



**PARKVIEW**  
**HEALTH**

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**PARKVIEW KOSCIUSKO SURGERY  
ONE, LLC**

# **MEDICAL STAFF BYLAWS**

**Corrective Action and Fair Hearing Manual**

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## **PREAMBLE**

The Governing Board of Parkview Ortho Center, LLC, its Medical Staff, and any committees thereof, in order to conduct professional Peer Review activities, hereby constitute themselves as Peer Review and professional review bodies as these terms are defined and used by Indiana state and federal law, including but not limited to, the Indiana Peer Review Statute (See I.C. §34-30-15-1 *et. seq.*) and the Health Care Quality Improvement Act of 1986 ("HCQIA"). These committees claim all privileges and immunities afforded to them by all applicable federal and state statutes.

The purpose of this Corrective Action and Fair Hearing Plan ("Plan") is to establish procedures relating to the review and investigation of concerns involving professional conduct and/or clinical competency, and to provide a process through which corrective and/or rehabilitation action (collectively "corrective action"), including but not limited to adverse action, may be taken to address such concerns. This Plan, which also provides for and distinguishes Administrative Action from corrective action, provides a mechanism through which due process, including a fair hearing and appeal when applicable, might be provided to Medical Staff Members and APPs at the ASC who are subject of adverse action. In order to ensure Peer Review participants are afforded all available privileges, protections and immunities, the ASC and Medical Staff intend for the processes set forth in this Plan to comply with all applicable laws and regulations, including but not limited to, those referenced above.

## **DEFINITIONS**

Unless otherwise indicated, the definitions set forth in the Medical Staff Governance and Credentialing Manual apply to this Corrective Action and Fair Hearing Manual, as if set forth fully herein.

## **ARTICLE I**

### **PROCEDURE FOR INVESTIGATION AND CORRECTIVE ACTION INVOLVING PHYSICIAN AND PODIATRIST MEMBERS OF THE MEDICAL STAFF**

#### **1.1 Applicability**

The corrective action procedures that are described Articles I-III of this Corrective Action and Fair Hearing Manual shall pertain exclusively to Members of the Medical Staff who are Physicians or Podiatrists. Articles I-III shall not apply to APPs, irrespective of any reference in these Articles to Member, Applicant, or Practitioner. The corrective action and hearing procedures applicable to APPs who maintain Clinical Privileges at the ASC are set forth in Article IV of this Manual.

Additionally, as set forth in Section 1.1 of the Governance and Credentialing Manual, any Practitioner who renders professional services at or on behalf of the ASC pursuant to an employment relationship and/or contract with the System or applicable ASC shall do so subject to the terms and conditions of employment and/or the contract (as applicable). Nothing herein is intended to preempt such conditions or terms of employment or contract. Accordingly, if the terms of employment and/or contract (as applicable) permit the limitation, restriction, reduction, removal, suspension, termination, or resignation of Membership and/or Clinical Privileges in a manner that obviates the need for, avoids, or waives the procedures for

corrective action and fair hearings (as contained in this Corrective Action and Fair Hearing Manual), the terms of the employment and/or contract (as applicable) shall take priority and control.

### **1.1.1 Criteria for Initiation**

When information reasonably indicates that a Member of the Medical Staff: (a) has not met the standard of care expected of such Members at the ASC, (b) has been disruptive to the delivery of quality health care in the ASC, (c) has violated System or ASC Bylaws, Policies, Procedures, Rules or Regulations, (d) has violated Medical Staff Bylaws, Policies, Procedures, Rules or Regulations, (e) has violated applicable federal and/or state law, or pertinent accreditations standards, (f) and/or has otherwise behaved or performed in a manner that has or may have an adverse impact on the quality of care provided at the ASC or on the ASC's licensure, accreditation or certification status, any individual may submit a complaint, concern, or report regarding such matters, request that an investigation of such matters be conducted, and/or request that corrective action be considered or taken (collectively referred to hereafter as "requests" or "requests for corrective action").

The following is a representative, but not exclusive, list of issues that may give rise to a request for corrective action:

- (a) Clinical or professional competence;
- (b) Care of a particular patient or patients;
- (c) Unprofessional demeanor or conduct, or conduct that is in violation of the Medical Staff's Code of Conduct or related professional conduct policy(s);
- (d) Practicing beyond an authorized scope of practice or Clinical Privileges granted by the Governing Board;
- (e) Violations of professional ethics as outlined by the code of ethics that govern a Member's profession or specialty;
- (f) The mental, emotional or physical health of the Member, including potential substance abuse and/or impaired behavior;
- (g) Conduct disruptive or detrimental to the efficient and/or safe operation of the ASC or the delivery of quality patient care, including compliance program related matters;
- (h) Unauthorized release of patient or Peer Review information;
- (i) Violation of the Bylaws, Policies, or Procedures; or
- (j) Violation of state or federal law, or accreditation standards.

### **1.1.2 Requests for Corrective Action**

Requests for corrective action should be, when reasonably possible, initially submitted in writing to the MSEC by way of the Medical Staff President, with a copy provided to the COO and Medical Director. The request should contain a brief statement of the conduct or activities that constitute the basis for the request. Upon receiving a request for corrective action, the Medical Staff President and/or MSEC (or their authorized designee(s)) may conduct a preliminary review of the matter in a manner deemed appropriate under the circumstances. Preliminary reviews are routine and administrative in nature. Preliminary reviews are not intended to constitute formal investigations. At the conclusion of the preliminary review, the Medical Staff President or the MSEC (whichever conducted the preliminary review) may determine that:

- (a) The nature of the request could reasonably result in corrective action, in which case the MSEC may determine that a formal investigation of the request, including the alleged basis for the request, is appropriate;
- (b) Imposition of a summary suspension is appropriate (in addition to initiation of an investigation) in which case the procedures set forth in Section 1.2, below, shall be followed;
- (c) No investigation is warranted under the circumstances, in which case the MSEC may nevertheless maintain a record of the request (and related documentation) for purpose of trending and/or future reference.

### **1.1.3 Investigative Procedure and MSEC Action**

- (a) If the Medical Staff President and/or MSEC concludes that a formal investigation is warranted, the MSEC shall proceed with such investigation, which shall be concluded within a period of time that is reasonable under the circumstances.
- (b) The MSEC may investigate the matter on its own, direct another Medical Staff committee to investigate the matter, or may appoint and direct an ad hoc committee to investigate the matter. The MSEC or other designated investigating committee (collectively "Investigating Committee") may delegate, in its discretion, particular tasks and/or aspects of the investigation to particular committee members or other designees requested to work on behalf of or assist the Investigating Committee.
- (c) Regardless of whether the MSEC directs another Medical Staff committee or ad hoc committee to investigate the matter, the MSEC shall at all times retain authority and discretion to take whatever action may be warranted by the circumstances, including the investigative process.
- (d) In the event the matter has undergone FPPE or other similar focused review by another Medical Staff committee, and such review gave rise or contributed to the request for corrective action, the Investigating Committee may consider this review, and if deemed reliable by the Investigating Committee, may adopt some or all of the review as part of its own investigation.

- (e) The Member subject of the investigation shall be notified that a formal investigation is being conducted and shall also be given an opportunity to provide information in a manner and upon such terms as the Investigating Committee deems appropriate. The Investigating Committee will review relevant documentation, including but not limited to medical records, incident reports and/or occurrence reports, and may, but is not obligated to, conduct interviews with the Member and any other individuals involved. However, such interview(s) shall not constitute a “hearing” as that term is used in this Manual, nor shall the procedural rules with respect to hearings or appellate review apply. When an interview is conducted with the Member subject of the investigation, the Member shall be informed of the general nature of the request for corrective action and shall be invited to provide information that is responsive, or otherwise relevant to, the request. The Member shall not be entitled to have legal counsel present for, or participate during, any meetings or discussions occurring during the investigative process. The Member’s failure to meaningfully participate in the investigation, including participation in requested interviews, external assessments or reviews, may be grounds for further adverse action or Administrative Action.
- (f) Any Member under investigation shall comply with all Governing Board, MSEC, Investigating Committee, or other Medical Staff meeting requests, documentation requests, personal appearance requests, and any requests made that the Member undergo physical or mental health examination secondary to any reasonable concern related to the Member’s ability to safely exercise Clinical Privileges or otherwise practice his or her profession
- (g) Within a reasonable period of time, as determined by the MSEC, following the conclusion of any investigation, the Investigating Committee shall prepare a written summary of its investigation. If an Investigating Committee other than the MSEC performed the investigation, that committee shall forward its written summary to the MSEC. Investigation summaries may be in any reasonably appropriate form, including but not limited to committee minutes.
- (h) The investigation summary should also include (either within the summary or by way of a separate document) a recommendation for corrective action, if any, as the Investigating Committee determines is appropriate.
- (i) If the MSEC delegated the investigation to an Investigating Committee, the MSEC in its discretion may accept the investigation as complete, may conduct further investigation itself, or may direct the Investigating Committee to conduct further investigation and report to the MSEC accordingly.
- (j) In all circumstances, the MSEC shall keep the COO and Medical Director informed regarding the status of any review, investigation, findings, report or recommendation for corrective action.
- (k) Furthermore, nothing in these Bylaws prevents the Governing Board (itself or by way of a designed Investigating Committee) from investigating requests for

corrective action, taking over such an investigation from the MSEC, or taking corrective action without first seeking and/or obtaining a recommendation from the MSEC. However, if the action to be taken by the Governing Board is of a nature that would give rise to the hearing and appellate rights set forth in this Manual, the Governing Board must extend those rights to the Member prior to taking any final action in the same manner that is required of the MSEC herein.

#### **1.1.4 Ad Hoc Investigating Committee**

If the MSEC decides to appoint an ad hoc committee to serve as an Investigating Committee, the Medical Staff President shall appoint at least three (3) Members of the Active Medical Staff in good standing to serve on the Investigating Committee. These Members may, but are not required to be, members of the MSEC.

#### **1.1.5 Professional Information Sharing**

ASCs and other health care entities affiliated with the System participate in professional information sharing, which may include (when appropriate) the exchange of Peer Review information. Each Applicant and Practitioner, as a condition of applying for, receiving, and/or maintaining Medical Staff Membership and/or Clinical Privileges at the ASC (as applicable), agrees to the sharing of this information and acknowledges that such information may form the basis for a request for corrective action and/or an adverse action. Information may also be exchanged as part of the preliminary review and/or investigation processes set forth herein.

#### **1.1.6 MSEC Action Upon Conclusion of Investigation**

Once the MSEC determines that the investigation is complete, the MSEC shall take one of the following actions:

- (a) The MSEC may determine that no corrective action should be taken. In such event, the MSEC should advise the Member that the investigation has been closed and that no action is recommended. The MSEC may nevertheless maintain a record of the investigation (and related documentation) for purpose of trending and/or future reference. The MSEC shall also provide a report of its determination, by way of the Medical Staff President or designee, to the Governing Board. The Governing Board may or may not, in its discretion, elect to take additional/different action pursuant to the processes set forth herein.
- (b) The MSEC may determine that corrective action should be taken that would, if implemented, not constitute an “adverse action” and therefore would not give rise to the hearing and appellate rights set forth in this Manual. In such event, the MSEC may implement the action by serving the Member with Special Notice of the corrective action. The MSEC shall also provide a report of its corrective action, by way of the Medical Staff President or designee, to the Governing Board. Whether or not the action imposed by the MSEC has been

implemented in full or in part, the Governing Board may or may not, in its discretion, elect to take additional/different action pursuant to the processes set forth herein.

- (c) The MSEC may determine that corrective action should be recommended to the Governing Board that would, if implemented, constitute an adverse action. In such event, the MSEC shall serve the Member with Special Notice of Adverse Action as set forth in Section 2.1.2, below, before the MSEC's recommendation is tendered to the Governing Board for final action and implementation.

The foregoing options are in addition to any other rights, remedies, and actions otherwise available to the MSEC pursuant to the Medical Staff Bylaws, as well as in addition to the option of a summary suspension, which may be imposed at any time subject to requirements of Section 1.2, below.

#### **1.1.7 Adverse Action**

- (a) An "adverse action" shall mean any action or recommendation taken or made by the MSEC or Governing Board that is based on the clinical competence or professional conduct of an eligible Applicant or Member, and that reduces, restricts, suspends, revokes, denies, terminates, fails to renew, or otherwise adversely restricts the Medical Staff Membership and/or Clinical Privileges of the eligible Applicant or Member (as applicable).
- (b) Notwithstanding the foregoing, the following recommendations or actions are not considered adverse actions and do not entitle an eligible Applicant or Member to those procedural rights set forth in Article II:
  - (i) Instruction, admonishments, reprimands, or initial or final warnings;
  - (ii) Agreed Peer Review actions or voluntary reductions of Medical Staff Membership or Clinical Privileges;
  - (iii) Proctoring when performed as part of a review or investigation;
  - (iv) Leaves of Absence;
  - (v) Routine retrospective review, routine prospective review, or routine concurrent monitoring or proctoring;
  - (vi) OPPE and routine FPPE for new or additional Clinical Privileges;
  - (vii) Required physical or psychological/psychiatric examinations;
  - (viii) Required Continuing Medical Education;
  - (ix) Closure of an application as a result of the application being incomplete, inaccurate, or untimely;

- (x) Closure of an application due to misstatement or omission;
  - (xi) Closure of an application or refusal to provide an application due to basic ineligibility;
  - (xii) Determination not to expedite an application;
  - (xiii) Denial or termination of temporary Clinical Privileges;
  - (xiv) Summary Suspension that is implemented pursuant to Section 1.2, below, and that is of a duration of fourteen (14) days or less;
  - (xv) Any action or recommendation that is an Administrative Action;
  - (xvi) Any action or recommendation resulting from a Member's failure to meet the minimum objective criteria for Medical Staff Membership or Clinical Privileges, as contained in Sections 1.2 and 1.3 of the Governance and Credentialing Manual; or
  - (xvii) Any other action or recommendation not reducing, restricting, suspending, revoking, denying or failing to renew an eligible Applicant's or Member's Membership or Clinical Privileges, or that otherwise does not constitute a Professional Review Action as that term is defined in the HCQIA.
- (c) If the MSEC or Governing Board takes or recommends any action that is an adverse action, the eligible Applicant or Member subject of the adverse action shall be entitled to those procedural rights provided in Article II, below, with respect to the action before the MSEC tenders its recommendation to the Governing Board or before the Governing Board implements its own action (as applicable). However, if the eligible Applicant or Member fails to timely request a hearing pursuant to Section 2.1.3, below, then the MSEC's recommendation shall be forwarded to the Governing Board for action pursuant to Section 1.1.8, below, and if the Governing Board recommended the action, then the Governing Board may implement the action without further delay.

### **1.1.8 Governing Board Action**

- (a) At its next regularly scheduled meeting after receiving the MSEC's action and/or report, unless additional time is reasonably required, the Governing Board shall review and take such action as it determines to be appropriate, if any. However, if the eligible Applicant or Member is entitled to and has timely requested a hearing pursuant to Section 2.1.3, below, then the Governing Board should take no final action until the matter is resubmitted to the Governing Board after a hearing or appeal, if applicable. If the MSEC's action does not entitle the eligible Applicant or Member to a hearing, but the Governing Board takes action that does entitle the eligible Applicant or

Member to a hearing, then the Medical Staff President shall promptly inform the eligible Applicant or Member by Special Notice, and he or she shall be entitled to a hearing in accordance with Article II, below.

- (b) If the Governing Board determines that the MSEC has failed to act in a timely or appropriate manner in processing a request for corrective action, the Governing Board may take action on its own initiative after consulting with and notifying the MSEC of its intent to do so.

## **1.2 Summary Suspension**

### **1.2.1 Criteria for Initiation**

- (a) Whenever the conduct or continuation of practice of a Medical Staff Member constitutes, or may result in, an immediate danger to the health, safety, or wellbeing of patients, ASC personnel, staff members, or other individuals at the ASC, any two (2) of the following individuals (operating as an ad hoc Peer Review Committee, by a majority vote) shall have the authority to summarily suspend or restrict all or part of a Member's Medical Staff Membership and/or Clinical Privileges (collectively referred to herein as a "summary suspension") in order to permit the necessary amount of time to investigate the matter further and determine the need for (if any) adverse action: the COO (or authorized designee), the Medical Director (or authorized designee), any Officer of the Medical Staff, or any other member of the MSEC. Unless otherwise stated, the summary suspension shall become effective immediately upon imposition.
- (b) A summary suspension should not be implemented unless there is documentation or other reliable information that an immediate danger may exist. Such documentation and/or information must be available at the time the decision to summarily suspend the Member is made.
- (c) Although verbal notice shall be provided as soon as reasonably possible following implementation of the summary suspension to the affected Member by one or more of the ad hoc Peer Review Committees involved in implementing the summary suspension, the Medical Staff President (or designee) shall thereafter additionally provide Special Notice of the summary suspension to the affected Member, with a copy also provided to the Medical Staff President, COO, and Medical Director. The notice shall contain a general statement of the reasons for the summary suspension.
- (d) In the event of a summary suspension, the affected Member's patients then in the ASC (if any) shall be reassigned by the Medical Staff President in consultation with the Medical Director. The desires of the patient shall be considered, where feasible, in choosing a substitute Practitioner.

### **1.2.2 Duration and Investigation**

Summary suspensions may or may not be limited in duration, and shall remain in effect for the period stated or, if none, until resolved as set forth herein.

- (a) As soon as reasonably possible, but not more than fourteen (14) days after initiation of the summary suspension, the MSEC shall convene to review and consider: (i) whether to initiate a formal investigation pursuant to Section 1.1.3, above, unless such an investigation has already been commenced, and (ii) whether to continue, modify, or terminate the summary suspension. As an alternative to full MSEC meeting, and particularly when there are concerns regarding MSEC member availability, the Medical Staff President (in his or her sole discretion) may appoint an ad hoc committee of the MSEC consisting of at least five (5) current MSEC members to convene and consider: (i) whether to initiate a formal investigation pursuant to Section 1.1.3, above, unless such an investigation has already been commenced, and (ii) whether to continue, modify, or terminate the summary suspension. The Medical Staff President (or authorized designee) shall serve as chairperson of this ad hoc committee.
- (b) The MSEC or ad hoc committee (as applicable), in its sole discretion, may request the affected Member to attend such meeting and make a statement concerning the issues under investigation, on such terms and conditions as the MSEC or ad hoc committee (as applicable) may impose, though in no event shall any meeting of the MSEC or ad hoc committee (as applicable), with or without the Member, constitute a “hearing” within the meaning of this Manual, nor shall any procedural rules apply.
- (c) If the summary suspension is terminated by the MSEC or ad hoc committee (as applicable) prior to the expiration of fourteen (14) days from its imposition without further recommendation for adverse action, the summary suspension does not constitute an adverse action and the affected Member shall not be entitled to a hearing.
- (d) If the MSEC or ad hoc committee (as applicable) fails to terminate or determines to continue the summary suspension, in any form, beyond fourteen (14) days, and/or recommends other adverse action, the affected Member shall be given Special Notice of Adverse Action consistent with Article II, below.
- (e) In the event an ad hoc committee is appointed pursuant to sub-section (a) above, the ad hoc committee shall report its activities, determinations, recommendations and/or actions (as applicable) to the MSEC (subject to the requirements for executive session) at the MSEC’s next regularly scheduled or special meeting. The MSEC shall retain the authority to reconsider, make a different recommendation, or take a different action (as applicable) than that proposed or taken by the ad hoc committee.

### **1.3 Informal Resolution and Collegial Intervention**

Unless not feasible or appropriate under the circumstances, complaints or concerns regarding the professional conduct or clinical competency of a Member may be (but are not required to be) initially referred to and addressed by an appropriate Medical Staff Committee or Officer prior to submission of a request for corrective action to the MSEC. Documentation of such complaints, concerns, and intervention, however, should be maintained in the Member's confidential Peer Review file. Furthermore, nothing set forth in this Corrective Action and Fair Hearing Manual is intended to dissuade the use of collegial intervention, when deemed appropriate under the circumstances, to address and/or resolve concerns regarding professional conduct or clinical competency.

#### **1.4 Mediation**

Upon an adverse action of the MSEC or the Board, the COO or his/her designee or the Member subject of the adverse action (each a "Party", collectively "Parties," for purposes of this Section 1.4) may request mediation within ten (10) business days of the Special Notice of Adverse Action required by Section 2.1.2, below ("Notice"). Both Parties must agree in writing to mediation. If the Parties agree to mediation, then the following shall apply:

- (a) All deadlines and time frames relating to the hearing process, as described in this Manual, shall be tolled while the mediation is in process. The Parties agree that no damages will accrue as the result of any delays attributable to the mediation.
- (b) Mediation cannot be used by either Party as a means to unduly delay the hearing process. Accordingly, unless the Parties agree otherwise, the first mediation session (which, as the Parties determine, may or may not be the only session) must be held within the thirty (30) business days following transmittal of the first written request for mediation (the "Request Date"), and must conclude within forty-five (45) business days following the Request Date. A mediation "concludes" when: (i) the Parties execute a written agreement that settles all or part of the dispute, (ii) either Party provides the other Party and the mediator written notice that the mediation is terminated, or (iii) when the mediator provides the parties written notice that the mediation is terminated. If the mediation does not resolve the dispute, any ongoing corrective action or hearing process will promptly resume when the mediation concludes. Either Party may elect at any time to withdraw a request for mediation or terminate a mediation, and the Parties are free to agree upon time frames that are different than those specified herein.
- (c) The COO will recommend the Mediator. However, the Mediator must be mutually accepted by both Parties. The Mediator shall determine the procedures to be followed during the mediation. The Mediator will be an attorney-at-law and should preferably have experience with medical staff hearing processes. The costs of mediation should be shared in equal parts by the Parties. The inability of the Parties to agree upon the Mediator within 30 days following the Request Date shall result in the automatic termination of the mediation process and the resumption of the corrective action/hearing process.

- (d) All mediation proceedings shall be confidential in accordance with applicable law except to prove that mediation was mutually accepted and applicable time frames for hearing were tolled or waived.

## **ARTICLE II**

### **PROCEDURES FOR HEARING AND APPEAL**

As described above, the following hearing and appeal procedures are applicable to eligible Applicants and Members who are Physicians or Podiatrists. This Article II does not apply to APPs who are Applicants for or who currently maintain Clinical Privileges at the ASC.

#### **2.1 Hearing**

##### **2.1.1 Grounds for Hearing**

Eligible Applicants and Members (together referred to in this Article II as “Providers”) shall be entitled to the hearing and appeal procedures set forth in this Article II in the event the MSEC or Governing Board recommend or take adverse action as set forth in Article I, above.

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

When grounds for a hearing exist, the Medical Staff President, on behalf of the MSEC or Governing Board, as applicable, shall give the Provider Special Notice of Adverse Action. The Special Notice of Adverse Action shall state:

- (a) The action taken or proposed to be taken;
- (b) The reason(s) for the action taken or proposed to be taken;
- (c) That the Provider has the right to request a hearing on the action or proposed action, as applicable;
- (d) That the Provider has thirty (30) days after receipt of the notice within which to submit a request for a hearing and that the request must satisfy the conditions of Section 2.1.3, below;
- (e) A summary of the Provider’s rights in the hearing;
- (f) That failure to request a hearing within the requisite time period, and in the proper manner, constitutes a waiver of rights to any hearing or appellate review, if applicable, on the matter that is the subject of the notice; and
- (g) That upon the Medical Staff President’s receipt of the Provider’s hearing request, the Provider shall be notified via Special Notice of Hearing of the date, time and place of hearing, which shall not be less than thirty (30) days after the date of the Hearing Notice, and which shall include a list of the witnesses

expected to testify at the hearing on behalf of the MSEC or Governing Board, as applicable.

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

- (a) A Provider shall have thirty (30) days after receiving a Special Notice under Section 2.1.2 to submit a written request for a hearing. A written request for a hearing is “submitted” when it is received by the Medical Staff President, with copy to the COO, either by way of hand delivery or by certified or registered mail.
- (b) If the Provider does not submit a request for hearing within the time and in the manner specified above, the Provider shall be deemed to have waived his or her right to hearing, and if the matter has not already been submitted to the Governing Board, it shall be forwarded to the Governing Board for final action.
- (c) By requesting a hearing or appellate review, a Provider affirms his or her agreement to be bound by the provisions of the Medical Staff Bylaws, including but not limited to, those provisions relating to immunity and release from liability.

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

In the event a Provider requests a hearing pursuant to Section 2.1.3, above, the COO and Medical Staff President (or their respective authorized designees) shall jointly appoint a Hearing Committee composed of at least three (3) Members of the Active Medical Staff. The COO and Medical Staff President shall appoint one (1) member of the Hearing Committee to serve as the Chairperson.

- (a) **Hearing Committee Composition.** Knowledge of the matter involved shall not preclude a Medical Staff Member from serving on the Hearing Committee, but a Medical Staff Member who previously considered and voted on the action being recommended, has a family, professional or business relationship with the Provider requesting the hearing that makes it inappropriate for such Member to serve, or is in direct economic competition with the Provider shall not be eligible to serve on the Hearing Committee. In the event it is not practicable to appoint a Hearing Committee from the ASC’s Active Medical Staff, the COO and the Medical Staff President may appoint one or more Members from another ASC affiliated with System, who are of good reputation and willing to serve on the Hearing Committee.
- (b) **Opportunity to Object.** The Medical Staff President shall notify the Provider of the composition of the Hearing Committee. The Provider shall have an opportunity to object to any of the Proposed members of the Hearing Committee if he or she can identify an objective basis as to why the individual(s) should not participate. The Provider must deliver any such objection to the Medical Staff President and within seven (7) days of the

Provider receiving notice of the Hearing Committee composition. The COO and the Medical Staff President shall appoint an individual(s) to replace the contested proposed member(s), if they determine in their discretion that just cause for removal has been established by the Provider. In the event the Provider elects not to object to the Hearing Committee composition, or otherwise fails to provide a timely objection pursuant to his subsection, then the Provider hereby consents to the Hearing Committee as composed.

- (c) **Presiding Officer.** The use of a Hearing Officer to act as the Presiding Officer at the hearing is optional and is to be determined by the Medical Staff President in consultation with the COO. If appointed, the Hearing Officer should be an attorney at law, and if reasonably possible, should have experience in conducting such hearings. A Hearing Officer is not a voting member of the Hearing Committee. Rather, a Hearing Officer shall assist and counsel the Hearing Committee members, as requested, in connection with the proceeding and shall assist with preparation of the Hearing Committee's Report. When a Hearing Officer is not appointed, the Chairperson of the Hearing Committee shall act as the Presiding Officer. The Presiding Officer shall conduct the hearing, address any pertinent pre-hearing matters, maintain decorum, and rule on all evidentiary and witness matters. The Presiding Officer shall ensure that each party to the hearing has a reasonable opportunity to present relevant oral and documentary evidence, and shall determine the order of procedure at the hearing, in a manner consistent with this Manual.

#### **2.1.5 Hearing Committee Action**

A simple majority of the members of the Hearing Committee shall constitute a quorum. Each member of the Hearing Committee must attend at least a majority of the hearing dates and must review hearing transcripts and records for those meetings that were missed in order to participate and vote on the hearing proceedings.

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

Unless the Parties agree in writing to an earlier date, which there is no obligation to do so, the Medical Staff President shall schedule and convene a hearing no sooner than thirty (30) days following the date of the Notice of Hearing. The Medical Staff President will provide Special Notice to the Provider of the date, time, and place of the hearing, and a list of the witnesses expected to testify at the hearing on behalf of the MSEC or Governing Board (as applicable). The date and time of the hearing may thereafter be extended upon mutual agreement of the parties, by request of the Hearing Committee, or upon request by a party to, and approval by, the Hearing Committee or Presiding Officer (as applicable).

### **2.1.7 Witnesses and Documents**

- (a) No later than ten (10) days prior to the hearing, the parties shall each furnish to the other a final written list of witnesses to be called at the hearing. Neither the Provider, nor the Provider's legal counsel or any other persons working on behalf of the Provider, shall contact ASC employees or staff members concerning the subject matter of the hearing, unless agreed upon in writing by the parties and subject to any limitations imposed by the MSEC or Governing Board (as applicable).
- (b) There is no right to discovery in connection with the hearing. Each party, however, shall provide the other party, no later than ten (10) days before the hearing with copies of all documents that the party intends to offer as evidence (as either substantive evidence or demonstrative evidence). The Presiding Officer may address, and rule upon, any objections or other issues raised in connection with the exchange of documents or the admissibility of the documents (see Section 2.1.8(c), below).
- (c) All documents shall be treated by the parties as confidential and privileged Peer Review information, shall not be disclosed to third parties that are not involved in the hearing, and shall remain subject to the applicable Peer Review protections available under state and federal law. Unless the parties agree otherwise, or unless a party demonstrates good cause for its noncompliance as determined by the Presiding Officer, a party will not be permitted to utilize documents or information at the hearing that have not been timely disclosed to the other party.
- (d) The MSEC or Governing Board may require, in their discretion, the Provider and Provider's legal counsel to execute a confidentiality and nondisclosure agreement prior to the MSEC or Governing Board disclosing copies of Peer Review documents. Such an agreement, in the discretion of the MSEC or Governing Board, may contain terms common to such agreements, including but not limited to, the right to prompt injunctive relief and other damages for any violation of the agreement, as well as the right to compensation for attorney fees and other related litigation expenses.

### 2.1.8 Hearing

- (a) **Right to Counsel.** The MSEC or the Governing Board (as applicable), and the Provider, are each entitled to representation by legal counsel and/or another person of choice who may present evidence, and call, examine and cross-examine witnesses. If the Provider elects to be represented by legal counsel or another person, such representation is at Provider's sole cost and expense. The COO shall appoint legal counsel to represent the MSEC and/or Governing Board (as applicable).
- (b) **Hearing Procedure.** The Presiding Officer shall conduct the hearing. The MSEC or Governing Board (as applicable) shall present its evidence first. The Provider shall then present his or her evidence. Both parties shall be given the opportunity for cross-examination of witnesses presented at the Hearing or for rebuttal as deemed appropriate by the Presiding Officer.
- (c) **Admissibility of Evidence.** The hearing shall not be conducted according to rules of law or procedures relating to the examination of witnesses or presentation of evidence, nor any other established trial rules. Any relevant evidence shall be admitted if it is the sort of evidence upon which responsible persons are accustomed to relying upon in the conduct of Medical Staff matters or other serious affairs, regardless of the admissibility of such evidence in a court of law. By way of example, the Peer Review record or records maintained or obtained by the ASC or Medical Staff (or a Peer Review Committee of the ASC or Medical Staff) that are related to the Provider shall be admissible (irrespective of length or duration) to the extent such information was relied upon by the Peer Review Committee(s) in arriving at its recommendation or action, or that is otherwise relevant to the matter. Evidence or testimony that is not relevant and/or is repetitious in the determination of the Presiding Officer may be excluded. The Hearing Committee may ask questions of the witnesses and may, on its own initiative, request the presence of expert or other witnesses, as it deems appropriate. All determinations of evidentiary appropriateness shall be made by the Presiding Officer. If the Provider does not testify on his or her own behalf, the Provider may be called and examined by the MSEC or Governing Board as if under cross-examination.
- (d) **Burden of Proof.** It is the Provider's burden to demonstrate, by a preponderance of the evidence, that there is no reasonable basis for the MSEC's or Governing Board's adverse recommendation or decision.
- (e) **Record of Hearing.** The Hearing Committee shall maintain a record of the hearing by a court reporter who is present during the proceedings. The Hearing Committee shall require evidence to be taken only on sworn oath or affirmation administered by any person authorized to administer such oaths in the state. Each party shall be entitled, at its own expense, to receive a copy of the hearing transcript.

- (f) **Proposed Findings.** Unless the parties agree otherwise, there shall be no closing statements at the hearing. Rather, the parties shall each be permitted (in their discretion) to tender proposed findings to the Hearing Committee. The Provider's proposed findings (if any is submitted) shall be due to the Hearing Committee, with a copy provided to the Medical Staff President, within seven (7) days following receipt of the hearing transcript by each party, unless additional time is extended by agreement of the parties. Whether or not the Provider submits a statement, the MSEC or Governing Board (whichever is applicable), will also be given the opportunity to submit proposed findings to the Hearing Committee, which shall be due to the Hearing Committee seven (7) days following the deadline for the Provider to submit the Provider's proposed findings, unless this date is otherwise extended by agreement of the parties. Proposed findings shall be submitted in a manner consistent with Special Notice. Any proposed findings submitted pursuant to this provision shall be considered part of the Hearing Record.

#### **2.1.9 Failure to Appear and Respond**

If the Provider fails to appear at the hearing or timely respond after notice and without sufficient cause as determined by the Hearing Committee, the Provider will be deemed to have waived the right to a hearing. In such event, the matter will be promptly forwarded to the Governing Board for final action.

#### **2.1.10 Adjournment and Decision**

- (a) The Presiding Officer may adjourn and reconvene the hearing at the convenience of the parties without Special Notice. The hearing is closed upon conclusion of the presentation of oral and written evidence, and receipt of the hearing transcript, and any proposed findings that are timely made pursuant to Section 2.1.8(f), above. The Hearing Committee shall thereafter conduct its deliberations in private.
- (b) Within thirty (30) days of closing the hearing, unless additional time is reasonably required, the Hearing Committee shall issue its findings and recommendation (the "Hearing Committee Report") to the parties by Special Notice. If the Hearing Committee finds that the Provider has not met his or her burden of proof, then the Hearing Committee shall recommend that the action taken or proposed by the MSEC or the Governing Board (as applicable) be initiated or affirmed (as applicable). If the Hearing Committee finds that the provider has met his or her burden of proof, then the Hearing Committee shall either recommend to the Governing Board that the action taken or proposed by the MSEC or the Governing Board (as applicable) not be taken or affirmed (as applicable).

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

### **2.2.1 Right to an Appeal**

- (a) Either party shall have ten (10) days after receiving Special Notice of the Hearing Committee Report provided pursuant to Section 2.1.10, above, to request appellate review. A request for appellate review must be made in writing and either delivered personally or sent by certified mail, return receipt requested, to the COO within ten (10) days after the party's receipt of the special notice.
- (b) If such appellate review is not timely requested as provided herein, the party shall be deemed to have waived the right to an appellate review, and the COO shall forward the Hearing Committee Report to the Governing Board, together with the hearing record, the Hearing Committee report and any other documentation considered, for final review and action by the Governing Board.
- (c) The grounds for appellate review shall be limited to those circumstances where a party asserts:
  - (i) A substantial failure to comply with the procedures set forth in this Manual; or
  - (ii) That the findings and recommendation of the Hearing Committee are not consistent with the standards for burden of proof as set forth in Section 2.1.8(d), above.

The Appellate Review Body shall be the Governing Board or a designated committee of the Governing Board.

### **2.2.2 Time Frame for Review**

The COO shall deliver a copy of a timely and proper request for appellate review to the Chairperson of the Governing Board. As soon as practicable, the Board shall schedule and arrange for an appellate review. At least fifteen (15) days prior to the appellate review, the COO shall send Special Notice to the parties of the time, place, and date of the appellate review. This time may be extended by the Appellate Review Body for good cause as determined in its sole discretion. The COO or other Governing Board representative will notify the parties of the date, time and place of the appellate review.

### **2.2.3 Procedure for Appellate Review**

Appellate review shall be based upon the hearing record, the Hearing Committee Report, the permitted written statements and any permitted oral statements.

- (a) **Written Statements.** The party requesting appellate review may submit a written statement detailing the basis for the appeal, within the permitted

scope of review, as set forth in Section 2.2.1, above. The statement shall be submitted to the Appellate Review Body by way of the COO at least ten (10) days prior to the appellate review. A copy shall also be provided to the opposing party. The opposing party shall be permitted to submit a responsive, written statement at least five (5) days prior to the appellate review. Any such responsive statement shall also be submitted to the Appellate Review Body by way of the COO. Parties shall serve written statements and copies to opposing parties in the same manner required for Special Notice.

- (b) **Presiding Officer of Appellate Review Body.** The chairperson of the Appellate Review Body shall be the presiding officer. The presiding officer shall determine the order of procedure during the review, make all required rulings and maintain decorum throughout the appellate review process.
- (c) **Oral Statements.** The Appellate Review Body, in its sole discretion, may require or allow the parties or their legal counsel/representatives to personally appear and make oral statements in favor of their positions. Any party wishing to make an oral statement is required to submit a written request to make an oral statement at the same time the party submits the party's written statement. A failure to make such written request operates as a waiver. If a written request is timely made by a party, the Appellate Review Body will determine, in its sole discretion, whether to permit oral statements and will advise the parties by way of Special Notice of its determination. Any party or legal counsel/representative appearing to make an oral statement shall be required to answer questions posed by any member of the Appellate Review Body.
- (d) **Consideration of new or additional matters.** New or additional matters or evidence not raised or presented during the hearing before the Hearing Committee and not otherwise reflected in the hearing record may be introduced at the appellate review only in the discretion of the Appellate Review Body and only if the party requesting consideration of the matter or evidence shows that it could not have been discovered using reasonable due diligence in time for the hearing before the Hearing Committee. The requesting party shall provide, through the COO, a written, substantive description of the new matter or evidence to the Appellate Review Body and the opposing party at least ten (10) days prior to the scheduled date of the appellate review.
- (e) **Powers and Scope of Review.** The Appellate Review Body shall have all the powers granted to the Hearing Committee and any additional powers that are reasonably appropriate or necessary for the discharge of its responsibilities. The duty of the Appellate Review Body is not, however, to re-hear the matter but to reasonably assure that the Provider's hearing before the Hearing Committee was in substantial compliance with this Manual, and that the recommendation pending before the Appellate Review Body is supported by the evidence and consistent with the requisite burden of proof. It shall be the

burden of the party requesting the appeal, by clear and convincing evidence, to demonstrate that these standards were not met.

- (f) **Recesses and Adjournment.** The Appellate Review Body may recess and reconvene the proceedings without additional notice for the convenience of the parties or for the purpose of obtaining new or additional evidence or consultation. At the conclusion of the oral statements, if permitted, the appellate review shall be closed. The Appellate Review Body shall thereafter deliberate in private. The appellate review shall be adjourned at the conclusion of those deliberations.
- (g) **Appellate Review Determination.** Following its deliberation, the Appellate Review Body may determine to adopt, modify, or reject the recommendation(s) of the Hearing Committee, or it may refer the matter to the Hearing Committee for further review. In the event the Appellate Review Body reaches a final determination, the Governing Board shall serve notice of final action as set forth in Section 2.2.4, below.

#### **2.2.4 Final Action**

The Governing Board, upon reaching any final determination pursuant to this Manual, shall deliver Special Notice of final action to the Provider and the MSEC.

#### **2.2.5 Reapplication following Final Adverse Action**

Reapplication, and the related limitations, following a final, adverse action are addressed in the Governance and Credentialing Manual.

#### **2.2.6 Substantial Compliance/Bylaws not a Contract**

As set forth in Governance and Credentialing Manual, the Medical Staff Bylaws are intended to create a framework to ensure compliance with pertinent state and federal law, and accreditation requirements, and to ensure entitlement to all immunities and protections set forth in the pertinent Peer Review statutes and the HCQIA. Therefore, and given the complexities of undertaking investigations, corrective action, hearings, and appeals, strict compliance by the MSEC, Medical Staff committees, and Governing Board with the procedures and timelines set forth in these Bylaws is not required. Rather, the MSEC, Medical Staff committees, and Governing Board, as applicable, should endeavor to substantially comply with the provisions set forth in this Corrective Action and Fair Hearing Manual and elsewhere in the Medical Staff Bylaws. These Bylaws are not intended in any fashion to create a legal contract.

Nothing in this provision, however, negates a Provider's strict obligation to comply with the deadlines set forth in the Medical Staff Bylaws, including the timing requirements to request a hearing, request appellate review, or to initiate action as set forth in this Manual. A failure by a Provider to make a timely request for hearing or appeal, or to timely initiate action, shall result in a waiver, without exception, as provided for in this Manual.

### **2.2.7 Right to Only One Hearing and Appeal**

A Provider is entitled to only one (1) hearing and one (1) appeal with respect to the subject matter that is the basis of the adverse action triggering the right to such hearing and appeal, regardless of whether the action is by the MSEC, the Governing Board, or a combination of their acts.

### **2.2.8 Exhaustion of Administrative Remedies and Attorney Fees**

Any Provider entitled to a hearing and appeal agrees, irrespective of alleged circumstances, to follow and exhaust the procedures and remedies afforded by this Manual as a prerequisite to any other legal action, if any, available to the Provider. Further, ASC shall be entitled to recover any and all attorney fees, litigation costs and other expenses incurred by ASC as a result of Provider's breach of this provision or any other provision set forth in the Bylaws, Policies, or Procedures.

## **ARTICLE III**

### **ADMINISTRATIVE ACTIONS INVOLVING PHYSICIAN AND PODIATRIST MEMBERS OF THE MEDICAL STAFF**

Members are at all times subject to the Administrative Actions set forth below. These Administrative Actions shall be in addition to all other Administrative Actions set forth in and/or permitted by the Bylaws, Policies, and Procedures.

#### **3.1 License to Practice**

Each Member who is a Physician or Podiatrist shall at all times maintain a current and valid license to practice his/her profession in Indiana. In addition, those Administrative Actions contemplated by the Governance and Credentialing Manual, in the event a Member's license is revoked, suspended, not renewed, restricted or limited or if the Member's license is placed on probation, the Member shall immediately notify the Medical Staff President and COO.

- (a) **Revocation of License.** Whenever a Member's license to practice in Indiana is revoked, the Member's Medical Staff Membership and Clinical Privileges at the ASC shall automatically terminate. Such termination shall be effective the same date as the revocation of the license. The Member shall have no right to a hearing, and no notice to the Member is required, as a prerequisite to termination.
- (b) **Suspension or Nonrenewal of License.** Whenever a Member's license to practice in Indiana is suspended or not renewed, the Member's Medical Staff Membership and Clinical Privileges at the ASC shall be automatically suspended. The suspension shall be effective the same date as the suspension or non-renewal of the license (as applicable). The Member shall remain suspended until the Member provides reliable evidence to the MSEC and COO that the underlying suspension of the license is lifted or that the license is appropriately renewed (as applicable). In the event the Member's license

remains suspended or not renewed for a period greater than sixty (60) days, and unless the Governing Board determines that there is good cause to delay automatic termination, the Member's Membership and Clinical Privileges at the ASC shall automatically terminate effective sixty-one (61) days after the suspension or non-renewal of the license. The Member shall have no right to a hearing, and no notice to the Member is required, as a prerequisite to either suspension or termination of the Member's Medical Staff Membership and Clinical Privileges. In the event a licensure suspension is lifted prior to the expiration of sixty (60) days and a Member's corresponding Medical Staff suspension is also lifted, nothing herein precludes the MSEC (or any other individual) from initiating a request for corrective action, as set forth in Section 1.1. herein, resulting from circumstances related to the licensure suspension or nonrenewal.

- (c) **Restriction or Limitation of License.** Whenever a Member's license to practice in Indiana is restricted or limited, the Member's Medical Staff Membership and Clinical Privileges shall be automatically and immediately restricted/limited in accordance with the underlying licensure restriction or limitation (as applicable). The restriction/limitation of Medical Staff Membership and Clinical Privileges shall be effective the same date as the restriction/limitation of the license (as applicable). The Member shall remain restricted/limited until the Member provides reliable evidence to the MSEC and COO that the underlying restriction/limitation of the license is lifted. In the event the Member's license remains limited/restricted for a period greater than sixty (60) days, and unless the Governing Board determines that there is good cause to delay automatic termination, the Member's Membership and Clinical Privileges at the ASC shall automatically terminate effective sixty-one (61) days after the suspension or non-renewal of the license. The Member shall have no right to a hearing, and no notice to the Member is required, as a prerequisite to either the restriction/limitation or termination of the Member's Medical Staff Membership and Clinical Privileges. In the event a licensure restriction/limitation is lifted prior to the expiration of sixty (60) days and a Member's corresponding Medical Staff restriction/limitation is also lifted, nothing herein precludes the MSEC (or any other individual) from initiating a request for corrective action, as set forth in Section 1.1. herein, resulting from circumstances related to the licensure restriction/limitation.
- (d) **Probation of License.** Whenever a Member's license to practice in Indiana is placed on probation, the matter is automatically deemed a request for corrective action and should be promptly forwarded to the MSEC for review as set forth in Section 1.1 herein.
- (e) **License to Practice in another State.** Whenever a Member's license to practice in any state other than Indiana is revoked, suspended, restricted, limited, or placed on probation, the matter is automatically deemed a request for corrective action and should be promptly forwarded to the MSEC for review as set forth in Section 1.1 herein.

### 3.2 DEA Registration/State Controlled Substance Registration

Unless otherwise exempt pursuant to the Bylaws, Members are required to maintain a current and valid Federal Drug Enforcement Administration ("DEA") registration (with appropriate registration in Indiana) and a controlled substance registration as applicable, in Indiana ("CSR"). In the event a Member's federal or state registration is revoked, suspended, non-renewed, restricted or limited, or if the Member's registration is placed on probation, he/she shall immediately notify the Medical Staff President and COO.

- (a) **Revocation, Suspension or Non-renewal of Registration.** Whenever a Member's federal DEA or state CSR is revoked, suspended or not renewed ("non-renewal" also refers to and includes a failure to appropriately obtain, register or maintain registration), the Member's Medical Staff Membership and Clinical Privileges at the ASC shall be automatically suspended. The suspension shall be effective the same date that the Federal DEA or state CSR is revoked, suspended, not renewed, or otherwise not valid (as applicable). The Member shall remain suspended until the Member provides reliable evidence to the MSEC and COO that the underlying revocation or suspension is lifted or that the registration is appropriately renewed/obtained (as applicable). In the event the Member's federal DEA or state CSR is revoked, suspended or not renewed/obtained for a period greater than sixty (60) days, and unless the Governing Board determines that there is good cause to delay automatic termination, the Member's Membership and Clinical Privileges at the ASC shall automatically terminate effective sixty-one (61) days after the effective date of the suspension. The Member shall have no right to a hearing, and no notice to the Member is required, as a prerequisite to either suspension or termination of the Member's Medical Staff Membership and Clinical Privileges. In the event a revocation, suspension or non-renewal is resolved prior to the expiration of sixty (60) days and a Member's corresponding Medical Staff suspension is also lifted, nothing herein precludes the MSEC (or any other individual) from initiating a request for corrective action, as set forth in Section 1.1. herein, resulting from circumstances related to the revocation, suspension or nonrenewal of the federal DEA or state CSR.
- (b) **Restriction or Limitation of Registration.** Whenever a Member's federal DEA or state CSR is restricted or limited, the Member's Medical Staff Membership and Clinical Privileges shall be automatically and immediately restricted/limited in accordance with the underlying restriction or limitation or registration (as applicable). The restriction/limitation shall be effective the same date that the federal DEA or state CSR is restricted/limited. The Member shall remain restricted/limited until the Member provides reliable evidence to the MSEC and COO that the underlying restriction/limitation is lifted. In the event the Member's federal DEA or state CSR is restricted/limited for a period greater than sixty (60) days, and unless the Governing Board determines that there is good cause to delay automatic termination, the Member's Membership and Clinical Privileges at the ASC shall automatically terminate

effective sixty-one (61) days after the restriction/limitation. The Member shall have no right to a hearing, and no notice to the Member is required, as a prerequisite to restriction/limitation or termination of the Member's Medical Staff Membership and Clinical Privileges. In the event a restriction/limitation is resolved prior to the expiration of sixty (60) days and a Member's corresponding Medical Staff restriction/limitation is also lifted, nothing herein precludes the MSEC (or any other individual) from initiating a request for corrective action, as set forth in Section 1.1. herein, resulting from circumstances related to the restriction/limitation of the federal DEA or state CSR.

- (c) **Probation of Registration.** Whenever a Member's federal DEA or state CSR is placed on probation, the matter is automatically deemed a request for corrective action and should be promptly forwarded to the MSEC for review as set forth in Section 1.1 herein.
- (d) **Controlled Substances Registration in another State.** Whenever a Member's federal DEA or state CSR in any state other than Indiana is revoked, suspended, restricted, limited or placed on probation, the matter is automatically deemed a request for corrective action and should be promptly forwarded to the MSEC for review as set forth in Section 1.1 herein.

### **3.3 Medicare/Medicaid Sanctions/Government Health Care Programs**

Members shall at all times remain eligible to participate in the Medicare and Medicaid programs, as well as any other Government Health Care programs (collectively referred to in this Section as "Medicare and/or Medicaid programs"). In the event that a Member's Medicare and/or Medicaid participation is revoked, suspended, revoked, limited or placed on probation or if he/she receives notice of any investigation or possible disciplinary action, the Member shall immediately notify the Medical Staff President and COO.

- (a) **Revocation, Suspension, Restriction or Limitation of Participation.** Whenever a Member's eligibility to participate in the Medicare and/or Medicaid programs is revoked, suspended, restricted or limited, or the Member is otherwise identified as an "excluded provider," the Member's Medical Staff Membership and Clinical Privileges at the ASC shall be automatically suspended. The suspension shall be effective the same date that the Member's eligibility to participate in the Medicare and/or Medicaid programs is revoked, suspended, restricted or limited, and the Member is no longer an "excluded provider." The Member shall remain suspended until the Member provides reliable evidence to the MSEC and COO that the underlying revocation, suspension, restriction or limitation has been lifted. In the event the Member's eligibility to participate in the Medicare and/or Medicaid programs is revoked, suspended, restricted or limited for a period greater than sixty (60) days, and unless the Governing Board determines that there is good cause to delay automatic termination, the Member's Membership and Clinical Privileges at the ASC shall automatically terminate effective sixty-one (61) days after the revocation, suspension, restriction or limitation. The

Member shall have no right to a hearing, and no notice to the Member is required, as a prerequisite to either suspension or termination of the Member's Medical Staff Membership and Clinical Privileges. In the event a revocation, suspension, restriction or limitation is resolved prior to the expiration of sixty (60) days and a Member's corresponding Medical Staff suspension is also lifted, nothing herein precludes the MSEC (or any other individual) from initiating a request for corrective action, as set forth in Section 1.1. herein, resulting from circumstances related to the revocation, suspension, restriction or limitation of the Member's eligibility to participate in the Medicare and/or Medicaid programs.

- (b) **Probation of Participation.** Whenever a Member's eligibility to participate in the Medicare and/or Medicaid programs is placed on probation, the matter is automatically deemed a request for corrective action and should be promptly forwarded to the MSEC for review as set forth in Section 1.1 herein.

### **3.4 Criminal Arrest, Charge, or Conviction**

Members of the Medical Staff are required to conduct themselves in a manner that is befitting of their profession. This requirement includes the expectation that Members will not engage in criminal activity. In the event a Member is arrested, charged with or convicted of any crime, he/she shall immediately notify the Medical Staff President and COO.

- (a) **Suspension.** In the event a Member has been arrested or formally charged with:
  - (i) a felony level crime;
  - (ii) a crime against another person or persons, such as murder, rape, assault or other similar crime;
  - (iii) a crime that placed a patient at immediate risk, such as a malpractice suit that results in a conviction of criminal neglect or misconduct;
  - (iv) a financial crime, such as extortion, embezzlement, income tax evasion, insurance fraud or other similar crime;
  - (v) any crime that involved the use of illegal substances; or
  - (vi) any crime that would result in mandatory exclusion from the Medicare or Medicaid programs, or any other government health care program.

The Governing Board, following recommendation by the MSEC, may elect to administratively suspend the Member's Medical Staff Membership and Clinical Privileges at the ASC pending resolution of the underlying arrest and/or charge. The Member shall have no right to a hearing, and no notice to the Member is required, as a prerequisite to suspending the Member's Medical Staff Membership and Clinical Privileges. In the event a suspension is

ultimately lifted, the Member may in the discretion of the MSEC, be required to comply with a plan for FPPE. Additionally, and irrespective of whether the Member is suspended, nothing herein precludes the MSEC (or any other individual) from initiating a request for corrective action, as set forth in Section 1.1. herein, resulting from circumstances related to the arrest or charge, even where such arrest or charge does not result in conviction. Further, and unless the MSEC and Governing Board elect to make an exception for good cause, if a Member remains administratively suspended when the Member's then-current term of appointment expires, the Member's Medical Staff Membership and Clinical Privileges shall administratively and automatically lapse. The Member shall be eligible to reapply as an initial Applicant in the event the underlying arrest and/or charge is resolved fully in favor of the Applicant.

- (b) **Termination.** In the event a Member is indicted or convicted of a crime identified in Section 3.4(a), above, the Member's Medical Staff Membership and Clinical Privileges at the ASC may immediately and automatically terminate. If that event, the Member shall have no right to a hearing, and no notice to the Member is required, as a prerequisite to termination of the Member's Medical Staff Membership and Clinical Privileges.

### **3.5 Medical Record Completion**

Timely and appropriate completion of medical records is a fundamental obligation of Medical Staff Membership and Clinical Privileges – bearing both on the quality of patient care provided at the ASC, as well as efficient operation of the ASC. Accordingly, Members are at all times required to comply with the prevailing Bylaws, Policies, and Procedures (including, but not necessarily limited to, the Medical Staff Rules and Regulations) related to medical record completion. A failure to timely and/or appropriately complete medical records may result in Administrative Action, including but not necessarily limited to, those administrative fines and other measures set forth in the Medical Staff Rules and Regulations. Repeated delinquency and/or other failure to appropriately complete medical records may additionally be referred to the MSEC for investigation and potential corrective action.

### **3.6 Failure to Maintain Professional Liability Insurance**

Members shall at all times maintain professional liability insurance in the form, amounts and limits established by the Governing Board. In the event that a Member fails to maintain the required insurance and/or the limits of coverage are reduced below the requisite amounts, the Member shall immediately notify the Medical Staff President and COO.

- (a) **Suspension.** Whenever a Member fails to maintain professional liability insurance in the form, amounts and limits required by the Governing Board, the Member's Medical Staff Membership and Clinical Privileges at the ASC shall be automatically suspended. The Member shall have no right to a hearing, and no notice is required, as a prerequisite to the termination of the Member's Medical Staff Membership and Clinical Privileges. The Member shall remain suspended until the Member provides a valid certificate of insurance (and any other requested information) to the MSEC and COO establishing that the

Member has obtained professional liability insurance in the form, amounts and limits required by the Governing Board.

- (b) **Voluntary Withdrawal.** In the event the Member remains suspended pursuant to this Section for a period greater than sixty (60) days, and unless the Governing Board determines that there is good cause to make an exception, the Member shall be deemed to have voluntarily withdrawn his or her Medical Staff Membership and Clinical Privileges, without right of appeal or hearing. In such event, the Member may reapply for Medical Staff Membership or Clinical Privileges as a new applicant, pursuant to the procedures set forth in the Medical Staff Governance and Credentialing.

### **3.7 Failure to Pay Dues, Fees, and Fines**

Members are required to timely pay (if any) Medical Staff annual dues, fees, and any other fines if applicable and approved by the MSEC and Governing Board. All Members will be provided with written notice of such dues, fees, and fines, as well as the due date for payment.

- (a) **Suspension.** Whenever a Member, who has been provided with written notice of annual dues, fees, and/or any other fine (as applicable), fails to provide full payment to the designated recipient within ninety (90) days of the due date for such payment (as set forth in the written notice), the Member's Medical Staff Membership and Clinical Privileges at the ASC shall be automatically suspended. The Member shall have no right to a hearing, and no notice is required, as a prerequisite to the suspension of the Member's Medical Staff Membership and Clinical Privileges. The Member shall remain suspended until such time as the Member provides reliable evidence to the MSEC and COO that the Member has delivered full payment to the designated recipient.
- (b) **Voluntary Withdrawal.** In the event the Member remains suspended pursuant to this Section for a period greater than sixty (60) days, and unless the Governing Board determines that there is good cause to make an exception, the Member shall be deemed to have voluntarily withdrawn his or her Medical Staff Membership and Clinical Privileges, without right of appeal or hearing. In such event, the Member may reapply for Medical Staff Membership or Clinical Privileges as a new applicant, pursuant to the procedures set forth in the Medical Staff Governance and Credentialing. However, full payment of any amount that gave rise to the prior voluntary withdrawal shall be made before the applicant is eligible to reapply.

### **3.8 Failure to Successfully Complete ASC-Sponsored Training Programs Related to Electronic Medical Record (EMR) and Related Clinical System Implementation, or other ASC Required Training Programs; Refusal to Utilize EMR**

Members are required to successfully and timely complete ASC-sponsored training programs related to EMR and clinical system implementation, or other ASC required (non-optional) training programs, pass any related program examination or opt-out examination, and submit required program documentation as required the Medical Staff Governance and Credentialing

Manual. Members are also required to utilize the EMR as required by the Medical Staff Governance and Credentialing Manual.

- (a) **Suspension.** Whenever a Member fails/refuses for more than thirty (30) days following a written reminder/request to complete ASC sponsored training programs related to EMR or related clinical system implementation, or any other ASC required (non-optional) training programs, pass any related program examination or opt-out examination, submit required program documentation as required by Section 1.3 of the Medical Staff Governance and Credentialing Manual, and/or utilize the EMR as required by Section 1.3 of the Medical Staff Governance and Credentialing Manual, the Member's Medical Staff Membership and Clinical Privileges at the ASC may be, in the discretion of the MSEC or Governing Board, administratively suspended. The Member shall have no right to a hearing, and no notice is required, as a prerequisite to the suspension of the Member's Medical Staff Membership and Clinical Privileges. The Member shall remain suspended until such time as the Member provides reliable evidence to the MSEC and COO that the Member has fully completed the outstanding program and/or program documentation, and/or has appropriately committed to use of EMR, as applicable.
- (b) **Voluntary Withdrawal.** In the event the Member remains suspended pursuant to this Section for a period greater than sixty (60) days, and unless the Governing Board determines that there is good cause to make an exception, the Member shall be deemed to have voluntarily withdrawn his or her Medical Staff Membership and Clinical Privileges, without right of appeal or hearing. In such event, the Member may reapply for Medical Staff Membership or Clinical Privileges as a new applicant, pursuant to the procedures set forth in the Medical Staff Governance and Credentialing Manual. However, the applicant must complete any program and/or program documentation (as applicable) that gave rise to the prior voluntary withdrawal before the applicant is eligible to reapply.

### 3.9 Failure to Maintain Eligibility or Satisfy Responsibilities

Members are required, at all times, to meet the minimum objective criteria for Medical Staff Membership and Clinical Privileges, as set forth in the Medical Staff Governance and Credentialing Manual.

- (a) **Suspension.** Whenever a Member fails to meet, or is determined to no longer to meet, any of the minimum objective criteria for Medical Staff Membership or Clinical Privileges at the ASC, as set forth in Section 2.2 of the Medical Staff Governance and Credentialing Manual, and unless such eligibility criteria are addressed elsewhere in this Section 3, the Member's Medical Staff Membership and Clinical Privileges at the ASC shall be immediately suspended. The Member shall have no right to a hearing, and no notice is required, as a prerequisite to the suspension of the Member's Medical Staff Membership and Clinical Privileges. The Member shall remain suspended until such time as the Member provides reliable evidence to the MSEC and COO

that the Member has fully satisfied the minimum objective criteria for Medical Staff Membership or Clinical Privileges at the ASC that gave rise to the suspension.

- (b) **Voluntary Withdrawal.** In the event the Member remains suspended pursuant to this Section for a period greater than sixty (60) days, and unless the Governing Board determines that there is good cause to make an exception, the Member shall be deemed to have voluntarily withdrawn his or her Medical Staff Membership and Clinical Privileges, without right of appeal or hearing. In such event, the Member may reapply for Medical Staff Membership or Clinical Privileges as a new applicant, pursuant to the procedures set forth in the Medical Staff Governance and Credentialing Manual.

### **3.10 Failure to Provide Requested Information/Failure to Appear or Undergo Examination**

Members of the Medical Staff are required to provide certain expirable items and other information to the ASC and Medical Staff, and to appear for special meetings when requested.

- (a) **Expirables.** In the event a Member fails to timely provide the ASC with a current and/or updated copy of his/her state license to practice or other legal credential required for practice, state CSR, Federal DEA certificate, proof of professional liability insurance coverage and limits, or any other expirable item required by the Bylaws, Policies, and Procedures, the Member's Medical Staff Membership and Clinical Privileges at the ASC shall be immediately suspended. The Member shall have no right to a hearing, and no notice is required, as a prerequisite to the termination of the Member's Medical Staff Membership and Clinical Privileges. The Member shall remain suspended until such time as the Member provides reliable evidence to the MSEC and COO that the Member has appropriately provided the expirable item.
- (b) **Information Requested by MSEC or Governing Board/Special Meetings.** If an authorized Medical Staff Standing Committee (including but not limited to MSEC) or the Governing Board, or any authorized designees of any such committee or the Governing Board, requests, in writing, that a Member provide information, appear for a meeting, and/or undergo a physical or mental health examination that is relevant to a Peer Review investigation, ASC risk management activity or process, credentialing process, OPPE, or FPPE, and the Member fails to comply (without good cause) with the request, the Member's Medical Staff Membership and Clinical Privileges at the ASC may be, in the discretion of the MSEC (if the request was related to the MSEC or other Standing Medical Staff Committee) or the Governing Board, administratively suspended. The Member shall have no right to a hearing, and no notice is required, as a prerequisite to the suspension of the Member's Medical Staff Membership and Clinical Privileges. The Member shall remain suspended until such time (as applicable): (i) the Member provides all such requested information; (ii) the Member undergoes the requested examination (if the requesting party determines in its discretion that additional time should be

provided to comply with the examination request, or (iii) the Member appears for the requested meeting (if the requesting party determines in its discretion that additional time/opportunity should be provided to appear for such meeting).

- (c) **Voluntary Withdrawal.** In the event the Member remains suspended pursuant to this Section for a period greater than forty-five (45) days, and unless the Governing Board determines that there is good cause to make an exception, the Member shall be deemed to have voluntarily withdrawn his or her Medical Staff Membership and Clinical Privileges, without right of appeal or hearing. In such event, the Member may reapply for Medical Staff Membership or Clinical Privileges as a new applicant, pursuant to the procedures set forth in the Medical Staff Governance and Credentialing Manual. However, the applicant must provide any expirable or information that gave rise to the prior voluntary withdrawal before the applicant is eligible to reapply.

### **3.11 Exclusive Contracting/Closure**

The Governing Board, in its sole discretion, may enter into exclusive agreements for certain services and/or close the Medical Staff (or particular clinical services or Clinical Privileges of the Medical Staff) for the purpose of securing the continued availability of a given service line, and/or to ensure that care provided at the ASC is efficient, effective, consistent, and of appropriate quality. The Governing Board's determination to do so may administratively impact the ability of one or more Members to exercise Clinical Privileges at the ASC.

- (a) **Exclusivity/Closure Policy.** Notwithstanding anything herein that could be construed to the contrary, application for initial Membership or Clinical Privileges related to ASC facilities or services covered by exclusivity agreements or closure will not be accepted or processed unless submitted in accordance with the existing contract or agreement with the ASC. Similarly, the Medical Staff Membership and Clinical Privileges of any current Member at the ASC, who renders services made subject of an exclusive agreement or closure, but who is not a party to or subject of that agreement or expressly exempted by the Governing Board from the closure, as applicable, shall automatically/administratively terminate as of the effective date of the exclusive agreement. In such event, the Member shall be eligible to reapply as an initial Applicant upon the expiration or termination of the exclusive agreement
- (b) **Qualifications.** An Applicant or Member who is providing or intends to provide specified professional services pursuant to a contract or a letter of agreement with the ASC must meet the same qualifications, must be processed in the same manner, and must fulfill all obligations of Membership and Clinical Privileges as applicable to any other similarly situated Member.
- (c) **Effect of Contract Expiration or Termination.** In the event a Member maintains Membership and/or Clinical Privileges at the ASC pursuant to an

exclusive agreement, then the terms of the exclusive agreement may require that the Member's Membership and/or Clinical Privileges, as applicable, will expire or terminate upon the termination of the agreement and/or upon the termination of the Member's participation pursuant to such agreement. In this event, the exclusive agreement shall take priority over any process set forth in these Medical Staff Bylaws. However, if the exclusive agreement does not address such termination, or otherwise require such termination, then termination of the exclusive agreement, alone, will not affect the Member's Membership or Clinical Privileges.

### **3.12 Quality Measures following Administrative Action**

In the event a Member is restricted for any period of time from exercising, in full or in part, a particular Clinical Privilege or Privileges, the MSEC may require the Member to satisfy a FPPE or other similar quality review process in order to ensure the Member is capable of exercising the Clinical Privilege or Privileges in manner that meets the ASC's expectations for safety and competency. Given the routine administrative nature of FPPE and related quality processes, the imposition of such requirements does not give rise to any right to hearing or appeal.

## **ARTICLE IV**

### **ADMINISTRATIVE ACTION, CORRECTIVE ACTION, HEARING AND APPEAL RIGHTS RELATED TO NON-PHYSICIAN PRACTITIONERS**

As set forth above, APPs are not entitled to the procedures and rights set forth in Articles I-III of this Manual. This Article IV shall set forth the administrative and corrective action provisions applicable to APPs who maintain Clinical Privileges at the ASC, as well as any applicable rights to review. However, nothing in these Medical Staff Bylaws shall interfere with or impact the rights of the ASC or Orthopaedics Northeast, P.C., to address matters through employment or contractual relationship, as applicable.

#### **4.1 Administrative Action**

- (a) The MSEC or Governing Board, or their respective designees, may administratively suspend the Clinical Privileges (as applicable) of an APP whenever the APP, in the discretion of the MSEC:
  - (i) No longer meets an eligibility criterion that is set forth in Governance and Credentialing Manual or the Clinical Privileges extended to the APP;
  - (ii) Fails to timely provide an expirable item, fails to comply with a meeting or health examination request, or otherwise fails to provide the MSEC or Governing Board with information that is reasonably requested;
  - (iii) Fails to meaningfully participate and/or timely complete any ASC required program, training or documentation; or fails to appropriately utilize the EMR;

- (iv) Is arrested, charged with or convicted of any crime set forth in Section 3.4(a), above;
  - (v) Fails to timely complete medical records;
  - (vi) Fails to timely pay any applicable dues, assessments or fines;
  - (vii) Is no longer eligible to exercise Clinical Privileges by virtue of an exclusive contract; or
  - (viii) Fails to comply with any other administrative requirement applicable to APPs at the ASC.
- (b) In the event an APP fails to appropriately correct any circumstance or matter giving rise to an administrative suspension within thirty (30) days of the effective date of the suspension, the APP shall be deemed to have voluntarily withdrawn his or her Clinical Privileges, without any right of appeal or hearing. In such event, the APP may reapply for Clinical Privileges as a new Applicant subject to the procedures set forth in the Medical Staff Governance and Credentialing, but only if the circumstances or matters giving rise to the prior administrative suspension have been fully corrected in the discretion of the MSEC.
- (c) Additionally, if an APP is employed by or under contract with the System or ASC, or an affiliated entity that is owned or operated by the System or ASC, and such employment or contract expires or terminates for any reason, then the APP's Clinical Privileges shall concurrently (and administratively) terminate. In such event, the APP may reapply for Clinical Privileges as a new Applicant subject to the procedures set forth in the Medical Staff Governance and Credentialing, and only if the APP is otherwise eligible to do so.

## **4.2 Summary Suspension**

Any two of the individuals identified in Section 1.2.1(a), above, with respect to Members (operating as an ad hoc Peer Review Committee) are authorized to summarily suspend or restrict the Clinical Privileges of an APP when the two individuals, in their discretion, determine that the APP represents, or may represent, an immediate danger to the health, safety, or wellbeing of patients, ASC personnel, staff members, or other individuals at the ASC.

In the event an ad hoc Peer Review Committee imposes a summary suspension of an APP's Clinical Privileges, the matter will be forwarded to the MSEC. The MSEC will then (at its next regularly scheduled meeting, unless it decides to meet sooner) determine whether to continue, modify or discontinue the summary suspension/restriction. If the MSEC determines to continue, in any form, the summary suspension/restriction, it shall do so in conjunction with an investigation that is conducted consistent with Section 4.3, below.

## **4.3 Corrective Action – Investigation and Hearing**

- (a) Any complaint or concern regarding the clinical competence or professional conduct of an APP may be referred to the MSEC for review. The MSEC will, in its discretion, review the matter and determine whether to conduct an investigation or, alternatively, to direct the matter to be handled pursuant to applicable ASC policy.
- (b) In the event the MSEC determines to investigate the matter, the MSEC shall either investigate the matter itself or shall request that the matter be investigated by a standing committee of the Medical Staff or an ad hoc committee consisting of at least three (3) Practitioners at the ASC (such committees referred to herein as the "Investigating Committee").
- (c) The Investigating Committee will have the authority to review relevant documents, interview individuals, and (if approved by the MSEC and COO) to retain external consultants or Peer Reviewers.
- (d) The Investigating Committee, as applicable, will provide the APP with a written notice generally describing the complaints or concerns being investigated and will also provide the APP with access to any medical records related thereto.
- (e) The Investigating Committee, as applicable, will thereafter permit the APP an opportunity for a hearing before the Investigating Committee, at which time the APP shall be invited to provide any witness testimony and/or documentary evidence that is relevant, in the discretion of the Medical Staff President (or designee) to the complaint or concern giving rise to the investigation. Neither the MSEC nor the APP will be represented by legal counsel at the hearing.
- (f) The Investigating Committee, as applicable, will thereafter complete its investigation and will prepare a written report of its findings and recommendations, a copy of which will be provided to both the APP and COO. If an Investigating Committee other than the MSEC conducts the investigation, it shall forward its written report of findings and recommendations to the MSEC. The MSEC may adopt none, some or all of the report and recommendations. The MSEC may also request that the Investigating Committee conduct further investigation or the MSEC may elect to conduct further investigation itself.
- (g) If the MSEC's final recommendations for action (if any) will restrict or preclude the APP from exercising his or her Clinical Privileges, the matter shall be forwarded to the Governing Board for final review and action (subject to appellate review rights as set forth below). If the MSEC's final recommendations for action (if any) will not materially restrict or preclude the APP from exercising his or her Clinical Privileges, the MSEC will implement the recommendation as its final action.

#### **4.4 Denial of Medical Staff Membership and/or Clinical Privileges**

- (a) In the event the MSEC recommends, or is inclined to recommend, the denial of an APP's requested Clinical Privileges, either in relation to an application for initial appointment or an application for renewal, the MSEC will permit the APP an opportunity for a hearing before the MSEC (consistent with this Section 4.4.), at which time the APP shall be invited to provide any witness testimony and/or documentary evidence that is relevant, in the discretion of the Medical Staff President (or designee), to the application. Neither the MSEC nor the APP will be represented by legal counsel at the hearing. The MSEC will thereafter determine its final recommendation and shall communicate such recommendation to the APP.
- (b) If the MSEC's final recommendation is to deny some or all of the APP's requested Clinical Privileges, then the MSEC shall forward its recommendation to the Governing Board for final review and action as set forth in the Medical Staff Governance and Credentialing Manual, but subject to appellate review rights as set forth below. If the MSEC's final recommendation is approval of the APP's requested Clinical Privileges, then the MSEC's recommendation shall be forwarded to the Governing Board for final review and action as set forth in the Medical Staff Governance and Credentialing Manual.

#### **4.5 Corrective Action/Credentialing – Appellate Review**

- (a) Upon receipt of the MSEC's final recommendation to deny some or all of an APP's requested Clinical Privileges, or for any corrective action that will materially restrict or preclude the APP from exercising his or her Clinical Privileges, the APP may make a written request for a written appeal to the Governing Board, which shall be conducted pursuant to this Section 4.5. Such a request must be made in writing and delivered to both the COO and Medical Staff President within ten (10) days of the APP's receipt of MSEC's final recommendation.
- (b) Upon receipt of a request for written appeal, the Governing Board (either through the full board or a designated subcommittee of the full Board) shall establish a deadline for the submission of written appellate arguments by the APP and by MSEC. There shall be no right to oral argument.
- (c) On appeal, the APP has the burden to prove, by clear and convincing evidence, that the denial, restriction, or other action recommended by the MSEC is without any reasonable basis.
- (d) Upon receipt and consideration of the written appellate arguments, the Governing Board (or designated subcommittee) may conduct any additional investigation that it deems reasonably necessary. Otherwise, the Governing Board (or designated subcommittee) will make a determination regarding what final action, if any, should be taken, and will provide notice of its determination to the APP and MSEC.

## ARTICLE V

### AMENDMENT AND ADOPTION

#### 5.1 Amendment

This Corrective Action and Fair Hearing Manual may be amended or repealed, in whole or in part, pursuant to the process and procedures set forth in the Governance and Credentialing Manual.

#### 5.2 Medical Staff

This Corrective Action and Fair Hearing Manual was recommended to the Governing Board by the Medical Staff and adopted by the Governing Board in accordance with and subject to the Medical Staff Bylaws.

By:   
Micah Smith (Sep 6, 2025 13:10:36 EDT)  
Dr. Micah Smith, Medical Staff President

Signature Date: 06/09/2025

#### 5.3 Governing Board

This Corrective Action and Fair Hearing Manual was approved and adopted by consent of resolution of the Governing Board after considering the Medical Staff's recommendation and in accordance with and subject to the ASC's Bylaws.

By:   
Marceline Rogers (Sep 6, 2025 21:40:54 EDT)  
Marceline Rogers, Chairperson, Governing Board

Signature Date: 06/09/2025

#### 5.4 Record of Revisions

| Date      | Article/Section Modified |
|-----------|--------------------------|
| 8/20/2025 | First Adoption           |

# PKSO Corrective Action and Fair Hearing Manual - August 2025 Final

Final Audit Report

2025-09-07

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