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## I. SCOPE

This policy applies to (1) Canopy Health, LLC (“Canopy Health”) and its subsidiaries and affiliates (each, an “Affiliate”); and (2) any other entity or organization with which Canopy Health contracts for such entity or organization to perform provider credentialing on Canopy Health’s behalf (each a “Contractor”). To the extent that any Contractors perform functions set forth herein, references to “Canopy Health” or the “Credentialing Department” shall be interpreted to refer to such Contractors.

## II. PURPOSE


The purpose of this policy is to define the process by which practitioners can appeal any decisions taken by the CPRC pertaining to their participation in Canopy Health’s network.

## III. DEFINITIONS

**Credentialing Peer Review Committee:** A group of providers selected by Canopy Health that evaluate the qualifications and make the final determination regarding the status of providers applying for participation in the network, and evaluate the necessity, quality or utilization of care rendered by providers in the network. Peer review is conducted by other health care providers from the same discipline or with similar or essentially equal qualifications who are not in direct economic competition with the health care professional under review.


## IV. POLICY

- A. It is the policy of Canopy Health that when the CPRC recommends a provider’s participation be denied, suspended, non-renewed, or revoked, the provider will be granted the right to appeal said decision in order to resolve matters bearing on professional competence and conduct in accordance with the following procedure.
- B. A provider shall not be entitled to a hearing if, in fact, the CPRC suspends or revokes the provider’s membership in the network due to non-quality issues such as, but not limited to, breach of contract or an at-will termination.
- C. If a practitioner receives an adverse decision which entitles the practitioner to a hearing, then that practitioner shall not be eligible to reapply until one (1) year after the adverse decision is final and the practitioner has exhausted all applicable hearing rights; the practitioner must undergo the initial credentialing process if the break in service is greater than 30 days. The credentials of the practitioner will be re-verified following the same guidelines as described in CD1003.


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## V. PROCEDURE


- A. When Canopy Health declines to include a provider in its network or decides to suspend, non-renew, or terminate a provider's participation in its network, it must furnish written notice to the affected provider with the reason for the decision.
- B. The CPRC, or its representative, shall give the affected practitioner written notice of the proposed action and of the practitioner's right to request a formal hearing. The notice will state:
  1. What action has been proposed against the practitioner
  2. If applicable, that the action, if implemented, must be reported to the appropriate board under Business and Professionals Code Section 805 and/or the National Practitioner Data Bank under 45 Code of Federal Regulations, Part 60, as applicable;
  3. A brief description of the reasons for the proposed action;
  4. That the practitioner may request a hearing;
  5. That the hearing must be requested within 30 days; and
  6. A brief summary of the practitioner's rights at the hearing;
  7. That the practitioner be represented by an attorney or another person of the practitioner's choice
- C. The practitioner shall have 30 days following the date of receipt of a notice of an adverse action to request a formal hearing.
  1. The request must be submitted in writing, directed to the representative of the CPRC, and received by the network at its administrative offices within the prescribed period.
  2. A copy must be sent to the Medical Director of the network.
  3. If the practitioner does not request a formal hearing within the time and in the manner prescribed, he/she shall be deemed to have accepted the recommendation, decision, or action involved and it may be adopted by the Board of Directors as the network's final action.
- D. Upon receiving a request for a formal hearing, the representative of the CPRC shall, in consultation with the Medical Director, promptly schedule and arrange for the hearing.
  1. The practitioner shall be given notice of the time, place, and date of the hearing.
  2. The date of the commencement of the hearing shall be no less than 30 days or more than 60 days from the date the representative of the CPRC received the request for a hearing.

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- E. A notice of charges or reasons may be sent along with or separate from the notice of hearing, further specifying, as appropriate, the acts or omissions with which the practitioner is charged.
1. This supplemental notice shall provide a list of the patient records, if any, which are to be discussed at the hearing, if that information has not been provided previously.
  2. The practitioner shall be given notice of the names and addresses of the individuals, as then reasonably known or anticipated, who are expected to give testimony or evidence in support of the Credentialing Committee action at the hearing.
  3. This notice shall be updated, as necessary and appropriate, at least 10 days prior to the commencement of the hearing.
  4. At least 10 days prior to the hearing, the practitioner shall furnish to the representative of the CPRC a written list of the names and addresses of the individuals, so far as then reasonably known or anticipated, who will give testimony or evidence in support of the practitioner at the hearing.
  5. Witness lists shall be amended when additional witnesses are reasonably known or anticipated.
  6. A failure by either party to comply with this requirement is good cause to postpone the hearing.
- F. The Medical Director shall appoint a Judicial Hearing Committee consisting of at least three practitioners with current network agreements who have the requisite expertise to ensure an efficacious and fair hearing.
1. The hearing panel members shall be impartial, 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 manner), shall not be in direct economic competition with the affected practitioner, and shall stand to gain no direct financial benefit from the outcome of the hearing.
  2. The majority of the hearing panel members shall be peers of the affected practitioner.
  3. The Medical Director shall designate a Chairman, who shall preside in the manner described below, and handle all pre-hearing matters and preside unless and until a hearing officer, as described below is appointed.
  4. The Medical Director shall have the discretion, in lieu of appointing a hearing panel as described above, to enter into an agreement with the practitioner and the representative of the CPRC to hold the hearing before an arbitrator or arbitrators mutually acceptable to both parties.

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5. Failure or refusal to exercise this discretion shall not constitute a failure to provide a fair hearing.
- G. The Medical Director may appoint a hearing officer to preside at the hearing.
1. The hearing officer shall be an attorney at law qualified to preside over a formal hearing and preferably have experience in professional peer review proceedings.
  2. He/she shall not be biased for or against the practitioner, shall not be in a position to gain direct financial benefit from the outcome, and shall not act as a prosecuting officer or as an advocate for any party.
  3. He/she may participate in the deliberations and act as a legal advisor, but shall not be entitled to vote.
- H. The presiding officer at the hearing shall be the hearing officer described above, or if no hearing officer has been appointed, the Chairman of the Judicial Hearing Committee.
1. The presiding 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 in an efficient and expeditious manner, and that proper decorum is maintained.
  2. If the presiding officer determines that either party is not proceeding as described, he/she may take such discretionary action as seems warranted by the circumstances.
  3. He/she shall be entitled to determine the order of/or procedure for presenting evidence and argument during the hearing, and shall have the authority and discretion, in accordance with these provisions, to grant continuances; to rule on disputed discovery requests; to decide when evidence may not be introduced; to rule on challenges to Judicial Hearing Committee members; to rule on challenges to him/herself serving as a presiding officer, to rule on questions which are raised prior to or during the hearing pertaining to matters of law, procedure, or the admissibility of evidence; and to exercise discretion in formulating such additional procedures as are not inconsistent with these hearing policies and procedures and are deemed reasonably necessary to effect an expeditious and efficient fair hearing.
- I. It shall be the duty of the practitioner and the representative of the CPRC to exercise reasonable diligence in notifying the presiding officer of any pending or anticipated procedure dispute, as far in advance of the scheduled hearing as possible, in order that decisions concerning such matters may be made expeditiously.

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1. Objection to any such pre-hearing decisions shall be raised at the hearing and when so raised shall be reflected on the record.
- J. The affected practitioner may inspect and copy (at his/her own expense) any documentary information relevant to the charges that the CPRC has in its possession or under its control.
1. This Committee or its representative may inspect and copy at the network's expense any documentary information relevant to the charges that the affected practitioner has in his/her control.
  2. This right of inspection and copying does not create or imply an obligation to modify or create documents in order to satisfy a request for information.
  3. Requests for discovery must be met as soon as practicable.
  4. Failures to comply with reasonable discovery requests at least 30 days prior to the hearing shall be good cause for a continuance of the hearing.
- K. The presiding officer, upon the request of either side, may impose safeguards including, but not necessarily limited to, the denial of a discovery request on any of the following grounds:
1. The information refers solely to individually identifiable practitioners other than the affected practitioner.
  2. The safeguard is warranted to protect peer review.
  3. The safeguard is warranted to protect justice.
- L. In ruling on discovery disputes, the factors that may be considered include:
1. Whether the information sought may be introduced to support or defend the charges.
  2. 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.
  3. The burden on the party of producing the requested information.
  4. Other discovery requests the party has previously made.
- M. The parties must exchange all documents that will be introduced at the hearing at least 10 days prior to the hearing.
1. A failure to comply with this rule is good cause for the presiding officer to grant a continuance.
  2. Repeated failures to comply shall be good cause for the presiding officer to limit introduction of any documents not provided to the other side in a timely manner.


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- N. Hearings are provided for the purpose of addressing issues of professional conduct or competence in healthcare. Accordingly, the practitioner and/or the network have the right to be represented by an attorney or a person of their choice at the hearing. However, the network cannot have an attorney, if the practitioner does not have an attorney representation.
- O. Failure without good cause of the practitioner to appear and proceed at the hearing shall be deemed to constitute voluntary acceptance of the recommendation or action involved and it shall thereupon become the final action of the network.
- P. After a timely request for a hearing has been received as described above, postponements and extensions of time beyond the times expressly permitted in this Fair Hearing Plan may be effected upon agreement of the parties or granted by the presiding officer on a showing of good cause and subject to the presiding officer's discretion to assure that the hearing proceeds and is completed in a reasonably expeditious manner under the circumstances.
- Q. The Judicial 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.
1. The practitioner shall be entitled to receive a copy of the transcript or recording upon paying the reasonable cost for preparing the record.
  2. The presiding officer may, but is not required to, order that oral evidence be taken under oath.
- R. Both parties shall have the following rights, which shall be exercised in an efficient and expeditious manner and within reasonable limitations imposed by the presiding officer:
1. To ask Judicial Hearing Committee members and/or the presiding officer questions which are directly related to determining whether they meet the qualifications set forth in this Fair Hearing Plan and to challenge such members or the presiding officer
  2. To call and examine witnesses
  3. To introduce relevant documents and other evidence.
  4. To receive all information made available to the Judicial Hearing Committee; to cross-examine or otherwise attempt to impeach any witness who testifies orally on any matter relevant to the issues; and otherwise to rebut any evidence
  5. The practitioner may be called by the CPRC's representative and examined as if under cross-examination.

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6. The Judicial Hearing Committee and the presiding officer may interrogate the witnesses or call additional witnesses, as the Committee deems appropriate.
  7. Each party has the right to submit a written statement at the close of the hearing.
  8. The Judicial Hearing Committee may request such a statement to be filed following the conclusion of the presentation of oral testimony.
- S. Rules relating to the examination of witnesses and the presentation of evidence in courts of law shall not apply in any hearing conducted hereunder.
1. Any relevant evidence, including hearsay, shall be admitted by the presiding officer if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs.
  2. However, the CPRC's representative may object to the introduction of any evidence that was requested of an applicant but not provided during the credentialing process.
  3. Such objections shall be sustained by the presiding officer unless the applicant can prove that the information could not have been produced previously in the exercise of reasonable diligence.
- T. The decision of the Judicial Hearing Committee shall be based on the evidence produced at the hearing and any written statements submitted to the Judicial Hearing Committee.
- U. In all cases, the CPRC shall have the burden of initially presenting evidence to support its action. Thereafter the burden differs, depending upon whether the practitioner is applying for an Agreement or already has one that is in effect.
1. If the CPRC's recommendation is to deny an agreement, the practitioner shall have the burden of persuading the Judicial Hearing Committee, by a preponderance of the evidence, that he/she is sufficiently qualified to be awarded such an Agreement in accordance with the professional standards of the network.
    - a. This burden requires the production of information which allows for an adequate evaluation and resolution of reasonable doubts concerning the practitioner's qualifications, subject to the CPRC's right to object to the production of certain evidence pursuant to Section R.
  2. If the CPRC's action involves the termination of an existing Agreement or the suspension, reduction, or limitation of privileges to perform patient care services, the CPRC shall have the burden of persuading the Judicial Hearing Committee by a preponderance of the evidence that its action is reasonable and warranted.



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- a. The term “reasonable and warranted” means within the range of reasonable and warranted alternatives available, and not necessarily that the action is the only measure or the best measure that could be taken in the opinion of the Judicial Hearing Committee.
- V. Within 15 days of the final adjournment of the hearing, the Judicial Hearing Committee shall issue a decision which shall include finding of fact and conclusions articulating the connection between the evidence produced at the hearing and the result.
1. Such result shall include reinstatement of the health care professional, provisional reinstatement subject to conditions set forth by network, or termination of the health care professional.
  2. Such decision shall be provided in writing to the health care professional within 10 days of decision. A copy shall be sent to the Chairman of the CPRC, the practitioner involved, and the Medical Director.
- W. Final action shall be taken by the CPRC as provided below:
1. There shall be no right of appeal to the network following a formal hearing.
  2. However, the CPRC shall have the discretion to defer taking final action pending such further proceedings as it may director or allow, including but not necessarily limited to further proceeding before the Judicial Hearing Committee, further fact finding at the CPRC level, or an opportunity for oral and/or written argument at the CPRC level.
  3. The CPRC shall endeavor to take final action as soon as possible.
  4. If the CPRC is satisfied that the Judicial Hearing Committee’s decision follows from a fair hearing and is consistent with the applicable burden of proof as described in Section T above, it shall adopt that decision as the final action of the network.
  5. If the CPRC concludes that the Judicial Hearing Committee’s decision does not follow from a fair hearing and/or is not consistent with the applicable burden of proof, the CPRC shall proceed as it deems necessary and appropriate to address any unfairness and render a final decision that is consistent with the applicable burden of proof.
  6. The network shall comply with reporting requirements for any applicable state and the federal healthcare quality improvement act or the appropriate agency regarding adverse credentialing peer review actions.
  7. All credentialing and peer review records and proceedings shall be confidential as contemplated by the applicable state codes.



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8. All activities conducted pursuant to this Fair Hearing Plan are in reliance on the privileges and immunities afforded by the Federal Healthcare Quality Improvement Act and applicable state laws.

## VI. ENFORCEMENT

All employees whose responsibilities are affected by this policy are expected to be familiar with the basic procedures and responsibilities created by this policy. Failure to comply with this policy will be subject to appropriate performance management pursuant to all applicable policies and procedures, up to and including termination. Such performance management may also include modification of compensation, including any merit or discretionary compensation awards, as allowed by applicable law.

## VII. REFERENCES

1. NCQA – CR 6

### Revision History:

| Version Date | Edited By | Reason for Change   |
|--------------|-----------|---|
| 01/01/2017   | M. Durbin | Created policy  |
| 11/13/2018   | R. Scott  | Updated for NCQA Requirements   |
| 01/01/2019   | R. Scott  | Added requirement to reverify board certification for providers who have been terminated and reinstated, updated to correctly reference NCQA CR 6 standard rather than 7. |