

CORRECTIVE ACTION/FAIR HEARING PLAN
MCKEE MEDICAL CENTER
LOVELAND, COLORADO

**MCKEE MEDICAL CENTER
CORRECTIVE ACTION/FAIR HEARING PLAN**

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ARTICLE I DEFINITIONS

The following definitions shall apply to the provisions of this Corrective Action/Fair Hearing Plan:

- 1.1 **APPLICANT** means any Practitioner who has applied for initial appointment to the Medical Staff or any Member who has applied for reappointment to the Medical Staff, additional clinical privileges or a change in Medical Staff category.
- 1.2 **BHS** means Banner Health System, an Arizona non-profit corporation, the owner and operator of the Hospital.
- 1.3 **CHIEF EXECUTIVE OFFICER** means the individual appointed by the President of BHS, or his/her designee, to act on BHS' behalf in the overall management of the Hospital.
- 1.4 **GOVERNING BOARD** means the governing body of BHS, or any subcommittee thereof, as may be designated by the governing body of BHS, unless otherwise specified.
- 1.5 **HEARING COMMITTEE** means the committee appointed pursuant to Section 3.2 of this Corrective Action/Fair Hearing Plan.
- 1.6 **HOSPITAL** means McKee Medical Center, an acute care hospital located at 2000 Boise Avenue, Loveland, Colorado.
- 1.7 **MEDICAL EXECUTIVE COMMITTEE** means the executive committee of the Medical Staff.
- 1.8 **MEDICAL STAFF** means all Practitioners who hold a valid Colorado license and who have been appointed to membership on the Medical Staff and granted clinical privileges by the Governing Board to attend patients at the Hospital. The term "Medical Staff" also shall include members of the Affiliate Staff.
- 1.9 **MEDICAL STAFF BYLAWS** refers to the major written statements governing the Medical Staff and the Members.
- 1.10 **MEDICAL STAFF RULES AND REGULATIONS** refers to the written statements regulating the conduct of the Medical Staff within the broad guidelines provided by the Medical Staff Bylaws.
- 1.11 **MEMBER** means any Practitioner who has been appointed to membership on the Medical Staff by the Governing Board.

- 1.12 **PRACTITIONER** means a doctor of medicine, a doctor of osteopathy, a doctor of medical dentistry, or a doctor of dental surgery.
- 1.13 **SPECIAL NOTICE** means written notification that is delivered in person or sent by certified or registered mail, return receipt requested.
- 1.14 **CAPITALIZED TERMS** used in this Corrective Action/Fair Hearing Plan and not otherwise defined herein shall have the meaning ascribed to such terms in the Medical Staff Bylaws.

ARTICLE II: CORRECTIVE ACTION

2.1 ROUTINE CORRECTIVE ACTION

- 2.1-1 **INFORMAL RESOLUTION PREFERRED:** Resolution of any controversy or request for an investigation regarding a Member's compliance with the Medical Staff Bylaws or the Medical Staff Rules and Regulations shall, if possible, be accomplished by an informal, intra-professional review procedure by the appropriate Medical Staff committee
- 2.1-2 **INITIATION OF CORRECTIVE ACTION:** Whenever the personal or professional conduct or activities of any Member (a) do not appear to meet the standards required by the Medical Staff Bylaws or the Medical Staff Rules and Regulations or (b) are, or are reasonably likely to be, detrimental to the quality of patient care or safety, a substantial hindrance to the delivery of quality patient care by others, disruptive to the Hospital operations or an impairment to the community's confidence in the Hospital or the Medical Staff, a request for corrective action against such Member may be initiated by any Member, any committee of the Medical Staff, the Chief Executive Officer, or the Governing Board.

The request for corrective action shall be submitted to the Medical Executive Committee, shall be in writing, and shall be supported by reference to the specific activities or professional conduct that constitute the grounds for the request. No anonymous or oral requests for corrective action shall be considered.

Upon receipt of a request for corrective action, the Chief of Staff shall promptly notify the Credentials Committee and the Chief Executive Officer in writing of such request and shall continue to keep them fully informed of all action taken in conjunction therewith.

A case file shall be established that shall serve as the single repository for all information relating to the request for corrective action. It shall be the responsibility of the Director of Medical Staff Services to maintain the file,

to receive and retain all information relating to the request for corrective action and to assure the confidentiality of the case file. Access to the case file shall be limited to only those persons whose position or function requires them to have access to the case file and the information contained therein, as determined by the Chief Executive Officer.

2.1-3 INITIAL REVIEW BY THE MEDICAL EXECUTIVE COMMITTEE: Upon receipt of a request for corrective action, the Medical Executive Committee shall consider such request at its next regularly scheduled meeting. If the initial review of such request indicates that the matter does not warrant further attention, the Medical Executive Committee shall prepare a report to the Chief Executive Officer, and the matter shall be closed without further action. A copy of this report shall be retained in the quality/peer review file of the Member in question.

If the initial review indicates that the matter merits further consideration, the Medical Executive Committee shall determine whether to take immediate action on the request for corrective action or to direct that an investigation be undertaken. If the Medical Executive Committee decides to take action on such request, the process set forth in Sections 2.1-5 through 2.1-7 below shall be followed.

If the Medical Executive Committee determines that further investigation is necessary, it shall conduct such investigation itself or shall direct that a Special Investigative Committee be appointed to conduct such investigation. Such investigation shall not constitute a hearing, and none of the procedural rules provided in this Corrective Action/Fair Hearing Plan with respect to hearings shall apply.

An investigation shall begin only after a formal determination by the Medical Executive Committee to do so.

Promptly upon completion of the initial review by the Medical Executive Committee, the Chief of Staff shall, by Special Notice, send to the Member, a written preliminary statement of the general nature of the request for corrective action, the nature of the issues raised, and the course of action to be followed.

2.1-4 SPECIAL INVESTIGATIVE COMMITTEE: If the investigation is delegated to a Special Investigative Committee, the Chief of Staff shall appoint at least three (3) persons to serve on the Special Investigative Committee, at least one (1) of which shall be a Member. If possible, the members of the Special Investigative Committee shall not be in direct economic competition with the Member in question.

The members of the Special Investigative Committee shall elect a member of the Special Investigative Committee to serve as the Chair. The Chair shall schedule the meetings of the Special Investigative Committee and shall conduct such meetings in compliance with the Medical Staff Bylaws and this Corrective Action/Fair Hearing Plan.

2.1-5 CONDUCT OF THE INVESTIGATION:

- (a) Investigation Process: The purpose of the investigation shall be to provide additional information to the Medical Executive Committee.

The investigation may consist of, but shall not be limited to, a review of the Member's credentials files, a review of information collected as a result of the Medical Staff quality assessment process, interviews with other Members or Hospital employees, consultations with other Practitioners who are not Members, and a review of any other information that may be relevant to the investigation.

An outside consultant who is not a Member may be retained by the Medical Executive Committee or the Special Investigative Committee, as the case may be, to assist in the evaluation process.

The investigation shall be conducted in a prompt manner with all deliberate speed.

- (b) Interview with the Member: The Member shall have an opportunity for an interview with the Medical Executive Committee or the Special Investigative Committee, as the case may be. The Member shall be given, by Special Notice, the time and place for the interview. At such interview, the Member shall be invited to present information relevant to the investigation. A report of such interview shall be made by the Medical Executive Committee or the Special Investigative Committee, as the case may be, and shall be included along with the report and recommendations of the Medical Executive Committee or the Special Investigative Committee. If the Member elects not to appear for an interview, this shall be so noted in the report of the Medical Executive Committee or the Special Investigative Committee, as the case may be.
- (c) Report of the Investigation by the Special Investigative Committee: If the investigation is conducted by a Special Investigative Committee, the Special Investigative Committee shall prepare a written report of the investigation as soon as is practicable after the assignment to investigate has been made. The written report shall

contain the findings, conclusions and recommendations of the Special Investigative Committee and shall be submitted to the Medical Executive Committee. The recommendations may include any of the actions listed in Section 2.1-6 below.

2.1-6 MEDICAL EXECUTIVE COMMITTEE REPORT AND RECOMMENDATIONS: Following its investigation, or, if a Special Investigative Committee has conducted the investigation, within thirty (30) calendar days following receipt of the report from the Special Investigative Committee, the Medical Executive Committee shall prepare a written report that shall contain the findings, conclusions and recommendations of the Medical Executive Committee. Such recommendations may include, without limitation, the following:

- (a) that no corrective action is justified;
- (b) that a letter of concern, warning, admonition, or reprimand be issued;
- (c) that conditions for continued appointment be imposed;
- (d) that the Member obtains additional training or education;
- (e) that the Member be counseled by the Chief of Staff, or his or her designee;
- (f) that the Member be required to obtain a consultation from another Member with respect to any or all of his/her clinical privileges prior to, or concurrent with, treating patients at the Hospital;
- (g) that the Member's clinical privileges be reduced, modified, or revoked;
- (h) that the Member's Medical Staff category be changed to another category; or
- (i) that the Member's Medical Staff membership be revoked.

The Medical Executive Committee may defer taking action on the request for corrective action if additional time is needed to complete the investigation. If a Special Investigative Committee has conducted the investigation, the Medical Executive Committee may refer the matter back to the Special Investigative Committee for further consideration, stating the reasons therefore and setting a time limit within which a subsequent report and recommendations shall be submitted.

If the recommended action is non-reviewable pursuant to Section 2.2 below, the Medical Executive Committee shall consider the manner in which the action shall be implemented. The Medical Executive Committee also shall forward any adverse recommendation to the Governing Board.

2.1-7 NOTICE TO THE MEMBER:

- (a) If a recommendation for corrective action is made by the Medical Executive Committee, the Chief of Staff shall send to the Member, by Special Notice, a summary of the request for corrective action, the recommendation of the Medical Executive Committee, and a course of action to be followed.
- (b) If the recommendation for corrective action is adverse and reviewable, the Member shall be informed in the Special Notice of his or her rights to a fair hearing and shall be provided a copy of this Corrective Action/Fair Hearing Plan.

2.2 NON-REVIEWABLE ACTION:

2.2-1 Not every recommended action entitles a Member to a formal hearing and/or appeal pursuant to this Corrective Action/Fair Hearing Plan before it is implemented. Specifically, the following actions are non-reviewable under this Corrective Action/Fair Hearing Plan:

- (a) Imposition of an automatic suspension pursuant to Section 2.4 below;
- (b) Imposition of suspension of clinical privileges for a period of up to fourteen (14) days in accordance with the provisions of the Disruptive Medical Staff Member Policy.
- (c) Imposition of supervision pending completion of an investigation to determine if corrective action is warranted or pending exhaustion of due process rights;
- (d) Issuance of a warning or a letter of admonition or reprimand;
- (e) Imposition of evaluation tools or monitoring of professional practices, other than direct supervision, for a period of six (6) months or less;
- (f) Termination or limitation of temporary privileges;

- (g) Supervision and other requirements imposed during the Member's provisional period;
- (h) Termination of any contract with, or employment by, the Hospital or BHS;
- (i) Any recommendation voluntarily imposed or accepted by an Applicant or a Member;
- (j) Denial of membership and clinical privileges for failure to complete an application for membership or clinical privileges;
- (k) Removal of membership and clinical privileges for failure to complete supervision within the time period granted by the Medical Staff Bylaws or this Corrective Action/Fair Hearing Plan;
- (l) Removal of membership and clinical privileges for failure to submit an application for reappointment within the allowable time period;
- (m) Reduction or change in staff category;
- (n) Refusal of the appropriate Department, the Credentials Committee, or the Medical Executive Committee to consider a request for appointment, reappointment, change in staff category, Department or section assignment, or clinical privileges within one (1) year of a final adverse decision regarding such request;
- (o) Removal or limitation of call obligations;
- (p) Any requirement to complete an educational assessment or training program;
- (q) Determination of ineligibility for initial appointment or reappointment due to failure to meet applicable requirements for board certification; and
- (r) any requirement to complete a health and/or psychiatric/psychological assessment and follow-up treatment recommended by the designated or approved healthcare professional.

Where an action that is not reviewable under this Corrective Action/Fair Hearing Plan has been taken against an Applicant or Member, the affected Applicant or Member may request that the Medical Executive Committee review the action, and such Applicant or Member may submit information demonstrating why the action is unwarranted. The Medical

Executive Committee, in its sole discretion, shall decide whether to review the submission and whether to take or recommend any action, and the affected Applicant or Member shall have no appeal or other rights in connection with the Medical Executive Committee's decision.

- 2.2-2 The inability of a Member to exercise clinical privileges and/or the rights and prerogatives of Medical Staff membership as a result of (a) the Hospital's decision to enter into, to terminate, or to modify an exclusive arrangement with a single Practitioner or provider group to provide certain clinical services, or (b) the termination or modification of the Member's relationship with the exclusive provider shall not constitute a reduction, suspension or revocation of such clinical privileges and/or Medical Staff membership such that the affected Member would be afforded any of the rights set forth in this Corrective Action/Fair Hearing Plan.
- 2.2-3 The determination that an Applicant is ineligible to apply for initial appointment or reappointment to the Medical Staff and for clinical privileges as a result of the Hospital's decision to enter into an exclusive arrangement with a single Practitioner or provider group to provide certain clinical services shall not constitute a reviewable action.

2.3 **PRECAUTIONARY SUSPENSION OF CLINICAL PRIVILEGES:**

- 2.3-1 **GROUNDS FOR PRECAUTIONARY SUSPENSION:** The Chief of Staff, the Chief of Staff-Elect, the appropriate Department Chair, the Chair of the Credentials Committee or the Chief Executive Officer, acting on behalf of the Governing Board, shall each have the authority to suspend all or any portion of the clinical privileges of a Member whenever failure to take such action may result in imminent danger to the health and/or safety of any individual or to the orderly operations of the Hospital, or threatens to interfere with the Hospital's ability or responsibility to provide quality patient care. The Member may be given an opportunity to refrain voluntarily from exercising clinical privileges pending an investigation.

The reason(s) for such precautionary suspension shall be set forth in a written statement prepared by the individual exercising the authority to impose such precautionary suspension. Such precautionary suspension shall be deemed an interim precautionary action and not the ultimate professional review action that may be taken with respect to the suspended Member. It shall not imply any final finding of responsibility for the situation that caused such precautionary suspension.

A precautionary suspension shall become effective immediately upon imposition, shall immediately be reported in writing to the Chief Executive Officer, the Chief of Staff, and the Chair of the Credentials Committee,

and shall remain in effect unless or until modified by the Medical Executive Committee or the Governing Board. The Chief of Staff or the Chief Executive Office shall notify the Member promptly, by Special Notice, of the imposition of the precautionary suspension. The Medical Executive Committee also shall be immediately notified of the imposition of the precautionary suspension.

2.3-2 MEDICAL EXECUTIVE COMMITTEE ACTION: Upon the written request of the suspended Member, a meeting of the Medical Executive Committee, or a subcommittee thereof consisting of no less than five (5) Members appointed by the Chief of Staff, shall be convened as soon as reasonably possible after the imposition of the precautionary suspension to review and consider the action taken. Such review must be requested by the Member within fifteen (15) calendar days of the Member's receipt of Special Notice of the suspension. The Medical Executive Committee, or the subcommittee acting for the Medical Executive Committee, shall recommend to the Governing Board modification, continuation or termination of the terms of the precautionary suspension and the action, if any, to be taken by the affected Member to have the suspension lifted.

2.3-3 EXPEDITED HEARING RIGHTS: In the event the precautionary suspension is continued, the Chief of Staff or the Chief Executive Officer shall notify the Member of such decision, by Special Notice, and the Member shall have the right to request an expedited hearing pursuant to Section 3.2 below.

2.4 AUTOMATIC SUSPENSION OR LIMITATION

2.4-1 STATE LICENSE:

- (a) **Revocation:** Whenever a Member's license to practice in Colorado is revoked, the Member's Medical Staff membership and clinical privileges shall be immediately and automatically revoked.
- (b) **Restriction:** Whenever a Member's license is limited or restricted in any way, the Member's clinical privileges that are within the scope of the limitation or restriction shall be similarly limited or restricted immediately and automatically.
- (c) **Suspension:** Whenever a Member's license is suspended, the Member's Medical Staff membership and clinical privileges shall be automatically suspended effective upon, and for at least as long as, the term of the suspension.

- (d) Probation: Whenever a Member is placed on probation by a licensing authority, the Member's Medical Staff membership and clinical privileges shall become subject to the same terms and conditions of the probation. In addition, the Member's voting prerogatives and ability to hold office are automatically suspended effective upon, and for at least as long as, the term of the probation.
- (e) Medical Executive Committee Recommendation: As soon as practicable after the Member's license is suspended, restricted or placed on probation, the Medical Executive Committee shall convene to review and consider the facts under which action was taken. The Medical Executive Committee may then recommend such further corrective action as is appropriate to the facts disclosed in the investigation including limitation of prerogatives. Thereafter, the applicable procedure is followed.

2.4-2 DRUG ENFORCEMENT (DEA): Whenever a Member's right to prescribe controlled substances is revoked, restricted, suspended, or placed on probation by a proper licensing authority, the Member's clinical privileges to prescribe such substances in the Hospital will also be revoked, restricted, suspended, or placed on probation automatically and to the same degree. Such revocation, restriction, suspension or probation will be effective upon, and will remain in effect for at least as long as, the term of the imposed restriction.

As soon as practicable after the Member's controlled substance number is revoked, restricted, suspended or placed on probation, the Medical Executive Committee shall convene to review and consider the facts under which action was taken. The Medical Executive Committee may then recommend such further corrective action as is appropriate to the facts disclosed in the investigation including limitation of prerogatives. Thereafter, the applicable procedure is followed.

2.4-3 MEDICAL RECORDS:

- (a) Timely Completion: The failure to prepare and/or to complete medical records in a timely fashion may result in limitation or automatic suspension of some or all of a Member's prerogatives of Medical Staff membership and clinical privileges. Such limitation or automatic suspension will not occur without written warning and the Member will be given sufficient warning and time so that imposition of the limitation or automatic suspension will not constitute a hardship.

- (b) Voluntary Resignation: Five (5) suspensions within any twelve (12) month period for failure to complete or prepare records will be deemed a voluntary resignation from the Medical Staff. Members who so resign may immediately submit a formal application for initial appointment.

2.4-4 **PROFESSIONAL LIABILITY INSURANCE:** A Member's Medical Staff membership and clinical privileges shall be immediately suspended for failure to maintain the minimum amount of professional liability insurance required by the Governing Board. An affected Member may request reinstatement during a period of ninety (90) calendar days following suspension, upon presentation of proof of adequate insurance. Thereafter, such Member shall be deemed to have voluntarily resigned from the Medical Staff and must reapply for Medical Staff membership and clinical privileges.

2.4-5 **EXCLUSION FROM FEDERAL PROGRAMS:** Whenever a Member is excluded from Medicare, Medicaid, Colorado Access or other federally-funded healthcare programs, the Member's Medical Staff membership and clinical privileges shall be automatically terminated. An affected Member may request reinstatement during a period of ninety (90) calendar days following suspension, upon presentation of proof of ability to participate in such federally-funded healthcare programs. Thereafter, such Member shall be deemed to have voluntarily resigned from the Medical Staff and must reapply for Medical Staff membership and clinical privileges.

2.4-6 **FAILURE TO SATISFY SPECIAL ATTENDANCE REQUIREMENT:** A Member who, without good cause, fails to appear at a meeting where his or her special attendance is required, in accordance with Section 11.4-2 of the Medical Staff Bylaws, shall be automatically suspended from exercising all clinical privileges. Failure to appear within sixty (60) calendar days of the imposition of an administrative suspension shall result in revocation of Medical Staff membership and clinical privileges. Thereafter, the affected Member must reapply for Medical Staff membership and clinical privileges.

2.4-7 **FAILURE TO PAY MEDICAL STAFF DUES:** A Member who fails to pay any required Medical Staff dues, fees or assessments shall automatically be suspended from the Medical Staff. If such dues, fees or assessments are paid within thirty (30) calendar days from the receipt of Special Notice regarding the suspension, the Member shall be reinstated. Thereafter, the Member shall be deemed to have resigned voluntarily from the Medical Staff and must reapply for Medical Staff membership and clinical privileges.

2.4-8 FAILURE TO EXECUTE RELEASES OR PROVIDE REQUESTED INFORMATION: A Member who fails to execute a release, as more particularly described in Section 12.5 of the Medical Staff Bylaws, or who fails to provide documentation or other information during a term of appointment when requested by the appropriate Department Chair, the Chair of the Credentials Committee or the Chief of Staff shall be automatically suspended. If the release is executed and/or documents provided within thirty (30) calendar days from the receipt of Special Notice regarding the suspension, the Member shall be reinstated. Thereafter, the Member shall be deemed to have resigned voluntarily from the Medical Staff and must reapply for Medical Staff membership and clinical privileges.

2.4-9 FAILURE TO OBTAIN INFLUENZA VACCINATION: A Member's Medical Staff membership and clinical privileges will be automatically suspended when a Member fails to provide satisfactory evidence of annual influenza vaccination by December 1st of each year. A Member's Medical Staff membership and clinical privileges will be reinstated at the end of the flu season or when evidence of compliance is provided. Exemptions to this requirement will be made if the Member is granted a medical or religious exemption and wears a mask in accordance with Banner Health Policy (the Exempted Member). If the Exempted Member fails to follow the Banner Health Policy and wear a mask the following steps will be taken:

- (a) Collegial interaction;
- (b) Written notice which shall include the requirement that the Member enter into a formal stipulation agreement within five (5) days of receipt of same;
- (c) If the Member fails to enter into the required stipulation agreement in the required time frame or fails to comply with the terms of the executed stipulation agreement, such Member's Privileges will be automatically suspended and only reinstated at the end of the flu season or when evidence of compliance is provided.

2.5 ENFORCEMENT AND CONTINUITY OF PATIENT CARE: Immediately upon the imposition of a precautionary suspension or upon the occurrence of an automatic suspension, the appropriate Department Chair or, if unavailable, the Chief of Staff, shall assign to another Member with appropriate clinical privileges the responsibility of caring for the suspended Member's patients in the Hospital. Such assignment shall be effective until such time as all of the affected patients

are discharged. The wishes of the patients shall be considered in the selection of the alternate Member.

It shall be the duty of all Members to cooperate with the Chief of Staff, the appropriate Department Chair, the Medical Executive Committee and the Chief Executive Officer in enforcing all precautionary and administrative suspensions.

2.6 **CONFIDENTIALITY:**

2.6-1 All proceedings conducted pursuant to this Corrective Action/Fair Hearing Plan shall be privileged and confidential pursuant to applicable federal and state laws, rules and regulations. Such proceedings and final action by the Governing Board pursuant to this Corrective Action/Fair Hearing Plan shall not be disclosed except in accordance with reporting requirements imposed by applicable federal and state laws, rules and regulations.

2.6-2 All Members participating in the proceedings outlined in this Corrective Action/Fair Hearing Plan acknowledge that confidentiality is required.

2.7 **REPORTING:**

2.7-1 Precautionary and automatic suspensions that exceed thirty (30) calendar days shall be reported as required by law to the National Practitioner Data Bank and, if required, to the Member's licensing board.

2.7-2 Any final action imposed by the Governing Board, after the exhaustion of all appeal rights, shall also be reported as required by law to the National Practitioner Data Bank and, if required, to the Member's licensing board.

ARTICLE III FAIR HEARING PLAN

3.1 **INITIATION OF HEARING**

3.1-1 **RECOMMENDATIONS OR ACTIONS:** The following recommendations or actions shall be deemed adverse and shall entitle the Applicant or Member affected thereby to a hearing, upon timely and proper request for same, unless such recommendation or action would be non-reviewable pursuant to Section 2.2 above:

- (a) denial of initial Medical Staff appointment;
- (b) denial of Medical Staff reappointment;

- (c) suspension of Medical Staff appointment;
- (d) involuntary revocation of Medical Staff appointment;
- (e) suspension or limitation of admitting privileges;
- (f) denial or restriction of requested clinical privileges;
- (g) reduction in or limitation of clinical privileges;
- (h) suspension or revocation of clinical privileges for more than thirty (30) calendar days (other than precautionary or administrative suspension); or
- (i) individual application of, or individual changes in, mandatory consultation requirement.

3.1-2 **WHEN DEEMED ADVERSE:** A recommendation or action listed in Section 3.1-1 is adverse only when it has been:

- (a) Recommended by the Medical Executive Committee;
- (b) Taken by the Governing Board, if contrary to a favorable recommendation from the Medical Executive Committee and under circumstances where no specific right to a hearing existed;
- (c) A suspension continued in effect after review by the Governing Board; or
- (d) Taken by the Governing Board on its own initiative without benefit of a prior recommendation by the Medical Executive Committee.

3.1-3 **NOTICE OF ADVERSE RECOMMENDATION OR ACTION:** An Applicant or Member against whom an adverse recommendation has been taken or against whom an adverse recommendation has been made, shall promptly receive Special Notice of such recommendation or action from the Chief Executive Officer. The Special Notice shall:

- (a) Advise the Applicant or Member that an adverse recommendation or action has been taken or is proposed to be taken against the Applicant or Member;
- (b) Contain a concise statement of the Applicant's or Member's alleged acts and 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;

- (c) Advise the Applicant or Member of his/her right to a hearing pursuant to the provisions of this Corrective Action/Fair Hearing Plan, upon timely and proper request for same;
- (d) Specify that the Applicant or Member shall have thirty (30) calendar days after receiving the Special Notice within which to submit a request for a hearing, which request shall be in writing and delivered to the Chief Executive Officer 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 rights to which the Applicant or Member is entitled, which may be done by furnishing the Applicant or Member with a copy of this Corrective Action/Fair Hearing Plan; and
- (g) State that after receipt of the request for a hearing, the Chief Executive Officer will notify the Applicant or Member of the date, time and place of the hearing, and the witnesses expected to testify on behalf of the Medical Executive Committee or the Governing Board, as the case may be.

3.1-4 MODIFICATION OF ACTION OR RECOMMENDATION: The Medical Executive Committee or the Governing Board, as the case may be, may modify its proposed adverse recommendation or action, or the grounds for such recommendation or action, and shall notify the Applicant or Member of all additions or deletions.

3.1-5 REQUEST FOR A HEARING: The Applicant or Member shall have thirty (30) calendar days after receiving Special Notice pursuant to Section 3.1-3 above to submit a written request for a hearing. Such request must be in writing and delivered to the Chief Executive Officer either in person or by certified or registered mail. Any time limits set forth in this Section 3.1-5 or in any other provision of this Corrective Action/Fair Hearing Plan may be extended or shortened by mutual agreement of the Applicant or Member and the Chief Executive Officer.

3.1-6 WAIVER BY FAILURE TO REQUEST A HEARING: An Applicant or Member who fails to request a hearing within the time and in the manner specified in Section 3.1-5 above shall be deemed to waive his/her right to any hearing or appellate review to which he/she might otherwise have been entitled. Such waiver shall apply only to the matters that were the basis for the adverse recommendation or action triggering the Special Notice. A waiver shall constitute acceptance of the recommendation and action, which shall immediately be transmitted to the Board of Directors for a final decision. The Chief Executive Officer shall promptly send the Applicant or Member Special Notice of the decision of the Governing Board and also shall notify the Chief of Staff of such decision.

3.1-7 WAIVER BY FAILURE TO PARTICIPATE CONSTRUCTIVELY IN THE HEARING PROCESS: An Applicant or Member who fails to participate constructively in the hearing process shall be deemed to have waived his/her right to any hearing or appellate review to which he/she might otherwise have been entitled. The Presiding Officer must inform the Applicant or Member that a waiver is being considered and give the Applicant or Member reasonable opportunity to participate constructively prior to ruling that his/her hearing rights have been waived. Examples of failure to participate constructively include, but are not limited to, refusal of the Applicant or Member 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 3.1-6 above. An Applicant or Member who has been deemed to have waived his/her right to a hearing may request that the Medical Executive Committee or the Governing Board, 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 Applicant's or Member's position must be submitted, if at all, within ten (10) calendar days of the ruling. The Medical Executive Committee or the Governing Board, as the case may be, shall decide whether to reinstate the Applicant's or Member's hearing rights, and the Applicant or Member shall have no appeal or other rights in connection with the decision of the Medical Executive Committee or the Governing Board, as the case may be.

3.2 NOTICE OF TIME AND PLACE FOR HEARING: Upon receipt of a timely and proper request for a hearing, the Chief Executive Officer shall deliver the request to the Chief of Staff or the Chair of the Governing Board, depending upon which body took the action that prompted the request for a hearing. Within fourteen (14) calendar days after receiving such request, the Chief of Staff or the Chair of the Governing Board, as the case may be, shall arrange and schedule a hearing, and the Chief Executive Officer shall send the Applicant or Member 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 sixty (60) calendar days from the date of the Special Notice of the hearing; provided, however, that an Applicant or Member who is under suspension then in effect may request an expedited hearing. Upon receipt of a written request for an expedited hearing from the Applicant or Member, such hearing must be held as soon as the arrangements may reasonably be made, but not later than twenty-one (21) calendar days after the receipt of the request for the expedited review. Furthermore, any Applicant or Member can waive the above stated time requirements in order to expedite the hearing process with the consent of the Chief of Staff or the Chair of the Governing Board, as the case may be.

3.3 APPOINTMENT OF HEARING COMMITTEE AND HEARING OFFICER:

3.3-1 BY THE MEDICAL STAFF: A hearing occasioned by a recommendation of the Medical Executive Committee pursuant to Section 3.1 above shall be conducted by a hearing committee appointed by the Chief of Staff and composed of at least three (3) Members, if possible, but, if not possible, other qualified persons may be appointed to serve on the hearing committee. If the Chief of Staff is in direct economic competition with the Applicant or Member, the Chief Executive Officer shall appoint the members of the hearing committee. The Chief of Staff or the Chief Executive Officer, as the case may be, shall designate one of the members so appointed as Chair of the hearing committee.

3.3-2 BY THE GOVERNING BOARD: A hearing occasioned by an adverse action of the Governing Board pursuant to Section 3.1 above shall be conducted by a hearing committee appointed by the Chair of the Governing Board and composed of at least three (3) persons, at least one of who shall be a member of the Governing Board. One of the members so appointed shall be designated as Chair of the hearing committee.

3.3-3 SERVICE ON HEARING COMMITTEE: A Member or a member of the Governing Board shall not be disqualified from serving on a hearing committee solely because he/she has heard of the matter or has knowledge of the facts involved or what he/she supposes the facts to be. No member of a hearing committee shall be a Practitioner in direct economic competition with the Applicant or Member for whom the hearing is held, a Member who has either requested, or has served on a body that has recommended, the adverse action, or an individual who is professionally associated with, or related to, the affected Applicant or Member.

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

3.3-4 APPLICANT'S OR MEMBER'S RIGHT TO OBJECT: The Chief of Staff or the Chief Executive Officer shall notify the Applicant or Member of the names of the hearing committee members and the date by which the Applicant or Member 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 Applicant or Member of such new member(s). The Applicant or Member may object to any new member(s) by giving written notice of the objection and the reasons therefor.

3.3-5 HEARING OFFICER: The Chief Executive Officer, upon the request of the Chief of Staff, or upon his/her 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 Governing Board, in the event of a hearing occasioned by an adverse action of the Governing Board, may appoint a hearing officer to conduct a hearing. 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 or a physician and may not be in direct economic competition or affiliation with the Applicant or Member. The hearing officer may, but need not, be an attorney, but shall be experienced in conducting hearings.

3.4 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 in support of the Applicant or Member 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 Medical 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 3.4 to testify if he/she 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 3.10 below. The Applicant or Member and the representative of the Medical Executive Committee or the Governing Board, as the case may be, shall be permitted to testify regardless of whether identified as a witness.

None of the affected Applicant or Member, his/ her counsel, or any other person on his/her behalf shall contact any Members or any Hospital employees who appear on witness list of the Medical Executive Committee or the Governing Board, 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 Applicant or Member may not present evidence of competency or character by presenting testimony, endorsements or opinions of his/her patients.

3.5 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 (5) copies of such statement to the Medical Staff Services office at least five (5) calendar days prior to the scheduled date for commencement of the hearing. The party also shall supply two (2) copies of the statement to the other party and his/her representative. The Medical Staff Services office shall distribute the statements (if any) to the members of the hearing committee at least three (3) calendar days prior to the scheduled date of the commencement of the hearing. Nothing in this Section 3.5 shall preclude the Medical Executive Committee or the Governing Board, as the case may be, or its representative(s) from submitting procedural information to the hearing committee.

3.6 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 3.6 if he/she 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 3.10 below.

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

3.7 DUTY TO NOTIFY OF NONCOMPLIANCE: If the Applicant or Member believes that there has been a deviation from the procedures required by this Corrective Action/Fair Hearing Plan or applicable law, the Applicant or Member must promptly notify the Chief of Staff or the Chair of the Governing Board, through the Chief Executive Officer, of such deviation, including a citation to the applicable provision of this Corrective Action/Fair Hearing Plan or the Medical Staff Bylaws or to applicable law. If the Chief or Staff or the Chair of the Governing Board, as the case may be, agrees that a deviation has occurred, is

substantial and has created demonstrable prejudice, he/she shall correct such deviation.

3.8 PRE-HEARING CONFERENCE: The Presiding Officer may require counsel for both the Applicant or Member and the Medical Executive Committee or the Governing Board, 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 Applicant's or Member'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.

3.9 HEARING PROCEDURE:

3.9-1 **PERSONAL PRESENCE:** The right to a hearing shall be waived if the Applicant or Member fails, without good cause, to appear. The personal presence of the Applicant or Member who requested the hearing is required throughout the hearing. The presence of the Applicant's or Member's counsel or other representative does not constitute the personal presence of the Applicant or Member. An Applicant or Member who fails, without good cause, as determined by the hearing committee, to be present throughout such hearing shall be deemed to have waived his/her rights in the same manner and with the same consequences as provided in Section 3.1-6 above.

3.9-2 **POSTPONEMENTS AND EXTENSIONS:** Postponements of meetings and extensions beyond the time limits expressly permitted may be requested by either party, and granted, with good cause, by the Presiding Officer or by the mutual agreement of both parties.

3.9-3 **PRESIDING OFFICER:** In the absence of a hearing officer, the Chair of the hearing committee shall serve as the Presiding Officer. The Presiding Officer shall maintain decorum and shall insure that all participants in the hearing have a reasonable opportunity to be heard and to present relevant oral and documentary evidence. The Presiding Officer shall be entitled to determine the order of procedure during the hearing and shall have the authority and discretion, in accordance with this Corrective Action/Fair Hearing Plan, to make all rulings on questions that pertain to matters of the conduct of the hearing and to the admissibility of evidence. If acting as the Presiding Officer, the Chair of the hearing committee shall not act as an advocate for any party to the hearing, but shall be entitled to vote.

3.9-4 **REPRESENTATION:** The Applicant or Member who requested the hearing may be accompanied and represented at the hearing by legal counsel or any other person of the Applicant's or Member's choice.

The Medical Executive Committee or the Governing Board, depending on whose recommendation or action prompted the hearing, shall appoint a representative, who may, but need not, be one of its members, to represent it at the hearing. The Medical Executive Committee or the Governing Board, as the case may be, also may be represented by legal counsel, even if the Applicant or Member is not so represented.

3.9-5 **CONDUCT OF HEARING:** The party whose adverse recommendation or action occasioned the hearing shall present evidence in support of its recommendations or action. The Applicant or Member who requested the

hearing shall have the obligation of presenting evidence to challenge the adverse recommendation or action and showing that the adverse recommendation or action is not appropriate.

3.9-6 RIGHTS OF PARTIES: During a hearing, each party 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 in support of such party's position if such statement is tendered pursuant to Section 3.5 above; and
- (g) Have a record made of the hearing, copies of which may be obtained by the Applicant or Member upon payment of any reasonable charges associated with the preparation thereof.

If the Applicant or Member who requested the hearing does not testify on his/her own behalf, he/she may be called and examined as if under cross-examination.

After the reconsideration of the recommendation by the Medical Executive Committee or the Governing Board, as the case may be, the Applicant or Member has the right to receive the written recommendations of the hearing committee and either the Medical Executive Committee or the Governing Board, as the case may be, both of which shall include a statement of the basis for the decision.

3.9-7 PROCEDURE AND EVIDENCE: The hearing need not be conducted strictly according to the rules of law relating to the examination of witnesses or presentation of evidence. At the discretion of the Presiding Officer, any relevant matter upon which responsible persons might customarily rely in the conduct of serious affairs may be considered regardless of the admissibility of such evidence in a court of law. During the hearing, each party shall be entitled to submit memoranda concerning

any issue of law or fact, if such memoranda were tendered pursuant to Section 3.5 above, and such memoranda 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 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 him/her and entitled to notarize documents or administer oaths in the State of Colorado.

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

- (a) Oral or written testimony or deposition of witnesses, including experts;
- (b) Briefs, memoranda, or other documentation of points and reference to authorities presented in connection with the hearing, if such documentation is tendered pursuant to Section 3.5 above;
- (c) Any material contained in the Hospital's credentials files regarding the Applicant or Member who requested the hearing;
- (d) Any application forms and informational material associated with the application and credentialing process;
- (e) Quality assurance documentation;
- (f) All officially noticed information; and
- (g) Any other relevant materials.

3.9-8 OFFICIAL NOTICE: In reaching a decision, the hearing committee may take official notice, 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 must be informed of the matters to be noticed, and those matters must be noted in the hearing record. Each party shall be given opportunity, on timely and proper request, to request that a matter be officially noticed and to refute any officially noticed matter by evidence or by written or oral presentation of authority, in a manner to be determined by the Presiding Officer.

3.9-9 BURDEN OF PROOF: When a hearing relates to Sections 3.1-1(e) or (h), the Applicant or Member has the burden of proving, by clear and

convincing evidence, that the adverse action or recommendation lacks any factual basis or that the basis or the conclusions drawn therefrom are either arbitrary, unreasonable or capricious. Otherwise, the Medical Executive Committee or the Governing Board, as the case may be, has the initial obligation to present evidence in support of the adverse action or recommendation. Thereafter, the Applicant or Member has the burden of demonstrating, by a preponderance of the evidence, that the adverse action or recommendation lacks any substantial factual basis or is otherwise arbitrary, unreasonable, or capricious.

3.9-10 HEARING RECORD: A record of the hearing shall be kept. A court reporter shall be used for making the record.

3.9-11 POSTPONEMENT: Requests for postponement or continuance of a hearing may be granted by the Presiding Officer only upon a timely showing of good cause, which may include failure of a member of the hearing committee to be present throughout the hearing.

3.9-12 PRESENCE OF HEARING COMMITTEE MEMBERS AND VOTE: A majority of the hearing committee must be present throughout the hearing and deliberations. If a committee member is absent from any part of the proceedings, he may not participate in the deliberations or the decision.

3.9-13 RECESSES AND ADJOURNMENT: The hearing committee may, exclusively at its discretion and without Special Notice, recess the hearing and reconvene the hearing 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 adjourned. The hearing committee shall thereupon, at a time convenient to itself, conduct its deliberations outside the presence of the parties.

3.9-14 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.

3.10 HEARING COMMITTEE REPORT AND FURTHER ACTION:

3.10-1 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, including a statement of the basis for the recommendations, with specific reference to the hearing record and other documentation considered, and shall forward the report, together with the hearing record and other documentation considered by it, to the body whose adverse recommendation or action occasioned the hearing.

3.10-2 ACTION ON HEARING COMMITTEE REPORT: At its next regularly scheduled meeting after receiving the hearing committee report, the body to whom the report is made shall consider the report and affirm, modify or reverse its previous 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 Governing Board, as the case may be, the Chair of the hearing committee may be invited to a meeting of the Medical Executive Committee or the Governing Board, as the case may be, to discuss the findings, conclusions and recommendation of the hearing committee.

3.10-3 NOTICE OF DETERMINATION AND EFFECT OF RESULT:

- (a) Notice: As soon as practicable after action by the Medical Executive Committee or the Governing Board, as the case may be, the Chief Executive Officer shall send to the Applicant or Member, by Special Notice, a copy of the hearing committee's report and the reconsidered recommendation of the Medical Executive Committee or the Governing Board, as the case may be. A copy of the report and the recommendation also shall be sent to the Chief of Staff.
- (b) Effect of Favorable Result: When the recommendation of the Medical Executive Committee or the Governing Board is favorable to the Applicant or Member, the Chief Executive Officer shall promptly forward it, together with all supporting documentation, to the Governing Board for final action.
- (c) Effect of an Adverse Result: If, after the Medical Executive Committee or the Governing Board, as the case may be, has considered the hearing committee report and the hearing record, its reconsidered recommendation continues to be adverse to the Applicant or Member, the Chief Executive Officer shall promptly so notify the Applicant or Member by Special Notice. The Chief Executive Officer also shall forward such recommendation and

documentation to the Governing Board, but the Governing Board shall not take any action thereon until after the Applicant or Member has exercised or has been deemed to have waived the right to an appellate review.

ARTICLE IV APPELLATE REVIEW

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

ARTICLE V GENERAL PROVISIONS

- 5.1 **NUMBER OF HEARINGS AND REVIEWS:** Notwithstanding any other provision of the Medical Staff Bylaws or of this Corrective Action/Fair Hearing Plan, no Applicant or Member shall be entitled as a right to more than one (1) evidentiary hearing and one (1) appellate review with respect to the subject matter that is the basis of the adverse recommendation or action triggering the right.
- 5.2 **RELEASE:** By requesting a hearing or appellate review under this Corrective Action/Fair Hearing Plan, the Applicant or Member 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.

ARTICLE VI ADOPTION AND AMENDMENT

- 6.1 **AMENDMENT:** This Corrective Action/Fair Hearing Plan, and any amendments thereto, shall become effective when adopted by a majority vote of the Medical Executive Committee and approved by the Governing Board.
- 6.2 **RESTRICTION OF AMENDMENT:** Any amendments to this Corrective Action/Fair Hearing Plan that become effective while an adverse action is being processed shall not apply to such adverse action.

MCKEE MEDICAL CENTER
CORRECTIVE ACTION/FAIR HEARING PLAN

This Corrective Action/Fair Hearing Plan was adopted and recommended to the Governing Board by the Medical Executive Committee as of the date set forth below.

Date

Chief of Staff

This Corrective Action/Fair Hearing Plan was approved and adopted by the Governing Board as of the date set forth below.

Date

Secretary, Governing Board