

**MEDICAL STAFF BYLAWS, POLICIES, AND  
RULES AND REGULATIONS  
OF  
OUR LADY OF LOURDES  
MEMORIAL HOSPITAL**

**FAIR HEARING PLAN**

*Adopted by the MEC: February 14, 2012  
Approved by the Board: January 18, 2013*

# TABLE OF CONTENTS

	<u>PAGE</u>
<b>1. HEARING PROCEDURES</b> .....	1
<b>1.A. INITIATION OF HEARING</b> .....	1
1.A.1. Grounds for Hearing .....	1
1.A.2. Actions Not Grounds for Hearing.....	1
1.A.3. Notice of Recommendation .....	2
1.A.4. Request for Hearing .....	2
1.A.5. Notice of Hearing and Statement of Reasons .....	2
1.A.6. Witness List .....	3
1.A.7. Hearing Panel and Presiding Officer .....	3
1.A.8. Counsel .....	5
<b>1.B. PRE-HEARING PROCEDURES</b> .....	5
1.B.1. General Procedures .....	5
1.B.2. Provision of Relevant Information.....	6
1.B.3. Pre-Hearing Conference.....	7
1.B.4. Stipulations .....	7
1.B.5. Provision of Information to the Hearing Panel .....	8
<b>1.C. THE HEARING</b> .....	8
1.C.1. Failure to Appear .....	8
1.C.2. Record of Hearing.....	8
1.C.3. Rights of Both Sides and the Hearing Panel at the Hearing .....	8
1.C.4. Order of Presentation .....	9
1.C.5. Admissibility of Evidence.....	9
1.C.6. Persons to Be Present.....	9
1.C.7. Postponements and Extensions .....	9
1.C.8. Presence of Hearing Panel Members .....	9
<b>1.D. HEARING CONCLUSION, DELIBERATIONS,     AND RECOMMENDATIONS</b> .....	10
1.D.1. Basis of Hearing Panel Recommendation.....	10
1.D.2. Deliberations and Recommendation of the Hearing Panel .....	10
1.D.3. Disposition of Hearing Panel Report .....	10

	<u>PAGE</u>
<b>2. APPEAL PROCEDURES .....</b>	<b>11</b>
2.A. APPEAL PROCEDURE.....	11
2.A.1. Time for Appeal.....	11
2.A.2. Grounds for Appeal.....	11
2.A.3. Time, Place and Notice .....	11
2.A.4. Nature of Appellate Review.....	11
2.B. BOARD ACTION .....	12
2.B.1. Final Decision of the Board .....	12
2.B.2. Right to One Hearing and One Appeal Only .....	13
<b>3. ADOPTION.....</b>	<b>14</b>

ARTICLE 1  
HEARING PROCEDURES

1.A. INITIATION OF HEARING

1.A.1. Grounds for Hearing:

- (a) An individual who is covered by this Fair Hearing Plan is entitled to request a hearing whenever the Executive Committee makes one of the following recommendations:
  - (1) denial of initial appointment, reappointment or requested clinical privileges;
  - (2) revocation of appointment or clinical privileges;
  - (3) suspension of clinical privileges for more than 30 days (other than precautionary suspension);
  - (4) restriction of clinical privileges, meaning a mandatory concurring consultation requirement, in which the consultant must approve the course of treatment in advance; or
  - (5) denial of reinstatement from a leave of absence if the reasons relate to professional competence or conduct.
- (b) No other recommendations will entitle the individual to a hearing.
- (c) If the Board makes any of these recommendations without an adverse recommendation by the Executive Committee, an individual is entitled to request a hearing. For ease of use, this Article refers to adverse recommendations of the Executive Committee. When a hearing is triggered by an adverse recommendation of the Board, any reference in this Article to the “Executive Committee” will be interpreted as a reference to the “Board.”

1.A.2. Actions Not Grounds for Hearing:

None of the following actions constitute grounds for a hearing:

- (a) a letter of guidance, counsel, warning, or reprimand;
- (b) conditions, monitoring, proctoring, or a general consultation requirement;
- (c) a lapse or decision not to grant or not to renew temporary privileges;

- (d) automatic relinquishment of appointment or privileges;
- (e) a requirement for additional training or continuing education;
- (f) precautionary suspension or restriction;
- (g) denial of a request for leave of absence or for an extension of a leave;
- (h) determination that an application is incomplete;
- (i) determination that an application will not be processed due to a misstatement or omission; or
- (j) determination of ineligibility based on a failure to meet threshold eligibility criteria, a lack of need or resources, or because of an exclusive contract.

These actions take effect without a hearing or appeal. The individual is entitled to submit a written statement regarding these actions for inclusion in his or her file.

1.A.3. Notice of Recommendation:

The Chief Executive Officer will promptly give special notice of a recommendation which entitles an individual to request a hearing. This notice will contain:

- (a) a statement of the recommendation 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 Article.

1.A.4. Request for Hearing:

An individual has 30 days following receipt of the notice to request a hearing, in writing, to the Chief Executive Officer, including the name, address, and telephone number of the individual's counsel, if any. Failure to request a hearing will constitute waiver of the right to a hearing, and the recommendation will be transmitted to the Board for final action.

1.A.5. Notice of Hearing and Statement of Reasons:

- (a) The Chief Executive Officer will 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 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 respond with additional information.
- (b) The hearing will begin as soon as practicable, but no sooner than 30 days after the notice of the hearing, unless an earlier hearing date has been specifically agreed to in writing by the parties.

#### 1.A.6. Witness List:

- (a) At least 15 days before the pre-hearing conference, the individual requesting the hearing will provide a written list of the names of witnesses expected to offer testimony on his or her behalf.
- (b) The witness list will include a brief summary of the anticipated testimony.
- (c) The witness list of either party may, in the discretion of the Presiding Officer, be amended at any time during the course of the hearing, provided that notice of the change is given to the other party.

#### 1.A.7. Hearing Panel and Presiding Officer:

- (a) Hearing Panel:

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

- (1) The Hearing Panel will consist of at least three members, one of whom will be designated as chairperson.

- (2) The Hearing Panel may include any combination of:
    - (i) any member of the Medical Staff or the Allied Health Staff, 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, will not preclude the individual from serving on the Panel.
  - (4) Employment by, or other contractual arrangement with, the Hospital or an affiliate will not preclude an individual from serving on the Panel.
  - (5) The Panel will not include any individual who:
    - (i) is in direct economic competition with the individual requesting the hearing;
    - (ii) is professionally associated with, related to, or involved in a referral relationship with, the individual requesting the hearing;
    - (iii) is demonstrated to have an actual bias, prejudice, or conflict of interest that would prevent the individual from fairly and impartially considering the matter; or
    - (iv) actively participated in the matter at any previous level.
- (b) Presiding Officer:
- (1) The Chief Executive Officer will appoint a Presiding Officer who may be an attorney. The Presiding Officer will not act as an advocate for either side at the hearing.
  - (2) The Presiding Officer will:
    - (i) schedule and conduct a pre-hearing conference;
    - (ii) 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;
    - (iii) prohibit conduct or presentation of evidence that is cumulative, excessive, irrelevant, abusive, or that causes undue delay;
    - (iv) maintain decorum throughout the hearing;

- (v) determine the order of procedure;
- (vi) rule on all matters of procedure and the admissibility of evidence;  
and
- (vii) conduct argument by counsel on procedural points outside the presence of the Hearing Panel unless the Panel wishes to be present.

(3) The Presiding Officer may participate in the private deliberations of the Hearing Panel, may be a legal advisor to it, and may draft the report of the Hearing Panel's decision based upon the findings and discussions of the Panel, but will not vote on its recommendations.

(c) Objections:

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

1.A.8. Counsel:

Counsel for either party may be an attorney at law who is licensed to practice, in good standing, in any state.

1.B. PRE-HEARING PROCEDURES

1.B.1. General Procedures:

The pre-hearing and hearing processes will be conducted in an informal manner. Formal rules of evidence or procedure will not apply.



1.B.2. Provision of Relevant Information:

- (a) Prior to receiving any confidential documents, the individual requesting the hearing must agree, in writing, 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.
- (b) Upon receipt of the above agreement and representation, the individual requesting the hearing will be provided with the following:
  - (1) copies of, or reasonable access to, all patient medical records referred to in the statement of reasons, at the individual's expense;
  - (2) reports of experts relied upon by the Executive Committee;
  - (3) copies of relevant minutes (with portions regarding other physicians and unrelated matters deleted); and
  - (4) copies of any other documents relied upon by the Executive Committee.The provision of this information is not intended to waive any privilege.
- (c) The individual will have no right to discovery beyond the above information. No information will be provided regarding any other member. In addition, there is no right to depose, interrogate, or interview witnesses or other individuals prior to the hearing.
- (d) Ten days prior to the pre-hearing conference, or on dates set by the Presiding Officer or agreed upon by both sides, each party will provide the other party with its proposed exhibits.
- (e) Neither the individual, nor any other person acting on behalf of the individual, may contact Hospital employees or members 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 individuals about their willingness to be interviewed. The Hospital will advise the individual who requested the hearing once it has contacted such employees or members and confirmed their willingness

to meet. Any employee or Medical Staff or Allied Health member may agree or decline to be interviewed by or on behalf of the individual who requested a hearing.

1.B.3. Pre-Hearing Conference:

- (a) The Presiding Officer may require the individual and the Executive Committee (or its representatives) to participate in a pre-hearing conference.
- (b) All objections to documents and witnesses will be submitted in writing five days in advance of the pre-hearing conference. The Presiding Officer will not entertain subsequent objections unless the party offering the objection demonstrates good cause.
- (c) At the pre-hearing conference, the Presiding Officer will resolve all procedural questions, including any objections to exhibits or witnesses.
- (d) Evidence unrelated to the reasons for the recommendation or to the individual's qualifications for appointment or the relevant clinical privileges will be excluded.
- (e) The Presiding Officer will establish the time to be allotted to each witness's testimony and cross-examination.
- (f) 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.

1.B.4. Stipulations:

The parties will use their best efforts to develop and agree upon relevant points, facts and/or circumstances, so as to provide for a more orderly and efficient hearing by narrowing the issues on which testimony is reasonably required.

1.B.5. Provision of Information to the Hearing Panel:

The following documents will be provided to the Hearing Panel in advance of the hearing:

- (a) a pre-hearing statement that either party may choose to submit;
- (b) exhibits offered by the parties following the pre-hearing conference (without the need for authentication by the original author); and
- (c) stipulations agreed to by the parties.

1.C. THE HEARING

1.C.1. Failure to Appear:

Failure, without good cause, to appear and proceed at the hearing will constitute a waiver of the right to a hearing and the matter will be forwarded to the Board for final action.

1.C.2. Record of Hearing:

A stenographic reporter will be present to make a record of the hearing. The cost of the reporter will be borne by the Hospital. Copies of the transcript will be available at the individual's expense. Oral evidence will be taken on oath or affirmation administered by any authorized person.

1.C.3. Rights of Both Sides and the Hearing Panel at the Hearing:

- (a) At a hearing, both sides will have the following rights, subject to reasonable limits determined by the Presiding Officer:
  - (1) to call and examine witnesses, to the extent they are available and willing to testify;
  - (2) to introduce exhibits;
  - (3) to cross-examine any witness;
  - (4) to have representation by counsel who may call, examine, and cross-examine witnesses and present the case;
  - (5) to submit a written statement at the close of the hearing; and
  - (6) to submit proposed findings, conclusions and recommendations to the Hearing Panel.

- (b) If the individual who requested the hearing does not testify, he or she may be called and questioned.
- (c) The Hearing Panel may question witnesses, request the presence of additional witnesses, or request documentary evidence.

1.C.4. Order of Presentation:

The Executive Committee will first present evidence in support of its recommendation. Thereafter, the burden will shift to the individual who requested the hearing to present evidence.

1.C.5. Admissibility of Evidence:

The hearing will not be conducted according to rules of evidence. Evidence will not be excluded merely because it is hearsay. Any relevant evidence will be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. The guiding principle will be that the record contains information sufficient to allow the Board to decide whether the individual is qualified for appointment and clinical privileges.

1.C.6. Persons to Be Present:

The hearing will be restricted to those individuals involved in the proceeding. Administrative personnel may be present as requested by the Chief Executive Officer or the President of the Medical Staff.

1.C.7. Postponements and Extensions:

Postponements and extensions of time may be requested by anyone, but will be permitted only by the Presiding Officer or the Chief Executive Officer on a showing of good cause.

1.C.8. Presence of Hearing Panel Members:

A majority of the Hearing Panel will be present throughout the hearing. In unusual circumstances when a Hearing Panel member must be absent from any part of the

hearing, he or she will read the entire transcript of the portion of the hearing from which he or she was absent.

#### 1.D. HEARING CONCLUSION, DELIBERATIONS, AND RECOMMENDATIONS

##### 1.D.1. Basis of Hearing Panel Recommendation:

Consistent with the burden on the individual to demonstrate that he or she satisfies, on a continuing basis, all criteria and other factors for initial appointment, reappointment and clinical privileges, the Hearing Panel will recommend in favor of the Executive Committee unless it finds that the individual who requested the hearing has proved, by credible evidence, that the recommendation that prompted the hearing was arbitrary, capricious, or not supported by credible evidence.

##### 1.D.2. Deliberations and Recommendation 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 will conduct its deliberations outside the presence of any other person except the Presiding Officer. The Hearing Panel will render a recommendation, accompanied by a report, which will contain a statement of the basis for its recommendation.

##### 1.D.3. Disposition of Hearing Panel Report:

The Hearing Panel will deliver its report to the Chief Executive Officer. The Chief Executive Officer will send a copy of the report by special notice to the individual who requested the hearing. The Chief Executive Officer will also provide a copy of the report to the President of the Medical Staff.

ARTICLE 2  
APPEAL PROCEDURES

2.A. APPEAL PROCEDURE

2.A.1. Time for Appeal:

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

2.A.2. Grounds for Appeal:

The grounds for appeal will be limited to the following:

- (a) there was substantial failure by the Hearing Panel to comply with this Policy or the Medical Staff Bylaws during the hearing, so as to deny a fair hearing; or
- (b) the recommendations of the Hearing Panel were made arbitrarily or capriciously or were not supported by credible evidence.

2.A.3. Time, Place and Notice:

Whenever an appeal is requested, the Chairperson of the Board will schedule and arrange for an appeal. The individual will be given special notice of the time, place, and date of the appeal. The appeal will be held as soon as arrangements can reasonably be made, taking into account the schedules of all the individuals involved.

2.A.4. Nature of Appellate Review:

- (a) The Board may serve as the Review Panel or the Chairperson of the Board may appoint a Review Panel, composed of members of the Board or others, including

but not limited to reputable persons outside the Hospital. No member of the Hearing Panel may serve on the appellate Review Panel.

- (b) The Review Panel may consider the record upon which the recommendation was made, including the hearing transcripts and exhibits, post-hearing statements, the findings and recommendations of the Executive Committee and Hearing Panel and any other information that it deems relevant.
- (c) Each party will have the right to present a written statement in support of its position on appeal. The party requesting the appeal will submit a statement first and the other party will then have ten days to respond. In its sole discretion, the Review Panel may allow each party or its representative to appear personally and make oral argument not to exceed 30 minutes.
- (d) The Review Panel may, in its discretion, accept additional oral or written evidence subject to the same rights of cross-examination provided at the Hearing Panel proceedings. Additional evidence will be accepted only if the Review Panel determines that 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.

## 2.B. BOARD ACTION

### 2.B.1. Final Decision of the Board:

- (a) The Board will take final action within 30 days after it (i) considers the appeal as a Review Panel, (ii) receives a recommendation from a separate Review Panel, or (iii) receives the Hearing Panel's report when no appeal has been requested.
- (b) Consistent with its ultimate legal authority for the operation of the Hospital and the quality of care provided, the Board may adopt, modify, or reverse any recommendation that it receives or refer the matter for further review.
- (c) The Board will render its final decision in writing, including the basis for its decision, and will send special notice to the individual. A copy will also be provided to the President of the Medical Staff.

- (d) Except where the matter is referred by the Board for further review, the final decision of the Board will be effective immediately and will not be subject to further review.

2.B.2. Right to One Hearing and One Appeal Only:

- (a) No individual will be entitled to more than one hearing and one appeal on any matter.
- (b) If the Board denies initial appointment or reappointment or revokes appointment or clinical privileges, that individual may not apply for appointment or clinical privileges for a period of five years from the date of the Board's final action, unless the Board provides otherwise.



ARTICLE 3  
ADOPTION

This Fair Hearing Plan is adopted and made effective upon approval of the Board, superseding and replacing any and all other bylaws, rules and regulations of the Medical Staff or Hospital policies pertaining to the subject matter thereof.

Adopted by the MEC: February 14, 2012

Approved by the Board: January 18, 2013