MEDICAL STAFF BYLAWS

FAIR HEARING PLAN, EXHIBIT "1"

Revised 12/3/1999, 1/14/2009, 2/5/2010, 3/16/2010, 04/23/2014, 11/17/2015, 10/17/17;
Reviewed with no changes 06/21/2005, 6/6/2008, 9/15/2020

PREAMBLE AND PURPOSE

The Board of Directors of Elkhart General Hospital, the Medical Staff and any committees thereof, in order to conduct professional peer review activity, hereby constitute themselves as peer review and professional review committees as defined by the Indiana Peer Review Act and the Health Care Quality Improvement Act of 1986. Such committees hereby claim all privileges and immunities afforded to them by said federal and state statues. The purpose of this Fair Hearing Plan ("Plan") is to provide, and as provided herein, a mechanism through which a fair hearing and appeal might be provided to all professional health care Practitioners having privileges or applying for privileges at the Hospital. This Plan is intended to comply with the Health Care Quality Improvement Act of 1986 and the Indiana Peer Review Act. As such, any action taken pursuant to this Plan shall be in the reasonable belief that such action was in the furtherance of quality health care (including the provision of care in a manner that is not disruptive to the delivery of quality medical care in the Hospital), after a reasonable effort has been made to obtain the true facts of the matter, after adequate notice and hearing procedures are afforded to any professional health care Practitioner involved, and in the reasonable belief that the action was warranted by the facts known after a reasonable effort has been made to obtain such facts.

It is intended that the provisions of this Plan regarding hearing and appeal rights be read and applied in concert with the Bylaws of the Medical Staff of Elkhart General Hospital in general, and Articles VI and VIII of the Bylaws in particular. To the extent any provision of Article VI or Article VIII of the Bylaws is irreconcilable or in conflict with the provisions in this Plan, the provisions of this Plan shall control.

1. **Definitions.** The following definitions apply to the provisions of this Fair Hearing Plan. The use of capitalization when defining terms is intended for convenience purposes only and shall not affect the meaning or interpretation of such terms throughout this Plan.
   - **1.1. "Adversely Affecting" or "Adverse Effect"** includes reducing, restricting, suspending, revoking, denying, or failing to renew clinical privileges or membership on the Medical Staff of the Hospital.
   - **1.2. "Adverse Action" or "Adverse Recommendation" or "Adverse Decision"** means any action, recommendation, or decision by the Medical Executive Committee or Board, including decisions, actions, and recommendations approved by the Board following a recommendation by the Medical Executive Committee that when based on competence or professional conduct would have the

effect of or results in the reducing, restricting, suspending, revoking, denying, or failing to renew clinical privileges or membership on the Medical Staff of the Hospital. Such actions are specifically set forth in Article 3 of this Plan. Actions or recommendations not based on competence or professional conduct shall not constitute an "Adverse Action" or "Adverse Recommendation" and shall not give rise to any rights to a hearing or appellate review unless otherwise expressly provided for herein. Restrictions, suspensions, terminations, denials, or other limitations on membership and/or clinical privileges for administrative reasons are not Adverse Actions as defined herein.

1.3. "Clinical Privileges" mean Board-granted privileges, permission, and other circumstances by which Members and AHPs may furnish medical care or other patient care services to patients at the Hospital and to utilize Hospital resources necessary to provide such services.

1.4. "Days" as included in this Plan with respect to time allowed for delivery or receipt of any Notice, shall be defined to mean calendar days (i.e, including Saturdays, Sundays, and legal holidays) unless the due date for such Notice or receipt falls on a Saturday, Sunday, or legal holiday, in which case the due date shall be the first date immediately following which is not a Saturday, Sunday, or legal holiday.

1.5. "Direct Economic Competition" shall mean any individual who would with reasonable probability have a financial interest in the outcome of any Adverse Action taken against a Member pursuant to this Plan.

1.6. "Board" shall mean the Board of Directors of the Hospital or any committee thereof acting as a hearing body. When the Board is considering appointments or reappointments to, delineation of privileges, and/or proposed corrective action for any Practitioner within the Hospital, it shall be acting as a Professional Review Body as defined by the Health Care Quality Improvement Act of 1986 and as a Peer Review Committee as defined by the Indiana Peer Review Act, Indiana Code 34-~~4-~~30-15 et seq.

1.7. "Hearing Committee" or "Hearing Body" means the Committee appointed under this Plan to conduct an evidentiary hearing properly filed and pursued by an affected Practitioner.

1.8. "Investigative Suspensions" are suspensions of all or any portion of a practitioner's privileges for a period not to exceed fourteen (14) days during which an investigation is being conducted to see if any corrective action is necessary. Investigative Suspensions are instituted in the same manner and are reviewable in the same manner as a summary suspension. Investigative Suspensions may be imposed to protect either patient safety and/or the orderly operation of the Hospital in a nondisruptive manner. If an Investigative suspension is lifted or terminates in fourteen (14) days or less without further corrective action, no right to a hearing or appeal shall arise unless an Investigative suspension has been imposed on the same practitioner more than twice in any six (6) month period of time.

1.9. "Member" means any Physician or Oral Maxillofacial Surgeon who has been duly appointed by the Board as a Member of the Medical Staff.

1.10. "Notice" means notification sent by certified or registered mail, return receipt requested, and/or personally delivered by hand or by courier service designed for overnight or same day delivery.

1.11. "Peer Review Committee" or "Professional Review Body" shall mean the Board of the Hospital, the Medical Staff, the Executive Committee, Credentials Committee, Quality Review Committee, and any other committee or body of the Medical Staff or Board which evaluates, recommends, or takes actions based on the competence or professional conduct of an individual Practitioner and which affects or may affect the Clinical Privileges or membership on the Medical Staff or status as an Associates of any Practitioner, including any recommendation or decision

whether the Practitioner may have Clinical Privileges with respect to or membership on the Medical Staff or the Hospital, or as an Associate the scope or conditions of such privileges of membership, or any changes or modifications in such privileges of membership. "Peer Review Committees" shall further include any committee of the Medical Staff or Board having responsibility of evaluation of qualifications of professional health care providers, which includes the performance of patient care and related duties in a manner that is not disruptive to the delivery of quality medical care in the hospital setting and evaluation of patient care which include the accuracy of diagnosis, propriety, appropriateness or necessity of care rendered by a professional health care provider, and the reasonableness of the utilization of services, procedures and facilities in the treatment of individual patients and such other matters as are within the scope of the Indiana Peer Review Act.

1.12. "Personnel of a Peer Review Committee" means not only members of the Committee, but also all of the Committee's employees, representatives, agents, attorneys, investigators, assistants, clerks, staff, and any other person or organization who serves a Peer Review Committee in any capacity, including any person acting as a member or staff to the Committee, any person under a contract or other formal agreement with the Committee, and any person who participates with or assists the Committee with respect to the action.

1.13. "Practitioner" means any Physician, Dentist, Podiatrist, or AHP, but does not include any Physician Extenders.

1.14. "Professional Review Action" means an action or recommendation of a Peer Review Committee which is taken or made in the conduct of Professional Review Activity, which is based on the competence or professional conduct of an individual "Practitioner". Conduct which affects or could affect adversely the health or welfare of a patient or patients or is disruptive or not conductive to the orderly operation of the Hospital, and which affects (or may affect) adversely the Clinical Privileges of the Practitioner. Such term includes a formal decision of a Professional Review Body not to take an action or make a recommendation, as that term is defined in the Health Care Quality Improvement Act of 1986, and also includes Professional Review Activities relating to a Professional Review Action and shall further mean any activity of the Peer Review Committee with respect to an individual Practitioner to determine whether the Practitioner may or may not have Clinical Privileges with respect to Medical Staff membership or Associate status; to determine the scope or condition of such privileges, membership or status; or to change or modify such privileges or membership or status. "Professional Review Actions", as defined herein, shall be eligible for, and subject to, immunity under the Health Care Quality Improvement Act of 1986 as amended, and the Indiana Peer Review Act, as amended.

1.14.1. Words used in this Plan shall be read interchangeability as the masculine or feminine gender and as the singular or plural, as the content requires. The captions or headings are for convenience only and are not intended to limit or define the scope or effect of any provision of this Plan.

2. FAIR HEARING PROCESS

2.1. Introduction

2.1.1. Intent of Plan. Pursuant to, and except as otherwise specified in the Bylaws, when any Practitioner who is either a Member of the Medical Staff or an applicant to the Medical Staff, receives notice of an adverse action or recommendation by the MEC, or the Board (or any committee or body when expressly allowed by these Bylaws thereof) that could or does adversely affect the Practitioner's appointment to, application for, or status as a Member of the Medical Staff and/or his or her clinical privileges, or the Practitioner's right to exercise clinical

privileges as a Member of the Medical Staff, the Practitioner shall be entitled to a hearing and appellate review as hereinafter set forth. The intent of this Plan is to ensure that the applicable immunities and protection of the Indiana Peer Review Act and the federal Health Care Quality Improvement Act of 1986 are afforded to the participants in any such hearing and/or appellate review and related professional review activity.

2.1.2. Grounds for Hearing. Except as otherwise specified in this Plan or in the Medical Staff Bylaws, any one or more of the following actions, or recommended actions if deemed an adverse action or adverse recommendation as defined herein, shall entitle the Practitioner to a hearing upon timely and proper request:

2.1.2.1. Denial of Medical Staff Membership;

2.1.2.2. Denial of reappointment as a Member of the Medical Staff;

2.1.2.3. Reduction or change of Medical Staff category status;

2.1.2.4. Suspension of Medical Staff membership or status;

2.1.2.5. Revocation of Medical Staff membership or Associate status;

2.1.2.6. Denial of requested clinical privileges excluding temporary privileges (unless such denial of temporary privileges acts as a denial of an application for membership);

2.1.2.7. Reduction of current clinical privileges;

2.1.2.8. Suspension of clinical privileges for a period longer than fourteen (14) days;

2.1.2.9. Revocation of all clinical privileges;

2.1.2.10. Restriction of clinical privileges by requiring the Practitioner to obtain special consultation or permission to perform a procedure, excluding probation or monitoring incidental to provisional staff status.

2.1.3. Non Adverse Actions. An action or recommendation that is not adverse in nature, such as probation, letters of warning or admonishment, or any other action or recommendation not "Adversely Affecting" in the context of a professional review action (as those terms are defined in the Health Care Quality Improvement Act of 1986 and this Plan) any Member or applicant for membership or their clinical privileges and any action or recommendation where the Member or applicant for membership no longer meets the minimum objective criteria for such membership or clinical privileges.

2.2. NOTICE

2.2.1. Notice of Adverse Action. The President shall be responsible for giving prompt written notice of any adverse action or adverse recommendation to the affected Practitioner by registered or certified mail, return receipt requested, or delivery by courier service designed for overnight or same day delivery.

2.2.1.1. That an adverse action or recommendation has been proposed which could Adversely affect the clinical privileges of the Practitioner;

2.2.1.2. The reasons for the proposed adverse action or recommendation;

2.2.1.3. That the Practitioner has a right to request a hearing, unless otherwise provided, which must be requested within thirty (30) days from receipt of the Notice. The request for a hearing must be delivered to the President either in person or by certified or registered mail;

2.2.1.4. That a 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,

2.2.1.5. A summary of the Practitioner's rights in the hearing as set forth in Section 3.5.

2.2.2. Notice of Hearing. If a hearing is requested by the affected Practitioner on a timely basis as set forth in Section 2.2.1.3., the affected Practitioner shall be provided with a Notice of Hearing by the President.

2.2.2.1. The time, place, and date of the hearing, which date shall not be less than thirty (30) days after the date of Notice of Hearing; and,

2.2.2.2. A list of witnesses known at the time of the Notice which are expected to testify at the hearing on behalf of the committee or body proposing the Adverse Action or Adverse Recommendation.

2.2.3. Failure to Request a Hearing. The failure of an affected Practitioner to request a hearing on a timely basis shall be deemed a waiver of the affected Practitioner's right to a hearing and to any appellate review to which the affected Practitioner might otherwise have been entitled.

2.2.4. Access in Advance of Hearing. Subject to pertinent restrictions on discovery and evidence herein, following receipt of a recommendation or action that adversely affects or could adversely affect the clinical privileges or membership of a Practitioner, the Practitioner shall have a right to inspect or copy that information compiled by MEC, Board, or other peer review committee, as applicable, which served as the basis or in support of the basis for its recommendation or action.

3. CONDUCT OF HEARING AND NOTICE

3.1. Appointment of Hearing Committee and Preliminary Matters

3.1.1. Appointment of Hearing Committee. If a hearing is requested on a timely basis pursuant to Section 2.2.1.3., the hearing shall be held before an impartial panel of at least three (3) but not more than five (5) Members of the Medical Staff, to be appointed by MEC. Any individual selected for such a Hearing Committee shall not be in direct economic competition with the affected Practitioner unless the affected Practitioner approves in writing of such individual's appointment.

3.1.2. Challenge for Bias or Prejudice. If the Practitioner has any reason to challenge any member of a Hearing Committee, such challenge and the basis therefore shall be stated in writing to the President and Chief of Staff within three (3) business days following receipt of the Notice of Hearing. The President and Chief of Staff, in their discretion, may jointly determine whether to substitute another member or members on the Hearing Committee.

3.1.3. Hearing Officer. The use of a hearing officer to preside at the hearing is optional and is to be determined by the President or Board after consultation with the President and Chief of Staff. Where a hearing officer is used in conjunction with a Hearing Committee, the hearing officer shall conduct the hearing, maintain decorum, and rule on all evidentiary and witness matters. A hearing officer shall be an attorney at law experienced in conducting such hearings.

3.2. Failure of Practitioner to Appear. The right to any hearing pursuant to this Plan will be considered as forfeited if the affected Practitioner fails, without good cause as determined in the sole discretion of the Hearing Committee, to appear at the place, time, and date of the scheduled hearing.

3.3. Exchange of Witness List and Exhibits. The hearing officer or presiding member of the Hearing Committee shall appoint a date, time and place for the interim and final exchange of exhibits and witness lists, which date shall not be less than ten (10) days prior to the scheduled date of the hearing. Any witnesses not listed and any exhibits not provided by such date may, in the sole discretion of the Hearing Committee, be excluded from the hearing.

3.4. Access of Affected Practitioner to File. All material contained in a Practitioner's credentials and/or personal file may be part of the hearing record and the Practitioner shall have the right to have a copy of all such material in advance of the hearing upon requests.

3.5. No Right to Discovery. There is no right to discovery in connection with the hearing. However, the Practitioner requesting the hearing shall be entitled, upon specific request, to the following, subject to a binding stipulation signed by both parties that such documents will be maintained as confidential peer review records and shall not be further disclosed or used for any purpose outside of the hearing: (a) copies of, or reasonable access to, all patient medical records referred to in the Notice of Hearing; (b) reports of internal and external peer review reports or correspondence relied upon by the MEC or Board and that pertain to Practitioner; (c) redacted copies of relevant Medical Staff committee or Department meeting minutes that pertain to Practitioner; and (d) copies of any other documents materially relied upon by the MEC or the Board in reaching its recommendation or decision.

3.6. Access to Witnesses. 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 Board's witness list concerning the subject matter of the hearing, unless specifically agreed upon by Hospital or Medical Staff legal counsel.

3.7. Rights of Participants. In the hearing, the affected Practitioner and the Medical Staff or Board committee initiating the action, each will have the following rights:

3.7.1. To representation by an attorney or any other person of the party's choice;

3.7.2. To have a record made of the proceedings, copies of which may be obtained by the Practitioner upon payment of any reasonable charges associated with the preparation thereof;

3.7.3. To call, examine, and cross-examine witnesses;

3.7.4. To present any evidence determined to be relevant by the Hearing Officer/Committee, regardless of its admissibility or inadmissibility in a court of law;

3.7.5. To submit a written statement at the close of the hearing; and,

3.7.6. Upon the completion of the hearing, the affected Practitioner shall have the right to receive the written recommendation of the Hearing Committee, including a statement of the basis for the recommendation.

3.8. Practitioner Testimony. If the Practitioner does not testify in his or her behalf, the Practitioner may be called and examined by the other party as if under cross-examination.

3.9. Record of Hearing. An accurate record of the hearing must be kept. The mechanism shall be established by the Hearing Committee and may be accomplished by the use of a court reporter (preferred method), electronic recording unit, or detailed transcription.

3.10. Postponement or Recess. The Hearing Committee shall have the right to postpone the hearing or to recess the hearing if, in its sole discretion, such action will be in the best interest of obtaining the facts at issue.

3.11. Hearing Committee Chairperson. The Hearing Committee, prior to the formal hearing, shall meet and elect a Chairperson who shall preside over the hearing and make determinations and decisions as called for in Section 3.14 below, unless otherwise a hearing officer is appointed. The Chairperson shall assure that all participants in the hearing have a reasonable opportunity to present relevant oral and documentary evidence.

3.12. Order of Hearing. Whenever a hearing relates solely to a recommended denial of 1) appointment to the Medical Staff, 2) requested Clinical Privileges, or 3) requested advancement in Medical Staff category, the Practitioner shall present his or her evidence first. In all other cases, the representative

of the Peer Review Committee shall present its evidence first. After the initial presentation of evidence is completed, the responding Party shall present his or her evidence. The initial party shall then have the opportunity to rebut the evidence presented by the responding party. The Hearing Committee may in its discretion request or permit opening statements, which if made will be presented by the parties in the same order as provided for presentation of evidence.

3.13. Burden of Proof. At any hearing that relates solely to a recommended denial of 1) appointment to the Medical Staff, 2) requested clinical privileges, or 3) requested advancement in Medical Staff category, the Practitioner who requested the hearing shall have the ultimate burden of proving, by a preponderance of the evidence, that: (a) he or she meets the standards for appointment or reappointment to the Medical Staff or for the granting of the clinical privileges or Medical Staff category requested as established by the Medical Staff; and that, (b) the denial of Medical Staff appointment or reappointment, requested clinical privileges or requested advancement in Medical Staff category would be arbitrary, unreasonable, or has no basis in fact. In all other hearings, the Peer Review Committee that proposed the Adverse Action shall have the duty to produce evidence in support of the adverse action, but the Practitioner shall have the ultimate burden of proving, by a preponderance of the evidence, that the proposed adverse action is arbitrary, unreasonable, or has no basis in fact.

3.14. Procedure and Evidence. The hearing need not be conducted strictly according to rules of law that pertain to the examination of witnesses or presentation of evidence. Any relevant matter upon which reasonable persons customarily rely in the conduct of serious affairs may be considered, regardless of the admissibility of such evidence in a court of law. Each party is entitled, prior to or during the hearing, to submit memoranda concerning any issue of law or fact, and those memoranda may become part of the hearing record in the sole discretion of the presiding officer. The Hearing Committee or hearing officer may, but is not required to, order that oral evidence be taken only under oath or affirmation to be administered by any person who is a duly registered notary public or individual of similar authority. Objections to evidentiary matters may be made and shall be noted in the hearing record. Subject to these requirements, when a hearing will be expedited in the interests of the parties and provided the proceedings will not be unreasonably prejudiced as determined by the Hearing Committee, any part of the evidence may be received in written form.

3.15. Presence of Hearing Committee Members. A majority of the Hearing Committee must be present throughout the hearing and deliberations. If a committee member is absent from any part of the hearing of evidence, he or she may not participate in the deliberations or the decision unless such committee member shall be able to hear a recording or read the transcript of the deliberations that were missed or with the consent of both parties.

3.16. Recesses and Adjournment. The Hearing Committee may recess and reconvene the hearing for the convenience of the participants or for the purpose of obtaining new or additional evidence or consultation upon giving the parties notice. Upon conclusion of the presentation of oral and written evidence, the hearing shall be closed. The Hearing Committee shall, at a time convenient to itself, conduct its deliberations outside the presence of the parties. The Hearing Committee may recess the hearing until a transcript of the record is prepared for its deliberations. Final adjournment of the hearing does not occur until the record is received by the committee.

3.17. Post-Hearing Memorandum. Each party shall have the right to submit, at the close of the hearing, proposed findings of fact and conclusions of law or a similar statement, and the Hearing Committee may request such a memorandum to be filed within ten (10) days following final adjournment.

3.18. Report of Hearing Committee. Within twenty (20) days after final adjournment of the hearing, the Hearing Committee shall have completed its deliberations and, with the assistance of the hearing officer if so appointed, shall issue a written report of its findings and recommendations, including a statement of the basis for its recommendation. The Hearing Committee may adopt, modify, or reject the adverse action or adverse recommendation of the MEC or Board in whole or in part, or refer the matter back to the MEC for additional consideration and final recommendation to the Board. Any referral back shall state the reasons for such referral and establish a time limit within which a final recommendation must be made.

4. APPEAL TO THE BOARD OF DIRECTORS

4.1. Practitioner's Right to Appeal. If the Hearing Committee's recommendation under Section 3.18 or the final recommendation of the MEC following the Hearing Committee's referral is favorable to the Practitioner in that the recommendation is no longer an adverse action as defined herein, the President shall promptly forward the recommendation together with all supporting documentation to the MEC and Board for review and final decision by the Board. The President will promptly send written notice to the Practitioner informing him or her of each action taken. This written notice shall also inform the MEC of its right to request an appellate review as provided in this Article V. If, however, the recommendation of the Hearing Committee under Section 3.18 or the final recommendation of the MEC following the Hearing Committee's referral continues to be an adverse action as to the Practitioner and is the result of a professional review action, the President shall promptly send written notice to the Practitioner and MEC informing them of the Hearing Committee's findings and recommendation, together with all supporting documentation. This written notice shall inform the Practitioner of his or her right to request an appellate review as provided in Article VI of this Plan.

4.2. Requests for Appellate Review. Either party to original hearing may request an appellate review of the findings and recommendation of the Hearing Committee or final recommendation of the MEC by an appellate review committee of the Board. Requests for an appellate review must be made in writing and either delivered personally or sent by certified mail, return receipt requested, to the President within ten (10) days after such party's receipt of the written report of the Hearing Committee. **If such appellate review is not requested within ten (10) days as provided herein, both Parties shall be deemed to have waived the right to an appellate review, and the Hearing.**

4.3. Waiver of Right to Appellate Review. If an appellate review is not received by the President within ten (10) days of receiving the Hearing Committee's report, both parties shall be deemed to have waived the right to an appellate review, and the Hearing Committee's report and recommendation or the MEC's final recommendation shall be forwarded to the Board for final action.

4.4. Grounds for Appellate Review. The grounds for appellate review shall be limited to the following: a) there was a substantial failure to comply with the procedures or standards set forth in this Plan and/or the Hospital or Medical Staff Bylaws and related manuals or policies prior to or during the hearing so as to deny the Practitioner a fair hearing; or (b) the findings and recommendation of the Hearing Committee or final recommendation of the MEC were not consistent with the standards for burden of proof as set forth in Section 3.13 herein.

4.5. Notice and Date for Appellate Review. The President shall deliver a copy of the requesting party's timely and proper request for appellate review to the chairperson of the Board. As soon as practicable, the Board shall schedule and arrange for an appellate review which shall be conducted

not less than twenty (20) nor more than sixty (60) days after receiving the request from the Practitioner; **provided, however, that an appellate review for a Practitioner who is under suspension then in effect, shall be held as soon as arrangements may be reasonably made, but not later than thirty (30) days after the President receives the request from the Practitioner**. At least fifteen (15) days prior to the appellate review, the President shall send written notice to the Practitioner of the time, place, and date of the appellate review. This time may be extended by the Appellate Review Body for good cause.

4.6. Appellate Review Body. The Appellate Review Body shall be the Board or a duly appointed subcommittee of the Board of not less than three (3) members. The chairperson of the Board shall serve as the chairperson of the Appellate Review Body. If a subcommittee of the Board serves as the Appellate Review Body, the Board chairperson shall designate the individual who shall serve as the chairperson of the Appellate Review Body. No member of the Appellate Review Body shall be in direct economic competition with the affected Practitioner unless the affected Practitioner approves in writing of such individual's appointment. If the Practitioner has any reason to believe that a member of the Appellate Review Body has a conflict of interest with regard to his or her participation by providing a basis for concern in writing to the President and Chairperson of the Board within three (3) business days following receipt of the Notice and Date of Appellate Review. The President and Chairperson of the Board, in their discretion, may jointly determine whether to substitute another member or members on the Appellate Review Body.

4.7. Nature of Appellate Proceedings. The proceedings by the Appellate Review Body shall be a review based upon the hearing record, the Hearing Committee's report, the request for appellate review, the written statements provided pursuant to Section 5.8, and any additional evidence that Appellate Review Body deems as appropriate, in its sole discretion.

4.8. Written Statement. Both parties may submit a written statement detailing their respective findings of fact and conclusions of law, and procedural matters with which the each party disagrees and reasons for disagreement. This written statement may cover any matter raised at any step in the hearing process. The statement shall be submitted to the Appellate Review Body through the President at least ten (10) days prior to the appellate review. The MEC or the Board, whichever body's adverse action occasioned the review, may also submit a written statement to the Appellate Review Body through the President at least ten (10) days prior to the appellate review. Each party is required to serve a copy of its written statement on the other party by Notice.

4.9. Practitioner's Access to Records. The affected Practitioner shall have access to the report, record, exhibits and transcript, if any, of the Hearing Committee and all other material, favorable or unfavorable, that was considered by the Medical Staff or Board Committee that initiated the adverse action in making the adverse recommendation or decision. The affected Practitioner shall have the right to submit a written statement in his or her own behalf, in which those factual and procedural matters with which the Practitioner disagrees, and his or her reasons for such disagreement, shall be specified. This written statement may cover any matters raised in any step in the procedure to which the appeal is related, and legal counsel may assist in its preparation. Such written statement shall be submitted to the Board through the President of the Hospital by certified mail, return receipt requested, at least five (5) days prior to the scheduled date for the appellate review. A similar statement may be submitted by the Medial Staff or Board Committee bringing the proposed Adverse Action.

4.10. Oral Argument. The Appellate Review Body, in its sole discretion, may allow the parties or their representatives to personally appear and make oral statements in favor of their positions. Any party

or representative appearing shall be required to answer questions posed by any member of the Appellate Review Body.

4.11. Scope of Review. The Appellate Review Body shall review the record created in the proceedings and shall consider the written statements submitted by each party for the purpose of determining whether the adverse action or recommendation is supported by the evidence and whether the Practitioner was granted a hearing pursuant procedures and standards set forth in this Plan. If oral argument is requested and approved as a part of the appellate review procedure, the affected Practitioner may be present at such appellate review, shall be permitted to speak against the adverse recommendation or decision, and shall answer questions put to him or her by any member of the appellate review body. The Medical Staff or Board Committee which presented the original charges at the Hearing Committee shall also be represented by an individual, if desired, who shall be permitted to speak in support of the adverse recommendation or decision, and who shall answer questions put to him or her by any member of the appellate review body. Both parties may be represented by counsel if they so choose.

4.12. New or Additional Matters. New or additional matters not raised during the original hearing or in the Hearing Report, not otherwise reflected in the record, shall only be introduced at the appellate review if the appellate body decides that the Practitioner has carried the burden of showing the materiality of the new information and the burden of showing that in the exercise of due diligence the Practitioner could not have discovered the information during the pendency of the hearing. The Appellate Body shall, in its sole discretion, determine whether such new matter may be accepted.

4.13. Decision of the Board. If the appellate review is conducted by the Board, it may affirm, modify or reverse the recommendation, or in its discretion, refer the matter back to the Medical Staff or Board Committee bringing the proposed Adverse Action for further review and recommendation. Such review and recommendation to be provided to the Board within fourteen (14) days. Such referral may include a request that the Medical Staff or Board Committee bringing the proposed adverse action arranges for a further hearing to resolve specified disputed issues.

4.14. Report of Appellate Review Committee. If the appellate review is conducted by a subcommittee of the Board, such committee shall, within fourteen (14) days after the scheduled or adjourned date, whichever is later, of the appellate review, either make a written report recommending that the Board affirm, modify or reverse the prior decision, or refer the matter back to the Medical Staff or Board Committee bringing the proposed Adverse Action for further review and recommendation. Such referral may include a request that the Medical Staff or Board Committee bringing the proposed adverse action arrange for a further hearing to resolve disputed issues. Within fourteen (14) days after receipt of such recommendation after referral, the appellate review committee shall make its recommendation to the Board as above provided.

4.15. Conclusion of Proceedings. The appellate review shall not be deemed to be concluded until substantially all of the procedural steps provided in this Section have been completed or waived. Where permitted by law and/or the Hospital Bylaws, all action required of the Board may be taken by a committee of the Board duly authorized to act.

5. FINAL DECISION BY THE BOARD OF DIRECTORS

5.1. Notice of Final decision of Board of Directors. Within thirty (30) days after the conclusion of the appellate review, the Board shall make its final decision in the matter and shall send written notice thereof to the Chief of the Medical Staff, or the President of the Hospital and the affected Practitioner, by certified mail, return receipt requested. In such notice, the affected Practitioner shall be provided with the decision of the Board and the basis upon which it was made.

5.2. Affected Practitioner's Rights. Notwithstanding any other provision herein, no Practitioner shall be entitled, as a right, to more than one (1) hearing and one (1) appellate review on any matter which shall have been the subject of an action by the MEC or by the Board, or by a duly authorized committee of the Board, or by both.

6. OTHER PROCEDURAL CONSIDERATIONS

6.1. Number of Hearings and Reviews. Notwithstanding any other provision of the Bylaws and Related Manuals, including this Plan, no Practitioner is entitled as a right to request more than one evidentiary hearing and not more than one appellate review with respect to the subject matter that is the basis of the adverse action triggering the right to such hearing and appellate review.

6.2. Release. By requesting a hearing or appellate review under this Plan, a Practitioner agrees to be bound by the provisions of the Bylaws and Related Manuals, including this Plan, relating to immunity from liability.

6.3. Substantial Compliance. Strict compliance with procedures and timelines set forth in this Plan is not required. The Hospital and Medical Staff shall make good faith efforts to substantially comply with the procedures and timelines set forth herein.

6.4. Exhaustion of Legal Remedies. Any applicant or Practitioner entitled to a hearing and appellate review must follow and exhaust the procedures and remedies afforded by this Plan as a prerequisite to any other legal action, if any, available to the applicant or Practitioner.

6.5. Confidentiality. All records, communications, determinations and other information and materials generated in connection with and/or as a result of the Hospital's peer review activities shall be confidential and privileged, and each individual or Peer Review Committee member participating in such review activities shall agree to make no disclosures of any such information except as authorized in writing, by the Chairperson or Vice-chairperson of the applicable Peer Review Committee. Any breach of confidentiality by an individual or Peer Review Committee member may result in the loss of federal and/or state immunity afforded to such proceedings and/or a professional review action, and/or may result in appropriate legal action to ensure that confidentiality is preserved, including application to a court of law for injunctive or other relief.

6.6. Peer Review Protections. All minutes, reports, recommendations, communications, determinations, and actions made or taken pursuant to this Plan are deemed to be covered by the Indiana Peer Review Act IC-34-30-15 *et seq.* or the corresponding provisions of any subsequent federal or state statute providing immunity and privileges to peer review or related activities. Furthermore, the Peer Review Committees charged with making reports, findings, recommendations, determinations or investigations pursuant to this Plan shall be considered to be acting on behalf of the Hospital and the Board when engaged in such Professional Review Activities and therefore shall be deemed to be professional review bodies as that term is defined in the Health Care Quality Improvement Act of 1986.

7. AMENDMENT

7.1. Amendments to Plan. This Medical Staff Hearing Plan, which is an integral part of the Medical Staff Bylaws, shall be reviewed, minimally, every three (3) years. Any amendments to this Hearing Plan shall be pursuant to the process set forth in Section 16 of the Medical Staff Bylaws.

8. ADOPTION

8.1. Medical Staff. This Plan was adopted and recommended to the Board by the Medical Staff in accordance with and subject to the Medical Staff Bylaws, on 3/15/94 by David E. Van Ryn, M.D., Chief of Staff, Elkhart General Hospital Medical Staff.

8.2. Board of Directors. This Plan was approved and adopted by resolution of the Board after considering the Medical Staff's recommendations and in accordance with and subject to the Hospital Bylaws, on 4/19/94 by Jeannine M. Davis, Chairman, Board of Directors, Elkhart General Hospital.