



MEDICAL STAFF BYLAWS:

Corrective Action and Fair Hearing Plan

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PREAMBLE

The Governing Board of CHRISTUS Mother Frances Hospital – Tyler, its Medical Staff, and any committees thereof, in order to conduct professional peer review activities, hereby constitute themselves as medical peer review and professional review bodies as used or defined by the Texas Hospital Licensing Act, the Texas Health and Safety Code, and the Health Care Quality Improvement Act of 1986. These committees claim all privileges and immunities afforded to them by all applicable federal and state statutes. The purpose of this Medical Staff Corrective Action and Fair Hearing Plan (“Plan”) is to establish procedures relating to corrective actions involving applicants to and members of the Medical Staff and to provide a mechanism through which a fair hearing and, when applicable, an appeal might be provided to those individuals having membership and/or clinical privileges or applying for membership and/or clinical privileges at Hospital. In order to ensure peer review participants are afforded all available privileges, protections and immunities, the Hospital intends for this Plan to comply with all applicable laws and regulations, including the Texas Hospital Licensing Act, the Texas Health and Safety Code, and the federal Health Care Quality Improvement Act of 1986. Therefore, any adverse decision or action taken pursuant to this Plan shall be in the reasonable belief that such decision or action was intended for the furtherance of quality health care (including the provision of care in a manner that is not disruptive to the delivery of quality health care in the Hospital); after a reasonable effort has been made to obtain the facts of the matter; after adequate notice and hearing procedures (or other appropriate procedures, depending upon the circumstances) are afforded to any practitioner involved; in the reasonable belief that the recommendation or action was warranted by the facts known after a reasonable effort has been made to obtain the facts; and without involving willful or wanton misconduct.

ARTICLE I

CORRECTIVE ACTION PROCEDURE

Section 1.1. Applicability

The corrective action procedures and related procedural rights described in this Plan shall be available only to those physicians, dentists, oral surgeons, podiatrists, and psychologists who are seeking or who have been granted membership on the Medical Staff. The corrective action, hearing, and appellate procedures specific to APCs are set forth in the Medical Staff Rules and Regulations. APCs shall not be entitled to the hearing and appellate review procedures available to physicians, dentists, and podiatrists as generally described in this Plan, however, APCs with clinical privileges at the Hospital are subject to Sections 4.1.4 of the Governance and Credentialing Manual, as applicable.

1.1.1 Informal Resolution

Unless not feasible or appropriate under the circumstances, complaints or concerns regarding the patient care, behavior or conduct of a member of the Medical Staff should be initially referred to and addressed by the appropriate Department Chairperson.

1.1.2 Criteria for Initiation

When information reasonably indicates that a member of the Medical Staff (hereinafter referred to as "practitioner") has not met the standard of care expected of practitioners at Hospital, is or may be disruptive to the delivery of quality health care in the Hospital, has violated the Medical Staff Bylaws or other Medical Staff policies and procedures or Hospital policies and procedures not inconsistent with the provision of these Bylaws, has or may have violated applicable federal and/or state law, or otherwise has behaved or performed in a manner that has or may have an adverse impact on the quality of care provided at the Hospital or the Hospital's licensure, accreditation or certification status, any individual may submit a complaint or report regarding such matters and request that corrective action or appropriate investigation be considered. The following are a representative list of issues, but not exclusive, that may constitute grounds for a report and request for corrective action and/or investigation:

- (a) Professional or clinical competence;
- (b) Care of a particular patient or patients;
- (c) Violation of the Medical Staff or Hospital Bylaws and/or policies;
- (d) Practicing beyond an authorized scope of practice or Governing Board granted clinical privileges;
- (e) Violation of applicable federal and/or state law;
- (f) Violations of professional ethics as outlined by the code of ethics that govern his or her profession or specialty;
- (g) The mental, emotional or physical health of the practitioner, including substance abuse and impaired behavior;
- (h) Conduct disruptive or detrimental to the efficient and safe operation of the Hospital and the delivery of quality patient care, including compliance program related matters; or
- (i) Unauthorized release of patient or peer review information.

1.1.3 Requests for Corrective Action

Complaints, reports or requests for investigation, review or corrective action (collectively referred to hereafter as "requests" or "requests for corrective action") should be, when reasonably possible, submitted in writing to the Medical Executive Committee ("MEC") by way of the Chief of Staff, with a copy then provided to the CEO. The request should contain a brief statement of the conduct or activities that constitute the basis for the request. Upon receiving a request, and after first consulting with the appropriate Department Chairperson as to whether the matter has been addressed at the Department level, the Chief of Staff or a designee, acting on behalf of the MEC, shall conduct a preliminary review of the matter in a manner deemed appropriate under the circumstances. Following the preliminary review, the Chief of Staff acting for the MEC may determine and report to the MEC that:

- (a) The nature of the request could reasonably result in action that adversely affects the practitioner's Medical Staff membership and/or clinical privileges. In such case, the MEC may determine that a formal investigation of the request, including the alleged basis for the request, is appropriate. Preliminary reviews performed by the Chief of Staff on behalf of the MEC are not considered an investigation.
- (b) The appropriate corrective action is summary suspension, in which case the procedures under Section 1.2 herein shall be followed. The initiation of an investigation shall not preclude the imposition of summary suspension.
- (c) The complaint or request has no basis, and no investigation is warranted. A determination that an investigation is not warranted at the time, however, does not preclude the MEC from maintaining a record of the request or related communications with the practitioner.

1.1.4 Investigative Procedure

- (a) If the Chief of Staff concludes following a preliminary review that a formal investigation is warranted, he or she shall present the request and related preliminary findings to the MEC so that it may conduct or direct a more comprehensive investigation to be concluded within a reasonable period.
- (b) The MEC may investigate the matter on its own, direct a standing committee of the Medical Staff to investigate the matter, or appoint and direct an *ad hoc* committee or designee to investigate the matter (See Section 1.1.4 regarding the use of an investigating *ad hoc* committee or designee). These committees, in turn, may delegate particular tasks and/or aspects of the investigation to particular committee members or other designees working on behalf of the committee.
- (c) The practitioner shall be notified that a formal investigation is being conducted and shall also be given an opportunity to provide information

in a manner and upon such terms as the MEC or investigating committee deems appropriate. The MEC or investigating committee will review relevant documentation, including but not limited to medical records, and incident or occurrence reports and may, but is not obligated to, conduct interviews with the practitioner and other individuals involved; however, such interview(s) shall not constitute a “hearing” as that term is used in this Plan, nor shall the procedural rules with respect to hearings or appellate review apply. At such interview(s), the practitioner shall be informed of the general nature of the complaint, concerns or questions directed to him or her, and shall be invited to discuss, explain or refute them. The practitioner shall not be entitled to have legal counsel present or participate during any meetings or discussions occurring during the investigative process. Failure to meaningfully participate in the investigation, including participation in requested interviews, external assessments or reviews, may be grounds for further adverse action by the MEC.

- (d) If external peer review is used during the course of an investigation, the findings of the external review shall be shared with the practitioner following review by the MEC or investigating committee. If either the Medical Staff or practitioner prepares a written response to the external peer review report within thirty (30) days following receipt of the report, the written response will be reviewed by the Governing Board prior to it taking any final action.
- (e) Within a reasonable period of time following the conclusion of any investigation, the MEC or investigating committee (as is applicable) shall prepare a written report of its investigation, and in the case of an investigating committee, shall forward such report to the MEC as soon as reasonably possible. The report may be in any form but should include a summary of any interview(s) with the practitioner and other individuals. The report should also summarize any pertinent findings made by the committee.
- (f) The investigation report may also include (either within the report or by way of a separate document) a recommendation for corrective action, as the MEC or investigating committee determines is appropriate.
- (g) Regardless of the status of any *ad hoc* committee investigation, at all times the MEC shall retain authority and discretion to take whatever action may be warranted by the circumstances, including the investigative process.
- (h) The MEC shall keep the CEO informed regarding the status of any review, investigation, findings, report or recommendation for corrective action. Nothing in these Bylaws prevents the Governing Board from taking corrective action without first seeking and/or obtaining a recommendation

from the MEC. However, if the action to be taken by the Governing Board is of a nature that would give rise to the hearing and appellate rights set forth in this Plan, the Governing Board must extend those rights to the practitioner before taking any final action.

1.1.5 *Ad Hoc* Investigating Committee

If the MEC decides to appoint an *ad hoc* committee to investigate the request on its behalf, the Chief of Staff and CEO shall jointly appoint three (3) members of the Active Medical Staff in good standing to serve on the *ad hoc* committee.

1.1.6 MEC Action

At its next regularly scheduled meeting after completing its own report, or after receiving the investigating committee's or designee's report, the MEC shall consider the report and any related recommendation(s) for corrective action, and take one or more of (but not be limited to) the following actions:

- (a) Accept the MEC's own report or that of the investigating committee and implement the recommendation(s);
- (b) Determine that corrective action is or is not warranted;
- (c) Recommend that the practitioner's Medical Staff status and/or clinical privileges be reduced, restricted, revoked, terminated or suspended for a designated period;
- (d) Recommend requirements for mandatory consultation in specified cases;
- (e) Recommend a probationary period during which certain conditions must be satisfied;
- (f) Issue a letter of instruction, admonishments, reprimand, or warning to the practitioner, a copy of which shall be placed in the practitioner's credentialing file;
- (g) Direct that additional information be submitted to the MEC or that further investigation occur; or
- (h) Recommend or take such action as it feels appropriate under the circumstances.

The MEC's action(s) and/or recommendation(s) along with information regarding the practitioner's hearing and appeal rights, if any, shall be sent to the practitioner by Special Notice as more fully described in Section 2.1.2, below. In the event the MEC takes action that does not give rise to hearing and appeal rights, then the

MEC shall also promptly notify the Governing Board as more fully described in Section 1.1.7(c) below. In the event the MEC recommends that does give rise to hearing and appeal rights, then the MEC shall not notify the Governing Board unless or until the practitioner waives his or her hearing or appeal rights or such rights have been exhausted.

1.1.7 Procedural Rights

For the purposes of this Plan, an adverse action shall mean any action or recommendation taken by the MEC or Governing Board with respect to the practitioner that reduces, restricts, suspends, revokes, denies, or fails to renew the Medical Staff membership and/or clinical privileges of the practitioner.

- (a) The following actions and recommendations are not adverse actions and do not entitle a practitioner to those procedural rights set forth in Article 2, unless otherwise provided in this Plan:
- i. Routine retrospective or concurrent review or monitoring;
 - ii. Required physical or psychological/psychiatric examinations;
 - iii. Required continuing education, training, or consultation for purposes of ongoing education;
 - iv. Instruction, admonishments, reprimands, or initial or final warnings;
 - v. Voluntary reductions of Medical Staff membership or clinical privileges;
 - vi. Determination that an application is incomplete, inaccurate or untimely;
 - vii. Determination that an application will not be processed due to misstatement or omission;
 - viii. Decision not to expedite an application;
 - ix. Any action or recommendation not requiring hearing or appellate rights as set forth in the then current Texas Hospital Licensing Act; and
 - x. Any other action or recommendation not reducing, restricting, suspending, revoking, denying, or failing to renew a practitioner's membership or clinical privileges and any action or recommendation where the practitioner does not or no longer

meets the minimum objective criteria for Medical Staff membership or clinical privileges set forth in Section 1.3.8 of this Plan.

- (b) If the MEC takes any of the actions described in Section 1.1.6(a) that is an adverse action, the practitioner shall be entitled to those procedural rights provided in Article 2 herein. If the practitioner is entitled to a hearing and fails to timely request a hearing under Section 2.1.3 herein, the practitioner will be deemed to have waived his/her right to a hearing, and the recommendation of the MEC shall be forwarded to the Governing Board for action pursuant to Section 1.1.8 herein.
- (c) If the MEC takes any action described in Section 1.1.6 that is not an adverse action, the Governing Board shall be reasonably notified of any such action. In such case, the MEC's action shall be the final action, subject to review and/or modification by the Governing Board and shall be transmitted by the CEO to the practitioner by Special Notice, the Chief of Staff or Chief of Staff and the Chairperson(s) of all relevant Department(s).

1.1.8 Governing Board Action

- (a) At its next regular meeting after the receipt of the MEC's action and/or report, the Governing Board shall review and take such action it determines to be appropriate, if any, unless the practitioner is entitled to and has requested a hearing in accordance with Article 2 herein, in which event no action need be taken until the matter is resubmitted to the Governing Board after a hearing or appeal, if applicable. If the MEC's action does not entitle the practitioner to a hearing, but the Governing Board takes action that does entitle the practitioner to a hearing if that action had been taken by the MEC, then the CEO shall promptly inform the practitioner by Special Notice, and he/she shall be entitled to a hearing in accordance with Article 2 herein. If the basis for any recommendation to the Governing Board relies wholly or in part on an external peer review, the Governing Board shall consider the findings of the external peer review along with any written response(s) provided by the Medical Staff or practitioner into consideration prior to taking final action.
- (b) If the Governing Board determines that the Medical Staff has failed to act in a timely or appropriate fashion in processing and recommending action on a request for investigation or corrective action, the Governing Board may take action on its own initiative after consulting with and notifying the MEC of its intent and designating an action date prior to which the MEC may still act, take action.

Section 1.2. **Summary Suspension**

1.2.1 Criteria for Initiation

Whenever the conduct or continuation of practice of a Medical Staff member constitutes or may result in an immediate danger to patients, Hospital personnel or the general public, the Chairperson(s) of the applicable Department(s), the Chief of Staff, and the CEO, or their respective designees, whom shall operate as an *ad hoc* peer review committee, by a majority vote, shall have the authority to summarily suspend all or part of a practitioner's clinical privileges and/or Medical Staff membership.

Upon any such suspension, the CEO shall promptly notify the practitioner of the suspension by Special Notice, with copy to the Chief of Staff and the Chairperson(s) of the applicable Department(s). The notice shall contain a statement of the grounds for suspension and the practitioner's resulting procedural rights. In the event of any such suspension, the practitioner's patients then hospitalized shall be assigned to the Department Chairperson(s). The Chairperson(s) will assume responsibility for the care of the patient(s) or may designate a substitute practitioner(s). The substitute practitioner(s) shall have the right to refuse to accept such patient(s) assignment. The desires of the patient shall be considered, where feasible, in choosing a substitute practitioner. The practitioner under suspension shall be advised of his/her right to have a hearing convened within fifteen (15) days from the date the summary suspension is imposed.

A summary suspension may not be implemented unless there is actual documentation or other reliable information that an immediate danger may exist. Such documentation must be available at the time the decision to summarily suspend the practitioner is made and when the decision is reviewed by the MEC.

1.2.2 MEC Action

Within five (5) days of the date a summary suspension is imposed or as soon as reasonably practicable, the MEC shall review the appropriateness of the summary suspension and shall either continue, modify or terminate the summary suspension if such review is requested by the practitioner. The practitioner shall be invited to be present and submit a statement as to why the suspension should be terminated or modified. If the summary suspension is affirmed, the practitioner shall be informed of this decision as well as his/her procedural rights under Article 2 herein, which requires that a requested hearing be commenced within fifteen (15) days of the date that the suspension was imposed unless the parties agree to an extension.

1.2.3 Governing Board Action if MEC lifts Suspension

If the MEC recommends that the suspension be modified, expunged or lifted, its recommendation shall be reported by the Chief of Staff to the Governing Board on an expedited basis. The Governing Board or standing or *ad hoc* committee of the

Governing Board shall consider the summary suspension and shall make a determination within three (3) days of reviewing the MEC's review and shall either continue, modify or terminate the summary suspension. A summary suspension once imposed shall remain in effect pending action by the Governing Board. If the Governing Board's action is anything other than a termination of the summary suspension, the practitioner's procedural rights under Article 2 shall proceed if requested by the practitioner.

1.2.4 Procedural Rights

A practitioner whose Medical Staff membership and/or clinical privileges have been summarily suspended pursuant to this Section 1.2 shall be entitled to a hearing in accordance with Article 2 herein.

Section 1.3. **Automatic Suspension**

1.3.1 Licensure

Practitioners shall at all times maintain a current and valid license to practice his/her profession in the State of Texas. In the event a practitioner's license is revoked, restricted, limited or suspended or the practitioner is placed on probation, he/she shall immediately notify the Chief of Staff. When a practitioner's license to practice has been revoked, restricted, limited or suspended, the practitioner is not entitled to a hearing or appellate right under this Plan.

- (a) Revocation. Whenever a practitioner's license to practice in Texas is revoked, Medical Staff membership and/or clinical privileges shall be automatically and immediately suspended and shall so remain in effect until the license is reinstated.
- (b) Suspension. Whenever a practitioner's license to practice in Texas is suspended, Medical Staff membership and/or clinical privileges shall be automatically and immediately suspended and shall so remain in effect until the license is reinstated.
- (c) Probation. Whenever a practitioner's license is placed on probation or otherwise restricted in some manner, an investigation shall be automatically initiated under Section 1.1 herein.
- (d) Restriction. Whenever a practitioner's license to practice in Texas is restricted, Medical Staff membership and/or clinical privileges shall be automatically and immediately restricted in accordance with the underlying licensure restriction and shall remain restricted until the license is fully reinstated.

1.3.2 DEA Registration

Practitioners shall at all times maintain a current and valid Federal DEA registration, if necessary, to exercise any of their clinical privileges. In the event a practitioner's DEA registration is revoked, suspended, or limited, he or she shall immediately notify the Chief of Staff.

- (a) Revocation. Whenever a practitioner's registration is revoked, Medical Staff membership and/or clinical privileges shall be automatically and immediately suspended and shall so remain in effect until the registration is reinstated.
- (b) Suspension. Whenever a practitioner's registration is suspended, Medical Staff membership and/or clinical privileges shall be automatically and immediately suspended and shall so remain in effect until the registration is reinstated.
- (c) Limitation/Restriction. Whenever a practitioner's registration is limited or restricted, Medical Staff membership and/or clinical privileges shall be automatically and immediately limited or restricted in accordance with the underlying limitation or restriction and shall remain so until the registration is fully reinstated.

1.3.3 Medicare/Medicaid Sanctions

In the event that a practitioner's Medicare and/or Medicaid participation or eligibility is suspended or revoked or if he/she receives notices of any investigation or possible disciplinary action, the practitioner shall immediately notify the Chief of Staff. Suspension, revocation or exclusion of Medicare and/or Medicaid participation or eligibility shall result in an automatic suspension of Medical Staff membership and/or clinical privileges until such time the practitioner is no longer suspended or otherwise considered an excluded provider as defined by applicable Federal regulations or related guidance.

1.3.4 Failure to Pay Dues

Failure by any practitioner to pay Medical Staff annual dues, special assessments or any other fines as required by or under authority of the Medical Staff Bylaws shall immediately and automatically result in suspension of the practitioner's Medical Staff membership and clinical privileges until such time as the practitioner provides sufficient evidence that he/she has satisfied this requirement.

1.3.5 Medical Record Completion

- (a) Activation of Suspension. The requirements, review and notification process regarding patient chart deficiency and delinquency are set forth in applicable Hospital and/or Medical Staff Policy.

- (b) Patients. A practitioner whose clinical privileges are suspended because of delinquent charts must arrange in a timely manner for the appropriate transfer of care of his/her admitted patients to another appropriately privileged physician.
- (c) Notice. The CEO or designee will give the suspended practitioner Special Notice, with copy to the MEC, that the practitioner's clinical privileges have been automatically suspended because of his or her delinquent records.
- (d) Waiver Request. A practitioner may request a written waiver of these requirements in advance of extended planned vacations or professional absences, provided any such waiver will not result in medical records in question being noncompliant with laws and accreditation standards applicable to Hospital.

1.3.6 Failure to Maintain Professional Liability Insurance

Practitioners shall at all times maintain professional liability insurance in the amounts and limits established by the Governing Body. In the event that the practitioner does not have the required insurance, or the limits of coverage are reduced below the required amounts, he/she shall immediately notify the Chief of Staff or the CEO.

- (a) Activation of Suspension. If a practitioner's professional liability insurance is canceled, not renewed, or the practitioner fails to maintain professional liability insurance in sufficient coverage, scope, and limits established by the Governing Board, the practitioner's clinical privileges shall automatically suspend on the same date and time that his/her insurance coverage ceases or status changes.
- (b) Notice. Each practitioner is obligated to promptly notify the Hospital if his or her professional liability insurance is canceled, not renewed, or the practitioner fails to maintain professional liability insurance coverage as established by the Governing Board. The Hospital shall notify the practitioner of any such suspension. The CEO shall promptly notify the Chief of Staff relevant Department Chairperson(s) of any such administrative suspension.
- (c) Period of Suspension. Administrative suspension of a practitioner's clinical privileges shall continue until such coverage or status is reestablished and practitioner provides a certificate of coverage or other reliable evidence of coverage acceptable to the CEO. The CEO shall send Special Notice to practitioner and copy the Chief of Staff to confirm that the CEO has received reliable evidence pursuant to this Section 1.3.7(c) and that practitioner's membership and clinical privileges are reinstated.

1.3.7 Failure to Successfully Complete Hospital sponsored Training Programs related to Electronic Medical Record (EMR) and related Clinical System Implementation

Failure to successfully complete Hospital sponsored training programs related to EMR and related clinical system implementation, pass any related program examination or opt-out examination, and submit required program documentation as required by the Medical Staff Bylaws within thirty (30) days following receipt of a reminder notice to the member shall result in automatic suspension of Medical Staff membership and clinical privileges until the required training and examination are successfully completed and documentation is submitted. A member whose Medical Staff membership and clinical privileges are suspended because of a failure to successfully complete EMR training must arrange in a timely manner for the appropriate transfer of care of his/her admitted patients to another appropriately privileged physician.

1.3.8 Failure to Satisfy Special Appearance Requirement

A practitioner who fails without good cause to appear at a meeting where his/her special appearance is required in accordance with these bylaws shall be considered to have automatically relinquished all clinical privileges with the exception of emergencies and imminent deliveries. These privileges will be restored when the practitioner complies with the special appearance requirement. Failure to comply within thirty (30) calendar days will be considered a voluntary resignation from the Medical Staff.

1.3.9 Failure to Participate in an Evaluation

A practitioner who fails to participate in an evaluation of his/her qualifications for Medical Staff membership or privileges as required under these bylaws (whether an evaluation of physical or mental health or of clinical management skills) and authorizes release of this information to the MEC, shall be considered to have automatically relinquished all privileges. These privileges will be restored when the practitioner complies with the requirement for an evaluation. Failure to comply within thirty (30) calendar days will be considered a voluntary resignation from the Medical Staff.

1.3.10 Failure to Execute Release and/or Provide Documents

A practitioner who fails to execute a general or specific release of information and/or provide documents when requested by the MEC to evaluate the competency and credentialing/privileging qualifications of the practitioner shall be considered to have automatically relinquished all privileges. If the release is executed and/or documents provided within thirty (30) calendar days of notice of the automatic relinquishment, the practitioner may be reinstated. After thirty (30)

calendar days, the Member will be deemed to have resigned voluntarily from the staff and must reapply for staff membership and privileges.

1.3.11 Failure to Maintain Eligibility or Satisfy Responsibilities

Failure by any practitioner to meet and maintain the following minimum objective criteria for Medical Staff membership and clinical privileges or associated responsibilities as set forth in the Governance Medical Staff Bylaws shall immediately and automatically result in suspension of the practitioner's Medical Staff membership and/or clinical privileges until such time as the practitioner provides sufficient evidence that he/she is in compliance with such requirements or otherwise eligible: (a) current federal DEA registration certificate to the extent required to exercise the clinical privileges the practitioner exercises in the Hospital; (b) non-exclusion or preclusion from participation in federal and Texas governmental health care programs, including Medicare and Medicaid; (c) professional liability insurance coverage in the amount required by these Bylaws; (d) Board certification, as required by the Medical Staff Bylaws; (e) submit to and meaningfully participate in focused and ongoing or periodic peer review of professional competence and skill and related quality assurance and improvement activities and policies, whether undertaken internally or externally; (f) comply with the Hospital's Emergency Department call roster or Hospital coverage program as determined by the Chairperson(s) of the respective Department(s) or MEC consistent with the requirement of EMTALA as implemented by the Hospital and the MEC; (g) comply with the Hospital's communicable disease surveillance program pursuant to the Hospital and Medical Staff policy; or (h) successfully complete in a timely manner any Hospital sponsored training programs related to electronic medical records (EMR) and related clinical system implementation, and to meet the other obligations or responsibilities as further described in Sections 1.1 or 1.2 of the Governance and Credentialing Manual.

1.3.12 Procedural Rights and Effect of Suspension

A practitioner who remains suspended for any of the above reasons for more than sixty (60) days if not otherwise specified shall be deemed to have voluntarily withdrawn his/her Medical Staff membership and/or clinical privileges, without right of appeal or hearing. In such event, the practitioner may reapply for Medical Staff membership as a new applicant, pursuant to the procedures set forth in the Governance and Credentialing Manual.

Section 1.4. **Disability**

Any practitioner, except an Honorary Staff member, who has been absent from his/her Hospital duties or has been unable to perform usual professional duties for more than sixty (60) days because of a physical, mental, emotional or other impairment or disability, shall upon request provide the Chief of Staff or Chief of Staff or his or her Department

Chairperson with a written report from his or her attending physician that addresses the practitioner's health status and that includes a recommendation regarding the practitioner's capacity to practice. A second opinion from an appropriate physician appointed or approved by the MEC or applicable Medical Staff committee may be required. If the MEC or the applicable Medical Staff committee finds the circumstances surrounding a practitioner's impairment or disability suggests that there is a limitation on the practitioner's ability to properly or safely exercise clinical privileges, regardless of the practitioner's absence from or presence at the Hospital, the MEC or applicable Medical Staff committee shall report its findings to the MEC, which shall then determine whether further investigation or corrective action pursuant to this Plan should be initiated.

ARTICLE II

HEARING AND APPEAL PROCEDURES

Those practitioners who are Medical Staff members or are otherwise entitled to the hearing and appeal procedures under this Plan are subject to the procedures set forth in this Article II.

Section 2.1. Entitlement to Mediation

2.1.1 Eligibility

- (a) A practitioner on the Medical Staff applying for membership on the Medical Staff and/or clinical privileges may request mediation if a Credentials Committee has failed to make a recommendation on appointment and/or clinical privileges to the MEC on or before the 180th day after receiving the practitioner's application. The 180-day period does not commence until the Credentials Committee has received all documents necessary for review of the application, including documents that are requested from the practitioner and other entities or individuals.
- (b) practitioners who are subject to an adverse professional review action that may adversely affect his or her medical staff membership or privileges may request mediation.

2.1.2 Requesting Mediation

- (a) A practitioner must submit the request for mediation in writing to his or her CEO. A practitioner has the right to one mediation during the application process or professional review action. The practitioner must submit the written request for mediation within the following timeframes: If the facility Credentials Committee has failed to make a recommendation regarding appointment within the required timeframe, the applying practitioner must submit the written request for mediation within fourteen (14) from the 90th day after the facility Credentials Committee received the

applicant's completed application. If the practitioner is subject to an adverse action, the practitioner must request mediation before requesting a hearing as specified in herein. The practitioner must notify his or her CEO within thirty (30) days following the date of receipt of a notice as described herein. The practitioner is not entitled to a second mediation.

2.1.3 Conduct of Mediation

- (a) The mediation shall occur within ninety (90) days after the CEO receives the practitioner's written request for mediation. The CEO will choose a mediator that meets the qualifications set forth below. The CEO has the discretion to make the following options available for selection of a mediator:
 - i. If the practitioner requesting mediation wishes to choose the mediator, the practitioner must agree to pay the fees and expenses of the mediator selected.
 - ii. If the CEO chooses the mediator without approval of the practitioner requesting mediation, the Hospital pays the fees and expenses of the mediator.
 - iii. If the practitioner and CEO jointly select a mediator acceptable to both parties, the practitioner and the Hospital shall each pay half of the fees and expenses charged by the mediator.

If the practitioner requesting the mediator does not make a decision regarding a mediator within two (2) weeks, the CEO may choose the mediator, and the Hospital will bear the costs. Individuals with the following qualifications may serve as mediators: an attorney registered with the American Health Lawyers Association Alternate Dispute Resolution Service; an attorney who specializes in Health Law; a person registered as a mediator with the American Arbitration association; or a person who can prove that s/he has been appointed by any Texas district court as a Mediator or Arbitrator.

- (b) Upon mediator selection and proposed dates are identified, the CEO will provide the practitioner with an option of three (3) dates. Failure to accept one of the three dates will result in waiver of the mediation by the practitioner.
- (c) If the practitioner fails to appear for a scheduled mediation, the practitioner waives the right to mediation. The practitioner waives the right to mediation, unless the mediator deems the failure to appear as unavoidable, at which time the mediator can reschedule the mediation. The Hospital is

not required to reschedule the mediation or to respond to another request for mediation for the same adverse action.

2.1.4 Effect of Mediation

- (a) If the Hospital and practitioner reach an agreement resolving the dispute, within thirty (30) days following the mediation, the CEO will have the agreement reduced to writing and a signed copy of the agreement will be submitted to the Medical Executive Committee for approval and referral to the Governing Board at the next scheduled meeting of the Medical Executive Committee. If the Medical Executive Committee approves an agreement, the action is concluded, and the practitioner will have no further rights of appeal on that action. If the Medical Executive Committee or the Governing Board does not approve of the agreement, the practitioner will still have any rights of due process or appeal that are otherwise granted to the practitioner in this Fair Hearing Plan.
- (b) If the Hospital and practitioner do not reach an agreement resolving the dispute, the practitioner will receive Special Notice informing the practitioner that within thirty (30) days following the mediation, the practitioner shall notify his or her CEO of his/her request for a hearing as described herein. Failure to request such a hearing within this time period waives the practitioner's right to a hearing and appellate review, resulting in the adverse recommendation becoming a final decision of the Governing Board.

Section 2.2. **Hearing**

2.2.1 Grounds for a Hearing

Practitioners shall be entitled to a hearing and appeal, as applicable, in accordance with Article 2 of this Plan, if in the furtherance of quality health care, the MEC recommends, or if the Governing Board (without there having been a prior hearing or waiver thereof; or if permitted by Section 1.1.8 of this Plan) determines that it intends to take or takes, an adverse action, as that term is defined in this Plan.

Summary suspensions shall be handled in accordance with Section 1.2 and, where appropriate, Article 2 of this Plan.

2.2.2 Notice of Adverse Recommendation or Action

- (a) The Chief of Staff, on behalf of the MEC or Governing Board, as applicable, shall give Special Notice to the practitioner of any adverse action, recommendation, summary suspension or administrative suspension that

provides for hearing or appellate review rights under Section 1.1-1.3 herein. The Special Notice shall state:

- i. The action proposed to be taken;
- ii. The reasons for the proposed action;
- iii. That the practitioner has the right to request a hearing on the proposed action, if applicable;
- iv. Unless otherwise provided for herein, that the practitioner has thirty (30) days after receipt of the notice within which to submit a request for a hearing and that the request must satisfy the conditions of Section 2.1.3;
- v. A summary of the practitioner's rights in the hearing;
- vi. That failure to request a hearing within the above time period, and in the proper manner, constitutes a waiver of rights to any hearing or appellate review, if applicable, on the matter that is the subject of the notice; and
- vii. That upon the Chief of Staff's receipt of the practitioner's hearing request, the practitioner shall be notified of the date, time and place of hearing, which unless otherwise provided for herein shall not be less than thirty (30) days nor more than ninety (90) days after the notice and shall provide the practitioner with a list of the witnesses expected to testify at the hearing on behalf of the MEC or Board, as applicable.

2.2.3 Request for a Hearing/Waiver

Except in the case of summary and automatic suspensions, a practitioner shall have thirty (30) days after receiving a Special Notice under Section 2.1.2 to submit a written request for a hearing. Practitioners under summary or automatic suspension shall be notified that they must request a hearing as soon as practicable (See Section 2.1.6 below). The request must be delivered to the Chief of Staff, with copy to the CEO, either in person or by certified or registered mail.

If the practitioner does not request a hearing within the time and in the manner specified, he or she shall be deemed to have waived his or her right to hearing, and if the matter has not already been submitted to the Governing Board, it shall be forwarded to the Governing Board for final action. By requesting a hearing or appellate review under this Plan, a practitioner agrees to be bound by the provisions of the Medical Staff Bylaws relating to immunity and release from liability.

2.2.4 Appointment of the Hearing Committee

The Chief of Staff and the CEO shall appoint a Hearing Committee composed of three (3) members of the Active Medical Staff. The Chief of Staff and the CEO shall appoint one (1) member of the Hearing Committee as the Chairperson.

(a) Hearing Committee Composition

Knowledge of the matter involved shall not preclude a Medical Staff member from serving on the Hearing Committee, but a Medical Staff member who previously considered and voted on the matter, has a family, professional or business relationship with the practitioner requesting a hearing that makes it inappropriate for such person to serve, or is in direct economic competition with the practitioner shall not be eligible to serve on the Hearing Committee. In the event it is not practicable to appoint a Hearing Committee from the Hospital's Active Medical Staff, the Chief of Staff and the CEO may appoint one or more members from another CHRISTUS Health hospital's active medical staff who are of good reputation and willing to serve on the Hearing Committee.

(b) Opportunity to Object

The Chief of Staff shall notify the practitioner of the composition of the Hearing Committee. The practitioner shall have an opportunity to object to any of the proposed members of the Hearing Committee if he or she can identify an objective basis as to why the individual(s) should not participate. The practitioner must deliver any such objection to the Chief of Staff and CEO within seven (7) days of the practitioner receiving notice of the Hearing Committee composition. The Chief of Staff and the CEO shall appoint an individual(s) to replace the contested proposed member(s), if they determine that just cause for removal has been established by the practitioner.

(c) Presiding Officer

The use of a Hearing Officer to act as the Presiding Officer at the hearing is optional and is to be determined by the CEO and Chief of Staff. If appointed, the Hearing Officer should be an attorney at law, and if reasonably possible, have experience in conducting such hearings. A Hearing Officer is not a voting member of the Hearing Committee. Rather, a Hearing Officer shall assist and counsel the Hearing Committee members, as requested, in connection with the proceeding and shall assist with preparation of the Hearing Committee's Report. Where a Hearing Officer is not appointed, the Chairperson of the Hearing Committee shall act as the Presiding Officer. The Presiding Officer shall conduct the hearing, any

pertinent pre-hearing matters, maintain decorum, and rule on all evidentiary and witness matters. The Presiding Officer shall ensure that all participants have a reasonable opportunity to present relevant oral and documentary evidence and shall determine the order of procedure at the hearing.

2.2.5 Hearing Committee Action

A simple majority of the members of the Hearing Committee shall constitute a quorum. Each member of the Hearing Committee must attend at least a majority of the hearing dates and must review hearing transcripts and records for those meetings that were missed in order to participate and vote on the hearing proceedings.

2.2.6 Time and Place of Hearing

The Chief of Staff or Chief of Staff shall schedule and convene a hearing no sooner than thirty (30) days after the date of the request from the practitioner, unless the adverse action or decision triggering the hearing is a summary or automatic suspension, in which case the hearing must be convened within fifteen (15) days of the date on which the suspension was imposed. These times may be extended upon mutual agreement of the parties. A request for hearing by a practitioner under summary or automatic suspension submitted ten (10) days or later after receiving a Special Notice under Section 2.1.2 shall be considered as his or her agreement that the hearing may be convened within twenty (20) days of the date on which the suspension was imposed. The Chief of Staff will provide Special Notice to the practitioner, of, at a minimum, the date, time, and place of the hearing, a list of the witnesses expected to testify at the hearing on behalf of the MEC or Board, as applicable.

2.2.7 Witnesses and Documents

No later than ten (10) days prior to the hearing (three (3) days in the case of summary or automatic suspensions), the practitioner and the MEC and/or Governing Board (whichever brought the automatic suspensions), the practitioner and the MEC and/or Governing Board (whichever brought the automatic suspensions) shall furnish to the other party a written list of the names and addresses of the witnesses he or she intends to call at the hearing. Neither the practitioner, nor his or her legal counsel, nor any other person on behalf of the practitioner, shall contact Hospital employees or staff appearing on the Medical Staff or Governing Board's witness list concerning the subject matter of the hearing, unless specifically and mutually agreed upon by and among the practitioner, MEC, and/or the Governing Board.

There is no right to discovery in connection with the hearing. Each party, however, shall provide the other party within ten (10) days (three (3) days in the case of summary or automatic suspensions) copies of all documents (including, but not limited to patient medical records, incident reports, redacted Department or committee minutes, memoranda, correspondence, books, or articles) that will be offered as evidence or relied upon by witnesses at the hearing, and which are pertinent to the basis for which the action is recommended or imposed. The Presiding Officer may address, and rule upon, any objections or other issues raised in connection with the exchange of documents. All documents shall be treated by the parties as confidential peer review information, shall not be disclosed to third parties not involved in the hearing and shall remain subject to the applicable peer review protections available under state and federal law. Unless the parties agree otherwise, or unless a party demonstrates good cause for its noncompliance as determined by the Presiding Officer, a party will not be permitted to utilize documents or information at the hearing that are not timely disclosed to the other party.

2.2.8 Hearing

(a) Right to Counsel

The Medical Staff or the Governing Board (whichever brought the action), and the practitioner, are each entitled to representation by personal legal counsel and/or other person of choice who may present evidence, call, examine, and cross-examine witnesses. If the practitioner is represented by legal counsel, such representation is at his or her sole expense. The CEO shall appoint legal counsel to represent the Medical Staff and/or Board.

(b) Hearing Procedure

The Presiding Officer shall conduct the hearing. The MEC or Governing Board (as applicable) shall present its evidence first. The practitioner shall then present his or her evidence. Both parties shall be given the opportunity for cross-examination or rebuttal as deemed appropriate by the Presiding Officer.

(c) Admissibility of Evidence

The hearing shall not be conducted according to rules of law or procedures relating to the examination of witnesses or presentation of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to relying in the conduct of serious affairs, regardless of the admissibility of such evidence in a court of law. Evidence or testimony that is not relevant and/or is repetitious in the determination of the Presiding Officer may be excluded. The Hearing

Committee may ask questions of the witnesses and may, on its own initiative, request the presence of expert or other witnesses, as it deems appropriate. All determinations of evidentiary appropriateness shall be made by the Presiding Officer. If the practitioner does not testify on his or her own behalf, he or she may be called and examined by the Medical Staff or Governing Board as if under cross-examination.

(d) Burden of Proof

It is the practitioner's burden to demonstrate, by a preponderance of the evidence, that there is no factual or reasonable basis for the adverse recommendation or decision.

(e) Record of Hearing

The Hearing Committee shall maintain a record of the hearing by a court reporter who is present during the proceedings. The Hearing Committee shall require evidence to be taken only on sworn oath or affirmation administered by any person authorized to administer such oaths in the State of Texas.

(f) Written Statement

The practitioner shall have the right to submit a written statement or proposed findings of fact and conclusions of law to the Hearing Committee for its consideration in final deliberations. Such statement or submission is due to the Hearing Committee with copy to the Chief of Staff within seven (7) days following receipt of the hearing transcript by each party, unless otherwise extended by agreement of the parties. If such statement or submission is presented, the MEC or Governing Board (whichever is applicable), will be given the opportunity to submit a response, which is due to the Hearing Committee within seven (7) days of receiving the practitioner's statement or submission. Any written statements or submissions shall be considered part of the Hearing Record.

2.2.9 Failure to Appear and Respond

If the practitioner fails to appear or timely respond after notice and without sufficient cause as determined by the Hearing Committee, the practitioner will be deemed to have waived the right to a hearing, and the Presiding Officer may direct the MEC or Governing Board representative (whichever is applicable) to present a written summary of the basis for the recommendation or action along with any pertinent evidence against the practitioner to the Hearing Committee. The written summary shall include reference to the fact that the practitioner failed to appear at the requested hearing.

2.2.10 Adjournment and Decision

The Presiding Officer may adjourn and reconvene the hearing at the convenience of the participants without Special Notice. The hearing is closed upon conclusion of the presentation of oral and written evidence, and receipt of the hearing transcript. The Hearing Committee shall conduct its deliberations in private. If the Hearing Committee finds that the practitioner has not met his or her burden of proof, then it shall either recommend that the action recommended or taken by the MEC or the Governing Board be initiated or affirmed, as the case may be; or it may recommend some lesser or greater action as is appropriate in light of the evidence. Within fourteen (14) days after receipt of the hearing transcript, or if the practitioner chooses to submit a post-hearing statement or other submission, then fourteen (14) days after receipt of the MEC's or Governing Board's statement or submission (as applicable), the Hearing Committee shall submit its written findings and recommendations, in its sole discretion, to either the MEC or directly to the Governing Board or designated committee, with a copy to the MEC and practitioner by Special Notice.

If referred to the MEC for additional consideration and final recommendation to the Governing Board, the referral should state the reasons for such referral. The MEC shall have seven (7) days following its next regularly scheduled meeting to complete its review and make a final recommendation to the Governing Board. The report of the MEC must contain, at a minimum, the Hearing Committee and/or MEC's findings and the nature of the basis for any adverse action recommended. The MEC's report and final recommendation shall be submitted to the Governing Board or a designated committee thereof with a copy to the practitioner by Special Notice.

Section 2.3. **Appeal Procedure/Miscellaneous Provisions**

2.3.1 Right to an Appeal

Within ten (10) days after receipt of a recommendation by the Hearing Committee or final recommendation of the MEC, either party to the proceeding may request an appellate review by the Governing Board. Such request shall be in writing and delivered to the CEO either electronically, by hand delivery or prepaid United States certified mail with return receipt requested, traceable courier service, or confirmed facsimile. A request for an appeal shall set forth the practitioner's or MEC's objections and exceptions to the Hearing Committee's recommendation or the MEC's final recommendation, as applicable, and shall be limited to those findings of fact issued by the Hearing Committee or MEC and/or the alleged failure to substantially follow this Plan or other provisions of the Medical Staff Bylaws. Without exception, if the practitioner fails to request an appeal within the time required, then the practitioner will have waived all rights for an appellate review under this Plan, and the Governing Board shall then take final action on the matter.

2.3.2 Time Frame for Review

Within thirty (30) days after the receipt of request for an appeal, the Governing Board, or a designated committee thereof, shall conduct a review of the matter; provided, however, that if the practitioner requesting the appeal is subject to a summary suspension, the review will be held as soon as the arrangements may reasonably be made. The CEO or other Governing Board representative will notify the parties of the date, time, and place of the appellate review.

2.3.3 Nature of the Appellate Review

Within fifteen (15) days of the Governing Board receiving the practitioner's or MEC's request for appellate review and statement of objections, the party not appealing the Hearing Committee's or MEC's final recommendation may submit a response to the Governing Board or designated committee. The Governing Board or designated committee shall review the appealing party's statement to the response, if submitted, and shall have access to the entire record of the Hearing Committee. The Governing Board or designated committee, may, but is not obligated to, invite a Medical Staff representative or the practitioner to be present. Only under unusual circumstances will the practitioner or MEC be permitted to introduce new or additional evidence, including witnesses, not considered during the original hearing, and the Governing Board or designated committee, shall be the sole determinant as to whether such new matter may be presented. The party requesting the appeal shall have the burden of establishing by a preponderance of the evidence that the Hearing Committee's recommendation was arbitrary and capricious or otherwise lacked any factual basis. The Governing Board may adopt, modify or reject the recommendation(s) of the Hearing Committee, or it may refer the matter to the Hearing Committee for further review and recommendation to be completed within thirty (30) days, unless the parties otherwise stipulate.

2.3.4 Final Decision

The Governing Board shall render a final decision in writing and deliver copies to the practitioner and MEC by Special Notice.

2.3.5 Application following Denial

If the Governing Board determines to deny initial Medical Staff appointment or reappointment to a practitioner, or to revoke, restrict, or terminate a practitioner's Medical Staff membership and/or clinical privileges, the practitioner may not apply for Medical Staff membership and/or the affected clinical privileges at the Hospital for a period of two (2) years unless the Governing Board expressly provides otherwise.

2.3.6 Substantial Compliance

These Bylaws are intended, in part, to create a framework to ensure compliance with fundamentally fair due process procedures. Provided that the Medical Staff and Governing Board act in a manner reasonably consistent with this Corrective Action and Fair Hearing Plan, and other than the timeframe for a practitioner to request a hearing or appellate review (as set forth in the Corrective Action and Fair Hearing Plan), strict compliance by the Medical Staff or Governing Board with the procedures and timelines set forth in these Bylaws is not required. These Bylaws are not intended in any fashion to create legally binding rights to strict compliance with its provisions. Accordingly, these Bylaws shall not be interpreted as, nor construed to give rise to any type of legal action, claim, or proceeding for breach of contract related to strict compliance.

2.3.7 Right to Only One Hearing and Appeal

A practitioner is entitled to only one (1) hearing and one (1) appeal with respect to the subject matter that is the basis of the adverse action triggering the right to such hearing and appeal, regardless of whether the action is by the MEC, the Governing Board or a combination of their acts.

2.3.8 Exhaustion of Administrative Remedies

Any practitioner entitled to a hearing and appeal agrees to follow and exhaust or otherwise waive the procedures and remedies afforded by this Plan as a prerequisite to any other legal action, if any, available to the practitioner.