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 9
PEER REVIEW AND CORRECTIVE ACTION

9.1 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, shall be 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, Privileges holder, or Member, an external peer review may be obtained in the following circumstances:

1) When a committee or Service performs a review(s) that could affect an individual’s Membership or Privileges, and would benefit from external input or expertise in the Privileges(s) or area(s) under review;

2) When no current Member can provide the necessary expertise in the Privileges(s) or area(s) under review;
3) To help promote an impartial peer review; or
4) As deemed necessary by the MSEC or the Chief of Medical Staff.

9.2 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 his/her 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 shall be reported to the MSEC.

9.3 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, which 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;

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 Codes of Conduct 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 the University of California San Diego’s compliance or research program(s) policies and procedures;

I. Below applicable professional standards; or

J. A breach of privacy and/or confidentiality.

9.4 Initiation of Formal Corrective Action

A. Any person who believes that formal corrective action may be warranted may provide information to the MSEC, Chief 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 Chief 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 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 Chief of Medical Staff shall notify the Chief Executive Officer of the request for formal corrective action and any resulting Investigation.

9.5 Expedited Initial Review/Preliminary Investigation

Whenever information suggests that expedited initial review of a request for formal corrective action may be warranted, the Chief of Medical Staff or his/her 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 9.6 below. The MSEC may also recommend a particular corrective action.

9.6 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 9.7, 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 give 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 Chief 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 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 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.

9.7 Medical Staff Executive Committee Action

As soon as practicable, 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, or monitoring;

F. Recommending termination or revocation of Membership and/or Privileges;

G. Recommending summary suspension as is set forth in the Bylaws and this Plan; or

H. Taking other actions deemed appropriate under the circumstances.

With the exception of (1) an action which forms any of the grounds for a hearing as defined in Article 10 of the Bylaws and this Plan, or (2) a summary suspension as set
forth in the Bylaws and Article 9.10 of this Plan, any action taken pursuant to this Section will become effective upon the decision of the MSEC.

9.8 Procedural Rights

If the MSEC recommends an action that is a ground for a hearing under Article 10, the Chief of Medical Staff, as set forth in the Bylaws, 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 his/her right to a hearing or exhausted all procedural rights set forth in Article 10 of the Bylaws and this Plan.

9.9 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 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, after written notice to the MSEC of the action.

9.10 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, the Chief of Medical Staff, the MSEC, the Chief Medical Officer, the Medical Staff Service Chief in which the Member holds Privileges, the Chief Executive Officer, and/or the EGB or his/her designee may immediately restrict or suspend the Membership and/or Privileges of such Member.

2) Unless otherwise stated, such summary restriction or suspension (Summary Action) shall become effective immediately upon imposition.

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 by the MSEC. A Summary Action by the Chief Executive Officer or EGB which has not been ratified by the MSEC within two (2) Days after the Summary Action, 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 Chief of
Medical Staff considering, where feasible, the wishes of the patient and the affected Member in the choice of a substitute Member.

4) The notice of the Summary Action given to the MSEC shall constitute a request to initiate corrective action and the procedures set forth in MSEC Action, subsection 9.10(B) below, 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: Chief of Medical Staff, Chief Medical Officer or his/her designee, Past Chief of Medical Staff, or Vice Chief of Medical Staff. The MSEC and/or the subcommittee may request that the affected Member meet with the MSEC 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 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 recommendation and the reasons thereof, with a copy to the Chief Executive Officer. Said notice shall include the elements specified in Article 10.3 if the action is adverse.

C. Procedural Rights

Unless the MSEC or subcommittee terminates the Summary Action, it 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 10. The hearing may be consolidated with
a hearing on any corrective action that is recommended so long as the hearings commence within forty-five (45) calendar days after the hearing on the Summary Action was requested. Said notice shall include the elements specified in Article 10.3 if the action is adverse.

9.11 Automatic Suspension Or Limitation Without Hearing Rights

A. In the following instances, the Member’s Privileges or Membership may be suspended or limited automatically 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 which remains in effect for longer than ninety (90) calendar days will result in voluntary withdrawal 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 applicants. The MSEC considers an automatic suspension based on one of the categories listed below not a suspension 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 suspensions set forth in this Article as relating to “possible incompetence or improper professional conduct” as that term is defined by the NPDB pursuant to 42 USC Section 11133, 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, his/her Membership and Privileges shall be automatically revoked 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 which 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, his or her 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 term(s) adversely affect(s) 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, the Member’s right to prescribe, dispense, or administer such medications and such probation affects the Member’s ability to exercise the Privileges the Member holds, 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, or Article 4 of the Organization Policy, shall automatically be suspended from exercising all or such portion of Privileges as the MSEC specifies. 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 Medical Records**

   Members are required to complete medical records within the time prescribed in the Bylaws, Policies, Procedures, Plans, Rules, and/or UCSDH Policies. Failure to complete medical 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 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 medical records are completed. Nothing in the foregoing shall preclude the MSEC from implementing a monetary fine for delinquent medical 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 11.5 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 excluded as a provider from a Government Health Program, his/her Membership and Privileges shall be terminated automatically as of the date the exclusion becomes effective, if, in the MSEC’s sole discretion the restriction, the exclusion adversely affects UCSDH operations and/or patient care.
8) Felony Conviction

If any Member is convicted of a felony, or pleads guilty or nolo contendere to a felony, his/her Membership and Privileges will be immediately and automatically terminated, unless otherwise determined by the MSEC.

9) Incomplete Proctoring

Failure to comply with the Credentials Policy and the Medical Staff Proctoring Policy (MSP 019) in the required timeframe without good cause may result in automatic suspension or revocation of Membership and/or Privileges, as determined by the MSEC.

10) Required Documentation

Failure to provide requested documentation, including documentation of Tuberculin testing, Fit for Practice Evaluations, any other preventative or health safety requirement for public health protection in accordance with the Bylaws and the Credentialing Policy, or completion of required educational courses for appointment and/or reappointment, may result in automatic suspension as determined by the MSEC. The suspension shall continue until the Member provides proof of compliance or the suspension is lifted by the MSEC.

11) Misstatement or Omission During Application Process

If an applicant for appointment or reappointment misrepresents or omits relevant information regarding his/her training, experience, and/or qualifications during the application process, the application will be denied and his/her Membership and Privileges will be immediately and automatically terminated, unless otherwise determined by the MSEC. Denial of an application for reason of misstatement or omission does not give the applicant or Member hearing rights as outlined in the Bylaws and this Plan.

12) Leave of Absence Longer Than One Year

If a Member remains absent on a Leave of Absence for longer than one (1) year, his/her Membership and Privileges will be immediately and automatically terminated, unless an extension is granted by the MSEC. This section does not apply to a Family Leave of Absence.

B. Notice of Automatic Suspension or Action

Notice of an automatic suspension or action shall be given to the affected individual, the MSEC, the Service, Chief Executive Officer, and EGB, but such notice shall not be required for the suspension to become effective.
9.12 Automatic Action Based Upon Actions Taken By Another University Of California Peer Review Body

A. The MSEC shall be empowered to automatically impose any adverse action that has been taken by another peer review body (as that term is used in California Business & Professions Code Section 809 et seq.) affiliated with The Regents. Such an adverse action may be any action taken by the original Regents peer review body, including, but not limited to, denying membership and/or privileges, restricting privileges or terminating membership and/or privileges. The action at the other Regents facility that will be the basis for the automatic action by the MSEC, shall have become final within the within the past thirty-six (36) months. The automatic action may be taken by the MSEC only if the original Regents peer review body took action based upon standards that are essentially the same as those in effect at UCSDH at the time the automatic action will be taken. The action before the MSEC or EGB may be taken once the Member has completed the hearing with the other peer review body and any appeal, if applicable, at the other peer review body; however, it is not necessary to await a final disposition in any judicial proceeding that may be brought challenging the action.

B. The Member shall not be entitled to any hearing or appeal, if applicable, unless the MSEC takes an action that is more restrictive than the final action taken by The Regents’ peer review body. Any hearing and appeal, if applicable, that is requested by the Member shall not address the merits of the action taken by The Regents’ peer review body, which were already reviewed at The Regents’ peer review body’s hearing, and shall be limited to only the question of whether the automatic action is more restrictive than The Regents’ peer review body’s action. The Member shall not otherwise be entitled to challenge the automatic peer review action unless he or she successfully overturns the original peer review action.

Nothing in this Article shall preclude the Medical Staff or EGB from taking a more restrictive action than The Regents’ peer review body based upon the same facts or circumstances.
9.13 Effect Of Actions Taken By Other Entities

Except as provided in the Bylaws, whenever the Chief of Medical Staff or the MSEC receives information about an action taken at another facility and involving a Member holding privileges at UCSDH, the Chief of Medical Staff or MSEC shall, if time permits, independently assess the facts and circumstances to ascertain whether to take comparable action. However, when the Member was summarily suspended or restricted at the other facility, any person authorized under the Bylaws to impose a Summary Action is authorized to immediately impose a comparable suspension or restriction at UCSDH, subject to review by the MSEC in accordance with the provisions of the Bylaws and this Plan.

9.14 Interviews

Interviews shall neither constitute nor be deemed a hearing as described in the Bylaws and Article 10 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 Article 10 of 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.

9.15 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.
ARTICLE 10
HEARINGS AND APPELLATE REVIEWS

10.1 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 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.

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 he or she 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 resulted 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.

10.2 Grounds for Hearing

Except as otherwise specified in the Bylaws, 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 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 which qualify as reportable 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 longer than thirty (30) calendar days 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.

10.3 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 9.7, 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 notice of recommendation or action;

4) The notice must also advise the Member that he/she may request mediation or arbitration pursuant to of the Fair Hearing Plan and that mediation or arbitration must be requested, in writing, within ten (10) calendar days from the date of the notice of recommendation or action;

5) That the Member has the hearing rights described in the Bylaws and this Plan, including those specified in Article 10.6.

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 Chief of Medical Staff with a copy to the Chief Executive Officer. Said request shall be delivered or sent by certified or registered mail, return receipt requested.

2) The Member shall state, in writing in his/her request for a hearing, his/her 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.

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 shall be given great weight by the EGB within forty-five (45) calendar days, although it is not binding on the EGB.

10.4 Reports Pursuant to Business & Professions Code Section 805.01

If the recommendation or final proposed action is reportable pursuant to California Business & Professions Code Section 805.01, the Member will be provided written notice, including the text of the report. Section 805.01 requires a peer review body, after a formal investigation, to report final decisions or recommendations for disciplinary actions against certain licensed medical processonals when the following may have occurred:
A. Incompetence, or gross or repeated deviation from the standard of care involving death or serious bodily injury to one or more patients, to the extent or in such a manner as to be dangerous or injurious to any person or to the public;

B. The use, prescribing, or administration to himself or herself of any controlled substance, or the use of any dangerous drug or of alcoholic beverages, to the extent or in such a manner as to be dangerous or injurious to the licentiate, any other person, or the public, or to the extent that such use impairs the ability of the licentiate to practice safely;

C. Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances or repeated acts of prescribing, dispensing, or furnishing of controlled substances without a good faith effort prior examination of the patient and medical reason therefor; or

D. Sexual misconduct with one or more patients during a course of treatment or an examination.

10.5 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 his/her receipt of a notice of action or proposed action that would give 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 the mediation.

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 10.6 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 issues in dispute. 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 10.6.

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.

10.6 Hearing Procedure

A. Time and Place for Hearing

Upon timely request for a hearing, the Chief of Medical Staff will give 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 Chief 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 Chief 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 may appoint an attorney or other individual experienced in the process as hearing officer.

2) 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), and must not act as a prosecuting officer or as an advocate.

3) 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.

4) He/she shall have the authority and discretion to make all rulings on questions that pertain to matters of law, procedure, or 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 himself/herself in their capacity as the hearing officer.

5) 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.
6) 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.

7) 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 Chief 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.

2) In the event it is not feasible to appoint a hearing panel from the Active Staff, the Chief 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) Hearing panel members with limited availability that may negatively impact the panel member’s ability to make themselves available as needed to conduct the hearing in the time limitations prescribed by this Policy, will not be appointed to serve on the hearing panel.

5) The Chief of Medical Staff may appoint 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.

6) 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 in
the same manner described above, in sub-article (C) related to hearing officers.
The arbitrator shall have the same powers described above in sub-article (C)
related to hearing officers and in sub-article (D) related to hearing panels.

F. Representation

1) The Member shall have the right, at his/her expense, to attorney
representation at the hearing.

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, 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
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 his/her
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 final and effective
immediately.

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 his or her 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 his or her possession or under his or her 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 or to introduce any evidence of 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 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 medical 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
   a) 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 he or she previously acted diligently and could not have timely submitted the information in response to the request.
   b) The failure to timely request information constitutes a waiver.

4) Protected Health Information
   Prior to receiving any documents, the Practitioner must provide a written representation that his/her 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 Practitioner 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 use by the Practitioner 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 Practitioner has committed flagrant or repeated noncompliance with the Bylaws and this Plan in a manner that prejudices the other party and may constitute a waiver of hearing rights, leading to a termination of the hearing in favor of the Body Whose Decision Prompted the Hearing. It also shall be grounds for additional corrective action against the Practitioner.

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 an estimate of the anticipated time for each witness' 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.

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. Objections to any pre-hearing decisions may be succinctly made at the hearing.

2) The parties shall be entitled to file 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 full 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. 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 entered into 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 or six (6) months, whichever is less, from the date the hearing commenced.

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 or six (6) months, whichever is less, due to the health of the Member at issue, the hearing panel/arbitrator will determine how much additional time will be necessary to conclude the evidentiary portion of the Hearing.

4) To the extent the case cannot conclude within sixty (60) hours or six (6) months, whichever is less, due to the health of a member of the hearing panel or the hearing officer/arbitrator, the parties will meet and confer to determine the best and most efficient manner to proceed. This shall
include, but is not limited to, utilizing an alternate or appointing a new hearing officer/arbitrator.

5) The parties may also stipulate for 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.

6) If either party wishes to seek an extension of time, that party may make a motion to the hearing panel/arbitrator seeking additional time. Any such motion is required to include the anticipated amount of hours necessary to conclude the hearing, the reasons for why the hearing cannot be completed within the timeframe set forth in this Section, the evidence that will be presented during the additional hearing time, and the relevance of any such evidence.

7) If a party is deemed to not be operating in good faith by delaying the proceeding unnecessarily or not effectively utilizing its sessions in a manner so as to negatively impact the other party's ability to present its case, the hearing panel/arbitrator can grant an extension of time to allow the other party sufficient time to present its case.

O. Pre-Hearing Conference

The hearing officer/arbitrator shall, at least ten (10) calendar days prior to the first evidentiary session, require both the 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 the hearing 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. Objections to any pre-hearing decisions may be succinctly made at 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;

2) Rule on any objections to witnesses, or other matters. Evidence unrelated to the reasons for the unfavorable recommendation or action or unrelated to the applicant’s qualifications for appointment or the relevant Privileges shall be excluded;
3) Establish the time to be allotted to each witness’ testimony and cross-examination unless such time is generally agreed upon by the parties. The parties must provide the hearing officer/arbitrator with reasonable and accurate time estimates for the hearing. If the time estimate of either party is exceeded, the hearing officer/arbitrator may, in his/her discretion, discontinue the witness’ testimony;

4) Rule on whether witnesses and documentation not provided and agreed upon in advance of the hearing will be excluded from the hearing; and

5) 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.

P. Record of the Hearing

A court reporter shall be present to make a record of the hearing proceedings and the pre-hearing proceedings if deemed appropriate by the hearing officer/arbitrator. 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. The hearing officer/arbitrator may, but shall not be required to, order that oral evidence shall be taken only under oath administered by any person lawfully authorized to administer such oath.

Q. Rights of the Parties

Within reasonable limitations,

1) Both sides at the hearing shall have the right to call, examine, and cross-examine witnesses;

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 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 argument; 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 Member, hearing officer/arbitrator, counsel for the parties (if applicable), and the Court Reporter, no other Members or individuals are permitted to attend.

R. Rules of Evidence

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.

S. Burden of Presenting Evidence and Proof

1) The Body Whose Decision Prompted The Hearing shall have the initial duty to present evidence which 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 his/her qualifications by producing information which allows for adequate evaluation and resolution of reasonable doubts concerning his/her 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, throughout the hearing, 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. In meeting this burden, the Body Whose Decision Prompted the Hearing shall not be limited to presenting only that information available to it at the time it imposed or recommended the action, but rather may present any relevant information (within the limits discussed elsewhere in this article) available to it at the time of the hearing.
5) The Body Whose Decision Prompted the Hearing is not required to prove each and every charge or issue in front of the Trier of Fact 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 Trier of Fact’s opinion.

T. 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.

U. 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.

V. 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.
10.7 Appeal

A. Time for Appeal

If appeal rights are provided, within fifteen (15) calendar days of receipt of the decision of the hearing panel/arbitrators by counsel for the parties, or if the parties are not represented, to the Member and the Chief of Medical Staff, either the Member or the MSEC may request an appellate review. A written request for such review shall be delivered in person or by certified or registered mail, return receipt requested, to the Chief of Medical Staff, the Chief Executive Officer, and the Member party in the hearing. 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

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 Article. 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 EGB shall be of the opinion that the error complained of has resulted in a miscarriage of justice.

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 commence 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 commence 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 which shall be composed of not less than three (3) EGB members designated by the EGB.

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

Knowledge of the matter involved shall not preclude any person from serving as a member of the Appeal Board, so long as that person did not take part in a prior hearing on the same matter. 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.

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 personally and to make oral argument.

5) The Appeal Board 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 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 recommendation, 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.

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 Chief of Medical Staff, and the MSEC, the Member party, 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.

10.8 Right to One Hearing

No 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.

10.9 Release

By requesting a hearing or appellate review under the Bylaws and this Plan, a 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.
10.10 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 Chief of Medical Staff, or any individual, hearing panel or committee with regard to the consideration of any application for appointment or reappointment, any Investigation, any corrective action, any hearing, or other action, the applicant or Member shall immediately 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.

10.11 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 Chief of Medical Staff. In such case, the EGB may, but need not, grant or conduct appellate review of a decision prompted by EGB action.

10.12 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.

10.13 Exceptions to Hearing Rights

A. Automatic Suspension or Limitation of Practice Privileges

No hearing is required when a member's license or legal credential to practice has been revoked or suspended as set forth in Article 9.12. In other cases described in Article 9.12, the issues which may be considered at a hearing, if requested, shall not include evidence designed to show that the determination by the licensing or credentialing authority was unwarranted, but only whether the member may continue to practice at UCSDH with those limitations imposed.

B. Failure to Meet Minimum Activity Requirements

A Member shall not be entitled to the hearing and appellate review rights if his/her 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.
C. 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.

D. Contract Physicians

Unless a contract or agreement executed provides otherwise, or unless otherwise required by law, those Privileges made exclusive or semi-exclusive pursuant to a closed-staff or limited-staff specialty policy will automatically terminate, without the right of access to the review, hearing, and 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. In the event there is a conflict between the Bylaws and a contract with the Member, the contract shall prevail.

10.14 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.