

TENTATIVE DRAFT

Response to Motion to Dismiss by Dr. Kearney Robert G. Lawson, Presiding Officer

Motion and Ruling: Through counsel, Dr. Kearney moved for dismissal of the Medical Staff Executive Committee's Professional Review Action (dated February 10, 2015) because of the Committee's failure to give him a hearing before issuing the Professional Review Action. He made his motion on the basis of Rule 9.4.2(a) of the UK Healthcare Medical Center ByLaws and presented it to both the Presiding Officer and the Hearing Panel. Dr. Kearney's motion for dismissal is not granted.

Grounds for Not Granting the Motion: The undersigned (acting as "Presiding Officer" under the Rules on "Fair Hearing Plan") finds the following reasons for not granting Dr. Kearney's motion:

1. Rule 9.4.2(a) uses the word "hearing" in describing the process to be used by the Medical Staff Executive Committee in deciding whether or not to take action against practicing physicians but says absolutely nothing about the nature of this so-called "hearing." Had the drafters and adopters of the Medical Center ByLaws intended this to mean a full hearing like the one now sought by counsel for Dr. Kearney, they would have described in great detail the nature of the "hearing," the purpose of the "hearing," and the rights in that "hearing" of the Practitioner (just as they have done in Article 10 of the ByLaws with respect to the "Fair Hearing" to which Dr. Kearney is clearly entitled). Rule 9.4.1 allows the University's Chief Medical Officer to impose a summary suspension of a Practitioner for alleged conduct violating the ByLaws and Rule 9.4.2 requires the Medical Staff Executive Committee to have an investigation done of the matters underlying that suspension (and to give the Practitioner a chance to address the matter during the course of this investigation) and then to render a decision by the whole Committee as to whether or not to move ahead with adverse action against a member of the Medical Staff. The objective of these provisions is to provide medical staff members with some limited protection against unwarranted charges of ByLaw violations (by putting into the hands of the full Medical Center Executive Committee the final determination of whether or not to proceed with formal charges against a member of the Medical Staff). In the case now before the Presiding Officer and the Hearing Panel, Dr. Kearney got all of the protection to which he was entitled under these provisions.

2. The Medical Center ByLaws carefully provide for a full and fair hearing for any member of the medical staff against whom Professional Review Action is taken (as defined in Article 10). The nature of the hearing, the Affected Individual's rights,

decision makers (a Presiding Officer and a Hearing Panel), and the narrow decision required of decision makers are all carefully defined in the Rules. Then in the final provision of Article 10 on the Fair Hearing Plan (Rule 10.25), the ByLaws contain the following explicit statement: “No Affected Individual shall be entitled as a matter of right to more than one hearing ... on any single matter which may give rise to a right to a hearing” Steps have been taken to provide the fair hearing to which Dr. Kearney is entitled, steps that will be completed in due course as required by the provisions of Article 10. Clearly and explicitly, the ByLaws leave no room for the additional hearing sought by counsel acting on behalf of Dr. Kearney.

3. The ByLaws provide very limited authority to both the Presiding Officer and the Hearing Panel. The Presiding Officer’s authority is limited to managing the hearing described in Article 10 and the Hearing Panel’s authority is limited to deciding if the Medical Staff Executive Committee’s recommendation “was unreasonable, not sustained by the evidence, or otherwise unfounded.” Neither the Presiding Officer nor the Hearing Panel has any authority whatsoever to grant the relief requested by counsel for Dr. Kearney.

Conclusion: Dr. Kearney fully received the protection to which he was entitled under Rule 9.4, he is getting the “fair hearing” to which he is entitled under Article 10 of the Medical Center Bylaws, and he is precluded by Rule 10.25 from getting a second hearing on the matter underlying the Professional Review Action pending against him. Additionally, the Presiding Officer and Hearing Panel have no authority to dismiss charges brought against a member of the Medical staff. For these reasons, the motion made by counsel for Dr. Kearney seeking a dismissal of charges for failure to comply with UK ByLaws is not and cannot be granted.

Robert G. Lawson
Presiding Officer