Medical Staff Bylaws
UC San Diego Health
Fair Hearing Plan
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**APPLICABILITY**

This Fair Hearing Plan is adopted in recognition of the University of California San Diego Health Medical Staff’s responsibility for overseeing, on behalf of the Governing Body, the quality of patient care, treatment, and services provided by Members at UCSDH.

This Plan is only applicable to Members. Advanced Practice Professionals (APP) as defined in the Bylaws, are not governed by this Plan. Peer review, corrective action, and any hearing rights for APPs, to the extent applicable, are set forth in the APP Policy.

**DEFINITIONS**

The definitions that apply to the terms used in this Plan are set forth in the Bylaws.
ARTICLE 1
PEER REVIEW AND CORRECTIVE ACTION

1.1 Role Of Medical Staff In Organization-Wide Quality Improvement Activities

The Medical Staff believes that the interests and well-being of patients are best served by the organized effort and support of the health care professionals to whom patients entrust their care, and that education and research in the health sciences are most effectively advanced by such an organized effort. The Medical Staff is responsible for overseeing the quality of medical care, treatment, and services delivered at UCSDH. An important component of that responsibility is the oversight of care rendered by Members practicing at UCSDH. The following provisions are designed to monitor and achieve quality improvements through collegial peer review and educative measures whenever possible, but with recognition that, when circumstances warrant, the Medical Staff is responsible to undertake informal corrective measures and/or corrective action as necessary to ensure that patients are being provided high quality of care, treatment, and services.

A. Members are expected to participate actively and cooperatively in a variety of peer review activities to measure, assess, and improve the performance of their peers at UCSDH.

B. The primary goals of the peer review processes are to prevent, detect, and resolve actual and potential problems through routine collegial monitoring, education, and counseling; however, remedial measures and, when necessary, Investigation and corrective action may be undertaken.

C. The Services and Medical Staff committees are responsible for determining the practice criteria and the type of data to be collected for OPPE in peer review and quality improvement functions. All such activities, whether performed directly or by delegation, are incorporated within the Medical Staff's peer review process.

D. External Peer Review

External peer review may be used to inform Medical Staff peer review activities as delineated under the Bylaws. In evaluating or investigating an applicant, Privilege holder, or Member, an external peer review may be obtained in the following circumstances:

1) When a Medical Staff Committee, Service or an Ad Hoc Committee performs a review(s) that could affect an individual’s Membership or Privileges, and would benefit from external input or expertise in the Privilege(s) or area(s) under review;
2) When no current Member can provide the necessary expertise in the Privilege(s) or area(s) under review;

3) To help promote an impartial peer review; or

4) As deemed necessary by the MSEC or the President of Medical Staff.

1.2 Ongoing Performance Monitoring And Informal Corrective Activities

A. OPPE is the process by which all Members are evaluated against criteria set by their Service so as to identify performance issues and intervene as necessary. FPPE is the process used to evaluate, for a specified time period or number of procedures, a Member’s performance or competency in exercising their privileges. OPPE and FPPE are performance monitoring tools and are not considered a disciplinary measure by the Medical Staff, rather, as information-gathering activities. Performance monitoring does not give rise to the procedural rights described in this Plan, nor is it considered an Investigation for purposes of the Bylaws.

B. The Officers, Medical Staff Service Chiefs, and Medical Staff committees may undertake informal corrective activities to counsel, educate, or institute retrospective or concurrent monitoring in the course of carrying out their duties without initiating formal corrective action. Comments, suggestions, and warnings may be issued to the Member orally or in writing. The Member may be given an opportunity to respond in writing to informal corrective activities and may be given an opportunity to meet with the Officer, Medical Staff Service Chief, or committee issuing the comment, suggestion, or warning.

C. Any informal actions, monitoring, or counseling may be documented in writing in the Member’s credentials file. MSEC approval is not required for such actions, although the actions may be reported to the MSEC.

1.3 Criteria For Initiation of Formal Corrective Action

Generally, formal corrective action measures should not be initiated unless reasonable attempts at informal resolution have failed; however, this is not a mandatory prerequisite, and formal corrective action may be initiated whenever circumstances reasonably appear to warrant formal action. Any recommendation of formal corrective action must be based on the evaluation of Member-specific information.

An Investigation may be initiated whenever reliable information indicates a Member may have exhibited acts, demeanor, or conduct, either within or outside of UCSDH, that is reasonably likely to be:

A. Detrimental to patient safety or to the delivery of quality patient care within UCSDH. This shall include, but is not limited to, conduct that undermines the
culture of safety and/or conduct that compromises the ability of other Members, UCSDH employees, or others at UCSDH to deliver quality patient care;

B. Unethical or illegal;

C. Contrary to the Bylaws and/or Medical Staff Policies, Procedures, Plans, and Rules. This shall include, but is not limited to, failure to disclose or keep current information pertinent to and necessary for evaluation of the Member’s qualifications for appointment or re-appointment to the Medical Staff;

D. Care below applicable professional competence. This shall include, but is not limited to, clinical care that is below the standard of care of UCSDH;

E. Unprofessional or disruptive conduct as set forth in the Bylaws, Code of Conduct, Medical Staff Policies, Procedures, Plans, and Rules, or other applicable Professional Conduct Policy at UCSDH;

F. Improper use of UCSDH resources;

G. Indictment or information charging a crime, or charges of fraud or abuse relating to any governmental health program or third party reimbursement. An investigation by the peer review body shall not be delayed on the grounds a defense or appeal has been filed or is pending;

H. Failure to comply with UCSD’s compliance or research program(s) policies and procedures;

I. Below applicable professional standards; or

J. A breach of privacy and/or confidentiality.

1.4 **Initiation of Formal Corrective Action**

A. Any person who believes that formal corrective action may be warranted may provide information to the MSEC, President of Medical Staff, any Officer, any Medical Staff Service Chief, any Medical Staff committee, the Chair of any Medical Staff committee, the EGB, or the Chief Executive Officer.

B. If the President of Medical Staff, any other Officer, any Medical Staff Service Chief, any Medical Staff committee, the Chair of any Medical Staff committee, the EGB or the Chief Executive Officer receives a request for formal corrective action, that person, entity, or committee will forward such a request to the MSEC in writing.

C. If, upon receipt of the written request, the MSEC determines that formal corrective action may be warranted under the Bylaws, the MSEC may recommend particular corrective action. The MSEC may also request that an
Investigation as described in Article 9.6 of the Bylaws and this Plan be undertaken.

D. The MSEC may dispense with further investigation of matters it deems to have been adequately investigated. The President of Medical Staff shall notify the Chief Executive Officer of the request for formal corrective action and any resulting investigation.

1.5 Expedited Initial Review/Preliminary Investigation

Whenever information suggests that expedited initial review of a request for formal corrective action may be warranted, the President of Medical Staff or designee may, on behalf of the MSEC, immediately investigate and conduct whatever interviews may be indicated or may delegate such activities as appropriate. The information obtained during this initial review shall be presented to the MSEC and the MSEC shall decide whether to initiate a formal Investigation as described in Article 1.6 below. The MSEC may also recommend a particular corrective action.

1.6 Formal Investigation

A. If the MSEC concludes that corrective action is indicated but that no further Investigation is necessary, the MSEC may proceed to take action in accordance with Article 1.7, without a formal Investigation.

B. If the MSEC concludes a formal Investigation is warranted, it shall direct an Investigation to be undertaken. Insofar as is feasible under the circumstances, Investigations should be conducted as soon as practicable.

C. The Member shall be notified in writing of the Investigation and of the concerns that gave rise to the Investigation. An Investigation will be deemed to commence on the day the Member is advised of the Investigation.

D. The MSEC may conduct the Investigation itself or may delegate the task to an appropriate designee, Officer, or standing or ad hoc committee to be appointed by the President of Medical Staff. Additionally, the investigating person or body may, but is not required to, engage the services of one or more external reviewers as deemed appropriate or helpful in light of the circumstances.

E. The Member shall be given an opportunity to provide information in a manner and upon such terms as the investigating body deems appropriate. The Member shall also be required to respond to requests for information and/or documents by the investigatory body and appear for any interviews as requested by the investigatory body. Any such interviews shall not constitute a “hearing” as that term is used in Article 10 of the Bylaws and Article 2 of this Plan, nor shall the procedural rules with respect to hearings or appeals apply.
F. The individual or body investigating the matter may, but is not obligated to, conduct interviews with other persons involved; however, any such interviews shall not constitute a “hearing” as that term is used in Article 10 of the Bylaws and Article 2 of this Plan, nor shall the procedural rules with respect to hearings or appeals apply.

G. The MSEC is authorized to determine the parameters for any Investigation, including the timelines for response.

H. If the Investigation is delegated to an individual, Officer, or committee other than the MSEC, such individual, Officer, or committee shall proceed with the Investigation in a prompt manner and shall forward a report of the Investigation findings to the MSEC as soon as practicable. The report may, but is not required to, include recommendations for appropriate corrective action.

I. 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 Investigation, or other action.

1.7 Medical Staff Executive Committee Action

As soon as practicable or after receipt of the report of the Investigation, the MSEC shall take action and inform the Member regarding the action, including, without limitation:

A. Determining no corrective action is warranted;

B. Deferring action for a reasonable time;

C. Issuing letters of admonition, censure, reprimand, or warning. In the event such letters are issued, the affected Member may make a written response and both letters shall be placed in the Member’s credentials file;

D. Referring the Member to the Physician Well-Being Committee, Medical Staff Professionalism Committee, and/or Patient Care and Peer Review Committee for evaluation and follow-up as appropriate;

E. Recommending the imposition of terms, without limitation: reduction, suspension, modification, or probation of Membership and/or Privileges, including, but not limited to co-admission, mandatory consultation, proctoring, or monitoring;

F. Recommending termination or revocation of Membership and/or Privilege(s);

G. Recommending summary suspension as is set forth in the Bylaws and this Plan; or
H. Taking other action(s) deemed appropriate under the circumstances.

1.8 Procedural Rights

If the MSEC recommends an action that is a ground for a hearing under Article 2 of this Plan, the President of Medical Staff shall give the Member notice of the proposed action and of the right to request a hearing. The EGB may be informed of the recommendation, but shall take no action until the Member has either waived their right to a hearing or exhausted all procedural rights set forth in Article 10 of the Bylaws and Article 2 of this Plan.

1.9 Initiation By Governing Body

A. The Medical Staff acknowledges that the EGB must act to protect the quality of care provided at UCSDH and the competency of its Medical Staff, and to ensure the responsible governance of UCSDH in the event that the Medical Staff fails in any of its substantive duties or responsibilities.

B. Accordingly, if the MSEC fails to investigate or to take corrective action contrary to the weight of the evidence then available, the EGB may direct the MSEC to initiate an Investigation or take corrective action, but only after consulting with the MSEC. If the MSEC fails to act in response to the EGB’s direction, the EGB may, in furtherance of its ultimate responsibility, initiate corrective action, in accordance with the Bylaws and this Plan, after written notice to the MSEC of the action.

1.10 Summary Restriction Or Suspension

A. Criteria for Initiation

1) Whenever it appears that the failure to take action may result in imminent danger to the health or safety of any individual, and after a good faith effort to communicate with at least three other individuals with similar authority, any one of: the President of Medical Staff, the MSEC, the Chief Medical Officer, the Associate Chief Medical Officer for Medical Staff Affairs, the Medical Staff Service Chief in which the Member holds Privileges, and/or the Chief Executive Officer may immediately restrict or suspend the Membership and/or Privileges of such Member. When none of the individuals identified above is available to summarily restrict or suspend Privileges, the EGB or its designee may immediately restrict or suspend a Member’s Privileges if a failure to do so is likely to result in an imminent danger to the health of any individual, provided the EGB has, before the summary restriction or suspension, made reasonable attempts to contact the MSEC.

2) Unless otherwise stated, such summary restriction or suspension (Summary Action) shall become effective immediately upon imposition. It
is the responsibility of the individual initiating the summary suspension to immediately (within 2 hours of the suspension) communicate directly with either the relevant Department Chair or Clinical Service Chief, in order to advise of the summary suspension and afford the clinical service as much time as possible to account for changes that may be required to patient care schedules associated with the summary suspension.

3) The Summary Action may be limited in duration and shall remain in effect for the period stated or, if none is stated, until ratified, modified, or terminated by the MSEC. A Summary Action by the Chief Executive Officer or the EGB that has not been ratified by the MSEC within two (2) Days shall terminate automatically. Unless otherwise indicated by the terms of the Summary Action, the Member’s patients shall be promptly reassigned to another Member by the Medical Staff Service Chief or by the President of Medical Staff considering, where feasible, the wishes of the patient(s) and the affected Member in the choice of a substitute Member.

4) When the MSEC initiates or ratifies a summary suspension, it shall determine whether to initiate a Formal Investigation. If it determines a Formal Investigation is warranted, the procedures set forth in Section 1.6 above shall be followed.

5) Within two (2) Days of imposition of a Summary Action, the Member shall be provided with written notice of such action. This initial notice shall include a statement of facts known at that time, explaining why the Summary Action was necessary. The written notice shall inform the Member: (1) of the right to an informal interview upon request; (2) that if a Summary Action remains in effect for more than fourteen (14) calendar days, the action will be reported to the Medical Board of California as required pursuant to California Business & Professions Code Section 805; and (3) that if the Summary Action exceeds thirty (30) calendar days, it will be reported to the NPDB.

B. MSEC Action

As soon as practicable after such Summary Action has been imposed, a meeting of the MSEC shall be convened to review and consider the action. Alternatively, a subcommittee of at least six (6) MSEC members may convene to review the Summary Action. If the MSEC elects to proceed with a subcommittee, the subcommittee must include at least two of the following: President of Medical Staff, Chief Medical Officer, Associate Chief Medical Officer for Medical Staff Affairs, Past President of Medical Staff, or Vice President of Medical Staff. The MSEC or subcommittee may request that the affected Member meet with the MSEC or subcommittee at such meeting. The meeting shall not constitute a "hearing," as that term is used in the Bylaws and/or this Plan. The affected Member is not allowed to have legal counsel present at the meeting. The MSEC
or subcommittee reserves the right to have the meeting transcribed and/or recorded by a certified court reporter.

The MSEC or subcommittee may thereafter continue, modify, or terminate the terms of the Summary Action. Within three (3) Days of its meeting, the MSEC or subcommittee must give the Member written notice of its decision and the reasons therefor, with a copy to the Chief Executive Officer. Said notice shall include the elements specified in Article 2.3 if the action is adverse.

C. Procedural Rights

Unless the MSEC or subcommittee terminates the Summary Action or specifies otherwise, the Summary Action shall remain in effect during the pendency and completion of the corrective action process, and the hearing and appellate review process. When a Summary Action is continued, such that it is required to be reported under California Business & Professions Code Section 805, the affected Member shall be entitled to the procedural rights afforded by Article 2. The hearing may be consolidated with a hearing on any corrective action that is recommended (to the extent the recommendation is a ground for hearing under Article 2 and the Member timely requests a hearing to challenge it). Said notice shall include the elements specified in Article 2.3 if the action is adverse.

1.11 Interviews

Interviews by MSEC or committee of the Medical Staff shall neither constitute nor be deemed a hearing as described in the Bylaws and Article 2 of this Plan, shall be preliminary in nature, and shall not be conducted according to the procedural rules applicable with respect to hearings. The MSEC shall be required, at the Member’s request, to grant an interview only when so specified in the Bylaws and this Plan. In the event an interview is granted, the Member shall be informed of the general nature of the reasons for recommended action and may present information relevant thereto. A record of the matters discussed and any findings resulting from an interview may be made. The Member is not allowed to be represented by an attorney during the interview.

1.12 Timely Objection

In the event any applicant or Member has any objection to any action taken or procedures followed by UCSDH, the Medical Staff, the MSEC, the President of Medical Staff, or any individual or committee with regard to the consideration of any Investigation, any corrective action, or other action, the applicant or Member shall state such objection and the reasons for the objection to the individual or body concerned in writing, or verbally if the objection arises during any recorded proceedings, in order to permit the body before whom the matter is pending to address the objection and take any corrective action deemed appropriate. The failure to give such notice of any objection shall be deemed to be a waiver of any such
objection and consent to the procedures being followed or action being taken.

1.13 Lapse, Limitation, Termination, Or Automatic Suspension Without Hearing Rights

A. In the following instances, the Member’s Privileges or Membership may be limited, terminated, or automatically suspended, as described below. Unless otherwise expressly provided or required by law, the affected Member shall not be entitled to the hearing rights provided for in Article 10 of the Bylaws and this Plan, or to any other procedural rights. Unless otherwise stated, for each matter listed below, an automatic suspension that remains in effect for longer than ninety (90) calendar days will result in voluntary resignation of Membership and/or Privileges, unless otherwise extended by the MSEC. Thereafter, reinstatement to the Medical Staff shall require a new application and compliance with the appointment procedures applicable to new applicants. The MSEC considers a limitation, termination or an automatic suspension based on one of the categories listed below not an action based on a Medical Disciplinary Cause or Reason as that term is defined in the California Business & Professions Code and the Bylaws, therefore no hearing rights are afforded pursuant to the Bylaws and this Plan, and no report is required to the Medical Board of California. The MSEC also does not consider any of the automatic actions set forth below as constituting a "professional review action" or relating to “possible incompetence or improper professional conduct” as those terms are defined under 42 USC Sections 11133 and 11151, and therefore no report is required to the NPDB.

1) Licensure

a) Revocation, Suspension, or Expiration of License: Whenever a Member’s license or other legal credential, certificate, or permit authorizing practice in this state is revoked, suspended, or expired, their Membership and Privileges shall be automatically revoked or suspended, as of the date such action becomes effective.

b) Restriction of License, Certificate, or Permit: Whenever a Member’s license, other legal credential authorizing practice in this state, certificate, or permit is limited or restricted by the applicable licensing or certifying authority, any Privileges that are within the scope of such limitation or restriction shall be automatically limited or restricted in a similar manner, as of the date such action becomes effective and throughout its term. Nothing in this provision shall require that the Medical Staff accept the restriction in lieu of other action, including corrective action, if in the MSEC’s sole discretion the restriction adversely affects UCSDH operations or patient care.
c) **Probation of License**: Whenever a Member is placed on probation by the applicable licensing or certifying authority, their Membership status and Privileges shall automatically become subject to the same terms and conditions of the probation as of the date such action becomes effective and throughout its term. Nothing in this provision shall require that the Medical Staff accept the condition(s) of probation in lieu of other action, including corrective action, if in the MSEC’s sole discretion, the probationary terms adversely affects UCSDH operations or patient care.

2) **Drug Enforcement Administration (DEA) Certificate**

   a) **Revocation, Limitation, Suspension, and Expiration**: Whenever a Member’s DEA certificate is revoked, limited, suspended, or expired, and such is required to exercise the Privileges the Member holds, the Member shall automatically and correspondingly be divested of the right to prescribe, dispense, or administer medications covered by the certificate as of the date such action becomes effective and throughout its term.

   b) **Probation**: Whenever a Member’s DEA certificate is subject to probation, and the Member’s right to prescribe, dispense, or administer such medications and such probation affects the Member’s ability to exercise their Privileges, the Member shall automatically become subject to the same terms of the probation as of the date such action becomes effective and throughout its term.

3) **Failure to Satisfy Special Appearance Requirement**

   A Member who fails without good cause to appear as requested and satisfy the requirements of Article 2 of the Bylaws, Article 1 of the Credentials Policy, Article 4 of the Organization Policy, or Article 1 of this Plan, shall automatically be suspended from exercising all Privileges. The automatic suspension shall remain in effect until the Member has provided the requested information to the satisfaction of the requesting committee and/or satisfied the special attendance requirement to the satisfaction of the requesting committee.

4) **Delinquent Health Records**

   Members are required to complete health records within the time prescribed in the Bylaws, Policies, Procedures, Plans, Rules, and/or UCSDH Policies. Failure to complete health records in a timely manner shall result in an automatic suspension after delinquency notice is given as provided in the relevant Medical Staff and UCSDH policies. Such suspension shall apply to the Member’s right to admit, treat, or provide services to new
patients at UCSDH, but shall not affect the right to continue to care for a patient(s) the Member has already admitted or is treating, provided, however, Members whose Privileges have been suspended for delinquent records may admit and treat new patients in life-threatening situations. The suspension shall continue until all delinquent health records are completed. Nothing in the foregoing shall preclude the MSEC from implementing a monetary fine for delinquent health records.

5) Cancellation of Professional Liability Insurance

Failure to maintain professional liability insurance as required by UCSDH and by the Bylaws shall be grounds for automatic suspension of a Member’s Privileges. Failure to maintain professional liability insurance for certain procedures shall result in the automatic suspension of Privileges to perform those procedures. The suspension shall be effective until appropriate coverage is reinstated, including coverage of any acts or potential liabilities that may have occurred or arisen during the period of any lapse in coverage.

6) Failure to Pay Membership Dues/Fees

For failure to pay any dues/fees as required under Article 11.4 of the Bylaws, a Member’s Membership and Privileges, after two written warnings of delinquency, spaced thirty (30) calendar days apart, will be automatically suspended and will remain suspended until the Member pays the delinquent dues/fees.

7) Exclusion from Government and Other Third Party Payor Programs

The MSEC shall be empowered to determine that compliance with certain specific third party payor, governmental agency, and professional review organization rules or policies is essential to UCSDH and/or Medical Staff operations and that compliance with such requirements can be objectively determined. The Bylaws authorize the automatic suspension of a Member who fails to comply with such requirements. The suspension shall be effective until the Member complies with such requirements. Whenever a Member is suspended or excluded as a provider from a Government Health Program, their Membership and Privileges shall be suspended or terminated automatically as of the date the exclusion becomes effective.

8) Felony Conviction

If any Member is convicted of a felony, or pleads guilty or nolo contendere to a felony, their Membership and Privileges will be immediately and automatically terminated.

9) Required Documentation and/or Information
As determined by the MSEC, the failure to provide requested or required documentation or information in accordance with any directive or policy of the Medical Staff, including the Bylaws, the Credentialing Policy, or any UCSDH, UCSD, or UCOP Policy, shall result in automatic suspension. The suspension shall continue until the Member provides the required information or documentation, or the suspension is lifted by the MSEC.

10) Leave of Absence Longer Than One Year or Failure to Request Reinstatement at the Conclusion of a Leave of Absence

   a) A Member's failure to request reinstatement from leave of absence at least fourteen (14) calendar days prior to returning from leave, shall be deemed a voluntary resignation of their Membership and result in automatic termination of Membership and Privileges, effective at the end of the approved Leave of Absence.

   b) If a Member remains absent on a Leave of Absence for longer than one (1) year, their Membership and Privileges will be immediately and automatically terminated.

B. Notice of Automatic Suspension or Action

Notice of an automatic suspension or action shall be given to the affected individual, and the Service Chief, but such notice shall not be required for the suspension to become effective.

C. MSEC Deliberation and Procedural Rights

As soon as practical under the circumstances after a suspension or limitation is effected as described in Article 1.12 (A) subdivisions 1, 2, 7, and 8, the MSEC will convene to review and consider the facts and may recommend corrective action as it deems appropriate in accordance with these Bylaws. The MSEC review of suspensions under subdivisions 1, 2, 7, and 8 will not address the propriety of the actions taken by governmental agencies, but instead will address what action should be taken by the Medical Staff. There is no need for the MSEC to act on automatic suspensions or limitations under any other subdivisions of Article 1.12 (A).

1.14 Confidentiality

To maintain confidentiality, peer review participants shall limit their discussion of peer review matters to the formal avenues and organized peer review meetings as provided in the Bylaws. Any breach of confidentiality will be referred to the MSEC for consideration of corrective action.
ARTICLE 2
HEARINGS AND APPELLATE REVIEWS

2.1 General Provisions

A. Review Philosophy

The purpose of these hearing and appellate review procedures is to provide a process for fair review of decisions that adversely affect Members.

Accordingly, discretion is granted to the Medical Staff and the EGB to create a hearing process that provides for fair review. The Medical Staff, the EGB, and their Officers, committees, and agents hereby constitute themselves as professional review bodies under the federal Health Care Quality Improvement Act of 1986 and peer review bodies under the California peer review hearing laws, and claim all privileges and immunities afforded by the federal and state laws.

B. Exhaustion of Remedies

If an adverse action as described in the Bylaws and/or this Plan is taken or recommended, the Member must exhaust the remedies afforded by the Bylaws and this Plan before resorting to legal action.

C. Intra-Organizational Remedies

The hearing and appeal rights, if applicable, established in the Bylaws and this Plan are quasi-judicial rather than legislative in structure and function. The hearing panel has no authority to adopt or modify rules and standards or to decide questions about the merits or the substantive validity of the Bylaws; however, the EGB may, in its sole discretion, entertain challenges to the merits or substantive validity of the Bylaws and may decide those questions. If the only issue in a case is whether the Bylaws, or any Article therein, are 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 EGB and only thereafter may they seek judicial intervention by a Petition for Writ of Administrative Mandamus.

D. Definitions

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

1) “Body Whose Decision Prompted The Hearing” refers to the MSEC in all cases where the MSEC takes the action or renders the decision that results in hearing rights being provided to the Member. It refers to the EGB in all
cases where the EGB takes the action or renders the decision that results in hearing rights being provided to the Member.

E. Substantial Compliance

Technical, insignificant, or non-prejudicial deviations from the procedures set forth in the Bylaws shall not be grounds for invalidating the action taken.

F. Final Action

Recommended final actions described in this Plan shall become final only after the hearing rights set forth herein have either been exhausted or waived and only after adopted by the EGB.

2.2 Grounds for Hearing

Except as otherwise specified in the Bylaws, any one or more of the following actions or recommended actions by the MSEC or EGB shall be deemed an adverse action and shall constitute grounds for a hearing only if the action or recommended action is taken for a Medical Disciplinary Cause or Reason, as defined in the Bylaws and in California Business & Professions Code Section 805, and must, if adopted as the final action, be reported under California Business & Professions Code Section 805:

A. Denial of Medical Staff initial applications for Membership and/or Privileges.

B. Denial of Medical Staff reappointment applications and/or renewal of Privileges.

C. Revocation or termination of Membership and/or Privileges.

D. Suspension, restriction, or involuntary reduction of Membership and/or Privileges lasting thirty (30) calendar days or more in any 12-month period;

E. Summary suspension of Membership and/or Privileges exceeding fourteen (14) calendar days.

F. Any other action or recommendation taken for a Medical Disciplinary Cause or Reason that must be reported to the Medical Board of California under the provisions of California Business & Professions Code Section 805.

2.3 Requests for Hearing

A. Notice of Action or Proposed Action

In all cases in which adverse action has been taken or a recommendation made as set forth in Article 2.2, the Member shall be given Special Notice of the recommendation or action and of the right to request a hearing. The notice must state:
1) What recommendation or action has been proposed or taken against the Member;

2) Whether the action, if adopted, must be reported under California Business & Professions Code Section 805;

3) That the Member may request a hearing to challenge the adverse action but that any such request must be made within thirty (30) calendar days following receipt of the Special Notice;

4) The notice must also advise the Member that they may request mediation or arbitration pursuant to this Plan and that mediation or arbitration must be requested, in writing, within ten (10) calendar days from the date of the Special Notice;

5) That the Member has the hearing rights described in the Bylaws and this Plan, including those specified in Article 2.5.

B. Request for Hearing

1) The Member shall have thirty (30) calendar days following receipt of Special Notice of such action to request a hearing. The request shall be in writing addressed to the President of Medical Staff with a copy to the Chief Executive Officer. Said request shall be delivered or sent via certified overnight delivery.

2) The Member shall state in writing in their request for a hearing their intentions with respect to attorney representation. Notwithstanding the foregoing and regardless of whether the Member elects to have attorney representation at the hearing, the parties shall have the right to consult with legal counsel to prepare for the hearing and/or appellate review, including attorney participation in prehearing communications with the Hearing Officer and written procedural and evidentiary motions in connection with the hearing.

3) If the Member does not request a hearing within the time and in the manner described herein, the Member shall be deemed to have waived any right to a hearing and to have accepted the recommendation/action involved and the recommendation/action shall thereupon become the final recommendation or action of the Medical Staff. Such final recommendation/action shall be considered and acted upon and shall be given great weight by the EGB within forty-five (45) calendar days, although the timeframe is not binding on the EGB.
2.4 Mediation of Peer Review Disputes

A. Mediation is a confidential process in which a neutral person facilitates communication between the MSEC and a Member 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 UCSDH operations, patient safety, and/or quality of care.

B. The parties are encouraged to consider mediation whenever it could be productive in resolving the 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. Mediation may be terminated at any time at the request of either party.

C. In order to obtain consideration of mediation, the Member must request mediation in writing, as defined herein, within ten (10) calendar days of their receipt of the Special Notice of action or proposed action that gives rise to a hearing pursuant to the Bylaws and this Plan.

D. If the Member and the MSEC agree to mediation, all deadlines and time frames relating to the hearing process shall be tolled while the mediation is in process, and the Member agrees that no damages may accrue as the result of any delays attributable to engaging in the mediation process.

E. Unless both the Medical Staff and the Member agree otherwise, mediation must commence within sixty (60) calendar days of the Member’s request and must conclude within thirty (30) calendar days of its commencement. If the mediation does not resolve the dispute, the hearing procedure per Article 2.5 will promptly resume upon completion of the mediation.

F. The parties shall cooperate in the selection of a mediator. The mediator should be both familiar with the mediation process and knowledgeable regarding the Medical Staff peer review process and applicable law. The mediator may also serve as the hearing officer at any subsequent hearing, subject to the agreement of the parties, which may be given prior to the mediation or after. The costs of mediation shall be shared two-thirds by the MSEC and one third by the Member, or as agreed upon by both parties. The inability of the Medical Staff and the Member to agree upon a mediator within the required time limits shall result in the termination of the mediation process and the resumption of hearing procedure described in Article 2.5.

G. Once selected, the mediator and the parties, working together, shall determine the procedures to be followed during the mediation and the applicable evidentiary protections. Either party has the right to be represented by legal counsel in the mediation process.
H. All mediation proceedings shall be confidential and the provisions of California Evidence Code Section 1119 shall apply, except that communications that confirm that mediation was mutually accepted and pursued may be disclosed as proof that otherwise applicable time frames were tolled or waived. Any such disclosure shall be limited to that which is necessary to confirm mediation was pursued, and shall not include any points that are substantive in nature or address the issues presented. Except as otherwise permitted in this Article, no other evidence of anything said at, or any writing prepared specifically for or as the result of, the mediation shall be used in any subsequent fair hearing process that takes place if the mediation is not successful.

I. The MSEC may promulgate further rules and policies outlining appropriate procedures for initiating and conducting mediation.

2.5 Hearing Procedure

A. Time and Place for Hearing

Upon timely request for a hearing, the President of Medical Staff will give Special Notice to the Member of the date of the commencement of the hearing, which shall be not less than thirty (30) calendar days or more than sixty (60) calendar days from the date the President of Medical Staff received the request for a hearing; provided, however, that when the request is received from a Member who is under summary suspension, the hearing shall be held as soon as the arrangements may reasonably be made, but not to exceed forty five (45) calendar days from the date of receipt of the request. The commencement of the hearing is considered the voir dire of the hearing officer, or in the case of an arbitrator, the voir dire of the arbitrator.

B. Notice of Charges

Together with the Special Notice stating the place, time, and date of the hearing, the President of Medical Staff shall state clearly and concisely in writing the reasons for the adverse proposed action taken or recommended, including the acts or omissions with which the Member is charged and a list of the medical record numbers in question, where applicable. The Notice of Charges shall contain a list of witnesses expected to testify at the hearing on behalf of the Medical Staff. A supplemental or amended notice may be issued at any time, provided the Member is given sufficient time to prepare to respond.

C. The Hearing Officer

1) The hearing officer shall be an attorney at law qualified to preside over a quasi-judicial hearing, but an attorney regularly utilized by UCSDH for legal advice regarding its affairs and activities shall not be eligible to serve as the hearing officer. The Medical Staff will appoint an attorney experienced in the process as hearing officer.
The hearing officer shall be subject to reasonable voir dire. The hearing officer shall not be biased for or against any party, shall gain no direct financial benefit from the outcome (i.e., the hearing officer's/arbitrator remuneration shall not be dependent upon or vary depending on the outcome of the hearing), shall have no direct financial benefit exists that creates an intolerable risk of actual bias under the circumstances, and must not act as a prosecuting officer or as an advocate.

The hearing officer shall endeavor to assure that all participants in the hearing have a reasonable opportunity to be heard and to present relevant oral and documentary evidence in an efficient and expeditious manner, and that proper decorum is maintained.

The hearing officer shall have the authority and discretion to make all rulings on questions that 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 whether 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 hearing panel members or to themselves in their capacity as the hearing officer.

When the parties are unrepresented during the hearing, the hearing officer shall have authority to interpose any objections and to initiate rulings necessary to ensure a fair and efficient process.

If the hearing officer determines that either side in a hearing is not proceeding in an efficient and expeditious manner, the hearing officer may take such discretionary action as seems warranted by the circumstances.

Where a hearing before a hearing panel is selected, the hearing officer may, if requested by the hearing panel, participate in the deliberations of the hearing panel and be a legal advisor to it, but the hearing officer shall not be entitled to vote. If requested, the hearing officer may assist the hearing panel in drafting a written decision, including findings of fact and a conclusion articulating the connection between the evidence produced at hearing and the decision reached.

D. Hearing Panel

1) When a hearing is requested before a hearing panel, the President of Medical Staff shall appoint a hearing panel composed of not less than three (3) Active Staff 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 member of the hearing panel. The President of Medical Staff shall designate the chair of the hearing panel.

2) In the event it is not feasible to appoint a hearing panel from the Active Staff, the President of Medical Staff may appoint Members from other Medical Staff categories or physicians outside the Medical Staff.

3) The hearing panel shall include, when feasible, at least one (1) panel member who has the same healing arts licensure as the Member and who practices the same specialty as the Member.

4) The President of Medical Staff may appoint and designate alternate panel members who meet the standards described above and who can serve if a hearing panel Member becomes unavailable, subject to voir dire by the parties.

5) The hearing panel shall have such powers as are necessary to discharge its responsibilities, including termination of the hearing, which must be in writing accompanied by documentation of the reasons for the termination.

E. Arbitration Provision

In lieu of a hearing officer and hearing panel, an arbitrator may be selected by the Member and the MSEC. The parties may (a) stipulate to select an arbitrator, or (b) the MSEC may propose three options for individuals to serve as an arbitrator. The Member will have the option of selecting one of the arbitrators proposed by the MSEC, or may propose an additional arbitrator. The MSEC and Member will meet and confer regarding the proposed arbitrators. To the extent an agreement cannot be reached regarding the identity of an Arbitrator by the parties, then the parties will proceed with a hearing panel. The arbitrator shall have the same powers afforded to the hearing officer in sub-article (C) and all the powers assigned to hearing panels in sub-article (D).

F. Representation

1) The Member shall have the right, at their expense, to attorney representation at the hearing, so long as the Member timely informs the Medical Staff of this intention as required by Article 2.3.B(2).

2) If the Member elects to have attorney representation, the Body Whose Decision Prompted The Hearing may also have attorney representation.

3) Conversely, if the Member elects not to be represented by an attorney at the hearing or fails to timely state their intentions as required by Article
2.3.B(2), then the Body Whose Decision Prompted The Hearing shall not be represented by an attorney at the hearing. When attorneys are not allowed, the Member and the Body Whose Decision Prompted The Hearing may be represented at the hearing only by a Member licensed to practice medicine in the State of California who is not also an attorney at law. Should the Member commence the hearing while being represented by counsel, but choose to proceed without counsel after the hearing has commenced, the hearing officer shall have the discretion to rule on procedural issues arising from such a change. The hearing officer shall exercise discretion in a manner that will not cause undue prejudice or delay as a result of any decision by the Member to proceed without counsel after having been represented at the commencement of the hearing. That discretion includes, but is not limited to, allowing the MSEC to proceed with counsel for such time as is necessary to avoid the prejudice or delay caused by any change in representation.

G. Failure to Appear or Proceed

Failure, without good cause of the Member, to attend personally or to proceed at a hearing in an efficient and orderly manner, as determined by the hearing panel or arbitrator, shall be deemed to constitute voluntary acceptance of the recommendations or actions involved, which shall become the final action or recommendation of the Medical Staff and be forwarded immediately to the EGB for final action.

H. Postponements and Extensions

Once a request for hearing is initiated, postponements and extensions of time beyond the times permitted in this Plan may be permitted by the hearing officer/arbitrator on a showing of good cause or upon agreement of the parties.

I. Rights of Inspection and Copying

The Member may inspect and copy, at their own expense, any documentary information relevant to the charges that the Medical Staff has in its possession or under its control, as soon as practicable after the receipt of the Member's request for a hearing. The Body Whose Decision Prompted The Hearing may inspect and copy, at its expense, any documentary information relevant to the charges that the Member has in their possession or under their control, as soon as practicable after receipt of the request. Failure to provide access to this information at least twenty-five (25) calendar days prior to the hearing shall be good cause for a continuance of the hearing.

1) Limits on Discovery

Except as specifically provided in this Plan, there shall be no right to conduct discovery in connection with any hearing, and no Member shall be
permitted access to any peer review records, minutes, or other documents or information relating to any other Member, or any actions taken or not taken with regard to any other Member. There is no obligation to modify or create documents in order to satisfy a request for information. The Member requesting a hearing shall, however, be entitled to production of any documents relied on by the Body Whose Decision Prompted The Hearing in making any recommendation or decision, any documents to be introduced at the hearing, and any health records relied on or to be introduced at the hearing. Production of documents does not constitute a waiver of the peer review protections afforded under California Evidence Code Section 1157 or other applicable privileges and protections.

2) Ruling on Discovery Disputes

The hearing officer/arbitrator shall consider and rule upon any request for access to information, and may impose any safeguards the protection of the peer review process and justice require. In ruling on discovery disputes, the factors that may be considered include:

a) Whether the information sought may be introduced to support or defend the charges;

b) The exculpatory or inculpatory nature of the information sought, if any;

c) The burden on the party requested to produce the requested information; and

d) Any other requests for information the party has previously made.

3) Objections to Introduction of Evidence

Any party may object to the introduction of the evidence that was not timely provided despite the requests for such information. The information will be barred from the hearing by the hearing officer/arbitrator unless the applicant/Member can prove they acted diligently and could not have timely submitted the information in response to the request.

4) Protected Health Information

Prior to receiving any documents, the Practitioner must provide a written representation that their counsel or other representative and any experts expected to testify have executed any agreements necessary to protect Protected Health Information contained in any documents provided by The Body Whose Decision Prompted the Hearing.
J. Documentary Evidence

At least fifteen (15) calendar days before the presentation of evidence, the parties shall exchange copies of all documents expected to be introduced at the hearing. Failure to do so shall constitute good cause for a continuance.

K. Confidentiality of Information Produced By the Medical Staff

As a condition of membership, the applicant/Member agrees that all documents and information disclosed at any time during the peer review process, including information disclosed as part of the hearing process, will be maintained as confidential and will not be disclosed or used for any purpose outside of the hearing. Any inappropriate disclosure or use by the applicant/Member of information disclosed by The Body Whose Decision Prompted the Hearing during the hearing shall be grounds for the hearing panel/arbitrator to find that the applicant/Member has committed flagrant or repeated violations of the Bylaws and this Plan in a manner that prejudices the other party and may constitute grounds for additional corrective action against the applicant/Member.

L. Witness Lists

Not less than fifteen (15) calendar days prior to the hearing, each party shall furnish to the other party a written list of the names of the individuals, so far as they are then reasonably known or anticipated, who are expected to give testimony or evidence in support of that party at the hearing. Each party will also provide a brief description of each witness's testimony and an estimate of the anticipated time for each witness' direct examination. Nothing in the foregoing shall preclude the testimony of additional witnesses whose possible participation was not reasonably anticipated. The parties shall notify each other as soon as they become aware of the possible participation of such additional witnesses. The failure to have provided the name of any witness at least fifteen (15) calendar days prior to the hearing date shall constitute good cause for a continuance.

Except on a showing of good cause as determined by the hearing officer/arbitrator, no current or former patients, their families, guardians, and/or representatives may be called to testify as a witness during the hearing.

M. Procedural Disputes

1) The parties must exercise reasonable diligence in notifying the hearing officer/arbitrator of any pending or anticipated procedural disputes as far in advance of the scheduled hearing as possible in order that decisions concerning such matters may be made in advance of the hearing.
2) The parties shall be entitled to submit motions as deemed necessary to give full effect to rights established by the Bylaws and this Plan and to resolve such procedural matters as the hearing officer/arbitrator determines may properly be resolved 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 briefing schedule and determine whether to allow oral argument on any such motions. Any ruling by a hearing officer/arbitrator shall be in writing and shall be provided to the parties promptly upon its rendering. All motions, responses and rulings thereon shall be maintained as part of the hearing record by the hearing officer/arbitrator.

N. Length of the Hearing

1) The evidentiary portion of any hearing governed by this Plan must be concluded within sixty (60) hours, such that each party has a total of thirty (30) hours to present its witnesses and cross examine the other party’s witnesses. It is expected that the hearing will be concluded in twelve (12) months from the start of evidence.

2) Only testimony under oath will count towards the sixty (60) hour limit.

3) To the extent the case cannot conclude within sixty (60) hours, the hearing panel/arbitrator is authorized to grant additional time on a showing of good cause. If the hearing officer/arbitrator’s unavailability is the cause of the need for an extension, the parties will meet and confer to determine the best and most efficient manner to proceed. This shall include, but is not limited to, appointing a new hearing officer/arbitrator.

4) The parties may stipulate to additional time to conclude the evidentiary portion of the hearing or may agree to stay the hearing to engage in negotiations to resolve the matter. However, any such stipulation shall not exceed six (6) months and must be approved by the hearing panel/arbitrator.

5) If either party seeks additional time beyond the thirty (30) hour limit, that party must make a motion to the hearing panel/arbitrator seeking additional time. Any such motion must include the anticipated number of hours necessary to conclude the party’s case, the reasons why the party cannot complete their case within the specified timeframe, the evidence that will be presented during the additional hearing time, and the relevance of any such evidence. The hearing officer/arbitrator must find good cause for granting any such motion and only grant such additional time as is reasonably necessary under all the circumstances.
O. Manner of Presentation of Evidence

The hearing may be conducted in person or via secure video link, so long as all hearing participants are visible and can hear all proceedings throughout the hearing. The MSEC shall have the sole discretion to determine the manner in which the hearing is conducted.

P. Pre-Hearing Conference

The hearing officer/arbitrator shall, at least twenty-one (21) calendar days prior to the first evidentiary session, require both the applicant/Member and a representative of the Body Whose Decision Prompted The Hearing to participate in a Pre-Hearing Conference for the purpose of addressing evidentiary, procedural, and discovery issues in advance of the hearing, and for ensuring an efficient and expeditious hearing. It shall be the duty of both parties to exercise reasonable diligence in notifying the hearing officer/arbitrator of any pending or anticipated procedural disputes in order that decisions concerning such matters may be made in advance of the hearing.

At the Pre-Hearing Conference, the hearing officer/arbitrator shall:

1) Ensure that all provisions requiring the exchange of documents, witness lists, agreements regarding the time allotment for witnesses or orders by the hearing officer/arbitrator pertaining thereto, exhibit lists, and any other information lawfully requested have been complied with or the parties are prepared to meet all deadlines for doing so; and

2) At the sole discretion of the hearing officer/arbitrator, the list of witnesses, exhibits or documents may be supplemented or amended during the course of the hearing provided that notice of the change is given to the parties and no prejudice to the other party occurs. This does not limit the ability of the hearing officer/arbitrator to limit exhibits or witnesses that otherwise may be cumulative or result in undue consumption of time.

Q. Record of the Hearing

A court reporter shall make a record of the hearing proceedings and, if deemed appropriate by the hearing officer/arbitrator, the pre-hearing proceedings. The cost of attendance of the court reporter shall be borne by the Medical Staff, but the cost of the transcript, if any, shall be borne by the party requesting it. The Member is entitled to receive a copy of the transcript upon paying the reasonable costs to the court reporter preparing the record. All oral evidence shall be taken only under oath administered by any person lawfully authorized to administer such oath.
R. Rights of the Parties

Within reasonable limitations,

1) Both sides at the hearing shall have the right to call, examine, and cross-examine witnesses, within the limits set by this Plan;

2) Both sides at the hearing shall have the right to present and rebut evidence determined by the hearing officer/arbitrator to be relevant;

3) The applicant/Member may be called by the MSEC at any time during its Case-In-Chief, and examined as if under cross-examination;

4) The hearing panel may interrogate the witnesses or call additional witnesses if it deems such action appropriate;

5) Both sides at the hearing shall have the right to submit a written statement at the close of the hearing. The hearing officer/arbitrator has the discretion to permit closing oral arguments; and

6) The hearing will be confidential and closed to the public. Aside from the individuals serving on the hearing panel, representative(s) of the Medical Staff, representative(s) from Medical Staff Administration, the applicant/Member, hearing officer/arbitrator, counsel for the parties (if applicable) or a representative for the party (as permitted by Article 2.5.F(3), testifying witnesses, and the court reporter, no other Members or individuals are permitted to attend.

S. Rules of Evidence

1) Formal judicial rules of evidence and procedure relating to the conduct of the hearing, examination of witnesses, and presentation of evidence shall not apply to a hearing conducted under the Bylaws and this Plan. Any relevant evidence, including hearsay, shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the admissibility of such evidence in a court of law.

2) If applicable, any report by a Title IX Office or Office for the Prevention of Harassment and Discrimination (“OPHD”) will be admitted regardless of the admissibility of such evidence in a court of law.

3) Any peer review records, minutes, or other documents or information relating to any other applicant or Member, or any actions taken or not taken with regard to any other applicant or Member is not admissible.
T. Burden of Presenting Evidence and Proof

1) The Body Whose Decision Prompted The Hearing shall have the initial duty to present evidence that supports the charge(s) or recommended action(s).

2) An applicant for Membership and/or Privileges shall bear the burden of persuading the hearing panel/arbitrator, by a preponderance of the evidence, of their qualifications by producing information that allows for adequate evaluation and resolution of reasonable doubts concerning their current qualifications for Privileges and/or Membership.

3) Initial applicants shall not be permitted to introduce information not produced upon the request of the peer review body during the application process, unless the initial applicant establishes that the information could not have been produced previously in the exercise of reasonable diligence.

4) Except as provided above for applicants for Membership and/or Privileges, the Body Whose Decision Prompted The Hearing shall bear the burden of persuading the hearing panel/arbitrator by a preponderance of the evidence that its action or recommendation is reasonable and warranted.

5) The Body Whose Decision Prompted the Hearing is not required to prove each and every charge or issue in the Notice of Charges in order for its actions and/or recommendations to be found reasonable and warranted.

6) “Reasonable and warranted” means within the range of alternatives reasonably open to the Body Whose Decision Prompted the Hearing under the circumstances, and not necessarily that the action or recommendation is the only measure or the best measure that can be taken or formulated in the hearing panel/arbitrator’s opinion.

U. Adjournment and Conclusion

After consultation with the hearing panel, the hearing officer/arbitrator may adjourn the hearing 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. Final adjournment shall be when the hearing panel has concluded its deliberations or, in the case of an arbitrator, upon submission of the matter to the arbitrator.

V. Basis for Decision

The decision shall be based on the evidence and written statements introduced at the hearing, including all logical and reasonable inferences from the evidence and the testimony.
W. Decision of the Hearing Panel/Arbitrator

Within thirty (30) calendar days after final adjournment of the hearing, the hearing panel/arbitrator shall render a written decision. The final decision of the hearing panel must be sustained by a majority vote of the members sitting on the panel.

A copy of the decision shall be forwarded to the Chief Executive Officer, the MSEC, the EGB, and by Special Notice to the Member. The decision shall contain the hearing panel’s/arbitrator’s findings of fact and its conclusions of law articulating the connection between the evidence produced at the hearing and the decision reached. The hearing panel/arbitrator shall determine, as part of the report, whether to affirm or reverse the decision of the Body Whose Decision Prompted The Hearing.

The decision of the hearing panel/arbitrator shall be considered final, subject only to such rights of appeal, if any, or EGB review as described in the Bylaws and this Plan.

2.6 Appeal

A. Time for Appeal

Within fifteen (15) calendar days of receipt of the decision of the hearing panel/arbitrator by counsel for the parties, or if the parties are not represented, to the applicant/Member and the President of Medical Staff, either the applicant/Member or the MSEC may request an appellate review. A written request for such review shall be delivered in person or via overnight delivery, to the President of Medical Staff, the Chief Executive Officer, and the applicant/Member. If appellate review is not provided or requested within such period, that action or recommendation shall thereupon become the final action of the MSEC.

B. Grounds for Appeal

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 Article.

C. Time, Place, and Notice
If an appellate review is to be conducted, the Appeal Board shall, within thirty (30) calendar days after receiving a notice of appeal, schedule a review date and cause each side to be given notice, with Special Notice to the Member, of the time, place, and date of the appellate review.

The appellate review shall be scheduled to occur within sixty (60) calendar days from the date of such notice provided; however, when a request for appellate review concerns a Member who is under suspension that is then in effect, the appellate review should be scheduled to occur within forty-five (45) calendar days from the date the request for appellate review was received. The time for appellate review may be extended by the Appeal Board for good cause.

D. Appeal Board

When an appellate review is to be conducted, the EGB may sit as the Appeal Board, or it may appoint an Appeal Board composed of not less than three (3) EGB members designated by the EGB.

In the event the EGB delegates some or all of its responsibilities described in this Article to an Appeal Board, the EGB shall nonetheless retain ultimate authority to accept, reject, modify, or return for further action or hearing the recommendations of the Appeal Board.

Knowledge of the matter involved shall not preclude any person from serving as a member of the Appeal Board, so long as that person was not involved in any way in the matter at issue in the hearing. The Appeal Board may select an attorney to assist it in the proceeding. That attorney shall not be entitled to vote with respect to the appeal. The Appeal Board shall have such powers as are necessary to discharge its responsibilities.

E. Appeal Procedure

1) The proceeding by the Appeal Board shall be an appellate hearing based upon the record of the hearing before the hearing panel/arbitrator.

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, even if the other party elects not to be represented by legal counsel.

3) The Appeal Board may establish reasonable time frames for the appealing party to submit a written statement and for the responding party to respond.

4) Each party has the right to appear and to make oral argument, whether in person or by secure video link, as directed by the Appeal Board in its sole discretion.
5) The Appeal Board may accept additional, relevant, and admissible 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 subject to the same rights of cross-examination or confrontation provided at the hearing. Alternatively, the Appeal Board may remand the matter to the hearing panel/arbitrator for the taking of further evidence and for decision.

6) The appealing party shall submit a written statement concisely stating the specific grounds for appeal. In addition, each party shall have the right to present a written statement in support of its position on appeal.

7) The Appeal Board may then, at a time convenient to itself, deliberate outside the presence of the parties.

8) The Appeal Board may remand the matter to the hearing panel/arbitrator for the taking of further evidence and for decision.

F. Final Decision of Appeal Board

1) Except where the matter is remanded to the hearing panel/arbitrator, within thirty (30) calendar days after the adjournment of the Appellate Review proceeding, the Appeal Board shall render a final decision in writing. Final adjournment shall not occur until the Appeal Board has completed its deliberations.

2) The Appeal Board may affirm, modify, reverse the decision, or remand the matter for further review by the hearing panel/arbitrator or any other body designated by the Appeal Board.

3) The Appeal Board shall give great weight to the hearing panel’s/arbitrator’s decision, and shall not act arbitrarily or capriciously. The Appeal Board’s 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.

4) The Appeal Board shall forward copies of its decision to each side involved in the hearing. The decision shall be in writing, shall specify the reasons for the action taken, and shall be forwarded to the President of Medical Staff, the MSEC, the applicant/Member, and the Chief Executive Officer.

5) The Appeal Board may remand the matter to the hearing panel or any other body the Appeal Board designates for reconsideration or may refer the matter to the full EGB for review. If the matter is remanded for further review and recommendation, the further review shall be completed within
thirty (30) calendar days, unless the parties agree otherwise or for good cause as determined by the Appeal Board.

2.7 **Right to One Hearing**

No applicant/Member shall be entitled to more than one evidentiary hearing and one appellate review on any matter that shall have been the subject of adverse action or recommendation.

2.8 **Release**

By requesting a hearing and appellate review under the Bylaws and this Plan, an applicant/Member agrees to be bound by the provisions in the Bylaws and this Plan relating to immunity from liability for the participants in the hearing process.

2.9 **Hearings Prompted by Governing Body Action**

If the hearing is based upon an adverse action by the EGB, the Chair of the EGB shall fulfill the functions assigned in this Article to the President of Medical Staff. In such case, the EGB may, but need not, grant or conduct appellate review of a decision prompted by EGB action.

2.10 **Confidentiality**

To maintain confidentiality in the performance of peer review, disciplinary, and credentialing functions, participants in any stage of the hearing or appellate review process shall limit their discussion of the matters involved to the formal avenues provided in the Bylaws and this Plan.

2.11 ** Exceptions to Hearing Rights**

A. **Failure to Meet Minimum Activity Requirements**

An applicant/Member shall not be entitled to the hearing and appellate review rights if their Membership and/or Privileges are denied, restricted, or terminated because of a failure to meet the minimum activity requirements set forth in the Bylaws, Credentials Policy, and/or Rules or Policies of the Service of which the Member belongs.

B. **Denial or Termination of Temporary Privileges**

No Member or applicant 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 Business & Professions Code Section 805.

C. **Contract Physicians**
Unless an executed contract or agreement provides otherwise, or unless otherwise required by law, those Privileges made exclusive pursuant to a closed-staff or limited-staff specialty policy will automatically terminate, without the right of access to the review, hearing, and/or appeal procedures as provided for in Article 10 of the Bylaws and this Plan, upon termination or expiration of such Member’s contract or agreement with the UCSDH, or departure from the contracted group. In the event there is a conflict between the Bylaws and a contract with the Member, the contract shall prevail.

2.12 Joint Hearings and Appeals for System Members

A. Whenever a Member is entitled to a hearing because a coordinated, cooperative or joint credentialing or corrective action has been taken or recommended by multiple peer review bodies at facilities operated by The Regents, a single joint hearing or single arbitration may be conducted in accordance with the Bylaws or Policies of one of the involved medical centers, as agreed upon by the parties. If the parties cannot agree on the controlling set of Bylaws or Policies, the hearing officer/arbitrator shall make the determination.

B. If the joint hearing is conducted before a hearing panel, as opposed to an arbitrator, there will be at least one (1) Medical Staff Member from each facility as part of the panel.

C. In the event there is such a joint hearing, the governing body of the medical center whose Bylaws or policies were used for the hearing shall act as the appellate body for purposes of appeal and final decision. At the discretion of the facilities, the appeal board may consist of at least one (1) representative from each hospital’s governing body. Notice of final decision shall be reported to all parties involved in the action.