

FAIR HEARING PLAN (PLAN)

This Fair Hearing Plan is adopted in connection with the Medical Staff Bylaws and made a part thereof. The definitions and terminologies of the Bylaws also apply to the Fair Hearing Plan and proceedings hereunder. All section references herein apply to the Plan.

DEFINITIONS

The following definitions, in addition to those stated in the Medical Staff Bylaws, shall apply to the provisions of this Fair Hearing Plan.

1. "Appellate Review Body" means the group designated pursuant to this Plan to hear a request for Appellate Review that has been properly filed and pursued by the Practitioner.
2. "Hearing Committee" means the committee appointed pursuant to this Plan to hear a request for an evidentiary hearing that has been properly filed and pursued by a Practitioner.
3. "Parties" means the Practitioner who requested the hearing or Appellate Review and the body (MEC or Board) upon whose adverse action a hearing or Appellate Review request is predicated.

ARTICLE I
INITIATION OF HEARING

1.1 ACTIONS THAT QUALIFY FOR A HEARING

The following recommendations or actions shall, if deemed adverse pursuant to Section 1.2, entitle the Practitioner affected thereby to a hearing:

- (1) Denial of initial Staff appointment;
- (2) Denial of reappointment;
- (3) Suspension of Staff membership;
- (4) Revocation of Staff membership;
- (5) Denial of requested advancement of Staff category, except for an extension of Provisional Staff status;
- (6) Reduction of Staff category due to an adverse determination as to a Practitioner's competence or professional conduct;
- (7) Limitation of the right to admit patients;
- (8) Denial of an initial request for particular Clinical Privileges;
- (9) Reduction of Clinical Privileges;
- (10) Permanent suspension of Clinical Privileges;
- (11) Revocation of Clinical Privileges;
- (12) Terms of supervision or probation, if such terms materially restrict the Practitioner's exercise of Privileges;
- (13) Revocation of Staff membership and/or Clinical Privileges of a Provisional Staff Member; and
- (14) Summary suspension of Privileges or Staff membership for a period in excess of fourteen (14) days.

1.2 WHEN DEEMED ADVERSE

A recommendation or action listed in Section 1.1 shall be deemed adverse only when it has been:

- (1) Recommended by the MEC; or
- (2) Taken by the Board contrary to a favorable recommendation by the MEC under circumstances where no prior right to hearing existed; or

- (3) Taken by the Board without prior recommendation by the MEC.

1.3 NOTICE OF ADVERSE RECOMMENDATION OR ACTION

A Practitioner against whom an adverse recommendation or action has been taken pursuant to Section 1.1 shall promptly be given Special Notice of such action. Such notice shall:

- (1) advise the Practitioner of the basis for the action and his right to a hearing pursuant to the provisions of the Medical Staff Bylaws and this Plan;
- (2) specify that the Practitioner has thirty (30) days following the date of receipt of this notice within which a request for a hearing must be submitted;
- (3) state that failure to request a hearing within the specified time period shall constitute a waiver of rights to a hearing and to an Appellate Review of the matter;
- (4) state that upon receipt of a properly filed request for a hearing, the Practitioner will be notified of the date, time and place of the hearing, the grounds upon which the adverse action is based, and a list of the witnesses expected to testify in support of the adverse action;
- (5) provide a summary of the practitioner's rights at the hearing; and
- (6) inform the Practitioner if the recommended action will be reportable to the Data Bank and appropriate licensing agencies.

1.4 REQUEST FOR HEARING

A Practitioner shall have thirty (30) days following his receipt of the 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 either in person or by certified or registered mail.

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

- (1) An adverse action by the Board shall constitute acceptance of that action which shall become and remain the final action on the matter; and
- (2) 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 MEC's recommendation at its next regular meeting following the waiver. In its deliberations, the Board shall review all relevant information and material considered by the MEC and may consider all other relevant information received from any source. The Board's action on the matter shall constitute the final decision of the Board. The CEO shall promptly send the Practitioner Special Notice informing him of each action taken

pursuant to this Section 1.5(2) and shall notify the Chief of Staff and the MEC of each such action.

ARTICLE II
HEARING PREREQUISITES

2.1 NOTICE OF TIME & PLACE FOR HEARING

Upon receipt of a timely request for a hearing, the CEO shall deliver such request to the MEC or to the Board, depending on whose action prompted the request for hearing. The Chief of Staff or the Board Chair, 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 not be less than thirty (30) nor more than ninety (90) days from the date of receipt of the request for hearing; provided, however, that a hearing for a staff member who is under suspension then in effect shall, at the member's request, be held as soon as arrangements for it reasonably may be made.

2.2 STATEMENT OF ISSUES & EVENTS

The notice of hearing required by Section 2.1 shall contain a concise statement of the Practitioner's alleged act or omissions, a list by number of specific or representative patient records in question, and/or the other reasons or subject matter forming the basis for the adverse or action which is the subject of the hearing. The notice shall further contain a list of witnesses expected to testify in support of the adverse action.

2.3 PRACTITIONER'S RESPONSE

Within ten (10) days of receipt of the notice of hearing under Section 2.1, the affected Practitioner shall deliver, by Special Notice, a list of witnesses expected to testify on his behalf at the due process hearing.

2.4 EXAMINATION OF DOCUMENTS

The Practitioner may request that he be allowed to examine any documents to be introduced in support of the adverse recommendation. If the Practitioner so requests, the body initiating the adverse action shall also be entitled to examine all documents expected to be produced by the Practitioner at the hearing. The Parties shall exchange such documents at a mutually agreeable time at least ten (10) days prior to the hearing. Copies of any patient charts which form the basis for the adverse action shall be made available to the Practitioner, at his expense, within a reasonable time after a request is made for same.

2.5 APPOINTMENT OF HEARING COMMITTEE

2.5(a) By Chief of Staff

A hearing occasioned by an adverse 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. None of the Hearing Committee members shall be partners, associates, relatives or in direct economic competition with the affected Practitioners. Should the Chief of Staff find it impossible to appoint a committee meeting the above requirements, he may, upon approval by the CEO, appoint three (3) Physicians or Podiatrists meeting all requirements of

this section with the exception of Medical Staff membership. One (1) of the members so appointed shall be designated as Chairperson.

The Practitioner shall have ten (10) days after receiving notice of the appointment of the Hearing Committee members to object and identify, in writing, any conflict of interest with any Hearing Committee members which the Practitioner believes should disqualify the member(s). The failure of the Practitioner to object and identify any conflict of interest as stated above shall constitute a waiver of any such right. Within seven (7) days of the receipt of the objections, the Chief of Staff shall determine whether such grounds asserted by the Practitioner are sufficient for disqualification. If a determination is made that a disqualification is appropriate, a replacement shall be appointed within seven (7) days of the determination. The CEO shall advise the Practitioner accordingly.

2.5(b) By Board

A hearing occasioned by an adverse action of the Board shall be conducted by a Hearing Committee appointed by the Board Chair and composed of at least three (3) people. At least one (1) Active Medical Staff Member shall be included on this committee. One (1) of the appointees to the committee shall be designated as Chairperson.

The Practitioner shall have ten (10) days after notice of the appointment of the Hearing Committee members to object and identify, in writing, any conflict of interest with any Hearing Committee members which he believes should disqualify the Hearing Committee member(s) from service. The failure of the Practitioner to object and identify any conflict of interest as stated above shall constitute a waiver of any such right. Within seven (7) days of the receipt of the objections, the Board Chair shall determine whether such grounds asserted by the Practitioner are sufficient for disqualification. If a determination is made that a disqualification is appropriate, a replacement shall be appointed within seven (7) days of the determination. The CEO shall advise the Practitioner accordingly.

2.5(c) Service on Hearing Committee

A Medical Staff or Board member shall not be disqualified from serving on a Hearing Committee solely because he has knowledge of the facts involved or what he supposes the facts to be. No member of the committee may have either requested the adverse action or served on a body that has acted on this action. All members of the Hearing Committee shall be required to consider and decide the case with good faith objectivity.

ARTICLE III
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 pursuant to Section 8.1, or the Chair 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 an attorney, a member of the Medical Staff in Good Standing, a member of his local professional society, or other individual of his choice. The MEC or the Board, depending on whose action prompted the hearing, shall appoint an individual to present the facts in support of its action and to examine the witnesses. Representation of either Party by an attorney at law shall be governed by the provisions of Section 8.2.

3.4 RIGHTS OF THE PARTIES

3.4(a) During a hearing, each of the Parties shall have the right to:

- (1) Call and examine witnesses;
- (2) Present evidence determined to be relevant by the Presiding Officer, regardless of its admissibility in a court of law;
- (3) Cross-examine any witness on any matter relevant to the issues;
- (4) Impeach any witness;
- (5) Rebut any evidence;
- (6) Have a record made of the proceeding, copies of which may be obtained by the Practitioner upon payment of any reasonable charges associated with the preparation thereof; and
- (7) Submit a written statement at the close of the hearing.

If the Practitioner who requested the hearing does not testify in his own behalf, he may be called and examined as if under cross-examination.

3.5 PROCEDURE & EVIDENCE

The hearing need not be conducted strictly according to rules of law relating to the examination of witnesses or presentation of evidence although these rules may be considered in determining the weight of the evidence. Any relevant matter upon which responsible persons customarily rely in the conduct of serious affairs shall be admitted, regardless of admissibility of such evidence in a court of law. 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 part of the hearing record. 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 in the state of New Mexico.

3.6 OFFICIAL NOTICE

In reaching a decision, the Hearing Committee may take official notice, either before or after submission of the matter for decision, of any generally accepted technical, medical 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 New Mexico. Parties present at the hearing shall be informed of the matters to be noticed and those matters shall be noted in the record of the hearing. Any Party shall be given opportunity on timely motion, to request that a matter be officially noticed and to refute officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the Hearing Committee.

3.7 BURDEN OF PROOF

- (1) When a hearing relates to the matters listed in Sections 1.1(1), 1.1(5) or 1.1(8), the Practitioner who requested the hearing shall have the burden of proving, by clear and convincing evidence, that the adverse action lacks any substantial factual basis or that the action is arbitrary, capricious or impermissibly discriminatory.
- (2) For the other matters listed in Section 1.1, the body whose adverse recommendation or action occasioned the hearing shall have the initial obligation to present evidence in support thereof; but the Practitioner thereafter shall be responsible for supporting his challenge to the adverse action by a preponderance of evidence that the grounds therefore lack any substantial factual basis or that the action is arbitrary, capricious or impermissibly discriminatory. The standards of proof set forth herein shall apply and be binding upon the Hearing Committee and on any subsequent appeal.

3.8 RECORD OF HEARING

A record of the hearing shall be kept that is of sufficient accuracy to permit an informed and valid judgment to be made by any group that later may be called upon to review the record and render a recommendation or decision in the matter. The method of recording the hearing shall be by use of a court reporter.

3.9 POSTPONEMENT

Request for postponement of a hearing shall be granted by the Hearing Committee's Presiding Officer only upon a showing of good cause and only if the request is made as soon as is reasonably practical. A hearing shall be postponed no more than two (2) times at the request of the Practitioner. Except in extraordinary circumstances approved by the Presiding Officer, a postponed hearing shall be rescheduled within thirty (30) days.

3.10 PRESENCE OF HEARING COMMITTEE MEMBERS & VOTING

A majority of the Hearing Committee must be present throughout the hearing and deliberations. If a committee member is absent from a substantial portion of the proceedings, he shall not be permitted to participate in the deliberations of the decision.

3.11 RECESSES & ADJOURNMENT

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. 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 conclusion of its deliberations, the hearing shall be declared finally adjourned.

ARTICLE IV
HEARING COMMITTEE REPORT & FURTHER ACTION

4.1 HEARING COMMITTEE REPORT

Within fourteen (14) days after the transcript of the proceedings has been delivered to the Presiding Officer of the hearing, or if no transcript is ordered, then thirty (30) days after the hearing ends, the Hearing Committee shall make a written report of its findings and recommendations in the matter. The Hearing Committee shall forward the same, together with the hearing record and all other documentation considered by it, to the initiating body, for action outlined in Section 4.2. All findings and recommendations by the Hearing Committee shall be supported by reference to the hearing record and the other documentation considered by it. Recommendations must be made by a majority vote of the members and the committee may only consider the specific recommendations or actions of the Board or MEC. The Practitioner who requested the hearing shall be entitled to receive the written recommendations of the Hearing Committee, including a statement of the basis for the recommendation.

4.2 ACTION ON HEARING COMMITTEE REPORT

If an adverse recommendation by the MEC initiated the hearing, and the Hearing Committee's recommendation is favorable to the Practitioner, the MEC shall take action on the Hearing Committee report no later than twenty-eight (28) days after receipt of same, and prior to any appeal by the Practitioner. If the Board initiated the action, and the Hearing Committee recommendation is favorable to the Practitioner, the Board shall take action on the Hearing Committee report no later than twenty-eight (28) days from receipt of same. If the Hearing Committee has not altered the initial adverse action, the Practitioner will be informed of his right to appeal per Section 4.3(c) before the Board takes final action.

4.3 NOTICE & EFFECT OF RESULT

4.3(a) Notice

The CEO shall promptly send a copy of the result to the practitioner by Special Notice, including a statement of the basis for the decision.

4.3(b) Effect of Favorable Result after Hearing Committee Report

- (1) **If the MEC initiated the Adverse Action:** If the MEC's recommendation, after review of a favorable Hearing Committee Report, is favorable to the Practitioner, the CEO shall promptly forward it, together with all supporting documentation, to the Board for its final action. The Board shall take action thereon by adopting or rejecting the MEC's recommendation or by referring the matter back to the MEC for further consideration. Any such referral back shall state the reasons therefore, set a time limit within which a subsequent recommendation to the Board must be made, and may include a directive that an additional hearing be conducted to clarify issues that are in doubt. After receipt of such subsequent recommendation and any new evidence in the matter, and consultation with the Corporation as necessary,

the Board shall take final action. Favorable action shall become the final decision of the Board , and the matter shall be considered finally closed.

- (2) If the Board initiated Adverse Action: If the Board's Action after review of a favorable Hearing Committee Report is favorable to the Practitioner, such Action shall become the final decision of the Board and the matter shall be considered finally closed.

4.3(c) Effect of Adverse Result

At the conclusion of the process set forth in Section 4.3(b), if the result continues to be adverse to the Practitioner in any of the respects listed in Section 1.1, the Practitioner shall be informed by Special Notice of his right to request an Appellate Review as provided in Section 5.1. Said notice shall be delivered to the Practitioner no later than fourteen (14) days from the MEC's or Board's action, as applicable, on the Hearing Committee Report.

ARTICLE V
INITIATION OF PREREQUISITES FOR APPELLATE REVIEW

5.1 REQUEST FOR APPELLATE REVIEW

A Practitioner shall have fourteen (14) days following his receipt of a notice pursuant to Section 4.3(c) to file a written request for an Appellate Review. Such request shall be deemed to have been made when delivered to the CEO either in person or by certified or registered mail. The Practitioner may request a copy of the report and record of the Hearing Committee and all other material, favorable or unfavorable, if not previously forwarded, that was considered in reaching the adverse result.

5.2 WAIVER BY FAILURE TO REQUEST APPELLATE REVIEW

A Practitioner who fails to request an Appellate Review within the time and manner specified in Section 5.1 shall be deemed to have waived any right to such review. Such waiver shall have the same force and effect as that provided in Section 1.5.

5.3 NOTICE OF TIME & PLACE FOR APPELLATE REVIEW

Upon receipt of a timely request for Appellate Review, the CEO shall deliver such request to the Board. As soon as practicable, the Board shall schedule and arrange for an Appellate Review which shall be not less than twenty-one (21) days from the date of receipt of the Appellate Review request; provided, however, that an Appellate Review for a Staff Member who is under a suspension then in effect shall be held as soon as the arrangements for it may reasonably be made. At least ten (10) days prior to the Appellate Review, the CEO shall send the Practitioner Special Notice of the time, place and date of the review. The time for the Appellate Review may be extended by the Appellate Review Body for good cause and if the request therefore is made as soon as reasonably practical.

5.4 APPELLATE REVIEW BODY

The Appellate Review Body shall be composed of, either the Governing Board or a committee of at least three (3) members of the Board of Trustees, at least one of which shall be an Active Staff Member. One (1) of its members shall be designated as the Chairperson of the committee.

ARTICLE VI
APPELLATE REVIEW PROCEDURE

6.1 NATURE OF PROCEEDINGS

The proceedings of the Appellate Review Body shall be in the nature of an Appellate Review based upon the record of the hearing before the Hearing Committee, the committee's report, and all subsequent results and actions thereon. The Appellate Review Body also shall consider the written statements submitted pursuant to Section 6.2 and such other material as may be presented and accepted under Sections 6.4 and 6.5. The Appellate Review Body shall apply the standards of proof set forth in Section 3.7.

6.2 WRITTEN STATEMENTS

The Practitioner seeking the review shall submit a written statement detailing the findings of fact, conclusions and procedural matters with which he disagrees and his reasons for such disagreement. This written statement may cover any matters raised at any step in the hearing process, but may not raise new factual matters not presented at the hearing. The statement shall be submitted to the Appellate Review Body through the CEO at least seven (7) days prior to the scheduled date of the Appellate Review, except if such time limit is waived by the Appellate Body. A written statement in reply may be submitted by the MEC or by the Board, and if submitted, the CEO shall provide a copy thereof to the practitioner at least three (3) days prior to the scheduled date of the Appellate Review.

6.3 PRESIDING OFFICER

The Chairperson of the Appellate Review Body shall be the Presiding Officer. He shall determine the order of procedure during the review, make all required rulings, and maintain decorum.

6.4 ORAL STATEMENT

The Appellate Review Body, in its sole discretion, may allow the Parties or their representatives to personally appear and make oral statements supporting their positions. If the Appellate Review Body allows one of the Parties to make an oral statement, the other Party shall be allowed to do so. Any Party or representative so appearing shall be required to answer questions put to him by any member of the Appellate Review Body.

6.5 CONSIDERATION OF NEW OR ADDITIONAL MATTERS

New or additional matters or evidence not raised or presented during the original hearing or in the hearing report and not otherwise reflected in the record shall not be introduced at the Appellate Review, except by leave of the Appellate Review Body. The Appellate Review Body, in its sole discretion, shall determine whether such matters or evidence shall be considered or accepted, following establishment of good cause by the party requesting the consideration of such matter or evidence as to why it was not presented earlier. If such additional evidence is considered, it shall be subject to cross examination and rebuttal.

6.6 PRESENCE OF MEMBERS & VOTING

A majority of the Appellate Review Body must be present throughout the review and deliberations. If a member of the Appellate Review Body is absent from a substantial portion of the proceedings, he shall not be permitted to participate in the deliberations or the decision.

6.7 RECESSES & ADJOURNMENT

The Appellate Review Body may recess the review proceedings and reconvene the same without additional notice for the convenience of the participants or for the purpose of consultation. Upon the conclusion of oral statements, if allowed, the Appellate Review shall be closed. The Appellate Review Body shall thereupon, at a time convenient to itself, conduct its deliberations outside the presence of the parties. Upon the conclusion of those deliberations, the Appellate Review shall be declared finally adjourned.

6.8 ACTIONS TAKEN

The Appellate Review Body may, in its discretion, refer the matter back to the Hearing Committee with specific instructions for further review. The Hearing Committee's subsequent report shall be returned to the Appellate Review Body within fourteen (14) days. The Appellate Review Body shall make its final determination to affirm, modify or reverse the adverse action within fourteen (14) days of adjournment unless there was a referral back to the Hearing Committee in which case a final determination will be made within seven (7) days after receipt of recommendation after referral.

6.9 CONCLUSION

The Appellate Review shall not be deemed to be concluded until all of the procedural steps provided herein have been completed or waived.

ARTICLE VII
FINAL DECISION OF THE BOARD

- 7.1 No later than thirty (30) days after receipt of the recommendation of the Appellate Review Body, or after waiver of Appellate Review, the Board shall consider the same and affirm, modify or reverse the recommendation. When a matter of Hospital policy or potential liability is presented, the Board shall consult with Corporation prior to taking action. The decision made by the full Board after receipt of the written recommendation from the Appellate Review Body will be deemed final, subject to no further appeal under the provisions of this Fair Hearing Plan. The action of the Board will be promptly communicated to the Practitioner in writing by certified mail.

ARTICLE VIII
GENERAL PROVISIONS

8.1 HEARING OFFICER APPOINTED & DUTIES

The use of a Hearing Officer to preside at an evidentiary hearing is optional. The use and appointment of such an officer shall be determined by the Board. A Hearing Officer may or may not be an attorney at law, but must be experienced in conducting hearings. He shall act as the Presiding Officer of the hearing and participate in the deliberations by acting as the Hearing Committee's legal advisor but he shall not be entitled to vote.

8.2 ATTORNEYS

If the affected practitioner desires to be represented by an attorney at the hearing or Appellate Review, his initial request for a hearing should state his wish to be so represented at either or both such proceedings in the event they are held. The MEC or the Board may also be represented by an attorney.

8.3 NUMBER OF HEARINGS & REVIEWS

Notwithstanding any other provision of the Medical Staff Bylaws or of this Plan, no practitioner shall be entitled to more than one (1) evidentiary hearing and Appellate Review with respect to an adverse recommendation or action.

8.4 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.

8.5 WAIVER

If any time after receipt of Special Notice of an adverse recommendation or action, a practitioner fails to make a required request or appearance or otherwise fails to comply with this Fair Hearing Plan or to proceed with the matter, he shall be deemed to have consented to such adverse recommendation, action or result 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.

**FAIR HEARING PLAN
APPROVED & ADOPTED:**

MEDICAL STAFF:

By: _____ Date _____
Chief of Staff

BOARD OF TRUSTEES:

By: _____ Date _____
Chairperson

LOS ALAMOS MEDICAL CENTER:

By: _____ Date _____
Chief Executive Officer

APPROVED AS TO FORM:

By: _____
Legal Counsel for PHC-Los Alamos, Inc.