

# **ALASKA PHYSICIANS & SURGEONS, INC.**

## **RULES AND REGULATIONS**

These Rules and Regulations of Alaska Physicians & Surgeons, Inc. ("APS") are adopted by the Board of Directors of APS in the furtherance of quality patient care and in conformance with State and Federal laws and guidelines pertaining to quality of patient care and professional review activities. Matters contained herein may be amended from time to time by the Board of APS as provided for herein, to reflect changes in State and Federal law as well as changes in the social and economic environment in which Members of APS provide health care services.

### **I. MEMBER APPRAISAL/REAPPRAISAL**

**1.1 General.** APS is a not-for-profit corporation composed of providers for purposes of providing an organization and management structure for its Members. In order for APS to successfully attract managed health care contracts and maintain its reputation as an organization comprised of health care professionals committed to providing a high quality of care, a potential member must undergo an "Appraisal Process" to determine whether he or she has appropriate competence, training, character, and other qualifications. Once Membership in APS has been approved, the Member will be required to comply with a "Reappraisal Process" on an annual basis, or at such other times as are determined by APS, in a fashion similar to the initial appraisal of a potential Member.

#### **1.2 Initial Appraisal.**

- a. Upon submission of an application for Membership, the Review Committee or other entity/person ("Committee") so designated by the Board of Directors of APS shall make an initial review of the application for completeness. If it is determined that an item has not been completely answered, or has been answered vague]y, the applicant will be contacted to supply further information. Information supplied by the applicant will be checked for accuracy. Individuals (including other health care professionals), agencies, insurance carriers and others will be contacted to verify the accuracy of the information provided. When necessary, certain records and other documentation will be requested from the custodian thereof, for inspection and copying. An applicant may be asked to meet with APS's Board of Directors, or its designee, so that Board members (or the designee) may become personally familiar with the applicant. The Committee may also make an on site inspection of the applicant's place of business at a previously designated time.

- b. If it is determined that any discrepancy exists between the information supplied by the applicant and that obtained by the Committee, or, if any information supplied by the applicant or obtained by the Committee is deemed detrimental to the approval of the applicant's Membership, the applicant will be notified and asked to sufficiently respond to the discrepancy or objectionable matter(s), or face denial of his or her application for Membership in APS.
- c. Upon a favorable review of the application by the Committee, the Board of Directors shall vote to determine whether or not the applicant will be extended Membership. The applicant must receive an affirmative vote of acceptance into APS by an absolute majority of the Board of Directors.
- d. If the applicant's application for Membership is approved, the applicant will then be required to read, sign and agree to be bound by a "Participating Provider Agreement" for the duration of the applicant's Membership in APS. By accepting Membership in APS and signing the appropriate Provider Agreement, the applicant is also agreeing to be bound by the Bylaws and these Rules and Regulations of APS, as may be amended from time to time. A copy of the appropriate Provider Agreement, Bylaws and these Rules and Regulations will be available for the applicant's review at APS's office.

**1.3 Reappraisal.** Annually, or at such other times as are determined from time to time by the Board, Members of APS shall be reappraised to monitor and evaluate (1) the appropriateness of care administered to patients, and (2) compliance with Member criteria requirements. Members may be required to complete a "Reappraisal Form" which may request information similar in most instances to the information supplied by an applicant in the Application for Membership. APS may review enrollee complaints and satisfaction surveys, quality review results and other data collected pursuant to Section 11 hereof for purposes of Member Reappraisal. A designee of APS may visit Members' offices to determine compliance with record keeping and other requirements. APS shall verify from primary sources, that a Member:

- a. Maintains a valid state license to practice;
- b. Maintains a valid DEA or CDS certificate, as applicable;
- c. Continues to hold Board Certification, if applicable;
- d. Maintains current, adequate professional liability insurance coverage;
- e. Is in compliance with Membership criteria as set forth in APS Bylaws; and
- f. Is a medical staff member, in good standing, at a hospital licensed by the State of Alaska

APS shall also verify a Member's professional liability claims history. A Member shall also be required to recertify that his or her ability to care for patients is not impaired by chemical dependency or substance abuse.

## **II. PROFESSIONAL REVIEW**

**2.1 General.** These policies and procedures shall apply to all Members of APS who have agreed to provide patient care under agreements with APS. All professional review will be conducted in such a manner as to comply with State law and the Medical Association's Professional Review Rules. The goal of this professional review program is to objectively and systematically monitor and evaluate the quality and appropriateness of care and service provided to patients and to pursue opportunities for improvement of such care and to educate providers about these matters. Information collected pursuant to this professional review program may also be used for purposes of Member reappraisal, and investigation and hearing procedures pursuant to Section IV hereof.

**2.2 Collection of Data.** APS and/or Payors with which APS contracts, need(s) to collect, tabulate, analyze, and report data relating to the treatment of Members' patients in order to assure and improve the quality of medical care. Each Member will cooperate and comply with the reasonable patient data collection efforts of APS and/or Payors with which APS contracts. Members will implement patient notification and consent procedures which may be necessary to accomplish this.

### **2.3 Type and Scope of Data.**

- a. The scope of the professional review program is comprehensive and includes both the quality of clinical care and the quality of services. The professional review program uses a variety of mechanisms to identify important areas that may benefit from improvement and to set meaningful priorities.
- b. The program uses specific measurements, systematic data collection, focused inquiries and other appropriate organized information gathering techniques. The program also uses information provided by individuals and by other organizations which may be available either regularly or sporadically. The data may be individual or aggregated with respect to either patients or providers. Methods and frequency of data collection are designed to be appropriate for each type of data.

### **2.4 Analysis and Reporting of Data.**

- a. Information will be analyzed both to identify areas of superior performance and to identify and address barriers to improved performance.

- b. Data analysis will be performed by qualified personnel. Quality indicators that are objective, measurable, and based on current knowledge and clinical experience will be used to monitor and evaluate important aspects of care and service. When practice guidelines or performance benchmarks are adopted to evaluate performance, they shall be based on explicit criteria and reasonable scientific evidence, shall be reviewed by APS Members, shall be updated periodically, and shall be communicated to APS Members. Appropriate clinicians shall be used to evaluate data on clinical performance. Multidisciplinary teams shall be used, where indicated, to analyze and address improvement issues.
- c. Whenever data or data analysis information is provided to third parties, it will be collected and transmitted in such a manner so as to preserve patient and provider confidentiality. Information integral to investigations, and hearings arising from professional review and quality improvement activities shall be held confidential and considered non-discoverable to the fullest extent permitted by law.

## **2.5 Uses of Data.**

- a. When superior performance is identified, the provider may be asked to participate in activities that will enable others to achieve similar results.
- b. When an opportunity for improvement is identified, the affected provider(s) may be required to participate in activities designed to improve performance.
- c. When information leads to the reasonable belief that action in the furtherance of quality health care may be required which would limit, suspend, or terminate a Member's Membership in APS and/or participation in managed care contracts APS enters into, the matter shall be referred for Corrective Action as provided by the Fair Hearing Plan set forth herein.

## **III. UTILIZATION MANAGEMENT AND QUALITY ASSURANCE**

**3.1 General.** The Utilization Review - Quality Assurance ("UR/QA") Committee of APS is responsible for the activities delegated pursuant to APS Bylaws as well as other activities set forth herein, for purposes of developing and implementing plans to continually improve the effectiveness and efficiency of the health care delivered by APS Members. If and when the LIR/QA Committee delegates any of its responsibilities to a subcommittee of APS and/or a body affiliated with or employed by a Payor with which APS contracts, the UR/QA Committee shall be responsible for the evaluation and oversight of the delegated activity.

**3.2 Meetings.** The UR/QA Committee shall meet quarterly, or more often as necessary at the call of its Chair or of at least three Committee Members. The UR/QA

Committee shall maintain a written record of its proceedings, and shall regularly report its activities and recommendations to the Board.

**3.3 Quality Improvement Program.** The UR/QA Committee or its designee is responsible for developing and recommending an annual Quality Improvement Plan, which may include a statement of the objectives, scope and planned projects or activities for the year, planned monitoring of previously identified issues and planned evaluation of the Quality Improvement Plan. In preparing such a Quality Improvement Plan the UR/QA Committee or its designee should consider:

- a. Developing a comprehensive program which focuses on both the quality of clinical care and the quality of service;
- b. Developing mechanisms to identify important areas for improvement and setting meaningful priorities;
- c. Utilizing measurements and analyses appropriate to the planned activities which are objective, measurable and based upon current knowledge and clinical experience;
- d. Using results of Quality Improvement evaluations to develop and recommend "action plans" to improve care and service; and
- e. Recommending and overseeing appropriate measurement and monitoring to confirm that improvement actions have been effective.

A Quality Improvement Plan will be prepared in conjunction with projections of the resources necessary to accomplish stated goals. The Plan will be proposed to the Board of APS for the implementation thereof.

**3.4 Utilization Management Program.** Because the utilization of financial and other resources is an inseparable and important component of providing health care, the UR/QA Committee, in coordination with Payors with which AJIS contracts, is responsible for developing, recommending and periodically reviewing methods to optimize utilization of such resources. The UR./QA Committee or its designee may evaluate existing methods of utilization management and may propose new mechanisms to optimize resource utilization. When possible, consideration will be given to the outcomes of care as well as the cost of care. Areas which may be examined in accomplishing this function include without limitation:

- a. Criteria or procedures used to establish whether a service is medically necessary, whether authorization will be granted to perform a particular procedure, whether a proposed site of care is appropriate or whether a referral will be authorized;
- b. Practice guidelines;

- c. Indications for the use of new technology or procedures;
- d. Administrative and informational systems designed to enhance the efficiency of care delivery; and
- e. Methods to improve patient compliance with recommendations.

#### **IV. FAIR HEARING PLAN**

**4.1 Definitions.** As used in this Section IV (hereafter "Fair Hearing Plan"), the following terms shall have the indicated meanings:

- a. "Adverse Action" shall mean action approved by the Board of Directors which terminates or suspends a Member's Membership in APS and/or restricts a Member's right to treat Enrollees under health care plans with which APS contracts.
- b. "Board of Directors" or "Board" shall mean the Board of Directors of APS.
- c. "Corrective Action" shall mean an act, investigation, request or recommendation concerning a Member's professional conduct or competency which affects or may affect the membership of a Member in APS and/or the Member's right to treat Enrollees under health care plans with which APS contracts.
- d. "Member" shall mean a provider who is a Member of APS.
- e. "Provider" or "Provider Under Review" shall mean the Member of APS who is the subject of proposed Corrective Action and is entitled to the rights specifically provided for herein.
- f. "Special Notice" or "Notice" shall mean written notification by (1) certified or registered mail, return receipt requested, dated the date of mailing and addressed to the Provider Under Review at either the office or home address stated on his or her most recent Participating Provider Agreement, or (2) personal hand-delivery, with delivery documented in writing by the person making the delivery. Special Notice shall be deemed to have been given as of the date appearing on the face of the Notice.

**4.2 General.** This Fair Hearing Plan is adopted in accordance with the Health Care Quality Improvement Act of 1986, as amended, and the regulations adopted pursuant thereto. For the purpose of this Fair Hearing Plan, any Corrective Action must be taken (1) in the reasonable belief that the action was in the furtherance of quality health care; (2) after a reasonable effort to obtain the facts of the matter in the manner outlined in Section 4.4 below;

(3) after the notice and hearing procedures set forth herein or such other procedures as are fair to the Provider under the circumstances; (4) in the reasonable belief that the action was warranted by the facts known after such reasonable effort to obtain the facts; and (5) after the above referenced adequate notice and hearing procedures.

#### **4.3 Grounds for Corrective Action.**

- a. Professional conduct or competence. Any person may provide information to the Utilization Review/Quality Assurance ("UR/QA") Committee about the professional conduct or competence of a Member of APS.
- b. Requests for and Initiation of Corrective Action. The UR/QA Committee shall review information provided to it pursuant to Section 4.3(a) above to determine whether the professional conduct or competence of a Member or applicant warrants further investigation Or the matter should be dismissed. If the Committee determines that the information provided to it merits further consideration, the Committee Chairman shall file a request for Corrective Action with the Board of Directors of APS. Such request shall be made in writing to the Board of Directors, and shall set forth in substantial detail the activities or conduct which constitutes the grounds for the request that Corrective Action be taken.
- c. Recommendation for Summary Suspension - If the information provided to the Committee leads it to believe that immediate action must be taken to protect the life, health or safety of any patient or person, the Committee may recommend to the Board, in addition to further investigation, summary suspension of the Member pursuant to Section 4.7 below. The final decision to summarily suspend the Member shall rest with the Board and shall not affect the otherwise pending Corrective Action, investigation and hearing procedures provided for in this Fair Hearing Plan, unless otherwise expressly, directed by the Board.

#### **4.4 Investigation.**

- a. Appointment of Investigator. Upon receipt of a request for Corrective Action, the Board shall promptly appoint an Investigator to investigate the allegations against the Provider Under Review. The Investigator may, but need not be a Member of APS. The Investigator shall not be in direct economic competition with the Provider Under Review, shall not have been previously involved in the recommendation to initiate Corrective Action against the Provider Under Review or any other prior investigation of the Provider and shall be familiar with the Provider's area of practice.
- b. Special Notice of Potential Corrective Action. The Board of Directors shall give the Provider Under Review "Special Notice" that a complaint which could result in Corrective Action has been made, within seven (7) days of the date the

Investigator is appointed. The Notice shall describe the substance of any complaint and shall describe the Provider's rights under this Article. The Notice shall also contain the name of the Investigator and shall inform the Provider that he or she may challenge the Investigator's appointment for demonstrated bias or direct economic competition. The Notice must state that challenges shall be in writing and delivered to the President of APS or his or her designee, within five (5) days of receipt of the Special Notice. The President or his or her designee shall, within five (5) days of receipt of the challenge, deny it or appoint a replacement and notify the Provider Under Review.

- c. Preliminary Meeting with Provider Under Review. The Provider Under Review shall be entitled to meet with the Investigator to make a presentation in his or her own behalf. The Investigator may require the Provider to attend and participate in an investigatory interview after reasonable notice. Failure to comply with the Investigator's request shall result in immediate summary suspension until such time as the Provider participates in the interview. Any appearance before the Investigator shall not constitute a hearing, shall be informal in nature and none of the procedural rules set forth in Section 4.9 below shall apply.
- d. Investigative Report- The Investigator shall proceed with the investigation in a prompt manner and shall forward a written report of the investigation to the URJQA Committee within thirty (30) days after receipt of the request for Corrective Action. The Committee Chair may extend the time for completion of an investigation for good cause, for a reasonable period of time. If time for completion of an investigation is extended, the Provider Under Review shall be notified in writing by the Committee Chair.

**4.5 UR/QA Committee Recommendation.** Within ten (10) working days following receipt of the investigation report, the URJQA Committee shall review the report and any other relevant information which the Committee deems appropriate, and submit a written recommendation to the Board of Directors. Special Notice of the UR/QA Committee's recommendation shall be given to the Provider Under Review. If the recommendation constitutes grounds for a hearing pursuant to Section 4.9 below, this Special Notice shall:

- a. Advise the Provider Under Review of the action recommended and the reasons therefore, and his or her right to request a hearing pursuant to these Bylaws;
- b. Summarize the rights of the Provider during the hearing;
- c. Specify that the Provider has thirty (30) days after receiving the Notice within which to submit a written request for a hearing to the President of APS;
- d. State that failure to request a hearing within the specified time period and in the proper manner, without good cause, will result in loss of all rights to a hearing

on the matter that is the subject of the Notice and that the Provider will be deemed to have accepted the action taken;

- e. State that any higher authority required or permitted under the Bylaws to act on the matter will not be bound by the adverse recommendation or action, but may take any action whether more or less severe, where it deems warranted by the circumstances; and
- f. State that upon receipt of the Provider's written request, the President of APS will notify, the Provider of the date, time and place of the hearing. The hearing request must be in writing and delivered in person or by certified mail, to the President of APS.

The Provider shall have the right to request a formal hearing within thirty (30) days of receipt of the Special Notice which identifies the UR/QA Committee's recommendation. The request for hearing shall be sent to the President of APS.

#### **4.6 Board Action Upon UR/QA Committee Recommendation.**

- a. The Board of Directors shall affirm any recommendation of the URJQA Committee which is not adverse to the Provider.
- b. If the Provider fails to request a hearing pursuant to Section 4.4 above, the Board of Directors shall act upon the recommendation of the URJQA Committee. Such action may be to affirm, to modify or to reject the recommendation. The Board's action under this Section shall be final in all respects.
- c. If the Provider Under Review requests a hearing within the time period specified in Section 4.4 hereof, the provisions of Section 4.9 below shall be implemented.
- d. The Board President shall notify the UR/QA Committee and the Provider of its decision in writing.

#### **4.7 Summary Suspension.**

- a. Whenever a Member's professional conduct, performance or competence appears to require that immediate action be taken to protect the life or well-being of patients or to reduce a substantial and imminent likelihood of significant impairment of the life, health or safety of any patient, prospective patient or other person, the Board of Directors by majority vote may summarily suspend patient access to the Member under health care plans with which APS contracts, either upon recommendation by the UR/QA Committee as provided for in Section 4.4, above, or upon the Board of Directors' initiative.

- i. A majority vote of the Board for summary suspension may be obtained by telephone conference in lieu of a special meeting, provided that a written record of the vote is attested to by each Director taking a part therein within twenty-four (24) hours of said vote.
  - ii. Unless otherwise stated, summary suspension shall become effective immediately upon notice and be effective for no longer than fourteen (14) days. If necessary, and after consultation with the suspended Member's patient(s) and contracting payor(s), the President has the authority to arrange for alternate medical coverage for patients of the suspended Member.
- b. Special Notice of the suspension will be given to the Member, to the President and the appropriate person(s) at the hospital(s) at which the Provider Under Review practices. The Notice shall contain the reasons for the suspension and state that the affected Member may request a review before the Review Committee in writing or that he or she can waive the right to a review which will cause the Board to accept the suspension. The suspended Member has seven (7) days to request the review or is deemed to have waived it.
- c. Upon receipt of the Special Notice of suspension, the President shall within one (1) day, appoint an ad hoc Investigation Committee consisting of three or more persons who have no conflict and are not in competition with the affected Member. The Investigation Committee shall meet informally with the affected Member to hear his or her position prior to making its recommendation. This is not a hearing.
- d. The Investigation Committee shall complete its investigation within three (3) working days and make its recommendation to the Review Committee and the affected Member.
- e. In the event the affected Member has not requested a review within the prescribed time, the Review Committee shall report to the Board and the affected Member that no review was requested and forward the recommendation of the Investigation Committee. The Board will then consider the recommendation of the Review Committee and come to a decision regarding suspension of the affected Member no later than fourteen (14) days from imposition of the suspension.
- f. In the event a review is requested, the Review Committee shall, within seven (7) days, meet with the affected Member and the President to consider the facts and circumstances of the suspension. The Review Committee will make its recommendation within three (3) days of the aforesaid meeting and deliver it to the affected Member, the President and the Board.

- g. An affected Member may accept the recommendation and notify the Board which will ratify the suspension, or, the affected Member may request a hearing pursuant to Section 4.9 below. The Board, upon ratification of the suspension, will notify the affected Member. The President shall notify the hospital and appropriate state licensing agency as required by law.

#### **4.8 Revocation or Suspension of Professional License.**

- a. Action by a licensing agency revoking or suspending a Member's professional license without concurrent reinstatement shall automatically terminate the Member's Participating Provider Agreement, and the Member's Membership Rights in APS. There shall be no right to a hearing with regard to such automatic termination under the provisions of Section 4.9, below.
- b. In the event that a Member's professional license is revoked or suspended with a concurrent reinstatement on probation, the Member shall notify the UR/QA Committee of the probation and supply it with a copy of the final order resulting in the Member's probation. Failure either to notify the Committee or to supply it with a copy of the final order within ten (10) days of the final order's effective date shall result in automatic termination of the Member's Participating Provider Agreement and Membership Rights in APS. There shall be no right to a hearing with regard to such automatic termination under the provisions of Section 4.9, below.
- c. Upon notice and receipt of a copy of the final Order of probation, the UR/QA Committee shall give the Member Special Notice of its intent to recommend termination of the Member's Participating Provider Agreement and Membership Rights in APS. The Special Notice shall advise the Member that he or she has ten (10) days from the date appearing on the Special Notice to request an appearance before the UR/QA Committee to show cause why the Committee's recommendation of termination should not be forwarded to the Board of Directors for final action. Within ten (10) days of receipt of a timely request for an appearance, the UR/QA Committee shall convene a meeting at which the Member may appear to show cause. This is not a hearing.
- d. Within ten (10) days of the Member's appearance before the UR/QA Committee, the Committee shall submit a written recommendation to the Board of Directors. A Member shall have the right to a hearing with regard to any adverse determination by the UR/QA Committee in accordance with the provisions of Section 4.9 below.

#### **4.9 Hearing.**

- a. Grounds for Hearing. The following recommendations of the UR/QA Committee, made to the Board of Directors pursuant to Sections 4.4 or 4.8(d) hereof, or a request for hearing by a Member pursuant to Section 4.7(g) hereof, shall constitute grounds for a hearing following proper request by a Provider Under Review:
- i. Termination or restriction of APS Membership;
  - ii. Limitation, suspension or termination of the Provider's Participating Provider Agreement;
  - iii. Termination or restriction of the right to participate or continue participation in an), contract procured through APS; or
  - iv. Denial or restriction of access to patients who are enrollees of health plans with which the Provider has contracted.

Only where the above Corrective Action is proposed as a result of a Provider's professional conduct or competence will he or she be eligible to request a hearing. Corrective Action taken against a APS Member for any other reason shall not create a right to the hearing procedures described hereafter.

- b. Request for Hearing - The President of APS shall immediately notify the Board of Directors upon receipt of a request for hearing by a Provider Under Review.
- c. The Hearing Committee. Upon Notice of the President's receipt of a request for hearing, the Board of Directors shall appoint a Hearing Committee composed of at least three(3) or more Members, none of whom shall previously have actively participated in consideration of the matter, or be in direct economic competition with the Provider under review. One of the Members shall be appointed as Presiding Officer. The Board may select providers that are not Members of APS to comprise the Hearing Committee.
- d. Notice of Time and Place of the Hearing. The Hearing Committee shall, within ten (10) days after its appointment, schedule a hearing and notify the Provider Under Review of the time, place and date. The hearing shall be scheduled on a date not less than thirty (30) days from the date appearing on the face of the notice.
- e. Content of Hearing Notice. The notice of hearing shall be prepared by the Board of Directors and shall state in concise language:

- i. The criteria, Bylaws, or other circumstances relied upon in making the adverse recommendation;
- ii. The composition of the Hearing Committee;
- iii. The time, place, and date of the hearing;
- iv. A list of witnesses expected to be called by APS, the name of the UR/QA Committee Member appointed to represent the Committee and that the Provider must provide a list of witnesses he or she expects to call to the UR/QA Committee at least ten (10) days prior to the date set for hearing;
- v. That the right to the hearing may be forfeited if the Provider fails, without good cause, to appear;
- vi. That during the hearing, the Provider has the right to representation by an attorney, or other person, of his or her choice, at his or her expense;
- vii. That the Provider has the right to have a record made of the proceedings, copies of which may be obtained by the Provider upon payment of any reasonable charges associated with the preparation thereof;
- viii. That the Provider has the right to call, examine and cross-examine witnesses;
- ix. That the Provider has the right to present evidence determined to be relevant by the Presiding Officer regardless of its admissibility in a court of law;
- x. That the Provider has the right to submit a written statement at the close of the hearing;
- xi. That upon the completion of the hearing, the Provider has the right to receive a written recommendation of the Hearing Committee, including a statement of the basis of the recommendations, and shall receive a written decision of the Board, including a statement of the basis of its decision; and
- xii. The name(s) of the UR/QA Committee Member(s) who shall be present at the hearing to represent the UR/QA Committee.

f. Procedural Requirements

- i. Personal Presence. Failure of the Provider Under Review to appear at the hearing, without good cause, shall constitute a waiver of the right to hearing and a voluntary acceptance of the re-recommendations or actions involved.
- ii. Challenge of Hearing Committee Member(s). A Provider who has requested a hearing may challenge the impartiality of a Hearing Committee member or members for demonstrated bias or direct economic competition and for no other cause. Challenges shall be in writing, stating the grounds for the challenge, and delivered to the President of APS within three (3) days after the Provider has been notified of the identity of the Hearing Committee members. Challenges shall be decided by the President within five (5) days of receipt of the challenge. All parties shall be notified in writing of the President's decision and the name(s) of the replacement(s), if any.
- iii. Presiding Officer - One of the Members appointed to a Hearing Committee shall be chosen as the Presiding Officer. The Presiding Officer of the Hearing Committee shall preside over the hearing. The Presiding Officer shall act to insure that decorum is maintained and that all persons who participate in the hearing have a reasonable opportunity to be heard and to present oral and documentary evidence.
- iv. Representation. The Provider shall be entitled to have an attorney, or other person of the Provider's choice, be present to advise him or her at his or her own expense.
- v. UR/QA Committee Participation. One or more members of the UR/QA Committee shall be present at the hearing to present evidence, call and examine witnesses and any such other actions as are necessary to properly conduct the hearing. The Provider shall be given notice of the name(s) of the person(s) appointed to represent the UR/QA Committee as provided for in Section 4.9(e) hereof.
- vi. Rights of the Parties. The parties at the hearing shall have the right to call and examine witnesses, present evidence determined to be relevant by the Presiding Officer, cross-examine on any matter determined to be relevant by the Presiding Officer, and obtain a copy of the hearing record upon payment of any reasonable charges associated with its preparation.
- vii. Procedure and Evidence. The hearing need not be conducted according to the rules of law relating to the examination of witnesses or presentation

of evidence. Any relevant matter, upon which responsible persons might customarily rely on in the conduct of serious affairs, May be considered regardless of the admissibility of such evidence in a court of law. Each party shall be entitled, prior to, during or at the close of the hearing, to submit memoranda considering any issue of law or fact, and those memoranda shall be part of the hearing record.

- viii. Burden of Proof. The UR/QA Committee has the burden of proving by a preponderance of the evidence that the recommended action should be implemented.
- ix. Hearing Record. An accurate record of the hearing must be kept. The Hearing Committee shall make arrangements to have the hearing recorded or transcribed by a certified court reporter.
- g. Hearing Committee Report and Further Action. Within ten (10) days after final adjournment of the hearing, the Hearing Committee shall prepare a written report and recommendations. The report shall include pertinent findings of fact; findings concerning claims of bias or disqualification of officials acting prior to the hearing; findings as to whether there was inappropriate conduct, care, utilization, or nonconformance with designated procedures or criteria, or any other basis of decision; and the Committee's recommendations, which may concur with, or recommend modification or rejection of the UR/QA Committee's recommendation. The report, written record and any other documentation of the matter shall be sent to the Board of Directors. A copy of the Hearing Committee's report and recommendation also shall be sent to the Provider Under Review on the same day as the Hearing Committee report is sent to the Board of Directors.
- h. Provider Response to Board. The Provider Under Review may submit within five (5) working days of the Provider's receipt of the Hearing Committee's recommendation, a written response to the Committee's recommendation for the Board's consideration prior to the Board issuing a final decision in the Matter.
- i. Final Action by the Board of Directors. No sooner than ten (10) days, but within twenty (20) days after receipt of the Hearing Committee's report, the Board of Directors shall act upon the recommendations of the Hearing Committee, provided that if any member(s) of the Board of Directors is/are in direct economic competition with the Provider Under Review, such Board member(s) shall be disqualified from participating in the final action by the Board of Directors. The Board may either affirm, modify or reject the decision of the Hearing Committee. The Board's decision shall be final. The Board of Directors shall inform the Provider under review of its decision, and the basis therefore, by Special Notice by certified mail or hand delivery with proof of service.

#### **4.10 Reporting.**

- a. When Action Deemed Adverse for Purposes of Reporting. Under this Fair Hearing Plan, only the Board of Directors is authorized to take final adverse action. A recommendation or action shall be deemed adverse for the purposes of reporting under the Health Care Quality Improvement Act of 1986 as amended, and the regulations adopted pursuant thereto ("The Act"), only when final action has been taken by reason of: (1) an investigation, meeting or conference; or (2) a summary restriction or suspension when finally approved by the Board of Directors.
- b. Adverse Action Report.
  - i. Prior Notice to Provider Under Review. If the final action of the Board is an action for which an Adverse Action Report form must be submitted to the Board of Medical Examiners pursuant to The Act, the President of APS shall provide the Provider Under Review with an exact copy of the Adverse Action Report which APS intends to submit to the Board of Medical Examiners, together with the Privacy Act Notification and an explanation of all codes used in completing the form, at least five (5) days prior to submission to allow resolution of any dispute.
  - ii. Disputes Concerning Adverse Action Report. If the Provider Under Review disputes the content of the Report, he or she shall immediately, in writing, inform the President, or his or her designee who, after conferring with the Board of Directors regarding the Report's contents, shall within forty-eight (48) hours ultimately decide upon the final content of the Report. If the Adverse Action Report is revised following this procedure, a new Adverse Action Report shall be prepared and an exact copy provided to the Provider Under Review by Special Notice prior to sending the Report to the Board of Medical Examiners.
  - iii. Submission of Report. Regardless of whether a dispute regarding an Adverse Action Report has been resolved, the Board of Directors shall submit the Report to the Board of Medical Examiners and any State or Federal agencies as required by law, within fifteen (15) days from the date the decision is approved in writing. The information reported shall include:
    - (a) The name of the Provider Under Review,
    - (b) A description of the acts or omissions or other reasons for the action or, if known, and

- (c) Such other information respecting the circumstances of the action as the Secretary of Health and Human Services deems appropriate.
- c. Notice of Adverse Action. The Board of Directors shall keep contracting health plans advised of any adverse action taken against a Member under this Fair Hearing Plan, pursuant to the terms of the applicable health plan contract.
- d. Voluntary Resignation or Termination. If the Provider voluntarily resigns from APS, or terminates his or her provider agreement with APS, while under or in lieu of investigation under Section 4.4 above, APS shall report to the Board of Medical Examiners as provided in this Section, pursuant to the Health Care Quality Improvement Act of 1986, as amended, and the regulations adopted pursuant thereto.

## V. AMENDMENT

**5.1 Amendment by Directors.** These Rules and Regulations may be amended by a two-thirds (2/3rds) majority vote of the Board of Directors of APS, at any meeting of the Directors at which a quorum is present. Proposed changes must be mailed to each Director at least thirty (30) days before the meeting.

**5.2 Procedure for Proposing Amendment.** An amendment may be proposed by any member of the Board of Directors, or by written initiative presented to the corporate Secretary signed by at least five percent (5%) of the Members of APS.