

MEDICAL ASSOCIATES HEALTH PLANS
ADMINISTRATIVE POLICY AND PROCEDURES MANUAL

POLICY NUMBER: 18B

POLICY TITLE: Fair Hearing and Appeal Review

POLICY STATEMENT: To outline the procedure for a Practitioner's appeal of an Adverse Action that is based on competence or professional conduct which could adversely affect the health or welfare of a patient.

PROCEDURE:

1. Definitions.

- a. "Administration" means the executive and administrative staff of the Clinic.
- b. "Adverse Action" means an action that limits, restricts, suspends, revokes, denies, fails to renew or terminates a Practitioner's participation in an MAHP network as a result of competence or professional conduct which could adversely affect the health or welfare of a patient.
- c. "Adversely Affect" means to reduce, restrict, suspend, revoke, deny, or fail to renew appointment or status as a participating Practitioner based on competence or professional conduct which affects or could affect adversely the health or welfare of a patient.
- d. "Board" means the Board of Directors of Medical Associates Clinic, P.C. (MAC).
- e. "CMO" means the Chief Medical Officer of MAC/MAHP or a person designated in writing to act on his/her behalf for the purposes of proceedings set forth herein.
- f. "Committee" means the Quality Improvement Committee, Credentialing Committee or other peer review committees designated by the Board to monitor quality of care and professional competence or conduct on behalf of MAC and/or MAHP.
- g. "MAC" means Medical Associates Clinic, P.C.
- h. "MAHP" means Medical Associates Health Plan, Inc., and The Medical Associates Clinic Health Plan of Wisconsin.
- i. "Notice" means written notification, sent by registered mail or certified mail with return receipt requested.
- j. "Practitioner" means any licensed physician of allopathic medicine and surgery, osteopathic medicine and surgery, podiatry, chiropractic and optometry, as well as any licensed mid-level professional, such as a physician assistant, nurse practitioner, audiologist, speech pathologist and mental health counselor, who is primarily engaged in the practice of his/her profession.

2. Overview.

- a. A Practitioner shall have the right to request an appeal and fair hearing, pursuant to the procedure set forth herein, upon receipt of Notice of a proposed Adverse Action by a Committee. Any appeal of a proposed Adverse Action will be permitted only to the extent required by applicable law and this Policy.

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- b. The procedure herein shall apply only to an appeal by a Practitioner of a proposed Adverse Action. This procedure does not apply to denial of a Practitioner's application for network participation that is not based on competence or professional conduct which could adversely affect patient care. This procedure also does not apply to a determination to suspend, limit, reduce, or terminate a Practitioner's participation for reasons unrelated to professional competence or conduct, including but not limited to failure to maintain licensure, accreditation, certification, insurance or other governmental authorization required to provide services to MAHP members.
3. Notice of proposed Adverse Action.
 - a. Notice of a proposed Adverse Action by a Committee shall include:
 - 1) A statement of the proposed Adverse Action and the reasons for the proposed Action;
 - 2) A statement that the Practitioner has the right to request an appeal in writing, which shall be sent by registered or certified mail within 30 days from the date of receipt of the Notice;
 - 3) A statement that if the Practitioner fails to request an appeal in the time and manner set forth above, such failure shall constitute a waiver of all of the Practitioner's rights to an appeal, and the proposed Adverse Action shall become final; and
 - 4) A summary of the Practitioner's rights in the hearing, as set forth in Section 5, below.
 3. Request for Appeal and Notice of Fair Hearing.
 - a. A request by a Practitioner for an appeal must be in writing, sent by registered or certified mail within 30 days from receipt of the Notice of proposed Adverse Action.
 - b. Upon receipt of the request for appeal, the Practitioner shall be provided a Notice that a hearing will be scheduled not less than 30 days after the date of the appeal request. Unless the parties mutually agree to an extension, the hearing will occur no more than 90 days after the date of the request for an appeal.
 - c. The Notice shall inform the Practitioner of the right to representation, and shall state that if the Practitioner desires legal counsel or another person to act on his or behalf, the Practitioner shall identify the name of the representative within five (5) business days after the date of the Notice.
 - d. At least 14 days prior to the hearing date, the Practitioner shall be informed as to the date, time and place of the hearing.
 - e. The parties shall exchange documents to be presented at the hearing and a list of witnesses at least five (5) business days before the hearing. There shall be no other discovery in connection with the hearing. A pre-hearing conference may be held at the request of either party for the purpose of resolving procedural questions.
 4. Fair Hearing Committee.
 - a. The Fair Hearing Committee shall be appointed by the CMO or designee and shall consist of not less than three (3) nor more than five (5) persons with the requisite expertise, as determined by the CMO, to ensure a fair hearing.

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- b. The appointees shall not have participated in the recommendation or proceedings leading to the Fair Hearing and shall neither be in direct economic competition with the Practitioner who is the subject of the Fair Hearing nor gain direct financial benefit from the outcome of the Fair Hearing. The determination of whether any member of the Fair Hearing Committee is in direct economic competition with the Practitioner or would gain direct financial benefit from the outcome of the Fair Hearing shall be made by the CMO, whose determination shall be final.
 - c. One of the persons appointed to the Fair Hearing Committee by the CMO shall be designated Chairperson. The Chairperson shall be a voting member of the Fair Hearing Committee. In the discretion of the CMO, the Chairperson may be an attorney who shall address pre-and post-hearing matters.
5. Conduct of Fair Hearing.
- a. A majority of the appointees to the Fair Hearing Committee must be present at the hearing, and no member may vote by proxy.
 - b. The Practitioner must be present at the Fair Hearing. A Practitioner's absence without good cause shall constitute a waiver of the right to a hearing and an acceptance of the proposed Adverse Action. The Practitioner must advise the Chairperson of the Fair Hearing Committee of the reasons for absence no less than 24 hours before the scheduled hearing. The Fair Hearing Committee has sole discretion to determine if the Practitioner has "good cause" for absence. If good cause is shown, the Fair Hearing Committee will reschedule the Fair Hearing as soon as practicable.
 - c. The Chairperson of the Fair Hearing Committee shall be the presiding officer. The presiding officer shall maintain decorum and assure that all participants in the hearing have a reasonable opportunity to present relevant oral and documentary evidence. The presiding officer shall determine the order of procedure during the hearing and shall make all rulings on matters of law, procedures and the considerations of evidence.
 - d. The hearing shall be conducted in such a manner that the Practitioner has an opportunity to have his/her position fairly heard and considered.
 - e. Each party shall have the following rights:
 - 1) to be represented by an attorney;
 - 2) to call, examine, and cross-examine witnesses;
 - 3) to present evidence on matters reasonably related to the specific issues involved in the proposed Adverse Action;
 - 4) to challenge and rebut any evidence;
 - 5) to have a record made of the proceedings, copies of which may be obtained by either party upon payment of a reasonable charge;
 - 6) to submit a written statement; and
 - 7) to make a brief closing statement.

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- f. MAC/MAHP shall have the right to call the Practitioner to testify, and to examine the Practitioner as if the Practitioner is under cross-examination.
 - g. Members of the Fair Hearing Committee may ask questions of the Practitioner and all witnesses, and may call additional witnesses if the Committee deems such action appropriate.
 - h. The Practitioner shall have the burden of proof to demonstrate that the proposed Adverse Action is
 - 1) Arbitrary
 - 2) Capricious
 - 3) Unreasonable; and/or
 - 4) Based on inaccurate or insufficient information through no fault of the Practitioner.
 - i. The Fair Hearing will not be governed by rules of evidence applicable to a court of law. Any matter that is relevant to the proposed Adverse Action, regardless of its admissibility in court, shall be admitted by the Chairperson, including hearsay, if it is the kind of evidence upon which responsible persons customarily rely in the conduct of serious affairs; provided, however, that the attorney-client and attorney work product privileges shall apply.
 - 1) The Fair Hearing Committee may take official note of any generally accepted technical or scientific matter at any point prior to its final report. All participants will be informed of matters so noted and given the opportunity, upon request, to refute such official note.
 - 2) The Fair Hearing Committee may consider any pertinent material contained on file at MAC or MAHP.
 - 3) The Fair Hearing Committee may order that oral evidence be taken only on oath or affirmation administered by a notary public duly authorized by law to administer oaths.
 - j. The hearing shall be recorded by minutes prepared by a recording secretary selected by the CMO, which minutes shall be subject to approval and amendment by the Fair Hearing Committee. Other means of recording (e.g., electronic tape or court stenographer) shall be used only at the request or with the consent of the Fair Hearing Committee.
 - k. The Fair Hearing Committee may, without special Notice, recess the Fair Hearing for the convenience of the members or for the purpose of obtaining new or additional evidence or consultation.
 - l. Upon conclusion of the presentation of oral and written evidence and the closing statements, if any, the Fair Hearing shall be adjourned.
6. Post Hearing.
- a. The Fair Hearing Committee's decision shall be reached after private deliberations at which only members of the Committee are present. Only members of the Committee present during all hearing sessions shall be entitled to vote on the decision.
 - b. The Fair Hearing Committee shall reach a decision within 14 days of the adjournment of the hearing. The decision shall be based on the evidence and arguments presented during the hearing. The opinion of a majority of the Fair Hearing Committee will prevail.

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- c. The Fair Hearing Committee shall issue a written report to the CMO setting forth its decision and rationale for the decision. The report may recommend confirmation, modification, or rejection of the original proposed Adverse Action.
 - d. The CMO shall send prompt Notice of the Fair Hearing Committee's determination to the Practitioner.
 - e. The determination of the Fair Hearing Committee shall be final and not subject to further administration action by, or appeal to, MAC/MAHP.
7. General Provisions.
- a. It is the intent and purpose of this Policy that the procedures set forth above comply with the provisions of the Health Care Quality Improvement Act of 1986.
 - b. The Fair Hearing Committee may, in its discretion, consult with an attorney at any stage of the proceedings for advice regarding the hearing or the drafting of its report(s).
 - c. At any time after receipt of Notice of a proposed Adverse Action, if the Practitioner fails to make a required request or appearance or otherwise fails to comply with the procedure herein, the Practitioner shall be deemed to have consented to such Adverse Action and to have voluntarily waived all rights with respect to the matter involved.
 - d. The Fair Hearing Committee may, at any stage of proceedings, retain an independent consultant who may or may not be a shareholder with MAC. The consultant may be provided with medical records, films, slides, reports, or such other materials that he/she and the Committee deem appropriate for review. The consultant shall present a written or oral report to Committee, which shall be made available to the parties. A consultant so selected should not be deemed a witness for any of the parties, but an independent adviser whose opinions represent evidence that may be considered.
 - e. By requesting an appeal hearing under the procedures herein, the Practitioner agrees to be bound by the procedures, and any applicable rules and regulations in all matters relating thereto.
 - f. Nothing in this Policy shall preclude an immediate suspension or restriction of a Practitioner where the failure by MAC/MAHP to take such action may result in an imminent danger to the health of a patient. In such circumstance, the Practitioner shall subsequently be provided with the notice and hearing rights set forth herein.
 - g. Any procedural rule or time limit specified herein may be modified or waived by agreement between the presiding officer of the Fair Hearing Committee and the Practitioner, or their duly authorized representatives. A Practitioner who requests an extension of any time limit, or an adjournment which is granted, waives any right to insist on compliance with any time limits specified herein.
 - h. It shall be the duty of each staff person or Practitioner who requests a hearing to act with utmost good faith before, during, and after the hearing. Such good faith shall include but not be limited to timely compliance with hearing requirements and cooperation in the receipt of required Notices or the exercise of any procedures, without intent to cause undue delay. In addition to other rights or remedies of a party set forth in this Policy, upon a finding by the Fair Hearing Committee that a Practitioner is not acting (or has not acted) in good faith with regard to the

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hearing process, the Fair Hearing Committee may limit or deem waived any of the Practitioner's rights to hearing, or use of particular procedures in the hearing.

i. Notices.

- 1) If, in attempting to give Notice under this Policy, postal authorities, despite reasonable efforts, are unable to deliver or obtain signature on a return receipt for registered or certified mail at the designated place of mail delivery of the Practitioner, such Notice may alternatively be given by regular mail that is mailed at least five days (5) before any deadline to the last home address and last office address provided by the Practitioner.
- 2) For the purpose of time limits of this Policy, a Notice to the Practitioner shall be deemed to have been received at the time of the first attempt at registered or certified mail delivery by postal authorities, as documented by their written statement. This presumption of receipt shall be binding on the Practitioner, even if it means a right to a hearing is waived by failure to comply with time limits.
- 3) The designated place of mail delivery shall be the office address last provided by the Practitioner to MAC or MAHP, and any person who signs a receipt for mail at such address shall be deemed as authorized by the Practitioner to do so. In the event of his/her absence, each Practitioner shall either authorize his/her office staff members to receive and sign receipts for mail on his/her behalf, or designate in writing, sent by certified mail to the CMO, the name and address of an alternate place of delivery (e.g., a law firm), and provide a statement that any person who receives and signs for mail there is authorized to do so on his/her behalf.
- 4) The purpose of the provisions set forth above is to assure that reasonable efforts to give required Notices and proceed with a requested hearing is not thwarted or delayed by refusal to accept delivery, refusal to sign receipts, office closure, absence from the community, or bad faith by the Practitioner.

j. Compliance with the procedure herein shall be a condition precedent to the commencement of any judicial proceeding in a court of competent jurisdiction by any affected person.

Zach Keeling
Chief Executive Officer
Medical Associates Clinic & Health Plans

Date

Jill Mitchell
Chief Operating Officer
Medical Associates Health Plans

Date

**MEDICAL ASSOCIATES HEALTH PLANS
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Dr. Hendrik Schultz
Chief Medical Officer
Quality Improvement Committee

Date

Chad Nachtman, MD
President, Board of Directors
Medical Associates Clinic

Date

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