

Fair Hearing Plan

Article 1: Initiation of Hearing

An applicant or an individual holding a medical staff appointment and/or assigned privileges shall be entitled to a hearing whenever a recommendation or an action unfavorable to him (see Section 2.2 below) has been made by the Executive Committee. The applicant is also entitled to a hearing whenever an unfavorable action is made by the Governing Body and the Fair Hearing Plan has not previously been invoked on the matter.

The purpose of the hearing shall be to recommend a course of action to those acting for the Hospital Corporation, whether Medical Staff or Governing Body, and to make findings concerning the nature of each basis for any adverse decision recommended to the Governing Body; the duties of the Hearing Panel shall be so defined and carried out.

Article 2: The Hearing

Section 2.1: Notice of Recommendation

- 1) When a recommendation is made which, according to this Plan, entitles an individual to a hearing prior to a final decision of the Governing Body on that recommendation, the affected individual shall be given notice within 15 days by the Chief Executive Officer, in writing with return receipt requested. This notice shall contain:
 - a. a statement of the recommendation made and the general reasons for it;
 - b. notice that the individual has the right to request a hearing on the recommendation within 30 days of receipt of the notice;
 - c. a summary of the rights in the hearing as provided for in this Plan.
- 2) Such individual shall have 30 days following the date of the receipt of such notice within which to request a hearing by a panel hereinafter referred to as the Hearing Panel. Said request shall be made by written notice to the Chief Executive Officer. In the event the affected individual does not request a hearing within the timeframe and in the manner set forth above, he shall be deemed to have waived his right to such hearing and to have accepted the action involved and such action shall thereupon become effective immediately upon final Governing Body action.

Section 2.2: Grounds for Hearing

No recommendation or action other than those hereinafter enumerated shall constitute grounds for a hearing:

- a. denial of initial medical staff appointment;
- b. denial of medical staff reappointment;
- c. revocation of medical staff appointment;
- d. denial of requested initial clinical privileges;

- e. denial of requested increased clinical privileges;
- f. decrease of clinical privileges;
- g. suspension of total clinical privileges for a term of greater than 14 days for reasons of competence or conduct;
- h. imposition of mandatory concurring consultation requirement.

Section 2.3: Unappealable Actions

The actions which shall take effect without hearing or appeal whether imposed by the Executive Committee or the Governing Body are:

- 1) voluntary or automatic relinquishment of clinical privileges, as provided for elsewhere in this Plan;
- 2) the imposition of any consultation requirement with the exception of a mandatory concurring consultation; and/or
- 3) the imposition of a requirement for retraining, additional training or continuing education.

Section 2.4: Notice of Hearing and Statement of Reasons

- 1) The Chief Executive Officer shall schedule the hearing and shall give notice of its time, place and date, in writing with return receipt requested, to the person who requested the hearing.
- 2) The notice shall also include a proposed list of witnesses who shall give testimony or evidence in support of the Executive Committee or the Governing Body at the hearing.
- 3) The hearing shall begin as soon as practicable, but no sooner than 30 days after the notice of the hearing and no later than 90 days unless an earlier hearing date has been specifically agreed to in writing by the parties.
- 4) This notice shall contain a statement of the specific reasons for the recommendation as well as the list of patient records and information supporting the recommendation. This statement, and the list of supporting patient record numbers and other information it contains, may be amended at any time, even during the hearing so long as the additional material is relevant to the continued appointment or clinical privileges of the individual requesting the hearing, and that individual and his counsel have had sufficient time to study this additional information.

Section 2.5: List of Witnesses

- 1) A written list of the names and addresses of the individuals, so far as is then reasonably known, who shall give testimony or evidence in support of the Executive Committee or the Governing Body at the hearing, shall be given with the notice of hearing.
- 2) The individual requesting the hearing shall provide a written list of the names and addresses of the individuals expected to offer testimony or evidence on his behalf within ten days after receiving notice of the hearing.

- 3) The witness list of either party may, in the discretion of the presiding officer, be supplemented or amended at any time during the course of the hearing; provided that notice of the change is given to the other party.

Section 2.6: Hearing Panel

- 1) When a hearing is requested, the Chief Executive Officer, acting for the Governing Body and after considering the recommendations of the President of the Medical Staff (and that of the Chairperson of the Governing Body, if the hearing is occasioned by a Governing Body determination) shall appoint a Hearing Panel which shall be composed of not less than three members who are mutually agreed upon by the majority of the active medical staff members.
- 2) The majority of the Panel shall be composed of medical staff members who shall not have actively participated in the consideration of the matter involved at any previous level or of physicians or of laypersons not connected with the hospital or a combination of such persons.
- 3) Such appointment shall include designation of the chairperson. Knowledge of the matter involved shall not preclude any individual from serving as a member of the Hearing Panel.

Section 2.7: Failure to Appear

Failure without good cause of the individual requesting the hearing to appear and proceed at such a hearing shall be deemed to constitute voluntary acceptance of the recommendations or actions pending, which shall then become final and effective immediately.

Section 2.8: Postponements and Extensions

Postponements and extensions of time beyond any time limit set forth in this Plan may be requested by anyone but shall be permitted only by the Hearing Panel or its chairperson on a demonstration of good cause.

Section 2.9: Deliberations and Recommendation of the Hearing Panel

Within 20 days after final adjournment of the hearing, the Hearing Panel shall conduct its deliberations outside the presence of any other person (except the Presiding Officer if one is appointed) and shall render a recommendation, accompanied by a report, which shall contain a concise statement of the reasons justifying the recommendation made and shall deliver such report to the Chief Executive Officer.

Section 2.10: Disposition of Hearing Panel Report

- 1) Upon its receipt, the Chief Executive Officer shall forward the Hearing Panel's report and recommendation, along with all supporting documentation, to the Governing Body for further action.
- 2) The CEO shall also send a copy of the report and recommendation, return receipt requested, to the individual who requested the hearing.
- 3) If the hearing has been conducted by reason of an adverse recommendation by the Executive Committee, a copy of the report of the Hearing Panel shall be delivered by the Chief Executive Officer to the Executive Committee for informational purposes.

Article 3: Hearing Procedure

Section 3.1: Representation

- 1) The individual requesting the hearing shall be entitled to be represented at the hearing by an attorney or other person of his choice to examine witnesses and present his case.
- 2) He shall inform the Chief Executive Officer in writing of the name of that person at least ten days prior to the date of the hearing.
- 3) The Chief Executive Officer shall appoint a person, who may be an attorney, to support the recommendations that give rise to the hearing and to examine and cross-examine witnesses at the hearing.
- 4) The Chief Executive Officer shall inform the individual requesting the hearing of who that person will be at least ten days prior to the hearing.

Section 3.2: Presiding Officer

- 1) The Chief Executive Officer may appoint an attorney as Presiding Officer. Such presiding officer may be legal counsel to the hospital. He must not act as a prosecuting officer, or as an advocate for either side at the hearing. He may participate in the private deliberations of the Hearing Panel and be a legal advisor to it, but shall not be entitled to vote on its recommendations. He or she may thereafter continue to advise the Governing Body on the matter.
- 2) If no Presiding Officer has been appointed, the chairperson of the Hearing Panel shall be the presiding officer, and shall be entitled to one vote. The Presiding Officer shall act to ensure that all participants in the hearing have a reasonable opportunity to be heard and to present all oral and documentary evidence, that decorum is maintained throughout the hearing and that no intimidation is permitted. He shall determine the order of procedure throughout the hearing, and shall have the authority and discretion, in accordance with this Plan, to make rulings on all questions which pertain to matters of procedure and to the admissibility of evidence, upon which he or she may be advised by legal counsel to the hospital.
- 3) In all instances he shall act in such a way that all information relevant to the continued appointment or clinical privileges of the person requesting the hearing is considered by the Hearing Panel in formulating its recommendations. It is understood that the Presiding Officer is acting at all times to see that all relevant information is made available to the Hearing Panel for its deliberations and recommendations to the Governing Body.

Section 3.3: Record of Hearings

The Hearing Panel shall maintain a record of the hearing by a reporter present to make a record of the hearing or a recording of the proceedings. The cost of such reporter shall be borne by the hospital, but copies of the transcript shall be provided to the individual requesting the hearing at that individual's expense. The Hearing Panel may, but shall not be required to, order that oral evidence shall be taken only on oath or affirmation administered by any person designated by such body and entitled to notarize documents in this state.

Section 3.4: Rights of Both Sides

If the person requesting the hearing does not testify in his own behalf, he may be called and examined as if under cross-examination. At a hearing, both sides shall have the right to:

- a. call and examine witnesses to the extent available;
- b. introduce exhibits; and
- c. cross-examine any witness on any matter relevant to the issues and to rebut any evidence.

Section 3.5: Admissibility of Evidence

- 1) The hearing shall not be conducted according to rules of law relating to the examination of witnesses or presentation of evidence. Any relevant evidence shall be admitted by the Presiding Officer 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.
- 2) Each party shall have the right to submit a memorandum of points and authorities, and the Hearing Panel may request such a memorandum to be filed, following the close of the hearing.
- 3) The Hearing Panel may question the witnesses, call additional witnesses or request documentary evidence if it deems it appropriate.

Section 3.6: Official Notice

- 1) The Presiding Officer shall have the discretion to take official notice of any matters, either technical or scientific, relating to the issues under consideration that could have been judicially noticed by the courts of this state.
- 2) Participants in the hearing shall be informed of the matters to be officially noticed and such matters shall be noted in the record of the hearing. Either party shall have the opportunity to request that a matter be officially noticed or to refute the notice matter by evidence or by written or oral presentation of authority.
- 3) Reasonable additional time shall be granted, if requested, to present written rebuttal of any evidence admitted on official notice.

Section 3.7: Basis of Decision

The decision of the Hearing Panel shall be based on the evidence produced at the hearing and shall include findings concerning the nature of each basis for any adverse decision recommended to or accepted by the governing board. This evidence may consist of the following:

- a. oral testimony of witnesses;
- b. memorandum of points and authorities presented in connection with the hearings;
- c. any information regarding the person who requested the hearing (so long as that information has been admitted into evidence at the hearing and the person who requested the hearing had the opportunity to comment on and, by other evidence, refute it);
- d. any and all applications, references, and accompanying documents; and
- e. all officially noticed matters:

- f. any other evidence that has been admitted.

Section 3.8: Burden of Proof

At any hearing conducted under this Article, the following rules governing the burden of proof shall apply:

- 1) The Governing Body or the Executive Committee, depending on whose recommendation prompted the hearing initially, shall first come forward with evidence in support of its recommendation. Thereafter, the burden shall shift to the person who requested the hearing to come forward with evidence in his support.
- 2) After all the evidence has been submitted by both sides, the Hearing Panel shall recommend in favor of the Executive committee or the Governing Body unless it finds that the individual who requested the hearing has proved that the recommendation that prompted the hearing was unreasonable, not sustained by the evidence, or otherwise unfounded.

Section 3.9: Adjournment and Conclusion

The presiding officer may adjourn the hearing and reconvene the same at the convenience of the participants without special notice. Upon conclusion of the presentation of oral and written evidence, the hearing shall be closed.

Article 4: Appeal

Section 4.1: Time for Appeal

- 1) Within ten days after the affected individual is notified of an adverse recommendation from the Hearing Panel, or Governing Body committee modifying a recommendation of a Hearing Panel which was not appealed in a manner adverse to the individual, he or she may request an appellate review.
- 2) The request shall be in writing, and shall be delivered to the Chief Executive Officer either in person or by certified mail, and shall include a brief statement of the reasons for appeal.
- 3) If such appellate review is not requested within ten days as provided herein, the affected individual shall be deemed to have accepted the recommendation involved and it shall thereupon become final and immediately effective.

Section 4.2: Grounds for Appeal

The grounds for appeal from an adverse recommendation shall be that:

- 1) there was substantial failure on the part of the Executive Committee, Hearing Panel or Governing Body committee, whichever's recommendation is the subject of the appellate review, to comply with this Plan and/or the hospital or medical staff bylaws in the conduct of hearings and recommendations based upon hearings so as to deny due process or a fair hearing; or
- 2) the above recommendations were made arbitrarily, capriciously or with prejudice; or
- 3) the above recommendations were not supported by the evidence.

Section 4.3: Time, Place and Notice

- 1) Whenever an appeal is requested as set forth in the preceding sections, the Chairperson of the Governing Body shall, within ten days after receipt of such request, schedule and arrange for an appellate review.
- 2) The Governing Body shall cause the affected individual to be given notice of the time, place and date of the appellate review. The date of appellate review shall be not less than 20 days, nor more than 40 days, from the date of receipt of the request for appellate review; provided, however, that when a request for appellate review is from an appointee who is under a suspension then in effect, the appellate review shall be held as soon as the arrangements may reasonably be made and not more than 14 days from the date of receipt of the request for appellate review. The time for appellate review may be extended by the Chairperson of the Governing Body for good cause with the consent of the affected individual.

Section 4.4: Nature of Appellate Review

- 1) The Chairperson of the Governing Body shall appoint a Review Panel composed of not less than three persons, either members of the Governing Body or others, including but not limited to reputable persons outside the hospital, or any combination of the same, to consider the record upon which the recommendation was made.
- 2) The Review Panel may accept additional oral or written evidence subject to the same rights of cross-examination or confrontation provided at the Hearing Panel proceedings. Such additional evidence shall be accepted only if the party seeking to admit it can demonstrate that he or she was deprived of the opportunity to admit it at the hearing and then only at the discretion of the Review Panel.
- 3) Each party shall have the right to present a written statement in support of its position on appeal, and in its sole discretion, the Review Panel may allow each party or its representative to appear personally and make oral argument. The Review Panel shall recommend final action to the Governing Body within 30 days.
- 4) The Governing Body may affirm, modify or reverse the recommendation of the Review Panel or, in its discretion, refer the matter for further review and recommendation. The Governing Body then has 30 days to make a decision.

Section 4.5: Final Decision of the Governing Body

Within 30 days after receipt of the Review Panel's recommendation, the Governing Body shall render a final decision in writing and shall deliver copies thereof to the affected individual, the CEO, and the President of the Medical Staff in person or by certified mail.

Section 4.6: Further Review

- 1) Except where the matter is referred for further action and recommendation in accordance with Section 4.4, the final decision of the Governing Body following the appeal shall be effective immediately and shall not be subject to further review. However, if the matter is referred for further action and recommendation, such recommendations shall be promptly made to the Governing Body in accordance with the instructions given by the Governing Body.

- 2) This further review process and the report back to the Governing Body shall in no event exceed 30 days in duration except as the parties may otherwise stipulate. Should a further decision then be required, the Governing Body will then have 60 days to review the matter and give its decision unless otherwise agreed to by the parties.

Section 4.7: Right to One Appeal Only

- 1) No applicant, medical staff appointee, or APP shall be entitled as a matter of right to more than one appellate review on any single matter which may be the subject of an appeal, without regard to whether such subject is the result of action by the Executive Committee or Hearing Panel, or a combination of acts of such bodies.
- 2) In the event that the Governing Body ultimately determines to deny initial appointment or reappointment to the medical staff to an applicant or revoke or terminate the medical staff appointment of a current member of the medical staff, that individual may not again apply for medical staff appointment at this hospital unless the Governing Body provides otherwise.