



Ohio Administrative Code Rule 3335-43-06 Hearing and appeal process.

Effective: December 29, 2023

(A) Right to hearing and to an appeal.

(1) When a member of the medical staff who has exhausted all remedies under paragraphs (E) and (F) of rule 3335-43-04 of the Administrative Code on appointment or reappointments; or under rule 3335-43-05 of the Administrative Code for corrective action; or who has been summarily suspended under paragraph (D) of rule 3335-43-05 of the Administrative Code the staff member shall be entitled to an adjudicatory hearing.

(2) A medical staff member shall not be entitled to a hearing under the following circumstances:

(a) Denial by the Wexner medical center board to grant a waiver of board certification for a medical staff member.

(b) Termination of a medical staff member because of exclusion from participation in any government reimbursement program.

(c) Voluntary withdrawal of a medical staff application.

(d) Failure to submit a reappointment application.

(e) A leave of absence extending beyond current appointment or failure to request reinstatement of clinical privileges following a leave of absence.

(f) Actions or recommendations resulting from an informal peer review.

(g) Termination of community affiliate B and community affiliate C medical staff appointments upon approval by the Wexner medical center board.



(3) All hearings and appeals shall be in accordance with the procedural safeguards set forth in this rule to assure that the affected medical staff member is accorded all rights to which the member is entitled.

(B) Request for hearing.

(1) The request for a hearing shall be submitted in writing by the affected medical staff member to the chief medical officer within thirty days of notification by the chief medical officer of the intended action. The chief medical officer shall forward the request to the medical staff administrative committee along with instructions to convene a hearing.

(2) The failure of a medical staff member to request a hearing, to which the member is entitled by these bylaws within the time and in the manner herein provided, shall be deemed a waiver of the right to any review by the medical staff administrative committee. The chief medical officer shall then implement the decision and that action shall become and remain effective against the medical staff member in the same manner as a final decision of the Ohio state university Wexner medical center board as provided for in paragraph (F) of rule 3335-43-05 of the Administrative Code. The chief medical officer shall promptly inform the affected medical staff member that the proposed decision, which had entitled the medical staff member to a hearing, has now become final.

(C) Notice of hearing.

(1) After receipt of a timely request for hearing by the chief medical officer from a medical staff member entitled to such hearing, the medical staff administrative committee shall be notified of the request for hearing by the chief medical officer and shall at the next scheduled meeting take the following action:

(a) Instruct the chief medical officer and chief of staff to jointly appoint within seven days a hearing committee, consisting of five members of the medical staff who are not members of the medical staff administrative committee, are not direct competitors, do not have a conflict of interest, and who have not previously participated in the formal peer review of the matter under consideration.

(b) Instruct the hearing committee to schedule and arrange for a hearing which hearing shall be



conducted not less than thirty days nor more than sixty days from the date of the receipt of the request for hearing by the chief medical officer; provided, however, that a hearing for a medical staff member who is under suspension, which is then in effect, shall be held as soon as arrangements may be reasonably made.

(2) The medical staff member shall be given at least ten days prior notice of the scheduled hearing, provided that this notice may be waived in writing by the medical staff member. Notice shall be by certified return receipt mail to the staff member at the staff members last known address as reflected by university records. The notice of hearing shall state in concise language the acts or omissions with which the medical staff member is charged; a list of representative medical records or documents being used; names of potential witnesses to be called; and any other reason or evidence that may be considered by the hearing committee during the hearing.

(D) Conduct of hearing.

(1) The hearing committee shall select a chairperson from the committee to preside over the hearing. The chairperson may require a representative for the individual and for the medical staff administrative committee (or the Wexner medical center board) to participate in a pre-hearing conference. At the pre-hearing conference, the chairperson shall resolve all procedural questions, including any objections to exhibits or witnesses, the role of legal counsel, and determine the time to be allotted to each witness testimony and cross-examination.

The hearing committee shall have benefit of Ohio state university legal counsel. The hearing committee may grant continuances, recesses, and the chairperson may excuse a member of the hearing committee from attendance temporarily for good cause, provided that there shall be at no time less than four members of the hearing committee present unless the affected staff member waives this requirement.

All members of the hearing committee must be present to deliberate and vote. No member may vote by proxy. The person who has taken action from which the affected staff member has requested the hearing shall not participate in the deliberation or voting of the hearing committee. The hearing shall be a de novo hearing, although evidence of the prior recommendations and decisions may be presented.



(2) An accurate record of the hearing shall be kept. The mechanism for taking the record shall be by the use of a professional stenographer. This record shall be available to the affected member of the medical staff upon request at the member's expense.

(3) The personal presence of the medical staff member for whom the hearing has been scheduled shall be required. A medical staff member who fails without good cause to appear and proceed at such hearing shall be deemed to have waived all rights to appear and to have a hearing before the medical staff administrative committee in the same manner as provided in paragraph (B) of this rule, and to have accepted the adverse recommendation or decision involved and the same shall therein become and remain in effect as provided in paragraph (B) of this rule. The medical staff administrative committee may, in its own discretion, order the hearing committee to proceed with the hearing without the medical staff member and impose a sanction which is greater or lesser than that originally imposed.

(4) The hearing need not be conducted strictly according to the rules of law related to the examination of witnesses or presentation of evidence. Any relevant matters upon which responsible persons customarily rely in the conduct of serious affairs shall be considered, regardless of the existence of any common law or statutory rule which might make evidence inadmissible over objection in civil or criminal action. The member of the medical staff for whom the hearing is being held shall, prior to, or during the hearing, be entitled to submit memoranda concerning any issues of procedure or of fact and such memoranda shall become a part of the hearing record.

(5) The affected medical staff member shall have the following rights: to be represented by an attorney at law and to call and examine witnesses; to introduce evidence; to cross-examine any witnesses on any matter relevant to the issue of the hearing; and to challenge any witness and to rebut any evidence. If the medical staff member does not testify in his or her own behalf, the staff member may be called and examined as if under cross-examination.

(6) The hearing committee shall request the person who has taken the action from which the affected staff member has requested the hearing to present evidence to the hearing committee in support of the adverse recommendation. The hearing committee may proceed to hear evidence and testimony from either party in whatever order the hearing committee deems appropriate. The hearing



committee may call its own witnesses, may recall any parties witnesses, and may question witnesses as it deems appropriate. All parties shall be responsible to secure the attendance of their own witnesses. All witnesses and evidence received by the hearing committee shall be open to challenge and cross-examination by the parties. Witnesses shall not be placed under oath. At the close of the evidence the hearing committee may request each party to make summary statements, either oral or written. The hearing committee may request legal representation from the Ohio state university.

(7) The hearing committee may, without special notice, recess the hearing and reconvene the same for the convenience of the participants or for the purpose of obtaining new or additional evidence or consultation. The hearing committee shall make its best effort to expeditiously determine the issues presented. The hearing committee may elect to limit its proceedings when sufficient material has been received. The parties may be required by the hearing committee to provide evidence in oral or written form. Upon conclusion of the presentation of oral and written evidence, the hearing shall be closed. The committee may thereupon, at a time convenient to itself, conduct its deliberations outside the presence of the medical staff member for whom the hearing was convened.

(8) Within sixty days after its appointment, the hearing committee shall forward its written report and recommendation together with the transcript of the hearing and all other documentation provided by the parties to the medical staff administrative committee. The affected medical staff member shall be notified of the recommendation of the hearing committee including a statement of the basis for the recommendation. The medical staff administrative committee shall accept, reject, or modify the recommendation of the hearing committee. The medical staff administrative committee may conduct further hearings as it deems necessary or may remand the matter back to the hearing committee for further action as directed. The medical staff administrative committee may impose a greater or lesser sanction than that recommended by the hearing committee.

(9) The medical staff administrative committee shall submit a written report, including its recommendation to the chairperson of the Wexner medical center board within fourteen days of the final vote by the medical staff administrative committee. An adverse action which must be reported to the state medical board or the federal government, including the national practitioner data bank, shall entitle an affected medical staff member to the procedures of this rule. The affected member of the medical staff shall be notified of the decision of the medical staff administrative committee by the chief medical officer.



(10) The decision and record of the medical staff administrative committee shall be transmitted to the quality and professional affairs committee of the Wexner medical center board, which shall, subject to the affected members right to appeal and implementation of paragraph (E) of this rule, consider the matter at its next scheduled meeting, or at a special meeting to be held no less than thirty days following receipt of the transmittal. The quality and professional affairs committee may accept, reject, or modify the decision of the medical staff administrative committee. The quality and professional affairs committee may remand that matter back to the medical staff administrative committee for further action as directed.

(11) The recommendation of the quality and professional affairs committee shall be promptly considered by the Wexner medical center board, at its next scheduled meeting. The Wexner medical center board may accept, reject, or modify the recommendation of the quality and professional affairs committee. The Wexner medical center board may remand the matter back to the medical staff administrative committee for further action as directed.

(12) A copy of the Wexner medical center board decision shall be sent certified return receipt mail to the affected medical staff member at the members last known address as determined by university records.

(E) Appeal process.

(1) Within thirty days after receipt of a notice by an affected medical staff member of the decision of the medical staff administrative committee, the member may, by written notice to the chairperson of the Ohio state university Wexner medical center board, request an appeal. The appeal shall only be held on the record before the medical staff administrative committee.

(2) If an appeal is not requested within thirty days, the affected medical staff member shall be deemed to have:

(a) Waived the member's right to appeal, and

(b) Accepted the adverse decision.



- (3) The appeal shall be conducted by the quality and professional affairs committee of the Wexner medical center board.
- (4) The affected medical staff member shall have access to the reports and records, including transcripts, if any, of the hearing committee and of the medical staff administrative committee and all other material, favorable or unfavorable, that has been considered by the medical staff administrative committee. The staff member shall then submit a written statement indicating those factual and procedural matters with which the member disagrees, specifying the reasons for such disagreement. This written statement may cover any matters raised at any step in the procedure to which the appeal is related, and legal counsel may assist in its preparation. Such written statement shall be submitted to the quality and professional affairs committee no later than seven days following the date of the affected members notice of appeal.
- (5) New or additional matters not raised during the hearing or in the medical staff administrative committee hearings shall only be considered on appeal at the sole discretion of the quality and professional affairs committee.
- (6) Within fourteen days following submission of the written statement by the affected medical staff member, the quality and professional affairs committee shall recommend to the Ohio state university Wexner medical center board that the adverse decision be affirmed, modified or rejected, or to refer the matter back to the medical staff administrative committee for further review and recommendation. Such referral to the medical staff administrative committee may include a request for further investigation.
- (7) Any final decision by the Wexner medical center board shall be communicated by the chief medical officer and by certified return receipt mail to the affected medical staff member at that members last known address as determined by university records. The chief medical officer shall also notify in writing the executive vice president for health sciences, the dean of the college of medicine, the chief executive officer of the Ohio state university hospitals and the vice president for health services, chief of staff, the chief of the clinical department, and the person(s) who initiated the request for formal peer review. The chief medical officer shall take immediate steps to implement the final decision.