



**MEDICAL STAFF BYLAWS  
OF GENESIS MEDICAL  
CENTER,  
DEWITT CAMPUS:  
Corrective Action and Fair  
Hearing Plan**

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The definitions set forth in the Medical Staff Governance and Organization Manual apply to this Corrective Action and Fair Hearing Plan unless otherwise indicated.

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## **PREAMBLE**

The Governing Board of Genesis Medical Center - Davenport Campus, its Medical Staff, and any committees thereof, in order to conduct professional peer review activities, hereby constitute themselves as peer review committees and professional review bodies as used or defined by applicable Iowa law 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 Iowa Peer Review Statute and the federal Health Care Quality Improvement Act of 1986.

### **ARTICLE 1: CORRECTIVE ACTION PROCEDURE**

#### **Section 1.1 Applicability**

The corrective action procedures and related procedural rights described in this Plan are available only to those physicians, dentists, oral surgeons, and podiatrists who are seeking or who have been granted membership on the Medical Staff. The corrective action, hearing and appellate procedures specific to non-physician practitioners are set forth in the Medical Staff Credentialing Manual. Licensed non-physician practitioners are not entitled to the hearing and appellate review procedures available to physicians, dentists, oral surgeons, and podiatrists as generally described in this Plan, however, non-physician practitioners with clinical privileges at the Hospital are subject to Sections 1.3.1 through 1.3.7 of this Plan, 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 President of the Medical Staff.

##### **1.1.2 Criteria for Initiation**

When information reasonably indicates that a member of the Medical Staff (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 Iowa 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 Iowa 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 President of the Medical Staff, with a copy then provided to the Hospital Administrator, VPMA, and System CMO in their capacities as MEC designees. The request should contain a brief statement of the conduct or activities that constitute the basis for the request. Upon receiving a request, the President of the Medical 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 President of the Medical 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 President of the Medical 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 President of the Medical 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. Actual or potential conflicts of interest should be considered when delegating an investigation.
- (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 Hospital Administrator 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 President in consultation with the Hospital Administrator shall appoint no less than three (3) members of the Active and/or Courtesy 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 makes a recommendation 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 that is based on the competence or professional conduct (as further defined by the Health Care Quality Improvement Act of 1986, as amended) of 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 applicable Iowa law; and
  - (x) Any other action or recommendation not "adversely affecting" (as such term is defined in the Health Care Quality Improvement Act of 1986, as amended) 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 and/or fulfills defined Medical Staff responsibilities 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) The Hospital Administrator shall notify the practitioner by Special Notice of any action taken by the MEC described in Section 1.1.6 that is not an adverse action the Chairperson (s) of all relevant Department (s) shall be reasonably notified of any such action.

### **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 or designee 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 or designee takes action that does entitle the practitioner to a hearing if that action had been taken by the MEC, then the Hospital Administrator 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 or designee 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 or 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, all or any one (1) of the following individuals shall have the authority to summarily suspend by immediate verbal notice all or part of the practitioner's clinical privileges and/or Medical Staff membership: the President of the Medical Staff and the Hospital Administrator, or their respective designees., When acting in collaboration, these individuals will operate as an ad hoc peer review committee.

Upon any such suspension, the Hospital Administrator shall promptly notify the practitioner of the suspension by Special Notice, with copy to the President of the Medical Staff, and the VPMA/CMO. 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 by the President of the Medical Staff or designee to a member of the Medical Staff who 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.

### **1.2.2 MEC Action**

Within fourteen (14) 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 will 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 below.

### **1.2.3 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 Iowa. 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 President of the Medical 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 rights under this Plan.

- (a) **Revocation.** Whenever a practitioner's license to practice in Iowa 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 Iowa 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, a review shall be initiated under Section 1.1 herein.
- (d) **Restriction.** Whenever a practitioner's license to practice in Iowa 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/Iowa Controlled Substance Registration

Practitioners shall at all times maintain a current and valid Federal DEA registration and Iowa controlled substance registration, if necessary, to exercise any of their clinical privileges. In the event a practitioner's Federal or Iowa registration is revoked, suspended, or limited, he or she shall immediately notify the President of the Medical 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 is suspended or revoked or if he/she receives notices of any investigation or possible disciplinary action, the practitioner shall immediately notify the President of the Medical 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 within ninety (90) days of receipt of initial notification from Medical Staff Services of such financial obligation (which ninety (90) day period includes a thirty (30) day warning period pursuant to 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. Notwithstanding the foregoing, a practitioner who remains suspended for this reason for more than thirty (30) days shall be deemed to have voluntarily withdrawn his/her Medical Staff membership and 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 Medical Staff Credentialing Manual.

### **1.3.5 Medical Record Completion**

Practitioners shall at all times comply with the Medical Record Policy adopted by the Medical Staff and Hospital. A failure to comply with the standards and requirements set forth in this Policy shall result in an automatic suspension of Medical Staff membership and/or clinical privileges until such time the practitioner is in compliance with the standards and requirements set forth in the Policy.

- (a) **Activation of Suspension.** The review, standards, and notification process regarding patient chart deficiency and delinquency as set forth in the current Medical Record Policy of the Medical Staff. A practitioner's patient charts will be deemed delinquent if not completed in the manner and within the timeframe as set forth in this 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 Hospital Administrator 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.

Notwithstanding the foregoing, a practitioner who remains suspended by terms of the applicable Medical Staff policy for more than ninety (30) days shall be deemed to have voluntarily withdrawn his or her Medical Staff membership and clinical privileges, without right of appeal or hearing. In such event, the practitioner may reapply for Medical Staff membership or clinical privileges as a new applicant, pursuant to the procedures set forth in the Medical Staff Credentialing Manual.

### **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 President of the Medical Staff and the Hospital Administrator.

- (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 Hospital Administrator shall promptly notify the President of the Medical Staff 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 Hospital Administrator. The Hospital Administrator shall send Special Notice to practitioner and copy the President of the Medical Staff to confirm that the Hospital Administrator has received reliable evidence pursuant to this Section 1.3.7(c) and that practitioner's membership and clinical privileges are reinstated.

Notwithstanding the foregoing, a practitioner who remains suspended for this reason for more than ninety (90) days shall be deemed to have voluntarily withdrawn his or her Medical Staff membership and clinical privileges, without right of appeal or hearing. In such event, the practitioner may reapply for Medical Staff membership or clinical privileges as a new applicant, pursuant to the procedures set forth in the Medical Staff Credentialing Manual.

### **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 as required by applicable Medical Staff policy, pass any related program examination or opt-out examination, submit required program documentation as required by Section 1.3 of the Medical Staff Governance and Organization Manual, and comply with related policies 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. A member who remains suspended for this reason for more than thirty (30) days shall be deemed to have voluntarily withdrawn his or her Medical Staff membership and clinical privileges, without right of appeal or hearing. In such event, the member may reapply for Medical Staff membership or clinical privileges as a new applicant, pursuant to the procedures set forth in the Medical Staff Credentialing Manual.

### **1.3.8 Failure to Maintain Eligibility or Satisfy Responsibilities**

Failure by any practitioner to meet the following minimum objective criteria and responsibilities for Medical Staff membership or clinical privileges as described in Sections 1.7 and 1.8 of the Medical Staff Governance and Organization Manual or applicable Medical Staff policy 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 is in compliance with such requirements or is otherwise eligible:

- (a) current federal DEA registration certificate or Iowa Controlled Substances Registration to the extent required to exercise the clinical privileges the practitioner exercises in the Hospital;
- (b) non-exclusion from participation in federal and Iowa 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 Section 1.7 of these Bylaws;
- (e) comply with and meaningful participation in focused and ongoing or periodic peer review of professional competence and skill, whether undertaken internally or externally, including related quality assurance and improvement or patient safety activities and policies;
- (f) comply with the Hospital's Emergency Department and Ambulatory Care call coverage policy(ies) as established by the MEC and Hospital consistent with the requirements of EMTALA and Hospital policy as implemented by the Hospital and Medical Staff;
- (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.

Unless otherwise provided in this Plan, a practitioner who remains suspended for one of these reasons for more than thirty (30) days shall be deemed to have voluntarily withdrawn his/her Medical Staff membership and 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 Medical Staff Credentialing Manual.

## **Section 1.4 Disability**

Any practitioner, except an Emeritus Staff member, who has been absent from his/her Hospital duties or has been unable to perform usual professional duties for more than thirty (30) days because of a physical, mental, emotional or other disability will be subject to the then current Impaired Practitioner policy of the Medical Staff.

## **ARTICLE 2: 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 2.

### **Section 2.1 Hearing**

#### **2.1.1 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. Automatic suspensions under Section 1.3 above are generally not considered adverse actions based on competence or professional conduct and do not afford hearing or due process rights as provided for in this Plan.

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

#### **2.1.2 Notice of Adverse Recommendation or Action**

- (a) The President of the Medical Staff, on behalf of the MEC or Governing Board, as applicable, shall give Special Notice to the practitioner of any adverse action, recommendation or summary suspension that provides for hearing or appellate review rights under Section 1.1-1.2 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 President of the Medical 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.

### **2.1.3 Request for a Hearing/Waiver**

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. The request must be delivered to the President of the Medical Staff, with copy to the Hospital Administrator, 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.

### **2.1.4 Appointment of the Hearing Committee**

The President of the Medical Staff in consultation with the Hospital Administrator or designee shall appoint a Hearing Committee composed of three (3) members of the Active and/or Courtesy Staff. The President of the Medical Staff 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 participated 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 Staff, the President of the Medical Staff in consultation with the Hospital Administrator or designee may appoint one or more members from another Genesis Health hospital's active medical staff who are of good reputation and willing to serve on the Hearing Committee.

#### **(b) Opportunity to Object**

The President of the Medical 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 President of the Medical Staff and Hospital Administrator or designee within seven (7) days of the practitioner receiving notice of the Hearing Committee composition. The President of the Medical Staff in consultation with the Hospital Administrator or designee 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 President of the Medical Staff and Hospital Administrator or designee. 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.

### **2.1.5 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.

### **2.1.6 Time and Place of Hearing**

The President of the Medical Staff shall schedule and convene a hearing no sooner than thirty (30) days after the date of the request from the practitioner. This time period may be extended upon mutual agreement of the parties. The President of the Medical 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.

### **2.1.7 Witnesses and Documents**

No later than ten (10) days prior to the hearing (three (3) days in the case of summary suspensions), the practitioner and the MEC and/or Governing Board, as applicable, the practitioner and the MEC and/or Governing Board 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 suspensions) copies of all documents (including, but not limited to patient medical records, incident reports, redacted 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.

### **2.1.8 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 Hospital Administrator 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 rely 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 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 Iowa.
- (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 President of the Medical 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.

### **2.1.9 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.

### **2.1.10 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 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 2.2 Appeal Procedure/Miscellaneous Provisions**

### **2.2.1 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 Hospital Administrator

either 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.

### **2.2.2 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 Hospital Administrator or other Governing Board representative will notify the parties of the date, time, and place of the appellate review.

### **2.2.3 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.

### **2.2.4 Final Decision**

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

### **2.2.5 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.

### **2.2.6 Strict Compliance Not Required**

This Plan provides certain minimum procedures with respect to Medical Staff appointment, reappointment and/or clinical privileges determinations concerning applicants to and existing members of the Medical Staff. Provided that the Medical Staff and Governing Board act in a manner consistent with the Bylaws, and other than the timeframe for a practitioner to request a hearing or appellate review (as set forth in Sections 2.1.3, 2.2.1, and 3.1.3), strict compliance by the Medical Staff or Governing Board with the procedures and timelines set forth in this Plan is not required. The Bylaws are not intended in any fashion to create legally binding rights to strict compliance with their provisions. Accordingly, the 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.

### **2.2.7 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.

### **2.2.8 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.

## **ARTICLE 3: EXCLUSIVE CONTRACTING**

### **Section 3.1 Exclusive Contracting**

#### **3.1.1 Criteria and Procedure**

For all hearings requested as a result of an exclusive contracting decision of the Hospital, the fair hearing and appellate review rights and procedures set forth in this Article 3 apply to such decisions and are distinct from those rights and procedures applicable to all other hearings.

#### **3.1.2 Special Notice of Exclusive Contracting**

The Hospital Administrator shall give Special Notice to a member of the Medical Staff whose right or permission to exercise all or part of his or her clinical privileges will be affected as a result of the Hospital's decision to enter into an exclusive contract with an individual, group or entit(ies) other than the member. Such Special Notice shall be provided at least sixty (60) days prior to the effect on the member's membership and/or clinical privileges.

#### **3.1.3 Hearing for Exclusive Contracting**

The member shall have fourteen (14) days after receiving Special Notice under Section 3.1.2 to notify the Hospital Administrator in writing that he or she is requesting a hearing. The requested hearing will be conducted by a Hearing Committee appointed pursuant to Section 2.1.4 and conducted pursuant to Sections 2.1.5-2.1.9 herein with the exception of conflicting time periods which shall not apply. Within thirty (30) days following the Hospital Administrator's receipt of

the member's request for a hearing or unless otherwise agreed to by the parties, the hearing must be completed and the Hearing Committee must make its recommendation to the Governing Board, with a copy to the Hospital Administrator and member. The Governing Board or member may request the Hearing Committee to write specific findings from the hearing. If such a request is made, the Hearing Committee must submit its findings and recommendation to the Governing Board, Hospital Administrator, and member no later than forty-five (45) days from the date of the Member's request for a hearing.

### **3.1.4 Effect of Hearing Committee's Recommendation**

- (a) **Recommendation to Modify.** If the Hearing Committee recommends to the Governing Board to modify the Hospital's preliminary decision with respect to an exclusive contract arrangement and the recommendation does not have the effect of removing the member's right or permission to exercise his or her clinical privileges, the Governing Board shall consider such recommendation and take one of the following actions:
- 1) The Governing Board may adopt or modify the Hearing Committee's recommendation as its final action on the matter; or
  - 2) The Governing Board may reject the Hearing Committee's recommendation and affirm the preliminary decision to enter into the exclusive arrangement.

Regardless of whether the Governing Board's final action is (a)1 or (a)2 immediately above, the Hospital Administrator will notify the member of the Governing Board's final action by Special Notice. If the Governing Board's final action removes the right or permission to exercise all or part of the member's clinical privileges, such Special Notice will be sent at least fifteen (15) days before member's clinical privileges are affected. The loss of permission or right to exercise clinical privileges is not considered a revocation, suspension, or reduction of clinical privileges for purposes of this Article only.

- (b) **Affirmation and Right to Appellate Review.** If the Hearing Committee affirms the Hospital's preliminary decision to enter into an exclusive contract and such contract would remove the right or permission to exercise all or part of member's clinical privileges, the member may request an appeal before the Governing Board of the Hearing Committee's recommendation to affirm as set out in 3.1.4(c) below for purposes of this Article only.
- (c) **Process of Appellate Review.** All appeals of a Hearing Committee's recommendation to affirm the Hospital's decision to exclusively contract are subject to the following procedure and conditions:
- 1) **Requests:** All requests for an appellate review of a Hearing Committee's recommendation to affirm must be made in writing and delivered to the Hospital Administrator either by hand delivery or prepaid United States certified mail with return receipt requested, traceable courier service, or confirmed facsimile within five (5) days of member's receipt of the Hearing Committee's recommendation. Without exception, if such appellate review is not requested within five (5) days as provided herein, the member shall be deemed to have waived the right to an appeal, and

the Hearing Committee's recommendation shall be forwarded to the Governing Board for final action.

- 2) Procedure and Decision: Upon receipt of the member's timely and proper request for an appeal, the Governing Board will, as soon as practicable, schedule and arrange for an appellate review. This appellate review shall be conducted no less than seven (7) days nor more than twenty-one (21) days after receiving the request from the member. The Hospital Administrator shall send Special Notice to the member of the time, place, and date of the appellate review as soon as practicable.
  - i) A quorum of the Governing Board shall comprise the Appellate Review Body.
  - ii) The appellate review proceedings shall be a review based upon the Hearing Committee's recommendation and/or findings, the hearing record, and as applicable, supporting documentation, any written statements submitted by the member or Hospital or other information requested by the Governing Board. The member and Hospital representative may personally appear and make oral statements in favor of their position.
  - iii) Following completion of the Governing Board's review, and regardless of the Governing Board's final action, the Hospital Administrator will notify the member of the Governing Board's final action by Special Notice.
- (d) **Affirmation by the Governing Board.** If the Governing Board decides to affirm the preliminary decision of the Hospital to enter into an exclusive contract arrangement and this decision results in the loss of member's right or permission to exercise all or part of his or her clinical privileges, such Special Notice to the member will be sent at least fifteen (15) days before the effect on the member's clinical privileges. The loss of permission or right to exercise clinical privileges is not considered a revocation, suspension, or reduction of clinical privileges.
- (e) **Modification by the Governing Board.** If the Governing Board decides to modify the Hearing Committee's recommendation and/or the Hospital's preliminary decision to enter into an exclusive contracting arrangement or the arrangement's effect on the member's clinical privileges, such Special Notice of the Governing Board's final action will be sent to the member in a timely manner.