Hearing Panel Recommendation

Because the Hearing Panel for the Professional Review Action taken by the Medical Staff Executive Committee cannot find that the Committee’s recommendation to revoke the medical staff privileges of Dr. Paul Kearney is unreasonable, not sustained by evidence, or otherwise unfounded, the Hearing Panel hereby affirms the recommendation of the Medical Staff Executive Committee for the reasons stated in the attached report.

Dr. Mark Williams, Chair

Dr. Wendy Hansen

Dr. Lisa Tannock
REPORT OF THE HEARING PANEL

I. INTRODUCTION

The Hearing: On February 10, 2015, the Medical Staff Executive Committee initiated a Professional Review Action against Dr. Paul Kearney of the UK Healthcare System containing a recommendation to the University Health Care Committee that the medical staff privileges of Dr. Kearney be permanently revoked. On March 4, 2015, exercising his rights under the Medical Staff ByLaws, Dr. Kearney requested a hearing under the Fair Hearing Plan of Article 10 of the Medical Staff ByLaws. As required by this Article, the Chief Clinical Officer (Dr. Kevin Nelson) appointed Dr. Mark Williams, Dr. Wendy Hansen, and Dr. Lisa Tannock to serve on a Hearing Panel for this hearing (with Dr. Williams serving as Chair) and appointed Robert G. Lawson (law professor and attorney) to serve as the Presiding Officer for the hearing. The University obtained outside legal counsel (Josh Salsbury and Bryan Beaumann) to represent the Medical Staff Executive Committee at the hearing and Dr. Kearney obtained Mr. Bernard Pafunda (attorney-at-law) to represent him at the hearing. The Hearing Panel and Presiding Officer conducted the hearing in private in the Medical Center on May 27 and 28, gave both the Medical Staff Executive Committee and Dr. Kearney a complete opportunity to present evidence relevant to the Professional Review Action, heard substantial testimony from Dr. Kearney himself, and at the close of the hearing gave the lawyers 10 days within which to submit to the Hearing Panel a written brief or statement about their positions on the issues generated by the Professional Review Action. Both sides presented these final statements within the time limit set by the Hearing Panel and the Panel conducted its deliberation of the issues within 20 days of receiving them.

Applicable Rules and Regulations: Rule 9.1.1 of the Medical Staff ByLaws declares that corrective action may be taken against a physician with medical staff privileges for any of the following: (1) “failure to meet the Hospital’s standards of quality care;” (2) “behavior ... not in the best interest of quality patient care,” (3) “behavior disruptive to the orderly operation of the Hospital [including] verbal and/or physical actions, threats, or other inappropriate behavior directed against patients, physicians, nurses, other Hospital personnel, or the public,” (4) a “recurrence of ... behavior problems,” (5) a “violation of the terms and conditions of any corrective action plan or remedial action plan,” and (6) a “violation of ... Behavioral Standards in Patient Care.” Included within these Standards in Patient Care (among many others) are the following commitments by medical practitioners: (1) “I will use language free from obscenities, profanities, and derogatory or abusive remarks;” (2) “I will be attentive to patients’ ... feelings and adapt my responses to make them feel comfortable and understood regardless of their behavior;” (3) “I will demonstrate support and respect for my colleagues and handle all interactions in a professional manner;” (4) “I will demonstrate integrity and professionalism at all times;” (5) “I will be respectful, talk through issues and conflicts and address conflicts in a respectful way;” and (6) “I will project a positive attitude
and keep my work-related or personal frustrations separate from my patient care and professional activities."

The applicability of these rules and regulations to the dispute between the Medical Staff Executive Committee and Dr. Kearney is clearly indicated by the following paragraph from a letter to Dr. Kearney from Dr. Fred Zachman (dated February 10, 2015) describing the Professional Review Action taken by the Medical Staff Executive Committee and giving Dr. Kearney formal notice of his right to a hearing before this Hearing Panel:

"The MSEC’s decision (upholding Dr. Kearney’s suspension of privileges) was based upon evidence of a pattern of your unprofessional behavior directed toward faculty, residents, staff and patients that the University of Kentucky has been attempting to address with you for over twenty years. This includes but is not limited to events last year involving profanity and derogatory remarks made toward a quadriplegic patient in one of the endoscopy suites as well as similarly unprofessional behavior toward a former operating room nurse circulator. Such behavior violates not only the University’s Behavioral Standards in Patient Care but also the Written Reprimand and Action Plan Re Unprofessional Conduct that you agreed to on January 9, 2013."

The Written Reprimand and Action Plan mentioned in this paragraph contained descriptions of allegedly unprofessional conduct by Dr. Kearney toward three different nurses on three different occasions and contained the following paragraph:

"In the future, you shall refrain from such unprofessional conduct when interacting with other UK personnel. Specifically, you shall not slap, smack or touch another UK employee with whom you are angry or frustrated. In addition, you shall not direct profane comments toward UK personnel if, in your opinion, they fail to perform their duties adequately. While I understand that the OR can be a very stressful environment at times, that is not an excuse for acting unprofessionally. If a physician, nurse, tech, or other personnel fails to perform his or her job in a manner that is satisfactory to you, you shall address all performance issues in a professional manner, either directly with the employee or with the employee’s supervisor."

The Written Reprimand and Action Plan predated by more than one year the two specific events described by the Medical Staff Executive Committee in its February 10, 2015 letter to Dr. Kearney (one involving a patient and one involving a nurse), which led the Committee to rely upon both the above described Rules and Regulations and the above described Written Reprimand and Action Plan in making its recommendation for action that would operate to permanently revoke the medical staff privileges of Dr. Kearney.
Issues for the Hearing Panel: Rule 10.1 of the Medical Center ByLaws states that a Professional Review Action by the Medical Staff Executive Committee is to be presumed by a Hearing Panel to be justified “unless the presumption is rebutted by a preponderance of the evidence” presented to the Panel. Rule 10.13.2 of the ByLaws provides that after all of the evidence has been presented the Panel “shall recommend in favor of the Medical Staff Executive Committee ... unless it finds that the Affected Individual has proved that the recommendation that prompted the hearing was unreasonable, not sustained by the evidence, or otherwise unfounded.” To comply with these rules and perform the tasks assigned to it by the Medical Center ByLaws, the Hearing Panel is required to resolve two issues: (1) Has Dr. Kearney proved that the recommendation of the Executive Committee calling for revocation of his clinical privileges is not sustained by the evidence? (2) Has he proved that the recommendation, if sustained by the evidence, was unreasonable or otherwise unfounded?

II. IS RECOMMENDATION NOT SUSTAINED BY THE EVIDENCE?

Introduction: The evidence presented by the Executive Committee in support of its Professional Review Action against Dr. Kearney concerned two acts of alleged unprofessional behavior by Dr. Kearney (one involving a patient and one involving a nurse) and a lengthy history of the Medical Center’s efforts to deal with alleged unprofessional behavior by Dr. Kearney on other occasions. The following is a summary of its evidence on these three subjects.

Behavior With Respect to Patient: The patient upon whom surgery was performed in an operating room of the University’s hospital had been seriously injured in an auto accident and was quadriplegic. Dr. Kearney and other hospital personnel (including medical residents) were involved in performing a procedure upon the patient that was unusually difficult and that produced a stressful situation for the patient and many if not all of those present in the OR. After the procedure was completed, the patient told his mother that Dr. Kearney had called him “a fucking quad,” “a fucking idiot,” and a “dumbass,” the mother expressed her anger in a Facebook entry reporting the content of these statements by her son, and both the son and mother reported this information in a complaint filed with a customer relations specialist (Glenn White); and, in the course of an investigation of the event conducted for the Medical Staff Executive Committee (by Dr. Susan McDowell and Dr. Louis Bezold), the patient told the investigators that Dr. Kearney had told residents “to pry his fucking mouth open,” that Dr. Kearney called him “a fucking quad” and “a fucking idiot” in the OR, and that the doctor had called him “a fucking quad” a few days earlier in a conversation with a medical resident. The report of this investigation included all of the accusations by the patient to the investigators, included statements by residents and staff members that were generally consistent with these accusations (i.e., “remembers Dr. Kearney cursing at the residents;” “Dr. Kearney was ‘yelling at the residents including calling them names like dumb and
retarded;” “remembers Dr. Kearney saying ‘stuff to the patient that was very unprofessional’ and included using profanity;” “remembers Dr. Kearney being ‘ornery with lots of cussing and name calling’ throughout the entire procedure;” and “believes that there was some profanity used but does not recall the exact words”), and included a description of an interview with Dr. Kearney during which he admitted to having called the patient a dumb-ass (“Hey dumb-ass we are trying to help you just relax”) and to having used profanity in statements made to residents (“I can almost guarantee I used profanity”). The Executive Committee introduced an exhibit the investigative report of Dr. McDowell and Dr. Bezold (which contained detailed summaries of interviews of all persons present in the OR during the procedure on the patient) but did not call the patient or his mother to testify in person before the Hearing Panel.

Behavior With Respect to Nurse: [Redacted] was a nurse intern who worked in the University Operating Room under a contract requiring her to repay to the University the costs of her internship ($2500) should she end her employment before working twenty-four months for the University Hospital. She terminated her employment before satisfying this obligation, received letters from the Medical Center’s legal counsel demanding payment of the money and threatening legal action should she not pay (letters provided to the Hearing Panel), and responded to those letters with written accusations of alleged unprofessional behavior by an unidentified physician. In a letter dated October 20, 2014, [Redacted] stated that she had ended her work for the University Hospital because of: (i) being called “a fucking retard,” ‘dumbass’ or ‘fucking moron’; (ii) “being punched in the side by a physician;” and (iii) other acts of unprofessionalism that she described as “shocking and not something I wanted to put myself in the middle of for two more years.” Patty Bender (Assistant Vice President for Equal Opportunity) was assigned the task of investigating these allegations, made efforts to interview Nurse [Redacted] about her accusations, but was limited in her contacts with Nurse [Redacted] to email communications. In one of two e-mails, Nurse [Redacted] repeated her earlier accusations (again without naming the physician) that in the OR she had been called “a fucking retard, fucking moron, and ... incompetent” and that she had been told by others that this unnamed physician “says that to everyone and is especially abusive to his residents.” In a second e-mail, after stating that she had not told anyone in the Medical Center about these events (“because I ... did not want to get people in trouble”), she stated that the “physician that was responsible for the verbal, emotional, and physical abuse was Dr. Kearney.” Neither Ms. Bender nor the investigators for the Medical Staff Executive Committee were ever able to interview Nurse [Redacted] in person (because “she did not respond to multiple attempts to contact her”) and she was not called by the Executive Committee to testify before the Hearing Panel. The Executive Committee produced the correspondence that Nurse [Redacted] had with legal counsel (including the letter in which she first made her accusations) and the emails that she had with Patty Bender.

Disciplinary History: The Executive Committee produced substantial evidence of Medical Center efforts prior to the events described above to address what it called
“unprofessional behavior directed toward faculty, residents, staff and patients” by Dr. Kearney. Much of this evidence was produced in the form of exhibits that described earlier unprofessional events and prior efforts to address behavioral issues involving Dr. Kearney (dating from 1992 to 2012). The events and actions described in four of these exhibits stand out about the rest:

1. **Letter from Dr. Byron Young (Sept. 5, 2000):** In this letter, Dr. Young stated that he had credible evidence that on August 18, 2000 Dr. Kearney had made “grossly inappropriate comments and gestures” in the OR that included but was not limited to “the use of profanity and anti-minority statements.” In the letter, he imposed on Dr. Kearney a voluntary remediation program and concluded with the following warning: “Failure to meet the requirements of the voluntary remediation or acting in a similar fashion in the future will result in additional corrective action, which could include termination of medical staff privileges and your termination from the University of Kentucky.”

2. **Letter from Dr. Jay Perman (July 8, 2005):** In this letter, Dr. Perman informed Dr. Kearney that he had heard “reports of a profanity-laced, totally uncalled for, outburst on your part in the course of caring for trauma patients on the evening of June 25th.” In the letter, Dr. Perman asked for a meeting with Dr. Kearney and concluded with this statement: “I am looking for correction here, Paul, through a meaningful, sustained professional behavior modification program.”

3. **Letter from Medical Center Leaders (January 7, 2009):** In this letter to the leaders of the University Medical Center, four very high level members of the University’s Medical Staff (Drs. Zwischenberger, McGrath, and DePrist and Nurse Colleen Swartz) stated that “Dr. Paul Kearney has continued to exhibit aggressive and humiliating behavior around colleagues and staff,” that “[t]here have been numerous complaints which are serious and which require management intervention,” and that “his attitude toward colleagues is perceived as derogatory and impacts on student education.” Additionally, they said in this letter that “Dr. Kearney is a respected colleague and valuable surgeon,” that they “want him to serve out his career at UKHealthcare,” but that “we believe that without identifiable intervention, Dr. Kearney and UKHealthcare are at risk.”

4. **Written Reprimand and Action Plan Re Unprofessional Conduct (December 12, 2012):** In this document signed by Dr. Jay Zwischenberger and Dr. Paul Kearney, there are three events involving conduct between Dr. Kearney and the nursing staff of the OR that are described in detail. Nurse 1 stated that Dr. Kearney “smacked her on the left shoulder with an open hand” and after being told that she was pregnant made unsettling remarks to the nurse about the pregnancy. Nurse 2 described an event involving a troublesome procedure in the OR and stated that after the procedure was over Dr. Kearney made to
her the following insulting statement: “You should have a colostomy bag around your head. You have shit for brains.” Nurse 3 stated that Dr. Kearney called her “a bitch” during a procedure in the OR and that he had “used unprofessional language toward her and around her on numerous times during her career at UK.” In the document, Dr. Kearney denied smacking the first nurse with his hand, admitted to making the statement to her about her pregnancy, admitted to making the statement to the second nurse, and neither admitted nor denied making the statement to the third nurse. Finally, the document signed by Dr. Kearney said: “In the future, you shall refrain from such unprofessional conduct when interacting with other UK personnel. Specifically, you shall not slap, smack, or touch another UK employee with whom you are angry or frustrated. In addition, you shall not direct profane comments toward UK personnel if, in your opinion, they fail to perform their duties adequately.”

In addition to these exhibits, the Executive Committee presented oral testimony by the Chief Medical Officer of the Medical Center (Dr. Boulanger) and by the chief nurse executive of the Medical Center (Ms. Colleen Swartz) who provided general information about the matters described above and about prior efforts of the Medical Center to address unprofessional behavior by Dr. Kearney.

**Challenges to the Evidence:** Dr. Kearney attacked the Executive Committee’s evidence in several ways:

1. **Patient Event:** He questioned the capacity of the patient to perceive the events of the operating room because of his drug sedation, he questioned the mother’s motivations by attributing her report to the stress of her circumstances, he produced witnesses who had been present in the operating room but who did not hear the statements alleged to have been made, and he personally testified that the patient event was an “absolute fiction” and “totally contrived.”

2. **Nurse Event:** He produced very little evidence aimed at contradicting the statements that Nurse... made to Medical Center investigators (in letters and emails). He did note that she had not been available to him for examination during the hearing and he raised some question about her credibility by emphasizing that her accusatory statements came to light in a letter responding to a demand for payment of a $2500 reimbursement to the University.

3. **Disciplinary History:** He tried to undermine the evidence of his disciplinary history in the Medical Center by claiming (1) that Medical Center authorities had planted phony documents in his personnel file, (2) that they had “cherry picked” documents from his file, (3) that the “draft” of a disciplinary record that was less favorable to him than the “final” record had been deliberately left in his personnel file, (4) that his personnel file
contained only one patient complaint during his 20 years in the Medical Center, (5) that one of his responses to a disciplinary accusation had been deliberately deleted from his personnel file, and (6) that he had been denied the opportunity to respond to some of the documents in his file (violating University regulations). But, in his challenge to this part of the Executive Committee’s case, he produced very little if any evidence to show that he had not engaged in the unprofessional behavior described in the documents set out above (the January 5, 2000 letter, the July 8, 2005 letter, the January 7, 2009 letter, and the December 12, 2012 written reprimand and action plan) or that the disciplinary action described in those documents had not been taken.

More generally, Dr. Kearney claimed in both his testimony and in his written statement that some Medical Center authorities do not like him and were acting in this case because of that dislike and that the Medical Center’s Chief Executive was fostering phony charges against Dr. Kearney out of his own self-interest.

**Conclusion:** After carefully assessing all of the evidence before it, the Hearing Panel believes (1) that the most persuasive evidence of the “patient event” was the admission by Dr. Kearney in his testimony that he called the patient a “dumbass,” his admission that he swears at residents, and the other physicians’ testimony that Dr. Kearney regularly curses directly at them, all of which is reinforced by the spontaneous and unsolicited statements by the patient and his mother, (2) that the most persuasive evidence of the “nurse event” were the unsolicited statements made by Nurse... in her letter to the Medical Center legal office, and (3) that the evidence proves beyond all reasonable doubt that Dr. Kearney has been subjected to disciplinary actions and professional counseling for unprofessional behavior on multiple occasions during his career in the Medical Center. Most importantly, the Hearing Panel finds that Dr. Kearney has failed to prove that the recommendation of the Executive Committee is “not sustained by the evidence.”

**III. IS RECOMMENDATION UNREASONABLE OR OTHERWISE UNFOUNDED?**

**Introduction:** The Hearing Panel believes that a recommendation to revoke clinical privileges of a physician would qualify as “unreasonable and unfounded” if it has the effect of imposing sanctions that exceed the seriousness of the unprofessional behavior for which they are to be imposed. The Panel considered the following factors in judging the reasonableness of the sanctions recommended by the Medical Staff Executive Committee.

**Dr. Kearney’s Qualities as a Surgeon and Teacher:** Dr. Kearney relied heavily on his performance as a surgeon and teacher to challenge the Executive Committee’s attempt to have his clinical privileges revoked, implying that evidence of his performance should be taken into account in judging the reasonableness of the Committee’s recommendation in its Professional Review Action. The Hearing Panel fully concurs with Dr. Kearney in this regard
and in its deliberations took careful account of his performance as a surgeon and a teacher, with particular attention given to the following evidence:

1. **Documented History:** Dr. Kearney introduced exhibits showing that he has performed at an exceptional level from the time of his arrival in the Medical Center Hospital to the present (from 1988 to 2013). The following statement from a 2013 evaluation captures the essence of his evaluations for this entire period: “Continues to be an outstanding surgeon; educator. Valuable resource for younger surgeons.” Included within this evaluation was a numerical assessment of his performance that bordered on perfect (4.88 on a scale of 5.0), an assessment that is close to what he has received over and over during his entire career at UK. He produced unchallengeable exhibits documenting (1) an exceptionally long list of notable awards that he has received for outstanding teaching, (2) constant recognition of his exceptional work as a surgeon (e.g., 10 consecutive years of inclusion in the “Best Doctors in America”), (3) the creation of an endowed chair in his name by a donor to whom he had given treatment, (4) a long lists of grants in support of his research work and an equally long list of publications emanating from this part of his efforts as a faculty member, and (5) scores of letters of recommendation from faculty on the UK staff with whom he has worked as well as faculty members from numerous other medical schools, all consistently describing Dr. Kearney as an outstanding surgeon, a productive scholar, a dynamic and successful teacher, and an invaluable member of the Medical Center faculty.

2. **Supporting Testimony:** Dr. Kearney produced oral testimony before the Panel from multiple residents who had served under him in the OR, all of whom gave evaluations of his performance as a teacher and surgeon that were equal to or better than those portrayed in the foregoing exhibits; for example and typical, one resident said that “he is the best teacher we have for clinical stuff” and that we “all think he hangs the moon.” He produced similar evidence from nurses who have worked under him, with one saying that nurses want to work with him because “he’s always focused on the patient” and another saying that the nurses in the OR “absolutely want him back”. He also produced oral testimony from two members of the current Medical Center faculty who described his work as a surgeon and teacher as invaluable; for example, Dr. McGrath credited Dr. Kearney with building the trauma center from sort of nothing to a nationally recognized unit, described him as an excellent surgeon, and said that he was an excellent teacher of residents and students. Even those pushing for this corrective action against Dr. Kearney concurred with these evaluations of his performance as a surgeon and teacher, with one saying that “[m]y perception of his abilities as a surgeon never changed. My perception of his ability to educate – he was a very unique educator and he was very well received by a larger number of students and residents. To this day I would say a majority of the students and residents truly admire his style and learn from him.”
In short, the evidence presented to the Hearing Panel by both sides leaves no room to doubt that Dr. Paul Kearney’s performance as a surgeon and teacher has been outstanding during his entire career in the Medical Center.

**Countervailing Considerations:** In judging the reasonableness of the corrective action taken against Dr. Kearney by the Executive Committee, the Hearing Panel considered all of the following factors and evidence:

1. **Disciplinary History:** The evidence presented to the Hearing Panel leaves no room to doubt that the Medical Center has been dealing with disciplinary problems involving Dr. Kearney for much of his career. As early as 1992, he was warned by the Chair of Surgery about engaging in “rude, offensive, impolite, arrogant, and loud” behavior toward staff members; in year 2000, he was offered voluntary remediation by the Chief of Staff of the Hospital who expressed disappointment in his conduct and asked that “you will modify your behavior to conform to the standards of the Medical Center.” In 2005, the Dean of the College of Medicine wrote about “reports of profanity-laced, totally uncalled for, outburst on your part in the course of caring for trauma patients” and mentioned in his letter the need for a “professional behavior modification program”; in 2009, leaders of the surgery department wrote to the Dean of Medicine and to the head of the Medical Center about “continued ... aggressive and humiliating behavior” by Dr. Kearney and about the need for “management intervention” to deal with his behavior in order to preserve his valuable contributions to UKHealthcare. Finally, in 2012, the Chair of the Surgery Department issued a written reprimand of Dr. Kearney for specified acts of unprofessional conduct toward staff members and imposed on Dr. Kearney an action plan that was meant “to correct your behavior and prevent its recurrence.” In other words, there exists no doubt in the record before the Hearing Panel that the Medical Center tried repeatedly without success to use moderate sanctions to correct what it believed to be unacceptable professional behavior by Dr. Kearney.

2. **Needed Corrections:** Multiple witnesses before the Hearing Panel, including Dr. Kearney, painted a picture of the Medical Center’s trauma units that is offensive and unacceptable. The evidence presented to the Panel proves beyond any doubt that personnel in the operating rooms (surgeons, nurses, and residents) tend to employ profanity and other offensive behaviors on a regular basis, to the extent that some witnesses (including Dr. Kearney) claimed that such behavior is simply a part of the culture of surgery. Most importantly, the evidence presented to the Hearing Panel leaves no doubt that residents and medical students of the University’s College of Medicine are exposed to this offensive and unacceptable behavior in the course of completing their educational obligations. Even if some of them find this “culture” tolerable (as Dr. Kearney’s presentation indicates), no one with responsibility for the education of residents and students of the UK College of Medicine could reasonably
believe that this is an acceptable method of preparing students for the practice of medicine. Nothing but a failure to take actions needed to correct this educational shortcoming could ever qualify as unreasonable.

3. **Major Obstacle:** The Executive Committee had a substantial reason to believe that Dr. Kearney’s unprofessional behavior would persist if the Medical Center continued to rely upon the same kind of moderate sanctions that it had employed for most of 20 years. As viewed by the Committee, multiple warnings, leaves of absence, remediation programs, written reprimands, and action plans had done little to eliminate the problem. Dr. Kearney’s presentation to the Hearing Panel provided no substantial grounds for the Hearing Panel to reject this judgment by the Executive Committee. He denied the most serious accusations leveled against him by the Committee (saying for example that the patient event is “totally contrived,” that he has “no problem with the staff,” etc.) and he claimed to have little or no recollection of others (such as the alleged misstatements to nurse [redacted]). Although he acknowledged the commission of some regrettable actions, he tended to minimize the significance of them by attributing them mostly to the inherent stress of the operating room (describing it as “a high-stress environment” and implying that imperfect behavior is an unavoidable consequences of caring for patients in the OR). He expressed a belief that the Professional Review Action of the Medical Staff Executive Committee was attributable to relationship problems that he has had with leaders of the Medical Center: “I think that there was a willful ... attempt on the part of certain people in hospital administration to take me down because they didn’t really like me.” Finally, without no more than a shred of evidence connecting it to the recommendation of the Executive Committee, Dr. Kearney concluded his defense with a written argument that he was being victimized by the Head of the Medical Center (Dr. Michael Karpf) for the purpose of gaining “extraordinary and unfettered access to Kentucky Medical Services Foundation funds without any university faculty control, and no Board of Trustees oversight.” All of this, when added to the 20 year unsuccessful effort to resolve the problems that exist between Dr. Kearney and the Medical Center and the existence of an undeniable need for corrective action, strongly supports the Executive Committee’s judgment that nothing short of the severe sanction that it selected could resolve the difficult problem before it.

**Conclusion:** As stated above, Dr. Kearney had to prove that the Executive Committee recommendation was “unreasonable or otherwise unfounded.” The Hearing Panel finds that he has failed to satisfy this burden.

**IV. CONCLUSION**

Under the UKHealthcare ByLaws, Dr. Kearney could obtain relief from the Medical Staff Executive Committee’s recommendation for revocation of his clinical privileges only by
proving (1) that the recommendation was “not sustained by the evidence” or (2) that the recommendation “was unreasonable ... or otherwise unfounded.” The Hearing Panel finds that he has failed to meet his burden of proof on both of these elements and on that basis rules in favor of the Medical Staff Executive Committee.