

CHILDREN'S PHYSICIANS MEDICAL GROUP, INC.
A California Professional Corporation

FAIR HEARING PLAN

1. PREAMBLE AND DEFINITIONS

1.1 Review Philosophy. The goal of these hearing and appellate review procedures is to provide for a fair review of decisions that adversely affect practitioners (physicians employed by or otherwise under contract with Children's Physicians Medical Group ("CPMG")) and to protect the peer review participants from liability.

1.2 Exhaustion of Remedies. A practitioner must exhaust the remedies afforded by this Fair Hearing Plan before resorting to formal legal action (a) challenging any decision made pursuant to this Plan, or the procedures used to arrive at such decision, or (b) asserting any claim against Children's Physicians Medical Group ("CPMG") or any participants in the decision making process.

1.3 Authority of Committees. The hearing committees established pursuant to this Fair Hearing Plan have no authority to adopt or modify rules and standards, or to decide questions about the merits or substantive validity of bylaws, the Fair Hearing Plan, rules, regulations or policies. Only the CPMG Board of Directors may entertain challenges to the merits or substantive validity of bylaws, rules, regulations or policies or this Fair Hearing Plan and decide those questions.

1.4 Privileges and Immunities. The hearing committees established pursuant to this Fair Hearing Plan, the CPMG Peer Review Committee, and all committees and individuals assigned peer review functions, shall have all privileges and immunities to the fullest extent provided by law

2. GROUNDS OF FAIR HEARING

2.1 Grounds for Hearing. Except as otherwise specified in this document, any one or more of the following actions or recommended actions shall be deemed actual or potential adverse action and constitute grounds for a hearing:

2.1.1 Denial, suspension or revocation of employment or other provider status for medical disciplinary cause or reason;

2.1.2 Employment or other contract termination for medical disciplinary cause or reason; and/or

2.1.3 Involuntary imposition of significant consultation or monitoring requirements status for medical disciplinary cause or reason;

2.2 Definition of "Medical Disciplinary Cause or Reason". For purposes of this Fair Hearing Plan, the phrase "medical disciplinary cause or reason" means that aspect of a physician's competence or professional conduct which is reasonably likely to be detrimental to

patient safety or to the delivery of patient care. In the event the definition of “medical disciplinary cause or reason” as set forth in Section 805(a)(6) of the California Business and Professions Code is changed or modified, the definition set forth in this Section 2.2 shall be likewise changed or modified as of the effective date of such change to the Business and Professions Code.

3. NOTICE OF ACTION OR PROPOSED ACTION

3.1 Notice of Adverse Action. In all cases in which action adverse to a physician has been taken for medical disciplinary cause or reason, or a recommendation to take such adverse action has been made by a CPMG committee to the CPMG Board and will be accepted by the Board subject to the affected physician’s fair hearing rights, and that such action, if adopted, shall be reportable to the Medical Board of California pursuant to Section 805 of the California Business and Professions Code, then CPMG shall give the physician prompt written notice (“Notice of Adverse Action”) of the recommendation or final proposed action. The notice shall inform the physician of the right to request a hearing pursuant to Section 4, and that such hearing must be requested within thirty (30) days.

3.2 Recommendation of Adverse Action. CPMG’s Peer Review Committee, Quality and Risk Management Committee, or other committee created by the Board, or any of their designees, may be the committee making a recommendation of adverse action to the Board. Such adverse recommendation may be made in the context of a corrective action in connection with quality assessment and improvement activities, in response to a specific complaint or in response to the receipt of other information regarding a physician’s conduct. Any such committee making a recommendation of adverse action to the Board shall be hereafter referred to as the “Peer Review Committee”. In the event the physician against whom such adverse action is recommended requests a hearing under this Fair Hearing Plan, a representative of the Peer Review Committee will present evidence which supports the basis of the proposed recommendation. Such representative is generically referenced in this Fair Hearing Plan as the CPMG Representative.

4. REQUEST FOR HEARING

4.1 The physician shall have thirty (30) days following receipt of the Notice of Adverse Action to request a hearing. The request for hearing shall be in writing addressed to the Chairperson of the Peer Review Committee with a copy to the CPMG President. In the event the physician does not request a hearing within the time and in the manner described, the physician shall be deemed to have waived any right to a hearing and to any appellate review and to have accepted the recommendation, decision or action involved which shall become effective immediately. In such case, the recommendation, decision, or action involved shall become the final recommendation of the body making it.

5. TIME AND PLACE FOR HEARING

5.1 Notice of Hearing. Upon receipt of a request for hearing, CPMG shall schedule a hearing not earlier than thirty (30) days and within sixty (60) days following receipt of the request for hearing and shall give notice to the physician of the time, place and date of the hearing as soon as practical but in no event less than ten (10) days prior to the actual hearing

date; provided, however, that when the request is received from a physician who is under summary suspension or restriction, or whose contractual relationship with CPMG has been terminated, the hearing shall be held as soon as the arrangements may reasonably be made, but not to exceed forty-five (45) days from the date of receipt of the request for hearing.

5.2 Notice of Reasons for Adverse Action. Together with the notice stating the place time and date of the hearing, CPMG shall state clearly and concisely in writing the reasons for the adverse final proposed action taken or recommended, including the acts or omissions with which the physician is charged and a list of the charts in question, where applicable.

6. JUDICIAL REVIEW COMMITTEE

6.1 When a hearing is requested, CPMG shall appoint a Judicial Review Committee composed of not less than three (3) physicians, who may but need not be CPMG employees, who shall gain no direct financial benefit from the outcome, and who have not acted as an accuser, investigator, fact-finder, initial decision maker or otherwise actively participated in the consideration of the matter leading up to the recommendation of adverse action. Whenever feasible, at least one (1) Judicial Review Committee member should practice the same specialty as the affected practitioner. CPMG will also appoint a Chairman of this committee. CPMG may, at its discretion, appoint up to two (2) alternates for the Judicial Review Committee. The alternates shall not be entitled to vote on or otherwise participate in the deliberations or decision of the Judicial Review Committee unless the alternate has replaced one of the three (3) (or more) members of the Judicial Review Committee. CPMG shall have the exclusive right to dismiss the alternates at anytime during hearing process prior to an alternate having replaced one of the three (3) members of the Judicial Review Committee. Knowledge of the matter involved shall not preclude a physician from serving as a member of the Judicial Review Committee. All members of the Judicial Review Committee, and any alternates, shall have M.D. or D.O. degrees and be licensed to practice medicine in the State of California.

7. FAILURE TO APPEAR AND PROCEED

7.1 Failure without good cause of the physician to personally attend and proceed at such a hearing in an efficient and orderly manner shall be deemed to constitute voluntary acceptance of the recommendations or actions involved and it shall thereupon become the final recommendation of the Peer Review Committee. Such final recommendation immediately shall be referred to and considered by the Board. Once a request for hearing is initiated, postponements and extensions of time beyond the times permitted may be permitted by CPMG on a showing of good cause, or upon agreement of the parties.

8. PREHEARING PROCEDURES

8.1 Witness Lists. If either side of the hearing requests in writing a list of witnesses, within fifteen (15) days of such request, each party shall furnish to the other a written list of the names and addresses of the individuals, so far as is reasonably known or anticipated, who are anticipated to give testimony or evidence in support of that party at the hearing.

8.2 Physicians Right to Inspect Documents. The physician shall have the right to inspect and copy documents or other evidence upon which the charges are based, and shall

also have the right to receive at least thirty (30) days prior to the hearing, a copy of the evidence forming the basis of the charges which is reasonably necessary to enable the physician to prepare a defense, including all evidence which was considered by the Peer Review Committee.

8.3 CPMG's Right to Inspect Documents. CPMG shall have the right to inspect and copy any documents or other evidence relevant to the charges which the physician has in his or her possession or control as soon as practicable after receiving the request for hearing.

8.4 No Right to Confidential Information. The right to inspect and copy by either party does not extend to confidential information referring solely to individually identifiable physicians, other than the physician under review.

8.5 Costs of Copying. The costs of inspection and copying of documents and other evidence shall be born by the party requesting such inspection and copying.

8.6 Failure to Provide Access. The failure by either party to provide access to this information at least thirty (30) days before the hearing shall constitute good cause for a continuance.

8.7 Ruling on Information Requests. The hearing officer shall consider and rule upon any request for access to information and may impose any safeguards that protection of the peer review process and justice requires. In so doing, the hearing officer shall consider:

8.7.1 Whether the information sought may be introduced to support or defend the charges;

8.7.2 The exculpatory or inculpatory nature of the information sought, if any;

8.7.3 The burden imposed on the party in possession of the information sought, if access is granted; and

8.7.4 Any previous requests for access to information submitted or resisted by the parties to the same proceeding.

8.8 Voir Dire. CPMG and the physician shall each be entitled to a reasonable opportunity to question and challenge the impartiality of Judicial Review Committee members and the hearing officer. The hearing officer shall rule upon challenges to the impartiality of any Judicial Review Committee member or the hearing officer. The Judicial Review Committee shall rule upon challenges to the impartiality of the hearing officer. Failure to challenge the impartiality of Judicial Review Committee members or the hearing officer at the outset of the hearing shall be deemed acceptance of the members and/or the hearing officer.

8.9 Notice of Procedural Disputes. It shall be the duty of the physician and the CPMG Representative to exercise reasonable diligence in notifying the hearing officer, or the chairman of the Judicial Review Committee if no hearing officer has been appointed, of any pending or anticipated procedural disputes as far in advance of the scheduled hearing as possible,

in order that decisions concerning such matters may be made in advance of the hearing. Objections to any prehearing decisions may be succinctly made at the hearing.

9. REPRESENTATION

9.1 The purpose of the hearing is to provide a forum for an impartial evaluation of the evidence bearing on professional conduct, professional competency, character or other factors on which an adverse decision affecting the physician are based. The hearing is not a courtroom trial but a process whereby a physician's conduct, competence, character or other professional attributes are evaluated by his or her peers.

10. THE HEARING OFFICER

10.1 CPMG can appoint a hearing officer to preside at the hearing. The hearing officer shall gain no direct financial benefit from the outcome. The hearing officer may be an attorney so long as the attorney is not regularly utilized by CPMG for legal advice regarding its affairs and activities. The hearing officer shall endeavor to assure that all participants in the hearing have a reasonable opportunity to be heard and to present relevant oral and documentary evidence in an efficient and expeditious manner, and that proper decorum is maintained. The hearing officer shall be entitled to determine the order of or procedure for presenting evidence and arguments during the hearing and shall have the authority and discretion to make all rulings on questions that pertain to matters of law, procedure or the admissibility of evidence. If the hearing officer determines that either side in a hearing is not proceeding in an efficient and expeditious manner, the hearing officer may take such discretionary action as seems warranted by the circumstances. If requested by the Judicial Review Committee, the hearing officer may participate in the deliberations of the Judicial Review Committee and be a legal advisor to it, but shall not act as a prosecuting officer or advocate and shall not be entitled to vote.

11. RECORD OF THE HEARING

11.1 A shorthand reporter shall be present to make a record of the hearing proceedings. A shorthand reporter shall be present to make a record of the pre-hearing proceedings if deemed appropriate by the hearing officer. The cost of attendance of the shorthand reporter shall be borne by CPMG, but the cost of the transcript, if any, shall be borne by the party requesting it. The Judicial Review Committee may, but shall not be required to, order that oral evidence shall be taken only on an oath administered by any person lawfully authorized to administer such oath.

12. RIGHTS OF THE PARTIES

12.1 Within reasonable limitations, both sides at the hearing may call and examine witnesses for relevant testimony, introduce relevant exhibits or other documents, cross-examine or impeach witnesses who shall have testified orally on any matter relevant to the issues, and otherwise rebut evidence, as long as these rights are exercised in an efficient and expeditious manner. The physician may be called by the CPMG Representative and examined as if under cross-examination.

13. MISCELLANEOUS RULES

13.1 Judicial rules of evidence and procedure relating to the conduct of a court proceeding, examination of witnesses, and presentation of evidence shall not apply to a hearing conducted under this Fair Hearing Plan. Any relevant evidence, including hearsay, shall 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. The Judicial Review Committee may question the witnesses or call additional witnesses if it deems such action appropriate. At its discretion, the Judicial Review Committee may request or permit both sides to file written arguments.

14. BURDENS OF PRESENTING EVIDENCE AND PROOF

14.1 Initial duty to Present Evidence. The CPMG Representative shall have the initial duty to present evidence that supports the charge(s) or recommended action.

14.1.1 Burden of Persuasion. The CPMG Representative shall bear the burden of persuading the Judicial Review Committee by a preponderance of the evidence that the adverse action or recommendation is reasonable and warranted.

15. ADJOURNMENT AND CONCLUSION

15.1 After consultation with the chairman of the Judicial Review Committee, the hearing officer may adjourn the hearing and reconvene the same without special notice at such times and intervals as may be reasonable and warranted, with due consideration for reaching an expeditious conclusion to the hearing. Both the CPMG Representative and the physician may submit a written statement at the close of the hearing. Upon conclusion of the presentation of oral and written evidence, or the receipt of closing written arguments, if submitted, the hearing shall be closed.

16. BASIS FOR DECISION

16.1 The decision of the Judicial Review Committee shall be based on the evidence introduced at the hearing, including all logical and reasonable inferences from the evidence and the testimony. The decision of Judicial Review Committee shall be subject to such rights of appeal as described in these procedures.

17. DECISION OF THE JUDICIAL REVIEW COMMITTEE

17.1 Within thirty (30) days after final adjournment of the hearing, the Judicial Review Committee shall render a decision that shall be accompanied by a report in writing. If the physician is under summary suspension or restriction at the conclusion of the hearing, the time for the issuance of the decision and report shall be fifteen (15) days. A copy of said decision shall be forwarded to the physician. The report shall contain a concise statement of the reasons in support of the decision including findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached. The decision of the Judicial Review Committee shall be subject to such rights of appeal for review as described in these procedures.

18. APPEAL

18.1 Time For Appeal. Within ten (10) days after receipt of the decision of the Judicial Review Committee, either the physician or the CPMG Representative may request an appellate review. A written request for such review shall be delivered to the CPMG President, and the other party to the hearing within the ten (10) day period. If a request for appellate review is not made within such period, the decision of the Judicial Review Committee shall become final. Physicians are notified of the appeal process through the Fair Hearing Plan document distributed to them at the time of joining CPMG.

18.2 Grounds For Appeal.

18.2.1 Identification of Grounds for Appeal. A written request for an appeal shall include an identification of the grounds for appeal and a clear and concise statement of the facts in support of the appeal. The grounds for appeal from the hearing shall be:

18.2.1.1 substantial non-compliance with the procedures required by this Fair Hearing Plan or applicable law which has created demonstrable prejudice; or

18.2.1.2 the decision was not supported by substantial evidence based upon the hearing record or such additional information as may be permitted pursuant to Section 18.5.1, below.

18.2.2 Statement of Facts. The statement of facts in support of the appeal shall demonstrate error based on the transcript from the Judicial Review Committee hearing, and based upon such additional evidence as may be submitted to the appeal board in accordance with this Fair Hearing Plan. In the event the transcript from the Judicial Review Committee hearing is not available to the appealing party within three (3) days prior to the date upon which the written request for appeal is due, the statement of facts in support of the appeal may be filed up to ten (10) days after the written request for appeal is filed. Any such delay shall not excuse the appealing party from their obligation to demonstrate error based on the transcript from the Judicial Review Committee hearing.

18.3 Notice Setting Appeal Hearing. If an appellate review is to be conducted, the Board of Directors of CPMG shall, within fifteen (15) days after receipt of notice of appeal, schedule an appeal hearing date and cause each side to be given notice of the time, place and date of the appellate review (“Notice Setting Appeal Hearing”). The date of the appellate review shall not be less than thirty (30) nor more than sixty (60) days from the date of the Notice Setting Appeal Hearing, provided however, that when a request for appellate review concerns a physician who is under summary suspension or restriction, the appellate review shall be held as soon as the arrangements may reasonably be made, not to exceed fifteen (15) days from the date of the Notice Setting Appeal Hearing. The appeal board for good cause may extend the time for appellate review.

18.4 Appeal Board. CPMG shall appoint an appeal board that shall be composed of not less than three (3) physicians. Knowledge of the matter involved shall not preclude any person from serving as a member of the appeal board, so long as that person was not previously involved with the same matter. The appeal board may select an attorney to assist it in the proceeding, but that attorney shall not be entitled to vote with respect to the appeal.

CPMG shall have the right to approve or disapprove of the legal fee arrangements with the attorney selected by the appeal board, provided that CPMG shall not unreasonably withhold its approval.

18.5 Appeal Procedure.

18.5.1 Appellate Hearing. The proceedings by the appeal board shall be in the nature of an appellate hearing based upon the record of the hearing before the Judicial Review Committee, provided that the appeal board may accept additional oral or written evidence, subject to a foundational showing that such evidence could not have been made available to the Judicial Review Committee in the exercise of reasonable diligence and subject to the same rights of cross-examination and confrontation provided at the Judicial Review Committee hearing. The appeal board may remand the matter to the Judicial Review Committee for the taking of further evidence and for further decision. Each party shall have the right to be represented by legal counsel, or any other representative designated by that party in connection with the appeal, to present a written statement in support of his or her position on appeal and to personally appear and make oral argument. The appeal board may thereupon conduct, at a time convenient to itself, deliberations outside the presence of the parties.

18.5.2 Transcript on Appeal. The party requesting appellate review shall order the complete transcript from the Judicial Review Committee hearing and shall make such transcript available to the appeal board in its entirety.

18.5.3 Obligation to Show Error. It shall be the appellant's obligation on appeal to affirmatively show error based upon the record of the hearing before the Judicial Review Committee, or based upon such additional evidence as may be allowed pursuant to Section 18.5.1 above. The Decision of the Judicial Review Committee shall be presumed correct.

18.5.4 Substantial Evidence Rule. The appeal board shall review challenges to the sufficiency of the evidence under the Substantial Evidence Rule.

18.5.5 Briefing Schedule. The appeal board may establish a briefing schedule to be met by the parties.

18.6 Decision.

18.6.1 Delivery of Decision. Except as provided in Section 18.6.2 below, within thirty (30) days after the conclusion of the appellate review proceedings, the appeal board shall present to the CPMG Board of Directors and to the physician its decision as to whether the Judicial Review Committee's decision should be affirmed, modified, reserved; or remanded to the Judicial Review Committee for further review and decision.

18.6.2 Modification or Remand. Should the appeal board determine that the Judicial Review Committee decision is not supported by substantial evidence, the appeal board may modify or reverse the decision of the Judicial Review Committee. Alternatively, the appeal board may, or shall, where a fair procedure has not been afforded, remand the matter back to the Judicial Review Committee for reconsideration, stating the purpose for the referral. If the matter is remanded back to the Judicial Review Committee for further review and decision, the

Judicial Review Committee shall promptly conduct its review and deliver its decision to the appeal board. This further review and the time required to report back shall not exceed forty-five (45) days in duration except as the parties may otherwise agree or for good cause as determined by the appeal board.

18.6.3 Written Decision. The decision of the appeal board shall be in writing, shall specify the reasons for the action taken, and shall be forwarded to the CPMG Board of Directors and the physician.

18.7 Finality of Decision and Right to One Hearing Only. The decision of the Board of Directors, following the appeal procedure, shall be final and effective immediately. No party is entitled as a matter of right to more than one appellate review hearing on any single matter.

19. AMENDMENT

19.1 Board Action. The CPMG Board of Directors may amend this Fair Hearing Plan at any time, and from time to time, as it shall in its sole discretion deem appropriate. The Board of Directors shall also have the power to revoke this Fair Hearing Plan, in whole or in part, at any time, with or without the substitution of any other policy.

APPROVED BY THE CPMG PEER REVIEW COMMITTEE:

Date: February 2011 _____ By: _____

APPROVED BY THE BOARD OF CPMG:

Date: February 2011 _____ By: _____