MEDICAL STAFF BYLAWS

Part II: Investigations, Corrective Action, Hearing and Appeal Plan

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PART II: INVESTIGATIONS, CORRECTIVE ACTION, HEARING AND APPEAL PLAN

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1.1 Collegial Intervention

(1) These bylaws encourage the use of progressive steps by medical staff leaders and medical center management, beginning with collegial and education efforts, to address questions relating to an individual's clinical practice and/or professional conduct. The goal of these efforts is to arrive at voluntary, responsive actions by the individual to resolve questions that have been raised.

(2) All collegial intervention efforts by medical staff leaders and medical center management are part of the medical center’s performance improvement and professional and peer review activities.

(3) These efforts involve reviewing and following up on questions raised about the clinical practice and/or conduct of staff members and pursuing counseling, education and related steps, such as the following:

   (a) Advising colleagues of all applicable policies, such as policies regarding appropriate behavior, emergency call obligations, and the timely, legible, and adequate completion of medical records.
   (b) Proctoring, monitoring, consultation and letters of guidance; and
   (c) Sharing comparative quality, utilization, and other relevant information, including any variations from clinical protocols or guidelines, in order to assist individuals to conform their practices to appropriate norms.

(4) Documentation of collegial intervention conducted by the relevant medical staff leader(s) will be included in the confidential peer review file. When documentation of collegial efforts is included in an individual’s file, the individual will have an opportunity to review it and respond in writing. The response shall be maintained in that individual’s file along with the original documentation.

(5) Collegial intervention efforts are encouraged, but are not mandatory, and shall be within the discretion of the appropriate medical staff leaders and medical center management.

(6) The chief of staff, in conjunction with the CMO or PRESIDENT, shall determine whether to direct that a matter be handled in accordance with another policy, such as the policy on Practitioner Impairment or the Standards of Excellence and Conduct policy, or to direct it to the executive committee for further determination.
SECTION 2. INVESTIGATION AND CORRECTIVE ACTION

2.1 Criteria for Initiation

Any person may provide information to any member of the Medical Executive Committee (MEC/PEC) about the conduct, performance, or competence of medical staff members. When reliable information indicates a member may have exhibited acts, demeanor, or conduct, reasonably likely to be (1) detrimental to patient safety or to the delivery of quality patient care within Mercy Health Saint Mary’s; (2) unethical; (3) contrary to the medical staff Bylaws, associated manuals, medical staff policies and/or any Rules and Regulations; (4) harassing or intimidating to colleagues, patients and their families, or staff; (5) disruptive of health center or medical staff operations; or (6) below applicable professional standards, a request for an investigation or action against such member may be initiated by the chief of staff, PRESIDENT, CMO, VP of Quality or the Medical Executive Committee (MEC), or the Practitioner Excellence Committee (PEC).

2.2 Initiation

A request for an investigation must be submitted by one of the above parties to the MEC/PEC through the chief of staff and supported by reference to specific activities or conduct alleged. If the MEC/PEC initiates the request, it shall make an appropriate record of the reasons.

2.3 Investigation

If the MEC or the PEC concludes an investigation is warranted, it shall direct an investigation to be undertaken. The MEC or PEC may conduct the investigation itself, or may assign the task to an appropriate medical staff officer, medical staff clinical service, or standing or ad hoc committee of the medical staff, or refer out to an external peer review consultant. If the investigation is delegated to an officer or committee other than the MEC/PEC, such officer or committee shall proceed with the investigation in a prompt manner and shall forward a written report of the investigation to the MEC/PEC as soon as practicable. The report may include recommendations for appropriate corrective action. The member shall be notified that the investigation (data gathering) is being conducted and shall be given an opportunity to provide information in a manner and upon such terms as the investigating body deems appropriate. The individual or body investigating the matter may, but is not obligated to, conduct interviews with persons involved, however, such investigation (data gathering) shall not constitute a “hearing” as that term is used in the hearing and appeal plan, nor shall the procedural rules with respect to hearings or appeals apply. Despite the status of any investigation, at all times the MEC/PEC shall retain authority and discretion to take whatever action may be warranted by the circumstances including suspension, termination of the investigative process; or other action.

2.3.1 An External Peer Review Consultant should be considered when:

a. Litigation seems likely, an outside review is a course of action in these circumstances. Every step should be taken to avoid even the appearance that the outside reviewers are being asked to achieve a certain result.
b. The health center is faced with ambiguous or conflicting recommendations from the medical staff committees, or where there does not appear to be a strong consensus for a particular recommendation. In these circumstances the MEC/PEC or the Board of Mercy Health Saint Mary's has the option to retain an objective external reviewer.

c. There is no one on the medical staff with expertise in the subject under review, or when the only physicians on the medical staff with that expertise are direct competitors, partners, or associates of the physician under review.

2.4 Medical Executive Committee Action or at the recommendation of PEC

As soon as practicable after the conclusion of the investigation the MEC/PEC shall take action that may include, without limitation:

2.4.1 Determining no corrective action be taken, and if the MEC/PEC determines there was not credible evidence for the complaint in the first instance, removing any adverse information from the member’s file (after two years).

2.4.2 Deferring action for a reasonable time where circumstances warrant.

2.4.3 Issuing letters of admonition, censure, reprimand, or warning, although nothing herein shall be deemed to preclude Clinical Service Chiefs from issuing informal written or oral warnings outside of the mechanism for corrective action. In the event such letters are issued, the affected member may make a written response, which shall be placed in the member’s file.

2.4.4 Recommending the imposition of terms of probation or special limitation upon continued medical staff membership or exercise of clinical privileges, including, without limitation, requirements for co-admissions, mandatory consultation, or monitoring.

2.4.5 Recommending denial, restriction, modification, reduction, suspension or revocation of clinical privileges.

2.4.6 Recommending reductions of membership status or limitation of any prerogatives directly related to the member’s delivery of patient care.

2.4.7 Recommending suspension, revocation, or probation of medical staff membership.

2.4.8 Taking other actions deemed appropriate under the circumstances.

2.5 Subsequent Action

If the MEC/PEC recommends corrective action, that recommendation shall be transmitted to the Board of Mercy Health Saint Mary's. The recommendation of the MEC shall become final unless the member requests a hearing, in which case the final decision shall be determined as set forth in this Hearing and Appeal plan.

2.6 Automatic Suspension Or Limitation:

In the following instances, the member’s privileges or membership will be suspended or limited as described, which action shall be final without a right to hearing or further review, except where a bona fide dispute exists as to whether the circumstances have occurred.

2.6.1 Licensure:
a. **Revocation and Suspension**: Whenever a member’s license or other legal credential authorizing practice in this or other state is revoked or suspended, medical staff membership and clinical privileges shall be automatically revoked as of the date such action becomes effective.

b. **Restriction**: Whenever a member’s license or other legal credential authorizing practice in this or other state is limited or restricted by the applicable licensing or certifying authority, any clinical privileges which the member has been granted at Mercy Health Saint Mary’s which are within the scope of said limitation or restriction shall be automatically limited or restricted in a similar manner, as of the date such action becomes effective and throughout its term.

c. **Probation**: Whenever a member is placed on probation by the applicable licensing or certifying authority, his or her membership status and clinical privileges shall automatically become subject to the same terms and conditions of the probation as of the date such action becomes effective and throughout its term. An automatic suspension may be imposed until the terms of the probation are fully investigated.

d. **Medicare, Medicaid, CHAMPUS, and/or other Federal Programs**: Whenever a member is sanctioned or barred from the Medicare, Medicaid, CHAMPUS or other federal programs, medical staff membership and clinical privileges shall be automatically revoked as of the date such action becomes effective.

2.6.2 Controlled Substance:

a. Whenever a member’s DEA certificate is revoked, limited, or suspended, the member shall automatically and correspondingly be divested of the right to prescribe medications covered by the certificate, as of the date such action becomes effective and throughout its terms.

b. **Probation**: Whenever a member’s DEA certificate is subject to probation, the member’s right to prescribe such medications shall automatically become subject to the same terms of the probation, as of the date such action becomes effective and throughout its term.

2.6.3 Medical Record Completion Requirements

Penalties for failure to satisfy these requirements shall be delineated in medical staff policies and procedures.

2.6.4 Professional Liability Insurance

Failure to maintain professional liability insurance in the amount required by the Board, sufficient to cover the clinical privileges granted shall result in automatic suspension of a members’ clinical privileges. Required minimum amounts of liability are $200,000 per incident and $600,000 aggregate, unless a specific privilege requires additional limits of liability. If within 90 days after written warning of the delinquency the member does not provide evidence of required professional liability insurance (including tail coverage for any period prior during which insurance was not maintained), the member’s membership shall automatically terminate. The medical staff office must be notified immediately of any change in professional liability insurance carrier or coverage.

2.6.5 Medical Staff Dues/special assessments

1 calendar days, in all time frames referenced
Failure to promptly pay medical staff dues or any special assessment shall be grounds for automatic suspension of a member’s appointment. If within (90) ninety days after written warning of the delinquency the member does not remit such payments the members’ membership shall automatically terminate.

2.6.6 Medical Executive Committee Deliberation

As soon as practicable after action is taken or warranted as described in Section 2.4, the MEC shall convene to review and consider the facts, and may recommend such further corrective action as it may deem appropriate following the procedure generally set forth in the Section 2.3.

2.7 Precautionary Suspension

2.7.1 Criteria For Initiation

Whenever a member’s conduct appears to require that immediate action be taken to protect the life or well-being of patient(s) or to reduce a substantial and imminent likelihood of significant impairment of the life, health, safety of any person, or when medical staff leaders and PRESIDENT determine that there is a need to carefully consider any event, concern or issue which, if confirmed, has the potential to effect patient or employee safety, the effective operation of the institution, or to impair the reputation of the medical staff or institution then the PRESIDENT, the chief of staff, CMO, the MEC, or the clinical service chief in which the member holds privileges may restrict or suspend the medical staff membership or clinical privileges of such member as a precaution. Unless otherwise stated, such precautionary suspension shall become effective immediately upon imposition, and the person or body responsible shall promptly give written notice to the member, the MEC, the PRESIDENT and the Board of Mercy Health Saint Mary’s. The restriction or suspension may be limited in duration and shall remain in effect for the period stated or, if none, until resolved as set forth herein. Unless otherwise indicated by the terms of the precautionary suspension, the member’s patients shall be promptly assigned to another member by the Clinical Service Chief or by the officer of the medical staff, considering where feasible, the wishes of the effected practitioner and patient in the choice of a substitute member.

2.7.2 Medical Executive Committee Action

As soon as practicable after such precautionary suspension has been imposed, a meeting of the MEC shall be convened to review and consider the action and if necessary begin the investigation (data gathering) process as noted in 2.3. Upon request, the member may attend this meeting at the discretion of the MEC and make a statement concerning the issues under investigation, on such terms and conditions as the MEC may impose, although in no event shall any meeting of the MEC, with or without the member, constitute a “hearing” within the meaning defined in the hearing and appeal plan, nor shall any procedural rules with respect to hearing and appeal apply. The MEC may modify, continue, or terminate the precautionary suspension, but in any event it shall furnish the member with notice of its decision.

2.7.3 Procedural Rights
Unless the MEC promptly terminates the precautionary suspension prior to or immediately after reviewing the results of the investigation (data gathering) described in 2.3, the member shall be entitled to the procedural rights afforded by the hearing and appeal plan once the restrictions or suspension last more than 14 days.

2.8 Disciplinary Suspension

The MEC may, with approval of the PRESIDENT and the Chair of the Board of Mercy Health Saint Mary's, institute one or more disciplinary suspensions of a member for a period not to exceed fourteen (14) consecutive days for each occurrence in a calendar year. Issuance of this disciplinary action will not trigger the provisions of the hearing process. A disciplinary suspension may be instituted only under the following circumstances:

2.8.1 When the action that has given rise to the suspension relates to one of the following policies of the medical staff: completion of medical records, practitioner behavior (or Standards of Excellence and Conduct policy) or requirements for clinical service coverage of the emergency service as established by the MEC.

2.8.2 When the action(s) have been reviewed by the MEC and only when the MEC has determined that one or more of the above policies has been violated.

2.8.3 When the practitioner has received at least two written warnings within the last twelve (12) months regarding the conduct in question. Such warnings must state the conduct or behavior that is questioned and specify or refer to the applicable policy, and state the consequence of repeat violation of the policy.

2.8.4 When the affected practitioner has been offered an opportunity to meet with the MEC prior to the imposition of the disciplinary suspension. Failure on the part of the practitioner to accept the MEC offer of a meeting will constitute a violation of the medical staff Bylaws regarding "special meetings" and will not prevent the MEC from issuing the disciplinary suspension.

2.9 Disciplinary Suspension and provision for coverage of existing hospitalized patients:

2.9.1 A disciplinary suspension will take effect after the practitioner has been given an opportunity to either arrange for his/her patients currently at the health center to be cared for by another qualified practitioner or until he/she has had an opportunity to provide needed care prior to discharge. During this period, the practitioner will not be permitted to schedule any elective admissions, surgeries, or procedures.

2.9.2 The chief of staff or the clinical service chief will determine details of the extent to which the practitioner may continue to be involved with hospitalized patients prior to the effective date of the disciplinary suspension.

SECTION 3. INITIATION AND NOTICE OF HEARING

3.1 Initiation of Hearing

An applicant or an individual holding a medical staff appointment shall be entitled to request a hearing whenever an unfavorable recommendation with regard to clinical competence or professional conduct has been made by the MEC or the Board. Hearings will be triggered only by the following actions:
3.1.1 Denial of medical staff reappointment;
3.1.2 Revocation of medical staff appointment;
3.1.3 Denial or restriction of requested clinical privileges;
3.1.4 Reduction in clinical privileges;
3.1.5 Involuntary reduction/revocation of clinical privileges;
3.1.6 Application of a mandatory concurring consultation requirement, or an increase in the stringency or a pre-existing mandatory concurring consultation requirement, when such requirement only applies to an individual medical staff member; and
3.1.7 Suspension of staff appointment or clinical privileges, but only if such suspension is for more than 14 days and is not caused by the member’s failure to complete medical records or any other reason unrelated to clinical competence or professional conduct.

3.2 Hearings are not triggered by the following actions:
3.2.1 Issuance of a letter of guidance, warning, or reprimand;
3.2.2 Imposition of conditions, monitoring, or general consultation requirement (i.e., the individual must obtain a consult but not get prior approval for the treatment);
3.2.3 Deferral of a request for privileges not central or directly related to the applicant’s prior training and practice;
3.2.4 Automatic suspension or limitation consistent with 2.6 and 2.8;
3.2.5 Precautionary or disciplinary suspension which does not exceed fourteen days;
3.2.6 Denial of a request for leave of absence, or for an extension of a leave;
3.2.7 Determination that an application is incomplete;
3.2.8 Determination that an application will not be processed due to misstatement or omission;
3.2.9 For not processing an application due to an exclusive arrangement or service provided under an exclusive contract or agreement.

3.2.10 Rules Violation
3.2.11 Behavior Issues

3.3 Notice of Recommendation

When a precautionary suspension lasts more than 14 days or when a recommendation is made, which, according to this plan entitles an individual to request a hearing prior to a final decision of the Board of Mercy Health Saint Mary's, the affected individual shall promptly be given notice by the PRESIDENT, in writing, certified mail, return receipt requested. This notice shall contain:
3.3.1 A statement of the recommendation made and the general reasons for it;

3.3.2 Notice that the individual has the right to request a hearing on the recommendation within thirty (30) days of receipt of this notice;

3.3.3 Notice that the recommendation, if finally adopted by the Board of Mercy Health Saint Mary’s, may result in a report to the state licensing authority (or other applicable state agencies) and the National Practitioner Data Bank; and

3.3.4 The individual shall receive a copy of Section 5.5 of this manual outlining the rights of both sides in the hearing.

3.4 Request for Hearing

Such individual shall have (30) thirty days following the date of the receipt of such notice within which to request the hearing. The request shall be made in writing to the health center PRESIDENT and/or his/her designee. In the event the affected individual does not request a hearing within the time and in the manner required by this policy, the individual shall be deemed to have waived the right to such hearing and to have accepted the recommendation made, and such recommended action shall thereupon become effective immediately upon final Board of Mercy Health Saint Mary’s action.

3.5 Notice of Hearing and Statement of Reasons:

The PRESIDENT shall schedule the hearing and shall give written notice, certified mail return receipt requested, to the person who requested the hearing. The notice shall include:

3.5.1 The time, place and date of the hearing;

3.5.2 A proposed list of witnesses (as known at that time, but which may be modified) who will give testimony or evidence in support of the MEC, (or the Board of Mercy Health Saint Mary’s), at the hearing;

3.5.3 The names of the hearing panel members and presiding officer or hearing officer, if known; and

3.5.4 A statement of the specific reasons for the recommendation as well as the list of patient records and/or information supporting the recommendation. This statement, and the list of supporting patient record numbers and other information, 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 that individual and the individual’s counsel have sufficient time to study this additional information and rebut it.

The hearing shall begin as soon as practicable, but no sooner than (30) thirty days after the notice of the hearing unless an earlier hearing date has been specifically agreed to in writing by the parties.

3.6 Witness List
At least (15) fifteen days before the hearing, 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 list of witnesses who will testify in support of the MEC recommendation (or the Board action) will include a brief summary of the nature 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. The presiding officer shall have the authority to limit the number of witnesses.

**SECTION 4. HEARING PANEL AND PRESIDING OFFICER OR HEARING OFFICER**

4.1 Hearing Panel

4.1.1 When a hearing is requested, the PRESIDENT, acting for the Board of Mercy Health Saint Mary's and after considering the recommendations of the chief of staff (and those of the chairperson of the Board of Mercy Health Saint Mary's, if the hearing is occasioned by a Board determination) shall appoint a hearing panel that shall be composed of not less than (3) three members. No individual appointed to the hearing panel shall have actively participated in the consideration of the matter involved at any previous level. Hearing Panel members must be connected with Mercy Health Saint Mary's. Knowledge of the matter involved shall not preclude any individual from serving as a member of the hearing panel.

4.1.2 Any objection to any member of the hearing panel or to the hearing officer or presiding officer shall be made in writing within (10) ten days of receipt of notice to the PRESIDENT who shall resolve the objection. While the individual who is the subject of the hearing may object to a panel member, he or she is not entitled to veto that member's participation. Final authority to appoint panel members will rest with the PRESIDENT.

4.1.3 The hearing panel 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 individual. Such appointment shall include designation of the chairperson or the presiding officer.

4.2 Presiding Officer

4.2.1 In lieu of a hearing panel chairperson, the PRESIDENT and chief of staff may appoint an attorney at law as presiding officer. Such presiding officer will not act as a prosecuting officer, or as an advocate for either side at the hearing. The presiding officer may participate in the private deliberations of the hearing panel and be a legal advisor to it, but shall not be entitled to vote on its recommendation.

4.2.2 If no presiding officer has been appointed, a chairperson of the hearing panel shall be appointed by the PRESIDENT to serve as the presiding officer, and shall be entitled to one (1) vote.

4.2.3 The Presiding Officer (or Hearing Panel Chairperson) shall:
a. 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;

b. Prohibit conduct or presentation of evidence that is cumulative, excessive, irrelevant, abusive or that causes undue delay;

c. Maintain decorum throughout the hearing;

d. Determine the order of procedure throughout the hearing;

e. 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;

f. Act in such a way that all information reasonably relevant to the continued appointment or clinical privileges of the individual requesting the hearing is considered by the hearing panel in formulating its recommendations;

g. Conduct argument by counsel on procedural points outside the presence of the hearing panel unless the panel wishes to be present; and

h. Legal counsel to the health center may advise the presiding officer

4.3 Hearing Officer

4.3.1 As an alternative to the hearing panel described in Section 4.1. of this manual, the PRESIDENT, after consulting with the chief of staff (and chairperson of the Board of Mercy Health Saint Mary's if the hearing was occasioned by a Board of Mercy Health Saint Mary's determination) may instead appoint a hearing officer to perform the functions that would otherwise be carried out by the hearing panel. The hearing officer may be an attorney.

4.3.2 The hearing officer may not be any individual who is in direct economic competition with the individual requesting the hearing, and shall not act as a prosecuting officer or as an advocate to either side at the hearing. In the event a hearing officer is appointed instead of a hearing panel, all references in this Article to the “hearing panel” or “presiding officer” shall be deemed to refer instead to the hearing officer, unless the context would clearly otherwise require.

SECTION 5. PREHEARING AND HEARING PROCEDURE

5.1 Provision of Relevant Information

5.1.1 There is no right to formal “discovery” in connection with the hearing. The presiding officer, hearing panel chairperson, or hearing officer shall rule on any dispute regarding discovery and may impose any safeguards, including denial or limitation of discovery to protect the peer review process and assure a reasonable and fair hearing. In general, the individual requesting the hearing shall be entitled, upon specific request, to the following, subject to a stipulation signed by both parties that such documents shall be maintained as confidential consistent with all applicable state and federal peer review and privacy statutes and shall not be 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 his or her expense;

b. Reports of experts relied upon by the MEC;

c. Copies of redacted relevant committee or clinical service minutes;

d. Copies of any other documents relied upon by the MEC or the Board of Mercy Health Saint Mary's;

e. No information regarding other practitioners shall be requested, provided or considered; and,

f. Evidence unrelated to the reasons for the recommendation or to the individual’s qualifications for appointment or the relevant clinical privileges shall be excluded.

5.1.2 Prior to the hearing, on dates set by the presiding officer or agreed upon by counsel for both sides, each party shall provide the other party with all proposed exhibits. All objections to documents or witnesses to the extent then reasonably known shall be submitted in writing in advance of the hearing. The presiding officer shall not entertain subsequent objections unless the party offering the objection demonstrates good cause.

5.1.3 Prior to the hearing, on dates set by the presiding officer, the individual requesting the hearing shall, upon specific request, provide the Credentials Committee or MEC (or the Board of Mercy Health Saint Mary's) copies of any expert reports or other documents upon which the individual will rely at the hearing.

5.1.4 There shall be no contact by the individual who is the subject of the hearing with health center employees appearing on the health center's witness list concerning the subject matter of the hearing; nor shall there be contact by the health center with individuals appearing on the affected individual's witness list concerning the subject matter of the hearing, unless specifically agreed upon by that individual or his or her counsel.

5.2 Pre-Hearing Conference

The presiding officer may require a representative for the individual and for the health center’s MEC (or the Board of Mercy Health Saint Mary's) 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 determine the time to be allotted to each witness’s testimony and cross-examination.

5.3 Failure to Appear

Failure, without good cause, of the individual requesting the hearing to appear and proceed at such a hearing shall be deemed to constitute a waiver of all hearing and appeal rights and a voluntary acceptance of the recommendations or actions pending, which shall then be forwarded to the Board for final action.

5.4 Record of Hearing
A record of the hearing must be kept that is of sufficient accuracy to permit an informed and valid judgment to 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 may select the method to be used for making the record, such as court reporter, detailed transcription, or minutes of the proceedings. The cost of such record shall be borne by the individual.

5.5 Rights of Both Sides:

5.5.1 At a hearing both sides shall have the following rights, subject to reasonable limits determined by the presiding officer:

a. To call and examine witnesses to the extent available;

b. To introduce exhibits;

c. To cross-examine any witness on any matter relevant to the issues and to rebut any evidence;

d. Representations by counsel who may call, examine, and cross examine witnesses and present the case. Both sides shall notify the other of the name of that counsel at least (10) ten days prior to the date of the hearing; and

e. To submit a written statement at the close of the hearing.

5.5.2 Any individuals requesting a hearing who do not testify in their own behalf may be called and examined as if under cross-examination.

5.5.3 The hearing panel may question the witnesses; call additional witnesses or request additional documentary evidence.

5.6 Admissibility of Evidence:

The hearing shall not be conducted according to rules of evidence. Hearsay evidence shall not be excluded merely because it may constitute hearsay. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the admissibility of such evidence in a court of law.

5.7 Burden of Proof

The hearing panel shall recommend in favor of the MEC (or the Board of Mercy Health Saint Mary’s) unless it finds that the individual who requested the hearing has proved with a preponderance of the evidence that the recommendation which prompted the hearing was arbitrary, capricious, or appears to be unfounded or not supported by credible evidence. It is this individual’s burden to demonstrate that he or she satisfies, on a continuing basis, all criteria for initial appointment, reappointment, and clinical privileges and fully complies with all medical staff and health center policies.

5.8 Post-Hearing Memoranda

Each party shall have the right to submit a post-hearing memorandum, and the hearing panel may request such a memorandum to be filed, following the close of the hearing.

5.9 Official Notice
The presiding officer shall have the discretion to take official notice of any matters, either technical or scientific, relating to the issues under consideration. Participants in the hearing shall be informed of the matters to be officially noticed and such matters shall be noted in the record of the hearing. Either party shall have the opportunity to request that a matter be officially noticed or to refute the noticed matter by evidence or by written or oral presentation of authority. Reasonable additional time shall be granted, if requested by either party, to present rebuttal of any evidence admitted on official notice.

5.10 Postponements and Extensions

Postponements and extensions of time beyond any time limit set forth in this policy may be requested by anyone but shall be permitted only by the presiding officer or the PRESIDENT on a showing of good cause.

5.11 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 or the chief of staff.

5.12 Order of Presentation

The Board of Mercy Health Saint Mary's or the MEC, depending on whose recommendation prompted the hearing initially, shall first present evidence in support of its recommendation. Thereafter, the burden shall shift to the individual who requested the hearing to present evidence.

5.13 Basis of Recommendation

The hearing panel shall recommend in favor of the MEC unless it finds that the individual who requested the hearing has proved, by clear and convincing evidence, that the recommendation that prompted the hearing was arbitrary, capricious, or not supported by credible evidence.

5.14 Adjournment and Conclusion

The presiding officer may adjourn the hearing and reconvene the same at the convenience and with the agreement of the participants. Upon conclusion of the presentation of evidence by the parties and questions by the hearing panel, the hearing shall be closed.

5.15 Deliberations and Recommendation of the Hearing Panel:

Within a reasonable time frame but no longer than (20) twenty business 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, if one is appointed) and shall render a recommendation, accompanied by a report, which shall contain a concise statement of the reasons for the recommendation.

5.16 Disposition of Hearing Panel Report

The hearing panel shall deliver its report and recommendation to the PRESIDENT, who shall forward it, along with all supporting documentation, to the Board of Mercy Health Saint Mary's for further action. The PRESIDENT shall also send a copy of the report and recommendation, certified mail, return receipt requested, to the individual who requested the hearing, and to the MEC for information and comment.
SECTION 6. APPEAL TO THE BOARD OF MERCY HEALTH SAINT MARY’S

6.1 Time for Appeal

Within (10) ten days after notice of the hearing panel’s recommendation, either the member or the MEC may appeal the recommendation. The request for appellate review shall be in writing, and shall be delivered to the PRESIDENT either in person or by certified mail, and shall include a brief statement of the reasons for appeal and the specific facts or circumstances which justify further review. If such appellate review is not requested within ten (10) days as provided herein, both parties shall be deemed to have accepted the recommendation involved, and the hearing panel’s report and recommendation shall be forwarded to the Board of Mercy Health Saint Mary’s for final action.

6.2 Grounds for Appeal

The grounds for appeal shall be limited to the following:

6.2.1 There was substantial failure to comply with fair hearing plan and/or the Health Center medical staff Bylaws prior to the hearing so as to deny a fair hearing; or

6.2.2 The recommendation of the hearing panel was made arbitrarily, capriciously or with prejudice; or

6.3 Time, Place and Notice

Whenever an appeal is requested as set forth in the preceding sections, the chairperson of the Board of Mercy Health Saint Mary’s shall schedule and arrange for an appellate review as soon as arrangements can be reasonably made, taking into account the schedules of all individuals involved. The affected individual shall be given notice of the time, place and date of the appellate review. The chairperson of the Board of Mercy Health Saint Mary’s for good cause may extend the time for appellate review.

6.4 Nature of Appellate Review

6.4.1 The Chairperson of the Board of Mercy Health Saint Mary's shall appoint a review panel composed of not fewer than (3) three members of the Board to consider the information upon which the recommendation before the Board of Mercy Health Saint Mary’s was made.

6.4.2 The review panel may accept additional oral or written evidence subject to the same of cross-examination or confrontation provided at the hearing panel proceedings. Such additional evidence shall be accepted only if the party seeking to admit it can demonstrate that it is new, relevant evidence and that any opportunity to admit it at the hearing was denied.

6.4.3 Each party shall have the right to present a written statement in support of its position on appeal. In its sole discretion, the review panel may allow each party or its representative to appear personally and make a time-limited (30) thirty-minute oral argument. The review panel shall recommend final action to the Board of Mercy Health Saint Mary’s.

6.4.4 The Board of Mercy Health Saint Mary’s may affirm, modify or reverse the recommendation of the review panel or, in its discretion, refer the matter for further review and recommendation, or make its own decision based upon the Board’s ultimate legal responsibility to grant appointment and clinical privileges.
6.5 Final Decision of the Board of Mercy Health Saint Mary's

Within a reasonable time frame but no longer than (30) thirty business days or its next business meeting after receipt of the review panel's recommendation, the Board of Mercy Health Saint Mary's shall render a final decision in writing, including specific reasons for its action, and shall deliver copies thereof to the affected individual and to the chairpersons of the Credentials Committee and MEC/PEC, in person or by certified mail, return receipt requested.

6.6 Further Review

Except where the matter is referred for further action and recommendation, the final decision of the Board of Mercy Health Saint Mary's 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 of Mercy Health Saint Mary's in accordance with the instructions given by the Board. This further review process and the report back to the board of Mercy Health Saint Mary's shall in no event exceed (45) forty-five days or one business meeting in duration except as the parties may otherwise stipulate.

6.7 Right to One Appeal Only

No applicant or medical staff appointee shall be entitled as a matter of right to more than (1) one hearing or appellate review on any single matter which may be the subject of an appeal. In the event that the Board of Mercy Health Saint Mary's ultimately determines to deny medical staff reappointment to an applicant, or to revoke or terminate the medical staff appointment and/or clinical privileges of a current appointee, that individual may not apply within (5) five years for medical staff appointment or for those clinical privileges at this health center unless the Board of Mercy Health Saint Mary's provides otherwise.
Adoption and Approval

Adopted
by:

_________________________________________   _______________________
Chief of Staff                Date

_________________________________________   _______________________
President, Mercy Health Saint Mary’s                Date

_________________________________________   _______________________
Chairperson, Board                Date

This electronic version is the official document as adopted and approved by the Chief of Staff, Chief Executive Officer, and Chairperson of the Board.