

DAYTON CHILDREN'S HOSPITAL

FAIR HEARING PLAN

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DAYTON CHILDREN'S HOSPITAL

PROFESSIONAL STAFF

FAIR HEARING PLAN

1. Right to a Hearing

A. An applicant, or practitioner holding a professional staff appointment shall be entitled to request a hearing whenever one or more of the following recommendations have been made by the Professional Staff Executive Committee or the Board of Trustees.

- (1) Denial of initial professional staff appointment;
- (2) Denial of requested advancement in professional staff category;
- (3) Denial of professional staff reappointment;
- (4) Revocation of professional staff appointment;
- (5) Denial of requested initial clinical privileges;
- (6) Denial of requested increased clinical privileges;
- (7) Decrease of clinical privileges;
- (8) Suspension of clinical privileges for more than 30 days;
- (9) Imposition of mandatory concurring consultation requirement.

B. No other recommendations except those enumerated in (A) of this section shall entitle the individual to request a hearing.

C. The affected individual shall also be entitled to request a hearing before the Board enters a final decision, in the event the Board should determine, without a similar recommendation from the Professional Staff Executive Committee, to take any action set forth above.

D. The hearing shall be conducted in as informal a manner as possible, subject to the rules and procedures set forth in this Fair Hearing Plan.

E. None of the following actions shall constitute grounds to request a hearing, and these shall take effect without hearing or appeal, provided that the individual shall be entitled to submit a written explanation to be placed into his*file:

- (1) Issuance of a letter of guidance, 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 relinquishment of appointment or privileges;

his* – see VI. Gender

- (5) Imposition of a requirement for additional training or continuing education;
- (6) Precautionary suspension;
- (7) Denial of a request for leave of absence, or for an extension of a leave;
- (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 criteria, a lack of need or resources or because of an exclusive contract.

F. A mandatory concurring consultation is a consultation in which the treating physician must consult with another physician at the time the patient is being treated and there must be an agreement by the consulting physician as to the course of treatment before the physician who is subject to the mandatory concurring consultation may treat the patient. A general consultation requirement is one in which the treating physician must consult with another physician, but the agreement of the consulting physician is not necessary. Should the treating physician disagree with the recommendation of the consultant, the treating physician is permitted to treat the patient in accordance with his professional judgment and is required to articulate the reasons for his/her disagreement with the consultant, in the medical record.

II. Notice of Adverse Recommendation

The affected party shall be notified in writing by the President and Chief Executive Officer of any such recommendation or action that would entitle the affected party to a hearing. The notice shall be in substantially the following form, and shall contain the following information.

NOTICE OF A PROPOSED PROFESSIONAL REVIEW ACTION

To: (name and address of physician, dentist or podiatrist)

You are hereby notified that the Professional Staff Executive Committee/Board of Trustees of The Dayton Children's Hospital, Dayton, Ohio, in a meeting duly called and held on

_____, 20____, made the following recommendation or the Board of Trustees took the following action, for the accompanying reason:

(Recommendation or Action) _____

(Reason) _____

Pursuant to the provision of the Fair Hearing Plan, a copy of which is enclosed, you have a right to a hearing and an appellate review if you file a written request for such a hearing with the Office of the President and Chief Executive Officer within thirty (30) days after your receipt of this notice. A request filed by mail must be received by the Office of the President and Chief Executive Officer within the thirty (30) day period.

Failure to file such a request on time shall constitute a complete and final waiver by you of any right to a hearing and any appellate review of the matter which is the subject of this notice, and the matter shall be transmitted to the Board of Trustees for final action.

If you file a request for a hearing, you will be notified of the time, place, and date of the hearing in accordance with Section IV (G) (2) of the Fair Hearing Plan.

III. The Hearing Committee

- A. When a hearing is requested, the President and Chief Executive Officer, acting for the Board and after considering the recommendations of the Chairperson of the professional staff (and that of the Chairperson of the Board, if the hearing is occasioned by a Board determination) shall appoint a Hearing Committee which shall be composed of not less than three members, one of whom shall be designated as the Hearing Committee Chairperson. The majority of the Hearing Committee shall be composed of professional staff appointees who shall not have actively participated in the consideration of the matter involved at any previous level or physicians or lay persons not connected with the hospital or a combination of such persons.
- B. The Hearing Committee shall not include any individual who is in direct economic competition with the affected person or any such individual who is professionally associated with or related to the affected party or any such individual who is involved in a referral relationship with the affected person. Such appointment shall include designation of the Chairperson or the Presiding Officer. Knowledge of the matter involved shall not preclude any individual from serving as a member of the Hearing Committee.

The name of the members of the Hearing Committee will be immediately communicated to both parties by their appointer, both upon the initial appointments and in the event of any subsequent substitute appointments.

IV. Hearing Procedure

A. Appearances

The personal presence of the individual who requested the hearing is required. If he fails to appear without good cause, as determined by the Hearing Committee, he shall be deemed to have completely and finally waived his rights in the matter.

Both the person who requested the hearing and the Professional Staff Executive Committee are entitled to have legal counsel or any other person represent them at the hearing. If a party is represented by an attorney, the attorney representing each party shall be responsible for presenting the case.

B. Presiding Officer

In lieu of a Hearing Committee Chairperson, the President and 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. If no Presiding Officer has been appointed, the Chairperson of the Hearing Committee shall serve as the Presiding Officer and shall be entitled to one vote. The Presiding Officer (or Hearing Committee Chairperson) shall:

- (1) Act to insure that all participants in the hearing have a reasonable opportunity to be heard and to present oral and documentary evidence subject to reasonable limits on the number of witnesses and duration of direct and cross examination, applicable to both sides, as may be necessary to avoid cumulative or irrelevant testimony or to prevent abuse of the hearing process;
- (2) Prohibit conduct or presentation of evidence that is cumulative, excessive, irrelevant, abusive or that causes undue delay;

- (3) Maintain decorum throughout the hearing;
- (4) Determine the order of procedure throughout the hearing;
- (5) Have the authority and discretion, in accordance with this policy, to make rulings on all questions which pertain to matters of procedure and to the admissibility of evidence;
- (6) Act in such a way that all information relevant to the appointment or clinical privileges of the individual requesting the hearing is considered by the Hearing Panel in formulating its recommendations; and
- (7) Conduct argument by counsel on procedural points outside the presence of the Hearing Committee unless the Committee wishes to be present.

The Presiding Officer may participate in the private deliberations of the Hearing Committee and be a legal advisor to it, but shall not be entitled to vote on its recommendation.

C. Hearing Officer

- (1) As an alternative to a Hearing Committee, the President and Chief Executive Officer, after consulting with the Chairperson of the Professional Staff, may appoint a Hearing Officer, preferably an attorney, to perform the functions of a Hearing Committee. The Hearing Officer may not be, or represent clients who are, in direct economic competition with the individual requesting the hearing.
- (2) If a Hearing Officer is appointed instead of a Hearing Committee, all references in this Article to the "Hearing Committee" or "Presiding Officer" shall be deemed to refer to the Hearing Officer.

D. Objections

Any objection to any member of the Hearing Committee, or the Hearing Officer or Presiding Officer, shall be made in writing within 10 days of receipt of notice to the President and Chief Executive Officer, who shall resolve the objection.

E. Attendance of Committee Members

A majority of the Hearing Committee shall be present throughout the hearing. In unusual circumstances when a Hearing Committee member must be absent from any part of the hearing, he or she shall read the entire transcript of the portion of the hearing from which he or she was absent.

F. Rights of Parties

During a hearing, each of the parties shall have the right, 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 on any matter relevant to the issues;
- (4) To rebut any evidence; and

- (5) To submit a written statement at the close of the hearing.

Oral evidence will be taken only on oath or affirmation administered by a person entitled to notarize documents.

G. Procedure and Evidence

1. The hearing need 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 their affairs shall be admitted, regardless of the admissibility of such evidence in a court of law. Each party shall, prior to or during or after the hearing, be entitled to submit memoranda that shall become part of the hearing record. The Rules of Evidence do not apply to the hearing. While there is no right to pre-hearing discovery, the individual who requests the hearing shall have the right to have available to him or her the following, subject to the condition that all documents and information be maintained as confidential and not disclosed or used for any purpose outside of the hearing:
 - (a) Copies of, or reasonable access to, all patient medical records referred to in the statement of reasons, at the individual's expense;
 - (b) Reports of experts relied upon by the Professional Staff Executive Committee;
 - (c) Copies of relevant minutes (with portions regarding other physicians and unrelated matters deleted); and
 - (d) Copies of any other documents relied upon by the Professional Staff Executive Committee.

The provision of this information is not intended to waive any privilege under the state peer review protection statute. The individual shall have no right to discovery beyond the above information. No information shall be provided regarding other practitioners. The rule to be applied in determining the admissibility of evidence will be the relevance of the evidence to the immediate proceeding, as determined by the chair or presiding officer.

2. The President and Chief Executive Officer shall schedule the hearing and shall give written notice, by certified mail, return receipt requested, to the person who requested the hearing. The notice shall include:
 - (a) the time, place and date of the hearing;
 - (b) a proposed list of witnesses who will give testimony of evidence in support of the Professional Staff Executive Committee or Board at the hearing and a brief summary of the anticipated testimony;
 - (c) the names of the Hearing Committee members/hearing officer if known; and
 - (d) a statement of the specific reasons for the recommendation as well as the list of patient records and information supporting the recommendation. This statement, and the list of supporting patient record numbers and 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 recommendation or the individual's qualifications, and provided that individual and the

individual's counsel have sufficient time, up to 30 days, to study this additional information and rebut it.

3. The hearing shall 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.
4. The Presiding Officer shall require a representative (who may be counsel) for the individual and for the Professional Staff Executive Committee to participate in a pre-hearing conference. At the pre-hearing conference the Presiding Officer shall resolve all procedural questions, including any objections to exhibits or witnesses, and the time to be allotted to each witness's testimony and cross-examination.
5. At least 15 days before the pre-hearing conference, the individual requesting the hearing shall provide a written list of the names and addresses of the individuals expected to offer testimony or evidence on the affected individual's behalf. The witness list shall include a brief summary of the anticipated testimony. The witness list of either party may, in 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. Each party shall also provide the other party with its proposed exhibits. All objections to witnesses or documents, 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.
6. If the individual who requested the hearing does not testify in his own behalf, he may be called and examined as if under cross-examination by the Professional Staff Executive Committee Representative or Board Representative. Also, the Hearing Committee may question any witness, request the presence of additional witnesses, and/or request documentary evidence.
7. In reaching a recommendation, the Hearing Committee may take official notice of the submission of the matter for recommendation of any generally accepted technical or scientific matter relating to the issues under consideration. Parties present at the hearing shall be noted in the hearing record. Any party shall be given opportunity, on timely request, to request that a matter be officially noticed and to refute the officially noted matters by evidence, or by written or oral presentation of authority, the manner of such refutation to be determined by the Hearing Committee.
8. Burden of Proof: It shall be the obligation of the Professional Staff Executive Committee representative to present appropriate evidence in support of the adverse recommendation of the Professional Staff Executive Committee. It shall be the obligation of the Board representative to present appropriate evidence in support of the adverse recommendation made by the Board of Trustees. The person who requested the hearing shall thereafter have the burden of proving, by clear and convincing evidence, that the adverse recommendation or action which occasioned the hearing was arbitrary or capricious.

H. Record

A record of the hearing shall be kept by the use of a court reporter and the cost borne by the Hospital. Copies of the transcript shall be available at the individual's expense.

I. Post-Hearing Statement

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

J. Persons to be Present

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

K. Postponements and Extensions

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

L. Deliberation and Decision

Upon conclusion of the presentation of oral and written evidence, the hearing shall be closed. The Hearing Committee shall thereupon, at a time convenient to itself within seven (7) days after hearing closure, or at which time the hearing records are available for review (which may be designated as the time the Hearing Committee receives the hearing transcript or any post-hearing statements, whichever is later), conduct its deliberations outside of the presence of any person other than the Presiding Officer. Upon conclusion of its deliberations, the hearing shall be declared finally adjourned and the Hearing Committee, within fourteen (14) days thereafter shall forward to the President and Chief Executive Officer a written report of its findings and recommendations, along with all supporting documentation, to the Board for further action.

Upon receipt of the recommendation from the Hearing Committee, the President and Chief Executive Officer shall thereafter, within seven (7) days, forward to the individual who requested the hearing and Professional Staff Executive Committee a copy of the recommendation of the Hearing Committee.

V. Appeal Procedure

A. Time for Appeal:

Within 10 days after notice of the Hearing Committee's recommendation, either party may request an appellate review. The request shall be in writing, and shall be delivered to the President and Chief Executive Officer either in person or by certified mail, return receipt requested, and shall include a brief statement of the reasons for appeal and the specific facts and circumstances that justify further review. If such appellate review is not requested within 10 days as provided herein, both parties shall be deemed to have accepted the recommendation involved and it shall thereupon be forwarded to the Board for final action.

B. Ground for Appeal:

The grounds for appeal shall be that:

- (1) there was substantial failure to comply with this policy and/or the hospital or Professional Staff Bylaws in the matter which was the subject of the hearing so as to deny due process or a fair hearing; or
- (2) the recommendations of the Hearing Committee were made arbitrarily, capriciously or with prejudice; or
- (3) the recommendations of the Hearing Committee were not supported by substantial evidence.

C. Time, Place and Notice:

Whenever an appeal is requested as set forth in the preceding sections, the Chairperson of the Board shall, within 10 days after receipt of such request, schedule and arrange for an appellate review. The parties shall be given notice of the time, place and date of the appellate review. The date of the appellate review shall be not less than 10 days, nor more than 30 days from the date of receipt of the request for appellate review; provided, however, that when a request for appellate review is from an appointee who is under a suspension then in effect the appellate review shall be held as soon as the arrangements may reasonably be made and not more than 14 days from the date of receipt of the request for appellate review. The time for appellate review may be extended by the Chairperson of the Board for good cause.

D. Nature of Appellate Review:

- (1) The Chairperson of the Board shall appoint a Review Committee composed of not less than three persons, either members of the Board or others, including but not limited to reputable persons outside the hospital, to consider the record upon which the recommendation before it was made.
- (2) The Review Committee may accept additional oral or written evidence subject to the same rights of cross-examination or confrontation provided at the Hearing Committee proceedings. Such additional evidence shall be accepted only if the party seeking to admit it can demonstrate that any opportunity to admit it at the hearing was denied, or that it is new, relevant evidence, and then only at the discretion of the Review Committee.
- (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 have 10 days to respond. In its sole discretion, the Review Committee may allow each party or its representative to appear personally and make oral argument, not to exceed 30 minutes per party. The Review Committee shall recommend final action to the Board.
- (4) The Board may affirm, modify or reverse the recommendation of the Review Committee or, in its discretion, refer the matter for further review and recommendation.

E. Final Decision of the Board:

Within 30 days after receipt of the Review Committee's recommendation, the Board shall render a final decision in writing and shall deliver copies thereof to the affected party and to the Chairperson of the Professional Staff Executive Committee, in person or by certified mail, return receipt requested.

F. Further Review:

Except where the matter is referred for further action and recommendation in accordance with Section V (D) (4), the final decision of the Board following the appeal shall be effective immediately and shall not be subject to further review. Provided, however, if the matter is referred for further action and recommendation, such recommendation 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 Appeal Only:

No applicant or Professional Staff appointee shall be entitled as a matter of right to more than one hearing and one appellate review on any single matter which may be the subject of an appeal. In the event that the Board ultimately determines to deny initial Professional Staff appointment or reappointment to an applicant, or to revoke or to terminate the Professional Staff appointment and/or clinical privileges of a current appointee, that individual may not apply within five (5) years for Professional Staff appointment or for those clinical privileges at this hospital unless the Board provides otherwise.

VI. Gender

Any reference made to the masculine gender throughout is for convenience purpose only and not intended to reflect a specific designation.

VII. Days

Any reference made to “days” throughout means calendar days. In computing any period of time pursuant to this policy, the day of the act or event from which the period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

FAIR HEARING PLAN

APPROVAL/AMENDMENT PROCESS

The professional staff shall adopt the fair hearing plan for the proper conduct of its work. Such fair hearing plan shall be a part of these bylaws. Amendments to the professional staff fair hearing plan may be introduced by any member of the active professional staff, or committee of the professional staff. Particular parts of the plan may be adopted, amended, repealed or added by vote of the executive committee at any regular or special meeting, provided that copies of the proposed amendments, additions or repeals are posted on the professional staff bulletin board and the DCH website (or equivalent) at least fourteen (14) days prior to the next executive committee meeting. Upon written request by a professional staff member to the professional staff office, a copy of the proposed changes to the fair hearing plan will be mailed to the requesting professional staff member. All written comments on the proposed changes by individuals holding current appointments to the professional staff must be brought to the attention of the executive committee before the change is voted upon. If the active professional staff disagrees with the changes and/or amendments, a special meeting of the active professional staff may be called to hear concerns by petition of 10% of the active professional staff to the executive committee. A minimum of 20% of the active professional staff must attend the special meeting. Two-thirds of the active professional staff present at the meeting must vote to overturn the proposed amendment. The overturned amendment will then be forwarded back to the executive committee for reconsideration. If 20% of the active professional staff are not present at the special meeting, the proposed amendment as voted on previously by the executive committee will then be final.

The fair hearing plan shall be adopted, amended, repealed or added to at any regular meeting of the professional staff executive committee and shall become effective when approved by the board of trustees. Neither the professional staff nor the board of trustees may unilaterally amend this plan. A current copy of the fair hearing plan will be maintained on the DCH website. Any professional staff member may request a copy of this plan by submitting a written request to the professional staff office. Significant changes to this plan (as determined by the professional staff executive committee) shall be cause to notify all professional staff members that such changes have occurred. Revised texts of the changes will be made available to professional staff members.