

Montrose Memorial Hospital

MEDICAL STAFF BYLAWS

**Volume II:
Corrective Action & Fair Hearing Manual**

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Contents

INTRODUCTION	4
ARTICLE I: INVESTIGATIONS	4
1.1 Criteria for Initiation	4
1.2 Initiation	4
1.3 Procedure	5
1.4 Completion of Investigation	5
1.5 Reporting to the National Practitioner Data Bank (NPDB) and Regulatory Agencies	6
1.6 Medical Executive Committee Action	6
ARTICLE II: PRECAUTIONARY SUSPENSIONS OR DISCIPLINARY RESTRICTIONS	7
2.1 Authority to Temporarily Suspend Privileges	7
2.2 Assignments of Patients	7
2.3 Interview	7
2.4 Medical Executive Committee Action	8
2.5 Procedural Rights of Practitioners Subject to Precautionary Suspension	8
2.6 Disciplinary Restriction of Privileges	8
ARTICLE III: AUTOMATIC SUSPENSION, LIMITATION, OR VOLUNTARY RELINQUISHMENT OR RESIGNATION OF MEDICAL STAFF MEMBERSHIP AND/OR PRIVILEGES	8
3.1 Revocation or Suspension of License	9
3.2 Conviction of a Felony	9
3.3 Suspension for Failure to Complete Medical Records	10
3.4 Revocation or Suspension of DEA Number	10
3.5 Failure to Maintain Liability Insurance	10
3.6 Exclusion from Federal or State Insurance Programs or Conviction for Insurance Fraud	10
3.7 Failure to Participate in an Evaluation or Assessment	10
3.8 Failure to Become Board Certified or to Maintain Board Certification	11
3.9 Failure to Notify Hospital of Disciplinary or Final Malpractice Actions	11
3.10 Failure to Return from a Leave of Absence	11
ARTICLE IV: REPORTING REQUIREMENTS	12
4.1 Reporting to the National Practitioner Data Bank (NPDB)	12
4.2 Additional Reporting Requirements	12
ARTICLE V: INITIATION OF HEARING	12
5.1 Grounds for Hearing	12
5.2 Circumstances Not Grounds for a Hearing	12
5.3 Notice to Practitioner	13
5.4 Practitioner’s Request for Hearing	14
5.5 Waiver of Hearing by the Practitioner	14
5.6 Stay of Adverse Decision	14
ARTICLE VI: HEARING PREREQUISITES	14
6.1 Notice of Time and Place for Hearing	14
6.2 Statement of Issues and Events	15
6.3 Limited Right of Discovery	15
ARTICLE VII: HEARING PROCEDURE	17
7.1 Personal Presence	17
7.2 Presentation	17
7.3 Presiding Officer	17

7.4 Hearing Officer	18
7.5 Pre-Hearing Conference	18
7.6 Record of Hearing	18
7.7 Rights of Parties	18
7.8 Admissibility of Evidence	19
7.9 Official Notice	19
7.10 Burden of Production or Proof	19
7.11 Presence of Panel Members and Vote	20
7.12 Recesses and Conclusions	20
7.13 Postponements and Extensions	20
ARTICLE VIII: HEARING PANEL REPORT AND FURTHER ACTION	20
8.1 Hearing Panel Report	20
8.2 Action on Hearing Panel Report	20
8.3 Notice and Effect of Results	21
ARTICLE IX: INITIATION AND PREREQUISITE OF APPELLATE REVIEW	21
9.1 Request for Appellate Review	21
9.2 Waiver by Failure to Request Appellate Review	22
9.3 Notice of Time and Place	22
9.4 Appellate Review Body	22
ARTICLE X: APPELLATE REVIEW PROCEDURE	22
10.1 Grounds for Appeal	22
10.2 Written Statements	23
10.3 Submission of Additional Evidence	23
10.4 Oral Statement	23
10.5 Recesses and Adjournment	23
10.6 Action	24
ARTICLE XI: FINAL DECISION OF THE BOARD	24
11.1 Final Board Decision	24
11.2 Effect of Final Board Decision	24
ARTICLE XII: GENERAL PROVISIONS	24
12.1 Exhaustion of Administrative Remedies	24
12.2 Limit of One Appellate Review	25
12.3 Waiver	25
ARTICLE XIII: ADOPTION AND AMENDMENT	25
13.1 Amendment	25

CORRECTIVE ACTION & FAIR HEARING MANUAL

INTRODUCTION

It is the policy of the Medical Staff of Montrose Memorial Hospital to work collegially with its members to assist them in delivering safe and good quality medical care, to continually improve their clinical skills, to comply with Medical Staff and Hospital policies, and to meet all performance expectations as established from time to time by the Medical Staff and Hospital. Medical Staff policies, including those on peer review, performance improvement, professional conduct, and Practitioner health and impairment describe some of the collegial interventions available to Medical Staff leaders in working with colleagues whose clinical performance or professional conduct is problematic. The provisions of this manual describe the steps that the Medical Staff and Hospital will undertake when such collegial efforts fail or are insufficient to protect the well being of patients, staff, and colleagues, or to assure the effective and efficient operating of the Hospital. In particular, Article V of this manual is designed to provide a fair hearing and appeals process for members of and applicants to the Medical Staff.

ARTICLE I **INVESTIGATIONS**

1.1 Criteria for Initiation

Any person or committee may provide information to any member of the Medical Executive Committee (MEC) or other Medical Staff leader about the conduct, performance, or competence of Medical Staff members. When reliable information indicates a member may have exhibited acts, demeanor, or conduct, reasonably likely to be (1) detrimental to patient safety or to the delivery of quality patient care within the Hospital; (2) unethical or illegal; (3) contrary to the Medical Staff Bylaws, Hospital or Medical Staff rules, regulations, manuals and/or policies; (4) harassing or intimidating to staff, colleagues, patients or their families; (5) disruptive of Hospital or Medical Staff operations; or (6) below applicable professional standards as established or determined by the Medical Staff or its MEC, a request for an Investigation or action against such member may be initiated by the Chief of Staff, Medical Executive Committee (MEC), the chair of the Credentials Committee or the Peer Review Oversight Committee, or the Hospital Chief Executive Officer (CEO). The purpose of an Investigation is to determine if an MEC recommendation to the Board for Corrective Action is warranted or determine what additional information should be gathered or collegial interventions attempted prior to making such a recommendation. Routine peer review and performance monitoring (e.g. focused and ongoing professional practice evaluation) will not be considered an "Investigation" as described in this Article.

1.2 Initiation

A request for an Investigation must be submitted by one of the above parties to the MEC or initiated by the MEC itself and supported by reference to the specific activities, concerns or conduct alleged to warrant the Investigation. When the MEC initiates the Investigation it shall make a record of this action in its official minutes. An Investigation

will be automatically initiated by the MEC whenever it affirms that a Practitioner should be subject to a precautionary suspension as described in Article II of this Corrective Action and Fair Hearing Manual.

1.3 Procedure

If the MEC concludes an Investigation is warranted, it shall direct an Investigation to be undertaken. In the event the Hospital Board believes the MEC has incorrectly determined an Investigation unnecessary, it may direct the MEC to proceed with an Investigation. The MEC may conduct the Investigation itself, or may assign the task to an appropriate Medical Staff officer, standing or ad hoc committee of the Medical Staff or the committee chair, or engage an external peer review consultant to carry out the Investigation or assist the Investigator or Investigative committee. Strong consideration should be given to use of external peer review if any of the following circumstances is present:

- The MEC is presented with ambiguous or conflicting recommendations from Medical Staff reviewers or committees, or where there does not appear to be a strong consensus for a particular recommendation.
- There is a reasonable probability that litigation may result in response to an MEC recommendation regarding the Practitioner under review;
- There is no one on the Medical Staff with expertise in the subject under review, or when the only Practitioners on the Medical Staff with the requisite expertise are direct competitors, partners, or associates of the Practitioner under review.

If the Investigation is delegated to an individual or entity other than the MEC, the Investigation shall proceed in a prompt manner and a written report of the Investigation findings will be submitted to the MEC as soon as practicable. The report may include recommendations for appropriate Corrective Action. The member shall be notified that the Investigation is being conducted and shall be given an opportunity to provide information in a manner and upon such terms as the investigating body or individual deems appropriate. The individual or body conducting an Investigation may require the Practitioner who is the subject of the Investigation to provide any records or documents necessary to complete the Investigation, including records or documents from his office practice or other medical settings where he is clinically active (e.g. other hospitals or ambulatory centers). The individual or body investigating the matter may, but are not obligated to, conduct interviews with persons knowledgeable about the Practitioner under review, however, such Investigation shall not constitute a “hearing” as that term is used in this Corrective Action and Fair Hearing Manual, nor shall the procedural rules with respect to hearings or appeals apply. Despite the status of any Investigation, at all times the MEC shall retain authority and discretion to take whatever action it feels may be warranted by the circumstances to protect the Hospital, its staff and its patients, including suspension or limitations on the exercise of privileges.

1.4 Completion of Investigation

When the individual or entity carrying out the Investigation submits its written report the MEC will determine if it is complete and sufficient for the MEC to make a determination whether Corrective Action should be recommended. When it makes this decision the MEC will indicate in its minutes that the Investigation is completed and so notify the Practitioner involved. If the Investigation is triggered by imposition of a precautionary suspension, the results of the Investigation should be submitted to the MEC for consideration within 14 days from the suspension's imposition. In all other cases, the Investigation should be concluded within 90 days or as soon as practicable. If the MEC believes extenuating circumstances require a longer period to complete the Investigation, it may authorize up to an additional 90 days in which to receive a written report.

1.5 Reporting to the National Practitioner Data Bank (NPDB) and Regulatory Agencies

If the Practitioner under Investigation resigns membership or privileges while the Investigation is underway, the MEC will inform the Hospital Medical Staff Office and a report will be made in accordance with the requirements governing such reporting to the federal National Practitioner Data Bank. Reports regarding Investigations and Corrective Actions will be made to state regulatory agencies as required under state regulations and statutes.

1.6 Medical Executive Committee Action

A record of the Investigation shall be placed in the Practitioner's Medical Staff peer review file along with any actions the MEC undertakes as a result. As soon as practicable after the conclusion of the Investigation the MEC shall take action that may include, without limitation:

- a. Determining no Corrective Action be taken.
- b. Deferring action if the MEC believes more information is needed. However, such deferral should be consistent with the timelines described in 1.4 above.
- c. Issuing letters of admonition, censure, reprimand, or warning, although nothing herein shall be deemed to preclude Medical Staff or Hospital leaders from issuing informal written or oral warnings outside of the mechanism for Corrective Action. In the event such letters are issued, the affected Practitioner may make a written response, which shall be placed in the Practitioner's Medical Staff peer review file.
- d. Recommending the imposition of terms of probation or special limitation upon continued Medical Staff membership or exercise of clinical privileges, including, without limitation, requirements for co-admissions and co-management of patients, mandatory consultation, or monitoring.
- e. Recommending denial, restriction, modification, reduction, suspension or revocation of clinical privileges.
- f. Recommending reductions of membership status or limitation of any prerogatives directly related to the member's delivery of patient care.
- g. Recommend changes in the Practitioner's call responsibilities, including removal or limitation of emergency department call obligations.
- h. Recommending suspension, revocation, or probation of Medical Staff membership.

- i. Referral to the Colorado Physician Health Program (CPHP) or for medical or mental health examination to determine 'fitness' to exercise Privileges safely.
- j. Taking other actions deemed appropriate under the circumstances.

ARTICLE II
IMPOSITION OF PRECAUTIONARY SUSPENSION OR DISCIPLINARY
RESTRICTION OF PRIVILEGES OR MEMBERSHIP

2.1 Authority to Temporarily Suspend Privileges

Any officer of the Medical Staff in conjunction with the Hospital CEO or his/her representative may temporarily suspend all or any portion of the clinical privileges of a Medical Staff appointee or Practitioner holding privileges whenever he perceives a reasonable possibility that failure to do so may pose danger to the health and/or safety of any individual or to the orderly operations of the Hospital. Such a precautionary suspension shall be deemed an interim action and not a professional review action. It shall not imply a final finding of responsibility for the situation that caused the suspension. Unless otherwise indicated, this suspension will take place immediately and the Chief of Staff, Hospital CEO, Hospital Board Chair, and the affected Practitioner will be promptly informed. The imposition of the suspension will be affirmed by the MEC as soon as practicable but in no more than 10 (ten) days.

Suspension undertaken to protect the well being of patients or staff are considered precautionary in nature and will be described as 'precautionary suspensions'. The term 'precautionary suspension' should be considered synonymous with the term 'summary suspension' as this terminology is used in state and federal statutes and regulations.

2.2 Assignments of Patients

Where any or all of the privileges of a Medical Staff member or Practitioner are terminated, revoked, or restricted, such that she/he can no longer treat all or some of his/her patients at the Hospital for any period of time, such patients who are then in the Hospital shall be assigned for the period of such termination, revocation, or restriction to another Practitioner by the Chief of Staff or designee. Where feasible, the wishes of the patient shall be considered in choosing a substitute Practitioner.

2.3 Interview

When a Practitioner has had privileges or membership status temporarily suspended, the Practitioner will be afforded an interview with the MEC if so requested. The MEC may also request an interview with the Practitioner under the mandatory special meeting provisions of the Medical Staff bylaws. The interview shall not constitute a hearing, shall be informal in nature, and shall not be conducted according to the procedural rules provided with respect to hearings under this Corrective Action and Fair Hearing Manual. Request to meet with the MEC must be made within five (5) business days of notification

of the precautionary suspension of privileges or membership. Request must be made in writing and delivered to the Chief of Staff or designee within the designated timeframe. Meeting with the MEC will be scheduled as soon as practicable after imposition of the suspension.

2.4 Medical Executive Committee Action

No more than fourteen (14) days after the imposition of a precautionary suspension, the Medical Executive Committee shall recommend to the Hospital Board whether the suspension should be modified, continued or terminated, including whether further Corrective Action should be taken or whether there is a need for further Investigation. Unless the precautionary suspension was imposed by action of the Hospital Board, such recommended action by the MEC shall take immediate effect and remain in effect pending a final decision by the Board. The MEC shall give special notice to the affected Practitioner of its recommendations as soon as possible or within five (5) days of the adoption of such recommendation.

2.5 Procedural Rights of Practitioners Subject to Precautionary Suspension

Whenever a Practitioner has been suspended for unprofessional conduct or concerns about clinical competence for more than fourteen days, or when the MEC makes a recommendation for suspension of more than fourteen days the Practitioner will be entitled to request a fair hearing as described below in Article V of this manual.

2.6 Disciplinary Restriction of Privileges

The MEC may, with approval of the Hospital CEO and the Chair of the Board or designees, institute one or more disciplinary restriction of the privileges of a Practitioner for a cumulative period up to but not to exceed fourteen (14) consecutive days in a calendar year. A disciplinary restriction may be instituted only under the following circumstances:

- When the action that has given rise to the suspension relates to non-compliance with a Medical Staff or Hospital policy on professional conduct; and,
- When the affected Practitioner has been offered an opportunity to meet with the MEC prior to the imposition of the disciplinary suspension. Failure on the part of the Practitioner to accept the MEC offer of a meeting will constitute a violation of the Medical Staff Bylaws regarding mandatory special meetings.

ARTICLE III

AUTOMATIC SUSPENSION, LIMITATION, OR VOLUNTARY RELINQUISHMENT OR RESIGNATION OF MEDICAL STAFF MEMBERSHIP AND/OR PRIVILEGES

This article addresses automatic suspensions and limitations on membership and privileges and voluntary resignations/relinquishments of membership and privileges when these occur for administrative reasons. Administrative reasons are those relating to failure to meet eligibility

requirements of membership or to comply with additional requirements for membership or privileges found in the Medical Staff Bylaws or other Medical Staff policies, rules, or regulations. Automatic suspensions and limitations on membership and privileges and voluntary resignations/relinquishments of membership and privileges are not considered professional review actions, are not based on determinations of competence or unprofessional conduct, and are not entitled to the hearing or appeal procedures provided under these Bylaws and described in this manual.

3.1 Revocation or Suspension of License

A Medical Staff member or Practitioner with privileges, whose license, or other legal credential authorizing practice in the State of Colorado is suspended, the Practitioner shall be immediately suspended from practicing in the Hospital pending final resolution and outcome by the licensing agency. During this time the Practitioner will be considered ineligible for Medical Staff membership or privileges and will not be entitled to the procedural due process rights provided in this manual. If the licensing agency reinstates the Practitioner without any limitations or conditions, the suspension will be lifted. If licensing agency reinstates Practitioner's license with limitations or conditions, suspension will remain in effect pending an interview with Credentials Committee and recommendation from the MEC for action by the Hospital Board.

If license, or other legal credential authorizing clinical practice in the State of Colorado is revoked, the Practitioner shall immediately and automatically lose Medical Staff membership and/or privileges at the Hospital. This will not be considered a professional review action, but an administrative action for noncompliance with the Medical Staff eligibility requirements for membership and/or privileges. The Practitioner shall not be entitled to the procedural due process rights outlined in this manual.

3.2 Failure to Attend Specially Noticed Meeting When Requested

A Practitioner who fails to appear at a meeting where his or her special appearance is required under the Medical Staff Bylaws, shall automatically be suspended from exercising all clinical privileges unless he can establish good cause to the satisfaction of the Chief of Staff for missing the meeting. Failure to appear for a rescheduled meeting on more than one occasion shall be considered a voluntary resignation from the Medical Staff. Unless the Practitioner was under formal Investigation at time of this voluntary resignation, there will be no entitlement to the fair hearing and appeals procedures provided in this manual.

3.3 Conviction of a Felony

A Practitioner who has been convicted of, or entered a plea of guilty or no contest to a felony or a misdemeanor relating to controlled substances, illegal drugs, insurance or health fraud, or violence, will be immediately and automatically suspended from practicing in the Hospital. Such suspension shall not entitle the affected Medical Staff member or Practitioner with privileges to the hearing and the procedural rights of this manual of the Medical Staff Bylaws. Such suspension shall become effective

immediately upon such conviction, or plea, regardless of whether an appeal is filed. Such suspension shall remain in effect until the matter is resolved by subsequent action of the Board or through corrective action, if necessary.

3.4 Suspension for Failure to Complete Medical Records

A temporary administrative suspension of privileges may be imposed for failure to complete medical records within the time periods established by the MEC and reflected in Medical Staff and/or Hospital policies. The suspension shall be lifted upon completion of the delinquent records. A temporary administrative suspension may become permanent suspension for failure to complete all medical records in accordance with the Medical Staff policy on medical records. However, affected Practitioners may request reinstatement during a period of thirty calendar days following permanent suspension if all delinquent records have been completed. Thereafter, such Practitioners shall be deemed to have voluntarily resigned from the Medical Staff and must reapply for membership and privileges.

3.5 Revocation or Suspension of DEA Number

A Practitioner whose Drug Enforcement Administration (DEA) number is revoked or suspended shall immediately and automatically be divested of his privilege to prescribe drugs covered by such number/license within the Hospital. This is not a professional review action and the Practitioner shall not be entitled to procedural due process as described in this manual. As soon as practicable, the MEC shall investigate the facts under which the Practitioner's DEA number was revoked or suspended, and may take further Corrective Action if indicated.

3.6 Failure to Maintain Liability Insurance

A Practitioner's Medical Staff appointment and/or privileges shall be immediately suspended for failure to maintain the minimum amount of professional liability insurance required by the Board. Affected Practitioners may request reinstatement during a period of ninety calendar days following suspension upon presentation of proof of adequate insurance. Thereafter, such Practitioners shall be deemed to have voluntarily resigned staff membership and/or privileges and must reapply for reinstatement of those Medical Staff membership and/or privileges.

3.7 Exclusion from Federal or State Insurance Programs or Conviction for Insurance Fraud

If a Practitioner appears on the list of "Excluded Individuals/Entities" maintained by the HHS Office of Inspector General, or is excluded from any federal insurance programs, the Practitioner shall be considered to have automatically resigned his Medical Staff membership and/or privileges. Similarly, any Practitioner convicted of violations of the federal False Claims Act or of insurance fraud shall be considered to have automatically relinquished his Medical Staff membership and/or privileges.

3.8 Failure to Participate in an Evaluation or Assessment

A Practitioner who fails or refuses to participate in an evaluation or assessment of his or her qualifications for Medical Staff membership and/or privileges as required under these Bylaws shall be automatically suspended. Such evaluations or assessments can be to determine clinical competence, physical fitness to exercise privileges, or to evaluate the Practitioner's behavioral/mental health and must be undertaken with professionals or organizations (e.g. the Center for Personalized Education for Physicians (CPEP) or the Colorado Physician Health Program) identified by or acceptable to the Chief of Staff or MEC. If, within thirty days of the suspension the Practitioner agrees to and participates in the evaluation or assessment, the Practitioner shall be reinstated. Otherwise, after thirty days, the Practitioner will be deemed to have voluntarily resigned his or her Medical Staff membership and/or privileges.

3.9 Failure to Become Board Certified or to Maintain Board Certification

Where applicable under these Bylaws, whenever a Practitioner's time period in which to become board certified or maintain certification expires without achieving certification, that individual will be deemed to have voluntarily resigned his Medical Staff membership and/or privileges.

3.10 Failure to Notify Hospital of Disciplinary or Final Malpractice Actions

A Practitioner who fails to notify the Chief of Staff and the Hospital CEO in writing within ten (10) days of any of the following shall be automatically suspended:

- if his privileges in any Hospital or health care entity have been revoked or limited in any way;
- if proceedings have been initiated to revoke or limit privileges in any way at another health care facility or institution;
- if a professional malpractice action has been resolved in an adverse outcome;
- if there is a change in the practitioner's license to practice medicine or prescribe drugs in any state;
- if removed or not renewed as an insurance plan provider due to quality of care issues; or
- if he fails to notify the Hospital of any action taken by any state licensing board against the Practitioner (including but not limited to probation, restrictions, suspensions, or revocations).

The suspension shall be lifted by the MEC when the Practitioner provides adequate documentation to the MEC of the circumstances that triggered the suspension. Failure to provide this information in fourteen (14) days will be considered a voluntary resignation from Medical Staff membership and/or privileges.

3.11 Failure to Return from a Leave of Absence

If a Practitioner granted a leave of absence (LOA) does not request reinstatement or an extension before the LOA expires, he or she will be considered to have voluntarily resigned his Medical Staff membership and/or privileges.

ARTICLE IV **REPORTING REQUIREMENTS**

4.1 Reporting to the National Practitioner Data Bank (NPDB)

Professional review actions based on reasons related to professional competence or conduct adversely affecting clinical privileges for longer than thirty (30) days or voluntary surrender or restriction of clinical privileges while under, or to avoid, Investigation must be reported to the National Practitioner Data Bank (“NPDB”). The Practitioner involved will be notified prior to its submission that a data bank report is required and will be made.

4.2 Additional Reporting Requirements

Reports of professional review actions will be made to state and other regulatory entities as required by federal and state laws or regulations.

ARTICLE V **INITIATION OF HEARING**

5.1 Grounds for Hearing

Except as otherwise provided in these Bylaws, a recommendation by the Hospital Board or MEC for one or more of the following adverse actions or their imposition, if based on a determination of clinical incompetence or unprofessional conduct, shall constitute grounds for a hearing:

- a. Denial of initial appointment to the Medical Staff ;
- b. Denial of reappointment to the Medical Staff;
- c. Revocation of appointment to the Medical Staff;
- d. Denial of some or all requested clinical privileges;
- e. Revocation of some or all clinical privileges;
- f. Suspension of some or all privileges for more than 14 days; or
- g. Restriction of some or all privileges for more than 14 days (e.g. mandatory concurring consultation requirement), when such requirement only applies to an individual Medical Staff member or Practitioner.)

5.2 Circumstances Not Grounds for a Hearing

The following circumstances would not limit rights to a fair hearing if related to acts of conduct deemed unprofessional or demonstrating incompetence.

- a. Having a letter of guidance, warning, or reprimand issued to the Practitioner or placed in the credentials or performance file of the Practitioner;
- b. Automatic relinquishment of privileges or membership as described in Article III above;
- c. Imposition of a precautionary or disciplinary suspension that does not last for more than fourteen days;
- d. Denial of a request for a leave of absence or for an extension of a leave of absence;
- e. Determination by the Hospital that an application for appointment, reappointment, and/or privileges is untimely or incomplete for failure to submit all requested information;
- f. A decision not to process an application under the available procedures for expedited review;
- g. Assignment to a particular Medical Staff category;
- h. Imposition of a proctoring or monitoring requirement where such does not include a restriction on privileges;
- i. Failure to process a request for a privilege when the applicant/member does not meet the eligibility requirements to hold that privilege;
- j. Conduct of focused peer review (including external peer review) or a formal Investigation;
- k. Requirement to appear for a special meeting under the provision of the Medical Staff Bylaws;
- l. Termination or limitation of temporary privileges unless for demonstrated incompetence or unprofessional conduct;
- m. Determination that an applicant for membership does not meet the requisite qualifications or criteria for membership;
- n. Ineligibility to request membership or privileges or continue the exercise of privileges because a relevant specialty is closed under a Medical Staff development plan adopted by the Board or covered under an exclusive provider agreement approved by the Board;
- o. Termination of any contract with or employment by the Hospital;
- p. Any recommendation voluntarily accepted by the member as a result of collegial peer review;
- q. Removal or limitation of emergency department call obligations or opportunities;
- r. Any requirement by the MEC or Board to complete an educational assessment;
- s. Any requirement by the MEC or Board to undergo a mental, behavioral, or physical evaluation to determine fitness for practice;
- t. Appointment or reappointment for a duration of less than 24 months;
- u. Suspension for failure to complete medical records unless such behavior is deemed to represent unprofessional conduct reportable to the NPDB;
- v. Actions taken by the affected Practitioner's licensing agency or any other governmental agency or regulatory body.

5.3 Notice to Practitioner

A Practitioner with respect to whom adverse action listed in Section 5.1 above has been taken shall promptly be given special notice thereof by the Chief of Staff or, if such

notice was prompted by action of the Hospital Board, by the Chair of the Hospital Board. This special notice will include a description of the adverse action and the reasons for it, a copy of this Corrective Action and Fair Hearing Manual, and an offer to provide the Practitioner a hearing. The notice will also inform the Practitioner that the adverse action or recommendation, if finally adopted by the Board, may result in a report to the state licensing authority (or other applicable state agencies) and the National Practitioner Data Bank. The Practitioner shall have thirty (30) days following the date of receipt of such notice within which to request a hearing.

5.4 Practitioner's Request for Hearing

A Practitioner's request for a hearing shall be made by means of written special notice delivered either in person or by certified or registered mail to the Hospital CEO.

5.5 Waiver of Hearing by the Practitioner

A Practitioner who fails to request a hearing within the time required and in the manner specified waives any right to a hearing to which he might otherwise have been entitled. Such waiver in connection with:

- a. a decision or proposed decision by the Hospital Board shall constitute acceptance of such decision, which shall thereupon become effective as the final decision of the Hospital Board and will be reported as required by law.
- b. a recommendation by the MEC shall constitute acceptance of such recommendation, which shall thereupon become and remain effective pending the final decision of the Hospital Board and which will be reported as required by law.

The Practitioner may also waive the right to a hearing by signed statement submitted to the Hospital CEO.

5.6 Stay of Adverse Decision

A request for a hearing does not automatically operate to stay any adverse recommendation of the MEC or adverse decision of the Hospital Board, including the imposition of a precautionary suspension, and such recommendation or decision shall remain effective pending the final decision of the Hospital Board.

ARTICLE VI **HEARING PREREQUISITES**

6.1 Notice of Time and Place for Hearing

Upon receipt of a timely request for hearing, the Hospital CEO shall inform the Chief of Staff, MEC and Hospital Board. Within thirty (30) days after receipt of such request the Hospital CEO shall schedule and arrange for a hearing. At least thirty (30) days prior to the hearing, the Practitioner will be sent a special notice of the time, place, and date of the

hearing, together with a statement of the matters to be considered and a list of witnesses (if any) expected to testify at the hearing on behalf of the MEC or Hospital Board. The hearing date shall commence not less than thirty (30) days nor more than sixty (60) days from the date of receipt of the request for hearing, unless the affected Practitioner and Hospital CEO mutually agree to an earlier date. Once the date is set, the Hospital CEO and Practitioner shall mutually agree to any change in the hearing date, however, neither party may change the date more than one time.

6.2 Statement of Issues and Events

As part of or together with the notice of the hearing, there shall be provided a written statement, in concise language, of the acts or omissions which support the decision to impose or recommend an adverse action against the Practitioner, and the identification of any medical records (by chart or patient number where available) or other information or data which form the basis for the action. This statement and the list of supporting information may be amended or enhanced at any time, including during the hearing if the additional material is relevant to the continued appointment or clinical privileges of the Practitioner requesting the hearing and that Practitioner and his/her counsel have an opportunity to rebut the new material.

6.3 Limited Right of Discovery

There shall be no right to discovery except as specifically provided in these Bylaws.

- a. The Hospital CEO will provide the names of any hearing panel members, hearing officer, or Presiding Officer to the Practitioner requesting the hearing within five days of their appointment.
- b. Each party to a fair hearing shall furnish a list, in writing, of the names and addresses of the individuals, to the extent then reasonably known, who will be called as witnesses on its behalf and a brief summary of the nature of the anticipated testimony at least seven days prior to the hearing.
- c. There shall be no right to discover the name of any individual who has produced evidence relating to the charges made against the Practitioner who requested the hearing unless such individual is to be called as a witness at the hearing or unless the deposition or other written statement of such individual is to be evidence at the hearing.
- d. There shall be no right to the discovery of credentials or quality files of other members of the Medical Staff, or peer review minutes of any Medical Staff committee or activity unless specifically created and limited to addressing the competence and/or conduct concerns of the Practitioner requesting the hearing.

6.4 Hearing Panel, Presiding Officer, Hearing Officer

6.4.1 Appointment of Hearing Panel Members

The Hospital CEO, after consultation with and the concurrence of the Chief of Staff and chair of the Credentials Committee, shall appoint a Hearing Panel and a Presiding Officer or a Hearing Officer. A Hearing Panel shall be composed of not

fewer than three (3) voting members who meet the qualifications below. If the Presiding Officer is not a practitioner, he will not have voting privileges on the panel. The Practitioner requesting the Hearing will be notified of the Hearing Panel members appointed by the CEO and will have 5 business days from receipt of notice to lodge in writing with the CEO any objections to any appointee. Final authority to appoint panel members, a Presiding Officer, or a Hearing Officer will rest with the Hospital CEO and the Practitioner requesting the hearing is not entitled to veto any appointee's participation.

6.4.2 Qualification of Members

Voting members of the Hearing Panel shall be licensed practitioners who shall not have previously participated in the deliberations on the matter involved. All members of the hearing panel need not be members of the Medical Staff at Montrose Memorial Hospital.

Knowledge of the matter involved shall not preclude a person from serving as a member of the Hearing Panel. No member of the Hearing Panel may be a direct competitor of the member under review. The Hospital CEO shall have discretion to determine whether a potential panel member is a direct competitor of the Practitioner under review.

6.4.3 Presiding Officer

The Hospital CEO, after consultation and concurrence with the Chief of Staff, will appoint a Presiding Officer to chair the panel, set procedures for the Hearing, and conduct all business before the panel. If this individual is not a licensed practitioner, he/she will not be a voting member of the panel but may take part in its deliberations and support it in an advisory capacity. The Presiding Officer may be a practitioner on the Medical Staff, an active or retired judge or attorney, experienced practitioner executive, experienced human resources director, or any individual deemed by the CEO to have the capacity to manage the Hearing effectively and efficiently. Any cost incurred for a Presiding Officer will be borne by the Hospital.

6.4.4 Hearing Officer

The Hospital CEO, after consultation and concurrence with the Chief of Staff, may appoint a single Hearing Officer in lieu of a Hearing Panel where the issue triggering the Hearing is unprofessional conduct rather than clinical incompetence. The Hearing Officer may be a lawyer, practitioner executive, or other individual familiar with due process. The Hearing Officer may not be legal counsel to the Hospital, any individual who is in direct economic competition with the Practitioner requesting the Hearing, and cannot have been previously involved in the deliberations triggering the Hearing. The Hearing Officer will not act as a prosecuting officer or as an advocate for either side at the Hearing. In the event that a Hearing Officer is appointed instead of a Hearing Panel, all references

in this Corrective Action and Fair Hearing Manual to “Hearing Panel” or “Presiding Officer” shall be deemed to refer instead to the Hearing Officer, unless the context would clearly require otherwise. The cost of utilizing a Hearing Officer will be borne by the Hospital.

ARTICLE VII

HEARING PROCEDURE

7.1 Personal Presence

The personal presence of the Practitioner who requested the hearing shall be required. A Practitioner who fails without good cause to appear and proceed at such hearing shall be deemed to have waived his rights and thereby to have voluntarily accepted the adverse action that triggered the hearing.

7.2 Presentation

The hearings provided for in these Bylaws are for the purpose of intra-professional resolution of matters bearing on professional conduct or competency. Accordingly, the Presiding Officer shall have the discretion to limit the role of legal counsel for either side. This means that the Presiding Officer may rule that the person requesting the hearing shall be required to have his case presented at the hearing only by a Practitioner who is licensed to practice medicine in the State of Colorado and who, preferably, is a member in good standing of the Montrose Memorial Hospital Medical Staff. Where this is the case, the Hospital shall appoint a representative from the Medical Staff to present its recommendation and to examine witnesses. The foregoing shall not be deemed to deprive the Practitioner or Hospital of the right to utilize legal counsel, at their own expense, in preparation for the hearing and such counsel may be present at the hearing, advise his or her client, and participate in resolving procedural matters.

7.3 Presiding Officer

The Presiding Officer shall act to ensure that all participants in the hearing have a reasonable opportunity to be heard and to present appropriate oral and documentary evidence subject to reasonable limits on the number of witnesses and duration of direct and cross examination, applicable to both sides, as may be necessary to avoid cumulative or irrelevant testimony or to prevent abuse of the Hearing process. The Hearing need not be conducted in compliance with the formal rules of civil procedure governing legal matters in Colorado. The Presiding Officer shall act to ensure that decorum is maintained throughout the Hearing and to prohibit conduct or presentation of evidence that is cumulative, excessive, irrelevant, abusive, or that causes undue delay. The Presiding Officer shall be entitled to determine the order of procedure during the Hearing, and shall have the authority and discretion, in accordance with these Bylaws, to make all rulings on all matters of procedure, including the admissibility of evidence. The Presiding Officer may conduct argument by counsel on procedural points and may do so outside the presence of the Hearing Panel.

In addition, the Presiding Officer will act in such a way that the Hearing Panel, in formulating its recommendations, considers all information reasonably relevant to the continued appointment or clinical privileges of the individual requesting the Hearing. The Presiding Officer may seek legal counsel when he feels it is appropriate and may use the Hospital legal counsel for such advice.

7.4 Hearing Officer

Where a Hearing Officer is employed instead of a Hearing Panel this individual shall have the same authority as a Presiding Officer to determine the manner in which the Hearing will be conducted and rule on all matters of procedure and evidence.

7.5 Pre-Hearing Conference

The Presiding Officer or Hearing Officer may require a representative (who may be counsel) for the Practitioner requesting the hearing and for the Medical Executive Committee to participate in a pre-hearing conference. At the pre-hearing conference, the Presiding Officer or Hearing Officer shall resolve all procedural questions, including any objections to exhibits or witnesses and the time to be allotted to each witness's testimony and cross-examination.

7.6 Record of Hearing

The Hearing Panel shall maintain a complete record of the hearing by having a certified court reporter present to make a record of the hearing. The cost for the certified court reporter shall be borne by the Hospital. The Presiding Officer may, but shall not be required to, order that evidence shall be taken only upon oath or affirmation administered by any person entitled to notarize documents in Colorado. The record of the hearing may be requested by the Practitioner requesting the hearing and will be forwarded to him by the Hospital upon payment of reasonable reproduction costs.

7.7 Rights of Parties

The Practitioner shall have a limited right, as determined by the Presiding Officer, to inquire as to possible biases of the Hearing Panel. The Presiding Officer has discretion to respond to such inquiries in a manner he believes will provide for fair deliberations. Inquiry shall not be allowed into the medical qualifications or expertise of hearing panel members.

During a hearing, in accordance with procedures established by the Presiding Officer, each of the parties shall have the right to:

- a. call and examine witnesses
- b. introduce exhibits
- c. cross-examine any witness on any matter relevant to the issues
- d. impeach any witness
- e. rebut any evidence

If the Practitioner who requested the hearing does not testify in his own behalf, such Practitioner may be called and examined as if under cross-examination. Either party has the right to submit a written statement at the close of the hearing.

7.8 Admissibility of Evidence

The hearing shall not be conducted according to rules of law relating to the examination of witnesses or presentation of evidence. Any relevant evidence may be admitted by the Presiding Officer 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, unless such evidence is deemed by the Presiding Officer to be cumulative. Hearsay is admissible and shall be sufficient to support the decision of the Hearing Panel. The Hearing Panel may question witnesses or call additional witnesses if it deems appropriate.

7.9 Official Notice

The Presiding Officer shall have the discretion to take official notice of any generally accepted technical or scientific matter relating to the issues under consideration or of any other matter that may be judicially noticed by the courts of the State of Colorado. Participants in the hearing shall be informed of the matters to be officially noticed, and such matters shall be noted in the record of the hearing. Any party shall have the opportunity, upon timely request, to ask that a matter be officially noticed or to refute the noticed matters by relevant evidence or by written or oral presentation of authority in a manner determined by the Hearing Panel. Reasonable or additional time shall be granted, if requested, to present written rebuttal of any evidence admitted on official notice.

7.10 Burden of Production or Proof

a. Burden of Production

In all cases in which a hearing is conducted, it shall be incumbent on the body whose action or decision prompted the hearing (i.e. the MEC or Hospital Board) to come forward initially with evidence in support of its action or decision. Thereafter, the burden shall shift to the Practitioner who requested the hearing to come forward with evidence in his support.

b. Burden of Proof

In all cases in which a hearing is conducted, after all the evidence has been submitted by both parties, the Hearing Panel may rule against the Practitioner who requested the hearing unless it finds that such person has proved, by clear and convincing evidence, that the factual allegations against the Practitioner are untrue in total or in substantial part or unless it concludes, based on its findings of fact that the action of the entity whose decision prompted the hearing was arbitrary, unreasonable, or appears to be unfounded or unsupported by credible evidence. It is the burden of the Practitioner requesting the hearing to demonstrate that he or she satisfies, on a continuing basis,

all criteria for initial appointment, reappointment, and/or clinical privileges, and that he/she complies with all Medical Staff and Hospital policies.

7.11 Presence of Panel Members and Vote

A majority of the members of the Hearing Panel must be present throughout the hearings and deliberations; provided; however, that, at the discretion of the Presiding Officer, if a member is absent from part of the hearing, such member may be allowed to read the entire transcript of the missed proceedings and, after doing so, may thereafter participate in the deliberations of the Panel.

7.12 Recesses and Conclusions

The Presiding Officer may recess the hearing and reconvene the same at any time for the convenience of the participants, without additional notice. Upon conclusion of the presentation of oral and written evidence, the hearing shall be closed. The Hearing Panel shall then conduct its deliberations outside the presence of either party to the hearing.

7.13 Postponements and Extensions

Postponements and extensions of time beyond the times expressly permitted in these Bylaws may be requested by anyone, but shall be permitted only if the Hearing Panel, or its Presiding Officer acting on its behalf, determines that good cause has been shown.

ARTICLE VIII
HEARING PANEL REPORT AND FURTHER ACTION

8.1 Hearing Panel Report

Within ten (10) days after the conclusion of the hearing, the Hearing Panel shall make a detailed written report signed by each Panel member and setting forth separately each charge against the Practitioner, a summary of the evidence that supports or rebuts such charges, its findings on each fact at issue, and recommendations based on such findings with respect to the matter. This report, together with the hearing record and all other documentation considered by it, will then be forwarded to the body whose recommendation or decision prompted the hearing (MEC or Board). All findings and recommendations by the Hearing Panel shall be supported by reference to the hearing record and relevant documentation considered by the committee. If the Panel's decision is not unanimous, a minority report or reports may be issued. The Practitioner requesting the hearing has the right to receive the written recommendation of the Panel, including a statement of the basis for the recommendation.

8.2 Action on Hearing Panel Report

Within thirty (30) days after receipt of the report of the Hearing Panel, the Medical Executive Committee or Hospital Board, as the case may be, shall consider the same and affirm, modify or reverse its previous recommendation, decision or proposed decision in

the matter. It shall indicate its action in writing, and shall transmit a copy of its written recommendation together with the hearing record, the report of the Hearing Panel, and all other relevant documentation, to the Medical Executive Committee or Hospital Board. The Practitioner requesting the hearing has the right to receive the written decision of the MEC or Hospital Board, including a statement of the basis for the decision.

8.3 Notice and Effect of Results

a. The notice of the action taken shall be given to the Chief of Staff and, by special notice, to the affected Practitioner.

b. Effect of Favorable Result

1. Adopted by the Board

If the Hospital Board's action is favorable to the Practitioner, such action shall constitute the final decision of the Board and the matter shall be considered finally closed.

12.3 Adopted by the Medical Executive Committee

If the Medical Executive Committee's action is favorable to the Practitioner, it shall be promptly forwarded, together with all supporting documentation, to the Board for its decision. The Board shall either adopt or reject the Executive Committee's recommendation, in whole or in part, or refer the matter back to the Executive Committee for further reconsideration. Any such referral shall include a statement of the reasons therefore and set a time limit within which a subsequent recommendation to the Board must be made. After receipt of such subsequent recommendation, the Board shall render its decision. The Practitioner will be sent a special notice informing him of each action taken. A favorable decision shall constitute the final action of the Board, and the matter shall be considered finally closed.

c. Effect of Adverse Action

If the action of the Hospital Board, after any final recommendations received from the MEC, is adverse to the Practitioner, he shall be notified by special notice of his right to request an appellate review by the Hospital Board.

ARTICLE IX **INITIATION AND PREREQUISITE OF APPELLATE REVIEW**

9.1 Request for Appellate Review

Within ten (10) days after receipt of the notice given of an adverse recommendation pursuant to Section 8.3c, the Practitioner who requested the hearing may request in

writing an appellate review by the Hospital Board. Such request shall be delivered to the Hospital CEO or designee either in person or by certified or registered mail. The written request for an appeal shall also include a brief statement of the reasons for appeal.

9.2 Waiver by Failure to Request Appellate Review

If such appellate review is not requested within the time and in the manner specified in Section 9.1 the Practitioner shall be deemed to have waived his right to appeal and to accept the action so noticed, and it shall thereupon become final and effective immediately.

9.3 Notice of Time and Place

In the event of any appeal to the Hospital Board, the Board shall, within thirty (30) days after the receipt of such notice of appeal, schedule and arrange for an appellate review. The Hospital Board shall cause the Practitioner to be given special notice of the time, place and date of the appellate review. The date of the appellate review shall be not less than fourteen (14) days nor more than sixty (60) days from the date of receipt of the request for appellate review; provided, however, that when a request for appellate review is made by a member who is under a suspension which is then in effect, the appellate review shall be held as soon as the arrangements may reasonably be made and not more than thirty (30) days from the date of receipt of the request for appellate review. The Hospital Board for good cause may extend the time for appellate review.

9.4 Appellate Review Body

The Board shall determine whether the appellate review shall be conducted by the Board as a whole or by an Appellate Review Committee of not less than three (3) members of the Board appointed by the Chairman of the Board. The Chairman of the Hospital Board or designee shall be the Presiding Officer and shall have the same responsibilities as the Presiding Officer at the initial hearing. If such Committee is appointed, the Board shall delegate to such Committee full authority to render a final decision on behalf of the Board. Members of the review panel may not be direct competitors of the Practitioner under review and should not have participated in any formal Investigation or deliberations leading to the recommendation for Corrective Action under consideration.

ARTICLE X **APPELLATE REVIEW PROCEDURE**

10.1 Grounds for Appeal

The grounds for appeal to the Hospital Board or its Appellate Review Committee shall be limited to the following:

- a. There was substantial failure to comply prior to the hearing with the provisions contained in the Medical Staff Bylaws/Corrective Action and Fair Hearing Manual so as to deny basic fairness or reasonable due process; or
- b. The recommendation of the MEC and/or Hearing Panel or Hearing Officer was made arbitrarily, capriciously, or with prejudice; or
- c. The recommendation of the MEC was not supported by substantial evidence based upon the hearing record.

In making this assessment the Hospital Board or its Appellate Review Committee will consider the record of the hearing before the hearing panel and any written statements submitted by parties to the hearing.

10.2 Written Statements

Each party shall have the right to present a written statement in support of its position on appeal, provided that such statement is submitted to the Board or the Appellate Review Committee of the Board at least fifteen (15) days prior to the date of the appellate review, unless otherwise provided by the Board or the Appellate Review Committee of the Board. A copy shall be provided of each submitted written statement to the opposing party at least seven (7) days prior to the date of the appellate review.

10.3 Submission of Additional Evidence

The Appellate Review Committee may, but is not required to, accept additional oral or written evidence subject to the same cross-examination and admissibility provisions adopted at the Hearing Panel proceedings. Such additional evidence shall be accepted only if the party seeking to admit it can demonstrate that it is new, relevant evidence and that any opportunity to admit it at the hearing was denied.

10.4 Oral Statement

The Hospital Board or the Appellate Review Committee of the Board may, at its sole discretion, allow the parties and/or their representatives to personally appear and make a time limited thirty (30) minute oral argument. Any party or representative so appearing shall be required to answer questions put to him by any member of the Appellate Review Committee. This time restriction may be extended at the sole discretion of the Presiding Officer of the appellate review body.

10.5 Recesses and Adjournment

At the conclusion of the oral argument, if allowed, the appellate review shall be closed. The Hospital Board or the Appellate Review Committee of the Board, may thereupon, at a time convenient to itself, conduct deliberations outside the presence of the parties and their representatives. At the conclusion of those deliberations, the appellate review shall be declared finally adjourned.

10.6 Action

The Hospital Board or the Appellate Review Committee of the Board, may affirm, modify or reverse the action that is the subject of the appeal, or refer the matter back to the Medical Executive Committee for further review and recommendation. If the matter is referred back to the Medical Executive Committee for further review and recommendation, the MEC shall promptly conduct its review and make its recommendations to the Hospital Board or the Appellate Review Committee of the Board, in accordance with the instructions given to it by the Hospital Board or the Appellate Review Committee of the Board. This further review process shall in no event exceed sixty (60) days in duration, except as the parties may otherwise stipulate.

ARTICLE XI **FINAL DECISION OF THE BOARD**

11.1 Final Board Decision

Within ten (10) days after the conclusion of the proceeding before the Hospital Board or the Appellate Review Committee of the Board, the Hospital Board or its Appellate Review Committee shall render a final decision in writing and shall deliver copies thereof to the Medical Executive Committee and, by special notice, to the Practitioner. This decision shall be effective immediately and shall not be subject to further review.

11.2 Effect of Final Board Decision

If the Board denies a Practitioner's initial Medical Staff appointment or reappointment or revokes such Practitioner's Medical Staff membership or clinical privileges and the Practitioner has exhausted his rights under this Corrective Action and Fair Hearing Manual, such Practitioner may not apply for appointment or reappointment to the Montrose Memorial Hospital Medical Staff, as applicable, or for the affected clinical privileges for a period of four (4) years following the final decision of the Board, unless set forth to the contrary by the Board in rendering its final decision in the matter.

ARTICLE XII **GENERAL PROVISIONS**

12.1. Exhaustion of Administrative Remedies

By applying for membership on the Medical Staff or for privileges at Montrose Memorial Hospital, each applicant agrees that, in the event of any adverse action or decision with respect to the Medical Staff membership and/or privileges, the applicant or Medical Staff member shall fully exhaust the administrative remedies afforded by the Medical Staff Bylaws, including this Manual, before resorting to formal legal action.

12.2. Limit of One Appellate Review

Except as otherwise provided in this Section, no applicant or member shall be entitled as a matter of right to more than one appellate review in total before the Board or the Appellate Review Committee of the Board on any single matter which may be the subject of an appeal, without regard to whether such subject is the result of action by the Medical Executive Committee or the Board, or the Committee of the Board or a combination of actions by such bodies.

12.3 Waiver

If at any time after receipt of special notice of an adverse recommendation, action or result, a Practitioner fails to make a required request or appearance or otherwise fails to comply with this Corrective Action and Fair Hearing Manual or to proceed with the matter, he shall be deemed to have consented to such adverse recommendation, action, or result and to have voluntarily waived all rights to which he might otherwise have been entitled under the Medical Staff Bylaws then in effect or under this Manual with respect to the matter involved.

ARTICLE XIII
ADOPTION AND AMENDMENT

13.1. Amendment

This Corrective Action & Fair Hearing Manual of the Bylaws may be amended or repealed, in whole or in part, as described in Article XI of Volume 1 of the Medical Staff Bylaws.

Adopted by
Medical Staff:
Hospital Board of Directors: