



Banner Health

Platte County[®]

Memorial Hospital

Medical Staff Fair Hearing Plan



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FAIR HEARING PLAN
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FAIR HEARING PLAN

In accordance with the provisions of the Medical Staff Bylaws of Platte County Memorial Hospital, Wheatland, Wyoming, the medical staff, acting through its Medical Executive Committee (MEC), and Banner Health, acting through its Board of Directors, hereby adopt the following Fair Hearing Plan which shall govern the conduct of hearings and appeals relating to those recommendations and decisions of the Medical Staff and Board of Directors for which a right of hearing and appeal is provided. This Plan may be amended, from time to time, upon the concurrence of both the Medical Staff Executive Committee and the Board of Directors.

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. HEARING COMMITTEE means the committee appointed pursuant to this Plan to hear a request for an evidentiary hearing properly filed and pursued by a practitioner.
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.
3. PRACTITIONER means the applicant or staff appointee against whom an adverse action has been recommended or taken.
4. SPECIAL NOTICE means written notification sent by certified or registered mail, return receipt requested.
5. ADVERSE ACTION/RECOMMENDATION means a professional review action as defined in the ("Health Care Quality Improvement Act of 1986 any updates?")."
6. BOARD OR MEDICAL EXECUTIVE COMMITTEE means the professional review body as defined in the "Health Care Quality Improvement Act of 1986."

I. INITIATION OF HEARING

I.1 Recommendations or Actions

The following recommendations or actions shall, if deemed adverse, entitle the practitioner affected thereby to a hearing:

- A. Denial of initial staff appointment,
- B. Denial of reappointment,
- C. Suspension of staff appointment(other than non-reviewable actions as outlined in the medical staff bylaws),
- D. Revocation of staff appointment,
- E. Limitation of admitting privileges,
- F. Denial of requested clinical privileges,
- G. Reduction in or limitation of clinical privileges,
- H. Suspension of clinical privileges, and
- I. Revocation of clinical privileges.

1.2 When Deemed Adverse

A recommendation or action listed above shall be deemed adverse action only when it has been:

- A. Recommended by the MEC; or
- B. A suspension continued in effect after review by the MEC and/or the Board;
- C. Taken by the Board contrary to a favorable recommendation by the MEC under circumstances where no prior right to a hearing existed; or
- D. Taken by the board on its own initiative without benefit of a prior recommendation by the MEC;

1.3 Notice of Adverse Recommendation or Action

A practitioner against whom adverse action has been taken pursuant to Section 1.2 shall within thirty (30) days be given special notice of such action by the Chief Executive Officer (CEO). The notice shall state:

- A. That an adverse action has been taken or is proposed to be taken against the practitioner;
- B. The reasons for the adverse action;
- C. That the practitioner has no more than thirty (30) days from the date of furnishing the notice to request a hearing; and

- D. A summary of the hearing procedures and rights of the practitioner, which can consist of furnishing the practitioner a copy of this Fair Hearing Plan with the notice.

1.4 Request for Hearing

A practitioner shall have no more than thirty (30) days following his receipt of a notice pursuant to Section 1.3 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 registered mail to the CEO, properly addressed and postage prepaid. Any time limits set forth in this or any other provision of the Fair Hearing Plan may be extended or shortened by mutual agreement of the practitioner and hospital representatives.

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 waives any right to such hearing and to any appellate review to which he might otherwise have been entitled. Such waiver in connection with:

- A. An adverse action by the board shall constitute acceptance of that action, which shall thereupon become effective as the final decision of the board.
- B. An adverse recommendation by the MEC shall constitute acceptance of that recommendation, which shall thereupon become and remain effective pending the final decision of the board. The board shall consider the committee's recommendations at its next regular meeting following waiver. In its deliberations the board shall review all the information and material considered by the 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 him of each action taken pursuant to this Section 1.5 and shall notify the Chief of Staff of each such action.

2. HEARING PREREQUISITES

2.1 Notice of Time and Place of Hearing

Upon receipt of a timely request for hearing, the CEO shall deliver such request to the Chief of the Medical Staff or to the Board, depending on whose recommendation or action prompted the request for hearing. The Chief of Staff or the Chairman of the Board, as applicable, 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 not less than thirty (30) days nor more than forty-five (45) days from the date of the 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) days after the practitioner has been given special notice, unless he requests, and offers valid reasons for, an extension.

2.2 Statement of Charges

The notice of hearing shall 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 action which is the subject of the hearing, and a list of witnesses, if any, expected to testify on behalf of the hospital representatives.

This statement of grounds and the list of supporting patient record numbers, and other information it contains, may be amended or added to at any time, even during the hearings, so long as the additional material is relevant to the continued appointment or clinical privileges of the individual requesting the hearing, and that individual and his counsel have sufficient time to study this additional information and rebut it.

2.3 Appointment of Hearing Committee or Examiner

A. By Staff

A hearing occasioned by a MEC recommendation 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 other qualified persons may be appointed to serve on the Hearing Committee. One of the members so appointed shall be designated as chairman.

B. By Board

A hearing occasioned by an adverse action of the board shall be conducted by a hearing committee appointed by the Chairman of the Board and composed of at least three (3) persons. A majority of the 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 committee shall be designated as chairman.

C. Service on Hearing Committee

A staff or board member shall not be disqualified from serving on a hearing committee solely because he has heard of the case or has knowledge of the facts involved or what he supposes the facts to be.

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

D. Hearing Examiner

The CEO, upon the request of the Chief of Staff or upon his own initiative, in the event of a hearing occasioned by an adverse action of the MEC, or upon the request of the Chairman of the Board, in the event of a hearing occasioned by an adverse action of the board, may appoint a hearing examiner to conduct a hearing. Such an appointed hearing examiner shall exercise all the authority and responsibility

granted to a hearing committee and its chairman in the Fair Hearing Plan. A hearing examiner may, but need not, be an attorney, but shall be experienced in conducting hearings.

3. HEARING PROCEDURE

3.1 Personal Presence

The personal presence of the practitioner who requested the hearing shall be required. A practitioner who fails without good cause to appear and proceed at such hearing shall be deemed to have waived his rights in the same manner and with the same consequence as provided in Section 1.5.

3.2 Presiding Officer

Either the hearing officer, if one is appointed or the chairman of the hearing committee 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. He 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.

3.3 Representation

The practitioner who requested the hearing shall be entitled to be accompanied and represented at the hearing by a member of the staff in good standing or by a member of his local professional society. The MEC, when its recommendation has prompted the hearing, shall appoint at least one (1) of its members, some other staff member, or another person of its choosing, to represent it at hearing. The board, when its recommendation or action has prompted the hearing, shall appoint at least one (1) of its members, or another person of its choosing, to represent it at the hearing. Representation or assistance of either party by an attorney at law shall be governed by the provisions of Section 6.2.

3.4 Rights of Parties

During a hearing, each of the parties shall have the right to:

- 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, and/or
- F. Submit a written statement at the close of the hearing,

- 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 in his own behalf, he may be called by the other party and examined as if under cross-examination.

3.5 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 chairman, 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.
- 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 hearing committee may require one or both parties to prepare and submit to the committee, written statements of their position on the issues, prior to, during, or after, the hearing.
- C. The hearing committee may establish rules of procedure, including, but not limited to, requiring the submission prior to the hearing of lists of proposed witnesses and exhibits.
- 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 him and entitled to notarize documents.

3.6 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 Wyoming. 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. The committee shall also be entitled to consider any pertinent material contained on file in the hospital, and all other information that can be considered, pursuant to the medical staff bylaws, in connection with applications for appointment or reappointment to the staff and for clinical privileges.

3.7 Burden of Proof

When a hearing relates to Section I-1A or F, the practitioner who requested the hearing shall have the burden of proving, by clear and convincing evidence, that the adverse recommendation or action lacks any factual basis or that such basis or the conclusions drawn therefrom are either arbitrary, unreasonable, or capricious. When the hearing relates to other

adverse action, the body whose adverse recommendation or 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 his challenge to the adverse recommendation or action, by clear and convincing evidence that the grounds therefor lack any factual basis or that such basis or the conclusions drawn therefrom are either arbitrary, unreasonable, or capricious.

3.8 Record of Hearing

The Hearing Panel shall maintain a record of the hearing by a stenographic reporter present to make a record of the hearing. The cost of such reporter shall be borne by the Hospital, but copies of the transcript shall be provided to the Applicant or Member requesting the hearing at such Applicant's or Member's expense. Oral evidence shall be taken only on oath or affirmation administered by any person designated by such body and entitled to notarize documents in the State of Wyoming.

3.9 Postponement

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

3.10 Recesses, Adjournment and Deliberations

The hearing committee may recess the hearing and reconvene the same without additional notice 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 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 its deliberations, the hearing shall be declared finally adjourned.

4. HEARING COMMITTEE REPORT AND FURTHER ACTION

4.1 Hearing Committee Report

Within ten (10) days after final adjournment of the hearing, the hearing committee shall make a written report of its findings 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 action occasioned the hearing. A copy of the report shall also be delivered to the CEO. The CEO shall transmit a copy of the hearing committee report to the practitioner. If the hearing was occasioned by adverse recommendation or action by the MEC, a copy of the report shall be furnished to the MEC. If the action which precipitated the hearing was action of the Board of Directors, the report, findings and recommendations shall be delivered to the Board of Directors through its Chairman. In either event, the group to which the report is made by the Hearing Committee shall have authority to act as prescribed in the Medical Staff Bylaws.

4.2 Action on Hearing Committee Report

Within thirty (30) days after receipt of the report of the hearing committee, the committee or body to whom the report is made shall consider the report and affirm, modify or reverse the hearing committee's recommendation or action in the matter. The committee or body to whom the report is made 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.

4.3 Notice of Determination

A. Notice

After action by the appropriate Board or Committee as provided in the Medical Staff Bylaws, the CEO shall promptly send a copy of the determination to the practitioner by special notice, and to the Chief of Staff. The notice shall be in writing and state the action taken and the basis on which this action was taken. If properly requested by the practitioner, the matter, other than original action by the Board of Directors, may be submitted to the Board of Directors for appellate review in accordance with the following provisions:

5. INITIATION AND PREREQUISITES OF APPELLATE REVIEW

5.1 Request for Appellate Review

Appeals will be conducted in accordance with the Banner Health Board's Appellate Review Policy, which will be provided to the practitioner at the time of a request for appellate review or upon request by a practitioner.

6. GENERAL PROVISIONS

6.1 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 Chairman of the Board after consultation with the Chief of the Medical Staff. A hearing officer may or may not be an attorney at law, but should be experienced in conducting hearings. He shall act in an impartial manner as the presiding officer of the hearing. If requested by the hearing committee, he may participate in its deliberations and act as its legal advisor, but he shall not be entitled to vote.

6.2 Attorneys

If the affected practitioner desires to be represented by an attorney at any hearing or at any appellate review appearance, his 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. The medical executive committee or the board shall also be allowed representation by an attorney. When legal counsel attend and participate in

proceedings, it is with the understanding 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, he will be solely responsible for payment of all attorney fees, and this shall be true no matter which party prevails at the hearing.

6.3 Waiver

If at any time after receipt of special notice of an adverse recommendation, action or determination, a practitioner fails to make a required request or appearance or otherwise fails to comply with this Fair Hearing Plan, he shall be deemed to have consented to such adverse recommendation, action or determination, and to have voluntarily waived all rights to which he 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.

6.4 Number of Reviews

Notwithstanding any other provision of the medical staff bylaws or of this Plan, no practitioner shall be entitled as a right to more than one evidentiary hearing and appellate review with respect to any adverse recommendation or action.

6.5 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 appellate review body.

6.6 Release

By requesting a hearing or appellate review under this Fair Hearing Plan, a practitioner agrees to be bound by the provisions of the medical staff bylaws relating to immunity from liability in all matters relating thereto.

6.7 Conflicts of Interest

- (a) A member of the Board, Appellate Review Committee (reviewing body), Hearing Committee, Special Investigative Committee, Credentials Committee or Medical Staff Executive Committee hearing or reviewing the case, may withdraw at any time if that person deems him/herself disqualified or for any other good reason.
- (b) Upon a timely and good faith objection to any personal bias of any member of the Board, Appellate Review Committee (reviewing body), Hearing Committee, Special Investigative Committee, Credentials Committee or Medical Staff Executive Committee, the presiding officer or committee chair shall forthwith rule upon the objections as part of the record in the case, and shall take any

actions deemed appropriate to alleviate the personal bias, if so found. Any objection to a conflict of interest shall be deemed waived if not made in good faith and in a timely manner as determined by the presiding officer or committee chair.

7. IMMUNITY FROM LIABILITY

The following shall be express conditions to any practitioner's application for, or exercise of, membership and/or clinical privileges at this hospital:

- (a) Any action, communication, report, recommendation, or disclosure, with respect to any such practitioner who is or has been an applicant to or member of the Medical Staff, performed or made in good faith and at the request of an agent or representative of this or any other health care facility, for the purpose of achieving and maintaining quality patient care in this or any other health care facility, shall be a privileged act to the fullest extent permitted by laws.
- (b) Such privileges shall extend to officers, agents, and employees of the hospital, and to third parties who supply information to any persons authorized to receive, release or act upon the same. For the purpose of this section, the term "third parties" means both individuals and organizations providing information that has been requested by an authorized representative of the hospital or of the Medical Staff.
- (c) There shall, to the fullest extent permitted by law, be absolute immunity from civil liability arising from any such act, communication, report, recommendation, or disclosure, even where the information involved would otherwise be deemed privileged. Further, such immunity shall extend to members of the Medical Staff, and to third parties, who supply information to any of the foregoing authorized to receive, release or act upon the same.
- (d) Such immunity shall apply to all acts, communication, reports, recommendations, or disclosures performed or made in connection with this or any other health care institution's activities related, but not limited to:
 - 1. Applications for staff appointment;
 - 2. Periodic appraisals for reappointment;
 - 3. Corrective action, including summary suspension
 - 4. Hearings, including procedures of the Corrective Action/Fair Hearing Plan;
 - 5. Quality assessment evaluations;
 - 6. Utilization reviews; and
 - 7. Other hospital, departmental or committee activities related to quality patient care and interprofessional conduct.

- (e) The acts, communications, reports, recommendations and disclosures referred to in this section may relate to competency, character, mental or emotional stability, physical condition, ethics or any other matter that might directly or indirectly have an effect on patient care.
- (f) In furtherance of the foregoing, each practitioner shall, upon request of the hospital, execute releases in accordance with the tenor and import of this section in favor of the individuals and organizations specified in Section 7 (b) above subject to requirements, including those of good faith, absence of malice and the exercise of a reasonable effort to ascertain truthfulness, as may be applicable under the laws of this State. Regardless of the provisions of State law, truth shall be an absolute defense in all circumstances.
- (g) The contents, authorizations, releases, rights, privileges and immunities provided by the Medical Staff Credentialing Policy Manual for the protection of officers, agents, and employees of the hospital, members of the Medical Staff, and third parties, in connection with applications for initial appointment, shall also be fully applicable to the activities and procedures covered by this section.
- (h) The policies and procedures defined in the Fair Hearing Plan are written in accordance with the "Health Care Quality Improvement Act of 1986" and the applicable Wyoming laws and statutes.

8. AMENDMENTS

- A. This Fair Hearing Plan may be amended by a majority vote of the members of the Medical Executive Committee present and voting at any meeting of the Medical Executive Committee where a quorum exists. No such amendment shall be effective unless and until it has been approved by the Board of Directors.
- B. This Fair Hearing Plan may also be amended by the Board of Directors on its own motion as set forth in the Corporate Bylaws, provided that any such amendment is first submitted to the Executive Committee for review and comment at least thirty (30) calendar days prior to any final action by the Board of Directors on such amendment.

9. ADOPTION

This Fair Hearing Plan is adopted and made effective upon approval of the Board of Directors, superseding and replacing any and all other Medical Staff Bylaws, Rules and Regulations or Hospital policies pertaining to the subject matter thereof.

Revisions to Fair Hearing Plan

Adopted by the Medical Staff	May 22, 1989
Approved by the Lutheran Hospital & Homes Board	June 2, 1989
Adopted by the Medical Staff	March 31, 2003
Approved by the Banner Health Board	April 17, 2003
Revision by the Medical Staff	October 27, 2009
Approved by the Banner Health Board	November 12, 2009