

<b>Title: Indemnification for Claims Arising from Medical Staff Activities</b>	
<b>Number: 749, Version: 6</b>	<b>Original Date: 12/14/2004</b>
<b>Effective: 04/27/2019</b>	<b>Last Review/Revision Date: 07/16/2019</b>
<b>Next Review Date: 08/04/2022</b>	<b>Author: Janice Dinner</b>
<b>Approved by: Administrative Policy Committee, Banner Health Board of Directors, BH System Operations Team, PolicyTech Administrators 04/24/2019</b>	
<b>Discrete Operating Unit/Facility:</b> Banner Baywood Medical Center Banner Behavioral Health Banner Boswell Medical Center Banner Casa Grande Medical Center Banner Churchill Community Hospital Banner Del E Webb Medical Center Banner Desert Medical Center Banner Estrella Medical Center Banner Fort Collins Medical Center Banner Gateway Medical Center Banner Goldfield Medical Center Banner Heart Hospital Banner Ironwood Medical Center Banner Lassen Medical Center Banner Ocotillo Medical Center Banner Payson Medical Center Banner Thunderbird Medical Center Banner—University Medical Center Phoenix Banner—University Medical Center South Banner—University Medical Center Tucson Community Hospital East Morgan County Hospital McKee Medical Center North Colorado Medical Center Ogallala Community Hospital Page Hospital Platte County Memorial Hospital Sterling Regional MedCenter Washakie Medical Center Wyoming Medical Center	Banner Corporate Banner Health Clinics Banner Imaging Services Banner MD Anderson Cancer Center Banner Health Network Banner Home Care and Hospice Banner Imaging Services Banner Plan Administration Banner Pharmacy Services Banner Surgery Centers Banner Urgent Care Centers Occupational Health/Employee Services Post-Acute Care Services Research Rural Health Clinics University Physicians Health Plans

## I. Purpose/Population:

- A. **Purpose:** To indemnify Medical Staff Members against Claims arising from their participation in Medical Staff Activities at Banner Health (BH) hospitals and surgery centers and for BH health plans in order to enable BH to comply with state and federal law and to operate BH hospitals, surgery centers and health plans.
- B. **Population:** Medical Staff.

## II. Definitions:

- A. Claim means any pending, threatened or completed civil, criminal or administrative claim, action, suit proceeding or investigation involving a Medical Staff Member (even though wholly without merit and even though malice, fraud, criminality or bad faith is alleged) to investigate or enforce any potential liability imposed by law or equity, including but not limited to claims or suits based on error, negligence or mistake, loss of service, property damage, personal restraint, assault, slander, libel, restraint of trade or violation of constitutional rights.
- B. Medical Staff Member or Member means any former or current physician or other professional granted membership on the Medical Staff of a BH hospital, a BH surgical center, or a BH health plan. For purposes of this policy, Member includes physicians and other health care professionals assisting the Medical Staff with its Medical Staff Activities, such as chart review and service on hearing panels, even if such individuals are not members of a BH Medical Staff.
- C. Medical Staff Activities means all non-clinical activities performed by Medical Staff Members on behalf of the BH Board, subsidiary boards or any BH hospital, BH surgical center, or BH health plan. The term includes, but is not limited to: all activities conducted pursuant to quality review and improvement; peer review; utilization review; credentialing; appointment or reappointment to the Medical Staff; or any other duties or responsibilities delegated by the BH Board or a BH hospital, surgery center or health plan to a Medical Staff.

## III. Policy:

- A. BH will indemnify Medical Staff Members against Claims arising from their participation in Medical Staff Activities.
1. BH will pay all sums that the Member is legally obligated to pay as damages because of any Claim.
  2. BH will pay all costs of defense, including without limitation, all attorneys fees in accordance with Paragraph F, all costs taxed against a Member, all interest on any judgment, premium on appeal bonds, and reasonable expenses incurred by the Member.
  3. BH will pay the Member the sum of \$150 per hour to a maximum of \$1500 per day for time spent by the Member in court appearances, deposition appearances, and preparation for depositions or court appearances. The amount of this payment shall be reviewed periodically to ensure appropriateness.
  4. This duty to indemnify does not pertain to claims or suits arising out of patient care, unless patient care is alleged to have arisen because of a Member's participation in Medical Staff Activities.
  5. Indemnification is conditioned upon the Member's full cooperation with BH and its attorneys and representatives and upon Member's refraining from discussing any Claim covered by this Indemnification without the approval of BH or its attorneys or representatives. Notwithstanding the foregoing and as permitted by federal and state

law, the Member may provide his/her counsel and spouse with any information such as Member deems necessary or appropriate.

- B. Whenever, in the opinion of BH counsel, any claim presents a potential conflict of interest between the Member and BH Health, BH will promptly provide the Member with separate counsel.
- C. Indemnification provided under this Policy shall survive the termination of Medical Staff membership or privileges.
- D. Indemnification provided under this Policy is primary to any valid and collectible insurance available to such Member.
- E. A Member will reimburse BH for all expenses incurred by BH to indemnify such Member if a court determines that a Member:
  - 1. did not act in good faith and in a manner he/she reasonably believed to be in, or not opposed to, the best interests of BH Health;
  - 2. with respect to any criminal Claim or proceeding, acted with reasonable cause to believe his/her conduct was otherwise unlawful; or
  - 3. otherwise acted or failed to act in such a manner which, under state law, would preclude BH from indemnifying such Member.
- F. If BH management denies coverage under this policy because a Member is not entitled to coverage or for any other reason, the Member may:
  - 1. Appeal to the Chief/President of Staff or the Chief Medical Officer of the Health Plan who may forward the appeal to the Medical Staff Executive Committee or the Board of Directors of the Health Plan, or an ad hoc committee thereof for its consideration. If the Executive Committee of the Surgery Center recommends that the Member be indemnified, that matter will be forwarded to the Surgery Center Board of Directors.
  - 2. If the Executive Committee or the Surgery Center or Health Plan Board of Directors or its respective ad hoc committee recommends that the Member be indemnified, the matter will be forwarded to the Care Management and Quality Committee of the BH Board.
  - 3. The Chairman of the Care Management and Quality Committee will appoint four individuals, two lay members of the BH Board and two physicians who need not be members of the BH Board, to make a recommendation to the BH Board regarding indemnification.
  - 4. During the appeal, the Member seeking indemnification is responsible for responding to the litigation at his/her sole expense. If indemnification is approved, expenses incurred by such Member will be reimbursed by BH.
- G. BH has the sole and exclusive right to control the defense of any Claim covered by this Indemnification irrespective of its amount.
  - 1. BH will consult with the Member prior to approving any settlement agreement, but has the sole and exclusive right to enter into any settlement agreement without the consent of the Member. If the Member disagrees with BH Health's decision to settle, Member may request a settlement conference with the BH Claims Committee, which may be held telephonically. To request such a conference, Member must do so, if at all, within 30 days of being notified of BH's intent to settle. BH's willingness to provide the Member an opportunity to meet with the Claims Committee does not constitute a waiver of BH Health's right to enter into such settlement agreement without the Member's consent.
  - 2. Notwithstanding paragraph F(1) above, BH may not settle any Claim without consent of the Member if the settlement would result in a reporting obligation against such Member

under either federal or state law or would include an admission of wrongdoing by the Member.

- H. This Indemnification Policy may be amended only after recommendation from the Care Management and Quality Committee of the Board and following consultation with the Chiefs/Presidents of Staff, including the Chiefs/Presidents of the Surgery Centers and the Health Plan. No amendment or rescission shall take effect until ninety (90) days after each Medical Staff Executive Committee has been given written notification of amendment or rescission, and no such amendment or rescission shall affect BH Health's obligations under this Indemnification Policy with respect to Claims based on acts or omissions taken prior to the effective date of rescission.
- I. This Indemnification Policy will not apply to any BH medical staff that has indemnification coverage under the Medical Staff Bylaws or pursuant to a contract with BH.

**IV. Procedure/Interventions:**

- A. N/A

**V. Procedural Documentation:**

- A. N/A

**VI. Additional Information:**

- A. N/A

**VII. References:**

- A. N/A

**VIII. Other Related Policies/Procedures:**

- A. N/A

**IX. Keywords and Keyword Phrases:**

- A. Indemnification
- B. Claims
- C. Medical Staff
- D. Board

**X. Appendix:**

- A. N/A