

UNION HOSPITAL MEDICAL STAFF

# Hearing and Appeals Appendix

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Medical Staff Bylaws

**Union Hospital Medical Staff**

# Appendix

## Hearing and Appeals Process

HA 1.001

### 1. Initiation of Hearing

An applicant or an individual holding a Medical Staff appointment shall be entitled to a hearing whenever a recommendation unfavorable to the individual has been made by the Executive Committee regarding those matters enumerated in Section 2, paragraph B of this Appendix.

If the Board makes any of these recommendations without an adverse recommendation by the Executive Committee, an individual would also be entitled to request a hearing. For ease of use, this Appendix refers to adverse recommendations of the Executive Committee. When a hearing is triggered by an adverse recommendation of the Board, any reference in this Appendix to the "Executive Committee" shall be interpreted as a reference to the "Board."

The purpose of those acting for the hospital corporation, whether Medical Staff or Board, and the duties of the Hearing Panel shall be so defined and so carried out. Accordingly, the hearing shall be conducted in as informal a manner as possible, subject only to the rules and procedures set forth in the bylaws and this Appendix.

### 2. The Hearing

#### A. Notice of Recommendation and Request for Hearing:

(1) When a recommendation is made which, according to the Medical Staff Bylaws entitles an individual to a hearing prior to a final decision of the Board on that recommendation, the affected individual shall promptly be given notice by the Chief Executive Officer, in writing, by certified mail, return receipt requested. This notice shall contain:

(a) a statement of the recommendation made and the general reasons for it;

- (b) a statement that the individual has the right to request a hearing on the recommendation within 30 days of receipt of this notice; and
  - (c) a copy of this Appendix.
- (2) Such individual shall have 30 days following the date of the receipt of such notice within which to request a hearing. The request shall be in writing to the Chief Executive Officer and shall include the name, address, and telephone number of the individual's counsel, if any. In the event the affected individual does not request a hearing within the time frame and in the manner hereinabove set forth, 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 Board action.

B. Grounds for Hearing:

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

- (1) denial of initial Medical Staff appointment;
- (2) denial of Medical Staff reappointment;
- (3) revocation of Medical Staff appointment;
- (4) denial of requested clinical privileges;
- (5) revocation of clinical privileges;
- (6) suspension of clinical privileges for more than 30 days (other than precautionary suspension);
- (7) mandatory concurring consultation requirement (i.e., the consultant must approve the course of treatment in advance); or
- (8) denial of reinstatement from a leave of absence if the reasons relate to professional competence or conduct.

C. Actions Not Grounds for Hearing:

None of the following actions shall constitute grounds for a hearing, and they shall take effect without a hearing or appeal, provided that the individual shall be entitled to submit a written explanation to be placed in his or her file:

- (1) issuance of a letter of guidance, counsel, warning, or reprimand;

- (2) imposition of conditions, monitoring, or a general consultation requirement (i.e., the individual must obtain a consult but need not get prior approval for the treatment);
- (3) termination of temporary privileges;
- (4) automatic or voluntary relinquishment of appointment or privileges;
- (5) imposition of a requirement for additional training or continuing education;
- (6) precautionary suspension;
- (7) denial of a request for leave of absence, for an extension of a leave or for reinstatement from a leave if the reasons do not relate to professional competence or conduct;
- (8) determination that an application is incomplete;
- (9) determination that an application will not be processed due to a misstatement or omission; or
- (10) determination of ineligibility based on a failure to meet threshold eligibility criteria, a lack of need or resources, or because of an exclusive contract.

D. Notice of Hearing and Statement of Reasons:

- (a) The Chief Executive Officer shall schedule the hearing and provide, by special notice, the following:
  - (1) the time, place, and date of the hearing;
  - (2) a proposed list of witnesses who will give testimony at the hearing and a brief summary of the anticipated testimony;
  - (3) the names of the Hearing Panel members and Presiding Officer (or Hearing Officer), if known; and
  - (4) a statement of the specific reasons for the recommendation, including a list of patient records (if applicable), and information supporting the recommendation. This statement may be revised or amended at any time, even during the hearing, so long as the additional material is relevant to the recommendation or the individual's qualifications and the individual has

had a sufficient opportunity, up to 30 days, to review and rebut the additional information.

- (b) The hearing shall begin as soon as practicable, but no sooner than 30 days after the notice of the hearing, unless any earlier hearing date has been specifically agreed to in writing by the parties. The person requesting the hearing may waive in writing his or her right to 30 days' prior notice of the hearing.

E. List of Witnesses:

- (a) At least 15 days before the pre-hearing conference, the individual requesting the hearing shall provide a written list of the names of witnesses expected to offer testimony on his or her behalf.
- (b) The witness list shall include a brief summary of the anticipated testimony.
- (c) The witness list of either party may, at 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.

F. Hearing Panel, Presiding Officer, and Hearing Officer:

(a) Hearing Panel:

The Chief Executive Officer, after consulting with the President of the Medical Staff, shall appoint a Hearing Panel in accordance with the following guidelines:

- (1) The Hearing Panel shall consist of at least three members, one of whom shall be designated as chair.
- (2) The Hearing Panel may include any combination of:
  - (i) any member of the Medical Staff, provided the member has not actively participated in the matter at any previous level; and/or
  - (ii) physicians or laypersons not connected with the Hospital (i.e., physicians not on the Medical Staff or laypersons not affiliated with the Hospital).

- (3) Knowledge of the underlying peer review matter, in and of itself, shall not preclude the individual from serving on the Panel.
  - (4) Employment by, or other contractual arrangement with, the Hospital or an affiliate shall not preclude an individual from serving on the Panel.
  - (5) The Panel shall not include any individual who is in direct economic competition with the individual requesting the hearing.
  - (6) The Panel shall not include any individual who is professionally associated with, related to, or involved in a referral relationship with, the individual requesting the hearing.
  - (7) The Panel shall not include any individual who is demonstrated to have an actual bias, prejudice, or conflict of interest that would prevent the individual from fairly and impartially considering the matter.
- (b) Presiding Officer:
- (1) In lieu of a Hearing Panel Chairman, the Chief Executive Officer may appoint a Presiding Officer who may be an attorney. The Presiding Officer shall not act as an advocate for either side at the hearing.
  - (2) If no Presiding Officer has been appointed, the Chairman of the Hearing Panel shall serve as the Presiding Officer and shall be entitled to one vote.
  - (3) The Presiding Officer shall:
    - (i) allow the participants in the hearing to have a reasonable opportunity to be heard and to present evidence, subject to reasonable limits on the number of witnesses and duration of direct and cross-examination;
    - (ii) prohibit conduct or presentation of evidence that is cumulative, excessive, irrelevant or abusive or that causes undue delay;
    - (iii) maintain decorum throughout the hearing;

- (iv) determine the order of procedure;
  - (v) rule on all matters of procedure and the admissibility of evidence; and
  - (vi) conduct argument by counsel on procedural points outside the presence of the Hearing Panel unless the Panel wishes to be present.
- (4) The Presiding Officer may be advised by legal counsel to the Hospital with regard to the hearing procedure.
- (5) The Presiding Officer 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.
- (c) Hearing Officer:
  - (1) As an alternative to a Hearing Panel, the Chief Executive Officer, after consulting with the President of the Medical Staff, may appoint a Hearing Officer, preferably an attorney, to perform the functions of a Hearing Panel. The Hearing Officer may not be, or represent clients, in direct economic competition with the individual requesting the hearing.
  - (2) If a Hearing Officer is appointed instead of a Hearing Panel, all references in this Article to the "Hearing Panel" or "Presiding Officer" shall be deemed to refer to the Hearing Officer.
- (d) Objections:

Any objections to any member of the Hearing Panel, or the Hearing Officer or Presiding Officer, shall be made in writing, within ten days of receipt of notice, to the Chief Executive Officer. A copy of such written objections must be provided to the President of the Medical Staff and must include the basis for the objections. The President of the Medical Staff shall be given a reasonable opportunity to comment. The Chief Executive Officer shall rule on the objections and give notice to the parties. The Chief Executive Officer may request that the Presiding

Officer make a recommendation as to the validity of the objections.

G. Failure to Appeal:

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

H. Postponements and Extensions:

Postponements and extensions of time beyond any time limits set forth in this Appendix may be requested by anyone, but shall be permitted only by the Hearing Panel chairman or Chief Executive Officer on a good showing of good cause.

I. Deliberations and Recommendations of the Hearing Panel:

Within 20 days after final adjournment of the hearing (which may be designated as the time the Hearing Panel receives the hearing transcript or any post-hearing statements, whichever is later), the Hearing Panel shall conduct its deliberations outside the presence of any other person except the Presiding Officer. The Hearing Panel shall render a recommendation, accompanied by a report, which shall contain a concise statement of the basis for its recommendation.

J. Disposition of Hearing Panel Report:

The Hearing Panel shall deliver its report to the Chief Executive Officer. The Chief Executive Officer shall send by special notice a copy of the report to the individual who requested the hearing. The Chief Executive Officer shall also provide a copy of the report to the Executive Committee, and forward the report and recommendation, along with all supporting documentation, to the Board for further action.

**3. Hearing Procedure**

A. Provision of Relevant Information:

- (1) Prior to receiving any confidential documents, the individual requesting the hearing must agree that all documents and information will be maintained as confidential and will not be disclosed or used for any purpose outside of the hearing. The individual must also provide a written representation that his/her

counsel and any expert(s) have executed Business Associate agreements in connection with any patient Protected Health Information contained in any documents provided.

- (2) Upon receipt of the above agreement and representation, the individual requesting the hearing will be provided with the following:
  - (i) copies of, or reasonable access to, all patient medical records referred to in the statement of reasons, at the individual's expense;
  - (ii) reports of experts relied upon by the Executive Committee;
  - (iii) copies of relevant minutes (with portions regarding other physicians and unrelated matters deleted); and
  - (iv) copies of any other documents relied upon by the Executive Committee.

The provision of this information is not intended to waive any privilege under the state peer review protection statute.

- (3) The individual shall have no right to discovery beyond the above information. No information shall be provided regarding other practitioners.
- (4) Prior to the pre-hearing conference, on dates set by the Presiding Officer or agreed upon by both sides, each party shall provide the other party with its proposed exhibits. All objections to documents or witnesses, to the extent then reasonably known, shall be submitted in writing in advance of the pre-hearing conference. The Presiding Officer shall not entertain subsequent objections unless the party offering the objection demonstrates good cause.
- (5) Evidence unrelated to the reasons for the recommendation or to the individual's qualifications for appointment or the relevant clinical privileges shall be excluded.
- (6) Neither the individual, nor any other person acting on behalf of the individual, may contact Hospital employees whose names appear on the Executive Committee's witness list or in documents provided pursuant to this section concerning the

subject matter of the hearing, until the Hospital has been notified and has contacted the employees about their willingness to be interviewed. The Hospital will advise the individual once it has contacted such employees and confirmed their willingness to meet. Any employee may agree or decline to be interviewed by or on behalf of the individual who requested a hearing.

B. Pre-Hearing Conference:

The Presiding Officer will require a representative (who may be counsel) for the individual and for the Executive Committee to participate in a pre-hearing conference. At the pre-hearing conference, the Presiding Officer will resolve all procedural questions, including any objections to exhibits or witnesses. The Presiding Officer will establish the time to be allotted to each witness's testimony and cross-examination. It is expected that the hearing will last no more than 15 hours, with each side being afforded approximately seven and a half hours to present its case, in terms of both direct and cross-examination of witnesses. Both parties are required to prepare their case so that a hearing will be concluded after a maximum of 15 hours. The Presiding Officer may, after considering any objections, grant limited extensions upon a demonstration of good cause and to the extent compelled by fundamental fairness.

C. Record of Hearing:

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. 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.

D. Rights of Both Sides and the Hearing Panel at the Hearing:

- (1) At a hearing, both sides shall have the following rights, subject to reasonable limits determined by the Presiding Officer:
  - (i) to call and examine witnesses, to the extent they are available and willing to testify;
  - (ii) to introduce exhibits;
  - (iii) to cross-examine any witness on any matter relevant to the issues;

- (iv) to have representation by counsel who may be present but not call, examine, and cross-examine witnesses and present the case;
  - (v) to submit a written statement at the close of the hearing; and
  - (vi) to submit proposed findings, conclusions and recommendations to the Hearing Panel.
- (2) If the individual who requested the hearing does not testify, he or she may be called and questioned.
  - (3) The Hearing Panel may question witnesses, request the presence of additional witnesses, and/or request documentary evidence.

E. Admissibility of Evidence:

The hearing shall not be conducted according to rules of evidence. Evidence shall not be excluded merely because it is hearsay. 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. The guiding principle shall be that the record contains information sufficient to allow the Board to decide whether the individual is qualified for appointment and clinical privileges.

F. Post-Hearing Statement:

Each party shall have the right to submit a written statement, and the Hearing Panel may request that statements be filed, following the close of the hearing.

G. Official Notice:

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 courts of this state. 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 noticed matter by evidence or by written or oral presentation of authority. Reasonable additional time shall be granted, if requested, to present written rebuttal of any evidence admitted on official notice.

H. Basis of Decision:

The decision of the Hearing Panel shall be based on evidence produced at the hearing. This evidence may consist of the following:

- (1) oral testimony of witnesses;
- (2) written statements presented in connection with the hearing;
- (3) any information regarding the person who requested the hearing as 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;
- (4) any and all applications, references, and accompanying documents;
- (5) all officially noticed matters;
- (6) any other evidence that has been admitted.

I. Burden of Proof:

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

- (1) The Board or the Executive Committee, whichever 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 Board unless it finds that the individual who requested the hearing has provided the recommendation that prompted the hearing was unreasonable, not sustained by the evidence, or otherwise unfounded.

J. Presence of Hearing Panel Members:

Recognizing that it may not be possible for all members of the Hearing Panel to be present continually at all sessions of the panel, since it is necessary to conduct a hearing as soon as reasonable after the event or events that gave rise to its necessity, the hearing shall continue even though certain members of the Hearing Panel are not present at all times. The fact that certain panel members were not physically present at all times during the hearings will not disqualify them or invalidate the

hearing. Consequently, no quorum of the Hearing Panel shall be required in order to continue the hearing. The vote shall be by majority of those appointed to the Hearing Panel.

K. 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.

**4. Appeal**

A. Time for Appeal:

Within ten days after notice of the Hearing Panel's recommendation, either party may request an appeal. The request shall be in writing, delivered to the Chief Executive Officer either in person or by certified mail, return receipt requested, and shall include a statement of the reasons for appeal and the specific facts or circumstances which justify further review. If an appeal is not requested within ten days, an appeal is deemed to be waived and the Hearing Panel's report and recommendation shall be forwarded to the Board for final action.

B. Grounds for Appeal:

The grounds for appeal from an adverse recommendation shall be limited to the following:

- (1) there was substantial failure on the part of the Executive Committee, Hearing Panel or Board committee, whichever recommendation is the subject of the appellate review, to comply with the Hospital or Medical Staff Bylaws or this Appendix during the hearing, so as to deny a fair hearing; or
- (2) the above recommendations were made arbitrarily or capriciously; or
- (3) the above recommendations were not supported by credible evidence.

C. Time, Place and Notice:

Whenever an appeal is requested as set forth in the preceding sections, the Chairman of the Board shall, within 10 days after receipt of such request, schedule and arrange for an appellate review. The individual

shall be given special notice of the time, place, and date of the appeal. The appeal shall be held as soon as arrangements can reasonably be made, taking into account the schedules of all the individuals involved.

D. Nature of Appellate Review:

- (1) The Chairman of the Board shall appoint a Review Panel composed of not less than three (3) persons, either members of the Board 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 before it was made and recommend final action to the Board.
- (2) The Review Panel may, in its discretion, 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 it is new, relevant evidence or that any opportunity to admit it at the hearing was improperly denied, 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. The party requesting the appeal shall submit a statement first and the other party shall then have ten days to respond. In its sole discretion, the Review Panel may allow each party or its representative to appear personally and to make oral argument not to exceed 30 minutes.

E. Final Decision of the Board:

Within 30 days after the Board considers the appeal, or receipt of a Review Panel's recommendation, the Board shall render a final decision in writing, including specific reasons, and shall send special notice thereof to the individual. The Board may affirm, modify, or reverse the recommendation of the Review Panel or, in its discretion, refer the matter for further review and recommendation, or make its own decision based upon the Board's ultimate legal responsibility to grant appointment and clinical privileges. A copy shall also be provided to the Executive Committee for its information.

F. Further Review:

Except where the matter is referred for further action and recommendation, the final decision of the Board following the appeal shall be effective immediately and shall not be subject to further review. If the matter is referred for further action and recommendation, such recommendations shall be promptly made to the Board in accordance with the instructions given by the Board. This further review process and the report back to the Board shall in no event exceed 30 days in duration except as the parties may otherwise stipulate.

G. Right to One Hearing and One Appeal Only:

No applicant or member of the Medical Staff shall be entitled to more than one hearing and one appellate review on any single matter. If the Board denies initial appointment or reappointment to the Medical Staff to an applicant or revokes the appointment and/or clinical privileges of a current member of the Medical Staff, that individual may not apply for staff appointment or for those clinical privileges for a period of five years unless the Board provides otherwise.