

**FAIR HEARING PLAN**  
**PART ONE – INITIATION OF HEARING**

**1.1 TRIGGERING EVENTS**

Any practitioner whose membership and/or privileges are denied, revoked, suspended, reduced, or otherwise limited shall be entitled to a hearing upon timely and proper request, unless such limitation constitutes nonreviewable action as defined in Section 6.7 of the Medical Staff Bylaws.

**1.2 NOTICE OF ADVERSE RECOMMENDATION OR ACTION**

Within five (5) business days of an adverse action or recommendation of the Medical Executive Committee, the CEO shall notify the practitioner by special notice of the reviewable adverse action or recommendation. The notice shall:

- a) Advise the practitioner that an adverse action or recommendation has been taken or proposed; and contain a concise statement of the practitioner's alleged acts or omissions, a list of the specific or representative patient records in question, and/or the other reasons or subject matter forming the basis for the adverse action or recommendation that is the subject of the hearing;
- b) Advise the practitioner of his or her right to a hearing upon timely and proper request; and specify that the practitioner has 30 calendar days after receiving the notice within which to submit a written request for a hearing to the CEO;
- c) State that failure to request a hearing within the above stated time period and in the proper manner constitutes a waiver of rights to any hearing or appellate review on the matter that is the subject of the notice;
- d) Specify the hearing rights to which the practitioner is entitled; and
- e) State that after receipt of the request for a hearing, the practitioner will be notified of the date, time, and place of the hearing.

**1.3 AMENDED ADVERSE RECOMMENDATION OR ACTION**

The Medical Executive Committee may at any time during the course of the proceeding modify its proposed adverse recommendation or action, or the grounds for such recommendation or action, provided the Medical Executive Committee timely notifies the practitioner of such modifications. In the event a practitioner receives notice of any such modification, the practitioner may request a postponement of the hearing, if it has been scheduled, so as to give the practitioner a reasonable opportunity to respond to the modified proposed adverse recommendation or action and/or the additional grounds for such recommendation or action. If the Chief of Staff determines that the request is reasonable, the hearing will be postponed.

**1.4 REQUEST FOR HEARING**

The practitioner shall have 30 calendar days after receiving a notice under Section 1.2 to deliver to the CEO a written request for a hearing.

**1.5 CONCURRENT HEARINGS**

When the Executive Committee and one or more other Banner Medical Center Medical Staff Executive Committees make an adverse recommendation against the same practitioner relating to the same or similar facts or circumstances, and if the affected practitioner requests a hearing at more than one Medical Center, the Chiefs of Staff of such Medical Centers may, in their sole discretion, elect to conduct a single hearing which shall fulfill the affected practitioner's right to a hearing under the Fair Hearing Plans of all participating Medical Centers. The Chiefs of Staff of the participating Medical Centers shall collectively determine the members of the hearing committee; provided that reasonable efforts will be made to have at least one member of the Medical Staff of each participating Medical Center on the hearing committee.

**1.6 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 shall be deemed to waive his or her right to any hearing or appellate review to which he or she might otherwise have been entitled. Such waiver shall apply only to the matters that were the basis for the adverse recommendation or action communicated to the practitioner in accordance with Sections 1.2 and 1.3. A waiver shall constitute acceptance of the recommendation and action which shall immediately be transmitted to the Board for a final decision. The CEO shall as soon as reasonably practicable send the practitioner notice of the Board's decision.

#### **1.7 WAIVER BY FAILURE TO PARTICIPATE CONSTRUCTIVELY IN THE HEARING PROCESS**

A practitioner who fails to participate constructively in the Hearing Process shall be deemed to have waived his or her right to any hearing or appellate review to which he or she might otherwise have been entitled. The Presiding Officer must inform the practitioner that a waiver is being considered and give the practitioner reasonable opportunity to participate constructively prior to ruling that his or her hearing rights have been waived. Examples of failure to participate constructively include but are not limited to refusal of the practitioner to be sworn in or to answer questions posed by the Hearing Committee; failure to proceed with the hearing; and failure to abide by a ruling of the Presiding Officer. The waiver has the same force and effect as provided in Section 1.6. A practitioner who has been deemed to have waived his or her right to a hearing may request that the Medical Executive Committee review the ruling and may submit information demonstrating why the ruling is unwarranted. Such request and information in support of the practitioner's position must be submitted, if at all, within 10 days of the ruling. The Medical Executive Committee shall decide whether to reinstate the practitioner's hearing rights, and the practitioner shall have no appeal or other rights in connection with the Medical Executive Committee's decision.

### **PART TWO – HEARING PREREQUISITES**

#### **2.1 NOTICE OF TIME AND PLACE FOR HEARING**

Upon receiving a timely and proper request for hearing, the CEO shall deliver the request to the Chief of Staff, who shall schedule the hearing. At least 30 calendar days prior to the hearing, the CEO shall send the practitioner special notice of the date, time and place of the hearing. The hearing date shall be set for not less than 30 calendar days nor more than 90 calendar days after the CEO sends such notice to the practitioner; provided, however, that a practitioner who is under suspension then in effect may request an expedited hearing. Upon receipt of a written request for an expedited hearing by such a practitioner, the hearing must be held as soon as the arrangements may reasonably be made, but not later than 30 calendar days after the receipt of the request for the expedited hearing. The above stated time periods maybe modified upon the mutual agreement of the practitioner and the Chief of Staff.

#### **2.2 PRELIMINARY MATTERS**

##### **2.2-1 APPOINTMENT OF HEARING COMMITTEE**

A hearing shall be conducted by a hearing committee appointed by the Chief of Staff, and composed of at least 3 members. The Chief of Staff shall designate one of the appointees as chairman of the committee. The Chairman shall be entitled to vote. If the Chief of Staff is in direct economic competition with the practitioner, the vice chief of staff, secretary/treasurer, immediate past chief of staff or remaining members of the Medical Executive Committee (in that order) shall appoint the committee members and chairman. No person in direct economic competition with the practitioner shall participate in the selection of the committee or its chairman.

##### **2.2-2 SERVICE ON HEARING COMMITTEE**

The hearing committee shall be composed of individuals who are not in direct economic competition with the involved practitioner. Members of the hearing committee shall be physicians and may but need not be members of the Medical Staff. Any individual shall be disqualified from serving on the hearing committee if such member has directly participated in the consideration of the adverse recommendation.

##### **2.2-3 PRACTITIONER'S RIGHT TO OBJECT TO HEARING COMMITTEE MEMBERS**

The Chief of Staff or designee shall notify the practitioner of the names of the committee members and the date by which the practitioner must object, if at all, to the appointment of any member(s). Such objection must be in writing and must include the basis for the objection. If the Chief of Staff or the designee who appointed the committee determines that the objection is reasonable, the Chief of Staff or the designee may designate alternative member(s)

and shall notify the practitioner of such new member(s). The practitioner may object to any new member(s) by giving written notice of the objection and the reasons therefor.

#### **2.2-4 PRESIDING OFFICER**

In the absence of a Hearing Officer, the hearing committee chairman shall be the Presiding Officer. The Presiding Officer shall maintain decorum and assure that all participants have a reasonable opportunity to present relevant oral and documentary evidence and rule on matters of law, procedure and the admissibility of evidence, including the admissibility of testimony and exhibits.

#### **2.2-5 HEARING OFFICER**

The Chief of Staff, at his/her discretion or upon request of the affected practitioner, may appoint a hearing officer. The hearing officer shall serve as the Presiding Officer; maintain decorum, and rule on matters of law, procedure, and the admissibility of evidence, including the admissibility of testimony and exhibits. The hearing officer may participate in the deliberations and assist in the preparation of a written decision, but may not act as an advocate or advisor for either party and may not vote. The hearing officer need not be a member of the Medical Staff or a physician and may not be in direct economic competition or affiliation with the practitioner.

#### **2.2-6 PRACTITIONER'S RIGHT TO OBJECT TO HEARING OFFICER**

The Chief of Staff or his designee shall notify the practitioner of the name of the hearing officer and the practitioner shall have ten (10) days following the notification within which to object to the appointment of such person as the hearing officer. Such objection must be in writing and must include the basis for the objection. If the Chief of Staff or the designee who appointed the hearing officer determines that the objection is reasonable, the Chief of Staff or the designee may designate an alternative hearing officer and shall notify the practitioner of such new hearing officer. The practitioner may object to any new hearing officer by giving written notice of the objection and the reasons therefor.

### **2.3 LIST OF WITNESSES**

At least 10 days prior to the scheduled date for commencement of the hearing, each party shall give the other party a list of the names of the individuals who, as far as is then reasonable known, will give testimony or evidence in support of the practitioner at the hearing. The list shall contain only the names of individuals who can provide testimony relevant to the grounds for the adverse recommendation or action. Such lists shall be amended as soon as possible when additional witnesses are identified. The Presiding Officer may permit a witness who has not been listed in accordance with this Section to testify if he or she finds that failure to list such witness was justified, that such failure did not prejudice the party entitled to receive such list, and that the testimony of such witness will materially assist the hearing committee in making its report and recommendation under Section 4.1 below. The practitioner and the representative of the Medical Executive Committee will be permitted to testify regardless of whether identified as a witness.

### **2.4 STATEMENTS IN SUPPORT**

If a statement in support of a party's position is to be submitted to the hearing committee, such party shall supply five copies of such statement to the Medical Staff Office at least 10 days prior to the scheduled date for commencement of the hearing. The party shall also supply two copies of the statement to the other party and his or her representative. The Medical Staff Office shall distribute the statements (if any) to members of the hearing committee at least 5 days prior to the scheduled date of the commencement of the hearing. Nothing in this paragraph shall preclude the Medical Executive Committee or its representative from submitting procedural information to the hearing committee.

### **2.5 EXHIBITS**

At least 10 days prior to the scheduled date for commencement of the hearing, each party shall give the other party a copy of all exhibits, as far as then reasonably known, which will be introduced during the hearing. Documents previously provided to a party need not be resupplied. The Presiding Officer may permit the introduction of an exhibit which has not been provided in accordance with this Section if he/she finds that the failure to provide such exhibit was justified, that such failure did not prejudice the party entitled to receive it, and that the exhibit will materially assist the hearing committee in making its report and recommendation under section 4.1 below.

## **2.6 DUTY TO NOTIFY OF NONCOMPLIANCE**

If the practitioner believes that there has been a violation of the procedures required by the Medical Staff Bylaws, this Fair Hearing Plan or applicable law, the practitioner must promptly notify the Chief of Staff of each violation and the particular grounds or basis thereof. If the Chief of Staff agrees that a violation has occurred and is substantial and has created demonstrable prejudice, he/she shall take whatever action he/she deems appropriate to correct such violation. The practitioner shall be deemed to have waived any violation of the Bylaws, this Fair Hearing Plan or law not raised timely pursuant to this section.

## **PART THREE – HEARING PROCEDURE**

### **3.1 PERSONAL PRESENCE**

The right to a hearing shall be waived if the practitioner fails, without good cause, to appear. The personal presence of the practitioner is required throughout the hearing. The presence of the practitioner's counsel or other representative does not constitute the personal presence of the practitioner. A practitioner who fails without good cause to be present throughout the hearing shall be deemed to have waived his or her rights in the same manner and with the same consequence as provided in Section 1.6. The hearing committee shall determine what constitutes "good cause."

### **3.2 REPRESENTATION**

The practitioner may be represented at the hearing by legal counsel or any other person of the practitioner's choice. The Medical Executive Committee shall appoint a representative who may be a member of the Medical Executive Committee or another member of the active staff to represent it and may also be represented by legal counsel.

### **3.3 RIGHT OF PARTIES**

During a hearing, each party shall have the following rights, subject to the ruling of the Presiding Officer on the admissibility of evidence and provided that such rights shall be exercised in a manner so as to permit the hearing to proceed efficiently and expeditiously:

- (a) Call, examine, and cross-examine witnesses;
- (b) Present relevant evidence;
- (c) Rebut any evidence;
- (d) Submit a written statement in support of such party's position if such statement is tendered pursuant to Section 2.4;
- (e) Submit proposed findings of fact and recommendations, at the close of the hearing;
- (f) 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; and
- (g) After the reconsideration of the recommendation by the Medical Executive Committee, the practitioner has the right to receive the written recommendations of the hearing committee and the Medical Executive Committee, both of which must include a statement of the basis for the decision.

### **3.4 PROCEDURE AND EVIDENCE**

The hearing need not be conducted according to strict rules of law or procedure relating to the examination of witnesses or presentation of evidence. At the discretion of the Presiding Officer, any relevant matter may be considered. The hearing committee may ask questions of witnesses, call additional witnesses, or request documentary evidence if it deems it appropriate. The practitioner may be examined by the Medical Executive Committee representative and the hearing committee members regardless of whether the practitioner testifies in his or her own behalf. The Presiding Officer may order that oral evidence be taken only on oath.

### **3.5 BURDEN OF PROOF**

The Medical Executive Committee has the initial obligation to present evidence in support of the adverse action or recommendation. Thereafter, the practitioner has the burden of demonstrating that the adverse action or recommendation lacks any substantial factual basis or is otherwise arbitrary, unreasonable or capricious.

### **3.6 HEARING RECORD**

A record of the hearing shall be kept. A court reporter shall be used for making the record.

### **3.7 POSTPONEMENT**

Requests for postponement or continuance of a hearing may be granted by the Presiding Officer of the hearing committee only upon a timely showing of good cause.

### **3.8 RECESSES AND ADJOURNMENT**

The hearing committee may without special notice recess and reconvene the hearing for the convenience of the participants or for the purpose of obtaining new or additional evidence or consultation. Upon conclusion of the presentation of oral and written evidence, the hearing shall be adjourned. The hearing committee shall, at a time convenient to itself, conduct its deliberations outside the presence of the parties.

### **3.9 DELIBERATIONS**

In reaching its conclusions of fact and making its recommendations, the hearing committee must act:

- (a) In the reasonable belief that the recommendation is in furtherance of quality health care;
- (b) After a reasonable effort to obtain the facts of the matter; and
- (c) In the reasonable belief that the action is warranted by the facts known after reasonable effort to obtain such facts.

## **PART FOUR – HEARING COMMITTEE REPORT AND FURTHER ACTION**

### **4.1 HEARING COMMITTEE REPORT**

Within 10 days after adjournment of the hearing, the hearing committee shall make a written report of its findings and recommendations. The report shall include a statement of the basis for its recommendation. The hearing committee shall forward the report along with the record and other documentation to the Medical Executive Committee.

### **4.2 ACTION ON HEARING COMMITTEE REPORT**

At its next regularly scheduled meeting after receipt of the hearing committee's report and the hearing record, the Medical Executive Committee shall consider the report and record and shall affirm, modify or reverse its previous recommendation or action. The Medical Executive Committee's reconsidered report and recommendation shall include a statement of the basis for its recommendation. If the recommendation of the hearing committee differs from the initial recommendation of the Medical Executive Committee, the chairman of the hearing committee shall be invited to the Medical Executive Committee to discuss the findings and recommendation of the hearing committee.

### **4.3 NOTICE AND EFFECT OF RESULT**

#### **4.3-1 NOTICE**

As soon as is practicable after the Medical Executive Committee meeting, the CEO shall send the practitioner a copy of the hearing committee's report and the reconsidered recommendation of the Medical Executive Committee.

#### **4.3-2 EFFECT OF FAVORABLE RESULT**

If the recommendation of the Medical Executive Committee is favorable to the practitioner, the matter shall be dismissed with a notation in its record to that effect. In such event, the CEO shall promptly notify the practitioner that the matter has been dismissed.

#### **4.3-3 EFFECT OF ADVERSE RESULT**

- (a) If, after the Medical Executive Committee has considered the hearing committee's report and the hearing record, the Medical Executive Committee's reconsidered recommendation continues to be adverse, the CEO shall promptly so notify the practitioner by special notice. The CEO shall also forward such recommendation and documentation to the Board, but

the Board shall not take any action thereon until after the practitioner has exercised or has been deemed to have waived the right to an appellate review.

- (b) When the Medical Executive Committee's recommendation continues to be adverse, the CEO shall notify the appropriate licensing authority and make such other notifications as are required by law regarding the recommendation.

## **PART FIVE – INITIATION AND PREREQUISITES OF APPELLATE REVIEW**

### **5.1 REQUEST FOR APPELLATE REVIEW**

- (a) A practitioner shall have 10 days after receiving notice of the right to appellate review of the Medical Executive Committee's adverse recommendation or action to file a written request for an appellate review by an Appeals Subcommittee of the Board of Directors of Banner Health ("BHS"). The written request for appellate review shall include an identification of the grounds for appeal and a clear and concise statement of the facts in support of the appeal.
- (b) The grounds for appeal shall be 1) the hearing was not in substantial compliance with the procedures required by the Medical Staff Bylaws, this Fair Hearing Plan, or applicable law and created demonstrable prejudice; or 2) the adverse recommendation or action was arbitrary, capricious, or not supported by substantial evidence based upon the hearing record.
- (c) If the practitioner desires to present an oral statement in favor of his or her position, the notice must include a request to appear before the Appeals Subcommittee.
- (d) The request for appellate review must be delivered to the CEO and may include a request for a copy of hearing transcript, upon payment of any reasonable charges associated with the preparation thereof.

### **5.2 WAIVER BY FAILURE TO REQUEST APPELLATE REVIEW OR APPEARANCE OR BY FAILURE TO PARTICIPATE CONSTRUCTIVELY**

Failure to make a timely and proper request for appellate review shall constitute consent by the practitioner to final action by the Board of Directors without an appeal, provided the Board's final action is consistent with the Medical Executive Committee's recommendation or action. If the Board's decision differs from the Medical Executive Committee's recommendation or action in a manner that, in the reasonable opinion of the practitioner, is more averse to the practitioner than the Medical Executive Committee's recommendation or action, the practitioner shall be afforded the right to an appellate review in accordance with this Fair Hearing Plan prior to the Board's decision becoming final. A practitioner who fails to request an appearance before the Appeals Subcommittee shall be deemed to have waived the right to make an oral statement and to appear before the Appeals Subcommittee. A practitioner who fails to participate constructively in the appellate review process shall be deemed to have waived the right to appellate review.

### **5.3 NOTICE OF TIME AND PLACE FOR APPELLATE REVIEW**

The CEO shall promptly deliver a request for appellate review to the General Counsel of BHS, who shall schedule the appellate review as soon as practicable.

### **5.4 APPEALS SUBCOMMITTEE**

The Appeals Subcommittee shall be appointed in accordance with the BHS Bylaws.

## **PART SIX – APPELLATE REVIEW PROCEDURE AND FINAL ACTION**

### **6.1 NATURE OF PROCEEDINGS**

The Appeals Subcommittee shall consider the hearing record and, if the practitioner has requested the opportunity to appear, oral statements from the practitioner and representatives of the Medical Executive Committee. At the discretion of the Chairman of the Appeals Subcommittee, the appellate review may be conducted telephonically. These proceedings are not judicial in nature, but rather to provide a forum for the evaluation of a professional to render healthcare services. The rules of law relating to the presentation of evidence do not apply.

### **6.2 REPRESENTATION**

The practitioner may be represented by legal counsel or any other person of the practitioner's choice. The Medical Executive Committee shall appoint a representative to represent it and may also be represented by legal counsel.

### **6.3 WRITTEN STATEMENTS**

The practitioner and the Medical Executive Committee may each submit a written statement in support of their respective positions, which may cover only such matters raised at the hearing. If the parties choose to submit written statements, at least five copies must be submitted to the General Counsel or his or her designee at 5 days prior to the date of the scheduled review. If submitted, the General Counsel or his or her designee shall distribute such statements to members of the Appeals Subcommittee and to the parties' representatives at least 3 days prior to the scheduled date of review.

### **6.4 ORAL STATEMENTS**

If an oral statement has been requested, the Appeals Subcommittee shall allow the practitioner and representatives of the Medical Executive Committee to make oral statements in favor of their respective positions. Any party or representative appearing shall be required to answer questions asked by any member of the Appeals Subcommittee.

### **6.5 PRESIDING OFFICER**

The chairman of the Appeals Subcommittee is the Presiding Officer. He or she shall determine the order of procedure during the review, make all required rulings and maintain decorum.

### **6.6 CONSIDERATION OF NEW OR ADDITIONAL MATTERS**

New or additional matters or evidence not raised or presented during the original hearing or in the hearing report and not otherwise reflected in the Hearing Record may not be introduced at the appellate review.

### **6.7 RECESSES AND ADJOURNMENTS**

The Appeals Subcommittee may recess and reconvene the proceedings without special notice for the convenience of the participants or for the purpose of obtaining consultation. At the conclusion of the oral statements, the appellate review shall be adjourned. The Appeals Subcommittee shall then, at a time convenient to its members, conduct its deliberations outside the presence of the parties.

### **6.8 DELIBERATIONS**

In reaching its conclusions of fact and making its recommendations, the Appeals Subcommittee must satisfy itself that there has been a reasonable effort to obtain the facts and must act:

- (a) In the reasonable belief that the recommendation is in furtherance of quality health care; and
- (b) In the reasonable belief that the action is warranted by the facts known after reasonable effort to obtain such facts.

### **6.9 ACTION TAKEN**

As soon as practicable after adjournment of the appellate review, the Appeals Subcommittee shall prepare its report and recommendation. The General Counsel shall send a copy of the report and recommendation to the practitioner and to the Chief of Staff for transmittal to the Medical Executive Committee. The report and recommendation will be presented to the BHS Medical Staff Subcommittee, which will make a recommendation to the BHS Quality and Care Management Committee. The Chief of Staff will be invited to attend the presentation of the report and recommendation to the Medical Staff Subcommittee, but may not remain for the deliberations or the vote.

#### **6.9-1 APPEALS SUBCOMMITTEE IN ACCORD WITH THE MEDICAL EXECUTIVE COMMITTEE**

If the Appeals Subcommittee's recommendation is in accord with the Medical Executive Committee's last recommendation in the matter, the Medical Staff Subcommittee shall promptly forward its recommendation to the Quality and Care Management Committee along with all relevant documentation.

**6.9-2 APPEALS SUBCOMMITTEE NOT IN ACCORD WITH THE MEDICAL EXECUTIVE COMMITTEE**

If the Appeals Subcommittee's recommendation differs from the Medical Executive Committee's last recommendation, the Medical Staff Subcommittee may make a recommendation to the Quality and Care Management Committee or refer the matter back to the Medical Executive Committee for further consideration.

**6.10 SPECIAL JOINT CONFERENCE REVIEW**

Prior to a recommendation by the Medical Staff Subcommittee or the Quality and Care Management Subcommittee or a decision by the Board that differs from the Medical Executive Committee's last recommendation, the Medical Executive Committee will be permitted to request review by a special Joint Conference Subcommittee; provided, however, that the Medical Executive Committee is entitled to only one Joint Conference review with respect to the adverse recommendation against the practitioner. The special Joint Conference Subcommittee shall be composed of an equal number of Medical Staff and Board members selected in the manner prescribed in the BHS Bylaws. As soon as practicable after receiving a matter referred to it, the special Joint Conference Subcommittee shall convene to consider the matter and submit its recommendations to the Board.

**6.11 EFFECT OF ADVERSE RESULT**

When the Board's final decision results in the reduction, suspension, revocation or other limitation of a practitioner's privileges or membership, the CEO shall as soon as reasonably practicable send the practitioner notice of the Board's final decision and make such other notifications as are required by law regarding the decision.

**PART SEVEN - GENERAL PROVISIONS**

**7.1 NUMBER OF HEARINGS AND REVIEWS**

Notwithstanding any other provision of the Bylaws or this Fair Hearing Plan, no practitioner is entitled as a right to more than one evidentiary hearing and one appellate review with respect to the subject matter that is the basis of the adverse recommendation or action triggering the right.

**7.2 RELEASE**

By requesting a hearing and or appellate review, a practitioner agrees to be bound by the provisions of the Bylaws and this Fair Hearing Plan, including those provisions relating to confidentiality, releases, and immunity from liability.

**PART EIGHT - AMENDMENT**

**8.1 AMENDMENT**

This Fair Hearing Plan may be amended or repealed, in whole or in part, by a resolution of the Medical Executive Committee and approval by the Board.

**ADOPTION AND APPROVAL:**

Medical Executive Committee 08/10

Active Medical Staff 10/10

Board – 10/10

Medical Executive Committee 05/12

Active Medical Staff 05/12

Board 06/12

Board 06/14