

**WILLIAM BEAUMONT HOSPITAL  
MEDICAL STAFF FAIR HEARING PLAN**

This Fair Hearing Plan provides details regarding the hearing and appeal procedures provided for in Article VI of the William Beaumont Hospital Bylaws of the Medical Staffs. This Fair Hearing Plan is intended to provide a fair mechanism for hearings and appeals that arise from specified actions taken under the Medical Staff Bylaws. This Fair Hearing Plan sets forth standards that are procedural only and shall not be deemed to modify any rights arising under the Medical Staff Bylaws.

Definitions:

1. "Adverse Recommendation or Action" means a recommendation or action listed in Section 1.1 that was:
  - (a) recommended by the Medical Executive Committee; or
  - (b) taken by the Board of Directors and the Board's action was not preceded by a recommendation by the Medical Executive Committee to take one of the actions listed in Section 1.1.
2. "Board of Directors" or "Board" means the governing body of William Beaumont Hospital.
3. "Board Appeal Body" means those Board members designated pursuant to Section 5.2 to consider a Practitioner's post-hearing appeal.
4. "Hearing Officer" means an individual who is not a member of the Hearing Panel and who is appointed in accordance with this Plan to preside at a hearing.
5. "Hearing Panel" means the committee appointed pursuant to this Plan to conduct a hearing that has been properly requested by the affected Practitioner.
6. "Hearing Record" means the following materials: the written report of the Hearing Panel; the transcript of the hearing; all exhibits introduced by the Parties at the hearing; any written statements submitted by the Parties to the Hearing Panel at the conclusion of the hearing; and any other documents or evidence considered by the Panel in forming its report.
7. "Hospital" means a hospital at William Beaumont Hospital at which a hearing has been requested.
8. "Medical Executive Committee" or "MEC" means the Medical Executive Committee of a William Beaumont Hospital Medical Staff.
9. "Parties" means the Practitioner and the body upon whose Adverse Action or Recommendation a hearing request is predicated.

10. "Practitioner" means a Medical Staff member or applicant for Medical Staff membership who is the subject of an Adverse Recommendation or Action and is entitled to a hearing under the Bylaws of the Medical Staff and pursuant to this Plan.
11. "Presiding Officer" means the individual, either Hearing Officer or Chairperson of the Hearing Panel, as applicable, who is appointed pursuant to this Plan to preside at a hearing.
12. "Special Notice" means written notification sent (1) by certified or registered mail, return receipt requested; (2) via overnight delivery with confirmation of delivery; or (3) delivered by hand with a written acknowledgment of receipt.

### **ARTICLE 1. Initiation of Hearing**

#### **1.1 Recommendation or Action.**

The following recommendations or actions shall, if arising as an Adverse Recommendation or Action, entitle the affected Practitioner to a hearing.

- 1.1.1 Denial of initial staff appointment;
- 1.1.2 Denial of reappointment;
- 1.1.3 Suspension or revocation of staff membership;
- 1.1.4 Denial of requested initial, renewed or increased clinical privilege(s);
- 1.1.5 Reduction, suspension or revocation of clinical privilege(s);
- 1.1.6 Denial of a timely complete request for reinstatement from a leave of absence;
- 1.1.7 Other material limitation of the right to provide direct patient care as previously authorized (such as requiring proctoring or consultation, if the Practitioner is required to obtain consent of the proctor or consultant, or the proctor or consultant must be physically present, as a condition to the Practitioner providing patient care).

#### **1.2 Non-Appealable Matters.** A Practitioner will not be entitled to a hearing as a result of a recommendation or action that is not listed in Section 1.1 or the following matters:

- 1.2.1 Voluntary resignation of clinical privilege(s) or Medical Staff membership, including expiration and failure to file timely application for reappointment/renewal of clinical privileges;
- 1.2.2 Issuance of a written warning or a letter of reprimand;

- 1.2.3 Imposition of a consultation or proctoring requirement, if the Practitioner is not required to obtain the consent of the consultant/proctor, and the consultant/proctor is not required to be physically present, as a condition to the Practitioner providing patient care;
- 1.2.4 Imposition of automatic suspension or termination pursuant to the Medical Staff Bylaws or Medical Staff Rules, for example suspension due to failure to complete medical records;
- 1.2.5 Denial of a request for, or termination of, temporary or disaster clinical privileges;
- 1.2.6 Denial of a request for, or imposition of conditions or limitations on, a leave of absence;
- 1.2.7 Mandated education, that does not affect current clinical privileges;
- 1.2.8 Any action or recommendation (including those listed in Section 1.1) based upon (a) the Practitioner's failure to meet then-current written minimum objective criteria for the clinical privileges or Medical Staff status at issue, for example failure to obtain or maintain board certification or board eligibility, or (b) conviction of a felony related to health care, or (c) involuntary exclusion from a federal health care program, or (d) an omission or inaccuracy in the Practitioner's application/request for Medical Staff membership or privileges which the Medical Executive Committee determines to be material;
- 1.2.9 Termination of Medical Staff membership or clinical privileges as provided for in a contract to provide services at the Hospital;
- 1.2.10 Requiring a health assessment, report and/or treatment, as provided for the in Medical Staff Bylaws;
- 1.2.11 Appointment or reappointment for a period less than twenty-four (24) months; or
- 1.2.12 An Adverse Recommendation or Action at the Hospital which is based on a recommendation or action taken on the same grounds at another Beaumont Health hospital if the Practitioner was/is entitled to a hearing and appeal at that other hospital. (This provision shall not be deemed to preclude an Adverse Recommendation or Action by the Hospital on grounds different than those at issue at another Beaumont Health hospital.)
- 1.2.13 Any Adverse Recommendation or Action at a hospital of William Beaumont Hospital automatically applied to other hospitals at William Beaumont Hospital pursuant to Section 5.3(p) of the Medical Staff Bylaws.

In the event of dispute with a Practitioner regarding entitlement to a hearing, the Medical Executive Committee's interpretation of this Plan shall control.

1.3 Notice of Adverse Recommendation or Action.

The Practitioner shall promptly be given Special Notice of an Adverse Recommendation or Action taken against the Practitioner. Such Special Notice shall:

- 1.3.1 include a general statement of the basis for the action and the Practitioner's right to request a hearing pursuant to this Plan;
- 1.3.2 specify that the Practitioner has thirty (30) days following the date of receipt of the notice within which to submit a request for a hearing and the manner in which such request must be made;
- 1.3.3 state that failure to request a hearing by the deadline constitutes a waiver of the right to a hearing and appeal;
- 1.3.4 provide a summary of the Practitioner's rights at the hearing.

1.4 Request for Hearing.

The Practitioner shall have thirty (30) days following his or her receipt of a notice pursuant to Section 1.3 to request a hearing. Such request must be made in writing and delivered to the Chief Medical Officer (CMO) via Special Notices. A Practitioner who is subject to a summary suspension or whose term of appointment is likely to expire during the hearing and appeal, may request an early hearing as described in Section 2.1.1.

1.5 Waiver by Failure to Request a Hearing.

A Practitioner who fails to request a hearing within the time and in the manner specified in Section 1.4 waives any rights to a hearing and appeal to which he or she might otherwise have been entitled. Such waiver in connection with:

- 1.5.1 an Adverse Recommendation or Action by the Board constitutes acceptance of that recommendation or action and no further action by the Board shall be required to constitute a final decision of the Board.
- 1.5.2 an Adverse Recommendation or Action by the MEC constitutes acceptance of that recommendation or action, which shall thereupon be communicated to the Board. The Board shall consider the MEC's recommendation or action and may, in its discretion, consider all other relevant information received from any source. The Board's action on the matter shall constitute a final decision of the Board.

## **ARTICLE 2. Pre-Hearing Procedures**

### **2.1 Scheduling and Notice of Hearing.**

2.1.1 Upon appointment of the Hearing Panel in the manner provided for in this Plan and scheduling of the hearing, the CMO shall send the Practitioner a Notice of Hearing via Special Notice. The Notice of Hearing shall be delivered at least thirty (30) days before the scheduled hearing date (unless this time limit is mutually waived by the Parties). Best efforts will be made to schedule a hearing date that is not more than ninety (90) days after receipt of a timely request for a hearing, and is fewer than ninety (90) days after receipt of the hearing request if the Practitioner requested an early hearing pursuant to Section 1.4.

2.1.2 The Notice of Hearing shall contain:

2.1.2.1 a concise statement of the Practitioner's alleged act(s) or omission(s), a list by medical record number of specific or representative patient records in question, if any, and/or the other reasons or subject matter forming the basis for the Adverse Recommendation or Action which is the subject of the hearing;

2.1.2.2 a list of witnesses expected to testify in support of the Adverse Recommendation or Action; and

2.1.2.3 the date, time and place of the hearing.

### **2.2 Practitioner's Response.**

Within ten (10) days following receipt of the Notice of Hearing, the Practitioner shall deliver to the CMO via Special Notice a list of witnesses expected to testify on the Practitioner's behalf at the hearing.

### **2.3 Examination and Exchange of Documents.**

2.3.1 The Practitioner may request, at his or her own expense, copies of the following documents, as applicable:

2.3.1.1 a copy of the medical record of those patient(s) whose medical care was at issue in forming the Adverse Recommendation or Action, if any;

2.3.1.2 any materials considered by the MEC or Board, as applicable, in making the Adverse Recommendation or Action which occasioned the hearing; and

2.3.1.3 the relevant portions of the minutes of the MEC or Board meeting(s), as applicable, at which the Adverse Recommendation or Action was discussed.

2.3.2 The Parties shall each submit to the CMO at least five (5) days prior to the hearing, all documents the Parties intend to introduce as exhibits at the hearing.

2.3.3 Disclosure of the documents described in Section 2.3.1 may be conditioned on execution of an appropriate confidentiality agreement. All documents produced, submitted or introduced as exhibits for purposes of the hearing shall remain confidential, subject to statutory peer review privilege, and shall not be disclosed or used for any purpose other than as evidence in the hearing and appeal provided for in this Plan.

2.3.4 There are no discovery rights other than those stated in this Section 2.3.

#### 2.4 Appointment of Hearing Panel.

The hearing shall be conducted by a Hearing Panel appointed by the CMO. The Hearing Panel shall be composed of three (3) members, at least two (2) of whom shall be members of the Medical Staff. None of the Hearing Panel members shall be partners, associates, relatives or in direct economic competition with the Practitioner. In addition, none of the Hearing Panel members shall have actively participated in the investigation or recommendation of the Adverse Recommendation or Action that occasioned the hearing. Should the CMO find it impossible to appoint a committee meeting the above requirements, they may appoint to the Panel one or more practitioners who are members of the medical staffs of other Beaumont Health facilities and meet all other requirements of this Section.

### **ARTICLE 3. Hearing Procedure**

#### 3.1 Personal Presence.

The personal presence of the Practitioner shall be required. A Practitioner who fails without good cause, as determined by the Hearing Panel, to appear and proceed at the scheduled hearing shall waive his or her rights in the same manner and with the same consequence as provided in Section 1.5.

#### 3.2 Presiding Officer.

3.2.1 The CMO may appoint a Hearing Officer to preside at the hearing. The Hearing Officer may or may not be an attorney at law, but must be experienced in conducting hearings. The Hearing Officer may, at the request of the Hearing Panel, serve as an advisor to the Panel in its deliberations and in drafting its report, however, the Hearing Officer shall not vote.

- 3.2.2 If a Hearing Officer is not appointed, the CMO shall designate one member of the Hearing Panel as the Chairperson, who shall serve as the Presiding Officer and shall have the authority and responsibilities described in Sections 3.2.3 and 3.2.4. The Chairperson of the Hearing Panel may vote.
- 3.2.3 At the hearing the Presiding Officer (i.e., Hearing Officer or Panel Chairperson, as applicable) shall maintain decorum and assure that all participants in the hearing have a reasonable opportunity to present relevant oral and written evidence. The Presiding Officer shall determine the order of proceedings during the hearing, shall determine the relevance of evidence regardless of its admissibility in a court of law, shall make all rulings on matters of law and procedure, and may promulgate other rules and procedures for the hearing not inconsistent with this Plan.
- 3.2.4 The Presiding Officer may, in his or her discretion, require the Parties to participate in a pre-hearing conference to address:
- 3.2.4.1 The framing and simplification of issues to be presented at the hearing;
  - 3.2.4.2 Admission of facts or documents that will avoid unnecessary hearing testimony and proof;
  - 3.2.4.3 Limitation by the Presiding Officer of the number of witnesses to be called by the Parties in order to reduce repetitive or irrelevant testimony;
  - 3.2.4.4 Such other matters as the Presiding Officer determines may aid in the expeditious disposition of the matters before the Hearing Panel.

The pre-hearing conference may be held by phone. The Presiding Officer may submit a summary of the decisions reached at the conference to the Hearing Panel and such summary will be used to control the subsequent course of the hearing.

### 3.3 Representation.

The Practitioner may be accompanied and represented at the hearing by an attorney, a member of the Medical Staff, or other individual of the Practitioner's choice. The MEC or the Board, depending on whose recommendation or action occasioned the hearing, shall appoint an individual, who may be an attorney, to present the facts in support of its Adverse Recommendation or Action, and to examine the witnesses. The Parties shall each notify the CMO of their intent to be represented, the name of the representative and whether or not he or she is an attorney, no later than seven (7) days prior to the hearing.

### 3.4 Rights of the Parties.

During a hearing, each of the Parties shall have the right to:

- 3.4.1 representation by an attorney or other person of the Party's choice, as described in Section 3.3;
- 3.4.2 have a record made of the proceedings, copies of which may be obtained by the Practitioner upon payment of any reasonable charges associated with the preparation thereof, as described in Section 3.8;
- 3.4.3 call, examine and cross-examine witnesses;
- 3.4.4 present evidence determined to be relevant by the Presiding Officer; and
- 3.4.5 submit a written statement at the close of the hearing.

If the Practitioner does not testify in his or her own behalf, he or she may be called and examined as if under cross-examination.

### 3.5 Procedure and Evidence.

The hearing 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 serious affairs shall be admitted, regardless of admissibility of such evidence in a court of law. Members of the Hearing Panel may question witnesses. Upon the request of either Party, the Presiding Officer shall order that oral evidence be taken only on oath or affirmation administered by any person designated by the Presiding.

### 3.6 Additional Matters.

In reaching a decision, the Hearing Panel may on its own initiative consider any generally accepted technical, medical or scientific matter relating to the issues under consideration. The Parties shall be informed of such matters which are to be considered and those matters shall be noted in the Hearing Record.

### 3.7 Burden of Proof and Standard of Review.

The body whose Adverse Recommendation or Action occasioned the hearing shall present evidence supporting the Adverse Recommendation or Action. Thereafter, the Practitioner must establish by clear and convincing evidence that the Adverse Recommendation or Action was without factual basis or was arbitrary or capricious. The standard of proof set forth in this Section 3.7 shall apply to the hearing and to any subsequent appeal.



3.8 Record of Hearing.

A record of the hearing shall be recorded and transcribed by use of a court reporter, arranged by the MEC or Board, as applicable.

3.9 Postponement.

Each Party may make one (1) request for postponement of the hearing, which may be granted by the Presiding Officer, only if the Presiding Officer determines the requesting Party has shown good cause therefor and that the request was made as soon as was reasonably practical after the need for a postponement became known. Additional postponement of the hearing shall be allowed only by agreement of the Parties.

3.10 Presence of Hearing Panel Members & Voting.

A majority of the Hearing Panel must be present throughout the hearing and deliberations. If a Panel member is absent from a substantial portion of the proceedings, he or she may not participate in the deliberations or the decision.

3.11 Recesses and Adjournment.

The Hearing Panel may, in its discretion, recess and reconvene the hearing, without additional notice, for the convenience of the Parties or for the purpose of obtaining new or additional evidence or for consultation. Upon conclusion of the presentation of oral and written evidence, the hearing shall be closed. Upon closing of the hearing, the Hearing Panel shall allow the Parties the opportunity to submit written statements and shall specify the time and manner in which the Parties may do so.

**ARTICLE 4. Hearing Panel Report and Further Action**

4.1 Hearing Panel Report.

The Hearing Panel shall conduct its deliberations outside the presence of the Parties and without a record of the deliberations being made. No member of the Hearing Panel may vote by proxy. Within thirty (30) days after the later of (a) the closing of the hearing or (b) the deadline for filing post-hearing statements, if applicable, the Hearing Panel shall make a written report containing its recommendations and the basis therefor, and shall forward the report, together with the complete Hearing Record, to the MEC or the Board, as specified in Section 4.2 below. The CMO shall also receive a copy of the Hearing Panel report and shall forward a copy of same to the Practitioner via Special Notice.

4.2 Action on Hearing Panel Report.

- 4.2.1 If the MEC initiated the Adverse Recommendation or Action and the Hearing Panel's report does not recommend that the Adverse Recommendation or Action be modified, the Hearing Panel's report and the Hearing Record shall be forwarded to the Board for review and action

in accordance with Article V. A copy of the Hearing Panel report shall be provided to the MEC.

4.2.2 If the MEC initiated the Adverse Recommendation or Action and the Hearing Panel's report recommends that the Adverse Recommendation or Action be modified, the report shall be submitted to the MEC for consideration. The MEC shall consider the Hearing Panel's report at its next regularly scheduled meeting. The MEC may:

4.2.2.1 accept the recommendations contained in the Hearing Panel's report; or

4.2.2.2 reject the recommendations contained in the Hearing Panel's report and provide written explanation to the Board for its disagreement with the Hearing Panel.

Within seven (7) days following consideration by the MEC, (i) the Hearing Panel's report and the Hearing Record, together with the MEC's response, shall be forwarded to the Board for review and action in accordance with Article V and (ii) the CMO shall notify the Practitioner that the MEC has considered the Hearing Panel's report and summarize for the Practitioner the MEC's response that was forwarded to the Board.

4.2.3 If the Board initiated the Adverse Recommendation or Action, the Hearing Panel's report and the Hearing Record shall be forwarded to the Board for review and action in accordance with Article V. A copy of the Hearing Panel's report shall be provided to the MEC.

## **ARTICLE 5. Action of the Board**

### **5.1 Notice of Appeal Rights.**

Upon receipt of the Hearing Panel's report, the Hearing Record and, if applicable, the MEC's response to the report, the Secretary of the Board shall send a Notice of Appeal Rights via Special Notice to the Practitioner and, if the Adverse Recommendation or Action was initiated by the MEC, the Secretary shall also send a copy of the Notice to the MEC. The Notice of Appeal Rights shall inform the Parties that the matter has been received for review and action by the Board, and stating the rights of the Parties to provide written statements and request submission of oral statements, as provided for in this Article.

### **5.2 Board Appeal Body.**

The Board as a whole may conduct the appeal, or it may delegate this function to a standing committee of the Board or to a special committee of the Board appointed for such purpose. If so delegated, such committee shall have the authority to make determinations regarding written statements, oral statements and consideration of new or additional materials, as described in this Article.

### 5.3 Written Statements.

The Practitioner and, if the Adverse Recommendation or Action was taken by the MEC, the MEC, may submit a written statement supporting their respective positions and detailing any findings and recommendations of the Hearing Panel with which they agree or disagree, and the reasons for such position. This written statement may cover any matters raised during the hearing process, but may not raise new factual matters not presented at the hearing. The statement shall be (i) submitted to the Secretary of the Board, and (ii) served upon the opposing Party via Special Notice, within fourteen (14) days after receipt of Notice of Appeal Rights.

### 5.4 Oral Statements.

The Board Appeal Body, in its sole discretion, may allow the Practitioner and, if the Adverse Recommendation or Action was initiated by the MEC, the MEC, or their respective representative, to appear and make an oral statement supporting their respective positions. Request to make an oral statement must be sent to the Board Secretary within seven (7) days after receipt of the Notice of Appeal Rights. Failure to so request oral statements constitutes a waiver of such right. If the Board Appeal Body allows one Party to present an oral statement, the other Party shall be allowed to do so. Any Party or representative so appearing shall be required to answer questions put to him or her by any member of the Board Appeal Body. If the Board Appeal Body allows oral statements, the Board Secretary shall provide the Parties with notice of the date, time and location for the presentation of oral statements.

New or additional evidence not raised or presented during the hearing or in the Hearing Panel's report, and not otherwise reflected in the Hearing Record, shall not be introduced during oral statements, except in unusual circumstances by permission of the Board Appeal Body. The Board Appeal Body, in its sole discretion, shall determine whether such evidence shall be considered. If such additional evidence is considered, it shall be subject to rebuttal.

### 5.5 Final Action of the Board.

Within sixty (60) days after the Board receives the Hearing Panel's report, the Board shall consider the matter (including findings of the Board Appeal Body, if any) and affirm, modify or reverse the original Adverse Recommendation or Action. The decision of the Board will be final, subject to no further appeal. The action of the Board and the basis therefor will be promptly communicated to the Practitioner in writing via Special Notice and communicated to the MEC.

## **ARTICLE 6. General Provisions**

### 6.1 Number of Hearings and Review.

Notwithstanding any other provision of the Medical Staff Bylaws or of this Plan, no Practitioner shall be entitled to more than one (1) hearing and one (1) Board appeal based on the same topic/behavior, regardless of whether such topic/behavior is the subject of

multiple Adverse Recommendation(s) and/or Actions of the Medical Executive Committee and/or the Board.

6.2 Release.

By requesting a hearing under this Fair Hearing Plan, the Practitioner reaffirms his or her commitment to be bound by the provisions of the Medical Staff Bylaws relating to immunity from liability in all matters relating thereto.

6.3 Amendments.

This Plan may be amended only by vote of the Medical Executive Committee, subject to any applicable procedures stated in the Medical Staff Bylaws, and said amendments are effective upon approval by the Board.