review shall be provided by the MSEC through the Credentials Committee or, at the discretion of the President, an MSEC subcommittee consisting of at least three MSEC Members. The Credentials Committee or MSEC subcommittee shall give the Practitioner or applicant notice of the reasons for the intended denial or change in membership, privileges, and/or category and shall schedule an interview with the subcommittee to occur no less than thirty (30) days and no more than one hundred (100) days after the date the notice was given. At this interview with the subcommittee, the Practitioner or applicant may present evidence concerning the reasons for the action, and thereafter the subcommittee shall render a written decision within forty-five (45) days after the interview. A copy of the decision shall be sent to the Practitioner or applicant, MSEC and Governance Advisory Council. The subcommittee decision shall be final unless it is reversed or modified by the MSEC within forty-five (45) days after the decision was rendered, or the Governance Advisory Council within ninety (90) days after the decision was rendered

24.16.5 Denial of Termination of Temporary Privileges.

No Practitioner shall be entitled to a hearing or appeal if temporary privileges are denied or terminated or otherwise restricted, unless such action or recommendation would require the filing of a report pursuant to California Business & Professions Code Section 805.

## **24.17 Joint Hearing and Appeals**

24.17.1 Whenever a Practitioner is entitled to a hearing under this Article because a credentialing or corrective action has been taken or recommended that involves more than one peer review body within the UCSF Health System, a single joint hearing may be conducted in accordance with these hearing procedures, provided: (i) each participating Medical Staff has adopted the same or similar provisions; and (ii) each President/Chief of the Medical Staff or his/her designee has elected to participate in the joint hearing, as a matter of discretion. In the event there exists a governing document memorializing the relationship and responsibilities of and between the peer review bodies, that governing document will dictate the applicable fair hearing process. In the absence of such document, the hearing process contained in this Plan will dictate.

## **24.18 Applicability of Corrective Actions Among LPPH and UCSF Clinical Sites**

Unless otherwise expressly stated or provided for in separate Medical Staff Bylaws, contracts, policies or plans, any final decision following the procedures in this Fair Hearing Plan shall apply and be enforced across each of the Practitioner's Medical Staff membership(s) at all LPPH and UCSF clinical sites and hospitals, and the Practitioner's clinical activities at LPPH and UCSF Clinics.