FAIR HEARING POLICY
OF THE MEDICAL STAFF OF REGIONS HOPSITAL

Effective February 23, 2011

TABLE OF CONTENTS

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of the Medical Staff of Regions Hospital

Section 1. Purpose. The purpose of this Policy is to set forth the detailed procedural steps for the conduct of fair hearings provided by the Medical Staff bylaws.

1.1 Definitions. For purposes of this Policy, the following definitions apply.

1.1.1 Practitioner means any person who

(a) has applied for appointment or reappointment to the Active or Associate Staff, or

(b) has privileges to practice at the Hospital, or

(c) who has applied for new or expanded privileges.

1.1.2 Review Organization means either the MEC or the Board, depending on which organization proposed the action that is the subject of a hearing under this Policy.

1.1.3 Responsible Person means the person responsible for carrying out the duties of the Review Organization under this Policy. If the Medical Executive Committee (MEC) is the Review Organization, the Responsible Person is the Chief of Staff (COS) or the COS's designee. If the Board is the Review Organization, the Board Chair or the Chair's designee is the Responsible Person.

Section 2. Professional review actions that entitle a Practitioner to request a hearing. A Practitioner is entitled to request a hearing under this Policy only as provided in this section.

2.1 Criteria entitling a Practitioner to ask for a hearing. A Practitioner is entitled to request a hearing only if a Review Organization proposes to take an action that meets both of the following criteria:

2.1.1 The proposed action, if implemented, would adversely affect the Practitioner's ability to practice independently in the Hospital for more than 14 days; and

2.1.2 The reason for the proposed action is the Practitioner's clinical competence or professional conduct.

2.2 Examples of actions that entitle a Practitioner to request a hearing. Examples of proposed actions that meet these criteria and entitle a Practitioner to ask for a hearing include the following when the reason for the action is based on the Practitioner's clinical competence or professional conduct:

2.2.1 Denial of appointment or reappointment of the Practitioner to the Medical Staff.

2.2.2 Revocation of the Practitioner's Medical Staff appointment.

2.2.3 Denial or limitation of the Practitioner's requested clinical privileges.

2.2.4 Involuntary reduction or revocation of the Practitioner's clinical privileges.

2.2.5 Suspension of the Practitioner's appointment to the Medical Staff or clinical privileges for more than 14 days.

2.2.6 Imposition or application of a mandatory concurring consultation requirement or an increase in the stringency of a pre-existing mandatory concurring consultation requirement when the requirement applies only to the individual Practitioner, is imposed for more than 14 days, and is based on the Practitioner's clinical competence or professional conduct.

2.3 Examples of actions that cannot be challenged in a hearing. The following are examples of actions that do not entitle a Practitioner to ask for a hearing because they do not meet both of the criteria in paragraph 2.1. The examples are illustrative and not exclusive.

2.3.1 Examples of actions or activities that do not limit the Practitioner's ability to practice independently in the Hospital and therefore do not give the Practitioner a right to ask for a hearing include:

2.3.1.1 Conducting Focused Professional Practice Evaluation (FPPE), including imposition of performance monitoring requirements.

2.3.1.2 Conducting Ongoing Professional Practice Evaluation (OPPE).

2.3.1.3 Issuing a letter of guidance, warning, or reprimand to the Practitioner.

2.3.1.4 Requiring that the Practitioner be observed by a proctor with no requirement of prior approval by the proctor or any other restriction on the Practitioner's privileges.

2.3.1.5 Initiating an investigation into the Practitioner's clinical competence or professional conduct.

2.3.1.6 Requiring that the Practitioner appear for a special meeting with the MEC or Investigating Committee.

2.3.1.7 Granting privileges or appointment for a period of time shorter than that asked for or for less than the maximum 24 months.

2.3.1.8 Denying a request for a leave of absence or extension of a leave.

2.3.1.9 Requiring that the Practitioner complete an educational, physical, mental health, or substance abuse assessment.

2.3.2 Examples of reasons for actions that are not based on a Practitioner's clinical competence or professional conduct and therefore do not give the Practitioner a right to ask for a hearing, even though the effect of the action may limit the Practitioner's ability to practice independently in the Hospital for more than 14 days, include:

2.3.2.1 The Practitioner submits an incomplete or untimely application.

2.3.2.2 The Practitioner makes a material omission or misrepresentation on an application for appointment or privileges.

2.3.2.3 The Practitioner fails to meet minimum requirements for appointment to the Medical Staff.

2.3.2.4 The Hospital enters into an exclusive provider agreement with an entity with which the Practitioner is not affiliated.

2.3.2.5 The Hospital decides to close or limit the number of practitioners privileged in a specialty under a medical staff development plan.

2.3.2.6 The Practitioner is a Hospital employee or has a contract with the Hospital and the Practitioner's employment or contract with the Hospital terminates.

2.3.2.7 The Practitioner fails to timely apply for reappointment or re-privileging.

2.3.2.8 The Practitioner's appointment or privileges are administratively suspended.

Section 3. Notice of Proposed Action. When a Review Organization proposes taking adverse professional action entitling a Practitioner to request a hearing, the Responsible Person must give the Practitioner written notice of the proposed action within five Business Days of the action.

3.1 Means of sending notice. The Notice must be sent by Certified Mail – Return Receipt Requested, or another means that requires a written acknowledgment of receipt, addressed to the Practitioner's current address on file with the Review Organization's Office, or to another address with the prior consent of the Practitioner.

3.2 Contents of the Notice. The Notice must include the following information:

3.2.1 The action that has been proposed to be taken against the Practitioner and a statement that that the action constitutes professional review action.

3.2.2 The reason for the proposed action.

3.2.3 A statement that the Practitioner has the right to request a hearing on the proposed action by submitting a written request for a hearing.

3.2.4 The name and address of the person to whom the Practitioner must direct a request for a hearing.

3.2.5 A statement that the person named in the previous paragraph must receive the request a hearing within 30 days of the day the Practitioner received or is deemed to have received the Notice of Proposed Action, and that if the Practitioner does not request a hearing within this time the Board will proceed to take final action and the Practitioner will be deemed to have waived all rights to contest the action.

3.2.6 A summary of the rights the Practitioner would have in the hearing as listed in section 5.5 below.

3.2.7 A copy of this Policy.

3.2.8 A form that the Practitioner must sign to ask for the hearing that includes a statement by the Practitioner that, by requesting a hearing under the Medical Staff bylaws and this Policy, the Practitioner promises not to sue and waives any cause of action or claim against members of the Hearing Committee or Presiding Officer based on their participation in the hearing process.

3.3 Date of receipt. The Practitioner is deemed to have received the Notice of Proposed Action on the date the Practitioner signed an acknowledgement of receipt or ten Business Days after the Notice was sent, whichever is earlier.

Section 4. Request for Hearing; scheduling a hearing.

4.1 Contents of request. A request for Hearing must be in writing, directed to the CEO, state unequivocally that the Provider requests a hearing, and include the promise not to sue described in section 3.2.8. The Practitioner may include in the Request for Hearing a request that the hearing be held sooner or later than the presumptive time period provided by this Policy.

4.2 Timeliness of request. A Request for Hearing is timely only if it is received by 4:30 p.m. no later than 30 days after the day the Practitioner received or is deemed to have received the Notice of Action. If the 30th day is a Saturday, Sunday, or hospital-recognized holiday, a Request received before 4:30 p.m. the next Business Day is timely.

4.3 Delivery of request to Responsible Person. Upon receiving a timely request for a hearing, the CEO must promptly deliver the request to the Responsible Person (i.e., the COS if the decision under review is that of the MEC, or the Chair of the Board if the decision under review is that of the Board).

4.4 Time limits for hearing. Upon receiving a Request for Hearing, the Responsible Person must promptly arrange for and schedule a hearing. Except as provided below, the Responsible Person must not schedule the hearing sooner than 30 days or later than 60 days after the Notice of Hearing is sent to the Practitioner.

4.4.1 If the Practitioner is under suspension at the time the Request for Hearing is received, the Responsible Person must schedule the hearing as soon as reasonably possible and it may be held fewer than 30 days after the Notice of Hearing if the Provider consents.

4.4.2 The Responsible Person may schedule a hearing outside of these time limits, up to 45 days later than the 60-day limit, at the request of the Provider. The Responsible Person is under no obligation to grant such a request but may do so if granting the request is fair to all parties.

4.4.3 Failure to commence or conclude a hearing within these time limits does not preclude the hearing from proceeding or the Board from taking final action on the Review Organization's and Hearing Panel's recommendations.

Section 5. Notice of Hearing. When the hearing is scheduled, the Responsible Person must provide the Practitioner with a written Notice of Hearing that includes the following:

5.1. The date, time, and place of the hearing.

5.2. The list of witnesses expected to testify at the hearing on behalf of the Review Organization.

5.3 A statement of the specific reasons for the recommended action and a list of patient record numbers and other exhibits that the Review Organization intends to introduce as evidence in the proceeding.

5.3. The names of the members of the Hearing Panel and the Presiding Officer.

5.4. A statement that the right to a hearing will be forfeited if the Practitioner fails to attend the hearing without good cause.

5.5. That the Practitioner has the following rights at the hearing:

5.5.1 To be represented by an attorney or other person of the Practitioner's choice.

5.5.2 To have a record made of the proceedings and to obtain a copy of the record for the cost of having it prepared.

5.5.3 To call, examine, and cross-examine witnesses.

5.5.4 To present evidence that the presiding officer determines to be relevant even if the evidence may not be admissible in a judicial proceeding.

5.5.5 To submit a written statement at the close of the hearing.

5.5.6 To be given a copy of the written decision and recommendation of the hearing panel that includes the reasons for the decision and recommendation.

Section 6. Appointment of a Hearing Panel. The Responsible Person must appoint a Hearing Panel to hear and decide the case.

6.1 Composition. The Hearing Panel Review must have at least three members. When the MEC is the Review Organization, a majority of the Panel must be members of the Active Staff. When the Board is the Review Organization, the Hearing Panel must include at least one member of the Board and one member of the Active Staff, with no more than a simple majority of the Panel belonging to either the Board or the Active Staff.

6.2 Qualifications of Hearing Panel Members.

6.2.1 The Responsible Person must appoint to the Panel individuals who are impartial and capable of understanding and interpreting the evidence that is anticipated to be presented.

6.2.2 If the MEC is the Review Organization, the Responsible Person must not appoint to the Panel any member of the MEC at the time the decision under review was made.

6.2.3 The Responsible Person must not appoint anyone to the Hearing Panel who is in direct economic competition with the Provider.

6.2.4 The Responsible Person must not appoint anyone who actively participated in the consideration of the mater involved, but no one is disqualified from being appointed to the Hearing Committee solely because the person has some knowledge of the facts of the case.

6.2.5 When a material portion of the question under review involves the Practitioner's clinical competence and the MEC is the Review Organization, all members of the Hearing Panel must be clinical Practitioners, but they need not be clinicians in the same specialty as the Practitioner. When the Board is the Review Organization, a majority of the Panel must be clinical Practitioners.

6.2.6 The Responsible Person may appoint individuals who are not members of the Active Staff to the Hearing Panel, as long as a majority of Panel members are members of the Active Staff.

6.3 Objections to Hearing Panel. A Practitioner may object to the appointment of any member of the Hearing Panel by submitting a written objection that explains the reasons for the objection to the Responsible Person within two Business Days of receiving the Notice of Hearing. The Responsible Person must respond to the objection in writing within three Business Days of receiving it. If the Responsible Person removes a member of the Hearing Panel, the Responsible Person must appoint a replacement and promptly notify the Practitioner.

Section 7. Presiding officer. The Responsible Person must appoint a Presiding Officer to oversee the overall conduct of the hearing process.

7.1 Appointment. The Responsible Person may designate one of the members of the Hearing Panel as Presiding Officer, or may appoint an attorney or other person experienced in due process and conducting proceedings to serve as Presiding Officer. An attorney appointed as Presiding Officer may be engaged and paid for by the Hospital but does not represent the Hospital, the MEC, or the Board in the hearing.

7.2 Duties and prerogatives. The Presiding Officer has the following duties and prerogatives:

7.2.1 Manage the administrative details of arranging and preparing for and conducting the hearing on behalf of the Hearing Committee. The Medical Staff Services Office may assist the Presiding Officer in these tasks.

7.2.2 Maintain decorum and ensure that all participants have a fair opportunity to present relevant evidence at the hearing.

7.2.3 Determine the order of presentation of evidence during the hearing and rule on matters of law, interpretation of the Governing Documents, questions of procedure, and admissibility of evidence.

7.2.4 Prohibit undue delay, expense, or embarrassment in the conduct of the hearing.

7.2.5 Protect the confidentiality of evidence and testimony.

7.2.6 Supply additional rules of procedure that are not specifically addressed by this Policy as necessary to provide a fair and efficient hearing.

Section 8. Pre-hearing procedures.

8.1 Practitioner's evidence. The Practitioner must provide the Review Organization with a list of witnesses the Practitioner intends to call and copies of documentary exhibits the Practitioner intends to present no later than 10 Business Days before the hearing, or at another time as determined by the Presiding Officer. The Practitioner must supplement this information as necessary.

8.2 Supplementing information. Each party must promptly supplement its witness and exhibit lists given to the other party if the party adds to or eliminates a witness or exhibit.

8.3 No general right to discovery. Other than a right to fair notice of the identity of witnesses and access to documentary evidence the other party intends to introduce at the hearing, neither party has a general right discovery of information or documents from the other party.

8.3.1 Upon request, the Presiding Officer may order disclosure of documents not already disclosed if necessary to ensure a reasonable, fair, and efficient hearing, provided that satisfactory safeguards are imposed to prevent further disclosure of peer review, protected health, and other confidential information.

8.3.2 The Presiding Officer must not order disclosure of information regarding any other Practitioner or evidence unrelated to the reasons for the specific recommendation under review.

8.3.3 The Presiding Officer may require that all disclosures be made by a date set by the Presiding Officer or agreed to by the Parties.

8.4 Pre-hearing conference. The Presiding Officer may require the parties or the parties' attorneys to attend a pre-hearing conference to discuss the conduct of the hearing and resolve all procedural questions, including objections to exhibits or witnesses and to determine the time allotted to each witness' testimony and cross examination. The pre-hearing conference may be held in person, by telephone, or by any other means approved by the Presiding Officer.

8.5. Representation by counsel. The Review Organization may be represented by counsel provided by the Hospital. The Practitioner may be represented by counsel at all stages of the proceeding after the Notice of Action at the Practitioner's expense. If represented by counsel, all communication by a party to the Presiding Officer or the other party must be through the party's counsel.

Section 9. Conduct of the hearing.

9.1. Burden of production and proof. The Review Organization bears the initial burden of producing evidence at the hearing which, if not refuted, would constitute sufficient grounds to sustain the decision under review. If the Review Organization satisfies this burden, the burden shifts to the Practitioner to prove by clear and convincing evidence that the adverse recommendation or action (1) lacks any substantial factual basis or (2) is arbitrary or capricious. If the Practitioner does not meet this burden, the Hearing Panel must recommend that the action be forwarded to the Board for final action in accord with the Review Organization's recommendation.

9.2 Attendance by the Practitioner. The Practitioner must attend the hearing unless excused for good cause by the Presiding Officer. If the Practitioner is not present when the hearing is scheduled to begin without good cause, or if the Practitioner leaves the hearing without good cause before it is over, the Presiding Officer must terminate the hearing and announce that the Practitioner has by absence waived the right to a hearing.

9.3 Record of the hearing. The Review Organization must arrange and pay for someone to make a written, verbatim record of the hearing. The record may be made by a court reporter, an electronic recording of the hearing with subsequent transcription, or other means of reliably preserving and transcribing the testimony. The Practitioner has the right to purchase a copy of the record from the court reporter or Review Organization by paying the cost of having it prepared.

9.4 Witnesses. The Practitioner and the Review Organization have the right to call, examine, and cross-examine witnesses, subject to reasonable limitations imposed by the Presiding Officer. The Hearing Panel has the discretion to require witnesses to testify under oath or affirmation of the truth of their testimony.

9.4.1 Practitioner as witness. If the Practitioner does not testify on his or her own behalf, the Review Organization may call the Practitioner as a witness and examine the Practitioner as if under cross examination. If the Practitioner refuses to testify, the Hearing may be terminated and the Practitioner deemed to have waived his or her right to a hearing.

9.4.2 **Hearing panel witnesses.** The Hearing Panel may call any witness it deems necessary, even if not listed or called by a party, and may examine or cross-examine any witness called by a party.

9.4.3 **Remote testimony.** The Hearing Panel may in its discretion permit any witness other than the Practitioner to testify by telephone, video conference, or other means.

9.5 Evidence. The Presiding Officer must admit only evidence and testimony relevant to contested issues of fact or law in the hearing and helpful to the Hearing Panel. The Presiding Officer must not refuse to admit any evidence upon which a professional customarily relies in the conduct of his or her profession solely because the evidence is inadmissible under the rules of evidence applicable to judicial proceedings. However, the Presiding Officer must not admit evidence that is irrelevant, cumulative, duplicative, speculative, or otherwise not helpful to the Hearing Panel's consideration of the contested issues.

9.5.1 Official notice. On its own initiative or upon the suggestion of any party, the Hearing Panel may take official notice, before or after the matter is submitted for decision, of generally accepted technical or scientific matters relating to the issues under consideration, and on any facts that may be judicially noticed by a court in Minnesota, even if no affirmative evidence of the fact was introduced at the hearing.

9.5.1.1 If official notice is taken at the hearing, the parties must be informed of the facts to be noticed and the facts must be noted in the record. Any party may present evidence to refute any officially noticed fact, orally or by presentation of written authority. The Hearing Panel must then determine whether the officially noticed fact has been refuted or not.

9.5.1.2 If official notice is taken after the hearing is concluded, facts officially noticed must be noted in the Hearing Panel's report. The Practitioner may offer a written objection to any officially noticed fact to the Board by submitting an appeal of the Hearing Panel's report to the Board under section 12.1.

9.5.2 Evidence considered in credentialing decision admissible. The Hearing Panel may consider all information that the Medical Staff's Governing Documents permit to be considered in connection with an application for appointment or reappointment to the Medical Staff and for clinical privileges.

9.6 Recesses. The Presiding Officer or the Hearing Panel may recess the hearing and reconvene it for the convenience of the parties or the Panel, or for the purpose of obtaining new or additional evidence.

9.7. Record closed; concluding statement. At the conclusion of the presentation or oral and written evidence, the hearing is closed. The Practitioner and Review Organization have the right to submit a written statement at the close of the hearing or shortly after the close of the hearing. Either party may waive submission of a written statement.

Section 10. Deliberations. At the conclusion of the hearing, the Hearing Panel must, at a time and place convenient to itself, meet to deliberate outside the presence of the parties.

10.1 May begin deliberations before final statement. The Panel need not wait to receive the parties' written concluding statements before beginning deliberation, but must not make a final decision until it receives and considers the concluding statements.

10.2. Deliberations need not be in person. The Panel may deliberate in person or by any other means by which all Panel members are able to participate simultaneously.

10.3. Role of Presiding Officer. If the Presiding Officer is an attorney or other person who is not a member of the Hearing Panel, the Presiding Officer may advise the Hearing Panel, participate in its deliberations, and assist the Hearing Panel in writing its final report, but has no vote on the outcome of the matter. A Presiding Officer who is a member of the Hearing Panel may vote on the outcome.

10.4 Vote required to reverse. At the conclusion of its deliberations, the Hearing Panel must vote on whether the Practitioner has met the burden of proof to reverse the Review Organization's proposed action. The proposed action is affirmed unless a majority of the Hearing Panel votes to reverse it.

Section 11. Report. The Panel must prepare a written report and recommendation summarizing its findings of facts and stating its conclusions and recommendations. The Panel must support facts recited in its report by citation to the record. Each panel member must sign the report and indicate whether he or she agrees with the report's conclusions. The Panel must forward the report, the transcript, and all documentary evidence admitted at the hearing to the Responsible Person.

Section 12. Communication of decision; appeal; final action. The Responsible Person must promptly submit the Panel's Report and the record of the hearing to the Board, with a copy of the Report to the MEC and the Practitioner. The Responsible Person must also notify the Practitioner in writing of the Practitioner's right to appeal the Hearing Panel's recommendation as provided in this section.

12.1 Appeal of Hearing Panel's decision. Either party may appeal an adverse decision of the Hearing Panel by submitting to the Chair of the Board or the Chair's designee and to the other party a written notice of intention to appeal within three Business Days of receiving the report. The appellant must submit a written argument to the Board and the other party no later than ten Business Days of receiving the Hearing Panel's report, and the other party must submit its written response, if any, within five Business Days of receiving the appellant's written argument. The appeal must be based on the hearing record and must not include evidence not offered to the Hearing Panel. The only issue in the appeal is whether the Hearing Panel's recommendation and report lacks any substantial factual basis or is arbitrary or capricious.

12.2 Board's action. The Board must consider the Review Organization's recommended action, the Hearing Panel's report, and any party's appeal or response, if any, and take final action within 30 days of receiving the last of these to be submitted.

12.2.1 Appearance before the Board. The Board may, but is not required to, offer either or both parties an opportunity to appear personally before the Board or any subcommittee of the Board to explain the appeal and response and to answer any questions the Board members may have.

12.2.2 Board's final action. The Board may take any action that it could have taken had a hearing not been held, including affirming, denying, or modifying the recommendation. Any such action is final.

12.2.3 Non-final action. The Board may decline to take final action and refer the matter back to the Hearing Panel with specific instructions for further fact-finding, clarification or deliberation.

12.3 Notice of Board's action. The Board must notify the Practitioner, the Hearing Panel, and the MEC in writing of any action it takes on the Hearing Panel's recommendation. The Hearing Panel is dismissed upon the Board's final action.

Section 13. Only one hearing. Notwithstanding any other provision of this or any other Governing Document, a Practitioner is entitled as a right to no more than one evidentiary hearing with respect to an adverse recommendation or proposed action.

Section 14. Reports of final professional review actions. The Hospital will make any reports of final adverse professional review actions to the National Practitioner Data Bank, the Minnesota Board of Medical Practice, and any other organization as required by law.

Approved by Bylaw Revision Committee	_____ Signature	12/20/10 Date
Approved by MEC	_____ Signature	01/03/11 Date
Approved by Board	_____ Signature	02/23/11 Date