

HIGH DESERT HEALTH SYSTEM AMBULATORY SURGICAL CENTER

SUBJECT: III-104 HEARING AND APPELLATE REVIEW	POLICY #: 1221
	VERSION: 1
APPROVED BY: ASC Approvers	
DATE APPROVED: 07/31/2015	

PURPOSE: To outline the hearing and appellate review procedures that practitioners who are denied, lose or otherwise have their privileges reduced, for a medical disciplinary cause or reason, have available to them.

POLICY: Practitioners who receive notice of an action or proposed action that is reportable under California Business and Professions Code Section 805 have the hearing and appellate review rights set forth in this policy.

DEFINITIONS

1. "Body whose decision prompted the hearing" means the person who, or body which, rendered the decision that resulted in a hearing being requested.
2. "Director" means the Director of Los Angeles County Department of Health Services or his/her duly authorized delegate.
3. "Governing Body" means the Board of Supervisors of the County of Los Angeles or its duly authorized delegate.
4. "ASC" means the High Desert Health System Ambulatory Surgical Center.
5. "Medical disciplinary cause or reason" refers to an aspect of a practitioner's competence or professional conduct, which is reasonable likely to be detrimental to patient safety or to the delivery of patient care.
6. "Notice" means a written communication handed to the individual or sent by certified or registered mail, return receipt requested.
7. "Person who requested the hearing" means the provider whose privileges have been decreased, denied, suspended, terminated, or made subject to any other action or recommendation that requires submission of a report pursuant to California Business and Professions Code Section 805.
8. "ASC Credentials Committee" means the ASC Credentials Subcommittee of the ASC Medical Advisory Committee.

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PROCEDURE:

I. Substantial Compliance

Technical, insignificant, or non-prejudicial deviations from the procedures set forth in this policy shall not be grounds for invalidating the action taken.

II. Notice of Proposed Action

- A. A body that has authority to take any of the actions constituting grounds for a hearing as set forth in this policy shall give written notice of its recommendation or action to the affected practitioner and of his/her right to request a hearing. The notice shall state:
1. What corrective action has been proposed against the practitioner;
 2. That the action, if adopted, must be reported under California Business and Professions Code Section 805 by following the instructions outlined in the Medical Board of California Health Facility Reporting Form (ENF-805) and must be reported to the National Practitioner Data Bank (NPDB) in accordance with the law by following the instructions outlined in the NPDB Reporting Requirements;
 3. A brief indication of the reasons for the action proposed or taken;
 4. That the practitioner has the hearing rights prescribed in this policy; and
 5. That the practitioner may request a hearing within thirty (30) days.
- B. Any one or more of the following actions, when taken for a medical disciplinary cause or reason, may constitute grounds for a hearing:
1. Denial of requested privileges;
 2. Involuntary reduction of privileges;
 3. Suspension of privileges;
 4. Termination of privileges;
 5. Requirement of consultation; or
 6. Any other action that requires a report to be made under California Business and Professions Code Section 805 or to the National Practitioner Data Bank.

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III. Request For A Hearing

- A. A practitioner has thirty (30) days following the date of receipt of notice of an adverse action or recommendation to request a hearing. Said request must be submitted in writing to the Medical Director of the ASC. If the practitioner does not request a hearing within the time and in the manner set forth above, he/she shall be deemed to have waived his/her right to a hearing and to any appellate review to which he/she might otherwise have been entitled pursuant to this policy, and to have accepted the recommendation, decision, or action involved. In such case, the recommendation, decision, or action involved shall be considered and shall be given great weight by the Governing Body, but shall not be binding on the Governing Body.
- B. Upon receipt of a request for a hearing, the Medical Director shall deliver such request to the ASC Credentials Committee within fifteen (15) days. The Hearing Committee shall, within fifteen (15) days, schedule or arrange for a hearing. The hearing shall be scheduled to commence no sooner than thirty (30) days after receipt of the request for a hearing by the Medical Director, nor later than sixty (60) days after receipt of the request by the Medical Director.

IV. Hearing Procedure

- A. The Medical Director shall appoint a Hearing Committee of no less than three (3) practitioners who have clinical privileges at the ASC, and alternates as appropriate to ensure a fair hearing. The Hearing Committee members, and their alternates as appropriate, shall be unbiased and shall not have actively participated in the formal consideration of the matter (*i.e.*, they shall not have acted as an accuser, investigator, fact-finder, or initial decision-maker in the same matter).
- B. The Medical Director shall designate a Presiding Officer of the Hearing Committee. The Presiding Officer shall serve as chair of the Hearing Committee. It is the duty of the Presiding Officer to assure that all participants in the hearing have a reasonable opportunity to be heard and to present oral and documentary evidence, and that decorum are maintained. The Presiding Officer shall be the decision-maker regarding the conduct of the hearing, unless a Hearing Officer is appointed as set forth below.
- C. The Director may, at his or her sole discretion, appoint a Hearing Officer at the request of the applicant or the Hearing Committee. The Hearing

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Officer shall be an attorney at law qualified to preside over a hearing and preferably have experience in medical staff disciplinary matters. The Hearing Officer shall be unbiased and must not act as a prosecuting officer or an advocate for any party. The Hearing Officer shall act as Presiding Officer and shall maintain decorum at the hearing and rule on procedural matters (including, but not limited to, discovery requests and admission of evidence). The Hearing Officer may participate in the deliberations of the Hearing Committee and act as a legal advisor to the Committee, but he/she shall not be entitled to vote.

- D. The hearing shall not be conducted without the personal presence of the practitioner requesting the hearing, unless he/she has waived such appearance in writing or has failed without good cause to appear after appropriate notice.
- E. Changes in the timelines set forth in this policy may be permitted by the Presiding Officer only on showing of good cause.
- F. The practitioner shall be permitted to be represented by an attorney or another person of the practitioner's choice. The Hearing Committee cannot have an attorney if the practitioner does not have attorney representation. The body prompting the hearing may select a representative to present its action or recommendation and supporting materials to the Hearing Committee.
- G. A record shall be maintained of the hearing. Either party may request a certified shorthand or stenographic reporter. The cost of the reporter and transcription is the responsibility of the person making the request for such.
- H. Both sides shall have the right at their respective expense, to inspect and copy any documentary information relevant to the charges which the other side has in its possession or control, as soon as practical after the party's request. Failure to provide access to this information at least thirty (30) days before the hearing shall constitute good cause for a continuance. The right to inspect and copy by either party shall not extend to confidential information referring solely to individually identifiable practitioners, other than the affected practitioner.
- I. At the request of either party, the parties must exchange all documents that will be introduced at hearing. The documents must be exchanged ten

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(10) days prior to the hearing. A failure to comply with this rule is good cause for the Hearing Officer or Presiding Officer, as applicable, to grant a continuance. Failure to comply shall also be good cause for the Hearing Officer or Presiding Officer, as applicable, to limit introduction of any documents not provided to the other side in a timely manner.

- J. The Hearing Committee shall obtain information, and if requested, answer questions concerning bias. Any relevant evidence shall be admitted by the Presiding Officer or Hearing Officer, as applicable, if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of admissibility of such evidence in a court of law.
- K. Reasonable additional time, not to exceed thirty (30) days, shall be granted, if requested, to present written rebuttal of any evidence submitted on official notice.
- L. The decision of the Hearing Committee shall be based on the evidence produced at the hearing. Evidence may consist of the following:
 - 1. Oral testimony of witnesses;
 - 2. Briefs or memoranda of points and authorities presented in connection with the hearing;
 - 3. Any materials contained in ASC credentials files or central personnel files regarding the person who requested the hearing, which have been made part of the hearing record;
 - 4. Any and all applications, references, medical records and other documents, which have been made a part of the hearing record;
 - 5. All officially noticed matters; and
 - 6. Any other admissible evidence.
- M. The Hearing Committee shall render a decision within fifteen (15) days after final adjournment of the hearing (or within ten (10) working days if the practitioner is currently under suspension). The decision shall be accompanied by a written report that contains findings of fact and conclusions that articulate the basis for the decision. The report shall include sufficient detail to enable the parties, any appellate review body, and the Governing Body to determine the basis for the Hearing Committee's decision on each matter contained in the notice of charges. The decision and report shall be delivered to the body whose decision

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prompted the hearing, the Medical Director, and the affected practitioner. The practitioner's copy of the report shall be delivered by registered or certified mail, return receipt requested. The decision of the Hearing Committee shall be considered final, subject only to the right of appeal as provided below.

V. Burden of Going Forward

- A. In all cases, the body whose decision prompted the hearing shall have the burden of initially presenting evidence to support the charges and its recommendations. Thereafter, the burden differs, depending upon whether the practitioner is applying for clinical privileges or is already privileged.
- B. At any hearing involving initial denial of a practitioner's request for clinical privileges, the practitioner has the burden of proving by a preponderance of the evidence that he or she is qualified for the clinical privileges sought. In such case, the practitioner must produce information that allows for an adequate evaluation and resolution of any reasonable doubts concerning his or her qualifications.
- C. In all other cases involving practitioners who already have clinical privileges, the body whose decision prompted the hearing shall have the burden of proving by a preponderance of the evidence that the action or recommendation is reasonable and warranted.

VI. Appeal to the Director

- A. Within fifteen (15) days after receipt of the decision of the Hearing Committee, either the practitioner who requested the hearing or the body whose decision prompted the hearing may request appellate review by the Director, as the authorized delegate of the Governing Body. Such request shall be made to the Director, in writing, and delivered either in person or by certified or registered mail, return receipt requested. If such appellate review is not requested within such period and in such manner both sides shall be deemed to have accepted the decision of the Hearing Committee and it shall thereupon become final. The written request of appeal shall include a brief statement of the reasons for appeal.
- B. The Director shall, within forty-five (45) days after the date of receipt of the appeal notice, give the practitioner notice of the time, place, and date of the appellate review. The date of appellate review shall be not less than

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fifteen (15), nor more than ninety (90) days, from the date of receipt of the request for appellate review. If, however, a practitioner is under suspension, the appellate review shall be held as soon as the arrangements can reasonably be made, but not more than forty-five (45) after the date of receipt of the request for appellate review. The Director may for good cause extend the time of appellate review.

- C. When an appellate review is requested, the Director shall appoint an appeal board of an odd number of not less than five (5) unbiased members, one of whom shall be designated by the Director as chair. Knowledge of the matter involved shall not preclude any person from serving as a member of the appeal board so long as that person did not participate in the matter at any previous level (*i.e.*, as an accuser, fact-finder, or initial decision-maker in the same matter). The appeal board may select an unbiased attorney to assist by fulfilling the duties of a Hearing Officer as described above.
- D. The proceedings of the appeal board shall be in the nature of an appellate hearing based upon the record of the hearing before the Hearing Committee, provided that the appeal board may, in its sole discretion, accept additional oral or written evidence subject to the same rights of cross-examination provided in the Hearing Committee hearing. In evaluating any evidence the appeal board may apply its independent judgment.
- E. Within fifteen (15) days after adjournment, the appeal board shall recommend in writing, that the Director affirm, modify or reverse the decision of the Hearing Committee, or refer the matter back to the Hearing Committee for further review and recommendation. The Director shall thereafter affirm, modify or reverse the decision of the Hearing Committee, or refer the matter back to the Hearing Committee for further review and recommendation.
- F. Grounds for reversing the Hearing Committee's decision shall be limited to:
 - 1. Substantial failure of any person or body to comply with the procedures required by this policy for the conduct of hearings and decisions upon hearings so as to deny due process; or,
 - 2. The action taken by the Hearing Committee was arbitrary, capricious, with prejudice or not supported by the preponderance of the evidence.

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- G. Except where the matter is referred back to the Hearing Committee for further review and recommendation, the final decision of the Director, following the appeal procedure set forth above, shall be effective immediately and shall not be subject to any further review. If the matter is referred back to the Hearing Committee, then the committee will promptly conduct its review and report back to the Director within thirty (30) days, except as the parties may otherwise stipulate in writing to extend such period. The Director may affirm, modify or reverse the decision of the Hearing Committee, and such decision shall be final and effective immediately, and shall not be subject to further review.

- H. Except as otherwise provided in this policy, no applicant shall be entitled as a matter of right to more than one appeal to the Director on any single matter, which may be the subject of an appeal.

VII. Exhaustion of Administrative Remedies

The practitioner shall exhaust all the administrative remedies afforded by this policy before resorting to any legal action.

VIII. Exceptions to Hearing Rights: Denial of Applications for Failure to Meet the Minimum Qualifications

A practitioner shall not be entitled to any hearing or appellate review rights if his/her participation, application, or request is denied because of his/her failure to:

- A. Have a current and unrestricted California license to practice medicine
- B. Maintain an unrestricted Drug Enforcement Administration certificate (if applicable)
- C. Maintain professional liability insurance as required by applicable policies and procedures
- D. File a complete application, or
- E. Meet any other minimum requirements for clinical privileges.

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