

# FAIR HEARING PLAN

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# **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 Articles 6.6 and 6.7 of the Medical Staff Bylaws.

### **1.2 NOTICE OF ADVERSE RECOMMENDATION OR ACTION**

Upon the adverse recommendation of the Executive Committee, the CEO shall promptly notify the practitioner by special notice, of a reviewable adverse recommendation. Special notice required by this Fair Hearing Plan shall be either hand delivered or sent by certified mail, return receipt requested, or by facsimile or e-mail with confirmation of receipt. The notice shall:

- (a) Advise the practitioner that an adverse recommendation has been 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 Executive Committee may modify its proposed adverse recommendation or action, or the grounds for such recommendation or action at any time during the course of the proceeding, and shall notify the practitioner of all additions or deletions. However, the Executive Committee must provide timely notice of such modifications to the practitioner. 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 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 triggering the Section 1.2 notice. 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.

**1.6 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 1.5. A practitioner who has been deemed to have waived his or her right to a hearing may request that the 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 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 Executive Committee's decision.

**1.7 CONCURRENT HEARINGS**

Where 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.

**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 Chief of Staff shall use his or her best efforts to schedule the meeting to commence not less than 30 calendar days nor more than 90 calendar days after the CEO sends special 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 by a practitioner for an expedited hearing, the hearing must be held as soon as the arrangements may reasonably be made, with a goal that the hearing commence within 30 calendar days after the receipt of the request for the expedited review. The above stated time periods may be modified upon the mutual agreement of the practitioner and the Chief of Staff.

## **2.2 APPOINTMENT OF HEARING COMMITTEE**

### **2.2-1 BY THE MEDICAL CENTER**

A hearing shall be conducted by a hoc 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. 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 member of the 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**

The Chief of Staff or the 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 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. The practitioner has the right to object to the hearing officer in the same manner as specified in Section 2.2-3.

### **2.2-5 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 rule on matters of law, procedure, and the admissibility of evidence, including the admissibility of testimony and exhibits. The Chairman shall be entitled to vote.

## **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 reasonably 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 list and the list of the Executive Committee's witnesses

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 it finds that the 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 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 5 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 ad hoc committee at least 3 days prior to the scheduled date of the commencement of the hearing. Nothing in this paragraph shall preclude the 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 deviation from the procedures required by this Fair Hearing Plan or applicable law, the practitioner must promptly notify the Chief of Staff of such deviation, including the Fair Hearing Plan/Bylaws or applicable law citation. If the Chief of Staff agrees that a deviation has occurred and is substantial and has created demonstrable prejudice, he/she shall correct such deviation. 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 physician fails, without good cause, to appear for the hearing. 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 1.5. The Presiding Officer 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 Executive Committee shall appoint a representative who may be a member of the Executive Committee or another member of the active staff to represent it and may also be represented by legal counsel.

### **3.3 RIGHTS OF PARTIES**

During a hearing, each party shall have the following rights, subject to the rulings of the chairman 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; and
- (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.
- (g) Have the right to receive the written recommendations of the hearing committee and the 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 rules of law relating to the examination of witnesses or presentation of evidence. At the discretion of the chairman, any relevant matter may be considered. During the hearing, each party shall be entitled to submit a statement in support concerning any issue of law or fact if such statement was tendered pursuant to Section 2.4, and those statements shall become part of the hearing record. 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 Executive Committee representative and the hearing committee members regardless of whether the practitioner testifies in his or her own behalf. The chairman may order that oral evidence be taken only on oath.

### **3.5 BURDEN OF PROOF**

The 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, by preponderance of the evidence, 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 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 & 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 recommendation. 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 Executive Committee.

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

At its next regularly scheduled meeting after receipt of the hearing committee report and the hearing record, the Executive Committee shall consider the report of the hearing committee. The Executive Committee shall also 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 Executive Committee, the chairman of the hearing committee shall be invited to the Executive Committee to discuss the findings and recommendation of the ad hoc committee. The Medical Executive Committee shall affirm, modify, or reverse its previous recommendation or action and shall include with its recommendation a statement of the basis therefor.

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

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

As soon as is practicable after the Executive Committee meeting, the CEO shall send the practitioner a copy of the hearing committee's report and recommendation and the reconsidered recommendation of the Executive Committee along with the statements of the bases for such recommendations.

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

When the recommendation of the Executive Committee is favorable to the practitioner, the CEO shall promptly forward it to the Board.

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

- (a) If the Executive Committee's reconsidered recommendation continues to be adverse, the CEO shall promptly so notify the practitioner by special notice and shall also notify the practitioner of the appellate review rights to which the practitioner is entitled. The CEO shall also forward such recommendation 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 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 and the grounds therefor and of the affected practitioner's pending appeal rights.

## **PART FIVE - APPELLATE REVIEW**

The appellate review process is set forth in the Banner Health Appellate Review Policy.

## **PART SIX – FINAL ACTION**

### **6.1 ACTION TAKEN BY THE APPEALS SUBCOMMITTEE**

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 the Medical Staff for transmittal to the Executive Committee. The report and recommendation will be presented to the Medical Staff Subcommittee, which will make a recommendation to the Board's Quality and Care Management Committee. The Chief of the Medical 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.

- (a) **APPEALS SUBCOMMITTEE IN ACCORD WITH THE EXECUTIVE COMMITTEE**

If the Appeals Subcommittee's recommendation is in accord with the 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.

- (b) **APPEALS SUBCOMMITTEE NOT IN ACCORD WITH THE EXECUTIVE COMMITTEE**

If the Appeals Subcommittee's recommendation differs from the 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 Executive Committee for further consideration.

### **6.2 SPECIAL JOINT CONFERENCE REVIEW**

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

### **6.3 NUMBER OF REVIEWS**

No practitioner is entitled as a right to more than one hearing and one appellate review with respect to the subject matter that is the basis of the adverse recommendation or action triggering the right.



## **PART SEVEN - AMENDMENT**

### **7.1 AMENDMENT**

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

### **7.2 ADOPTION**

#### **7.2-2 BOARD OF DIRECTORS**

This Fair Hearing Plan was approved and adopted by resolution of the Banner Health Board of Directors on June 9, 2010.

Version: September 9, 2009