



<b>Subject:</b>	<i>Fair Hearing Plan</i>	<b>Policy #:</b>	CR-16
<b>Department:</b>	Credentialing	<b>Approvals:</b>	Credentialing Committee QM Committee
<b>Original Effective Date:</b>	5/00	<b>Revised Effective Date:</b>	1/03, 2/04, 1/05, 11/06, 12/06, 2/12,

**Purpose:**

To ensure providers are afforded a fair hearing for any denial, termination, suspension, reduction or limitation of privileges for medical disciplinary reason or for any action reportable to the Medical Board of California.

**Policy:**

Preferred IPA is committed to providing high quality health care to its members. Accordingly, it seeks to identify, investigate, evaluate, monitor, and correct matters that affect the quality of clinical and administrative services provided to its members. As part of this process, Preferred IPA performs peer review through its Credentialing Committee and Peer Review Committee of each provider who furnishes services to the Preferred IPA members.

The Credentialing and Peer Review Committees are responsible for overseeing credentialing and recredentialing of all providers. The committees review and evaluate all initial and recredentialing applications.

The Peer Review Committee is responsible for investigating any incidents or matters regarding a particular Provider that may affect the quality of care provided to patients. Based upon its investigation, and its reasonable belief that action is required to protect patients and in furtherance of quality of care, the Peer Review Committee may recommend various actions with respect to the particular Provider. Such actions may include, but are not limited to, counseling by the Medical Director, mandatory continuing medical education, proctoring, and limitation, suspension or termination of privileges.

If the Peer Review Committee, ("Peer Review Body"), decides to deny, limit, suspend, or terminate privileges based on a medical disciplinary cause or reason or on any cause or reason reportable to the Medical Board of California or NPDB, the affected Provider shall be entitled to a formal hearing pursuant to the Fair Hearing Procedure stated herein.

The Fair Hearing Plan is not applicable to mid-level providers.

**Grounds for a Hearing**

1. A Provider shall be entitled to a hearing if the Peer Review Body makes a recommendation to take one or more of the following actions against a Provider based on a cause or reason reportable to the Medical Board of California or NPDB or for medical disciplinary cause or reason:
  - a. Denial or rejection of an application;
  - b. Termination, revocation, or non-renewal of a Provider's privileges;
  - c. Restrictions imposed on the Provider's privileges to perform services for a total of thirty (30) days or more in any twelve month period;

- d. Summary suspension of a Provider's privileges to provide services for more than fourteen (14) calendar days.
  - e. An immediate suspension or restriction of privileges by the Medical Director or Peer Review Body where the failure to take such action may result in an imminent danger to the health of any individual.
2. A Provider shall not be entitled to a hearing for any action taken by the Peer Review Committee that adversely affects a Provider, including those actions stated above, unless such action is for a medical disciplinary cause or reason or is reportable to the Medical Board of California or NPDB.
  3. "Medical disciplinary cause or reason" means that aspect of a Provider's competence or professional conduct which is reasonably likely to be detrimental to patient safety or to the delivery of patient care. Such conduct includes that which affects, or could affect adversely, the health or welfare of a patient.

**Procedures:**

1. **Notice of Action or Proposed Action.** Whenever an action is taken that entitles a Provider to a hearing as stated herein, the Peer Review Committee, or its representative, shall give the affected Provider written notice of such action and of the Provider's right to request a hearing pursuant to this Fair Hearing Procedure. The notice must state:
  - a. The action to be taken against the Provider;
  - b. The reasons for the action;
  - c. That the Provider may request a hearing;
  - d. That a hearing must be requested by the Provider within thirty (30) days;
  - e. That the Provider has the hearing rights described in this Fair Hearing Procedure; and
  - f. That the action, if adopted, shall be reported to the appropriate State Medical Board or regulatory agency, and to the National Practitioner Data Bank pursuant to the Health Care Quality Improvement Act.
  - g. The notice shall be sent by first-class U.S. mail, postage prepaid, certified with return receipt requested, to the Provider's address listed with Preferred IPA.
2. **Request for Hearing.** The affected Provider shall have thirty (30) days following the date of receipt of a notice of an adverse action to request a hearing. The request for a hearing must be submitted in writing to the Chairman of the Board of Preferred IPA or such officer the Board may designate to perform such function (collectively, the "Preferred IPA Chairman") at Preferred IPA principal business address. If the Provider does not request a hearing within the time and in the manner set forth herein, the Provider shall be deemed to have accepted the recommendation, decision, or action involved and it shall become the final action of Preferred IPA. There shall be no right to appeal Preferred IPA's final action.
3. **Notice of Hearing.** Upon receiving a request for a hearing, the Preferred IPA Chairman shall schedule and arrange for a hearing that shall be commenced within sixty (60) days after receipt of the request for a hearing. The Preferred IPA Chairman shall give the Provider written notice of the hearing. The notice of the hearing shall include the following:
  - a. The time, date, and place of the hearing;

- b. The reasons for the proposed action including the acts or omissions with which the Provider is charged;
  - c. That the hearing will be held before a Hearing Committee appointed by Preferred IPA;
  - d. That the Provider's right to a hearing will be forfeited if the Provider fails, without good cause, to appear at the hearing.
  - e. The notice shall be sent first-class U.S. mail, postage prepaid, certified with return receipt requested, to the Provider's address listed with Preferred IPA.
4. **Hearing Committee.** The Peer Review Committee shall appoint a Hearing Committee consisting of at least three Providers, and an Alternate Provider, with current Provider Agreements with Preferred IPA who have the requisite expertise to ensure a fair hearing. The Alternate Provider will attend the entire hearing but will take part in the deliberations of the Hearing Committee only if a member of the Hearing Committee is not available to participate in such deliberations. In the event Providers who meet this criteria are not available, the Peer Review Committee shall appoint suitable alternates to be members and the alternate member of the Hearing Committee. The Hearing Committee members shall be unbiased, shall not be members of the Peer Review Body and shall not have actively participated in the formal consideration of the matter at any previous level (i.e., they shall not have acted as an accuser, investigator, fact finder or initial decision-maker in the same matter). Furthermore, the Hearing Committee members shall not be in direct economic competition with the affected Provider, and shall not stand to gain direct financial benefit from the outcome. **Majority of the panel members of Hearing Committee will be peers.**
5. **Hearing Officer.** The Peer Review Committee shall appoint a Hearing Officer to preside at the hearing. The Hearing Officer shall be an attorney at law qualified to preside over a formal hearing and preferably have experience in Preferred IPA matters. The Hearing Officer shall not be biased for or against the Provider, will gain no direct financial benefit from the outcome and shall not act as a prosecuting officer or as an advocate for any party. The Hearing Officer shall act to assure that all participants in the hearing have a reasonable opportunity to be heard and to present all relevant oral and documentary evidence 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, in accordance with this Fair Hearing Procedure, to grant continuances, to rule on disputed discovery requests, to decide when evidence may not be introduced, to rule on challenges to the impartiality of Hearing Committee members and to himself or herself serving as a hearing officer, and to rule on questions which are raised prior to or during the hearing pertaining to matters of law, procedure, or the admissibility of evidence.
6. **Pre-hearing Procedure**
- a. **Discovery**
    - 1) Rights of Inspection and Copying. The affected Provider has the right to inspect and copy (at his or her expense) any documentary information relevant to the charges that Preferred IPA has in its possession or under its control. The Peer Review Body or its representative has the right to inspect and copy (at its expense) any documentary information relevant to the charges that the affected Provider has in his or her possession or under his or her control. The requests for discovery must be fulfilled as soon as practicable. Failure to comply with reasonable discovery requests at least thirty (30) days prior to the hearing shall be good cause for a continuance of the hearing.

- 2) **Limits on Discovery.** The Hearing Officer, upon the request of either the Provider or the Peer Review Body, may deny a discovery request on any of the following grounds:
  - a) The information refers solely to individually identifiable Providers other than the affected Provider.
  - b) Denial is justified to protect peer review.
  - c) Denial is justified to protect justice.
- 3) In ruling on discovery requests, the Hearing Officer shall consider the following factors:
  - a) Whether the information sought may be introduced to support or defend the charges.
  - b) Whether the information is "exculpatory" in that it would dispute or cast doubt upon the charges or "inculpatory" in that it would prove or help support the charges and/or recommendation.
  - c) The burden imposed on the party in possession of the requested information, if access is granted.
  - d) Any previous discovery requests made by the party.
- b. **Pre-Hearing Document Exchange.** At the request of either the Provider or the Peer Review Body, the parties must exchange all documents that will be introduced at the hearing. The documents must be exchanged at least ten (10) days prior to the hearing. A failure to comply with this rule is good cause for the Hearing Officer to grant a continuance. Repeated failures to comply shall be good cause for the Hearing Officer to limit introduction of any documents not provided to the other side in a timely manner.
- c. **Witness Lists.** At least ten (10) working days prior to the hearing, the Provider and the Peer Review Body shall each furnish to the other a written list of the names and addresses of the individuals, who will give testimony or evidence in support of that party at the hearing. The witness list may be amended with a showing of good cause. A failure to comply with this requirement is good cause for the hearing officer to postpone the hearing or to limit the appearance of a witness.
7. **Failure to Appear at Hearing.** If the affected Provider fails to appear and proceed at the hearing without good cause, the Provider shall forfeit his or her right to a hearing, and the recommendation, decision, or action involved shall become the final action of Preferred IPA. There shall be no right to appeal Preferred IPA's final action.
8. **Postponements and Extensions.** Postponements and extensions of time beyond the times expressly permitted in this Fair Hearing Procedure may be requested by the affected Provider or the Peer Review Body and shall be permitted by the Hearing Officer on a showing of good cause.
9. **Rights of the Parties at the Hearing.** At the hearing, the affected Provider and the Peer Review Body shall have the following rights:

- a. To ask Hearing Committee members and the Hearing Officer questions which are directly related to determining whether they meet the qualifications set forth in this Fair Hearing Plan and to challenge the impartiality of such members or the Hearing Officer;
- b. To call, examine and cross-examine witnesses;
- c. To receive all information made available to the Hearing Committee; and to present and rebut any evidence determined to be relevant by the Hearing Officer. The Provider may be called by the Hearing Committee and examined as if under cross-examination. The Hearing Committee may interrogate the witnesses or call additional witnesses if it deems such action appropriate.
- d. Each party has the right to submit a written or verbal statement in support of his/her position at the close of the hearing. The Hearing Committee may request such a statement to be filed following the conclusion of the presentation of oral testimony.
- e. Either party shall have the right or option of being represented by an attorney at law at the hearing.
- f. **Preferred IPA cannot have an attorney, if the practitioner does not have attorney representation.**

## 10. Hearing Procedure

- a. **Record of the Hearing.** The Hearing Committee shall maintain a record of the hearing by using a certified shorthand reporter to record the hearing or by tape-recording the proceedings. The Provider shall be entitled to receive a copy of the transcript or recording upon paying the reasonable cost for preparing the record. The Hearing Officer may, but is not required to, order that oral evidence shall be taken only on oath administered by a person designated by such body and entitled to notarize documents in this State or by affirmation under penalty of perjury to the Hearing Officer.
- b. **Rules of Evidence.** The rules of law relating to the examination of witnesses and presentation of evidence shall not apply in any hearing conducted hereunder. Any relevant evidence, including hearsay, shall be admitted by the Hearing Officer if it is the sort of evidence which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the admissibility of such evidence in a court of law.
- c. **Objections to Introduction of Evidence Previously Not Produced to Preferred IPA.** The Peer Review Body may object to the introduction of any evidence that was not provided during the credentialing or recredentialing process or during the conducting of peer review despite Preferred IPA request for such information. Such information will be barred from the hearing by the Hearing Officer unless the Provider can prove he or she previously acted diligently and could not have submitted such information.

## 11. Burden of Going Forward and Burden of Proof.

In all cases, the Peer Review Body shall have the initial duty of presenting evidence to support the charge or recommended action. Thereafter, the burden differs depending upon whether the Provider is applying for privileges or already has privileges.

- a. At any hearing involving denial or rejection of an application, the Provider has the burden of proving, by a preponderance of the evidence, that the committee's decision was not reasonable and warranted. The Provider must produce information that allows for an adequate evaluation and resolution of any reasonable doubts concerning his or her current qualifications.
- b. At any hearing involving a Provider who already has privileges with Preferred IPA, the Peer Review Body shall have the burden of proving by a preponderance of the evidence that the action or recommendation is reasonable and warranted.

12. **Adjournment and Conclusion.** The Hearing Officer may adjourn the hearing and reconvene the same at the convenience of the participants without special notice. The hearing shall be concluded within a reasonable time and the Hearing Officer may set guidelines for introduction of evidence to achieve a timely conclusion. Upon conclusion of the presentation of oral and written evidence and argument, the hearing shall be closed. The Hearing Committee shall thereupon, outside of the presence of the parties, conduct its deliberations and render a decision and accompanying report. Final adjournment shall not occur until the Hearing Committee has completed its deliberations.
13. **Decision of the Hearing Committee.** Within thirty (30) days after final adjournment of the hearing, the Hearing Committee shall render a decision. The decision of the Hearing Committee shall be based on the evidence produced at the hearing and any written statements submitted to the Hearing Committee. The decision shall be accompanied by a written report that contains findings of fact and conclusions that articulate the connection between the evidence produced at the hearing and the decision reached. The report shall include sufficient detail to enable the parties and the Board to determine the basis for the Hearing Committee's decision on each matter contained in the notice of charges. The decision and report shall be delivered to the parties by first-class U.S. mail, postage prepaid, certified with return receipt requested.

The decision of the Hearing Committee shall be by majority vote of the Committee, shall be final, and shall become the final action of Preferred IPA. There shall be no right to appeal the decision of the Hearing Committee. A Provider shall have a right to only one hearing as a result of any adverse recommendation or action based on a medical disciplinary cause or reason.

**The Medical Director shall notify in writing the Medical Board of California the adverse recommendation or action taken by the Hearing Committee towards a provider.**

14. **Immediate Action by Peer Review Body Under Certain Circumstances.** Notwithstanding anything in this Fair Hearing Procedure, the peer review body may immediately suspend or restrict privileges of a Provider where the failure to take that action may result in an imminent danger to the health of any individual, provided that the Provider is subsequently provided with the notice and hearing rights set forth in this procedure.