

**MAINE MEDICAL CENTER
MEDICAL STAFF**

**FAIR HEARING
MANUAL**

**MAINE MEDICAL CENTER
FAIR HEARING PLAN**

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MAINE MEDICAL CENTER
FAIR HEARING PLAN

ARTICLE 1: INITIATION OF HEARING

1-1 RECOMMENDATIONS OR ACTIONS

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

- A. Denial of initial staff appointment,
- B. Denial of reappointment,
- C. Suspension of staff appointment,
- D. Revocation of staff appointment or termination of provisional staff appointment,
- E. Denial of clinical privileges, requested at the time of appointment or re-appointment,
- F. Reduction in clinical privileges,
- G. Suspension of clinical privileges,
- H. Revocation of clinical privileges,
- I. Terms of probation which limit or restrict clinical privileges,
- J. Imposition of a mandatory consultation requirement,
- K. Denial of re-instatement following leave of absence.

1-2 ADVERSE RECOMMENDATIONS OR ACTIONS

Only a recommendation or action listed in Article 1-1 shall be deemed adverse and only when it has been:

- A. Recommended by the Executive Committee; or
- B. A precautionary suspension continued in effect after review by the President of the Medical Staff, Vice President for Medical Affairs, and Chief; or
- C. Imposed by the Vice President for Medical Affairs as automatic relinquishment or revocation under Article 7-6.1 A or B of the Medical Staff Bylaws; or
- D. Taken by the Board contrary to or without benefit of a prior recommendation by the Executive Committee under circumstances where no prior right to a hearing existed.

1-3 EXCEPTIONS TO HEARING RIGHTS

1-3.1 Certain Actions or Recommended Actions:

Notwithstanding any provision in this Fair Hearing Plan, in the Medical Staff Bylaws, or in the Credentialing Procedures Manual to the contrary, the following actions or recommended actions do not entitle the practitioner to a hearing:

- A. Denial of a request for an application for Staff appointment;
- B. The issuance of a verbal warning or formal letter of reprimand;
- C. The imposition of a direct observation requirement as a condition attached to the exercise of clinical privileges during a supervision period;
- D. The imposition of a probationary period involving review of cases but with no requirement either for direct, concurrent supervision or for mandatory consultation;
- E. Any other action or recommended action not listed in Article 1-1 above or that are specifically exempted as stated in the Medical Staff Bylaws or related manuals.

1-3.2 Other Situations:

An action or recommended action listed in Article 1-1 above does not entitle the practitioner to a hearing when it is:

- A. Voluntarily imposed or accepted by the practitioner;
- B. Taken or recommended with respect to temporary privileges; or
- C. A precautionary suspension defined in Article 7-5 of the Medical Staff Bylaws whereby the Executive Committee or Board of Trustees takes action or recommends not to continue the precautionary suspension.

1-4 NOTICE OF ADVERSE RECOMMENDATION OR ACTION

The Vice President for Medical Affairs shall, within ten (10) working days, notify, by special notice, a practitioner against whom adverse action has been taken or recommended unless such notice has been previously given. The notice shall indicate the following:

- A. The recommendation or action that has been proposed or imposed;
- B. The general reasons for the recommendation or action;
- C. The practitioner's right to request a hearing under the Fair Hearing Plan within thirty (30) days of receipt of notice;
- D. A summary of the practitioner's rights at the hearing;
- E. A copy of any report of any investigating committee; and
- F. A statement that the practitioner's failure to make a required request or appearance or failure to comply with the Fair Hearing Plan shall constitute a voluntary waiver of all rights he or she may otherwise have under the Fair Hearing Plan.

1-5 REQUEST FOR HEARING

A practitioner shall have thirty (30) days following receipt of a notice pursuant to Article 1-3 to file a written request for a hearing from the Executive Committee or in the instance of Article 1-2 D from the Board. Such request shall be deemed to have been made when sent by special notice to the Vice President for Medical Affairs.

1-6 WAIVER BY FAILURE TO REQUEST A HEARING

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

- A. After Adverse Action Recommended by the Executive Committee: The waiver shall constitute acceptance by the practitioner of an adverse recommendation by the Executive Committee. This recommendation shall remain effective pending the final decision of the Board. The Board shall consider the committee's recommendation at its next regular meeting following waiver. In its deliberations, the Board shall review the information and material considered by the Executive Committee and, in making its final decision, may consider all other relevant information received from any source. The action by the Board has the following effects:

If the Board is in accord with the recommendation of the Executive Committee or chooses to modify the action to one that is less adverse to the practitioner, it becomes effective immediately as the final decision.

If the Board chooses to modify the Executive Committee recommendation to a recommendation more adverse to the practitioner, this Board action will be regarded as a separate and new recommendation. The practitioner will be notified of this recommendation by the Vice President for Medical Affairs and the right to request a Fair Hearing as detailed in Article 1-3.

- B. After Adverse Action by the Board: The waiver shall constitute acceptance by the practitioner of an adverse recommendation by the Board and that recommendation shall thereupon become effective as the final decision of the Board.

The Vice President for Medical Affairs shall within five (5) working days send the practitioner notice informing him or her of each action taken pursuant to this Article 1-5 and shall notify the President of the Medical Staff of each such action.

ARTICLE 2: HEARING PREREQUISITES:

2-1 NOTICE OF TIME AND PLACE OF HEARING

Upon receipt of a timely request for hearing, the Vice President for Medical Affairs shall deliver such request to the President of the Medical Staff or to the Board, depending on whose recommendation or action prompted the request for hearing. The Vice President for Medical Affairs, at the direction of the President of the Medical Staff or the Board, as applicable, shall promptly schedule and arrange for a hearing. The hearing date shall be not less than thirty (30) days nor more than sixty (60) days from the date of receipt of the request for hearing; provided, however, that a hearing for an individual who is under suspension then in effect shall be scheduled to be held as soon as arrangements may reasonably be made.

At least thirty (30) days prior to the hearing, the Vice President for Medical Affairs shall send the practitioner notice of the time, place, and date of the hearing. Such notice shall also include:

- A. A proposed list of witnesses who are expected to give testimony or evidence at the hearing in support of the Executive Committee or the Board. The list shall be amended as soon as possible when additional witnesses are identified;
- B. A concise statement of the practitioner's alleged act(s) or omission(s), a list of the numbers of the specific or representative patient records in question, and any other reasons or subject matter forming the basis for the adverse recommendation or action. This statement and the list of supporting patient records or other information it contains may be amended or added to 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 the individual and the individual's counsel have sufficient time to study the additional material and rebut it.

2-2 LIST OF WITNESSES

At least ten (10) working days prior to the scheduled date for commencement of the hearing, the practitioner who requested the hearing shall give to the Hearing Committee, the VPMA, and to the party whose adverse action or recommended action gave rise to the hearing rights, by special notice, a list of the names of the individuals who, as far as is then reasonably known, are expected to give testimony or evidence in support of the practitioner at the hearing. The list shall be amended as soon as possible when additional witnesses are identified.

The Hearing Committee may permit a witness who has not been listed in accordance with this Article 2-2 to testify if it finds that the failure to list such witness was justified, that such failure did not prejudice the party entitled to receive such list, or that the testimony of such witness will materially assist the Hearing Committee in making its report and recommendation.

2-3 APPOINTMENT OF HEARING COMMITTEE

- A. By Medical Staff: A hearing occasioned by an Executive Committee adverse recommendation or action pursuant to Article 1-2 A, B, or C shall be conducted by a Hearing Committee appointed by the President of the Medical Staff.
- B. By Board: A hearing occasioned by an adverse recommendation or action of the Board pursuant to Article 1-2 D, or upon a request pursuant to Automatic Relinquishment or Revocation pursuant to Article 7-6 of the Medical Staff Bylaws shall be conducted by a Hearing Committee appointed by the Chairman of the Board.
- C. Composition: The Hearing Committee shall be composed of not less than three members. The Hearing Committee shall be composed of Attending Medical Staff members or Board members, depending upon whose recommendation has prompted the hearing, who have not actively participated in the consideration of the matter at any previous level. Such appointment shall include designation of a Chairperson.
- D. Service on Hearing Committee: A Medical Staff or Board member shall not be disqualified from serving on a Hearing Committee solely because he or she participated in initiating or investigating the underlying matter at issue or because he or she has heard of the case or has knowledge of any of the alleged facts. No Medical Staff or

Board member shall serve on any Hearing Committee if he or she is in direct economic competition with the practitioner requesting such hearing.

- E. Practitioner Notification: Prior to the hearing the practitioner will be notified of the names of the Hearing Committee members and Presiding Officer, when known.

ARTICLE 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 at and participate in such hearing shall be deemed to have waived his or her rights in the same manner and with the same consequence as provided in Article 1-6.

3-2 PRESIDING OFFICER

The President of the Medical Center may appoint an attorney at law as Presiding Officer. Such Presiding Officer may be counsel to the Medical Center, but must not act as a prosecuting officer or as an advocate for either side at the hearing. If requested by the Hearing Committee, he or she may participate in its deliberations and act as its legal advisor; he or she shall not be entitled to vote.

If a Presiding Officer is not appointed, the chairman of the Hearing Committee shall be the presiding officer and shall be entitled to one vote. The presiding officer shall act to maintain decorum, assure that the committee makes a reasonable effort to obtain the facts of the matter, and assure that all the participants in the hearing have a reasonable opportunity to present relevant oral and documentary evidence. He or she shall determine the order of procedure during the hearing and shall make all rulings on matters of law, procedure, and the admissibility of evidence.

3-3 REPRESENTATION

The practitioner who requested the hearing may be accompanied and represented at the hearing by a member of the Medical Staff, by a member of his or her local professional society, or by an attorney licensed to practice in the State of Maine. The Executive Committee or the Board, depending upon whose recommendation has prompted the hearing, shall appoint one of its members, or an attorney, or in the case of the 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.

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,
- F. Request that the record of the hearing be made by use of a court reporter or an electronic recording unit, and
- G. Submit a written statement at the close of the hearing.

If the practitioner who requested the hearing does not testify in his or her own behalf, he or she 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. Upon reasonable notice to the practitioner and an opportunity for him or her to respond, 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. Each party shall, prior to or during the hearing, be entitled to submit memoranda 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 order that all oral evidence be taken on oath or on affirmation administered by any person designated by him and entitled to notarize documents.

3-6 EVIDENTIARY NOTICE

In reaching a decision, the Hearing Committee may notice, for evidentiary purposes, either before or after submission of the matter for decision, any generally accepted technical or scientific matter relating to the issues under consideration and any facts that may be judicially noticed by the courts of the State of Maine. Parties present 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, on timely request, 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.

3-7 BURDEN OF PROOF

When a hearing relates to Article 1-2 A or D, the practitioner who requested the hearing shall have the burden of proving, that is more reasonable than not, that the adverse recommendation or action lacks any factual basis or that such basis or the conclusions drawn there from are either arbitrary, unreasonable, or capricious. In all other instances under Article 1-2, the body whose adverse recommendation or action occasioned the hearing shall have the initial obligation to present evidence in support thereof, but

thereafter, the practitioner shall be responsible for supporting his or her challenge to the adverse recommendation or action by clear and convincing evidence.

After all the evidence has been submitted by both sides, the Hearing Committee shall recommend in favor of the Executive Committee or the Board unless it finds that the individual who requested the hearing has proven that the recommendation which prompted the hearing was arbitrary, capricious or not supported by substantial evidence.

3-8 RECORD OF HEARING

A record of hearing shall be kept that is of sufficient accuracy to assure 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 Committee chairman 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 Article 3-4 F or a separate copy of any transcript prepared shall bear the cost thereof.

3-9 POSTPONEMENT

The Presiding Officer shall grant requests for postponement of a hearing only upon a showing of good cause.

3-10 WAIVER OF NOTICE OR PROCEDURE

Notwithstanding any provision of this Fair Hearing Plan, the Hearing Committee may waive any notice or procedural requirement provided for in this Fair Hearing Plan upon the request and showing of good cause by the practitioner requesting the hearing.

3-11 RECESSES AND ADJOURNMENT

The Hearing Committee may recess the hearing for not more than two (2) weeks for the convenience of the participants or for the purpose of obtaining new or additional evidence or consultation. Upon conclusion of the presentation of oral and written evidence, the hearing shall be closed. The Hearing Committee shall thereupon conduct its deliberations outside the presence of the parties.

ARTICLE 4: HEARING COMMITTEE REPORT AND FURTHER ACTION

4-1 BASIS FOR DECISION

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

- A. Oral testimony of witnesses,
- B. Any information regarding the individual who requested the hearing provided that the information has been admitted into evidence at the hearing and the individual who requested the hearing had the opportunity to comment on, and, by other evidence, refute it,

- C. Any and all applications, references and accompanying documents,
- D. Other documented evidence, including medical records, and
- E. Any other evidence that has been admitted.

4-2 HEARING COMMITTEE REPORT

Within twenty (20) days after final adjournment of the hearing, the hearing committee shall make a written report of its findings and recommendations in the matter and shall forward the report together with the hearing record, either transcribed or not, to the practitioner and to the body whose adverse recommendation or action occasioned the hearing.

4-2.1 Action on Hearing Committee Report:

Within thirty (30) days after receipt of the report of the hearing committee, the 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. The Executive Committee or the Board shall then transmit the decision together with a statement of the basis for such decision, the hearing record, and the report of the hearing committee to the Vice President for Medical Affairs.

4-2.2 Notice and Effect of Decision:

- A. Notice: The Vice President for Medical Affairs shall promptly send or deliver a copy of the decision and statement of the basis for such decision to the practitioner, to the President of the Medical Staff, and to the Board.
- B. Effect of Favorable Result:
 - 1. Recommended by the Executive Committee: If the Executive Committee's decision pursuant to Article 4-2.1 is favorable to the practitioner, the Vice President for Medical Affairs shall promptly forward it together with all supporting documentation to the Board for final action. The Board shall take action thereon by adopting or by rejecting the Executive Committee's decision in whole or in part. Favorable action by the Board shall become the final decision and the matter shall be considered closed. If the decision by the Board is adverse to the practitioner, see Article 4-2.2 Paragraph C.2.
 - 2. Adopted by the Board: If the Board's decision pursuant to Article 4-2.1 is favorable to the practitioner, such decision shall become the final decision of the Board and the matter will be considered closed.
- C. Effect of Adverse Decision:
 - 1. Recommended by the Executive Committee: If the Executive Committee's decision pursuant to Article 4-2.1 is adverse to the practitioner, the Vice President for Medical Affairs shall promptly forward it, together with all supporting documentation to the Board for final action. The Board shall take action thereon by adopting or rejecting the Executive Committee's decision in whole or in part. Action favorable to the practitioner by the Board shall become the final decision and the matter shall be considered closed. If the decision of the Board is adverse to the practitioner, see Article 4-2.2 C.2.

2. Adopted by the Board of Trustees: If the decision of the Board pursuant to Articles 4-2.1, 4-2.2, B.1., or 4-2.2, C.1, is adverse to the practitioner in any respects listed in Article 1-1 of this Plan, the Vice President for Medical Affairs shall, by notice delivered by hand or sent by registered mail, notify the practitioner of his or her right to request an appellate review by the Board as provided in Article 5-1 of this plan.

ARTICLE 5: INITIATION AND PREREQUISITES OF APPELLATE REVIEW

5-1 REQUEST FOR APPELLATE REVIEW

A practitioner shall have thirty (30) working days following his or her receipt of a notice pursuant to Article 4-2.1 to file a written request for an appellate review including a brief statement of the reasons for appeal. Such request shall be deemed to have been made when sent by special notice to the Vice President for Medical Affairs.

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 Article 5-1 waives any right to such review. Such waiver shall have the same force and effect as that provided in Article 1-6, B.

5-3 GROUNDS FOR APPEAL

The grounds for appeal shall be that:

- A. There was substantial failure to comply with this Fair Hearing Plan and/or the Medical Staff Bylaws in the matter which was the subject of the hearing so as to deny due process or a fair hearing; or
- B. The recommendations made were arbitrary, capricious or with prejudice; or
- C. The recommendations were not supported by substantial evidence.

5-4 NOTICE OF TIME AND PLACE FOR APPELLATE REVIEW

Upon receipt of a timely request for appellate review, the Vice President for 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 fifteen (15) working days nor more than thirty (30) working days from the date of receipt of the appellate review request; provided, however, that an appellate review for a practitioner who is under a suspension then in effect shall be held, upon such individual's request, as soon as arrangements may reasonably be made. At least seven (7) days prior to the appellate review, the Vice President for Medical Affairs shall send the practitioner notice of the time, place and date of the review. The time for the appellate review may be extended by the Appellate Review Committee for good cause.

5-5 APPELLATE REVIEW COMMITTEE

The appellate review shall be conducted by an Appellate Review Committee composed of at least three (3) and not more than five (5) members of the Board appointed by the Board chairman. The Board Chair will designate one of its members as chairman.

ARTICLE 6: APPELLATE REVIEW PROCEDURE

6-1 NATURE OF PROCEEDINGS

The proceedings by the review committee shall be in the nature of an appellate review of the record of the Hearing Committee, that committee's report, and all subsequent results and actions thereon to determine whether the hearing was fair and whether the recommendations were reasonable and supported by the record. The Appellate Review Committee shall also consider the written statements submitted pursuant to Article 6-2 and such other materials as may be presented and accepted under Articles 6-4 and 6-5.

6-2 WRITTEN STATEMENTS

The practitioner seeking the review shall submit a written statement detailing the findings of fact, conclusions and procedural matters with which he or she disagrees, and his reasons for such disagreement. This written statement may cover any matters raised at any step in the hearing process. The statement shall be submitted to the Appellate Review Committee through the Vice President for Medical Affairs at least five (5) working days prior to the scheduled date of the appellate review. A similar written statement may be submitted by the Executive Committee or by the Board and, if submitted, the Vice President for Medical Affairs shall provide a copy thereof to the practitioner at least three (3) days prior to the date of the appellate review.

6-3 PRESIDING OFFICER

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

6-4 ORAL STATEMENT

The Appellate Review Committee may allow the parties or their representatives to appear personally and to make oral statements. Any party or representative so appearing shall be required to answer questions from any member of the Appellate Review Committee.

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 if the party requesting consideration of the matter or evidence demonstrates to the satisfaction of the Appellate Review Committee that it could not have been discovered in time for the original hearing. The requesting party shall provide, through the Vice President for Medical Affairs, a written substantive description of the

matter or evidence to the Appellate Review Committee and the other party prior to its being introduced at the review. Any such new or additional matters or evidence shall be subject to the same rights of cross examination, impeachment and rebuttal provided at the hearing pursuant to Article 3-4 above. The Appellate Review Committee in its sole discretion, shall determine whether such matters or evidence shall be accepted.

6-6 POWERS

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

6-7 RECESSES AND ADJOURNMENT

For the convenience of the participants or for the purpose of obtaining new or additional evidence or consultation, the Appellate Review Committee may recess the review proceedings and reconvene the same without additional notice. 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 shall, within twenty (20) working days of adjournment, recommend that the Board affirm, modify, or reverse its action taken pursuant to Article 4-2 or 4-2.1.

ARTICLE 7: FINAL DECISION OF THE BOARD

7-1 BOARD ACTION

Within twenty (20) working days after the conclusion of the appellate review, the Board shall render its final decision in the matter in writing. The Vice President for Medical Affairs shall within five (5) working days send notice of the decision and a statement of the basis for the decision to the practitioner by special notice and to the Executive Committee.

ARTICLE 8: GENERAL PROVISIONS:

8-1 WAIVER

If at any time after receipt of 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 or she shall be deemed to have consented to such adverse recommendation, action or result and to have waived voluntarily all rights to which he or she 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.

8-2 NUMBER OF REVIEWS

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

8-3 RELEASE

By requesting a hearing or appellate review under this Fair Hearing Plan, a practitioner agrees to be bound by the provisions of Article 13 of the Medical Staff Bylaws in all matters relating thereto.

ARTICLE 9: AMENDMENT

This Fair Hearing Plan may be amended, or repealed, in whole or in part by a resolution of the Executive Committee recommended to and adopted by the Board.