

## **FAIR HEARING PLAN**

In accordance with the provisions of the Medical Staff Bylaws of East Morgan County Hospital, Brush, Colorado, the Medical Staff, acting through the Medical Executive Committee, and Banner Health, acting through the Board of Directors, hereby adopt this Fair Hearing Plan, which shall govern the conduct of hearings and appeals relating to those recommendations and decisions of the Medical Executive Committee and the Board of Directors for which a right of hearing and appeal is provided. This Fair Hearing Plan may be amended, from time to time, upon the concurrence of both the Medical Executive Committee and the Board of Directors.

### **1. DEFINITIONS**

The following definitions, in addition to those stated in other provisions of the Medical Staff Bylaws, shall apply to the provisions of this Fair Hearing Plan:

- 1-1 HEARING COMMITTEE means the committee appointed pursuant to Section 3-2 of this Fair Hearing Plan to hear a request for an evidentiary hearing properly filed and pursued by a Practitioner.
- 1-2 PARTIES means the Practitioner who requested the hearing or appellate review and the body upon whose adverse action a hearing or appellate review request is predicated.
- 1-3 PRACTITIONER means the applicant or the Medical Staff member against whom an adverse action has been recommended or taken.
- 1-4 SPECIAL NOTICE means written notification delivered in person or sent by certified or registered mail, return receipt requested. Receipt of Special Notice shall

be effective upon personal delivery, and in the event Special Notice is sent by certified or registered mail, such Special Notice shall be presumed received three (3) business days after such Special Notice is deposited in the United States mail, postage prepaid.

- 1-5 ADVERSE ACTION or ADVERSE RECOMMENDATION means a professional review action as defined in the "Health Care Quality Improvement Act of 1986."
- 1-6 BOARD OF DIRECTORS means the governing body of Banner Health, or any subcommittee thereof, as may be designated by the governing body of Banner Health, unless otherwise specified, which is a professional review body as defined in the "Health Care Quality Improvement Act of 1986."
- 1-7 MEDICAL EXECUTIVE COMMITTEE means the executive committee of the Medical Staff, which is a professional review body as defined in the "Health Care Quality Improvement Act of 1986."

## 2. INITIATION OF HEARING

- 2-1 Recommendations or Actions

The following recommendations or actions shall be deemed adverse and shall entitle the Practitioner affected thereby to a hearing, upon timely and proper request for the same:

- A. Denial of initial Medical Staff appointment;
- B. Denial of Medical Staff reappointment;

- C. Suspension of Medical Staff membership for more than thirty (30) calendar days (other than by administrative suspension);
- D. Revocation of Medical Staff membership;
- E. Denial of requested modification of Medical Staff category;
- F. Involuntary reduction of Medical Staff category;
- G. Involuntary limitation of admitting privileges;
- H. Denial of requested department/service assignment;
- I. Denial of requested clinical privileges;
- J. Involuntary reduction in or limitation of clinical privileges;
- K. Suspension of clinical privileges for more than thirty (30) calendar days (other than by administrative suspension); and
- L. Revocation of clinical privileges.

2-2 When Deemed Adverse

A recommendation or action listed in Section 2-1 above shall be deemed adverse action only when it has been:

- A. Recommended by the Medical Executive Committee;
- B. A suspension continued in effect after review by the Medical Executive Committee and/or the Board of Directors, as the case may be;

- C. Taken by the Board of Directors, if contrary to a favorable recommendation by the Medical Executive Committee and under circumstances where no prior right to a hearing existed; or
- D. Taken by the Board of Directors on its own initiative without benefit of a prior recommendation by the Medical Executive Committee.

2-3 Notice of Adverse Recommendation or Adverse Action

A Practitioner against whom adverse action has been taken pursuant to Section 2-2 above shall, within thirty (30) calendar days, be given Special Notice of such action by the CEO. Such Special Notice shall:

- A. Advise the Practitioner that an adverse action has been taken or is proposed to be taken against the Practitioner;
- B. Contain a concise statement of the Practitioner's alleged acts or omissions, a list by number of the specific or representative patient records in question, and/or the other reasons or subject matter forming the basis for the adverse recommendation or adverse action which is the subject of the hearing;
- C. Advise the Practitioner of the Practitioner's right to a hearing pursuant to the provisions of this Fair Hearing Plan, upon timely and proper request for same;
- D. Specify that the Practitioner shall have no more than thirty (30) calendar days following receipt of the Special Notice within which to request a hearing, which request shall be in writing and delivered to the CEO in person or by certified or registered mail;

- E. 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 Special Notice;
- F. Specify the hearing procedures and rights of the Practitioner, which may be done by furnishing the Practitioner with a copy of this Fair Hearing Plan; and
- G. State that after receipt of the request for a hearing, the Practitioner shall be notified of the date, time, and place of the hearing, and the witnesses expected to testify on behalf of the Medical Executive Committee or the Board of Directors, as the case may be.

#### 2-4 Change in Recommendation

The Medical Executive Committee or the Board of Directors, as the case may be, may modify its proposed adverse recommendation or adverse action, or the grounds for such recommendation or action, and shall notify the Practitioner of all additions or deletions.

#### 2-5 Request for Hearing

A Practitioner shall have no more than thirty (30) calendar days following the Practitioner's receipt of Special Notice pursuant to Section 2-3 above to file a written request for a hearing. Such request shall be deemed to have been made when delivered to the CEO in person or when sent by certified or registered mail to the CEO, properly addressed and postage prepaid.

2-6 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 2-5 above shall be deemed to waive any right to such hearing and to any appellate review to which the Practitioner might otherwise have been entitled. Such waiver shall apply only to the matters that were the basis for the adverse recommendation triggering the Special Notice.

- A. A waiver in connection with an adverse action by the Board of Directors shall constitute acceptance of such action, which shall thereupon become effective as the final decision of the Board of Directors.
- B. A waiver in connection with an adverse recommendation by the Medical Executive Committee shall constitute acceptance of such recommendation, which shall thereupon become and remain effective pending the final decision of the Board of Directors. The Board of Directors shall consider the Medical Executive Committee's recommendations at its next regular meeting following such waiver. In its deliberations, the Board of Directors shall review all the information and material considered by the Medical Executive Committee and may consider all other relevant information received from any source in making its final decision.

The CEO shall promptly send the Practitioner Special Notice informing the Practitioner of each action taken pursuant to this Section 2-6 and shall notify the Chief of Staff of each such action.

2-7 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 the Practitioner's right to any hearing or appellate review to which the Practitioner 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 the Practitioner's 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 2-6 above. A Practitioner who has been deemed to have waived the Practitioner's right to a hearing may request that the Medical Executive Committee or the Board of Directors, as the case may be, 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 ten (10) calendar days of the ruling. The Medical Executive Committee or the Board of Directors, as the case may be, shall decide whether to reinstate the Practitioner's hearing rights, and the Practitioner shall have no appeal or other rights in connection with the decision of the Medical Executive Committee or the Board of Directors, as the case may be.

### 3. HEARING PREREQUISITES

#### 3-1 Notice of Time and Place of Hearing

Upon receipt of a timely and proper request for hearing, the CEO shall deliver such request to the Chief of Staff or to the chair of the Board of Directors, depending on whose recommendation or action prompted the request for a hearing. The Chief of Staff or the Chair of the Board of Directors, as the case may be, shall promptly schedule and arrange for a hearing. The CEO shall send the Practitioner Special Notice of the time, place, and date of the hearing. The hearing date shall be set for not less than thirty (30) calendar days nor more than forty-five (45) calendar days from the date of the Special Notice of the hearing, unless there are valid reasons for non-receipt of the Special Notice, in which case the date of the hearing can be extended. A hearing for a Practitioner who is under suspension must be held not later than twenty-one (21) calendar days after the receipt of the Practitioner's timely and proper request for a hearing, unless the Practitioner requests, and offers valid reasons for, an extension.

#### 3-2 Appointment of Hearing Committee or Hearing Examiner

##### A. By the Medical Executive Committee

A hearing occasioned by a Medical Executive Committee recommendation pursuant to Section 2-2.A or B above shall be conducted by a Hearing Committee appointed by the Chief of Staff and composed of at least three (3) members of the Medical Staff if possible, but, if not possible, other qualified persons may be appointed to serve on the Hearing Committee. One of the

members so appointed shall be designated as chair of the Hearing Committee.

B. By the Board of Directors

A hearing occasioned by an adverse action of the Board of Directors pursuant to Section 2-2.B, C or D, above shall be conducted by a Hearing Committee appointed by the chair of the Board of Directors and composed of at least three (3) persons. A majority of the Hearing Committee shall be members of the Board of Directors, but other persons who are not members of the Board of Directors may be requested to serve. One of the appointees to the Hearing Committee shall be designated as chair of the Hearing Committee.

C. Service on the Hearing Committee

A member of the Medical Staff or the Board of Directors shall not be disqualified from serving on a Hearing Committee solely because the member has heard of the matter or has knowledge of the facts involved or what the member supposes the facts to be. No member of a Hearing Committee shall be a practitioner in direct economic competition with the Practitioner for whom the hearing is held, or a practitioner who has either requested, or has served on a body that has, recommended the adverse action.

All members of a Hearing Committee shall be required to consider and decide the case with good faith objectivity.

D. Practitioner's Right to Object

The Chief of Staff or the CEO shall notify the Practitioner of the names of the Hearing 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 individual who appointed the Hearing Committee determines that the objection is reasonable, such individual 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.

E. Hearing Examiner

The CEO, upon the request of the Chief of Staff or upon the CEO's own initiative, in the event of a hearing occasioned by an adverse action of the Medical Executive Committee, or upon the request of the chair of the Board of Directors, in the event of a hearing occasioned by an adverse action of the Board of Directors, may appoint a hearing examiner to conduct a hearing. Such hearing examiner shall exercise all the authority and responsibility granted to a Hearing Committee and to the chair of a Hearing Committee in this Fair Hearing Plan. A hearing examiner may, but need not, be an attorney, but shall be experienced in conducting hearings.

3-3     List of Witnesses

At least ten (10) calendar days prior to the scheduled date for commencement of the hearing, each Party shall give to the other Party a list of the names of the individuals who, as far as is then reasonably known, shall give testimony or evidence 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 adverse action. Such list 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 3-3 to testify if the presiding officer finds that the failure to list such witness was justified, that such failure did not prejudice the Party entitled to receive the name of such witness, and that the testimony of such witness shall materially assist the Hearing Committee in making its report and recommendation under Section 5-1 below. The Practitioner and the representative of the Medical Executive Committee or the Board of Directors, as the case may be, shall be permitted to testify regardless of whether identified as a witness. Neither the affected Practitioner nor any other person acting on the Practitioner's behalf, including the Practitioner's counsel, shall contact any members of the Medical Staff or any Hospital employees who appear on witness list of the Medical Executive Committee or the Board of Directors, as the case may be, or who serve or served on any committees involved in the recommendation or action concerning the subject matter of the hearing, unless specifically agreed upon by counsel.

The affected Practitioner may not present evidence of competency or character by presenting testimony, endorsements or opinions of his/her patients.

### **3-4     Exhibits**

At least ten (10) calendar 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, that shall 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 that has not been provided in accordance with this Section 3-4 if the presiding officer finds that the failure to provide such exhibit was justified, that such failure did not prejudice the Party entitled to receive such exhibit, and that such exhibit shall materially assist the Hearing Committee in making its report and recommendation under Section 5-1 below.

Except as set forth in this Fair Hearing Plan, there is no right to any discovery in connection with the hearing.

### **3-5     Duty to Notify of Noncompliance**

If the Practitioner believes that there has been a deviation from the procedures required by this Fair Hearing Plan or applicable law, the Practitioner must promptly notify the Chief of Staff or the chair of the Board of Directors, through the CEO, of such deviation, including a citation to the applicable provision of this Fair Hearing Plan or the Medical Staff Bylaws or to applicable law. If the Chief or Staff or the chair of the Board of Directors, as the case may be, agrees that a deviation has occurred, is substantial and has created demonstrable prejudice, the Chief or Staff or the chair of the Board of Directors, as the case may be, shall correct such deviation.

### **3-6      Pre-Hearing Conference**

The presiding officer may require counsel for both the Practitioner and the Medical Executive Committee or the Board of Directors, as the case may be, to participate in a pre-hearing conference for purposes of resolving all procedural questions in advance of the hearing. The presiding officer may specifically require that:

- A.      All documentary evidence to be submitted by the Parties be presented at this conference and that any objections to the documents shall be made at that time, and the presiding officer shall resolve such objections;
- B.      Evidence unrelated to the reasons for the unfavorable recommendation or unrelated to the Practitioner's qualifications for appointment or the relevant clinical privileges be excluded;
- C.      The names of all witnesses and a brief statement of their anticipated testimony be submitted;
- D.      The time granted to each witness' testimony and cross-examination be agreed upon, or determined by the presiding officer, in advance; and
- E.      Witnesses and documentation not provided and agreed upon in advance of the hearing may be excluded from the hearing.

## **4.      HEARING PROCEDURE**

### **4-1      Personal Presence**

The personal presence of the Practitioner who requested the hearing shall be 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 appear and proceed at such hearing shall be deemed to have waived the Practitioner's rights in the same manner and with the same consequence as provided in Section 2-6.

4-2 Presiding Officer

Either the hearing officer, if one is appointed pursuant to Section 7-l, the chair of the Hearing Committee or the hearing examiner shall be the presiding officer. The presiding officer shall act to maintain decorum and to assure that all participants in the hearing have a reasonable opportunity to present relevant oral and documentary evidence. The presiding officer shall be entitled to determine the order of procedure during the hearing and shall make all rulings on matters of law, procedure, and the admissibility of evidence.

4-3 Representation

The Practitioner who requested the hearing shall be entitled to be accompanied and represented at the hearing by a member of the Medical Staff in good standing or by a member of his local professional society. The Medical Executive Committee, when its recommendation has prompted the hearing, shall appoint at least one (l) member of the Medical Executive Committee, another member of the Medical Staff, or another person of its choosing, to represent the Medical Executive Committee at hearing. The Board of Directors, when its recommendation or action has prompted the hearing, shall appoint at least one (l) of member of the Board of Directors, or another person of its choosing, to represent the Board of Directors at the hearing.

Representation or assistance of either Party by an attorney at law shall be governed by the provisions of Section 7-2.

#### 4-4 Conduct of Hearing

The Party whose adverse recommendation or adverse action prompted the hearing shall present evidence in support of its recommendations or action. The Practitioner who requested the hearing shall have the obligation of presenting evidence to challenge the adverse recommendation or adverse action and showing that the adverse recommendation or adverse action is not appropriate.

#### 4-5 Rights of Parties

During a hearing, each of the Parties shall have the following rights, subject to the rulings 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 and examine witnesses;
- B. Introduce exhibits and present relevant evidence;
- C. Cross-examine any witness on any matter relevant to the issues;
- D. Impeach any witness;
- E. Rebut any evidence;
- F. Submit a written statement at the close of the hearing; and
- G. Record the hearing by use of a court reporter or other acceptable means of recording.

If the Practitioner who requested the hearing does not testify on the Practitioner's own behalf, the Practitioner may be called by the other Party and examined as if under cross-examination. After the reconsideration of the recommendation by the Medical Executive Committee or the Board of Directors, as the case may be, the Practitioner has the right to receive the written recommendations of the Hearing Committee and either the Medical Executive Committee or the Board of Directors, as the case may be, both of which shall include a statement of the basis for the decision.

#### 4-6 Procedure and Evidence

- A. The hearing shall not be conducted strictly according to rules of law relating to the examination of witnesses or presentation of evidence. Any relevant evidence shall be admitted if, in the judgment of the presiding officer, it is the sort of evidence upon which responsible persons customarily rely in the conduct of serious affairs, regardless of the admissibility of such evidence in a court of law. The Hearing Committee may ask questions of witnesses, call additional witnesses, or request documentary evidence if it deems it appropriate.
- B. Each Party shall, prior to or during the hearing, be entitled to submit memoranda concerning any issue of law or fact, and such memoranda shall become a part of the hearing record. The presiding officer may require one or both Parties to prepare and submit to the Hearing Committee, written

statements of their position on the issues, prior to, during, or after, the hearing.

C. Evidence presented at the hearing may include, but need not be limited to, the following:

- i. Oral or written testimony or deposition of witnesses, including experts;
- ii. Briefs, memoranda, or other documentation of points and reference to authorities presented in connection with the hearing;
- iii. Any relevant material contained in the Hospital's credentials files regarding the Practitioner who requested the hearing;
- iv. Any application forms and informational material associated with the application and credentialing process;
- v. Quality assurance documentation;
- vi. All evidentially noticed information; and
- vii. Any other relevant materials.

D. The presiding officer may, but shall not be required to, order that oral evidence be taken only on oath or affirmation administered by any person designated by the presiding officer and entitled to notarize documents.

#### 4-7 Evidentiary Notice

In reaching a decision, the Hearing Committee may take note, for evidentiary purposes, either before or after submission of the matter for decision, of any

generally accepted technical or scientific matter relating to the issues under consideration and of any facts that may be judicially noticed by the courts of the State of Colorado. Parties present at the hearing shall be informed of the matters to be noticed and those matters shall be recited in the hearing record. Any Party shall be given opportunity, on timely request, to request that a matter be evidentially noticed and to refute the evidentially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the Hearing Committee.

#### 4-8 Burden of Proof

When a hearing relates to Section 2-l.A, E, H, or I, the Practitioner who requested the hearing shall have the burden of proving, by clear and convincing evidence, that the adverse recommendation or adverse action lacks any factual basis or that such basis or the conclusions drawn therefrom are arbitrary, unreasonable, or capricious. When the hearing relates to other adverse action, the body whose adverse recommendation or adverse action occasioned the hearing shall have the initial obligation to present evidence in support thereof. The Practitioner shall, thereafter, have the burden of persuasion to prevail on the Practitioner's challenge to the adverse recommendation or adverse action, by clear and convincing evidence that the grounds therefor lack any factual basis or that such basis or the conclusions drawn therefrom are arbitrary, unreasonable, or capricious.

#### 4-9 Record of Hearing

A record of hearing shall be kept that is of sufficient accuracy to assure that an informed and valid judgment can be made by any group that may later be called upon to review the record and render a recommendation or decision in the matter. The presiding officer shall select the method to be used for making the record, such as court reporter, electronic recording unit, detailed transcription, videotape or minutes of the proceedings. A Practitioner requesting an alternate method under Section 4-5.G shall bear the cost thereof.

#### 4-10 Postponement

Requests for postponement of a hearing shall be granted by the presiding officer only upon a showing of good cause. A hearing shall be postponed no more than two (2) times at the request of the Practitioner.

#### 4-11 Recesses and Adjournment

The Hearing Committee may recess the hearing and reconvene the same without additional notice for the convenience of the Parties 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 closed. The Hearing Committee shall thereupon, at a time convenient to itself, conduct its deliberations outside the presence of the Parties. Upon the conclusion of the deliberations of the Hearing Committee, the hearing shall be declared finally adjourned.

#### 4-12 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.

## 5. HEARING COMMITTEE REPORT AND FURTHER ACTION

### 5-1 Hearing Committee Report

Within ten (10) calendar days after final adjournment of the hearing, the Hearing Committee shall make a written report of its findings, conclusions and recommendations in the matter, including a statement of the basis for the recommendations, and shall forward the same, together with the hearing record and all other documentation considered by it, to the body whose adverse recommendation or adverse action occasioned the hearing. A copy of the report shall also be delivered to the CEO.

### 5-2 Action on Hearing Committee Report

Within thirty (30) calendar days after receipt of the report of the Hearing Committee, the Medical Executive Committee or the Board of Directors, as the case may be, shall consider the report and affirm, modify or reverse the Hearing Committee's recommendation or action in the matter. The body to whom the report is made also shall have available to it the hearing record and all documentation submitted at the hearing. If the recommendation of the Hearing Committee differs from the initial recommendation of the Medical Executive Committee or the Board of Directors, as

the case may be, the chair of the Hearing Committee may be invited to a meeting of the Medical Executive Committee or the Board of Directors, as the case may be, to discuss the findings, conclusions and recommendation of the Hearing Committee. The Medical Executive Committee or the Board of Directors, as the case may be, shall transmit its determination, including a statement of the basis for its determination, together with the hearing record, the report of the Hearing Committee and all other documentation considered, to the CEO.

**5-3 Notice of Determination and Effect of Result**

**A. Notice**

After action by the Medical Executive Committee or the Board of Directors, as the case may be, the CEO shall promptly send a copy of the determination to the Practitioner by Special Notice and to the Chief of Staff. The Special Notice shall state the action taken and the basis on which such action was taken.

**B Effect of Favorable Result**

When the recommendation of the Medical Executive Committee or the Board of Directors is favorable to the Practitioner, the CEO shall promptly forward it, together with all supporting documentation, to the Board of Directors for final action.

**C. Effect of Adverse Result**

If, after the Medical Executive Committee or the Board of Directors, as the case may be, has considered the Hearing Committee report and the hearing

record, its reconsidered recommendation continues to be adverse, the CEO shall promptly so notify the Practitioner by Special Notice. The CEO also shall forward such recommendation and documentation to the Board of Directors, but the Board of Directors 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.

## 6. APPELLATE REVIEW

Appeals shall be conducted in accordance with the Appellate Review Policies of the Board of Directors, copies of which shall be provided to the Practitioner at the time of a request for appellate review or upon request by the Practitioner.

## 7. GENERAL PROVISIONS

### 7-1 Hearing Officer Appointment and Duties

The use of a hearing officer to preside at an evidentiary hearing is optional. The use and appointment of such officer shall be determined by the Chief Executive Officer after consultation with the Chief of Staff. A hearing officer may or may not be an attorney at law, but should be experienced in conducting hearings. The hearing officer shall act in an impartial manner as the presiding officer of the hearing. If requested by the Hearing Committee, the hearing officer may participate in its deliberations and act as its legal advisor, but the hearing shall not be entitled to vote.

### 7-2 Attorneys

If the Practitioner desires to be represented by an attorney at any hearing or at any appellate review appearance, the Practitioner's request for such hearing or appellate

review must so state. The Practitioner shall include the name, address and telephone number of the attorney in his request. Failure to provide such information with the request shall permit the Hearing Committee or appellate review body to preclude participation by legal counsel. The Medical Executive Committee or the Board of Directors may also be allowed representation by an attorney upon providing Special Notice to that effect to the Practitioner. If the Practitioner had not requested previously representation by legal counsel, the Practitioner shall be informed by the CEO that the Medical Executive Committee or the Board of Directors, as the case may be, plans to be represented by counsel and shall be given the opportunity to be represented by counsel upon notice to the CEO as described above. The foregoing shall not be deemed to limit the Practitioner, the Medical Executive Committee or the Board of Directors in the use of legal counsel in connection with preparation for a hearing or an appellate review. When legal counsel attend and participate in proceedings, it is with the understanding that they recognize the proceedings are not a judicial forum, but a forum for evaluation of a professional to render health services. Accordingly, the Hearing Committee and/or appellate review committee retains the right to limit the role of legal counsel as participants in the proceedings.

If a Practitioner elects to be represented by an attorney, the Practitioner will be solely responsible for payment of all attorneys' fees, and this shall be true no matter which Party prevails at the hearing.

### 7-3 Waiver

If, at any time after receipt of Special Notice of an adverse recommendation or adverse action, a Practitioner fails to make a required request or appearance or otherwise fails to comply with this Fair Hearing Plan, the Practitioner shall be deemed to have consented to such adverse recommendation or adverse action, and to have voluntarily waived all rights to which the Practitioner might otherwise have been entitled under the Medical Staff Bylaws then in effect or under this Fair Hearing Plan with respect to the matter involved.

7-4 Number of Reviews

Notwithstanding any other provision of the Medical Staff Bylaws or of this Fair Hearing Plan, no Practitioner shall be entitled as a right to more than one (1) evidentiary hearing and one (1) appellate review with respect to an adverse recommendation or adverse action.

7-5 Extensions

Stated time periods and limits for actions, notices, requests, submissions of material and scheduling may be extended upon the agreement of the Parties and, when necessary, by the Hearing Committee or the appellate review body.

7-6 Release

By requesting a hearing or an appellate review under this Fair Hearing Plan, a Practitioner agrees to be bound by the provisions of the Medical Staff Bylaws, including, without limitation, the provisions relating to confidentiality, releases, and immunity from liability in all matters relating thereto.



ADOPTED by the Medical Executive Committee on \_\_\_\_\_, 2004 .

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Chief of the Medical Staff

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Secretary-Treasurer of the Medical Staff

APPROVED by the Board of Directors on \_\_\_\_\_, 2004.

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Secretary of the Board of Directors