

Medical Staff Bylaws
Part 2: INVESTIGATIONS, CORRECTIVE ACTION,
HEARING AND APPEAL PLAN

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Section 1. DEFINITIONS

1.1 Definitions

For the purpose of this Plan, and unless stated otherwise, the terms as defined in the Medical Staff Bylaws: Part 1 shall apply.

Section 2. CORRECTIVE ACTION

2.1 Medical Staff Responsibility.

It is the responsibility of the Medical Staff to assist the Governing Board of BCH in conducting professional review activities and taking professional review actions, subject to final action of the Governing Board. As such, the Medical Staff constitutes a professional review body or professional review committee under state and federal law.

2.2 Procedure to Initiate and Obtain Corrective Action.

- 2.2.1 Criteria for Initiation. An investigation or corrective action may be initiated against a Member or APP whenever the activities or professional conduct of the individual are considered to:
 - 2.2.1.1 be lower than the standards or aims of the Medical Staff;
 - 2.2.1.2 call into question the Member's or APP's clinical competence, care, treatment or management of a case;
 - 2.2.1.3 be reasonably likely to be detrimental to a patient's safety or to the delivery of quality patient care;
 - 2.2.1.4 be disruptive to BCH operations;
 - 2.2.1.5 be in violation of professional ethics, BCH or Medical Staff Bylaws, Rules and Regulations, Department rules or other Medical Staff or BCH policies;
 - 2.2.1.6 indicate an inability to work with others;
 - 2.2.1.7 be deemed to constitute fraud, abuse, or criminal conduct; or
 - 2.2.1.8 call into question the qualifications of the individual for membership or clinical privileges.
 - 2.2.1.9 the Member or APP has been charged with any felony or any misdemeanor related to the qualifications for practice of a health care professional, fraud or abuse relating to any governmental health program, third party reimbursement, or controlled substance, whether or not a conviction or appeal has been filed or is pending.
 - 2.2.1.10 a material breach of privacy and confidentiality.
- 2.2.2 If the conduct which gives rise to a request for corrective action is the type of conduct described in BCH's Practitioner Policy on Professional Conduct, the matter shall be referred to the Medical Staff Department and the provisions of that Policy shall be followed in lieu of the provisions of Section 2.2.1 above.

2.3 Persons Entitled to Request Investigations or Corrective Action.

- 2.3.1 An investigation or corrective action against a Member or APP may be requested by any officer of the Medical Staff, by the Chair of any clinical Department where the individual exercises clinical privileges, the Chair of any standing Committee of the Medical Staff, the Chief Medical Officer, the Chief Executive Officer or the Governing Board of BCH on the complaint, request or suggestion of any person. All requests for an investigation or corrective action shall be in writing and supported by reference to the specific activities or conduct, which are alleged to constitute the grounds for the request.

2.4 Initiation of Corrective Action.

- 2.4.1 Proposed corrective action, including a request for an investigation, may be initiated by the Medical Executive Committee on its own initiative or by a written request submitted to the Medical Executive Committee pursuant to Section 2.3.1 above.
- 2.4.2 After the consideration of the request, the Medical Executive Committee shall either deny or act itself on the request for the investigation or the corrective action, or direct that it be undertaken setting forth, in writing, the reasons for its decision to the Chief Executive Officer of BCH, who shall inform the Governing Board of all proposals for an investigation or corrective action that have been initiated.

2.5 Investigatory Leave

- 2.4.3 A Member or APP can be placed on Investigatory Leave in response to an inherently plausible allegation of a violation of BCH Medical Staff Bylaws, Rules and Regulations or other governing documents, or of BCH policy which could have an adverse effect on the health and safety of patients, BCH staff and/or other Members of the Medical Staff or APPs. Investigatory Leave may be appropriate in response to (but not limited to) allegations of sexual harassment, sexual violence, discrimination, workplace violence, retaliation, disruptive behavior, impairment, or quality of care or competency concerns. For purposes of this section 2.5, “inherently plausible” means the facts alleged are reasonable and it is plausible that events occurred in the manner alleged.
- 2.4.3.1 Initiation of Investigatory Leave
- 2.4.3.1.1 Any two (2) of the following individuals or committees (in any combination) shall have the authority to immediately place a Member on Investigatory Leave: the Department Chair of the department in which the Member has been assigned, the Chief Medical Officer, the Chief Executive Officer, the Medical Staff President (or designee), the Professional Practice Review Committee, the Leadership Council, or the Medical Executive Committee.
- 2.4.4 The President of the Medical Staff and Chief Executive Officer must be concurrently notified of the decision to place the Member on Investigatory Leave. Investigatory Leave is solely intended to remove the Member from clinical activity as necessary for the Medical Executive Committee to obtain additional information regarding the allegations. It is only appropriate where there is insufficient information at the time the allegation is received to determine whether corrective action is appropriate. Investigatory Leave may be permitted for a period up to 14 Days as

needed. It may be lifted at any time by the Medical Staff President in consultation with the Chief Executive Officer or MEC, if it is determined that continuation of Investigatory Leave is no longer required to obtain additional information regarding the allegations. There is no obligation for the investigation of the allegations to be completed during the Investigatory Leave period. If it is determined at any point during the investigatory leave period that the Member poses an imminent danger to the health or safety of a patient, prospective patient, employee, Member of the Medical Staff, or other person present on BCH property, or to the operations of BCH and associated clinics, the investigatory leave shall immediately be cancelled and the Member's or APP's clinical privileges summarily restricted or suspended consistent with Section 2.9 of this plan.

2.4.4.1 The initiation of an Investigatory Leave shall constitute a referral to the MEC for an investigation pursuant to Section 2.6 of this Plan. The provisions of Section 2.10 of this Plan shall apply to Investigatory Leaves.

2.6 Investigation.

- 2.6.1 The Medical Executive Committee may conduct the investigation itself or may appoint an ad hoc committee or use outside consultants to conduct the investigation. No partners, associates, relatives or individuals in direct economic competition with the individual under investigation shall be a consultant or a member of any ad hoc committee. The investigational process shall be informal and administrative. The individual who is under investigation may be invited to appear before the committee or individual conducting the investigation. The individual's appearance shall be construed as informal in nature. There is no right to have an attorney present, nor are the procedural rights afforded under this Plan applicable. If the investigation is being conducted by an ad hoc investigating committee or consultants, upon completion of its investigation, the ad hoc investigating committee or consultants shall make a written report to the Medical Executive Committee.
- 2.6.2 Medical Executive Committee Action. As soon as is practicable after the conclusion of the investigative process, but in any event within a reasonable period after the initiation of the investigation, the Medical Executive Committee shall act, and may recommend any of the following actions be taken:
 - 2.6.2.1 to take no corrective action;
 - 2.6.2.2 to reject or modify any proposed corrective action;
 - 2.6.2.3 to issue a letter of admonition, reprimand or warning;
 - 2.6.2.4 to impose terms of probation on the individual's membership and/or clinical privileges or individual requirements for consultation;
 - 2.6.2.5 to recommend reduction, suspension or revocation of Medical Staff membership and/or clinical privileges;
 - 2.6.2.6 to recommend suspension of clinical privileges or Medical Staff membership until completion of specific conditions or requirements; or
 - 2.6.2.7 any other action deemed appropriate by the Medical Executive Committee.
- 2.6.3 If the Medical Executive Committee's recommended action is a letter of admonition, reprimand, or warning to an individual, the Medical Executive Committee shall, at the individual's request, grant them an interview. Said interview shall be informal and shall not be deemed a hearing. Following the

interview, if one is requested, if the Medical Executive Committee's final recommendation is a letter of admonition, reprimand or warning, the matter shall be reviewed by the Joint Conference Committee, which may, in its discretion, make a recommendation to the Governing Board for further review or additional corrective action. If no further review or action is recommended, the matter shall be concluded and notice of the final decision shall be sent to the individual. If the matter is sent to the Governing Board for review or further corrective action, the procedures in Section 2.7 below shall apply. An admonition, reprimand or warning is not considered to be an adverse action under this Plan.

2.7 Procedures After Medical Executive Committee Recommendation.

- 2.7.1 If the recommendation of the Medical Executive Committee is to recommend no corrective action or is a recommendation which is not an adverse recommendation under Section 3 of this Plan, the recommendation and supporting documentation shall be forwarded to the Governing Board for final approval. A representative of the Medical Executive Committee shall be available to the Board at its request. The Governing Board shall, in whole or in part, adopt or reject the Medical Executive Committee recommendation or may reserve the right to defer action on the application and refer the recommendation back to the Medical Executive Committee for further consideration, stating the reasons for such referral and setting a reasonable time within which a subsequent recommendation shall be made. At the next regular meeting after receipt of such subsequent recommendation, the Governing Board shall make a decision on the recommendation of the Medical Executive Committee.
- 2.7.2 If the action of the Governing Board is favorable to the individual, the action shall become final, and the Chief Executive Officer shall so notify the individual. If the action of the Governing Board is an adverse action, as defined in Section 3 of this Plan, the Chief Executive Officer shall notify the individual of their rights under Section 3 of this Plan or the APP Manual.
- 2.7.3 If the recommendation of the Medical Executive Committee is an adverse recommendation as defined in Section 3 of this Plan, the Chief Executive Officer shall notify the applicant in writing of their procedural rights under Section 3 of this Plan or the APP Manual.
- 2.7.4 If the corrective action which is approved by the Governing Board of BCH (after the individual has exercised any procedural rights afforded under this Plan or the APP Manual) will substantially modify the Medical Executive Committee's recommendation, the Governing Board shall submit the matter to the Joint Conference Committee for review and recommendation prior to making its decision final.

2.8 Temporary Supervision.

While an investigation or corrective action is pending, the individual may be placed under temporary supervision by the Medical Executive Committee. The placing of the individual under temporary supervision shall not entitle an individual to the procedural rights under Section 3 of this Plan or the APP Manual but shall entitle the individual to notice of the reasons for the supervision and, if requested within five (5) consecutive business days of receipt of notice, an opportunity to appear informally before the Medical Executive Committee. The Medical Executive Committee may

recommend modification, continuation, or termination of the terms of the temporary supervision pending the outcome of the corrective action.

2.8 Summary Suspension.

2.8.1 Criteria for Initiation. The Medical Staff membership and/or any or all of the clinical privileges of an individual may be summarily suspended whenever the conduct or physical or mental condition of an individual with clinical privileges at BCH requires that immediate action be taken to protect the life of or to reduce the likelihood of injury to the health or safety of any patient, prospective patient, employee, or other person present in the Hospital; or

2.8.1.1 Authority to Initiate. Either the President of the Medical Staff, the Medical Executive Committee, or, after consultation with the Chair of the involved Department, the Chief Executive Officer or Governing Board of BCH has the authority to impose summary suspension for the reasons set forth in Section 2.9.1.1 above.

2.8.1.2 Effective Immediately. A summary suspension is effective immediately upon imposition. It must be reported immediately to the Chief Executive Officer and to the President of the Medical Staff. The Chief Executive Officer or Chair of the Governing Board shall promptly give oral notice, to be confirmed in writing, to the affected individual. Notice of same shall be sent simultaneously to the Medical Executive Committee and to the Governing Board of BCH. The notice of suspension given to the Medical Executive Committee shall constitute a request for an immediate investigation. A summary suspension shall be deemed to be administrative in nature. It shall not indicate the validity of the charges, and shall remain in force, without appeal, during the course of the investigation.

2.8.1.3 Medical Executive Committee Initial Meeting. An individual whose membership and/or clinical privileges have been summarily suspended shall be entitled to request to meet with the Medical Executive Committee of the Medical Staff not later than two (2) consecutive business days, after such summary suspension. If, as a result of such meeting, the Medical Executive Committee recommends termination of summary suspension, the individual may resume their membership and/or privileges; if such recommendation is not to terminate the summary suspension, the suspension shall remain in effect during the pendency of the investigation.

2.8.1.4 Investigation and Procedural Rights. Upon the summary suspension of an individual, the Medical Executive Committee must cause to be commenced an investigation into the allegations giving rise to the summary suspension. No later than thirteen (13) consecutive days after summary suspension was imposed, the Medical Executive Committee must immediately make a determination as to whether to lift the summary suspension or whether to keep it in effect while further investigation and/or professional review action against the individual is ongoing. If the summary suspension is not lifted within thirteen (13) consecutive days after it was imposed, the individual shall be entitled to the applicable procedural rights of Section 3 or the APP Manual. In no case shall an individual be on summary suspension longer than fourteen (14) consecutive days prior to being

entitled to the commencement of procedural rights under Section 3 or the APP Manual.

- 2.8.1.5 Patient Coverage. Immediately upon the imposition of the summary suspension, the President of the Medical Staff shall ensure that the Department wherein the individual exercises clinical privileges provides alternative medical coverage for the suspended individual's patients who are still in the Hospital at the time the individual is suspended. The wishes of the patient shall be considered, where feasible, in choosing a substitute.

2.9 Automatic Suspension.

- 2.9.1 Automatic administrative suspension of an individual's Medical Staff membership and all clinical privileges held by that individual shall be ordered by the Chief Executive Officer of BCH upon occurrence of any of the following events:

- 2.9.1.1.1 Expiration of an individual's license to practice medicine or license or certification to practice their respective profession. Reinstatement will occur automatically if the individual provides evidence of renewal of said license or certification to the Medical Executive Committee within a three (3) month period from the date of expiration. Failure to provide such evidence within said three (3) month period shall be deemed to be a voluntary resignation of the individual's Medical Staff membership and clinical privileges.

- 2.9.1.1.2 Failure of an individual to comply with the applicable requirements for malpractice insurance. Reinstatement will occur automatically if the individual provides evidence of insurance to the Medical Executive Committee within three (3) months from the date of noncompliance. Failure to provide such evidence of insurance within said three (3) month period shall be deemed to be a voluntary resignation of the individual's Medical Staff membership and clinical privileges.

- 2.9.1.1.3 Expiration of the DEA certificate. Reinstatement will occur automatically upon the occurrence of one of the following conditions within three (3) months from the date of expiration of said certificate: (a) the individual provides evidence of renewal of said certificate to the Medical Executive Committee; or (b) the individual submits to the Medical Executive Committee a written surrender and waiver of their rights and privileges to prescribe any controlled pharmaceutical agents (Schedules 2 through V). Failure to meet one of the above conditions within said three (3) month period shall be deemed to be a voluntary resignation of the individual's Medical Staff membership and clinical privileges. This section 2.9.2.1.3 shall not apply to a Member or APP who does not require a DEA certificate to exercise their clinical privileges.

- 2.9.1.1.4 Failure to pay Medical Staff dues within thirty (30) consecutive days after receipt of notification of said delinquency. Notification of delinquency shall be by secured email.

Reinstatement shall automatically occur if the individual pays the delinquent dues within sixty (60) consecutive days from the date of the notice and notifies the Medical Executive Committee of same. A late fee will be assessed if payment is not received within the first 30 days. Failure to pay such dues within said two (2) month period shall be deemed to be a voluntary resignation of the individual's Medical Staff membership and clinical privileges.

2.9.1.1.5 Failure to complete medical records as delineated in Medical Staff policy. Reinstatement shall automatically occur upon verification by the medical records administrator of completion of the delinquent records.

2.9.1.1.6 Failure to comply with BCH health requirements. Reinstatement will occur automatically when the individual provides evidence of the health requirements to Medical Executive Committee within a three (3) month period from the date of expiration. Failure to provide such evidence within said three (3) month period shall be deemed to be a voluntary resignation of the individual's Medical Staff membership and clinical privileges.

2.9.1.1.7 Felony conviction (including a plea of guilty or no *lo cotendre*)

2.9.1.1.8 Federal or Colorado Healthcare program sanctions

2.9.1.1.9 Failure to meet special appearance requirements.

2.9.1.1.10 Failure to participate in call coverage, where required.

2.9.1.2 Other Administrative Suspension Administrative Suspension may be imposed for up to twenty-nine (29) days for unprofessional conduct as set forth in the Medical Staff: Policy Practitioner Policy on Professional Conduct (MS.1001.ORG).

2.9.2 Suspension, Revocation, Probation or Restriction of License or DEA Certificate

2.9.2.1 Suspension or Revocation of License. Automatic suspension of an individual's Medical Staff membership and all clinical privileges held by that individual shall be ordered by the Chief Executive Officer of BCH upon action by the State Board of Medical Examiners or appropriate licensing or certification authority to revoke or suspend an individual's license to practice medicine or license or certification to practice their respective profession.

2.9.2.2 Probation or Restriction of License. If an individual is placed on probation by the State Board of Medical Examiners or appropriate licensing or certification authority, or if their license or certification to practice their respective profession is restricted, other than by suspension or revocation, their applicable membership status, prerogatives, clinical privileges and responsibilities shall automatically become subject to the terms of the probation or restriction and shall be automatically reduced, restricted, or revoked, if applicable, consistent with the terms of the probation or restriction.

2.9.2.3 Suspension or Revocation of DEA Certificate. Automatic suspension of an individual's Medical Staff membership and all clinical privileges held

by that individual shall be ordered by the Chief Executive Officer of BCH upon suspension or revocation of an individual's DEA certificate.

- 2.9.2.4 Probation or Restriction of DEA Certificate. If the individual's DEA certificate is placed on probation or restricted, other than by suspension or revocation, their applicable prerogatives, clinical privileges and responsibilities shall automatically become subject to the terms of the probation or restriction and shall be automatically reduced, restricted, or revoked, if applicable, consistent with the terms of the probation or restriction.
- 2.9.2.5 Reinstatement. If an individual's Medical Staff membership and/or clinical privileges are placed on automatic suspension pursuant to this Section 2.10, the individual shall be eligible for consideration for reinstatement of their membership or clinical privileges upon the lifting of said revocation, suspension, restriction or probation upon application to the Medical Executive Committee. The Medical Executive Committee shall consider the nature and duration of any sanction and should it deem it necessary in the interests of quality patient care, the Medical Executive Committee can direct the individual to reapply for Medical Staff membership and clinical privileges rather than reinstate said individual on its own initiative.
- 2.9.2.6 Medical Executive Committee Discretion to Take Further Action. Upon the occurrence of a revocation, suspension, or restriction or probation of an individual's license to practice medicine or their license or certification to practice their respective profession or upon a similar action with regard to an individual's DEA license, the Medical Executive Committee shall convene to review the facts upon which such action was predicted. The Medical Executive Committee may, at its discretion, then recommend further corrective action or may direct that an investigation be undertaken based upon the information disclosed or otherwise made available to it. If the corrective action recommended by the Medical Executive Committee and approved by the Governing Board, is an adverse action as set forth in Section 3.3 of this Plan, procedural rights shall be afforded the individual under Section 3 or the APP Manual.
- 2.9.2.7 Summary Suspension. If an individual's license to practice medicine, license or certification to practice their respective profession or DEA certificate has been restricted or placed on probation, the individual may be placed on Investigatory Leave pending the Medical Executive Committee's investigation as described in this section. The procedures set forth in Sections 2.5 and 2.9 shall apply to any leave or suspension imposed under this section.
- 2.9.2.8 Voluntary Resignation. Except as otherwise provided for in these Bylaws, upon the occurrence of an event triggering automatic administrative suspension, failure of an individual to seek and obtain reinstatement of Medical Staff membership and applicable privileges within six (6) months from the date of the automatic suspension shall be deemed to constitute voluntary resignation of membership and applicable privileges.

2.10 Provisions Related to Automatic Suspensions and Investigatory Leaves:

- 2.10.1 Procedural Rights. Individuals whose clinical privileges have been automatically or administratively suspended under this section shall not be entitled to the procedural rights afforded under these Bylaws.
- 2.10.2 Patient Coverage. Where applicable, the suspended individual's patients must be assigned to another individual by the Department Chair or their designee considering the wishes of the patient, where feasible, in choosing a substitute.
- 2.10.3 Notice. The individual shall receive prompt written notice of the automatic or administrative suspension, reduction, revocation or restriction in effect by the Chief Executive Officer of BCH. Giving such notice shall not be necessary in order for the automatic suspension, reduction, revocation or restriction to become effective, however.

2.11 Reporting.

- 2.10.1 BCH and the Medical Staff shall be obliged to comply with all applicable reporting requirements imposed by state and federal law, including, but not limited to, the reporting requirements for adverse actions and malpractice actions or claims. What constitutes a reportable matter shall be as defined under state and federal law.

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Section 3. FAIR HEARING AND APPELLATE REVIEW PROCEDURE

3.1 Intent

The intent of these fair hearing and appellate review procedures is to provide for a fair review of certain recommendations or decisions that adversely affect a Member of the Medical Staff, while at the same time protecting the integrity of the peer review process. Accordingly, discretion is granted to the Medical Staff and Governing Board to create a hearing process that provides for the least burdensome level of formality in the process and yet still provides for a fair review, and to interpret these Bylaws in that light. The Medical Staff, Governing Board, and their officers, committees, and agents hereby constitute themselves as peer review bodies under the Federal Health Care Quality Improvement Act of 1986 and the Colorado Professional Review Statutes, and claim all privileges and immunities afforded by federal and state laws.

3.2 Purpose of a Hearing

In the course of professional review activities conducted pursuant to Medical Staff responsibilities under this Plan, some professional review actions may occur entitling an individual to the hearing and appellate review procedures set out in this Section. This Section sets forth those actions entitled to a hearing and appellate review and the procedures for said hearing and review.

3.3 Right to a Hearing

3.3.1 Any one or more of the following actions or recommendations by the Medical Executive Committee or Governing Board, when made on the basis of the individual's competence or professional conduct, are considered to be professional review actions characterized as an "adverse action," and shall entitle an individual to a hearing after they have exhausted all applicable procedures set forth in this Plan

3.3.1.1 Denial of Medical Staff membership;

3.3.1.2 Denial of Medical Staff reappointment;

3.3.1.3 Suspension of Medical Staff membership other than administrative suspensions pursuant to Section 2.9;

3.3.1.4 Continuation of summary suspension of Medical Staff membership after the investigation period provided in Sections 2.5 and 2.8 of this Plan;

3.3.1.5 Revocation of Medical Staff membership;

3.3.1.6 Denial of a request for or increase to clinical privileges;

3.3.1.7 Reduction in clinical privileges;

3.3.1.8 Suspension of clinical privileges other than Investigatory Leave, or automatic or administrative suspension pursuant to Sections 2.5 and 2.8.

3.3.1.9 Continuation of summary suspension of clinical privileges after the investigation period provided in Section 2.5 and 2.8 of this Plan;

3.3.1.10 Revocation or termination of clinical privileges;

3.3.1.11 Requirement of consultation or supervision where the consultation or supervision has been imposed for a period longer than thirty (30) consecutive days as a result of peer review activity and/or corrective action and the individual must be granted approval before certain medical care is administered.

3.3.2 An individual is entitled to a hearing only if one of the above adverse actions or recommendations is taken or made by the Medical Executive Committee or the

Governing Board, on the basis of the individual's competence or professional conduct and is effective for more than thirty (30) days.

- 3.3.3 An Advanced Practice Provider who is the subject of one of the above adverse actions is not entitled to the hearing rights set forth in this Section 3 but shall be entitled to the procedural rights set forth in the Advanced Practice Provider Manual.

3.4 Notice of Adverse Recommendation or Action

- 3.4.1 When a recommendation is made or an action taken which, as set forth in Section 3.3.1 of this Plan, entitles a Medical Staff Member to a hearing on that recommendation or action, the affected individual shall promptly be given written notice by the Chief Executive Officer of BCH. This notice shall contain:
 - 3.4.1.1 A statement of the recommendation made, or action taken and the reasons for it.
 - 3.4.1.2 Notice that the individual has the right to request a hearing on the recommendation or action within thirty (30) consecutive days of receipt of the notice.
 - 3.4.1.3 A summary of the individual's rights in the hearing as provided for in this Plan.
 - 3.4.1.4 A statement as to whether the action or recommendation must be reported to a licensing agency and/or the National Practitioner Data Bank.

3.5 Request for a Hearing

- 3.5.1 In order to exercise the right to a hearing, the individual shall have thirty (30) consecutive days following the date of receipt of written notice of an adverse recommendation or action within which to request a hearing. This request must be in writing to the Chief Executive Officer.
- 3.5.2 In the event the individual does not request a hearing within the time and/or in the manner required, they shall be deemed to have accepted the adverse recommendation or action and shall be deemed to have waived any right to a hearing or to any appellate review to which they might otherwise be entitled on the matter, as set forth in Section 3.3.

3.6 Notice of Hearing and Statement of Reasons

- 3.6.1 Within ten (10) consecutive days after receipt of a request for hearing from an individual entitled to the same, the Chief Executive Officer, shall schedule and arrange for a hearing. The Chief Executive Officer of BCH shall give written notice to the individual of the time, place and date of the hearing and the names of the members of the Hearing Committee ("Notice of Hearing").
- 3.6.2 The hearing date shall be set as soon as practicable, considering the schedules and availability of all concerned, but in no case, shall it begin less than thirty (30) consecutive days from the date of the Notice of Hearing, unless an earlier hearing date has been specifically agreed to in writing by the parties.
- 3.6.3 The Notice of Hearing shall contain a concise statement of the specific reasons for the recommendation or action. If applicable, it shall state the specific alleged acts, omissions or conduct that form the grounds for the recommendation or action as well as a list of specific or representative patient charts, records and other documents upon which BCH intends to rely to support the recommendation or

action. This statement and the list of documents it contains may be amended or added to at any time, even during the hearing, so long as the additional material is relevant and the individual and their counsel have had sufficient time to study this additional information and rebut it.

- 3.6.4 A written list of the names and addresses of the individuals, so far as is then reasonably known, who will offer testimony or evidence in support of the adverse recommendation or action at the hearing, shall be given with the Notice of Hearing, along with a brief summary of the nature of the anticipated testimony. The individual requesting the hearing shall provide a written list of the names and addresses of the individuals expected to offer testimony or evidence on their behalf within ten (10) consecutive days after receiving Notice of the Hearing, along with a brief summary of the nature of the anticipated testimony. The witness list of either party may, at the discretion of the Presiding Officer, be supplemented or amended at any time prior to the pre-hearing conference, provided that notice of the change is given to the other party.

3.7 Composition of Hearing Panel

- 3.7.1 When a hearing panel is requested, unless a Hearing Officer or Arbitrator is appointed pursuant to section 3.12 of this Plan, such hearing shall be conducted by an ad hoc impartial Hearing Panel of not fewer than five (5) persons, at least three (3) of whom shall be Members of the Medical Staff. Said Panel shall be appointed by BCH's Joint Conference Committee. A majority of persons appointed to the Hearing Panel shall be physicians actively engaged in the practice of medicine in Colorado. No person who has participated in the consideration of the adverse recommendation or action or in an investigation associated therewith at any previous level shall be appointed a member of this Hearing Panel. The Hearing Panel shall not include any individual who is in direct economic competition with the affected individual, or any individual who is professionally associated with, a business partner of, or related to the affected individual. Knowledge of the matter involved shall not preclude any individual from serving as a member of the Hearing Panel, however.
- 3.7.2 All matters before the Hearing Panel are required to be kept confidential by those members of the Hearing Panel and shall be handled in accordance with this Plan.

3.8 Presiding Officer

- 3.8.1 BCH's Joint Conference Committee may appoint an attorney at law or former or retired judge as Presiding Officer for the hearing. Such Presiding Officer should not be legal counsel to BCH or the Medical Staff. The Presiding Officer must not act as an advocate for either side at the hearing. The Presiding Officer shall serve only to facilitate the hearing process, serve as legal advisor to the Panel and assure that the hearing is conducted in accordance with this Plan. The presiding officer shall not participate in the private deliberations of the Hearing Panel nor shall they be entitled to deliberate or vote on its recommendations.
- 3.8.2 The Presiding Officer shall act to assure that all participants in the hearing have a reasonable opportunity to be heard and to present all oral and documentary evidence, that decorum is maintained throughout the hearing and that no intimidation is permitted. The Presiding Officer shall determine the order and format of procedure throughout the hearing, and shall have the authority and

discretion, in accordance with this Plan, to make rulings on all questions which pertain to matters of procedure and to the admissibility of evidence. It shall be the responsibility of the Presiding Officer to assure that each party presents the evidence relevant to its case in the most efficient and expeditious manner practicable.

3.9 Discovery

- 3.9.1 There is no right to discovery in the hearing process. However, the individual requesting the hearing shall be entitled to copies of specific documents upon which BCH intends to rely at the hearing as a basis for the adverse recommendation or action, provided that the individual and their counsel agree in writing that such documents shall be maintained as confidential and shall not be disclosed or used for any purpose outside of the hearing.
- 3.9.2 Both parties are entitled to a list of witnesses who will give testimony at the hearing on their behalf. Neither party, however, shall have the right to depose, interrogate or interview the other party's witnesses prior to the hearing, unless otherwise provided in the Pre-Hearing Plan, as defined in Section 3.10 below. Neither the affected individual nor their attorney nor any other person on behalf of the affected individual shall contact Hospital employees, physicians or any expert witness appearing on BCH's witness list, unless agreed upon by counsel or approved by the Presiding Officer. Neither BCH nor its attorney nor any other person on behalf of BCH shall contact any employee, partner or expert witness appearing on the individual's witness list, unless agreed upon by counsel or approved by the Presiding Officer.

3.10 Pre-Hearing Conference

- 3.10.1 No more than ten (10) consecutive days after BCH's receipt of the individual's witness list, the individual and the representative of the Chief Executive Officer, or their counsel, shall participate in a pre-hearing conference with the Presiding Officer.
- 3.10.2 No less than five consecutive days before the pre-hearing conference, each party shall, if they have not done so already, provide the other party with copies of proposed exhibits and a list of witnesses the party intends to call at the hearing, along with a brief summary of the nature of the witness's testimony. Exhibits or witnesses not provided on or before that date may not be introduced at the hearing absent a showing of good cause.
- 3.10.3 All objections to documents or witnesses to the extent then reasonably known shall be presented to the Presiding Officer at the pre-hearing conference. The Presiding Officer shall not entertain subsequent objections unless the party offering the objection demonstrates good cause.
- 3.10.4 The Presiding Officer shall rule on all objections presented at the pre-hearing conference and shall determine, to the extent possible at that time, which exhibits of both parties shall be admitted at the hearing. Such exhibits shall be provided to the Hearing Panel at least five (5) consecutive days in advance of the hearing.
- 3.10.5 The parties shall, at or before the pre-hearing conference, agree, subject to approval of the Presiding Officer, which witnesses will testify at the hearing and the approximate length of the witnesses' testimony and cross examination. The Presiding Officer may determine that a particular witness shall not testify at the

hearing if the witness's testimony would be irrelevant, cumulative or otherwise not necessary in order for the party to effectively present its case.

- 3.10.6 In the event the person requesting the hearing proposes to offer new evidence or information not presented to the body that initiated the adverse recommendation or action, the matter shall be remanded to that body for consideration and a new or reconsidered recommendation, unless that body agrees to have the evidence presented in the hearing.
- 3.10.7 If requested by either party, the Presiding Officer shall determine whether the party may interview a limited number of the witnesses listed by the other party and shall determine which witnesses may be interviewed. In determining whether to permit witness interviews, the Presiding Officer shall balance the needs of the party making the request with the need to avoid disruption to the operation of BCH or to the business operations of the individual requesting the hearing.
- 3.10.8 Subject to the Presiding Officer's determination of relevance, including a consideration of the applicable burden of proof as set forth in Section 3.10.5., no expert testimony by individuals not Members of the Medical Staff shall be permitted unless the following information is exchanged in written form within such time as set forth in the Pre-Hearing Plan.
 - 3.10.8.1 A curriculum vitae setting forth the qualifications of the expert.
 - 3.10.8.2 A complete expert witness report, which must include the following:
 - 3.10.8.2.1 A complete statement of all opinions the expert will express and the basis and reasons for each opinion.
 - 3.10.8.2.2 The facts or data considered by the expert in forming the opinions.
 - 3.10.8.2.3 Any exhibits that will be used to summarize or support the opinions.
 - 3.10.8.2.4 A representation that the expert has agreed to testify at the hearing.
- 3.10.9 The Presiding Officer shall document the agreements of the parties and any decisions of the Presiding Officer made as a result of the Pre-Hearing Conference in a written Pre-Hearing Plan to be shared with all parties.

3.11 Conduct of the Hearing

- 3.11.1 An accurate record of the hearing shall be kept by a court reporter or a recording, copies of which may be obtained by the individual upon payment of any reasonable charges associated with the preparation thereof.
- 3.11.2 The personal presence of the individual for whom the hearing has been scheduled shall be required. An individual who fails, without good cause, to appear and proceed in such hearing shall be deemed to have waived their rights in the same manner as provided in Section 3.5 and to have accepted the adverse recommendation or action involved, and the same shall thereupon become and remain in effect as provided in said Section 3.5.2.
- 3.11.3 The individual requesting the hearing shall be entitled to be accompanied by and/or represented at the hearing by a person of their choice or by an attorney to call, examine and cross-examine witnesses and present their case. The individual requesting the hearing shall inform the Chief Executive Officer in writing of the name of that person or attorney, if then known at the time the individual requests

a hearing, but in any event, no later than ten (10) consecutive days prior to the date of the hearing.

- 3.11.4 BCH shall appoint a person (who may be an attorney) to represent its position and to call, examine and cross-examine witnesses at the hearing.
- 3.11.5 BCH shall present the facts in support of its adverse recommendation or action. Thereafter, the individual shall have the ultimate burden of persuading the Hearing Panel, by a preponderance of the evidence, that the adverse recommendation or action was without factual support or was otherwise arbitrary or unreasonable, considering patient care concerns and the standards and aims of the Medical Staff embodied in the Medical Staff and Hospital Bylaws, manuals, rules and regulations and policies.
- 3.11.6 During the hearing, each party may call and examine witnesses; introduce written evidence determined to be relevant by the Presiding Officer, regardless of its admissibility in a court of law; cross examine witnesses on any matter relevant to the issues; and rebut any evidence.
- 3.11.7 If the individual who requested the hearing does not testify on their own behalf, they may be called and examined as if under cross examination. All oral testimony shall be under oath.
- 3.11.8 The Hearing Panel may interrogate the witnesses, call additional witnesses or request documentary evidence if it deems appropriate.
- 3.11.9 The hearing is not akin to a court of law. The rules of law relating to examination of witnesses and the presentation of evidence shall not apply to any hearing conducted under these Bylaws. Any relevant evidence upon which responsible persons customarily rely in the conduct of serious affairs may be considered regardless of its admissibility in court, including, but not limited to, hearsay evidence.
- 3.11.10 The Hearing Panel may recess and reconvene the hearing at its sole discretion for the convenience of the participants or for the purpose of considering additional evidence or consultation, but in any event, the hearing process shall be concluded no later than two (2) months from the date the Hearing Panel convened for its first session.
- 3.11.11 Each party shall have the right to submit a written statement or a memorandum of points and authorities either prior to, during or following the close of the hearing, and the Hearing Panel may request such a statement or memorandum to be filed following the close of the hearing.
- 3.11.12 Upon conclusion of the presentation of oral and written evidence, the hearing shall be closed. Within fifteen (15) consecutive days after final adjournment, the Hearing Panel shall have conducted its deliberations outside the presence of any other person, except the Presiding Officer, and shall render a recommendation, accompanied by a report based upon the evidence presented at the hearing. The report shall contain a concise statement of the reasons which form the basis for the recommendations made. The Hearing Panel shall then deliver its report to the Chief Executive Officer of BCH who shall forward the Hearing Panel's recommendation and report to the Governing Board. The Chief Executive Officer shall provide written notice to the parties of the recommendation and shall enclose a copy of the Hearing Panel's recommendation and report, within a reasonable time after conclusion of the hearing.

- 3.11.13 If the recommendation of the Hearing Panel is unfavorable to the individual, the Chief Executive Officer shall notify the individual of their rights to an appellate review, the time frame and procedure for requesting said review and the grounds upon which appellate review can be requested, as set forth below at Section 3.13. The Governing Board shall not take final action on the matter until the time for appellate review has expired.
- 3.11.14 If the recommendation of the Hearing Panel is favorable to the individual, the Governing Board may, in its discretion, affirm, modify, or reverse the recommendation of the Hearing Panel. Copies of the decision of the Governing Board, together with a statement for the basis of the decision, shall be delivered to the individual and to the Medical Executive Committee in writing. If the Governing Board affirms the recommendation of the Hearing Panel, such action shall constitute the final action on the matter. If the Governing Board reverses or modifies the recommendation of the Hearing Panel in a manner which is adverse to the individual, the individual may request an Appellate Review pursuant to Section 3.13, in which case, the Governing Board shall make its final decision following the receipt of the recommendations of the Review Panel, pursuant to Section 3.13. The Chief Executive Officer shall notify the individual of their rights to appellate review, the time frame and procedure for requesting said review and the grounds upon which appellate review can be requested, as set forth below at Section 3.13.

3.12 Alternatives to Appointment of a Hearing Panel

- 3.12.1 Notwithstanding the foregoing, BCH may, by action of BCH's Joint Conference Committee, either:
- 3.12.1.1 Appoint a Hearing Officer (who is not in direct economic competition with the individual involved); or, in the alternative
- 3.12.1.2 Appoint an arbitrator mutually acceptable to the individual and to BCH.
- 3.12.2 In the event BCH elects either of such alternatives, the Hearing Officer or arbitrator shall have the same duties and authority as the Hearing Panel and the Presiding Officer referred to in this Section 3.

3.13 Appellate Review

- 3.13.1 Request for Appellate Review. Within thirty (30) consecutive days after receipt of a notice by the affected individual of an adverse recommendation, action or decision made or adhered to by the Hearing Panel or the Governing Board after a hearing as above provided, they may make a written notice of request for appellate review to the Governing Board through the Chief Executive Officer of BCH in writing ("Notice of Request for Appellate Review").
- 3.13.2 Waiver of Right to Appellate Review. If such appellate review is not requested within said thirty (30) day period, the affected individual shall be deemed to have accepted such adverse recommendation, action or decision, and shall be deemed to have waived their right to any appellate review to which they might otherwise have been entitled on the matter, as set forth in Section 3.11.13.
- 3.13.3 Notice of Appellate Review. Within ten (10) consecutive days after receipt of a Notice of Request for Appellate Review, the Governing Board shall schedule a date for appellate review. The Chief Executive Officer of BCH shall give written notification to the affected individual of the date, time and place of the review

("Notice of Appellate Review"), which date shall be not less than thirty (30) consecutive days after the date of said Notice unless the parties have agreed to an earlier date in writing. When the individual requesting the review is under a suspension which is then in effect, upon written agreement of the parties, such review shall be scheduled as soon as the arrangements may reasonably be made but not more than twenty (20) consecutive days from the date of receipt of a Notice of Request for Appellate Review.

- 3.13.4 Review Panel. The Chair of the Governing Board shall appoint a Review Panel composed of not less than three (3) persons, either members of the Governing Board or independent and unbiased third parties appointed by the Governing Board, to consider the record upon which the matter before it arose.
- 3.13.5 Written Statement. At least five (5) consecutive days prior to the date of the appellate review, the Review Panel shall receive from the party requesting the appeal a written statement detailing the facts, conclusions and/or procedural matters with which they disagree and the reasons for their disagreement. This written statement may cover any matter at any step of the proceedings to which the appeal is related.
- 3.13.6 Appellate Proceedings. The proceedings by the Review Panel shall be in the nature of an appellate hearing. The Review Panel shall review the record of the hearing before the Hearing Panel and shall consider the written statement submitted pursuant to subsection Section 3.11.12.
 - 3.13.6.1 New or additional matters not raised at the hearing may be introduced at the appellate review only under unusual circumstances and upon a showing that such evidence could not have been made available to the Hearing Panel upon the exercise of reasonable diligence. The Review Panel shall have complete discretion to accept such matters or reject them and reserves the right to remand any such matter to the Hearing Panel for the taking of further evidence and for its decision.
 - 3.13.6.2 The Review Panel shall allow each party or their representative to make oral argument. The parties shall have the right to be represented by an attorney. In all cases, the party requesting the appellate review must be present and shall be subject to examination by the Review Panel. If not present, the appellate hearing will be canceled and all further rights to appellate review will be deemed waived by the party who requested the review.
- 3.13.7 Recommendation of Review Panel. Within fifteen (15) consecutive days after the conclusion of the appellate review, the Review Panel shall recommend final action to the Governing Board in the matter and shall send notice thereof to the Medical Executive Committee, to the Governing Board and, through the Chief Executive Officer, to the affected individual, by certified mail, return receipt requested. The Review Panel shall recommend affirmation of the Hearing Panel's recommendation, unless it specifically finds one or more of the following:
 - 3.13.7.1 A substantial and material failure to comply with the applicable Bylaws in the matter which was the subject of the hearing occurred so as to deny due process or a fair hearing to the affected individual; or
 - 3.13.7.2 The recommendations made or action taken were made arbitrarily, capriciously or with prejudice; or

- 3.13.7.3 The recommendations made or action taken were not supported by the evidence.
- 3.13.8 Final Action of the Governing Board. The final action of the Governing Board shall be taken in the reasonable belief that the action is in furtherance of quality health care, after assuring itself that a reasonable effort has been made to obtain the facts of the matter, after assuring itself that adequate notice and hearing procedures were afforded to the affected individual as to constitute fairness under the circumstances, and in the reasonable belief that its action is warranted by the facts known after such reasonable effort to obtain the facts and after meeting the notice and hearing requirements.
- 3.13.9 In its discretion, the Governing Board may refer the matter to the Hearing Panel or to any other body or person for further review and recommendation for a period of time not to exceed thirty (30) consecutive days, or the Governing Board may affirm, modify or reverse the recommendation of the Review Panel, in which case, such action shall constitute the final action on the matter. Copies of the decision of the Governing Board, together with a statement of the basis for the decision, shall be delivered to the individual and to the Medical Executive Committee by certified mail, return receipt requested.
- 3.13.10 The final action of the Governing Board shall be final and binding, shall be effective immediately, and shall not be subject to further hearing or appellate review unless specifically provided for under law.

3.14 Waiver

- 3.14.1 If an individual fails to request a hearing or appellate review within the time and/or in the manner required by this Plan, they shall be deemed to have accepted the adverse recommendation or action and shall be deemed to have waived any right to a hearing or any appellate review to which they might otherwise be entitled on the matter, except as provided below in Section 3.14.2 through 3.14.7.
- 3.14.2 When the waived hearing or appellate review relate to an adverse recommendation or action of the Medical Executive Committee or of a Hearing Panel, such adverse recommendation shall thereupon become and remain effective against the individual pending the Governing Board's decision on the matter.
- 3.14.3 If the individual waives the right to a hearing regarding an adverse recommendation or action of the Medical Executive Committee, the Governing Board, in its discretion, may affirm, modify or reverse a recommendation or action of the Medical Executive Committee. The individual shall be entitled to a hearing regarding the decision of the Governing Board only if the Governing Board modifies or reverses the recommendation or action of the Medical Executive Committee adversely to the individual.
- 3.14.4 If the individual waives the right to appellate review of an adverse action or recommendation of a Hearing Panel, the Governing Board, in its discretion, may affirm, modify or reverse the recommendation of the Hearing Panel. The individual shall be entitled to appellate review only if the Governing Board reverse or modifies the recommendation or action of the Hearing Panel adversely to the individual.
- 3.14.5 When the waived hearing or appellate review relate to an adverse decision by the Governing Board of BCH, such decision shall thereupon become and remain

effective against the individual in the same manner as a final decision of the Governing Board provided for in Section 3.12.10.

3.14.6 When the individual has waived their right to a hearing or to appellate review and the Governing Board has made a decision on the matter, the Chief Executive Officer shall promptly notify the affected individual of their status and, if applicable of their right to a hearing or appellate review pursuant to this Plan.

3.14.7 Such notice shall be delivered to the affected individual, return receipt requested.

3.15 Limitation on Rights to Hearing and Appellate Review

3.15.1 Notwithstanding any other provisions of this Plan, no individual shall be entitled as a matter of right to more than one hearing and one appellate review under this Plan on any matter which shall have been the subject of action by the Medical Executive Committee of the Medical Staff, or by the Governing Board of BCH, or by duly authorized Committees of the Governing Board of BCH, or by both.

3.16 Rights, Privileges, Immunities and Authority

3.16.1 In matters relating to hearings and appellate reviews under these Bylaws, all Medical Staff Members and other physicians and all involved personnel and other persons including members of the Governing Board and administration and management, hospital counsel of BCH, hearing panel members, and the Presiding Officer shall be acting pursuant to the same rights, privileges, immunities and authority as provided for in Hospital and Medical Staff Bylaws, policies and manuals.

3.17 Exceptions to Hearing Rights

3.17.1 In addition to the exceptions set forth in this Plan, the hearing and appellate review rights of this Section 3 do not apply to an individual whose application for Medical Staff membership and privileges was denied on the basis that the privileges they seek are granted only pursuant to a closed staff or exclusive use Hospital policy.

3.18 Fair Hearing Costs

3.18.1 All costs of the fair hearing including without limitation, the Hearing Officer, arbitrator, and/or Presiding Officer, and hearing panel fees, shall be paid by the individual if the adverse action is upheld.

3.18.2 Each party is responsible for its own attorney's fees.

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