Banner Health

Thunderbird Medical Center

Fair Hearing Plan

March 2020

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Definitions

1. "Chief Executive Officer" means the Chief Executive Officer or Chief Executive Officer of the applicable BH facility.

2. "President/Chief of the Medical Staff" means the President or the Chief of Staff of the applicable BH facility.

3. "Executive Committee" means the Medical Executive Committee of the Medical Staff that made the adverse recommendation against the practitioner.

4. "Hearing Record" means the transcript with all exhibits thereto, the written report of the ad hoc hearing committee, the Reconsidered Adverse Recommendation of the Executive Committee, and the written statements to the Appeals Subcommittee submitted by the practitioner and the Executive Committee and any briefs, motions or other papers filed by the parties and the transcript of any hearing, of any motion or procedural matter.

5. The "Joint Conference Subcommittee" means the committee composed of equal numbers of medical staff and Board members selected in the manner prescribed in the Banner Health Bylaws.

PART ONE – INITIATION OF HEARING

1.1 TRIGGERING EVENTS

Unless any of the following constitutes non-reviewable action as defined under the Medical Staff Bylaws ("adverse action"), a practitioner shall be entitled to a hearing upon timely and proper request if:

(a) the practitioner's privileges are suspended or otherwise summarily limited;
(b) the practitioner has been advised that the Executive Committee has made a recommendation to deny, revoke, suspend, reduce or otherwise limit membership and/or privileges; or
(c) the Care Management and Quality Committee of the Board or the Board ("Board") has declined to ratify a recommendation to approve the practitioner's application for appointment or reappointment or request for clinical privileges ("Board adverse action").

1.2 ADVERSE ACTION BY BANNER BOARD

If the practitioner requests a hearing based a Board adverse action, the hearing process shall proceed in accordance with the Board's fair hearing plan.

1.3 NOTICE OF ADVERSE ACTION

The Chief Executive Officer shall promptly notify the practitioner by Special Notice of a reviewable Adverse Action. Special notice required by this Fair Hearing Plan shall be either hand-delivered, delivered by facsimile or email with confirmation of receipt, or sent by certified mail, return receipt requested. The notice shall:

(a) Advise the practitioner of the Adverse Action; and contain a concise statement of the practitioner's alleged acts or omissions, a list of the specific records in question, and/or the other reasons or subject matter forming the basis for the Adverse Action;
(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 Chief Executive Officer;
(c) State that the failure to submit a request for 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;
(e) State that after receipt of a proper, timely request for a hearing, the practitioner will be notified of the date, time and place of the hearing, and the witnesses then expected to testify in support of the adverse action.

1.4 MODIFIED ADVERSE ACTION

The Executive Committee may modify its adverse action or the grounds for the action at any time prior to the fair hearing. The practitioner shall be notified of all such modifications. The practitioner shall not be required to submit a new request for a hearing. However, in the event a practitioner receives notice of any such modification after the hearing has been scheduled, the practitioner may request a postponement. If a request for postponement is made and the Hearing or Presiding Officer determines that the request is reasonable, the hearing will be postponed.

1.5 APPLICABLE BYLAWS AND FAIR HEARING PLAN

The fair hearing shall be conducted in accordance with the Medical Staff Bylaws and fair hearing plan in effect at the time the notice of adverse action is submitted to the practitioner.

However, if the adverse action or bases for adverse action are modified, the fair hearing shall be conducted in accordance with the Medical Staff Bylaws and fair hearing plan in effect at the time the final notice of modified adverse action or modified bases is submitted to the practitioner.

1.6 REQUEST FOR HEARING

The practitioner shall have 30 calendar days after receiving a notice under Section 1.2 to submit to the Chief Executive Officer a written request for a hearing.

1.7 CONCURRENT HEARINGS

1.7.1 Where the Executive Committee and Executive Committee(s) at one or more other Banner medical centers take adverse action against the same practitioner based on what the Executive Committees deem the same facts or issues. The Executive Committee, in its sole discretion, may elect to participate in a concurrent hearing with the other Executive Committees who elect to participate. The concurrent hearing proceedings shall be conducted in accordance with the Banner Concurrent Medical Staff Hearing Policy in effect at the time of the notice of adverse action or modified notice of adverse action, as applicable.

1.7.2 Where the Executive Committee and Executive Committee(s) at one or more other Banner medical centers take adverse action against more than one practitioner based on what the Executive Committees deem the same facts or issues, where the practitioners agree, the Executive Committee, in its sole discretion, may elect to hold and participate in a concurrent hearing with the other Executive Committees who elect to participate. The practitioners will be given written notice of the concurrent hearing and 10 days in which to submit written objection to participate to the President of the Medical Staff who provided the notice. If an objection is not received timely, the practitioner shall waive his/her objection to the concurrent hearing. The concurrent hearing proceedings shall be conducted in accordance with the Banner Concurrent Medical Staff Hearing Policy in effect at the time of the notice of adverse action or modified notice of adverse action, as applicable.

1.8 WAIVER BY RESIGNATION

A practitioner who resigns after an adverse recommendation 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 even if he or she timely requested a hearing. The resignation shall constitute acceptance of the recommendation or action, which shall immediately be transmitted to the Board for a final decision.

1.9 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 1.6 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. A waiver shall constitute acceptance of the recommendation or action, which shall immediately be transmitted to the Board for a final decision. The Chief Executive Officer, as soon as reasonably practicable, send the practitioner notice of the Board's decision.

1.10 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 a ruling that the practitioner's hearing rights have been waived. Examples of failure to participate constructively include, but are not limited to, refusal of the practitioner to be sworn in or to answer questions posed by the Hearing Committee, failure to proceed with the hearing, and failure to abide by a ruling of the Presiding Officer. The waiver has the same force and effect as a failure to request a hearing.

PART TWO - HEARING PREREQUISITES

2.1 NOTICE OF TIME AND PLACE FOR HEARING

Upon receiving a timely and proper request for hearing, the Chief Executive Officer shall deliver the request to the President of the Staff, who shall schedule the hearing. At least 30 calendar days prior to the hearing, the Chief Executive Officer shall send the practitioner Special Notice of the date, time and place of the hearing, and a list of the witnesses expected to testify on behalf of the Executive Committee. The hearing date shall be set for not less than 30 calendar days nor more than 90 calendar days after the Chief Executive Officer receives practitioner's written request for a hearing. A practitioner who is under suspension then in effect may request that the hearing be expedited. The expedited hearing must be held as soon as the arrangements may reasonably be made, with a goal that the hearing commence within thirty (30) calendar days after the Chief Executive Officer's receipt of the written request for the expedited review.

2.2 APPOINTMENT OF HEARING COMMITTEE

A hearing shall be conducted by a Hearing Committee of at least three (3) members appointed by the President of the Medical Staff. The President shall designate one of the appointees as chairman of the Hearing Committee. If the President is disqualified by reason of conflict of interest or bias (for reasons including being in direct economic competition or having a formal business or professional association with the practitioner), the President-Elect, Treasurer, Past-President or remaining members of the Executive Committee (in that order) shall appoint the committee members and chairman. No person in direct economic competition or having a formal business or professional association with the practitioner shall participate in the selection of the Hearing Committee or its chairman.

No person who has actively participated in the consideration of the Adverse Action, who has a formal business or professional association with the practitioner, who is in direct economic competition with the practitioner, or who is biased regarding the matter, shall serve on the Hearing Committee. Members of the Hearing Committee shall be physicians duly licensed by one of the fifty states and may need not be members of the Banner Medical Staff.

2.3 HEARING OFFICER

The President of the Medical Staff, at his/her discretion 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, in his or her discretion, may hold one or more prehearing conferences with the parties' attorneys (or directly with the practitioner if the practitioner has not retained an attorney) to address and resolve procedural and evidentiary matters. The Hearing Officer may participate in the deliberations and assist in the preparation of a written decision but may not act as an advocate or advisor for either party and may not vote. The Hearing Officer need not be a member of the Medical Staff or a physician and may not be in direct economic competition or affiliation with the practitioner.

2.4 PRACTITIONER'S RIGHT TO OBJECT

The Chief Executive Officer shall promptly notify the practitioner of the names of the Hearing Committee members and Hearing Officer. The practitioner shall have 10 days following a notification to object to the appointment of any member(s). Such objection must be in writing and must include the basis for the objection. If the President or the designee who appointed the Hearing Committee determines that the objection is reasonable, he or she 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. An objection is not reasonable if based solely upon the member's Medical Staff membership or employment by or contractual agreements with Banner Health, a Banner Health affiliate, or a Banner Health medical center.

2.5 PRESIDING OFFICER

If a Hearing Officer is not appointed, the Hearing Committee Chair shall serve as the Presiding Officer. The Presiding Officer shall maintain decorum, rule on matters of law, procedure, and the admissibility of evidence, including the admissibility of testimony and exhibits, and assure that all participants have a reasonable opportunity to present relevant oral and documentary evidence. The Hearing Committee Chair shall be entitled to participate in the Hearing Committee deliberations and vote.

2.6 HEARING DURATION

The parties may propose to the Presiding Officer the duration of each party's time to conduct direct and cross-examination of witnesses. The Presiding Officer will establish time parameters that may, at the discretion of the Presiding Officer, be modified based upon the complexity of the hearing presentations.

2.7 LIST OF WITNESSES

The Chief Executive Officer will give the practitioner the MEC's list of expected witnesses at the time the notice of the hearing is provided. At least 10 days prior to the scheduled hearing date (or at least 3 days in the event of an expedited review), the practitioner shall submit to the Medical Staff Services Department a list of the names of the individuals, who, as far as is reasonably known, will give testimony or evidence in support of the practitioner at the hearing. Both list of witnesses shall be limited to individuals who can provide testimony relevant to the grounds for the Adverse Recommendation or Action. Such lists shall be amended as soon as possible when additional witnesses are identified or when it is determined that individuals previously listed as witnesses will not testify. The Presiding Officer may permit a witness who has not been listed in accordance with this Section to testify if the Presiding Officer finds that the failure to list such witness was justified, that such failure did not prejudice the party entitled to receive such list, or that the testimony of such witness will materially assist the Hearing Committee in making its report and recommendation. The practitioner and the representative of the Executive Committee/Board will be permitted to testify regardless of whether listed as a witness.

2.8 STATEMENTS IN SUPPORT PRIOR TO THE HEARING.

Each party may submit a statement in support of the party's position prior to the hearing. To do so, the party shall submit five copies of such statement to the Medical Staff Services office at least five days prior to the scheduled date for commencement of the hearing. The party shall also supply a copy of the statement to the other party, a copy to the other party's representative, if any, and a copy to the Hearing Officer, if one has been appointed. The Medical Staff Services Department shall distribute the statements (if any) to members of the Hearing Committee at least three days prior to the scheduled date of the commencement of the hearing.

2.9 STATEMENT IN SUPPORT AT THE CLOSING OF THE HEARING

The parties may provide a statement containing proposed findings of fact and recommendations to be given to the Hearing Committee. The statement must be provided, if at all, to the Presiding Officer at the close of hearing and before the deliberations. The parties shall supply a copy of the statement to the other party or his or her representative.

2.10 EXHIBITS

At least ten days prior to the scheduled date for commencement of the hearing, each party shall give the other party, the Medical Staff Services office and the Hearing Officer, if appointed, a list of exhibits that party intends to present at the hearing and a copy of each exhibit unless previously disclosed to the other party. The Hearing Officer or 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. Neither party shall have the right to conduct discovery.

2.11 DUTY TO NOTIFY OF NON-COMPLIANCE.

If the practitioner believes that there has been a deviation from the procedures required by this Fair Hearing Plan, the Concurrent Hearing Policy or applicable law, the practitioner shall promptly notify the Chief of the Medical Staff of such deviation including the applicable citation. If the President of the Medical Staff agrees that a deviation has occurred, is substantial and has created demonstrable prejudice, he or she shall correct such deviation. The practitioner shall be deemed to have waived any violation of the Bylaws, this Fair Hearing Plan, the Concurrent Hearing Policy or law not raised timely pursuant to this Section.

PART THREE - HEARING PROCEDURE

3.1 PERSONAL PRESENCE

The right to a hearing shall be waived if the practitioner fails, without good cause, to appear for and remain at 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. The waiver has the same force and effect as a failure to request a hearing. The Hearing Officer or 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. Each party shall notify the other party and the Hearing Officer or Presiding Officer of the identity of the party's representative at least ten (10) days before the scheduled hearing commencement date.

3.3 RIGHTS OF PARTIES

During a hearing, each party shall have the following rights, subject to the rulings of the Hearing Officer or Presiding Officer, relating to the admissibility of evidence and provided that such rights shall be exercised in a manner that permits the hearing to proceed efficiently and expeditiously:

(a) To call, examine and cross-examine witnesses;
(b) To present relevant evidence;
(c) To rebut any evidence;
(d) To submit a written statement in support of such party's position prior to the hearing in accordance with Section 2.7
(e) To submit a written statement in support of such party's position at the close of the hearing in accordance with Section 2.8;
(f) To have a record made of the proceedings, copies of which may be obtained by the practitioner upon payment of any reasonable charges associated with the preparation thereof, and
(g) To receive the written recommendations of the Hearing Committee and the Executive Committee/Board and, if the reconsidered recommendation is appealed, the written recommendation of the Appeals Subcommittee of the Board, all 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 Hearing Officer or Presiding Officer, any relevant matter or evidence may be considered. The practitioner may be examined by the Executive Committee representative and the Hearing Committee regardless of whether the practitioner testifies on his or her own behalf. The Hearing Committee may ask questions of witnesses, call additional witnesses, or request documentary evidence if deemed appropriate. The Hearing Officer or Presiding Officer may order that oral evidence be taken only on oath. Information about the quality of care rendered by, or the conduct of, other practitioners may not be presented and will not be considered.

3.5 BURDEN OF PROOF

The Executive Committee shall first present evidence in support of the Adverse Action or Recommendation. Thereafter the practitioner has the burden of demonstrating, a 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 proceedings shall be kept by a court reporter.

3.7 POSTPONEMENT

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

3.8 RECESSES AND ADJOURNMENT

Upon a timely showing of good cause, the Hearing Officer or Presiding Officer may recess and reconvene 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, but no later than ten days after adjournment of the hearing, 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 matters; and
(c) In the reasonable belief that its recommendations are warranted by the facts known after reasonable effort to obtain such facts.

PART FOUR – HEARING COMMITTEE REPORT AND FURTHER ACTION

4.1 HEARING COMMITTEE REPORT

Within 10 days after adjournment of the hearing, the Hearing Committee shall make a written report of its findings and recommendations. The report shall include a statement of the basis for the recommendations. The Hearing Committee shall forward the report along with the record and any other documentation to the Medical Staff Services Office, which will deliver such documentation to the Executive Committee or for an action taken by the Board, to the Chief Executive Officer.

4.2 ACTION ON HEARING COMMITTEE REPORT

At its next regularly scheduled meeting after receipt and consideration of the Hearing Committee report, the Executive Committee shall affirm, modify or reverse its previous Adverse Action (the "reconsidered determination"). The Executive Committee shall state the basis for its reconsidered determination. The Executive Committee instead may refer the matter back to the Hearing Committee for further fact finding and clarification of issues that need resolution before final action is possible. The chairman of the Hearing Committee or his designee shall be present to discuss the findings and recommendations of the Hearing Committee at the meeting of the Executive Committee Medical Staff Subcommittee.

4.3 NOTICE AND EFFECT OF RESULT

4.3.1 NOTICE

As soon as is practicable, but in no event longer than ten (10) days after the Executive Committee makes its reconsidered determination based on the hearing, the Chief Executive Officer shall send the practitioner a copy of the Hearing Committee's report and the reconsidered determination of the Executive Committee including a statement of its basis.

4.3.2 EFFECT OF FAVORABLE RESULT

When the reconsidered determination of the Executive Committee is favorable to the practitioner, the Chief Executive Officer shall promptly forward it, together with all supporting documentation to the Board where appropriate. The Board shall adopt the reconsidered determination if it is supported by substantial evidence. A favorable reconsidered determination of the Board shall be its final action on the matter.

4.3.3 EFFECT OF ADVERSE RESULT

Where the reconsidered determination remains adverse to the practitioner, the Chief Executive Officer shall promptly notify the practitioner by special notice of the adverse determination, the practitioner's appeal rights and any consequences of waiving those rights. The Chief Executive Officer shall forward the adverse reconsidered determination, with supporting documentation and a statement of its basis, to the General Counsel if the practitioner requests appeal rights. The Banner Health Appellate Review Policy set forth appellate review procedures including notice and waiver provisions.

PART FIVE - APPELLATE REVIEW

The Board shall provide appeal rights to Medical Staff members entitled to such rights under these Bylaws in accordance to Banner Health Board's Appellate Review Policy. The practitioner shall have 10 days after receiving notice of the right to appellate review of the Executive Committee's Reconsidered Adverse Recommendation to file a written request for appellate review with the Administrator or with the General Counsel of Banner Health if a Concurrent Hearing has been held. The written request for appellate review shall include an identification of the grounds for appeal and a clear and concise statement of the facts in support of the appeal as required by the Appellate Review Policy.

Upon practitioner's request for an appellate review, a copy of the policy current at that time will be provided to the practitioner. That policy shall govern the procedures for the appellate review, if any.

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 President/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 BH Quality and Care Management Committee.

6.1.1 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.

6.1.2 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 may 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 recommendations to the Board.

6.3 NUMBER OF APPELLATE REVIEWS

No practitioner is entitled as a right to more than 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 MEDICAL EXECUTIVE COMMITTEE

This Fair Hearing Plan was approved and adopted by resolution of the Medical Executive Committee of Banner Thunderbird Medical Center on 1/28/20.

7.2 2 BOARD OF DIRECTORS

This Fair Hearing Plan was approved and adopted by resolution of the Banner Health Board of Directors on March 12, 2020.

Original Date: 1/12/89

REVISED: Medical Executive Committee 1/25/2000
Medical Staff by vote 3/10/2000
Board 4/18/2000

REVISED: Medical Executive Committee 8/213/2005
Medical Staff by vote 11/9/2005
Board 12/15/2005

REVISED: Medical Executive Committee 4/28/2009
Medical Staff by Vote 5/19/2009
Board 6/11/2009

REVISED: Medical Staff Vote 6/15/2018
Board 7/12/2018

REVISED: Medical Executive Committee 1/28/2020
Out for Comment 1/31/2020
Board 3/12/2020