



# MEDICAL STAFF

# FAIR HEARING PLAN



**MEDICAL STAFF**  
**FAIR HEARING PLAN**

**DEFINITIONS**

The following definitions, in addition to those stated in other provisions of the Medical Staff Bylaws, shall apply to the provisions of this Fair Hearing Plan:

1. APPELLATE REVIEW COMMITTEE means the group designated pursuant to Section 5-4 of this Plan to hear a request for appellate review properly filed and pursued by a practitioner.
2. HEARING COMMITTEE means the committee appointed pursuant to Section 2-3 of this Plan to hear a request for an evidentiary hearing properly filed and pursued by a practitioner.
3. PARTIES means the practitioner who requested the hearing or appellate review and the body upon whose adverse action a hearing or appellate review request is predicted.
4. PRACTITIONER, means unless otherwise expressly limited, any appropriately licensed physician, and allied health professional applying for, or exercising clinical privileges in this hospital.
5. SPECIAL NOTICE means notification via registered mail, properly addressed and postage prepaid with delivery signature required.

**1. INITIATION OF HEARING**

1-1 Recommendations or Actions

The following recommendations or actions shall, if deemed adverse, pursuant to Section 1-2, entitle the practitioner affected thereby to a hearing:

- A. Denial of initial staff appointment,
- B. Denial of reappointment,
- C. Suspension of staff appointment,
- D. Revocation of staff appointment,
- E. Denial of requested modification of staff category,
- F. Reduction in staff category,
- G. Limitation of admitting privileges,

- H. Denial of requested department (or division) assignment,
- I. Denial of requested clinical privileges,
- J. Reduction in clinical privileges,
- K. Suspension of clinical privileges,
- L. Revocation of clinical privileges,
- M. Terms of probation, and
- N. Requirement of consultation

In particular, the following actions do not give rise to hearing rights: issuance of a warning, letter of admonition or reprimand; imposition of supervision; reduction, suspension or revocation of temporary privileges.

#### 1-2 When Deemed Adverse

A recommendation or action listed in Section 1-1 shall be deemed an adverse action only when it has been:

- A. Recommended by the Staff Executive Committee; or
- B. A suspension continued in effect after review by the Staff Executive Committee and/or Board; or
- C. Taken by the Board contrary to a favorable recommendation by the Staff Executive Committee under circumstances where no prior right to a hearing existed; or
- D. Taken by the Board on its own initiative without benefit of a prior recommendation by the Staff Executive Committee; or
- E. Imposed automatically.

#### 1-3 Notice of Adverse Recommendation or Action

A practitioner against whom adverse action has been taken pursuant to Section 1-2 shall promptly be given special notice of such action by the Vice President, Medical Affairs. The notice shall indicate that the practitioner may request a hearing in accordance with the Staff Bylaws and the Fair Hearing Plan.

#### 1-4 Request for Hearing

A practitioner shall have thirty (30) days following his receipt of a notice pursuant to Section 1-3 to file a written request for a hearing. Such request shall be deemed to have been made when delivered to the Vice President-Medical Affairs and/or the Chief of Staff in person or when sent by registered mail to the Vice President-Medical Affairs, properly addressed and postage prepaid.

## 1-5 Waiver by Failure to Request a Hearing

A practitioner who fails to request a hearing within the time and in the manner specified in Section 1-4 waives any right to such hearing and to any appellate review to which he might otherwise have been entitled. Such waiver in connection with:

- A. An adverse action by the Board shall constitute acceptance of that action, which shall thereupon become effective as the final decision of the Board.
- B. An adverse recommendation by the Staff Executive Committee shall constitute acceptance of that recommendation, which shall thereupon become and remain effective pending the final decision of the Board. The Board shall consider the committee's recommendations at its next regular meeting following waiver. In its deliberations the Board shall review all the information and material considered by the committee. If the Board is in possession of information that would militate in favor of a different decision, the Board should send the matter back to the committee for a further hearing and recommendation.
- C. The Vice President-Medical Affairs shall promptly send the practitioner special notice informing him of each action taken pursuant to this Section 1-5 and shall notify the Chief of Staff of such action.

## 2. HEARING PREREQUISITES

### 2-1 Notice of Time and Place of Hearing

Upon receipt of a timely request for hearing, the Vice President-Medical Affairs shall deliver such request to the Chief of Staff or to the Board, depending on whose special notice of the time, place and date of the hearing. The hearing date shall be not less than thirty (30) days from the date of receipt of the request for hearing unless mutually agreed upon by both parties in writing, provided, however, that a hearing for a practitioner who is under suspension than in effect shall be scheduled to be held as soon as the arrangements for it may reasonably be made, but not later than thirty (30) days from the date of receipt of the request for hearing.

### 2-2 Statement of Charges

The notice of hearing required by Section 2-1 shall contain a concise statement of the practitioner's alleged acts or omissions, a list by number of the specific or representative patient records in question, and/or the other reasons or subject matter forming the basis for the adverse recommendation or action which is the subject of the hearing.

### 2-3 Appointment of Hearing Committee

#### A. By Staff

A hearing occasioned by a Staff Executive Committee recommendation pursuant to Article 1-2A shall be conducted by a Hearing Committee appointed by the Chief of Staff and composed of no fewer than three (3) members of the Active Staff. One of the members so appointed shall be designated as Chairman.

**B. By Board**

A hearing occasioned by an adverse action of the Board pursuant to Section 1-2 B or C, or upon a request pursuant to Section 7.3-7 of the Medical Staff Bylaws, shall be conducted by a Hearing Committee appointed by the Chairman of The Board and composed of at least (3) persons. At least one (1) Active Staff member chosen with the advice of the Chief of the Staff shall be included on this committee when the issues concern professional competence or performance. One of the appointees to the committee shall be designated as Chairman.

**C. Service on Hearing Committee**

A staff or board member shall not be disqualified from serving on a hearing committee solely because he participated in initiating or investigating the underlying matter at issue, or because he has heard of the case or has knowledge of the facts involved or what he supposes the facts to be. In any event, all members of a Hearing Committee shall be required to consider and decide the case with good faith objectivity.

Individuals involved in peer review activities shall be impartial peers<sup>1</sup> and shall not have an economic interest in and/or a conflict of interest with the subject of the peer review activity.

<sup>1</sup> impartial peer would also exclude individuals with blood relationships, employer/employee relationships, or other potential conflicts that might prevent the individual from giving an impartial assessment, or give the appearance for the potential of bias for or against the subject of peer review.

**3. HEARING PROCEDURE**

**3-1 Personal Presence**

The personal presence of the practitioner who requested the hearing shall be required. A practitioner who fails without good cause to appear and proceed at such hearing shall be deemed to have waived his rights in the same manner and with the same consequence as provided in Section 1-5.

**3-2 Presiding Officer**

Either the hearing officer, if one is appointed pursuant to Section 8-1, or the Chairman of the Hearing Committee shall be the presiding officer. The presiding officer shall act to maintain decorum and to the end that all participants in the hearing have a reasonable opportunity to present relevant oral and documentary evidence. He shall be entitled to determine the order of procedure during the hearing and shall make all ruling on matters of law, procedure, and the admissibility of evidence.

### 3-3 Representation

The practitioner who requested the hearing shall be entitled to be accompanied and represented at the hearing by a member of the Medical Staff in good standing or by a member of his local professional society. The Staff Executive Committee or the Board, depending upon whose recommendation has prompted the hearing, shall appoint one of its members, or in the case of the Staff Executive Committee, any staff member to represent it at the hearing, to present the facts in support of its adverse recommendation or action, and to examine witnesses. Representation of either party by an attorney at law shall be governed by the provision of Section 8-2.

### 3-4 Rights of Parties

During a hearing, each of the parties shall have the right to:

- A. Call and examine witnesses,
- B. Introduce exhibits,
- C. Cross-examine any witness on any matter relevant to the issues,
- D. Impeach any witness,
- E. Rebut any evidence, and/or
- F. Request that the record of the hearing be made by use of a court reporter or an electronic recording unit.

If the practitioner who requested the hearing does not testify on his own behalf, he may be called and examined as if under cross-examination.

### 3-5 Procedure and Evidence

The hearing shall not be conducted strictly according to rules of law relating to the examination of witnesses or presentation of evidence. Any relevant matter upon which responsible persons customarily rely in the conduct of serious affairs shall be admitted, regardless of the admissibility of such evidence in a court of law. Each party shall, prior to or during the hearing, be entitled to submit memorandum concerning any issue of law or fact, and such memoranda shall become a part of the hearing record. The hearing committee may require one or both parties to prepare and submit to the committee, written statements of their position on the issues, prior to, during, or after, the hearing. The Hearing Committee may establish rules of procedure, including, but not limited to, requiring the submission prior to the hearing of lists of proposed witnesses and exhibits. The presiding officer may, but shall not be required to, order that oral evidence be taken only on oath or affirmation administered by any person designated by him and entitled to notarize documents.

### 3-6 Evidentiary Notice

In reaching a decision, a Hearing Committee may take note, for evidentiary purposes, either before or after submission of the matter for decision, of any generally accepted technical or scientific matter relating to the issues under consideration and of any facts that may be judicially noticed by the courts within the State of Michigan. Parties at the hearing shall be informed of the matters to be noticed and those matters shall be recited in the hearing record. Any party shall be given opportunity, in a timely manner, to request that a matter be evidentially noticed and to refute the evidentially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the hearing committee. The committee shall also be entitled to consider any pertinent material contained on file in the hospital, and all other information that can be considered, pursuant to the Medical Staff Bylaws, in connection with applications for appointment or reappointment to the staff and for clinical privileges.

### 3-7 Burden of Proof

The body whose adverse recommendation or action occasioned the hearing shall have the initial obligation to present evidence in support thereof, but the practitioner shall thereafter be responsible for supporting his challenge to the adverse recommendation or action by clear and convincing evidence that the grounds therefore lack any factual basis or that such basis or the conclusions drawn there from are either arbitrary, unreasonable, or capricious.

### 3-8 Record of Hearing

A record of hearing shall be kept that is of sufficient accuracy to allow any group that may later be called upon to review the record and render a recommendation or decision in the matter. The Hearing Committee Chairman, unless his decision is reversed by a majority vote of the Hearing Committee, shall select the method to be used for making the record, such as court reporter, electronic recording unit, detailed transcription, or minutes of the proceedings. A practitioner requesting an alternate method under Section 3-4 F shall bear the cost thereof.

### 3-9 Postponement

Request for postponement of a hearing shall be granted by the hearing committee only upon a showing of good cause.

### 3-10 Recesses and Adjournment

The Hearing Committee may recess the hearing and reconvene the same without additional notice for the convenience of the participants or for the purposes of obtaining new or additional evidence or consultation. Upon conclusions of the presentation of oral and written evidence, the hearing shall be closed. The hearing committee shall thereupon, at a time convenient to itself, conduct its deliberations outside the presence of the parties. Upon the conclusions of its deliberations, the hearing shall be closed.



#### 4. HEARING COMMITTEE REPORT AND FURTHER ACTION

##### 4-1 Hearing Committee Report

Within ten (10) days after final adjournment of the hearing, the Hearing Committee shall make a written report of its findings and recommendation in the matter and shall forward the same, together with the hearing record and all other documentation considered by it, to the body whose adverse recommendation or action occasioned the hearing.

##### 4-2 Action on Hearing Committee Report

Within thirty (30) days after receipt of the report of the Hearing Committee, the Staff Executive Committee or the Board, as the case may be, shall consider the same and affirm, modify or reverse its recommendation or action in the matter. It shall transmit the result, together with the hearing record, the report of the Hearing Committee and all other documentation considered, to the Vice President, Medical Affairs and Chief of Staff.

##### 4-3 Notice and Effect of Result

###### A. Notice

The Vice President, Medical Affairs shall promptly send a copy of the result to the practitioner by special notice, to the Chief of Staff and to the Board.

###### B. Effect of Favorable Result

1. Adopted by the Board - If the Board's result pursuant to Section 4-2 is favorable to the practitioner, such result shall become the final decision of the Board and the matter shall be considered closed.
2. Adopted by the Staff Executive Committee - If the Staff Executive Committee's result pursuant to Section 4-2 is favorable to the practitioner, the Chief of Staff shall promptly forward it, together with all supporting documentation, to the Board for its final action. The Board shall take action thereon by adopting or rejecting the Staff Executive Committee's result in whole or in part, or by referring the matter back to the Staff Executive Committee for further reconsideration.  
Any such referral back shall state the reasons therefore, set a time limit within which a subsequent recommendation to the Board must be made, and may include a directive that an additional hearing be conducted to clarify issues that are in doubt.  
After receipt of such subsequent recommendation and any new evidence in the matter, the Board shall take final action. The Vice President, Medical Affairs shall promptly send the practitioner special notice informing him of each action taken pursuant to this Section 4-3B.2. Favorable action shall become the final decision of the Board, and the matter shall be considered finally closed.

If the Board's action is adverse in any of the respects listed in Section 1-1, the special notice shall inform the practitioner of his right to request an appellate review by the Board as provided in Section 5-1 of this Plan.

C. Effect of Adverse Result

If the result of the Staff Executive Committee or of the Board pursuant to Section 4-2 continues to be adverse to the practitioner in any of the respects listed in Section 1-1, the special notice required by Section 4-3 A, shall inform the practitioner of his right to request an appellate review by the Board as provided in Section 5-1 of this Fair Hearing Plan.

## **5. INITIATION AND PREREQUISITES OF APPELLATE REVIEW**

### **5-1 Request for Appellate Review**

A practitioner shall have ten (10) days following his receipt of a notice pursuant to Section 4-3 B2 or 4-3 C to file a written request for an appellate review. Such request shall be deemed to have been delivered to the Vice President, Medical Affairs when received in person or when set by registered mail to the Vice President, Medical Affairs, properly addressed and postage prepaid, and may include a request for a copy of the report and record of the Hearing Committee and all other material, favorable or unfavorable, that was considered in making the adverse action or result.

### **5-2 Waiver by Failure to Request Appellate Review**

A practitioner who fails to request an appellate review within the time and in the manner specified in Section 5-1 waives any right to such review. Such waiver shall have the same force and effect as that provided in Section 1-5.

### **5-3 Notice of Time and Place for Appellate Review**

Upon receipt of a timely request for appellate review, the Vice-President, Medical Affairs shall deliver such request to the Board. The Board shall promptly schedule and arrange for an appellate review which shall be not less than thirty(30) days from the receipt of the request for appellate review.

However, if the practitioner is already under suspension then review shall be held as soon as arrangements for it can reasonably be made. Requests for postponement of a hearing should be granted liberally when requested by the practitioner, particularly where the practitioner is under a suspension.

### **5-4 Appellate Review Committee**

The Board shall determine whether the appellate review shall be conducted by the Board as a whole or by an Appellate Review Committee composed of at least three (3) members of the Board appointed by the Chairman. If a committee is appointed, one of its members shall be designated as Chairman.

## **6. APPELLATE REVIEW PROCEDURE**

### **6-1 Nature of Proceedings**

The proceedings by the review body shall be in the nature of an appellate review based upon the record of the hearing before the Hearing Committee, the committee's report, and all subsequent results and actions thereon.

The appellate review body shall also consider the written statements submitted pursuant to Section 6-2 and such other materials as may be presented and accepted under Sections 6-4 and 6-5.

### **6-2 Written Statement**

The practitioner seeking the review shall submit a written statement detailing the findings of the fact, conclusions and procedural matters with which he disagrees, and his reasons for such disagreement. This written statement may cover any matters raised at any step in the hearing process, and legal counsel may assist in its preparation.

The statement shall be submitted to the Appellate Review Committee through the Vice President, Medical Affairs at least seven (7) days prior to their view date. A written statement in reply may be submitted by the Staff Executive Committee or by the Board prior to the scheduled date of the appellate review.

### **6-3 Presiding Officer**

The chairman of the Appellate Review Committee shall be the presiding officer. He shall determine the order of procedure during the review, make all required rulings, and maintain decorum.

### **6-4 Oral Statement**

The Appellate Review Committee, in its sole discretion, may allow the parties or their representatives to appear personally and make oral statements in favor of their positions. Any party or representative so appearing shall be required to answer questions put to him by any member of the appellate review body.

### **6-5 Consideration of New or Additional Matters**

New or additional matters or evidence not raised or presented during the original hearing or in the hearing report and not otherwise reflected in the record shall be introduced at the appellate review only under unusual circumstances. The Appellate Review Committee in its sole discretion, shall determine whether such matters or evidence shall be considered or accepted.

### **6-6 Powers**

The Appellate Review Committee shall have all power granted to a Hearing Committee, and such additional powers as are reasonable appropriate to the discharge of its responsibilities.

## 6-7 Recesses and Adjournment

The Appellate Review Committee may recess the review proceedings and reconvene the same without additional notice for the convenience of the participants or for the purpose of obtaining new or additional evidence or consultation. Upon the conclusion of oral statements, if allowed, the appellate review shall be closed. The Appellate Review Committee shall thereupon, at a time convenient to itself, conduct its deliberations outside the presence of the parties. Upon the conclusion of those deliberations the appellate review shall be declared finally adjourned.

## 6-8 Action Taken

The Appellate Review Committee may recommend that the Board affirm, modify or reverse the adverse result or action taken by the Staff Executive Committee or by the Board pursuant to Section 4-2 or 4-3B.2. or, in its discretion, may refer the matter back to the Hearing Committee for further review and recommendation to be returned to it within twenty-one (21) days. Within seven (7) days after receipt of such recommendation after referral, the appellate review body shall make its own recommendation to the Board as provided in this Section 6-8.

## 6-9 Conclusion

The appellate review shall not be deemed to be concluded until all of the procedural steps provided in Section 6 have been completed or waived.

# **7. FINAL DECISION OF THE BOARD**

## 7-1 Board Action

Within thirty (30) days after the conclusion of the appellate review, the Board shall render its final decision in the matter in writing and the Vice President, Medical Affairs shall send notice thereof to the practitioner by special notice, and to the Staff Executive Committee.

If the decision is in accord with the Staff Executive Committee's last recommendation in the matter, if any, it shall be immediately effective and final. If the Board's action has the effect of changing the Staff Executive Committee's last such recommendation, the Board shall refer the matter to the Joint Conference Committee who shall conduct its review based upon the documented records. The Board's action on the matter following receipt of the Joint Conference Committee recommendation shall be immediately effective and final.

## 7-2 Joint Conference Committee Review

Within thirty (30) days of its receipt of a matter referred to it by the Board pursuant to the provisions of this Plan, the Joint Conference Committee shall conduct its review based upon the documented records and submit its recommendation to the Board. In any case, in which the Hospital's legal counsel so advises, the practitioner may be invited to the meeting of the Joint Conference Committee in order to respond to any questions that may be presented to him.

## **8. GENERAL PROVISIONS**

### **8-1 Hearing Officer Appointment and Duties**

The use of a hearing officer to preside at an evidentiary hearing is optional. The use and appointment of such an officer shall be determined by the Board after consultation with the Chief of the Medical Staff. A hearing officer may or may not be an attorney at law, but must be experienced in conducting hearings. He shall act in an impartial manner as the presiding officer of the hearing. He may participate in its deliberations and act as its legal advisor, but he shall not be entitled to vote. In the interest of fairness and impartiality under the rules of due process, the hearing officer should not be one who participated in initiating or investigating the underlying matter at issue.

### **8-2 Attorneys**

If the affected practitioner desires to be represented by an attorney at any hearing or at any appellate review appearance pursuant to Section 6-4, his request for such hearing or appellate review must so state. The Hearing Committee or Appellate Review Committee shall, in its sole discretion, determine whether to permit such representation. If the practitioner is not permitted to be so represented, neither shall the Staff Executive Committee or the Board be allowed representation at the hearing or appellate review session by an attorney. The foregoing shall not be deemed to limit the practitioner, the Staff Executive Committee or the Board in the use of legal counsel in connection with preparation for a hearing or an appellate review.

### **8.3 Waiver**

If at any time after receipt of special notice of an adverse recommendation, action or result, a practitioner fails to make a required request or appearance or otherwise fails to comply with this Fair Hearing Plan, he shall be deemed to have consented to such adverse recommendation, action or result and to have voluntarily waived all rights to which he might otherwise have been entitled under the Medical Staff Bylaws then in effect or under this Fair Hearing Plan with respect to the matter involved.

### **8-4 Number of Reviews**

Notwithstanding any other provisions of the Medical Staff Bylaws or of this Plan, no practitioner shall be entitled as a right to more than one evidentiary hearing and appellate review with respect to an adverse recommendation or action.

### **8-5 Extensions**

Stated time periods and limits for actions, notices, requests, submissions of material and scheduling in The Fair Hearing Plan may be extended upon the agreement of the parties and, when necessary, the Hearing Committee or Appellate Review Committee.

8-6 Release

By requesting a hearing or appellate review under this Fair Hearing Plan, a practitioner agrees to be bound by the provisions of Article XIII of the Medical Staff Bylaws in all matters relating thereto.

8-7 Report to Authorities

Reports of disciplinary actions will be reported to the appropriate authorities upon completion or waiver of Fair Hearing procedures, unless otherwise required by legal statute, by the Vice President-Medical Affairs (or designee).

\* \* \* \* \*

Original Approval: General Staff July 13, 1989; Board of Trustees July 18, 1989

Reviewed/Amended: General Staff/Board of Trustees March, 1998  
General Staff / Board of Trustees November, 2000

Staff Executive Committee May 9, 2997; Board of Trustees 5/22/07  
Staff Executive Committee / Board of Trustees: March, 2015

Reviewed: August, 2012; January 2012; March 2015; 2016