

<b>This policy applies to:</b> <i>Stanford Health Care</i> <i>Lucile Packard Children's Hospital Stanford</i>	<b>Last Update:</b> <b>January 2019</b>
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**I. PURPOSE:**

When a Provider Organization has taken action against a practitioner for quality of care or service, the Provider Organization must report the action the appropriate authorities and offer the practitioner a formal appeal process.

When a substantive validity question is the issue, the petitioner will be permitted a direct appeal and appearance in an executive session (voting members only) of the Medical Executive Committee. Only after the Medical Executive Committee has denied said appeal may the petitioner appeal directly to the Stanford Health Care (SHC) Board of Directors. Such appearance will not be considered a "hearing" under this policy and will be conducted in accordance with guidelines established by the SHC Board of Directors. A final determination by the SHC Board of Directors after such appeal will be a condition precedent to the petitioner's right to seek judicial review in a court of law.

**II. POLICY:**

A. If an adverse ruling is made with respect to a Medical Staff member's membership, Staff status, or clinical privileges at any time, regardless of whether he/she is an applicant or a Medical Staff member, he/she must exhaust the remedies afforded by these Bylaws before resorting to formal legal action challenging the decision, the procedures used to arrive at it, or asserting any claim against SHC, or participants in the decision process; and the exclusive procedure for obtaining judicial review will be by Petition for Writ of Mandate pursuant to Part 3, Title 1, Chapter 2 of the California Code of Civil Procedure.

B. Grounds for Hearing

Any one or more of the following actions or recommended actions constitute grounds for a hearing unless otherwise specified in these Bylaws:

1. Denial of Medical Staff membership.
2. Denial of requested advancement in Medical Staff membership status.
3. Denial of Medical Staff appointment.

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4. Demotion to lower Medical Staff category or membership status.
5. Summary restriction or suspension of Medical Staff membership during the pendency of corrective action and hearing and appeals procedures.
6. Expulsion from Medical Staff Membership
7. Denial of requested privileges
8. Reduction in privileges
9. Summary restriction or suspension of Medical Staff membership and/or privileges during the pendency of corrective action and hearing and appeals procedures.
10. Termination of privileges
11. Requirement of consultation or proctoring when the reviewing physician has the authority to supervise, direct, or transfer care from the physician being monitored.
12. Any other action which requires filing a report pursuant to California Business & Professions Code, Section 805, and with the National Practitioner Data Bank.

Recommendations of any of these actions constitute an "adverse recommendation" for the purposes of these Bylaws.

### III. **PROCEDURE:**

#### A. **REQUESTS FOR HEARING**

##### 1. **NOTICE OF ACTION OR PROPOSED ACTION**

In all cases in which the Medical Executive Committee or authorized officer has, under these Bylaws, recommended or taken any of the actions constituting grounds for hearing as set forth in Section 7.2, the Medical Executive Committee or officer will give the affected Medical Staff member notice of the decision and of his/her right to request a hearing pursuant to Section 7.3.B, below.

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2. REQUEST OF HEARING

The petitioner will have thirty (30) days following the date of receipt of notice to request a hearing by a Judicial Review Committee. The request will be sent to the Chief of Staff. If the petitioner does not request a hearing within thirty (30) days, he/she will be deemed to have waived his/her right to a hearing and accepted the decision. It will there upon become the final action of the Medical Executive Committee and will be forwarded to the SHC Board of Directors

3. TIME AND PLACE FOR HEARING

The Chief of Staff will confirm a date for a hearing. Notice will be given to the petitioner of the time, place, and date of the hearing. The date of commencement of the hearing will not be more than ninety (90) days from the date of receipt of the request unless further delay is agreed upon by both the practitioner and the Medical Executive Committee; provided that a hearing for a practitioner under suspension will commence as soon as arrangements may reasonably be made.

4. NOTICE OF CHARGES

The Chief of Staff will advise the petitioner in writing of the acts or omissions with which the petitioner is charged including, if applicable, a list of the medical records or charts being questioned. The Chief of Staff and the petitioner will provide each other with a list of witnesses expected at that time to testify at the hearing. The Chief of Staff and the petitioner will notify each other of additions to the list. Witness lists must be exchanged at least ten (10) days prior to commencement of the hearing.

5. JUDICIAL REVIEW COMMITTEE

The Chief of Staff will select a Judicial Review Committee consisting of at least three (3) Medical Staff members, the majority of the hearing panel members are peers of the affected practitioner. A peer is trained and licensed in a practice similar to the affected practitioner. Panel members are not required to possess identical specialty training. The members selected to serve on the Judicial Review Committee will be impartial and will not have actively participated in the formal consideration of the matter at any previous level

6. FAILURE TO APPEAR

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Failure of the petitioner to appear without good cause and proceed at a hearing will be deemed to constitute voluntary acceptance of the actions involved and waiver to any hearing rights, and it will thereupon become the final recommendation of the Medical Executive Committee. Such final recommendation will be subject on that basis alone to review and decision by the SHC Board of Directors.

**7. POSTPONEMENTS AND EXTENSIONS**

Postponements and extensions of time beyond the times expressly permitted in these Bylaws may be requested by any affected person and will be permitted by the hearing officer, or the Chief of Staff before appointment of a hearing officer, on a showing of good cause.

**B. HEARING PROCEDURE**

**1. PRE-HEARING PROCEDURE**

It will be the duty of the petitioner and the Medical Executive Committee to raise any procedural objections before the hearing so that decisions concerning such matters may be made expeditiously. Any such objections, when raised, will be preserved for consideration at any appellate review hearing which may subsequently be requested.

**2. THE HEARING OFFICER**

The Chief of Staff will appoint an unbiased hearing officer to preside at the hearing. The hearing officer will be an attorney-at-law qualified to preside over a quasi-judicial hearing and, preferably, have experience in Medical Staff matters. The hearing officer will have the authority to (1) rule on questions of procedure; (2) rule on the admission and exclusion of evidence; (3) participate in the deliberations of the Judicial Review Committee but may not vote; (4) draft the findings and recommendations of the Judicial Review Committee as requested by the Committee; and (5) advise the Judicial Review Committee generally on the discharge of its functions.

**3. RECORD AND CONDUCT OF THE HEARING**

The Judicial Review Committee will maintain a record of the hearing by a certified shorthand reporter. The cost of attendance of the shorthand reporter will be borne by the Hospital, but the cost of the transcript if any

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will be borne by the party requesting it. The hearing need not be conducted by technical rules of law relating to examination of witnesses or production of evidence except that irrelevant or unduly repetitious evidence will be excluded.

4. RIGHTS OF THE PARTIES

At a hearing both sides have the right to representation by counsel or other person. If either the petitioner or the Medical Executive Committee elects not to be represented by counsel, this fact will be noted in the record by the hearing officer. Both sides may ask the Judicial Review Committee members questions relating to determining and to challenge for bias, call and examine witnesses, introduce exhibits, cross-examine witnesses, and otherwise rebut any evidence. The petitioner may be called by the Medical Executive Committee and examined as if under cross-examination.

5. REPRESENTATION

The hearings provided for in these Bylaws are for the purpose of intra-professional resolution of matters bearing on conduct or professional competence. A practitioner may choose to be represented at the hearing by an attorney if he/she so wishes. If the practitioner chooses not to be so represented, the Medical Executive Committee will not have its attorney present at the hearing. The foregoing will not be deemed to deprive any party of its right to the assistance of legal counsel for the purpose of preparing for the hearing. If there is no counsel, the petitioner is entitled to be accompanied by and represented at such hearings only by a physician, dentist, podiatrist, or clinical psychologist licensed to practice in the State of California who is not also an attorney-at-law, and who is preferably a member in good standing of the Medical Staff. The body whose decision prompted the hearing will appoint a representative from the Medical Staff or from the Board of Directors (whichever body's decision prompted the hearing), who will present its recommendation, action or decision, and the materials in support thereof, and examine witnesses.

6. MISCELLANEOUS RULES

Any relevant evidence, including hearsay, will be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the admissibility of such evidence in a court of law. Each party shall have the right to submit a written

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statement in support of his/her position and the Judicial Review Committee may request such a statement be filed following the conclusion of the presentation of oral testimony. The Judicial Review Committee may interrogate the witnesses or call additional witnesses at its discretion.

**7. BURDEN OF GOING FORWARD AND BURDEN OF PROOF**

The Medical Executive Committee must initially come forward with evidence in support of its decision. Subject to the foregoing, the petitioner will bear the ultimate burden of persuading the Judicial Review Committee, by the substantial weight of evidence provided at the hearing that the decision of the Medical Executive Committee lacked foundation in fact or was otherwise arbitrary, capricious, or unreasonable.

**8. ADJOURNMENT AND CONCLUSION**

The hearing may be adjourned and reconvened at the convenience of the participants without special notice. Upon receipt of all oral and written evidence and argument, the hearing will be closed. The Judicial Review Committee will thereupon conduct its deliberations and render a decision based on the record produced at the hearing including oral testimony, written statements, and all exhibits entered into evidence.

**9. DECISION OF THE JUDICIAL REVIEW COMMITTEE**

Within thirty (30) days after the close of the hearing the Judicial Review Committee will render a written decision which will contain findings of fact sufficient in detail to indicate the basis for the Judicial Review Committee's decision on each matter contained in the notice of charges. The decision will be delivered to the Medical Executive Committee, the Chief of Staff, the President and CEO, and the SHC Board of Directors and, by delivery of registered or certified mail, to the petitioner. The decision of the Judicial Review Committee will be considered final, subject only to the right of appeal as provided in Section 7.5.

**C. APPEALS TO THE STANFORD HOSPITAL AND CLINICS BOARD OF DIRECTORS**

**1. TIME FOR APPEAL**

Within fourteen (14) days after the date of notice of the Judicial Review Committee decision, either the petitioner, or the body whose decision

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prompted the hearing, may appeal to the SHC Board of Directors. No petitioner is entitled to more than one evidentiary hearing and one appellate review on any matter which has been the subject of adverse action or recommendation. All requests for appeal will be delivered to the CEO in writing either in person, or by certified mail, return receipt requested, and will include a statement of the reasons for the appeal. If an appellate review is not requested within the fourteen (14) day period, both sides will be deemed to have accepted the Judicial Review Committee decision, and it will become the final recommendation of the Medical Executive Committee. Such final recommendation will be subject on that basis to final review and decision by the SHC Board of Directors.

## 2. REASONS FOR APPEAL

The reasons for an appeal from the Judicial Review Committee decision will be: (1) lack of compliance with the procedures required by these Bylaws at the hearing so as to deny the petitioner a fair hearing; and/or (2) action taken arbitrarily, unreasonably, or capriciously.

## 3. TIME, PLACE AND NOTICE

When an appeal is requested, the SHC Board of Directors will, within thirty (30) days after the receipt of the request for appeal, set a date for the conduct of an appellate review before the Board of Directors. The SHC Board of Directors will give both parties notice of the time, place and date of the appellate review. The date of appellate review will not be less than fifteen (15) nor more than ninety (90) days from the date of receipt of the request for appeal. If, however, the request for appellate review is from a petitioner who is under summary suspension then in effect, the appellate review will be held as soon as arrangements may be made, not to exceed sixty (60) days from the date of receipt of the request for appeal. The time for appellate review may be extended for good cause by the SHC Board of Directors, or appeal board (if any).

## 4. APPEAL BOARD

Whenever an appellate review is requested, the SHC Board of Directors may sit as the appeal board or may appoint an appeal board which will be composed of at least three (3) members of the SHC Board of Directors. Knowledge of the matter involved will not preclude any person from serving as a member of the appeal board, so long as that person did not take part in a prior hearing on the same matter. For purposes of this Section,

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participating in an initial decision to recommend adverse action will not be deemed to constitute participation in a prior hearing on the same matter.

## 5. APPEAL PROCEDURE

The proceedings on appeal will be based upon the Judicial Review Committee record. The appeal board may accept additional evidence, subject to a showing that such evidence could not have been made available to the Judicial Review Committee in the exercise of reasonable diligence. The appeal board may accept such evidence directly, subject to the same rights of cross-examination or confrontation provided at the Judicial Review Committee hearing or may remand the matter to the Judicial Review Committee for the taking of such further evidence. Each party will have the right to present a written statement in support of his/her position on appeal and, in its sole discretion, the appeal board may allow each party or representative to appear personally and make oral argument. At the conclusion of oral argument, if allowed, the appeal board will conduct, at a time convenient to itself, deliberations outside the presence of the appellant and respondent and their representatives. If an appeal board is appointed, the appeal board will present to the SHC Board of Directors its written recommendations as to whether the SHC Board of Directors should affirm, modify, or reverse the Judicial Review Committee decision, or remand the matter to the Judicial Review Committee or any other body or person for further review and decision. If no appeal board is appointed, the procedures outlined in this Subsection will apply to a hearing before the SHC Board of Directors.

## 6. DECISION BY STANFORD HOSPITAL AND CLINICS BOARD OF DIRECTORS

Within forty-five (45) days after the conclusion of the appellate review proceedings before the SHC Board of Directors, the Board of Directors will render a final decision in writing. The SHC Board of Directors may affirm, modify, or reverse the Judicial Review Committee decision, or remand the matter for further review and recommendation by the Judicial Review Committee or any other body or person. Any such further review by the Judicial Review Committee or other body or person will be conducted within a time frame set by the SHC Board of Directors and will not exceed sixty (60) days unless the parties agree to the contrary. The recommendation, based on further review, if any, by the Judicial Review Committee or other body or person will be submitted to the SHC Board of Directors for a final decision. Notice of the final decision of the SHC Board of Directors will be

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provided to the petitioner, Medical Executive Committee and the President and CEO.

**10. RELATED DOCUMENTS:**

-- Stanford Hospital and Clinics and Lucile Packard Children's Hospital Medical Staff Bylaws, Rules and Regulations

**11. DOCUMENT INFORMATION:**

A. Legal Authority/References

None

a. Author/Original Date

This Policy was authored by the Director, Medical Staff Services, in March 2003.

b. Gatekeeper of Original Document

Director of Medical Staff Services

c. Distribution and Training Requirements

The distribution and training of this Policy will be handled through Medical Staff Services.

d. Review and Renewal Requirements

This policy will be reviewed and/or revised every three years or as required by change of law or practice.

e. Review and Revision History

1. 11/06, 11/08, 8/12, 1/19

f. Approvals

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1. Hospital Counsel
2. Medical Executive Committee (2) – 11/03;  
12/06; 11/08, 10/12
3. Credentials, Policies and Procedures  
Committee of the Board of Directors – 11/03;  
12/06; 11/08, 10/12

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