

# Medical Staff Fair Hearing Policy

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LEGACY EMANUEL MEDICAL CENTER

A Medical Staff Document

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# ARTICLE 1 HEARINGS

## 1.1 GENERAL PROVISIONS

- 1.1.1 Definitions. The definitions set forth in the Medical Staff Bylaws shall apply to this Medical Staff Fair Hearing Policy unless otherwise provided herein.

**Adverse** means a recommendation or action of the Medical Executive Committee or Board that denies, limits (*e.g.*, suspension, restriction, *etc.*) for a period in excess of fourteen (14) days, or terminates a Practitioner's Medical Staff appointment and/or Privileges on the basis of clinical competency or professional conduct.

**Special Notice** means written notice (a) sent by certified mail, return receipt requested; or (b) by personal delivery service with signed acknowledgment of receipt.

- 1.1.2 Whenever an individual is authorized in the Medical Staff governing documents to perform a duty by virtue of their position, then reference to the individual shall also include the individual's authorized designee.

## 1.2 APPLICATION OF POLICY

- 1.2.1 The purpose of this Policy is to provide a mechanism for resolution of matters Adverse to Medical Staff Members who have been granted Medical Staff appointment and/or Privileges at the Hospital, or Practitioner applicants who have requested Medical Staff appointment and/or Privileges at the Hospital.

- 1.2.2 This Policy is not applicable to those Allied Health Professionals who are not eligible for appointment to the Medical Staff. Procedural due process rights for Allied Health Professionals who are eligible to be granted Privileges at the Hospital but who are not eligible for Medical Staff appointment are set forth in the Allied Health Professional Policy, as such policy may be amended from time to time.

## 1.3 EFFECT OF ADVERSE RECOMMENDATION OR ACTION

- 1.3.1 By the MEC. Unless otherwise provided in the Medical Staff Bylaws or Policies, when a Practitioner receives Special Notice of an Adverse recommendation of the MEC the Practitioner shall be entitled to a hearing and appellate review, if applicable, in accordance with the procedures set forth in this Policy.

- 1.3.2 By the Board. Unless otherwise provided in the Medical Staff Bylaws or Policies, when a Practitioner receives Special Notice of an Adverse recommendation or action of the Board, and such decision is not based upon a prior Adverse recommendation of the MEC with respect to which the Practitioner was entitled to a hearing, the Practitioner shall be entitled to a hearing and appellate review, if applicable, in accordance with the procedures set forth in this Policy.

## 1.4 RIGHT TO A HEARING

- 1.4.1 Adverse Recommendation or Action. Unless otherwise provided in the Medical Staff Bylaws or Policies, the following recommendations or actions, if deemed Adverse (as such term is defined in the Medical Staff Bylaws), shall entitle the Practitioner affected thereby to a hearing:

- (a) Denial of initial Medical Staff appointment, reappointment, and/or Clinical Privileges.
- (b) Suspension, restriction, or reduction of a Practitioner's Medical Staff appointment and/or Privileges in excess of fourteen (14) days as part of a formal corrective action process.
- (c) Imposition of a focused professional practice evaluation resulting in a limitation on previously exercised Privileges in excess of fourteen (14) days as part of a formal corrective action process.
- (d) Termination of Medical Staff appointment and/or Privileges as part of a formal corrective action process.
- (e) Other recommendations or actions as so designated by the MEC or the Board.

1.4.2 Right to Hearing; When Deemed Adverse

- (a) A recommendation or action listed in Section 1.4.1 shall be deemed Adverse, as such term is defined in the Medical Staff Bylaws, only when it has been:
  - (i) Recommended by the MEC; or,
  - (ii) Taken by the Board under circumstances where no prior right to request a hearing existed.
- (b) Recommendations or actions pertaining to a Practitioner's Medical Staff appointment and/or Clinical Privileges that are based on any matter which does not relate to the clinical competence or professional conduct of a Practitioner shall not give rise to hearing or appellate review rights unless otherwise specified in the Medical Staff Bylaws or Policies.

**1.5 ACTIONS THAT DO NOT GIVE RIGHT TO A HEARING**

- 1.5.1 The following actions are not deemed to be Adverse and shall not constitute grounds for, or entitle the Practitioner to request, a hearing:
- (a) An oral or written warning or reprimand.
  - (b) Imposition of focused or ongoing professional practice evaluation as part of the routine peer review process.
  - (c) The denial, termination, modification or suspension of temporary, emergency, disaster, or telemedicine Privileges.
  - (d) Automatic suspension or automatic termination of Medical Staff appointment and/or Privileges pursuant to the grounds set forth in the Medical Staff Bylaws.
  - (e) Any action recommended/taken by the MEC or the Board against a Practitioner where the action was recommended/taken solely for administrative or technical failings of the Practitioner (*e.g.*, determination of ineligibility for Medical Staff appointment and/or Privileges based on a failure to meet baseline qualifications; failure to provide requested information, *etc.*).

- (f) Ineligibility for Medical Staff appointment, reappointment, and/or the Privileges requested, because a Medical Staff Department has been closed or the Hospital is presently a party to an exclusive contract for such services.
- (g) Ineligibility for Medical Staff appointment and/or requested Privileges because of the Hospital's lack of facilities, equipment, or support services; because the Hospital has elected not to perform or does not provide the service or the procedure for which Privileges are sought; or, inconsistency with the Hospital's strategic plan.
- (h) Termination of the Practitioner's employment or other contract for services unless the employment/services contract or the Medical Staff Bylaws provide(s) otherwise.
- (i) Resignation of Medical Staff appointment and/or Privileges when such resignation is not in return for the Medical Staff or Board refraining from conducting an investigation based upon the Practitioner's professional conduct or clinical competence.
- (j) Any other recommendation or action made/taken by the MEC or Board that does not relate to the clinical competence or professional conduct of a Practitioner unless the Medical Staff Bylaws or Policies specifically state such action to be Adverse.

## **1.6 NOTICE OF ADVERSE RECOMMENDATION OR ADVERSE ACTION**

1.6.1. In all cases in which an Adverse recommendation or action has been initiated that gives rise to the right to a hearing pursuant to the Medical Staff Bylaws and this Policy, the Medical Staff President (or Hospital President if the Adverse action was initiated by the Board) shall promptly notify the Practitioner of the Adverse recommendation or action and of the Practitioner's right to request a hearing. Such notice shall be in writing and shall be delivered by Special Notice. Such notice shall set forth the following:

- (a) A description of the Adverse recommendation or action.
- (b) The reasons for the Adverse recommendation or action including a concise statement of the basis for the recommended denial of Medical Staff appointment and/or Privileges; or, in the case of a formal corrective action, the Practitioner's acts or omissions (including a list of specific or representative patient medical records, where applicable) or other information forming the basis for the Adverse recommendation or action.
- (c) A statement that the Practitioner has a period of thirty (30) days after the date of receipt of the *Notice of Adverse Recommendation or Action* within which to request a hearing and the manner in which to do so.
- (d) A summary of the Practitioner's hearing rights as hereinafter set forth.
- (e) A statement that if the Practitioner fails to request a hearing in the manner and within the time period prescribed, such failure shall constitute a waiver of their right to a hearing and to an appellate review on the issue that is the subject of the *Notice of Adverse Recommendation or Action*.

## **1.7 REQUEST FOR HEARING; WAIVER**

1.7.1 A Practitioner's request for a hearing shall be made in writing, by Special Notice, to the Medical Staff President (or Hospital President if the Adverse action was initiated by the Board), and must

be received within thirty (30) days following the Practitioner's receipt of the *Notice of Adverse Recommendation or Action*.

- 1.7.2 If the Practitioner does not request a hearing within the time period and in the manner described, such action shall constitute a waiver of any right to a hearing or appellate review to which they might otherwise have been entitled. The Adverse recommendation or action shall thereafter be presented to the Board for final decision. The Practitioner shall be informed of the Board's final decision by Special Notice.

## **1.8 NOTICE OF DATE, TIME, AND PLACE FOR HEARING**

- 1.8.1 Upon receipt of a timely and proper request for a hearing from the affected Practitioner, the Medical Staff President (or Hospital President if the Adverse action was initiated by the Board) shall promptly schedule and arrange for a hearing. Not less than thirty (30) days prior to the hearing, the Medical Staff President (or Hospital President, as appropriate) shall give written notice to the affected Practitioner of the:

- (a) Date, time, and place of the hearing.
- (b) A list of witnesses, if any, expected to testify at the hearing in support of the Adverse recommendation or action on behalf of the MEC or Board, as applicable.
- (c) A time frame within which the Practitioner must provide the MEC or Board, as applicable, with their list of witnesses.
- (d) A schedule for exchange of documents upon which each party expects to rely at the hearing.

- 1.8.2 The *Notice of Hearing* shall be delivered to the Practitioner in writing by Special Notice. The hearing shall not be held sooner than thirty (30) days after the date of the *Notice of Hearing*, unless an earlier hearing date has been specifically agreed to in writing by the parties. When the request is received from a Medical Staff Member who is under summary suspension, every effort shall be made to hold the hearing as soon as possible provided the Medical Staff Member agrees to waive the time requirements set forth in this Section.

- 1.8.3 Each party remains under a continuing obligation to provide to the other party the names of any witnesses or any documents identified after the initial exchange which such party intends to introduce at the hearing. The introduction of any documents not provided prior to the hearing, or the admissibility of testimony to be presented by a witness not so listed, shall be at the discretion of the presiding officer.

## **1.9 HEARING OFFICER OR HEARING PANEL; PRESIDING OFFICER**

- 1.9.1 The hearing shall be conducted by either a hearing officer or a hearing panel as determined by whichever body (*i.e.*, the MEC or the Board) made the Adverse recommendation or took the Adverse action that is the basis for the hearing.

- (a) Appointment of a Hearing Officer. A hearing officer may be a Practitioner, an attorney, or other individual qualified to conduct the hearing as determined by the MEC or Board, as applicable. The hearing officer is not required to be a Medical Staff Member. A hearing officer shall also act as the presiding officer pursuant to Section 1.9-4.

- (b) Appointment of a Hearing Panel. A hearing panel shall consist of not less than three (3) persons chosen by the MEC or the Board, as applicable.
- (i) The hearing panel members may either be Practitioners, individuals from outside of the Hospital, or a combination thereof, as determined by the MEC or the Board, as appropriate.
  - (ii) At least two (2) members of the hearing panel should be practitioners who are members of a Legacy medical staff or allied health professionals who practice at a Legacy hospital.
  - (iii) The chair of the hearing panel shall preside over the proceeding. The appointing body shall designate one (1) member of the hearing panel as the panel chair. If the MEC or Board, as applicable, elects not to designate the panel's chair, one (1) of the panel members shall be appointed as chair pursuant to a majority vote of the panel members. The presiding officer, if a member of the hearing panel, may participate in the panel's deliberations and shall be entitled to vote. In the alternative, the MEC or Board, as applicable, may appoint an active or retired attorney in addition to the hearing panel to act as presiding officer; provided, however, that such individual shall not be entitled to vote on the hearing panel's recommendation

#### 1.9.2 Disqualification

- (a) Any person shall be disqualified from serving as a hearing officer, on a hearing panel, or as a presiding officer if the individual directly participated in initiating the Adverse recommendation or action or in investigating the underlying matter at issue; if the individual has taken an active part in the matter contested; if the individual is professionally associated with or related to the Practitioner requesting the hearing; or, if the individual is a direct economic competitor or otherwise has a conflict of interest with the involved Practitioner.
- (b) In the event that an attorney serves as the hearing officer, on the hearing panel, or as a presiding officer, they must not represent clients in direct economic competition with the Practitioner who is the subject of the hearing.

1.9.3 Objections. A Practitioner shall have ten (10) days following notice of the appointment of a hearing officer or hearing panel to advise the Medical Staff President (or Hospital President if the Adverse action was initiated by the Board), in writing, of any objections that the Practitioner has with respect to any such appointment(s). The Medical Staff President (or Hospital President, as appropriate) shall advise the appointing body of the objections. The appointing body, in its sole discretion, shall decide whether a substitution should be made. Failure of a Practitioner to make such objection shall be deemed a waiver of any objection to the appointment(s).

1.9.4 Presiding Officer. The hearing officer, the hearing panel chair, or other designated individual, as applicable, shall serve as the presiding officer. The presiding officer shall act to maintain decorum and to assure that all participants in the hearing process have a reasonable opportunity to present relevant oral and documentary evidence. The presiding officer shall make all rulings on matters of law, procedure, and the admissibility of evidence. If the presiding officer determines that either side is not proceeding in an efficient and expeditious manner, the presiding officer may take such action as is warranted by the circumstances.

## 1.10 HEARING PROCEDURE

- 1.10.1 Failure to Appear or Proceed. 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 the hearing shall be deemed to have waived his or her rights to such hearing and to any appellate review to which they might otherwise have been entitled.
- 1.10.2 Postponements and Extensions. Prior to the beginning of the hearing, the Medical Staff President (or Hospital President, as appropriate), in discussion with the hearing officer or hearing panel, shall determine whether a request for postponement of a hearing should be granted. The presumption shall be that the hearing will go forward on its scheduled date in the absence of a showing of good cause. Once the hearing has begun, the hearing officer or hearing panel shall be responsible for determining whether any continuances should be granted based upon the same standard.
- 1.10.3 Representation
- (a) The Practitioner may be represented by legal counsel or another person of the Practitioner's choosing provided that such other person agrees to maintain the confidentiality of the peer review proceedings.
  - (b) The MEC or Board, depending upon whose Adverse recommendation or action prompted the hearing, may appoint an attorney or one of its members to represent the MEC or Board at the hearing, to present the facts in support of its Adverse recommendation or action, and to examine witnesses. If an attorney is chosen to represent the MEC or Board, then either of those bodies, as applicable, may also appoint one of its members to present the facts in support of its Adverse recommendation or action.
  - (c) If either party will be accompanied by legal counsel, notice must be given to the other party at such time as counsel is obtained.
- 1.10.4 No Right to Discovery. There is no right to discovery in connection with the hearing; provided, however, that the Practitioner requesting the hearing shall be entitled to all documentation relied upon by the MEC or the Board in making the Adverse recommendation or taking the Adverse action subject to written attestation by the Practitioner and their legal counsel stating that all documents shall be maintained as confidential and shall not be disclosed or used for any purpose outside of the hearing.
- 1.10.5 Prehearing Procedure. The affected Practitioner and the body whose Adverse recommendation or action prompted the hearing should notify the presiding officer of any pending or anticipated procedural disputes as far in advance of the scheduled hearing as necessary to permit advance decisions concerning such matters. Objection to any pre-hearing decisions or procedures may be put on the record at the time of the hearing.
- 1.10.6 Record of the Hearing. A record of the hearing shall be kept of sufficient accuracy that an informed and valid judgment can be made by any group that may later be called upon to review the record and render a recommendation or decision in the matter. The hearing officer or panel shall arrange for a court reporter to transcribe the hearing. Upon request, the Practitioner shall be entitled to obtain a copy of the record at their own expense.
- 1.10.7 Rights of the Parties. At the hearing, the parties shall have the following hearing rights:
- (a) To be represented by an attorney or other person of the party's choice.



- (b) To be provided with a list of witnesses and copies of documents that will be relied upon by the other party at the hearing subject to Section 1.8.3.
- (c) To have a record made of the proceedings, copies of which may be obtained by the Practitioner upon payment of any reasonable charges associated with the preparation thereof.
- (d) To call, examine, and cross-examine witnesses.
- (e) To introduce relevant exhibits and documents.
- (f) To present and/or rebut any evidence determined relevant by the hearing officer or hearing panel regardless of the admissibility of the evidence in a court of law.
- (g) To impeach (challenge the credibility of) witnesses.
- (h) To submit a written statement at the close of the hearing.
- (i) Upon completion of the hearing, to receive a copy of the written recommendation of the hearing officer or hearing panel (including a statement of the basis for the hearing officer's or hearing panel's recommendation(s)) and to receive a copy of the written decision of the Board (including a statement of the basis for the Board's decision).

1.10.8 Practitioner Testimony. If the Practitioner who requested the hearing does not testify on their own behalf, they may be called to testify and examined as if under cross-examination.

1.10.9 Hospital Employees. Neither the Practitioner, nor their attorney, nor any other person on behalf of the Practitioner shall contact Hospital employees during an employee's working hours at the Hospital. The Practitioner or their attorney or other agent may contact the Hospital President or legal counsel to the MEC or Board, as applicable (if representation has been obtained) to request assistance in talking with Hospital employees. At their request, a Hospital employee may be accompanied by legal counsel (who may be the counsel who represents the MEC or Board, as applicable) when meeting with the Practitioner or their attorney or other agent. Although Hospital employees will be encouraged to participate in the hearing process, all such participation shall be voluntary, and the Hospital shall not have the authority to demand participation unless such participation is part of the employee's job description.

1.10.10 Observers. The hearing shall be restricted to those individuals involved in the proceeding. Appropriate administrative personnel may be present as requested by the Hospital President and the Medical Staff President and approved by the hearing officer or panel. All aspects of the proceedings shall be considered privileged, confidential, and protected by applicable laws, rules, and regulations, and shall not be open to the public.

1.10.11 Burden of Proof

- (a) At the hearing, the MEC or the Board, as applicable, and the Practitioner may make opening statements.
- (b) Following the opening statements, the body whose Adverse recommendation or action gave rise to the hearing shall have the initial obligation to present evidence, establishing the basis for its Adverse recommendation or action. The MEC or Board, as applicable, shall also have the right to rebuttal following the presentation of the Practitioner's case.

- (c) The Practitioner shall have the burden of proving, by clear and convincing evidence, that the Adverse recommendation or action lacks any factual basis or that such basis, or the conclusions drawn therefrom, are arbitrary, capricious, or not supported by substantial credible evidence.
- (d) The parties may make closing statements following the introduction of all of the evidence and submit post-hearing written statements.

#### 1.10.12 Evidentiary Matters

- (a) Judicial rules of evidence and procedure relating to the examination of witnesses and presentation of evidence need not be strictly enforced, except that oral evidence shall be taken only on oath or affirmation administered by any person designated by the presiding officer and entitled to notarize documents in Oregon. The hearing officer or hearing panel may consider any relevant matter upon which responsible persons customarily rely in the conduct of serious affairs regardless of whether such evidence would be admissible in a court of law. The parties may, at the discretion of the presiding officer, submit memoranda concerning any issue of procedure or fact and such memoranda shall become a part of the hearing record.
- (b) In reaching a decision, the hearing officer or panel may take official note at any time for evidentiary purposes of any generally accepted technical or scientific principles relating to the matter at hand and of any facts that may be judicially noticed by Oregon courts. The parties to the hearing shall be informed of the principles or facts to be noticed and the same shall be noted in the hearing record. Either party shall be given the opportunity to request that a principle or fact be officially noticed or to refute any officially noticed principle or fact by evidence or by written or oral presentation of authority in such manner as determined by the hearing officer or panel.
- (c) The hearing officer or hearing panel may ask questions of the parties and their witnesses.

#### 1.10.13 Recesses and Adjournment

- (a) The hearing officer or panel may recess the hearing and reconvene it without additional notice for the convenience of the participants, to obtain new or additional evidence, or if consultation is required for resolution of the matter.
- (b) When presentation of oral and written evidence is complete, the hearing shall be closed.
- (c) The hearing shall be adjourned upon receipt of the transcript of the proceedings and any closing written statements, whichever occurs later.
- (d) The hearing officer or panel shall thereafter deliberate outside the presence of the parties at such time and in such location as is convenient.

### **1.11 REPORT & RECOMMENDATION OF HEARING OFFICER OR PANEL**

- 1.11.1 Within thirty (30) days after adjournment of the hearing, the hearing officer or panel shall report, in writing, its findings and recommendation (including a statement of the basis for such recommendation with specific references to the hearing record) and shall forward the report, along with the hearing record and documentation introduced at the hearing and considered by the hearing officer or panel, to the body whose Adverse recommendation or action gave rise to the hearing.

1.11.2 The hearing recommendation shall be based exclusively upon the written and oral evidence presented at the hearing, and any memoranda submitted by the parties.

## **1.12 ACTION UPON RECEIPT OF HEARING OFFICER OR PANEL REPORT & RECOMMENDATION**

1.12.1 Review of Report & Recommendation. Within fourteen (14) days after receipt of the report and recommendation from the hearing officer or panel, the body whose Adverse recommendation or action gave rise to the hearing shall consider the same and affirm, modify, or reverse its original Adverse recommendation or action in the matter.

(a) Favorable Recommendation/Action

(i) When the MEC's recommendation is favorable to the Practitioner, the Board may adopt or reject any portion of the MEC's recommendation that was favorable to the Practitioner or refer the matter back to the MEC for additional consideration. Any such referral shall state the reason(s) for the requested reconsideration, set a time limit within which a subsequent recommendation must be made to the Board, 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 action.

(ii) A favorable determination by the Board (whether as the initiating body or in affirmance of a favorable recommendation by the MEC) shall be effective as the Board's final decision and the matter shall be considered closed.

(b) Adverse Recommendation/Action. If the recommendation of the MEC or action of the Board continues to be Adverse to the affected Practitioner after exhaustion of their hearing rights, the Practitioner shall be entitled, upon timely and proper request, to an appellate review before a final decision is rendered on the matter by the Board.

1.12.2 Notice of Result. Such recommendation or action of the MEC/Board shall be transmitted, together with the hearing record, the report of the hearing officer or panel, and all other documentation introduced at the hearing and considered by the hearing officer or panel, to the Hospital President. The Hospital President shall promptly send a copy of the hearing officer's or panel's report, together with a copy of the subsequent determination of the body whose Adverse recommendation or action initially gave rise the hearing, to the affected Practitioner by Special Notice. In the event of an Adverse result, the notice shall inform the Practitioner of their right to request an appellate review by the Board before a final decision regarding the matter is rendered.

**ARTICLE 2**  
**APPEAL TO BOARD OF DIRECTORS**

**2.1 APPEAL PROCESS**

2.1.1 Time for Appeal. The Practitioner shall have fourteen (14) days after receiving notice of their right to request an appellate review to submit a request for such review. Such request shall be made in writing, by Special Notice, to the Hospital President.

- (a) If the Practitioner wishes an attorney to represent themselves at any appellate review appearance permitted, their request for appellate review shall so state.
- (b) The request shall also state whether the Practitioner wishes to present oral arguments (themselves or through the Practitioner's attorney) to the appellate review body.
- (c) If the Practitioner does not request an appeal within the time and in the manner described, such failure shall constitute a waiver of their rights to an appeal. The Adverse recommendation or action shall thereafter be presented to the Board for final decision. The Practitioner shall be informed of the Board's final decision by Special Notice.

2.1.2 Time, Place and Notice. If appellate review is timely and properly requested, the Hospital President shall deliver such request to the Board. As soon as practicable, the Board chair shall schedule and arrange for the appellate review.

- (a) At least ten (10) days prior to the date of the appellate review the Hospital President shall advise the Practitioner, by Special Notice, of the date, time, and place of the review, and whether oral arguments will be permitted.
- (b) The date of the appellate review shall not be less than ten (10) days, nor more than thirty (30) days, from the date of the *Notice of Appellate Review*, except that when the Practitioner requesting the review is under a suspension which is then in effect, such review shall be scheduled as soon as arrangements for it may reasonably be made provided that the Practitioner agrees to waive the time requirements set forth in this section.
- (c) The appellate review body may extend the time for the appellate review for good cause if such request is made as soon as is reasonably practicable.

2.1.3 Appellate Review Body. The Board chair shall decide whether to have the entire Board hear the appeal or to appoint an appellate review panel comprised of not less than three (3) Board members ("Appeal Panel"). To the extent possible, the Appeal Panel shall include a Practitioner who is a Board member.

2.1.4 Presiding Officer. The Board chair shall determine whether the presiding officer shall be a member of the Appeal Panel or an attorney. The presiding officer shall preside over the appellate review and have the same role as provided in §1.9.4 above.

2.1.5 Appeal Procedure

- (a) The proceedings by the Board or Appeal Panel shall be in the nature of an appellate review based upon the record of the hearing before the hearing officer or hearing panel,

the hearing officer's or hearing panel's report, and all subsequent results and actions thereof for the purpose of determining whether the Practitioner was denied a fair hearing and/or whether the Adverse recommendation or action against the affected Practitioner was justified, as supported by substantial, credible evidence presented at the hearing, and not arbitrary or capricious.

- (b) The appellate review body shall also consider any written statements submitted pursuant to §2.1.7.
- (c) The affected Practitioner shall have access to the report and recommendation of the hearing officer or hearing panel and the MEC and/or the Board, as applicable, and all material, favorable or unfavorable, that was introduced at the hearing and considered in making the Adverse recommendation or taking the Adverse action against the Practitioner.

#### 2.1.6 Consideration of New/Additional Evidence

- (a) If a party wishes to introduce new/additional evidence not raised or presented during the original hearing and not otherwise reflected in the record, the party must make such request in writing at the time they submit a request for appellate review pursuant to §2.1.1.
- (b) The party may introduce such evidence at the appellate review only if expressly permitted by the Board or Appeal Panel, in its sole discretion, and only upon a clear showing by the party requesting consideration of the evidence that it is new, relevant evidence not previously available at the time of the hearing; or, that a request to admit relevant evidence was previously erroneously denied.
- (c) In the exceptional circumstance where the Board or Appeal Panel determines to hear such evidence, the Board or Appeal Panel shall further have the ability to recess appellate review and remand the matter back to the hearing officer or hearing panel.
- (d) In such event, the hearing shall be reopened as to this evidence only and the evidence shall be subject to submission and cross-examination and/or counter-evidence.
- (e) The hearing officer or hearing panel shall prepare a supplemental report and submit it to the body whose Adverse recommendation or action initially gave rise to the hearing. The initiating body will then notify the Board or Appeal Panel, in writing, through the Hospital President as to whether the initiating body will or will not be amending its Adverse recommendation or action and, as applicable, the nature of the amendment or reason for non-amendment.
- (f) The Hospital President shall then provide a copy of the hearing officer's or hearing panel's supplemental report and the initiating body's recommendation/action to the Practitioner and the appellate review process shall recommence.

2.1.7 Written Statements. The Board or Appeal Panel shall set a date by which written statements must be submitted to it (through the Hospital President) and to the opposing party. The Practitioner's statement should describe the facts, conclusions, and procedural matters with which they disagree, and the reasons for such disagreement. The statement of the body whose Adverse recommendation or action occasioned the review should discuss the basis upon which it believes its recommendation/action should be upheld.

- 2.1.8 Oral Arguments. The decision to permit oral arguments shall be in the sole discretion of the Board or Appeal Panel. The Board or Appeal Panel shall further decide what time limits, if any, should be placed upon the arguments and whether the arguments will be presented separately or with representatives of both parties in the room. Parties or their representatives appearing before the Appeal Panel or Board must be willing to answer questions posed to them by the Board or Appeal Panel.
- 2.1.9 Presence of Members and Vote. All of the Board or Appeal Panel shall be present at all times during the review and deliberations. If a Board member or an Appeal Panel member is absent from any part of the review or deliberations, the presiding officer, in their discretion, may rule that such member be excluded from further participation in the review or deliberations or in the recommendation of the Board or Appeal Panel.
- 2.1.10 Recesses and Adjournments
- (a) The Board or Appeal Panel may recess the review proceeding and reconvene the same without additional notice if it deems such recess necessary for the convenience of the participants, to obtain new or additional evidence, or if consultation is required for resolution of the matter.
  - (b) Upon conclusion of oral statements, if allowed, the appellate review shall be closed. The Board or Appeal Panel shall then deliberate outside the presence of the parties at such time and in such location as is convenient to the Board or Appeal Panel.
  - (c) The appellate review shall be adjourned at the conclusion of the Board or Appeal Panel's deliberations.
- 2.1.11 Recommendation by Appeal Panel. If the appellate review was conducted by an Appeal Panel, within fifteen (15) days after adjournment of the appellate review, the Appeal Panel shall issue a written report recommending that the Board affirm, modify, or reverse its prior Adverse action, accept or reject the Adverse recommendation of the MEC, or refer the matter back to the MEC for further review and recommendation. Such referral back to the MEC may include a request that the MEC arrange for a further hearing to resolve disputed issues and a specified time period in which to do so and report back to the Board.

## **2.2 FINAL DECISION OF THE BOARD**

- 2.2.1 Within thirty (30) days after receipt of the Appeal Panel's recommendation, or adjournment of the appellate review if heard by the Board as a whole, the Board shall consider the recommendation of the Appeal Panel, if one was utilized, and make a determination to affirm, modify or reverse the Board's prior Adverse action; accept or reject the Adverse recommendation of the MEC; or refer the matter back to the MEC for further review and recommendation. Such referral back to the MEC may include a request that the MEC arrange for a further hearing to resolve disputed issues and a specified time period in which to do so and report back to the Board.
- (a) If the Board's decision is in accordance with the MEC's last recommendation or the Board's last action in the matter, it shall be immediately effective and final and shall not be subject to further hearing or appellate review.
  - (b) If the Board's decision is contrary to the MEC's last recommendation or the Board's last action, the Board shall refer the matter to the Joint Conference Committee prior to issuing notice of its final decision. The Joint Conference Committee shall make its written recommendation to the Board within the time period specified by the Board. The Board

shall then make its final decision. The Board's final decision shall be immediately effective, and the matter shall not be subject to any further referral or review.

- 2.2.2 The Hospital President will promptly send notice of the Board's final decision to the affected Practitioner in writing, by Special Notice, and to the Medical Staff President. The notice to the Practitioner shall include a statement of the basis for the Board's decision.

**ARTICLE 3  
GENERAL PROVISIONS**

**3.1 RIGHT TO HEARING**

No Practitioner shall be entitled to more than one (1) hearing and one (1) appeal on any matter that may be the subject of an appeal. Adverse recommendations or actions on more than one (1) matter may be consolidated and considered together or separately as the Board shall designate in its sole discretion.

**3.2 WAIVER**

If at any time after receipt of notice of an Adverse recommendation or action the affected Practitioner fails to satisfy a request, make a required appearance, or otherwise fails to comply with the Medical Staff governing documents, they shall be deemed to have voluntarily waived all rights to which they might otherwise have been entitled with respect to the matter involved.

**3.3 EXHAUSTION OF REMEDIES**

A Practitioner must exhaust the remedies afforded by the Medical Staff governing documents before resorting to any form of legal action.

**3.4 RELEASE**

By requesting a hearing or appellate review, a Practitioner agrees to be bound by Article 16 of the Bylaws relating to confidentiality, reporting immunity, and release from liability.

**3.5 REPRESENTATION BY COUNSEL**

At such time as the Practitioner, MEC, or Board is represented by legal counsel, then all notices required to be sent herein may be served upon legal counsel, and the requirement that such notices be sent by Special Notice is hereby waived; rather, such notices may thereafter be sent by regular first class U.S. mail, electronically, by facsimile, or such other form as is mutually agreed to by the parties.

**3.6 REPORTING**

The Hospital President shall report any final action taken by the Board pursuant to the Medical Staff governing documents to the appropriate authorities as required by law and in accordance with applicable Hospital procedures regarding the same.

**3.7 ADOPTION AND AMENDMENT OF POLICY**

This Policy may be adopted and amended in accordance with the applicable procedure set forth in the Medical Staff Bylaws.

**CERTIFICATION OF ADOPTION AND APPROVAL**



Adopted by the Medical Executive Committee on March 1, 2021.

Approved by the Board on July 22, 2021.