

FAIR HEARING PLAN  
ANTELOPE VALLEY HOSPITAL  
Revised April 26, 1995

The following definitions apply to the provisions of this FAIR HEARING PLAN.

1. APPELLATE REVIEW BODY means the group designated under this plan to hear a request for appellate review properly filed and pursued by a practitioner.
2. HEARING COMMITTEE means the committee appointed under this plan to hear a request for an evidentiary hearing properly filed and pursued by a practitioner.
3. PARTIES means the practitioner who requested the hearing or appellate review and the professional review body upon whose adverse recommendation or action a hearing or appellate review request is predicated.
4. PRACTITIONER means the applicant or Staff member against whom adverse action has been recommended or taken.
5. SPECIAL NOTICE means written notification sent by certified or registered mail, return receipt requested.
6. ADVERSE ACTION/RECOMMENDATION means a professional review action as defined in the "Health Care Quality Improvement Act of 1986."
7. PROFESSIONAL REVIEW BODY as defined in the "Health Care Quality Improvement Act of 1986" includes the Board of Directors of Antelope Valley Hospital (or "Board"), any committee of the Board, the Medical Executive Committee of the Medical Staff and all committees of the Medical staff in the conduct of professional review activities at Antelope Valley Hospital.

#### PART I. INITIATION OF HEARING

##### 1.1 TRIGGERING EVENTS

- 1.1-1 RECOMMENDATIONS OR ACTIONS: The following recommendations or actions, when made or taken for "medical disciplinary cause or reason as defined in California Business and Professions Code, Section 805, shall, if deemed adverse under Section 1.1-2 below, entitle the practitioner to a hearing under timely and proper request:
  - A. Denial of Medical Staff membership;
  - B. Denial of requested advancement in Staff membership status or category;
  - C. Denial of Medical Staff reappointment;
  - D. Demotion to lower Medical Staff category or membership status;
  - E. Suspension of Staff membership;
  - F. Revocation of Medical Staff membership;
  - G. Denial of requested clinical privileges;
  - H. Involuntary reduction of current clinical privileges;
  - I. Suspension of clinical privileges;
  - J. Termination of all clinical privileges;
  - K. Involuntary imposition of significant consultation or monitoring requirements (excluding monitoring incidental to provisional status).
- 1.1-2 WHEN DEEMED ADVERSE: A recommendation or action listed in Section 1.1-1 is adverse only when it has been:

- A. Recommended by the Medical Executive Committee or
- B. Taken by the Board under circumstances in which no prior right to request a hearing existed.

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- 1.2 NOTICE OF ADVERSE RECOMMENDATION OR ACTION: The President and Chief Executive Officer promptly gives the practitioner special notice of an adverse recommendation or action taken pursuant to Section 1.1-2. The notice shall indicate that if adopted, the action or recommendation shall be reported to the Medical Board of California and the National Practitioner Data Bank, if required. The notice shall state the general reasons for the action or recommendation. The notice shall also:
- 1.2-1 Advise the practitioner of the recommendation or action and of his right to request a hearing pursuant to the provisions of this FAIR HEARING PLAN.
  - 1.2-2 Specify that the practitioner has thirty (30) days after receiving the notice within which to submit a request for a hearing and that the request must satisfy the conditions of Section 1.3;
  - 1.2-3 State that the hearing shall be held as determined by the professional review body whose decision prompted the hearing:
    - A. Before an arbitrator or arbitrators selected by a process mutually acceptable to the practitioner and the professional review body; or
    - B. Before a judicial review committee comprised of unbiased individuals who are appointed by the professional review body.
  - 1.2-4 Indicate that the right to the hearing may be forfeited if the practitioner fails, without good cause, to appear.
  - 1.2-5 State that in the hearing the practitioner involved has the right to:
    - A. Representation by an attorney or other person of the practitioner's choice;
    - B. 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;
    - C. Call, examine, and cross-examine witnesses;
    - D. Present evidence determined to be relevant by the presiding officer, regardless of its admissibility in a court of law; and
    - E. Submit a written statement at the close of the hearing;
  - 1.2-6 State that upon completion of the hearing, the practitioner involved has the right to receive the written recommendation of the arbitrator(s), or judicial review committee, including a statement of the basis for the decision;
  - 1.2-7 State that any higher authority required or permitted under this plan to act on the matter following a waiver is not bound by the adverse recommendation or action that the practitioner has accepted by virtue of the waiver, but may take any action, whether more or less severe, that may be deemed warranted by the circumstances;
  - 1.2-8 State that upon receipt of the practitioner's hearing request, the President and Chief Executive Officer will notify the practitioner of the date, time and place of the hearing, and a notice of charges; and
  - 1.2-9 State that if the practitioner wishes representation by an attorney, he must make that known in his request for a hearing.
- 1.3 REQUEST FOR HEARING: The practitioner has thirty (30) days after receiving a notice under Section 1.2 to file a written request for a hearing. The request must be delivered to the President and Chief

Executive Officer either in person or by certified or registered mail. If the practitioner wishes to be represented by an attorney at the hearing, his request for hearing must so state.

- 1.4 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 1.3 waives his right to any hearing or appellate review to which he might otherwise have been entitled and shall be deemed to constitute a voluntary acceptance of the recommendations or actions involved subject to review and action by the Board of Directors.

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## PART II. HEARING PREREQUISITES

- 2.1 NOTICE OF TIME AND PLACE FOR HEARING: When a proper request for a hearing is received, the President and Chief Executive Officer shall promptly deliver the request to the President of the Medical Staff. Within seven (7) days after receiving such request, the President of the Medical Staff shall (1) arrange and schedule a hearing, and (2) send the practitioner special notice of the time, place and date of the hearing. The hearing date shall be not less than thirty (30) nor more than sixty (60) days after the President and Chief Executive Officer have given special notice to the practitioner, unless there are valid reasons for nonreceipt of the special notice; in which case the date of the hearing can be extended. A hearing for a practitioner who is under suspension must be held not later than twenty-one (21) days after the practitioner has been given special notice, unless he requests, and offers valid reasons for, an extension.

- 2.2 NOTICE OF CHARGES: A notice of charges shall be sent with notice of the time and place for hearing and shall contain a concise statement of the practitioner's alleged acts or omissions, a list by number of the specific or representative patient records in question, and any other reasons or subject matter forming the basis for the adverse action or recommendation which is the subject of the hearing. A list of witnesses expected to testify at the hearing on behalf of the professional review body whose action or recommendation triggered the hearing will be included in the notice.

- 2.3 APPOINTMENT OF HEARING BODY:

The professional review body whose action or recommendation prompted the hearing shall determine if the hearing will be held before one or more arbitrators or a judicial review committee.

- 2.3-1 ARBITRATOR(S): If the professional review body whose decision prompted the hearing determines that the hearing will be before an arbitrator or arbitrators, the arbitrator or arbitrators shall be selected by a process mutually acceptable to the practitioner and the professional review body. The procedure followed by the arbitrator or arbitrators will be that contained in this Fair Hearing Plan and references to "judicial review committee," "hearing officer," or "presiding officer," shall be to the arbitrator or arbitrators, as appropriate.

- 2.3-2 JUDICIAL REVIEW COMMITTEE: If the professional review body determines that the hearing shall be before a judicial review committee, the President of the Medical Staff shall appoint the members, one of whom he shall designate as chair of the committee. A Medical Staff member is not disqualified from serving on a hearing committee because he has knowledge of the matter involved. The committee shall be composed of not less than 5 members of the Medical Staff. Members shall gain no direct financial benefit from the outcome, and shall not have acted as an accuser, investigator, fact finder, initial decision-maker or otherwise have actively participated in the consideration of the matter leading to the recommendation or action. In the event that it is not feasible to appoint a committee from the Active Staff, the President of the Medical Staff may appoint members from other Staff categories or practitioners who are not members of the Medical Staff. Membership on a judicial review committee shall consist of one member who shall have the same healing arts licensure as the accused, and where feasible shall include an individual practicing the same specialty as the practitioner.

## III. HEARING PROCEDURE

- 3.1 PREHEARING CONFERENCE: The hearing officer or chair may require a prehearing conference for purposes of document exchange, establishing basic rules concerning the number and type of witnesses who may be called by either party, the length of testimony, length of direct and cross-examination, order and length of initial and closing arguments, as well as other matters deemed necessary to the conduct of a fair, orderly and efficient hearing process.

- 3.2 **PERSONAL PRESENCE:** The personal presence of the practitioner is required at the hearing. A practitioner who fails without good cause to appear and proceed at the hearing waives his rights and shall be deemed to have accepted the action or recommendation subject to final review and action by the Board.
- 3.3 **PRESIDING OFFICER:** The hearing officer, if appointed under section 6.1, or if not appointed, the hearing committee chair shall be the presiding officer. This officer shall maintain decorum and assure that all participants have a reasonable opportunity to present relevant oral and documentary evidence. He shall determine the order of procedure during the hearing and shall make all rulings on matters of procedure.

- 3.4 **REPRESENTATION:** Subject to Section 1.3, the practitioner may be accompanied and represented at the hearing by an attorney. If the practitioner is not represented by an attorney, he may be represented by a member of the Medical Staff in good standing or by a member of his local professional society. The Medical Executive Committee or Board, depending on whose recommendation or action triggered the hearing, shall appoint an individual to represent it. Neither party shall be represented by an attorney at law before the judicial review committee if the practitioner is not represented by counsel.

3.5 **RIGHTS OF PARTIES:**

3.5-1 **ACCESS TO INFORMATION:**

(a) **Rights of Inspection and Copying:**

The affected practitioner may inspect and copy (at his expense) any documentary information relevant to the charges that the Medical Staff has in its possession or under its control. The professional review body whose decision prompted the hearing may inspect and copy (at its expense) any documentary information relevant to the charges that the affected practitioner has in his possession or under his control. The requests for discovery must be fulfilled as soon as practicable. Failure to comply with discovery requests at least thirty days prior to the hearing shall be good cause for a continuance of the hearing.

(b) **Limits on Access:**

The presiding officer, upon the request of either side, may deny a discovery request on the grounds that the information refers solely to individually identifiable practitioners other than the affected practitioner. In addition, in the event of discovery disputes, the following factors, among others, may be considered by the presiding officer:

- (1) Whether the information sought may be introduced to support or defend the charges.
- (2) Whether the information is "exculpatory" in that it would dispute or cast doubt upon the charges or "inculpatory" in that it would prove or help support the charges and/or recommendation.
- (3) The burden on the party of producing the requested information.
- (4) What other discovery requests the party has previously made.

(c) **Objections to Introduction of Evidence Previously not Produced for the Medical Staff.**

The professional review body whose decision prompted the hearing may object to the introduction of any evidence that was not provided during an appointment, reappointment or privileges application review or during corrective action despite the requests of the body for such information. The information will be barred from the hearing by the Presiding officer unless the practitioner can prove he previously acted diligently and could not have submitted the information.

- 3.5-2 **PREHEARING DOCUMENT EXCHANGE:** At the request of either party, the parties must exchange all documents that will be introduced at the hearing. The documents must be exchanged at least ten (10) days prior to the hearing. A failure to comply with this rule is good cause for the presiding officer to grant a continuance. Repeated failures to comply shall be good

cause for the presiding officer to limit introduction of any documents not provided to the other side in a timely manner.

- 3.5-3 DURING THE HEARING: At the hearing, both sides shall have the following rights: To ask judicial review committee members and/or the presiding officer questions which are directly related to determining whether they meet the qualifications set forth in this Fair Hearing Plan and to challenge such members or the presiding officer, to call and examine witnesses, to introduce relevant documents and other evidence, to receive all information made available to the judicial review committee, to cross-examine or otherwise attempt to impeach any witness who testified orally on any matter relevant to the issues, and otherwise to rebut any evidence. The practitioner may be called by the professional review body whose decision prompted the hearing and examined as if under cross-examination. The judicial review committee may interrogate the witnesses or call additional witnesses if it deems such action appropriate. Each party has the right to submit a written statement in support of his position at the close of the hearing. The judicial review committee may also request such a statement to be filed following the conclusion of the presentation or oral testimony.

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- 3.6 PROCEDURE AND EVIDENCE: The hearing need not be conducted according to rules of law relating to the examination of witnesses or presentation of evidence. Any relevant matter upon which responsible persons might customarily rely in the conduct of serious affairs may be considered regardless of the admissibility of such evidence in a court of law. Each party shall be entitled, prior to or during the hearing, to submit memoranda concerning any issue of law or fact, and those 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.
- 3.7 OFFICIAL NOTICE: In reaching a decision, the judicial review committee may take official notice, either before or after submission of the matter for decision, of any generally accepted technical or scientific matter relating to the issues under consideration and of any facts that may be judicially noticed by the courts of the State. Parties present at the hearing must be informed of the matters to be noticed, and those matters must be noted in the hearing record. Any party shall be given opportunity, on timely request, to request that a matter be officially noticed and to refute any officially noticed matter by evidence or by written or oral presentation of authority, in a manner to be determined by the judicial review committee. The committee is also entitled to consider all other information that can be considered under the Medical Staff Bylaws and Credentials Policy and Procedure Manual in connection with credentials matters.
- 3.8 BURDEN OF GOING FORWARD AND BURDEN OF PROOF: In all cases, the professional review body whose decision prompted the hearing shall have the burden of initially presenting evidence to support the charges and its recommendation. Thereafter the burden differs, depending upon whether the practitioner is applying for membership or privileges or is a member who already has the membership or privileges. At any hearing involving denial of initial Medical Staff membership or denial of newly requested privileges, the practitioner has the burden of proving by the preponderance of the evidence that he is qualified for membership and/or the denied privileges. The practitioner must produce information which allows for an adequate evaluation and resolution of any reasonable doubts concerning his current qualifications.
- In all other cases involving practitioners who already have been granted membership and the privileges, the professional body whose decision prompted the hearing shall have the burden of proving by a preponderance of the evidence that the action or recommendation is reasonable and warranted.
- 3.9 RECORD OF THE HEARING: The Hospital shall maintain a record of the hearing at its cost by using a certified shorthand reported to record the hearing. The practitioner shall be entitled to receive a copy of the transcript upon paying the reasonable cost for preparing same.
- 3.10 POSTPONEMENT: Requests for postponement of a hearing may be granted by the presiding officer only upon showing a good cause and only if the request is made as soon as is reasonably practical.
- 3.11 ADJOURNMENT AND CONCLUSION: The presiding officer may adjourn the hearing and reconvene the same at the convenience of the participants without special notice. The hearing shall be concluded within a reasonable time and the presiding officer may set guidelines for introduction of evidence to achieve a timely conclusion. Upon conclusion of the presentation of oral, and written evidence and arguments, the hearing shall be closed. The judicial review committee shall thereupon, outside of the presence of the parties, conduct its deliberations and render a decision and accompanying report. Final adjournment shall not occur until the judicial review committee has completed its deliberations.
- 3.12 DECISION OF THE JUDICIAL REVIEW COMMITTEE: Within fifteen (15) days after final adjournment of the hearing (or within ten (10) working days if the practitioner is currently under suspension) the judicial review committee shall render a decision. The decision shall be accompanied by a written

report that contains findings of fact and conclusions that articulate the connection between the evidence produced at the hearing and the decision. The report shall include sufficient detail to enable the parties and the Board of Directors to determine the basis for the committee's decision on each matter contained in the notice of charges. The decision and report shall be delivered to the Medical Executive Committee, the President and Chief Executive Officer, the Board of Directors and the affected practitioner. The practitioner's copy of the report shall be delivered by registered or certified mail, return receipt requested or personal delivery. The decision of the judicial review committee shall be considered final, subject only to the right of review by or appeal to the Board of Directors.

- 3.13 **BASIS OF DECISION:** If the judicial review committee should find the charge(s) or any of them to be true, it shall recommend such form of discipline as it finds warranted. If the recommended discipline is more stringent than that recommended by the professional review body whose decision prompted the hearing, the practitioner shall be notified by the committee and be given a further opportunity to submit evidence to the judicial review committee in support of his position if he can demonstrate he previously was unaware of the possible severity of the consequences and fairness requires a further chance to respond. The decision of the judicial review committee shall be based exclusively on the evidence produced at the hearing and any written statements submitted to the judicial review committee.

#### PART IV. INITIATION AND PREREQUISITES OF APPELLATE REVIEW

- 4.1 **TIME FOR APPEAL:** Within ten (10) days after the date of receipt of the judicial review committee decision, either the practitioner, the professional review body whose decision prompted the hearing or review, or the Board of Directors (on its own motion) may request an appellate review by the Board of Directors. Said request shall be delivered to the President and Chief Executive Officer in writing either in person, or by certified or registered mail, return receipt requested, and it shall briefly state the reasons for the appeal. If appellate review is not requested within this period, both sides shall be deemed to have accepted the action involved and it shall thereupon become the final recommendation of the Medical Staff. Such final recommendation shall be considered by the Board of Directors within seventy (70) days. The recommendation of the Medical Staff shall be given great weight, but shall not be binding on the Board of Directors.
- 4.2 **WAIVER BY FAILURE TO REQUEST APPELLATE REVIEW:** A practitioner who fails to request an appellate review within the time and in the manner specified, waives any right to a review and shall be deemed to have accepted the recommendation or action, subject to final review and action by the Board of Directors.
- 4.3 **NOTICE OF TIME AND PLACE FOR APPELLATE REVIEW:** The President and Chief Executive Officer shall promptly deliver a timely and proper request to the Chair of the Board. As soon as practicable, the Board shall schedule and arrange for an appellate review which shall be not less than ten (10) days nor more than twenty-nine (21) days after the President and Chief Executive Officer received the request; provided, however, that appellate review for a practitioner who is under a suspension then in effect, shall be held as soon as the arrangements for it may be reasonably made, but not later than twenty-one (21) days after the President and Chief Executive Officer received the request. At least ten (10) days prior to the appellate review, the President and Chief Executive Officer shall send the practitioner special notice of the time, place and date of the review. The time may be extended by the appellate review body for good cause and if a request is made as soon as is reasonably practical.
- 4.4 **APPELLATE REVIEW BODY:** The Board shall determine whether the appellate review shall be conducted by the Board as a whole or by an appellate review committee of three (3) members of the Board appointed by the Chair of the Board. If a committee is appointed, one of its members shall be designated as chair.

#### PART V. APPELLATE REVIEW PROCEDURE AND FINAL ACTION

- 5.1 **NATURE OF PROCEEDINGS:** The proceedings by the Board are in the nature of an appellate review based upon the hearing record, the judicial review committee's report, all subsequent results and action, the written statements, if any, provided below and any other material that may be presented and accepted under Section 5.5. Each party has the right to be represented by an attorney or another person of this choice at the appellate review.

- 5.2 WRITTEN STATEMENTS: Each party may submit a written statement detailing the findings of fact, conclusions and procedural matters relating to the judicial review committee with which he agrees or disagrees and his reasons. This written statement may cover any matters raised at any step in the hearing process. The statements shall be submitted to the appellate review body through the President and Chief Executive Officer at least ten (10) days prior to the scheduled date of the review, except if the time limit is waived by the appellate review body.
- 5.3 PRESIDING OFFICER: The chair of the appellate review body is the presiding officer. He determines the order or procedure during the review, makes all required rulings and maintains decorum.
- 5.4 ORAL STATEMENTS: The appellate review body, in its sole discretion, may allow the parties or their representatives to personally appear and make oral statements in favor of their positions. Any party or representative appearing is required to answer questions put by any member of the review body.
- 5.5 CONSIDERATION OF ADDITIONAL EVIDENCE: New or additional evidence not raised or presented during the original hearing or in the hearing report and not otherwise reflected in the record may be introduced at the appellate review only in the discretion of the appellate review body and as the review body deems appropriate, only if the party requesting consideration of the matter of evidence establishes that it could not have been made available to the judicial review committee in the exercise of reasonable diligence and subject to the same rights of cross-examination. The requesting party shall provide, through the President and Chief Executive Officer, a written, substantive description of the matter or evidence to the appellate review body and the other party at least three (3) days prior to the scheduled date of the appellate review.

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- 5.6 PRESENCE OF MEMBERS AND VOTE: A majority of the appellate review body must be present throughout the review and deliberations. If a member is absent from any part of the proceedings, he shall not be permitted to participate in the deliberations or the decisions.
- 5.7 RECESSES AND ADJOURNMENTS: The appellate review body may recess and reconvene the proceedings without additional notice for the convenience of the participants or for the purpose of obtaining new or additional evidence or consultation. At the conclusion of the oral statements, if allowed, the appellate review shall be closed. The appellate review body shall then, at a time convenient to itself, conduct its deliberations outside the presence of the parties provided it may have legal counsel of its choice present to advise it. The appellate review shall be adjourned at the conclusion of those deliberations.
- 5.8 DECISION: The appellate review body may affirm, modify or reverse the decision of the judicial review committee, or in its discretion, may refer the matter back to the judicial review committee for further review and recommendation to be returned to it within twenty-one (21) days and in accordance with its instructions. Within ten (10) days after receipt of such recommendation after referral, the review body shall take action. In any event, the final decision of the Board of Directors shall be in writing and shall be effective immediately unless otherwise stated. The Board of Directors shall give great weight to the recommendation of the Medical Staff and shall not in any event, act in an arbitrary or capricious manner.

## PART VI. GENERAL PROVISIONS

- 6.1 HEARING OFFICER APPOINTMENT AND DUTIES: The use of a hearing officer to preside at the judicial review committee hearing is optional and is to be determined by the President and Chief Executive Officer after consultation with the President of the Medical Staff. A hearing officer may or may not be an attorney at law, but must be experienced in conducting hearings.
- 6.2 ATTORNEYS:
- 6.2-1 AT HEARING: The practitioner may be represented by an attorney at the judicial review committee hearing. If the practitioner elects not to be represented by an attorney, the Medical Executive Committee may not be represented by an attorney.
- 6.2-2 AT APPELLATE REVIEW: The practitioner may be represented by an attorney at the appellate review. Regardless of whether the practitioner is represented by an attorney at the appellate review, the Medical Executive Committee may be represented by an attorney.
- 6.2-3 RESPONSIBILITY FOR ATTORNEYS: Each party is solely responsible for payment of his attorney fees.



- 6.3 NUMBER OF HEARINGS AND REVIEWS: Notwithstanding any other provision of the Medical Staff Bylaws or of this Plan, no practitioner is entitled as a right, to request more than one (1) evidentiary hearing and appellate review with respect to the subject matter that is the basis of the adverse recommendation or action triggering the right.
- 6.4 RELEASE: By requesting a hearing or appellate review under this plan, a practitioner agrees to be bound by the provisions of the Medical Staff Bylaws relating to immunity from liability.

PART VII. AMENDMENT

- 7.1 AMENDMENT: This FAIR HEARING PLAN may be amended or repealed, in whole or in part, by the following mechanism:
- 7.1-1 A resolution of the Medical Executive Committee recommended to and adopted by the Board.
- 7.2 RESPONSIBILITIES AND AUTHORITY: The procedures outlined in the Medical Staff and Hospital Corporate Bylaws regarding Medical Staff responsibility and authority to formulate, adopt and recommend Medical Staff Bylaws and amendments thereto apply as well as to the formulation, adoption and amendment of this FAIR HEARING PLAN, provided that the Medical Executive Committee may act for the Medical Staff in making the necessary recommendations to the Board.

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PART VIII. ADOPTION

- 8.1 MEDICAL STAFF: This FAIR HEARING PLAN, was adopted and recommended to the Board of Directors by the Medical Executive Committee in accordance with and subject to the Medical Staff Bylaws

Medical Executive Committee

April 04, 1995

Date

- 8.2 BOARD: This FAIR HEARING PLAN was approved and adopted by resolution of the Board of Directors after considering the Medical Executive Committee's recommendations, and in accordance with and subject to the Hospital Corporate Bylaws.

Board of Directors

April 26, 1995

Date