



APPENDIX C –
Investigations, Corrective Actions, Hearing and
Appeal Manual

For Socorro General Hospital's Medical & Dental Staff Bylaws

Approved by Socorro General Hospital Board of Trustees

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1 Definitions

1.1 Appendix A

Means the Organization and Functions Manual of the bylaws.

1.2 Appendix B

Means the Credentials Procedures Manual of the bylaws.

1.3 Appendix C

Means the Investigations, Corrective Actions, Hearings and Appeals Manual.

1.4 Attendance

See the definition in Appendix A, Organization and Functions Manual.

1.5 Board or The Board (singular)

Means the governing body of Presbyterian Healthcare Services Socorro General Hospital.

1.6 Boards or The Boards (plural)

Means the governing bodies of Presbyterian Healthcare Services and Presbyterian Healthcare Services Socorro General Hospital.

1.7 Credentialing Authority

Means the Board and the other groups or individuals defined in Appendix B, the Credentials Procedures Manual, and may also include the MEC at those PHS hospitals where the applicable hospital board has delegated credentialing oversight to the MEC in lieu of a separate credentials committee.

1.8 Credentials Procedures Manual

Means Appendix B to these bylaws, which provides additional details associated with credentialing process.

1.9 Hospital

Means the medical facility, Presbyterian Healthcare Services Socorro General Hospital.

1.10 Investigations, Corrective Actions, Hearings and Appeals Manual

Means Appendix C to these bylaws, which provides additional details associated with practitioner investigations, corrective actions, hearings and appeals.

1.11 Medical Executive Committee or MEC

Means a committee of the medical staff organized and authorized to act pursuant to these bylaws. References to the medical executive committee, sometimes called the MEC, shall include any designee(s) charged with a specific task of the MEC who is acting on the MEC's behalf.

1.12 Meetings

See definition in Appendix A, the Organization and Functions Manual.

1.13 Organization and Functions Manual

Means Appendix A to the bylaws, which provides additional associated details to the organization and functions of the medical staff.

1.14 Organized Health Care Arrangement or OHCA

Means the mechanism adopted by the hospital, all members of the medical staff and all practitioners to implement and comply with the Standards for Privacy of Individual Identifiable Health Information promulgated by the US Department Of Health and Human Services pursuant to the Administrative Simplification provisions of Healthcare Information Portability and accountability Act (HIPAA). The hospital, and all of its medical staff members and practitioners shall be members of and participate in the OHCA, which functions as a clinically integrated care setting in which patients typically receive health care from more than one healthcare provider.

1.15 PHS

Means Presbyterian Healthcare Services.

1.16 Practitioners

Means physicians (M.D. or D.O), dentists, oral maxillofacial surgeons and podiatrists, and Advanced Practice Clinicians who have medical staff membership or exercise privileges at the hospital.

1.17 Professional Review Action

Means an investigation and resulting proceeding against a physician on the medical staff that is reportable to the National Practitioner Data Bank under the Health Care Quality Improvement Act of 1986 and its successor statues, and any applicable state reporting requirements, that is related specifically to clinical incompetence or misconduct that adversely affects clinical privileges for greater than thirty (30) calendar days (e.g., denial of appointment and/or reappointment; reduction in clinical privileges) or a resignation, surrender of privileges, or acceptance of privilege reduction either during an investigation or to avoid an investigation that could result in a decision which adversely affects clinical privileges for greater than thirty (30) days.

1.18 Vote

Means a ballot cast by one or the following approved mechanisms: verbally in person or through teleconference, written or electronic via personal or courier delivery, mail, fax, email, text, and secure voting through the web or other technology that communicates the voter's choices. No proxy voting will be permissible.

2 Authority and Interpretation

2.1 Authority

This Investigations, Corrective Actions, Hearings and Appeals Manual supplements the Medical Staff Bylaws, and in particular, Article III of the Medical Staff Bylaws.

2.2 Interpretation

To promote continuity and uniformity throughout the hospitals owned by Presbyterian Healthcare Services (PHS), this Organization and Functions Manual reflects the

overarching philosophies and practices of PHS, including those included in its corporate bylaws. Subject to the authority and approval of the hospital boards, this manual is designed to be interpreted consistent with such philosophies and practices, including the policies and procedures of PHS as applied to its individual hospitals. Additionally, this manual has been written to provide flexibility, where appropriate, to each PHS hospital, taking into consideration the size of the hospital and its medical staff and the types of services offered. Definitions contained in this manual apply to the bylaws and other manuals designated as appendices to the bylaws.

3 Investigative Committee Composition and Status

3.1 Professional Review Body

Whenever the MEC, another appropriate standing committee or an ad hoc committee is charged with investigating a practitioner in a professional review action, such committee will constitute a professional review body with all of the rights, responsibilities, and immunities afforded such a body.

3.2 No Conflicts

Whenever the MEC, another appropriate standing committee or an ad hoc committee is charged with investigating a practitioner in a professional review action, a majority of such members will be physicians on the medical staff and none of the voting committee members will be in direct economic competition with the practitioner under investigation nor in any way involved with the case or cases being reviewed or with any external peer review consultants engaged as part of the investigation.

3.3 Specialty Advisor

One or more member of the medical staff in the same specialty as the practitioner under investigation may serve solely in a technical advisory capacity to the committee if such medical expertise is necessary. Such advisor shall not have any voting rights and shall not participate in formulating recommendations.

3.4 Other PHS Practitioners

If there are not a sufficient number of medical staff members who are eligible and willing to serve on the investigative committee, the president of the medical staff and the hospital may appoint physicians from other PHS hospitals who meet such criteria.

4 External Peer Review Consultant Guidelines

4.1 Grounds

An external peer review consultant may be used during an investigation when:

- a. Litigation seems likely;
- b. The hospital is faced with ambiguous or conflicting recommendations from medical staff committees; or

- c. There is no one on the medical staff with expertise in the subject under review, or when the only physicians on the medical staff with appropriate expertise are direct competitors, partners, or associates of the physician under review.

4.2 Approval

The engagement of an external peer review consultant must be approved by the MEC and hospital administrator.

4.3 No Right to External Peer Review Consultant

The individual being investigated shall not have the right to compel the medical staff to engage an external peer review consultant.

5 Summary of Hearing Rights to Accompany Notice of Recommendation

The Summary of Hearing Rights form attached to this appendix shall accompany the notice of recommendation that is required to be given to any practitioner when a precautionary suspension lasts more than fourteen (14) calendar days, or a recommendation is made that allows a practitioner to request a hearing prior to a final decision of the board.

6 Supplemental Information Following Notice of Hearing

The Notice of Hearing may be supplemented as follows prior to the hearing provided that the notice of change is given to the other party as stated below and the party receiving such notice, including such party's legal counsel, if any, has sufficient time to study the supplemental information and rebut it.

6.1 Witness List

At least fifteen (15) calendar days before the hearing, each party shall furnish to the other a written list of the names of the witnesses intended to be called. The witness list of either party may, in the discretion of the presiding officer, be supplemented or amended at any time during the course of the hearing, provided that notice of the change is given to the other party. The presiding officer shall have the authority to limit the number of witnesses.

6.2 Hospital Document List and Documents

The statement of the specific reasons for the recommendation, the list of patient records, patient record numbers and other information supporting the recommendation may be amended or added to at any time with additional relevant information prior to the hearing. Amendments or supplements may be made during the hearing only with the approval of the presiding officer.

6.3 Practitioner's Document List and Documents

At least seven (7) days prior to the hearing, the practitioner shall furnish to the hospital administrator or designee a list and copies of all documents that will be offered as pertinent information or relied upon by witnesses or the practitioner at the Hearing Panel.

Amendments or supplements may be made during the hearing only with the approval of the presiding officer.

7 Administration of Hearing: Hearing Panel and or Hearing Officer

7.1 Hearing Panel

a. Selection

If a hearing panel is the method chosen to address issues subject to a valid appeal, a hearing panel of not fewer than three individuals will be selected as follows: (1) a panel member shall be appointed by the hospital administrator; (2) a panel member shall be appointed by the President of the Medical Staff; (3) all remaining panel members shall be selected by a joint decision of the above two referenced individuals.

b. Hearing Panel Qualifications

No individual appointed to the hearing panel shall have actively participated in the consideration of the matter involved at any previous level. However, mere knowledge of the matter involved shall not preclude any individual from serving as a member of the hearing panel. Employment by, or a contract with, the hospital or an affiliate shall not be deemed a conflict of interest and shall not preclude any individual from serving on the hearing panel. Hearing panel members need not be members of the hospital medical staff. When the issue before the panel is a question of clinical competence, all panel members shall be clinical practitioners with physicians serving as a majority. Panel members may or may not be clinicians in the same specialty as the member requesting the hearing. The hearing panel shall not include any individual who is in direct economic competition with the affected practitioner. Additionally, no member of the hearing panel shall include an individual who is professionally associated with or related to the affected practitioner unless the practitioner and the MEC agree to the panel member. This restriction on appointment shall include any individual designated as the chair or the presiding officer.

c. Practitioner Notice, Objection and Final Selection Process

The hospital administrator or designee shall notify the practitioner requesting the hearing of the names of the panel members and the date by which the practitioner must object, if at all, to appointment of any hearing panel member(s). Any objection to any member of the hearing panel or to the hearing officer or presiding officer shall be made in writing to the hospital administrator, who, in conjunction with the President of the Medical Staff, shall determine whether a replacement panel member should be identified. Although the practitioner who is the subject of the hearing may object to a panel member, they are not entitled to veto that member's participation. Final authority to appoint panel members will rest with the hospital administrator and the President of the Medical Staff.

d. Hearing Panel Chairperson or Presiding Officer

Every hearing panel shall appoint one of its members as the Chairperson or presiding officer for the hearing. Such individual will be responsible to:

- i. Schedule deadlines for requesting and exchanging documents prior to the hearing, consistent with relevant time frames set forth in the bylaws and this appendix;
- ii. Act to ensure that all participants in the hearing have a reasonable opportunity to be heard and to present oral and documentary evidence subject to reasonable limits on the number of witnesses and duration of direct and cross examination as may be necessary to avoid cumulative or irrelevant testimony or to prevent abuse of the hearing process;
- iii. Prohibit conduct or presentation of evidence that is cumulative, excessive, irrelevant, or abusive, or that causes undue delay;
- iv. Maintain decorum throughout the hearing;
- v. Determine the order of procedure throughout the hearing;
- vi. Make rulings, in the presiding officer's discretion consistent with the bylaws and appendices, on all questions that pertain to matters of procedure and to the admissibility of evidence;
- vii. Act in such a way that all information reasonably relevant to the continued appointment or clinical privileges of the individual requesting the hearing is considered by the hearing panel in formulating its recommendations;
- viii. Receive arguments by counsel on procedural points, which may be made outside the presence of the hearing panel at the discretion of the presiding officer;
- ix. Seek legal counsel when they feel it is appropriate;
- x. Modify or rule on requested postponements and extensions of time beyond any time limit set forth in the bylaws or this appendix based on a showing of good cause; and
- xi. Temporarily adjourn, postpone or extend the hearing for good cause or upon the agreement of the parties.

e. Role of Hearing Panel

Because the hearing panel will hear factual evidence and arguments related to the recommendation(s) on appeal and determine whether the facts presented warrant the recommendation made as it relates to the furtherance of quality health care, no member of the hearing panel shall act as a prosecuting officer or as an advocate to either side at the hearing.

7.2 Hearing Officer

a. Selection of Hearing Officer

As an alternative to the hearing panel, the hospital administrator, acting for the Board and in conjunction with the president of the medical staff (or those of the chair of the Board, if the hearing is occasioned by a Board determination) may instead appoint a hearing officer to perform the functions that would otherwise be carried out by the hearing panel, contingent on acceptance by the individual and the MEC. The hearing officer may be an attorney in non-clinical matters.

b. Hearing Panel Qualifications

The hearing officer shall not have actively participated in the consideration of the matter involved at any previous level. However, mere knowledge of the matter involved shall not preclude any individual from serving as a member of the hearing panel. Employment by, or a contract with, the hospital or an affiliate shall not be deemed a conflict of interest and shall not preclude any individual from serving on the hearing panel. The hearing officer shall not be in direct economic competition with the affected practitioner. Additionally, the hearing officer shall not be professionally associated with or related to the affected practitioner.

c. Practitioner Notice, Objection and Final Selection Process

The hospital administrator or designee shall notify the practitioner requesting the hearing of the name of the hearing officer and the date by which the practitioner must object, if at all, to appointment of the hearing officer. Any objection to any member of the hearing panel or to the hearing officer or presiding officer shall be made in writing to the hospital administrator, who, in conjunction with the President of the Medical Staff, shall determine whether the hearing officer shall be replaced. Although the practitioner who is the subject of the hearing may object to a panel member, they are not entitled to veto that member's participation. Final authority to appoint panel members will rest with the hospital executive and the President of the Medical Staff.

d. Duties and Role of Hearing Officer

The hearing officer shall have the same authority and duties as the presiding officer of the hearing panel. Additionally, the hearing officer will hear factual evidence and arguments related to the recommendation(s) on appeal and determine whether the facts presented warrant the recommendation made as it relates to the furtherance of quality health care. The hearing officer shall not act as a prosecuting officer or advocate to either side at the hearing. All references in the bylaws or appendices to the "hearing panel" or "presiding officer" shall be deemed to refer instead to the hearing officer, unless the context would clearly require otherwise.

7.3 Length of Hearing

In general, a hearing will be expected to last no more than fifteen hours.

7.4 Legal Counsel

Legal counsel to the hospital will advise the presiding officer or hearing officer.

8 Pre-Hearing Process: Exchange of Information

8.1 Provision of Relevant Information to Practitioner

The hearing does not confer the right of formal, legal "discovery" to any party. The presiding officer, hearing panel chair, or hearing officer shall rule on any dispute regarding discoverability and may impose any safeguards, including denial or limitation of discovery

to protect the peer review process and ensure a reasonable and fair hearing. In general, the practitioner requesting the hearing shall be entitled, upon specific written request and at the practitioner's expense, to the following, subject to a stipulation signed by both parties, the practitioner's counsel and any experts engaged by the practitioner, that such documents shall be maintained as confidential consistent with all applicable state and federal peer review and privacy statutes and shall not be disclosed or used for any purpose outside of the hearing:

- a. Copies of, or reasonable access to, all patient medical records referred to in the Statement of Reasons;
- b. Reports of experts relied upon by the MEC-directed committee;
- c. Copies of redacted relevant committee minutes;
- d. Copies of any other documents relied upon by the MEC or the Board;

8.2 Information Deemed Irrelevant

Information regarding other practitioners shall not be requested by the practitioner, provided by the hospital to the practitioner, nor considered by the hearing panel or hearing officer. Information unrelated to the reasons for the recommendation, the individual's qualifications for appointment or the relevant clinical privileges shall also not be requested, provided, not considered.

8.3 Provision of Relevant Information to Hospital

Copies of, or reasonable, access to, all information to be relied upon by the practitioner at the hearing, including but not limited to, patient medical records and reports of experts.

8.4 Exhibits and Witness List

Prior to the hearing, on dates set by the presiding officer, or as agreed upon by counsel for both sides, each party shall provide the other party with all proposed exhibits. All objections to documents or witnesses to the extent then reasonably known shall be submitted in writing prior to the hearing. The presiding officer shall not entertain subsequent objections unless the party offering the objection demonstrates good cause.

8.5 Restrictions on Witness Contact

Contact with witnesses listed on the opposing side's witness list shall be permitted only under parameters set by the presiding officer or as specifically agreed upon by that individual or their counsel.

8.6 Legal Counsel

At least ten business days prior to the hearing, each side must notify the other of the name of any legal counsel.

9 Pre-Hearing Conference: Procedures, Evidence Objections, and Attorney Roles

The presiding officer may require a representative for the individual and for the MEC (or the Board) to participate in a pre-hearing conference. At the pre-hearing conference, the

presiding officer shall resolve all procedural questions, including any objections to exhibits or witnesses, and determine the time to be allotted to each witness's testimony and cross-examination. The appropriate role of attorneys will be decided at the pre-hearing conference. In addition to being available to advise their clients at the hearing, attorneys' roles may or may not include: participation in resolving procedure issues, presenting their clients' case through the examination of witnesses and introduction of exhibits, and presenting arguments on the merits of their respective client's cases.

10 Failure to Appear

If the practitioner requesting the hearing fails, without good cause, to appear and proceed at such a hearing, such failure shall be deemed to constitute a waiver of all hearing and appeal rights and a voluntary acceptance of the recommendations made, which shall become effective immediately upon final Board action. Good cause for failure to appear will be determined by the presiding officer.

11 Persons Who May Attend the Hearing

The hearing is confidential and not open staff or the public. Attendance at the hearing shall be restricted to those individuals involved in the proceeding, including the parties, the hearing panel or hearing officer, their attorneys, witnesses when they are testifying, and administrative personnel as requested by the president of the hospital or medical staff.

12 Record of Hearing

The hearing panel shall maintain a record of the hearing by a reporter present to make a record of the hearing or a recording of the proceedings. The cost of such reporter shall be borne by the hospital, but copies of the transcript shall be provided to the individual requesting the hearing at that individual's expense. The hearing panel may, but shall not be required to, order that oral evidence shall be taken only on oath or affirmation administered by any person designated to administer such oaths and entitled to notarize documents in the State of New Mexico.

13 Order and Conduct of Hearing

13.1 Order

The Board or the MEC, depending on whose recommendation prompted the hearing initially, shall first present evidence in support of its recommendation. Thereafter, the burden shall shift to the practitioner who requested the hearing to present evidence.

13.2 Rights of Parties

At the hearing both sides shall have the following rights, subject to reasonable limits

determined by the presiding officer:

- a. To call and examine available witnesses listed on their final witness lists;
- b. To introduce exhibits listed on their final exhibit lists;
- c. To cross-examine any witness on any matter relevant to the issues and to rebut any evidence;
- d. To have representation by counsel who may be present at the hearing to serve in the manner determined at the pre-hearing conference;
- e. To submit a written statement at the close of the hearing; and.
- f. To submit a post-hearing memorandum following the close of the hearing.

If the practitioner requesting a hearing does not testify in their own behalf, they may be called and examined as if under cross-examination. Additionally, the hearing panel may question the witnesses, call additional witnesses, request additional documentary evidence, or post-hearing memoranda.

13.3 Official Notice

The presiding officer or hearing officer shall have the discretion to take official notice of any matters, either technical or scientific, relating to the issues under consideration. Participants in the hearing shall be informed of the matters to be officially noticed and such matters shall be noted in the record of the hearing. Either party shall have the opportunity to request that a matter be officially noticed or to refute the noticed matter by evidence or by written or oral presentation of authority. Reasonable additional time shall be granted, if requested by either party, to present written rebuttal of any evidence admitted on official notice.

14 Post-Hearing Procedures

14.1 Final Adjournment of Hearing

Upon conclusion of the presentation of evidence by the parties, any closing arguments, and the resolutions of questions by the hearing panel, the hearing shall be finally adjourned.

14.2 Deliberations and Recommendation of the Hearing Panel

Within thirty (30) calendar days after final adjournment of the hearing, the hearing panel shall conduct its deliberations and render a recommendation. The recommendation shall contain a concise statement of the reasons for the recommendation.

14.3 Disposition of Hearing Panel Report

The hearing panel shall deliver its report and recommendation to the hospital executive who shall forward it, along with any supporting documentation, to the Board for further action. The hospital administrator shall also send a copy of the report and recommendation, certified mail, return receipt requested, to the individual who requested the hearing, and to the MEC for information and comment.

15 Appeal to the Hospital Board

15.1 Time, Place and Notice of Board Appellate Review

Whenever an appeal is timely requested, the chair of the Board, if they determine the grounds for appeal have been met, shall schedule and arrange for an appellate review as soon as arrangements can be reasonably made, taking into account the schedules of all individuals involved, but no sooner than 30 calendars days of the notice of request for appellate review. The affected individual shall be given notice of the time, place and date of the appellate review. The chair of the Board may extend the time for appellate review for good cause.

15.2 Nature of Review by Board Appellate Review Panel

a. Evidence

The board appellate review panel shall review the information considered by the hearing panel or officer along with supporting documentation and may, but is not required, accept additional oral or written evidence subject to the same procedural constraints in effect for the hearing panel or hearing officer. Such additional evidence shall be accepted only if the party seeking to admit it can demonstrate that it is new, relevant evidence and that any opportunity to admit it at the hearing was denied. If additional oral evidence or oral argument is conducted, a record of this procedure, similar to that done for the hearing panel, will be made.

b. Written Statements

Each party shall have the right to present a written statement in support of its position on appeal. In its sole discretion, the board review panel may allow each party or its representative to appear personally and make a time-limited thirty-minute (30) oral argument.