

JOHN C. LINCOLN & DEER VALEY SYSTEM
THE FAIR HEARING PLAN
2015

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PART ONE - DEFINITIONS

1.1 DEFINITIONS

The following definitions shall apply to this Fair Hearing Plan.

- (a) "Chief Executive Officer" or "CEO" refers to the designated administrator of the Hospital.
- (b) "Executive Committee" refers to the Executive Committee of the Medical Staff.
- (c) "Hospital(s)" refers to John C. Lincoln and/or Deer Valley Medical Centers.
- (d) Any "Notice" required to be given under this Fair Hearing Plan shall be in writing and sent by hand delivery or certified mail, return receipt requested.
- (e) "Presiding Officer" refers to the person who shall preside over the hearing, as described in Section 3.2 hereof. If a hearing officer is appointed, the hearing officer shall be the Presiding Officer. If a hearing officer is not appointed, the Chairman of the Hearing Committee shall be the Presiding Officer.

PART TWO – PRE HEARING PROCEDURE

2.1 NOTICE OF DECISION

In all cases in which the Executive Committee has recommended taking any of the actions constituting grounds for a hearing as set forth in Section 2.2 below, the affected practitioner shall promptly be given Notice of such action. The affected practitioner shall be provided with a copy of this Fair Hearing Plan with such Notice to inform such practitioner of his rights and obligations hereunder. In the event the affected practitioner desires to be represented and accompanied by an attorney, he shall so notify the Chief Executive Officer at the time he requests a hearing.

2.2 REQUEST FOR HEARING

The affected practitioner shall have thirty (30) days following the date of his receipt of such Notice within which to request a hearing. Said request shall be in writing and shall be either delivered to the Chief Executive Officer in person or sent to him/ by certified mail, return receipt requested. In the event the affected practitioner does not request a hearing within the required time and in the proper manner, he shall be deemed to have waived his right to such hearing and to any appeal and to have accepted the recommendation of the Executive Committee, and such action shall thereupon become final and shall take effect immediately without action of the Board of Directors. However, a report of the action taken shall be made to the Board of Directors.

2.3 GROUNDS FOR HEARING

No recommendation or action other than those hereafter enumerated in this Section shall constitute grounds for a hearing:

- (a) Denial of Medical Staff appointment;
- (b) Denial of Medical Staff reappointment;
- (c) Revocation or supervision of Medical Staff membership;
- (d) Denial of requested initial clinical privileges;
- (e) Denial of requested increased clinical privileges;
- (f) Decrease of clinical privileges;
- (g) Suspension of clinical privileges;
- (h) Summary suspension of clinical privileges, except as otherwise provided in the Medical Staff Bylaws;
- (i) Imposition of direct supervision, except in cases of a practitioner newly obtaining privileges to perform the type(s) of care to be observed;
- (j) Imposition of terms of probation, which limits or adversely affects the practitioner's right to exercise some or all of his clinical privileges; or
- (k) Except as otherwise provided to the contrary under the Automatic Suspension provisions of the Medical Staff Bylaws, any other recommendation or action which, if it becomes final, would be reportable to the affected practitioner's licensing board or the National Practitioner Data Bank.

Notwithstanding the foregoing, if the affected practitioner is subject to any of the actions described above in accordance with the Automatic Corrective Action Section of the Medical Staff Bylaws as a result of corrective action taken at Deer Valley and/or John C Lincoln Medical Staff(s), the affected practitioner will not be entitled to a hearing or appeal under this Fair Hearing Plan.

2.4 TIME AND PLACE FOR HEARING

Upon receipt of a request for hearing, the Chief of Staff shall, within ten (10) days after receipt of such request, arrange for and schedule a hearing and give Notice to the affected practitioner who requested the hearing of the time, place and date of the hearing. Unless otherwise agreed to by the affected practitioner and the Chief of Staff, the hearing shall begin no less than thirty (30) days, nor more than forty (40) days, from the date of the CEO's receipt of the request for a hearing; provided, however, that when the request is from an affected practitioner who is under suspension which is then in effect, the hearing shall be held as soon as practical, preferably within fourteen (14) days from the date of the CEO's receipt of the request for hearing.

2.5 NOTICE OF HEARING

The notice of hearing shall state the reasons for the action constituting grounds for the hearing and the time, place and date of the hearing.

2.6 HEARING COMMITTEE

When a hearing is requested, the Chief of Staff shall appoint a Hearing Committee which shall be composed of not less than five (5) members of the Active Staff who shall not have actively participated in the consideration of the matter involved at any previous level and who shall not be in direct economic competition with the affected practitioner. Medical Staff members who are appointed to a Hearing Committee shall, at all times, act impartially. Physicians with blood relationships, employer/employee relationships, or other potential conflicts that might prevent giving an impartial assessment or that might give the appearance of potential bias, either for or against the affected practitioner, shall not serve on a Hearing Committee. Such factors will be taken into consideration by hospital staff when requesting physicians to serve on a Hearing Committee. Physicians who are asked to serve on a Hearing Committee shall disclose any such relationships and conflicts and decline the request. Each side may challenge for cause any member, but not to exceed five (5) challenges. Knowledge of the matter involved shall not preclude a physician from serving as a member of the Hearing Committee. The Chief of Staff shall make the final decision on any such challenges. The Chief of Staff shall designate the chairman. In the event the Chief of Staff is unable to appoint a fully qualified Hearing Committee from the Active Staff, the Chief of Staff may appoint qualified physicians from the Courtesy Staff or may appoint qualified physicians from outside sources.

2.7 POSTPONEMENTS AND EXTENSIONS

Postponements and extensions beyond the time expressly permitted in this Fair Hearing Plan may be requested by any affected person including, but not limited to the affected practitioner, the Chief of Staff, the Chief Executive Officer, or any member of the Hearing Committee, but shall be permitted only by the Presiding Officer acting upon a showing of good cause.

2.8 LIST OF WITNESSES

At least ten (10) days before the scheduled date for commencement of the hearing (or at least 3 days in the event of an expedited hearing), the affected practitioner shall give the Executive Committee, and the Executive Committee shall give the affected practitioner, a list of the names of the individuals, who, as far as is then reasonably known, will testify at the hearing. Such lists of witnesses shall be amended as soon as possible when additional witnesses are identified. The Hearing Committee may permit a witness who has not been listed in accordance with this Section to testify only if it finds that the failure to list such witness was justified, that such failure did not prejudice the party entitled to receive such list, or that the testimony of the witness will materially assist the Hearing Committee in making its decision.

2.9 LIST OF EXHIBITS

At least ten (10) days before the scheduled date for commencement of the hearing (or at least three (3) days in the event of an expedited hearing), the affected practitioner shall give the Executive Committee, and the Executive Committee shall give the affected practitioner, a list and copies of all exhibits such party proposes to offer into evidence at the hearing. Such lists

of exhibits shall be amended as soon as possible when additional exhibits are identified, in which event copies of such additional exhibits shall be provided to the other party. The Hearing Committee may permit an exhibit to be introduced into evidence that has not been listed in accordance with this Section only if it finds that the failure to list and provide a copy of such exhibit was justified, that such failure did not prejudice the party entitled to receive the exhibit, or that the exhibit will materially assist the Hearing Committee in making its decision.

2.10 DISTRIBUTIONS OF EXHIBITS TO HEARING COMMITTEE

In order to facilitate the Hearing Committee becoming familiar with the issues involved in the hearing prior to the commencement of the hearing, the following documents may be distributed to the Hearing Committee members by the Hospital prior to the hearing:

- (a) a copy of the Notice of Hearing;
- (b) a copy of the affected practitioner's Request for Hearing;
- (c) a copy of the minutes of all meetings of Medical Staff committees at which matters involving the affected practitioner have been discussed or considered;
- (d) a copy of all reports created by any Medical Staff committee involved in the matter giving rise to the hearing;
- (e) copies of all exhibits listed by the parties unless the Chief of Staff has received a written objection from the affected practitioner or the Executive Committee, or their respective representatives or counsel, within three (3) business days of the objecting party's receipt of the exhibit being objected to. Any such objection shall set forth the reasons for the objection. Any exhibit to which either party has objected shall not be distributed to Hearing Committee members prior to the commencement of the hearing and such objection(s) shall be ruled upon by the Presiding Officer at the hearing if and when the exhibit is offered into evidence.

2.11 WRITTEN STATEMENTS

If a party wishes to submit a written statement in support of the party's position, such party shall supply a copy of the written statement to the other party and supply five (5) copies of such written statement to the Medical Staff Services Office of the Hospital at least five (5) days prior to the scheduled date for commencement of the hearing. The Medical Staff Services Office shall distribute the written statements (if any) to members of the Hearing Committee at least three (3) days prior to the scheduled date of the commencement of the hearing. Nothing in this Section or this Fair Hearing Plan shall preclude the Hospital from submitting procedural information to the Hearing Committee prior to the commencement of the hearing.

2.12 DUTY TO NOTIFY OF NON-COMPLIANCE

If the affected practitioner believes that there has been a deviation from the procedures required by this Fair Hearing Plan, the Medical Staff Bylaws or applicable law, the practitioner must promptly notify the Chief of Staff of such deviation, including in such notification a citation to the applicable provisions of the Fair Hearing Plan, Medical Staff Bylaws and/or applicable law. If the Chief of Staff agrees that a deviation has occurred and is substantial, the Chief of Staff shall take appropriate action to correct such deviation.

PART THREE - HEARING PROCEDURE

3.1 PRACTITIONER RIGHTS

The hearing is convened to provide appropriate hearing and review to the Practitioner. Therefore, the evidence presented at the hearing shall be limited to evidence relevant to the charges that were the basis of the Medical Executive Committee's recommendation. Where the right to a hearing was based on a recommendation or action resulting from the Practitioners' failure to maintain strict compliance with the conditional appointment/reappointment, the scope of the hearing under the **Fair Hearing Plan** shall be limited to a determination of whether the Practitioner maintained strict compliance with the terms of the conditional appointment or reappointment.

3.2 REPRESENTATION

The hearing provided for in this Fair Hearing Plan is for the purpose of intra-professional resolution of matters bearing on the activities or the professional conduct or competence of the affected practitioner. Accordingly, neither the person requesting the hearing, the Executive Committee nor the Board of Directors shall normally be represented in any phase of the hearing procedure by an attorney unless the affected practitioner advises the Chief Executive Officer at the time he requests a hearing that he desires to be represented by an attorney. The affected practitioner may not be represented at the hearing by an attorney unless the affected practitioner is also present throughout the entire hearing. If the affected practitioner elects to be represented at the hearing by an attorney, the Executive Committee shall also be entitled to be represented by an attorney. If the affected practitioner does not elect to be represented by an attorney, neither side shall be represented by an attorney. The person requesting the hearing shall be entitled to be accompanied by and represented at the hearing by a physician licensed to practice in the State of Arizona. The Executive Committee shall appoint a representative from the Medical Staff to present its recommendations and to examine witnesses. In the event there will be attorneys participating in the hearing, the Chief of Staff, at his discretion, may appoint a hearing officer to preside at the hearing.

3.2 THE PRESIDING OFFICER

The hearing officer, if one is appointed, or the Chairman of the Hearing Committee, if no hearing officer is appointed, shall be the Presiding Officer at the hearing. The Presiding Officer shall act to ensure that all participants in the hearing have a reasonable opportunity to be heard and to present all relevant oral and documentary evidence and that order is maintained. He shall be entitled to determine the order of procedures during the hearing. He shall have the authority and discretion, in accordance with this Fair Hearing Plan, to make rulings on all questions which pertain to matters of law and procedure and to the admissibility of evidence. The Presiding Officer may, but shall not be required to, order that testimony shall be taken only on oath or affirmation.

3.3 RECORD OF HEARING

The Hearing Committee shall maintain a record of the hearing by the presence of a court reporter. If the affected practitioner requests a copy of the transcript of the hearing, one shall be prepared at his expense.

3.4 RIGHTS OF BOTH SIDES

At the hearing, both parties shall have the following rights:

- (a) to submit a written statement summarizing such party's position if not previously submitted in accordance with Section 2.11;
- (b) to call, examine and cross-examine witnesses;
- (c) to introduce exhibits and present evidence determined to be relevant by the Presiding Officer, regardless of its admissibility in a court of law; and
- (d) to submit a written statement at the close of the hearing.

If the person requesting the hearing does not testify on his own behalf, he may be called and questioned as if under cross-examination.

3.5 ADMISSIBILITY OF EVIDENCE

The hearing shall not be conducted strictly according to rules of law relating to the examination of witnesses or presentation of evidence. Any relevant evidence shall be admitted by the Presiding Officer if it is the type 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. All reports and documents that were created or considered by any Medical Staff committees involved in the matter giving rise to the hearing and the minutes of all meetings of said committees shall be presumed to be relevant evidence. All reports created by such committees and the minutes of all meetings of such committees shall be disseminated to the Hearing Committee prior to the hearing in accordance with Section 2.10. All other documents considered by such committees shall be listed as exhibits and admitted into evidence in the same manner as other exhibits of the parties under the terms of this Fair Hearing Plan. The Hearing Committee may ask questions of the witnesses and/or call additional witnesses if it deems appropriate. If the Hearing Committee elects to call additional witnesses, it shall not be limited to the witnesses on the lists exchanged by the parties in accordance with this Fair Hearing Plan.

3.6 FAILURE TO APPEAR

Failure without good cause of the affected practitioner who requested the hearing to appear at the scheduled hearing shall be deemed to constitute the voluntary acceptance of the recommendations or actions which give rise to the request for hearing and which shall then become final and take effect immediately without action of the Board of Directors.

3.7 BASIS OF DECISION

The decision of the Hearing Committee shall be based on the evidence produced at the hearing. This evidence may consist of the following:

- (a) oral testimony of the witnesses;
- (b) any material contained in the hospital's files regarding the affected practitioner including, but not limited to, any and all applications, references and accompanying

documents so long as such material has been admitted into evidence at the hearing and the affected practitioner had the opportunity to review and comment on it;

- (c) all judicially noticed matters; and
- (d) any other admissible evidence.

3.8 BURDEN OF PROOF

The representative of the Executive Committee shall have the initial obligation to present evidence in support of its recommendation or action. The affected practitioner shall have the burden of proving that the adverse recommendation or action lacks any substantial factual basis or is otherwise arbitrary or capricious.

3.9 ADJOURNMENT AND CONCLUSION

The Presiding Officer may adjourn and reconvene the hearing at the convenience of the participants without special notice. Upon conclusion of the presentation of oral and written evidence, the hearing shall be closed. The Hearing Committee shall thereupon, outside the presence of any other person except the Hearing Officer, if appointed, and a secretary, conduct its deliberations off the record and render a decision.

3.10 REPORT AND RECOMMENDATION

As soon as practical after the close of the hearing, the Hearing Committee shall forward a written report and recommendation, together with the hearing record, including a written transcription if it has been prepared and all other documentation admitted into evidence, to the Executive Committee and affected practitioner. The Hearing Committee may recommend confirmation, modification or rejection of the original recommendation of the Executive Committee.

3.11 EXECUTIVE COMMITTEE ACTION

At its next regularly scheduled meeting or at a special meeting called for such purpose, the Executive Committee shall take action on the Hearing Committee's report and recommendation. After considering the report and recommendation, the Executive Committee shall forward its final decision, together with the Hearing Committee's report and recommendation, to the Board of Directors. Notice of the Executive Committee's decision shall be sent by certified mail, return receipt requested, to the affected practitioner. If such decision is adverse to said individual, he may request an appellate review by the Board of Directors as provided in Part 4 of this Fair Hearing Plan.

PART FOUR - APPEAL TO THE BOARD OF DIRECTORS

4.1 TIME FOR APPEAL

If the decision of the Executive Committee following a hearing as provided in this Fair Hearing Plan is adverse to the affected practitioner, he may request an appellate review by the Board of Directors. Said request shall be in writing and shall be either delivered to the Chief Executive Officer in person or sent to him by certified mail, return receipt requested. If the

affected practitioner does not properly request an appellate review within ten (10) days of the affected practitioner's receipt of the Executive Committee's decision, the affected practitioner shall be deemed to have accepted the Executive Committee's decision, which shall thereupon become final and shall take effect immediately without action of the Board of Directors. Such final action shall be reported to the Board of Directors at its next scheduled meeting.

4.2 GROUNDS FOR APPEAL

The grounds for appeal from the Executive Committee's decision shall be:

- (a) the Hearing Committee or Executive Committee failed to substantially comply with the Medical Staff Bylaws and/or the Fair Hearing Plan in a manner which resulted in the affected practitioner being denied due process or a fair hearing; or
- (b) the decision of the Hearing Committee or Executive Committee was arbitrary or capricious or not supported by the evidence.

4.3 TIME, PLACE AND NOTICE

In the event of an appeal to the Board of Directors in accordance with this Fair Hearing Plan, the Chairman of the Board of Directors shall, within ten (10) days after receipt of the request for appellate review, arrange for and schedule an appellate review. The Chairman of the Board of Directors shall cause the affected practitioner to be given Notice of the time, place and date of the appellate review. The date of the appellate review shall not be less than thirty (30) days, nor more than forty (40) days, from the date of the CEO's receipt of the request for appellate review; provided, however, that when a request for appellate review is from an affected practitioner who is under suspension which is then in effect, the appellate review shall be held as soon as practicable, preferably within fourteen (14) days from the date of the CEO's receipt of the request for appellate review. The appellate review shall be heard by the Board of Directors or by a duly appointed Appellate Review Committee comprised of not less than five (5) members of the Board of Directors.

4.4 EXTENSION OR POSTPONEMENT

The affected practitioner, if he has properly and timely requested an appellate review, or the Executive Committee may request a reasonable extension of time or postponement of any phase of the appellate review, which may be granted by the Chairman of the Board of Directors or the Chairman of the Appellate Review Committee, or their designees, only for good cause shown.

4.5 NATURE OF APPELLATE REVIEW

The appellate review proceedings shall be in the nature of an appellate hearing based upon the record of the hearing before the Hearing Committee, provided that the Board of Directors or the Appellate Review Committee may, in its discretion, accept additional relevant oral or written evidence at the appellate review proceeding, subject to the same rights of examination and cross examination as were provided at the earlier hearing. Each party shall have the right to present a written statement in support of his/its position on appeal. The Board of Directors or the Appellate Review Committee may allow each party or his/its representative to appear personally and make oral arguments at the appellate review proceeding. The Board of

Directors Committee or the Appellate Review Committee may affirm, modify or reverse the decision of the Executive Committee or, in its discretion, refer the matter back to the Executive Committee with instructions for further consideration of the matter.

4.6 FURTHER CONSIDERATION

If the Board of Directors or the Appellate Review Committee refers a matter back to the Executive Committee for further consideration, the Executive Committee shall promptly take appropriate action including, at its discretion, arranging for a further hearing before the Hearing Committee to resolve specified disputed issues and make its recommendations to the Board of Directors in accordance with the instructions given by the Board of Directors or the Appellate Review Committee. Unless the parties otherwise agree, the Executive Committee shall make its recommendations to the Board of Directors following such review within thirty (30) days of the date the matter was referred back to the Executive Committee for further consideration.

4.7 FINAL DECISION

The appellate review shall not be deemed to be concluded until all of the procedural steps described above have been completed or waived. By the earlier to occur of thirty (30) days after the conclusion of the appellate review or the next regular meeting of the Board of Directors, the Board of Directors shall render its final decision in writing and shall send Notice thereof to the Executive Committee and, through the Chief Executive Officer, to the affected practitioner, by certified mail, return receipt requested. If this decision is in accordance with the Executive Committee's last decision on the matter, it shall be immediately final and effective and shall not be subject to further hearing or appellate review.

If the decision of the Board of Directors is contrary to the Executive Committee's last decision, the Board of Directors shall withhold sending Notice of its decision to the affected practitioner and shall refer the matter to the standing Joint Conference Committee of John C. Lincoln Health Network for further review and recommendation. The Joint Conference Committee shall convene within fifteen (15) days of the matter being referred to it. The Joint Conference Committee shall consider the conflicting decisions, attempt to resolve the conflict and make a recommendation for final action to the Board of Directors. At its next meeting after receipt of the Joint Conference Committee's recommendation, the Board of Directors shall make its final decision and give Notice thereof to the Executive Committee and to the affected practitioner in the manner provided above in this Section.

If the Board of Directors' final decision is adverse to an affected practitioner, such adverse decision shall become effective immediately.

4.8 RIGHT TO ONLY ONE APPELLATE REVIEW

No affected practitioner shall be entitled as a matter of right to more than one (1) hearing and one (1) appellate review on any single matter which may constitute grounds for a hearing, without regard to whether such subject is the result of action by the Executive Committee or the Board of Directors, or a combination of acts of such bodies. However, nothing in this Fair Hearing Plan shall prohibit the affected practitioner from reapplying for membership on the Medical Staff or for an increase in clinical privileges at a future date, provided that the affected practitioner submits additional information and meets such additional requirements as may be reasonably required to demonstrate that the basis for the adverse decision no longer exists.

However, the affected practitioner may not reapply for membership on the Medical Staff or apply to obtain the clinical privileges which were denied, reduced, limited or suspended for a period of at least one (1) year following such action becoming final.

PART FIVE – GENERAL PROVISIONS

5.1 CONSTRUCTION OF TERMS AND HEADINGS

Words used in this Fair Hearing Plan shall be read as the masculine or feminine gender and as the singular or plural, as the context requires. The captions or headings in this Fair Hearing Plan are for convenience only and are not intended to limit or define the scope or effect of any of the provisions of this Fair Hearing Plan.

PART SIX - AMENDMENT AND ADOPTION

6.1 AMENDMENT

The Executive Committee shall be responsible for periodic review of this Fair Hearing Plan, which shall be consistent with Hospital policies, the HONORHealth Bylaws, the Medical Staff Bylaws and applicable laws. This Fair Hearing Plan may be amended, in whole or part, by the Executive Committee, subject to such amendment being ratified by the Board.

6.2 EXECUTIVE COMMITTEE - ADOPTION AND APPROVAL

This Fair Hearing Plan, as amended, was approved and adopted by resolution of the Deer Valley and John C Lincoln Executive Committee(s) on February 17 and 19, 2014.

Maria Soriano, MD, Chief of Staff-DV
Kevin Veale, DO, Chief of Staff-JCL

6.3 BOARD OF DIRECTORS - ADOPTION AND APPROVAL

This Fair Hearing Plan, as amended, was approved and adopted by resolution of the Deer Valley and John C. Lincoln System Sub-Committee of the Board for Medical Staff on February 26, 2014