# **Article IV. HEARING AND APPEAL PROCEDURE**

**4.1. Grounds for Hearing**

4.1.1 This section describes the exclusive circumstances that entitle a Medical Staff Member to a right to a hearing. A Medical Staff Member shall be entitled to a hearing only upon making a timely request for a hearing after any of the following actions:

1. A Medical Executive Committee (MEC) recommendation to deny an application, Article I under MEC Recommendation for appointment or reappointment;
2. An MEC action longer than fourteen (14) days that is a reduction, suspension, or revocation of clinical privileges or Medical Staff membership (other than an administrative action or pursuant to an agreement with the Medical Staff Member);
3. Any MEC recommendation for a reduction, suspension, or revocation of clinical privileges or Medical Staff membership that lasts longer than fourteen (14) days (other than an administrative suspension or pursuant to an agreement with the Medical Staff Member);
4. A decision by the Board of Trustees not to ratify an initial appointment or reappointment in Article I under Board of Trustees Action.

A Medical Staff Member does not have a right to a hearing or an appeal for circumstances or actions of any kind not expressly set forth in Section 4.1.1.

A hearing shall be conducted in accordance with the provisions of these Bylaws.

**4.2 Notice to Medical Staff Member of Action**

4.2.1 Notice

1. When an action occurs that entitles a Medical Staff Member to a hearing, notice shall be given to the affected Medical Staff Member that shall include:
2. A statement of the action or recommendation and fair notice of reasons for the action or recommendation;
3. A statement that the Medical Staff Member has the right to request a hearing within thirty (30) days of delivery of this notice;
4. A statement that the Medical Staff Member may affirmatively waive the right to a hearing, and that the failure to submit a timely request for a hearing shall be deemed a waiver of the right to a hearing and acceptance of the final action; and
5. A summary of the rights in the hearing as provided in these Bylaws, including the Medical Staff Member’s right to be represented by an attorney of the Medical Staff Member’s choice and at the Medical Staff Member’s sole expense.
6. Notice shall be deemed delivered when: (1) sent by certified mail, return receipt requested to the Medical Staff Member’s professional office or personal residence; or (2) hand-delivered to the Medical Staff Member or designee personally.

4.2.2 Request for Hearing

The Medical Staff Member has thirty (30) days following the date of delivery of such notice to submit a written request for a hearing to the Hospital President, Chairperson of the MEC, or Chief Medical Officer/Vice President of Medical Staff. Failure to timely request a hearing shall be deemed a waiver of all rights to a hearing under these Bylaws and acceptance of the action or recommended action, as applicable.

**4.3 Medical Staff Member’s Request for Mediation**

When a Medical Staff Member is entitled to a hearing, the Medical Staff Member may require the MEC participate in mediation. The Medical Staff Member must request mediation in writing to the Hospital President, Chairperson of the MEC, or Chief Medical Officer/Vice President of Medical Staff within ten (10) business days of delivery of notice of the right to a hearing. The mediation must be scheduled and completed as soon as practicable, and in no event shall mediation be held less than fourteen (14) days before the hearing is scheduled (if a hearing has been timely requested) unless the Medical Staff Member and MEC otherwise agree in writing. The parties shall be required to share the cost of any mediation equally. The mediator shall be qualified according to state law and selected by the MEC.

* 1. **Timing and Notice of Hearing**

4.4.1 The hearing shall take place as soon as practicable but no sooner than thirty (30) days after the notice of hearing unless an earlier hearing date has been agreed to in writing by the parties. The MEC and the Practitioner, or their attorneys if applicable, shall work together to secure a date for the hearing, taking into consideration the following factors: (a) Availability of Hearing Panel Members; (b) Availability of Witnesses; (c) Availability of Presiding Officer; (d) Estimated length of the hearing.

4.4.2 In the event the Practitioner, or Practitioner’s attorney, if applicable, fails to respond to requests to schedule a hearing or for information related to the above within thirty (30) days of such request, Practitioner shall be deemed to have waived any rights to a hearing under these Bylaws and accepted the action or recommended action, as applicable.

4.4.3 The notice shall include:

1. A proposed list of witnesses, as known at the time, but which may be modified as changes are known, who may give testimony or evidence on behalf of the MEC action or recommendation; and
2. A concise statement of the reasons for the action or recommendation as well as the list of records and documents that may be used in support of the action or recommendation. This statement, and list of records and documents, may be revised, supplemented, or amended as necessary prior to the hearing.

**4.5 The Hearing**

4.5.1 Composition of the Hearing Panel

1. The MEC shall appoint a Hearing Panel composed of either one (1) or more Medical Staff Members, as the MEC in its sole discretion determines appropriate. A Medical Staff Member of the Hearing Panel must not have been in direct economic competition with the Medical Staff Member at any time during the previous twelve (12) months, and must not have been a member of any committee that previously considered or acted upon the issue that is the subject matter of the hearing. A Medical Staff Member is not disqualified from serving on the Hearing Panel by having previously considered matters related to the Medical Staff Member that are not the subject of the hearing.
2. Medical Staff Member members of the Hearing Panel need not be members of the Hospital’s Medical Staff, nor are they required to have training or expertise in the same clinical practice area as the Medical Staff Member.
3. Medical Staff Member members of the Hearing Panel may be compensated for reasonable time in preparing for and conducting the hearing. If compensation is proposed, the MEC shall deliver notice to the Medical Staff Member of the proposed compensation and the opportunity for the Medical Staff Member to pay one-half of such compensation.

4.5.2 Presiding Officer

1. The MEC may appoint an attorney as Presiding Officer. General Counsel to the Hospital may not serve in this capacity. The Presiding Officer may not act as prosecuting officer or as an advocate for either side at the hearing. The Presiding Officer shall:
2. Afford all participants in the hearing a reasonable opportunity to be heard and to present oral and documentary evidence, subject to reasonable limits on the nature and extent of the proposed evidence;
3. Determine the number of witnesses and duration of direct and cross-examination as the Presiding Officer deems necessary to avoid cumulative or irrelevant testimony or to prevent abuse of the hearing process;
4. Prohibit conduct or presentation of evidence that is cumulative, excessive, abusive, irrelevant, or that causes undue delay;
5. Maintain decorum throughout the hearing;

1. Facilitate delivery of relevant information to the Hearing Panel;
2. Have the authority and discretion to rule on all questions pertaining to procedural matters and admissibility of evidence, including the exclusion of witnesses from the hearing room during testimony of other witnesses or exclusion of any evidence; and
3. Conduct sidebar conferences with counsel and hear arguments by counsel on procedural points outside the presence of the Hearing Panel unless the Hearing Panel wishes to be present.
4. The Presiding Officer may participate as a legal advisor in the private deliberations of the Hearing Panel, but the Presiding Officer shall not be entitled to vote on the recommendations of the Hearing Panel. The Presiding Officer may thereafter continue to advise the Board of Trustees on the matter.
5. If no Presiding Officer has been appointed, the Chairperson of the Hearing Panel shall be the Presiding Officer and shall be entitled to one (1) vote.
6. The Presiding Officer may be compensated for reasonable time in preparing for and conducting the hearing. If compensation is proposed, the MEC shall deliver notice to the Medical Staff Member of the proposed compensation and the opportunity for the Medical Staff Member to pay one-half of such compensation.

4.5.3 Representation by Counsel

The Medical Staff Member shall be entitled to representation by an attorney or other person of the Medical Staff Member’s choice and at the Medical Staff Member’s sole expense. The Medical Staff Member shall notify the Hospital President, the Chair of the MEC, or the Chief Medical Officer/Vice President of Medical Staff in writing of the name and all contact information of the attorney or representative at least twenty-one (21) days before the date of the hearing. The MEC shall appoint a person, who may be an attorney, as its counsel. The Chief Medical Officer/Vice President of Medical Staff and representatives from the MEC and the Hospital Administration may attend the hearing to observe and to testify; however, no other individuals may attend the hearing.

4.5.4 Discovery

1. There is no right to conduct discovery in connection with the hearing. However, the Medical Staff Member shall be entitled to request the following information, subject to a stipulation signed by both parties that such information shall be maintained as confidential and shall not be disclosed or used for any purpose outside the hearing.
2. At a mutually agreed time prior to the hearing or as provided by the Presiding Officer, each party shall provide the other party with a list of proposed exhibits and witnesses. If the Medical Staff Member intends to rely upon expert testimony, a written report from each such expert shall be provided at the same time as the list of exhibits and witnesses. All objections to documents or witnesses (to the extent then reasonably known) shall be submitted prior to the hearing to the Presiding Officer for consideration and ruling.
3. Neither the Medical Staff Member nor the Medical Staff Member’s representative shall contact directly or indirectly Hospital employees or, Medical Staff or Hospital committee members appearing on the MEC’ s witness list concerning the subject matter of the hearing, unless agreed upon by counsel.
4. Copies of, or reasonable access to, all patient medical records referred to as a basis for the adverse recommendation, at the Medical Staff Member’s expense;
5. Reports of experts relied upon by the Credentials Committee, MEC, or Board of Trustees; and
6. Copies of any other documents relied upon in reaching the action taken or recommended.

4.5.5 Prehearing Conference

The Presiding Officer may require counsel for the parties to participate in a prehearing conference. The Presiding Officer may issue any rulings he deems appropriate for the orderly conduct of the hearing, including:

1. List of witnesses.

Each party shall provide a written list of the names and addresses of the witnesses expected to offer testimony and a short summary of the expected testimony. Failure to do so may be grounds for the Presiding Officer to refuse testimony from such witnesses at the hearing. Either party may, in the discretion of the Presiding Officer, supplement or amend the witness list before the hearing provided that notice is given to the other party. The Presiding Officer has the authority to limit the number of witnesses, especially character witnesses or witnesses whose testimony is merely cumulative;

1. Time for presentation.

The time available for each party’s presentation of testimony and evidence and cross-examination shall be determined by the Presiding Officer;

1. Documentary evidence.

All documentary evidence must be exchanged on or before the prehearing conference. Any objections shall be made at that time and ruled upon by the Presiding Officer. Failure to disclose and provide such documentary evidence may be grounds for the Presiding Officer to exclude such evidence.

4.5.6 Rights of Both Parties

Both parties shall have the following rights, subject to reasonable limits determined by the Presiding Officer: to call and examine witnesses, to introduce exhibits, to cross-examine any witness, and to submit a closing statement including points of argument and citation of authorities at the end of the hearing. If the Medical Staff Member does not testify on his behalf, the Medical Staff Member may be called adversely and examined as if under cross-examination.

At the hearing, the MEC shall proceed first. The Medical Staff Member shall have the right to proceed following the conclusion of the presentation of the MEC. The MEC shall have the right to rebuttal after the presentation of the Medical Staff Member.

4.5.7 Admissibility of Evidence

Formal rules of evidence and procedure shall not be strictly enforced. However, the Presiding Officer shall make rulings for the orderly conduct of the hearing. Any relevant noncumulative evidence shall be admitted if a reasonable person would rely on such evidence in the conduct of serious affairs, regardless of its admissibility in a court of law. The Hearing Panel may question the Medical Staff Member and other witnesses, call additional witnesses, and request additional documentary evidence.

4.5.8 Taking Official Notice of Matters

The Hearing Panel has the discretion to take official notice of any matter that was not submitted by the parties but which the Hearing Panel deems relevant to the issues under consideration. The parties shall be informed of the matters to be officially noticed, and such matters shall be noted in the hearing record or panel report. Either party shall have the opportunity to object and refute that a matter be officially noticed. Reasonable additional time shall be granted, if requested, to present written rebuttal to any evidence admitted by official notice.

4.5.9 Burden of Proof and Basis of Decision

The MEC shall not have any burden of proof regarding the action or proposed recommendation. The burden of proof shall rest solely on the Medical Staff Member to prove by a standard of “clear and convincing evidence” (as routinely defined in law) that the action or recommendation, in light of the MEC recommendation, was either (1) arbitrary and capricious, or (2) not supported by substantial evidence. “Arbitrary and capricious” means the absence of any rational connection between the known facts and the recommendation made. “Not supported by substantial evidence” means that no reasonable person could conclude that there was sufficient support for the recommendation based on the facts.

The Hearing Panel shall recommend in favor of the MEC recommendation unless the Medical Staff Member has carried the burden of proof as to each one of the Medical Staff Member’s contentions.

4.5.10 Record of Hearing

A stenographic reporter shall make a record of the hearing. The cost of such record shall be borne by the Hospital, but copies of the record may be provided to the Medical Staff Member at his expense. Each witness shall testify only on oath or affirmation administered by the Presiding Officer, and all testimony shall be contained in the record.

4.5.11 Adjournment and Conclusion

The Presiding Officer may adjourn and reconvene the hearing for the convenience of the participants without special notice. The hearing shall conclude when the Presiding Officer, after consultation with the Hearing Panel, finds that no more evidence needs to be presented or questions need to be asked.

4.5.12 Postponements and Extensions

Requests for postponements or extensions of the hearing shall be permitted by mutual agreement, or by the Presiding Officer on a showing of good cause.

4.5.13 Failure to Appear

Failure, without good cause, of the Medical Staff Member to appear timely and proceed at the hearing shall be deemed a waiver of the hearing and a voluntary acceptance of the action or recommendation.

4.5.14 Deliberations and Recommendation of the Hearing Panel

Within twenty (20) days after final adjournment of the hearing, the Hearing Panel shall conduct its deliberations outside the presence of any other person except the Presiding Officer and shall render a recommendation, in the form of a written report, which shall contain concise statements of the reasons for the recommendation.

4.5.15 Delivery of Hearing Panel Report

The Hearing Panel shall deliver its recommendation and report to the Hospital President, Chair of the MEC, or Chief Medical Officer/Vice President of Medical Staff who shall forward it, along with the record, to the Board of Trustees for further action. A copy of the recommendation and report shall be forwarded to the Medical Staff Member.

4.5.16 Board of Trustees Action

No later than the next regularly scheduled meeting following receipt of the Hearing Panel’s recommendation, the Board of Trustees shall review such recommendation and the earlier MEC action or recommendation. The Board of Trustees may appoint a subcommittee of Board of Trustees members to review the matter and bring a recommendation to the Board within ninety (90) days of receipt of the Hearing Panel’s recommendation. The Board is not bound by the recommendation of the Hearing Panel, so it may affirm, reverse, or modify its recommendation. The Board shall notify the Medical Staff Member of its decision, with a statement of the basis for the decision, within ten (10) days of its decision in writing by personal delivery to the Medical Staff Member or designee or by certified mail, return receipt requested.

**4.6 Appellate Review**

4.6.1 Request for Appeal

Within fourteen (14) days after receiving notice of the action of the Board of Trustees, the Medical Staff Member may request an appeal. This request shall be made in writing, certified mail, return receipt requested, to the Hospital President, Chair of the MEC, or Chief Medical Officer/Vice President of Medical Staff and shall specify the reasons justifying further review. Failure to make a timely request shall constitute a waiver of the right of appeal and an acceptance of the Board’s ruling.

4.6.2 Grounds for Appeal

The grounds to be argued on appeal shall be limited to:

1. Substantial and material failure to comply with this article of the Bylaws so as to deny a fair hearing; or
2. A Board action under Section 4.5.16, in light of the recommendation of the Hearing Panel, that was (1) arbitrary and capricious, or (2) not supported by substantial evidence (as defined above).

4.6.3 Notice of Review

Unless otherwise agreed by the parties, the review shall be held within forty-five (45) days of the receipt of a timely request for appeal. The Medical Staff Member shall receive written notice, return receipt requested, of the date, time, and place for the review no later than fourteen (14) days prior to the scheduled appellate review. The time for review may be extended for good cause by the Chairperson of the Board of Trustees.

4.6.4 Composition of the Appellate Review Committee

The Chairperson of the Board of Trustees shall appoint a committee to act as an appellate body with one (1) member being designated as Chairperson. The Review Committee shall consist of not less than five (5) members and shall not contain any person who directly participated in the hearing. The Review Committee shall contain three (3) members of the Board of Trustees and two (2) members of the Medical Staff. These Medical Staff members shall not be members of the Credentials Committee or the MEC, or in direct economic competition with the Medical Staff Member. The Hospital President, the Chief Medical Officer/Vice President of Medical Staff, and representatives of the MEC and Hospital Administration may attend the proceedings, but not as voting members of the Review Committee.

4.6.5 Presiding Officer

The Chairperson of the Review Committee may appoint a Presiding Officer to assist in matters of argument and procedure during the review process. The Presiding Officer may be, but is not required to be, the same individual who served in that capacity during the hearing.

4.6.6 Written Statement

Each party shall have the right to present a written statement in support of its position on appeal. Legal counsel may assist in the preparation of these statements. The written statement shall be delivered to the Chairperson of the Review Committee and the other party at least seven (7) days before the date of the scheduled review. Each party shall have three (3) days to submit written objections to the form and/or content of the other party’s statement to the Chairperson of the Review Committee. The Chairperson, who may consult with the Presiding Officer if one is appointed, shall rule on these objections.

4.6.7 Record on Appeal

Except as provided below, the record on appeal that may be reviewed and considered by the Review Committee shall be limited to (1) the written statements; (2) the evidence admitted in the hearing consisting of (a) documents, (b) witness testimony, and (c) matters taken by official notice; (3) the record of the hearing; and (4) closing statements submitted at the end of the hearing. New evidence shall be accepted at the sole discretion of the Review Committee and only upon a sufficient demonstration by the proponent that the new evidence was not reasonably available at the time of the hearing.

The Review Committee has sole discretion whether to allow the parties and their counsel to appear in person to present oral arguments subject to any limitations imposed by the Review Committee.

4.6.8 Recommendation to the Board of Trustees

The Review Committee shall review the record on appeal and statements of the parties, and shall deliberate in private. The Review Committee may adjourn and reconvene at any time if additional investigation or deliberation is needed.

The Review Committee may recommend that the Board of Trustees affirm, reverse, or modify the previous decision. The decision of the Review Committee shall be by majority vote of its members and shall be communicated in writing to the Board of Trustees within ten (10) days after conclusion of the appellate review.

4.6.9 Board of Trustees Action

The Board of Trustees shall review the recommendation of the Review Committee and make its final decision not later than its next regularly scheduled meeting. The Board is not bound by the recommendation of the Review Committee, so it may affirm, reverse, or modify same. If the Board requests further investigation, such investigation shall take place and be reported to the Board of Trustees within thirty (30) days, and final action shall be taken not later than the next regularly scheduled meeting after such report. The Board decision shall be communicated in writing to the MEC and the Medical Staff Member.

**4.7 Right to One Hearing and One Appeal**

The Medical Staff Member shall have the right to only one (1) hearing and one (1) appellate review on any matter.