
OSF Healthcare

Modernizing Your Medical Staff Bylaws Documents

November 8, 2022

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Horty, Springer & Mattern, P.C.

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CENTER FOR CONTINUING EDUCATION IN THE HEALTH SCIENCES AND HORTYSPRINGER SEMINARS

AGENDA

- 1:00 to 1:15 p.m. **Introduction and Key Issues**
- Goals and objectives
 - Organization and structure of documents
 - Terminology
 - Advance Practice Providers
 - Compliance with state law
- 1:15 to 1:35 p.m. **Bylaws**
- Staff categories
 - Qualifications for officers and nomination process
 - Structure and function of the MEC
 - Quorum requirements
 - Amendment process
 - Unified Medical Staff provision
- 1:35 to 1:55 p.m. **Credentials Policy**
- Threshold eligibility criteria (and waivers)
 - Misstatements and omissions
 - Difficult privileging issues
 - Collegial efforts and progressive steps
 - Administrative relinquishment
 - Actions occurring in other OSF Hospitals
- 1:55 to 2:10 p.m. **Organization Manual**
- Departments, divisions, and services lines
 - Committee structure (e.g., Credentials Committee, Leadership Council, Peer Review Committee, etc.)

AGENDA

2:10 to 2:30 p.m.

Medical Staff Policies & Rules and Regulations

- Peer Review (including potential protections for Patient Safety Work Product from PSO)
- Professionalism
- Practitioner Health
- Rules and Regulations

2:30 to 2:50 p.m.

Process for Revision of Medical Staff Bylaws Documents

- Appointment of Bylaws Task Force
- Development of discussion draft of template documents
- Review of template documents by Bylaws Task Force
- Drafting of executive summary of documents
- Roll out each document to the MECs
- Posting for Medical Staffs
- Town hall meetings to review and answer questions
- Vote and adoption

2:50 to 3:00 p.m.

Q & A

ACCREDITATION STATEMENT

In support of improving patient care, this activity has been planned and implemented by the University of Pittsburgh and HartySpringer Seminars. The University of Pittsburgh is jointly accredited by the Accreditation Council for Continuing Medical Education (ACCME), the Accreditation Council for Pharmacy Education (ACPE), and the American Nurses Credentialing Center (ANCC), to provide continuing education for the healthcare team.

This activity is approved for the following credit: AMA PRA Category 1 Credit™. Other health care professionals will receive a certificate of attendance confirming the number of contact hours commensurate with the extent of participation in this activity.

The University of Pittsburgh designates this live activity for a maximum of 2 AMA PRA Category 1 Credits™. Physicians should claim only the credit commensurate with the extent of their participation in the activity.

EDUCATIONAL INTENT

This program is designed for physicians who serve in Medical Staff leadership positions in hospitals. Upon completion of this program, participants should be able to identify common credentialing issues and develop best practices relating to initial appointment, reappointment, and clinical privileges. They should also be able to identify and manage the variety of peer review issues that confront them in their roles as physician leaders. Finally, participants should be able to define the legal responsibilities of Medical Staff leaders and the legal protections available to them.

TARGET AUDIENCE

- Medical Staff Officers
- Department Chiefs
- Credentials Committee Members
- MEC Members
- Bylaws Committee Members
- VPMAs, CMOs, and Medical Directors
- Medical Staff Services Professionals
- Quality/Performance Improvement Directors
- Hospital Management

SUSAN LAPENTA**SLapenta@HortySpringer.com**

SUSAN LAPENTA is a partner in the law firm of Horty, Springer & Mattern, P.C. in Pittsburgh, Pennsylvania. Ms. Lapenta is an Editor of the *Health Law Express*, a weekly e-newsletter on the latest health law developments. She previously served as a faculty member of the HortySpringer Seminars *The Complete Course for Medical Staff Leaders* and *Credentialing for Excellence*.

She has worked extensively with hospitals and their medical staffs on peer review investigations and hearings and she has assisted medical staffs in the revision of medical staff governance documents including bylaws and related policies. She has also worked with systems in revising their medical staff documents to achieve uniformity and consistency and to reflect recommended best practices. Additionally, Ms. Lapenta has served as counsel in litigation stemming from credentialing decisions. Ms. Lapenta has also served on the faculty of the American College of Obstetricians and Gynecologists and on the faculty of the American Association for Physician Leadership.

Ms. Lapenta received her Bachelor of Arts degree from West Virginia University, and her Juris Doctor degree from the University of Pittsburgh School of Law. She was a member of the staff and served as the Managing Editor of the *University of Pittsburgh Law Review*. Upon graduating from law school, Ms. Lapenta worked as a law clerk for U.S. District Court Judge Glenn E. Mencer.

CHARLES CHULACK**CChulack@HortySpringer.com**

CHARLES CHULACK is a partner with the law firm of Horty, Springer & Mattern, P.C. in Pittsburgh, Pennsylvania, where his work is devoted exclusively to advising hospitals and physician leaders on a wide range of topics, including medical staff issues, medical staff bylaws and associated documents, compliance with federal and state law and regulations and accreditation standards, and employment matters. In addition, he represents hospitals in litigation on topics such as contractual disputes, physician hearing and appeal rights, and immunity under state and federal law.

Mr. Chulack is an editor of the firm's *Health Law Express*, a weekly e-newsletter on the latest health law developments. Mr. Chulack also served as an editor for the fourth and fifth editions of the American Health Law Association *Peer Review Guidebook* and the first edition of the American Health Law Association *The Complete Medical Staff, Peer Review, and Hearing Guidebook*. He has also published articles in the *Duquesne Law Review* and the Allegheny County Bar Association's *Lawyer's Journal*. He is currently a faculty member of the HortySpringer seminar *Credentialing for Excellence*.

Mr. Chulack is a member of the Allegheny County Bar Association and the American Health Law Association and is admitted to practice in front of the Pennsylvania Supreme Court and the United States District Court for the Western District of Pennsylvania.

Conflict of Interest Disclosure

No planners, members of the planning committee, speakers, presenters, authors, content reviewers and/or anyone else in a position to control the content of this education activity have relevant financial relationships to disclose.

No relevant financial relationships with commercial entities were disclosed by:

Susan Lapenta, Partner
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Disclaimer Statement

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1

Introductions

2

Goals and Objectives

- Allow practitioners to move more easily within the System
- Promote consistent bylaws, policies, and MSRR
- Reduce duplication of efforts in credentialing and peer review
- Reduce inconsistent credentialing and peer review decisions

3

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Overview

- History and experience with Systems
- Scope of project including review of issues and best practices
- Proposed process for project

4

Pre-1990s

When hospitals became part of a system, very little thought was given to medical staff issues.

5

1990s-early 2000s

Hospital systems undertook efforts to coordinate medical staff functions, including credentialing.

6

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1990s-early 2000s

- Credentialing verification office
- Uniform applications
- Mirror medical staffs
- Coordination of committee functions

7

2012

CMS said:
“Each hospital must have a
medical staff.”

8

2014

CMS adopted CoPs that
allowed unification of medical
staffs in a system operated
under a single Board.

9

2014

Unification of medical staffs is not currently permitted for CAHs (but that may change).

10

Why do anything?

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A “problem” physician applies to Hospital A. Significant red flags are spotted and he is sent a letter asking for more information. After several more letters, the physician withdraws his application and goes away...

12

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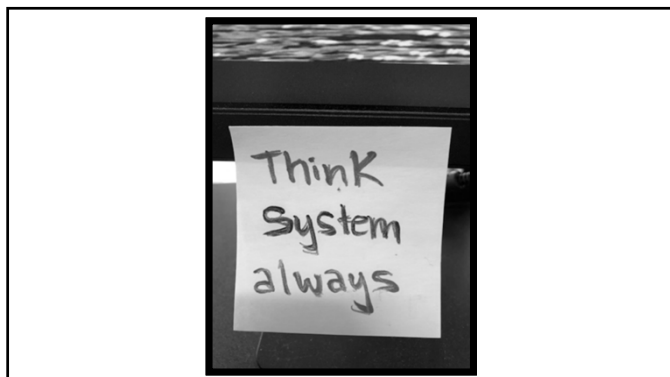
**...but not very far.
He meanders down the road to Hospital B, our
sister hospital, and asks for an application.**

13



**Oops, did we forget to mention that this
physician has already been granted
appointment and privileges at Hospital C?**

14



15

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Quality concerns are raised about a staff member at Hospital A. The Peer Review Committee implements a Performance Improvement Plan.

16



Following an investigation, the MEC of Hospital A recommends revocation of appointment and privileges for a physician. After a hearing, this recommendation is upheld by the Board.

17

A fix to most of these issues can be built into the bylaws documents.

18

Scope of the Project

- Medical Staff Bylaws
- Credentials Policy
- Organization Manual
- Rules and Regulations
- Professionalism and Health Policies

19

Medical Staff Bylaws

20

**I wish
I had
...*YOUR BYLAWS***

21

**Medical Staff Bylaws:
Best Friend**

22

**Medical Staff Bylaws:
Best Friend
or Worst Enemy**

23

Best Friend Bylaws

- Legally correct
- Reflect current practice and culture
- Easy to read and understand
- Incorporate "best practices"
- Anticipate problem situations
- Internally consistent

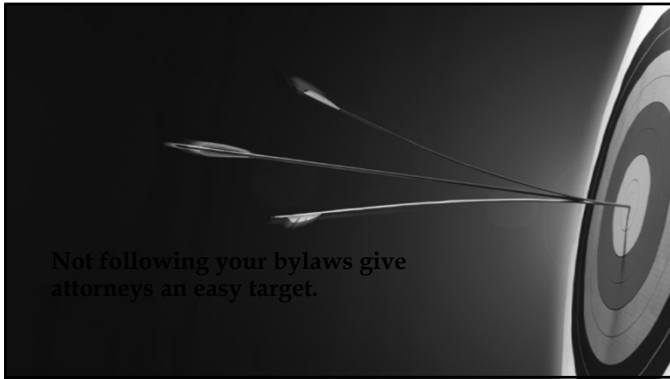
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Worst Enemy Bylaws

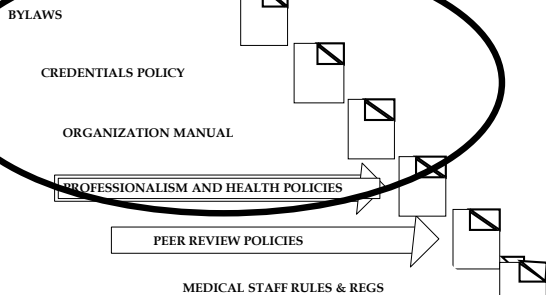
- Outdated
- Difficult to amend
- Lack needed guidance
- Include inaccurate cross-references
- Not consistent with the law
- Difficult to understand and follow
- Internally inconsistent

25




26

Best Practices for Medical Staff Documents



27

BYLAWS 

Medical Staff Bylaws

28

Structure

- Staff categories
- Process for nominating and electing leaders
- Medical Executive Committee
- Medical Staff meeting issues, including quorum, attendance and voting
- Amendment process

29

Staff Categories

- Rethink purpose and benefits of each staff category
- Do current categories work?

30

**What to do about
Advanced Practice Providers?**

31

APPs: Options

- Have an APP category that is not a category of the Medical Staff
- Have an APP category similar to Courtesy Staff, with limited rights

32

**Nomination Process
and Term of Office**

- Candidates must satisfy qualifications and be willing to serve
- Improve nomination process
- No nominations from the floor
- Increase terms of office

33

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Medical Executive Committee

- Governance of Medical Staff
- Acts for Medical Staff in-between meetings
- Authority to adopt policies and rules and regulations of Medical Staff (subject to Board approval)

34

Composition of MEC

- Officers
- Department Chairs
- At-large members
- Include ability for MEC to add additional members?

35

Quorum Requirements

- Relaxed standard - works to increase participation!
- "Those voting members present (but not fewer than 2 members)"

36

Quorum Requirements

- More relaxed except for:
 - Medical Executive Committee (50%)
 - Credentials Committee (50%)
 - Peer Review Committee (50%)
 - Bylaws amendment (25%)

37

History and Physicals


Just do it!

38

Amendment Process


- Can vary for different documents
- Only the Bylaws need to be amended by the Medical Staff
- Allow for voting by electronic ballot

39

CREDENTIALS POLICY 

Credentials Policy

40

Credentials Policy 

- Qualifications for appointment and privileges
- Credentialing process
- Privileging
- Collegial intervention
- Administrative relinquishment
- Precautionary Suspension
- Investigations
- Actions at Other System Hospitals
- Hearings and appeals

41

Qualifications

- **Threshold eligibility qualifications**
- **Distinguish objective from subjective review**
- **Raise the bar!**

42

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Threshold Eligibility
<ul style="list-style-type: none">• Unrestricted license• Board certification• Not terminated from another staff• No felony convictions• Not excluded from Medicare• Never resigned appointment during investigation

43

Waivers
<ul style="list-style-type: none">• Waivers may be granted when appropriate• <u>Only</u> for exceptional circumstances• Not to be used routinely• Not intended as precedent

44

Misstatements and Omissions


45

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Misstatements and Omissions
<ul style="list-style-type: none">• Notify applicant of misstatement and permit written response• Credentials Committee Chair and CMO review response and determine if application should be processed further

46

Privileging
<ul style="list-style-type: none">• Core privileges – develop process to selectively request and resign privileges within the core

47

Privileging
<ul style="list-style-type: none">• Core privileges – develop process to selectively request and resign privileges within the core• New procedures and privileges that cross specialty lines

48

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Privileging
<ul style="list-style-type: none">• Core privileges – develop process to selectively request and resign privileges within the core• New procedures and privileges that cross specialty lines• Temporary privileges (including locums)

49

Privileging
<ul style="list-style-type: none">• Core privileges – develop process to selectively request and resign privileges within the core• New procedures and privileges that cross specialty lines• Temporary privileges (including locums)• Disaster privileges

50

Collegial Intervention
<ul style="list-style-type: none">• Intervene early!• Document appropriately!• Address common issues

51

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Physician's counsel should be neither heard

52



Physician's counsel should be neither heard nor seen during meetings

53

Recording of meetings is not permitted!



54

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Administrative Relinquishment (Not Automatic Suspension)
<ul style="list-style-type: none">• Not an adverse professional review action• Administrative action

55

Administrative Relinquishment
<ul style="list-style-type: none">• Failure to satisfy threshold criteria• Failure to provide requested documents• Failure to attend mandatory meeting• Failure to obtain requested fitness for practice evaluation

56

Administrative Relinquishment
<ul style="list-style-type: none">• Reinstatement – have a process

57

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Precautionary Suspension
<ul style="list-style-type: none">• A life-changing event• “Once the damage is done, it is hard to undo”

58

Precautionary Suspension
<ul style="list-style-type: none">• Use when failure to do so “may result in imminent danger”• Try to meet with the physician in advance• Consider “agreement to refrain from exercising privileges”

59

Investigations
<ul style="list-style-type: none">• When all else fails• Draw a bright line!• Only MEC has authority to commence an Investigation

60

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Investigations
<ul style="list-style-type: none">• Build in reasonable time frames• Be careful about limiting the role of counsel• Meet with MEC if there is an adverse recommendation

- Build in reasonable time frames
- Be careful about limiting the role of counsel
- Meet with MEC if there is an adverse recommendation

61

Hearings
<ul style="list-style-type: none">• Identify situations that trigger a hearing/those that do not• Use outside counsel as Presiding Officer• Address exchange of documents• No "discovery" about other physicians

- Identify situations that trigger a hearing/those that do not
- Use outside counsel as Presiding Officer
- Address exchange of documents
- No "discovery" about other physicians

62


Actions Occurring in Other System Hospitals
<ul style="list-style-type: none">• Conditional appointment• LOA• Administrative relinquishment• Change in appointment or privileges• Adoption of a PIP• Precautionary suspension or• Professional review action

- Conditional appointment
- LOA
- Administrative relinquishment
- Change in appointment or privileges
- Adoption of a PIP
- Precautionary suspension or
- Professional review action


63

Actions Occurring in Other System Hospitals

- **Action administratively implemented at all System Hospitals**
- **MEC may recommend that administrative implementation be waived and**
- **No right to a hearing and not reportable.**




64

ORGANIZATION MANUAL 

Medical Staff Organization Manual

65

ORGANIZATION MANUAL 



- **Listing of clinical departments**
- **Committee composition and duties**
- **Easy amendment process**

66

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Committees
<ul style="list-style-type: none">• Consider the number and function of committees• Consider composition of each committee

67

<p>PROFESSIONALISM AND HEALTH POLICIES  </p> <p>Professionalism and Health Policies</p>
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68

Professionalism Policy
<ul style="list-style-type: none">• Conduct expected of all practitioners• Provides examples of inappropriate conduct and behaviors that undermine a culture of safety• Process for reporting and addressing behavioral concerns

69

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Health Policy

- Outlines the process for:
 - Reporting potential health issues
 - Responding to issues that may pose an immediate threat
 - Fitness for practice evaluation
 - Addressing reinstatement and developing practice conditions after LOA

70

Professionalism and Health Policies

- We will also provide a Professionalism Policy Manual and Health Policy Manual with sample forms, letters, talking points, and checklists.

71

MEDICAL STAFF RULES & REGS



Medical Staff Rules and Regulations

- Based on regulatory and accreditation requirements
- Common topics: admissions, medical records, consultations, surgical and anesthesia services, and pharmacy services

72

Next Steps

73

Process to Revise Bylaws Documents

1. Appointment of Bylaws Task Force
2. Development of discussion draft of template documents
3. Virtual retreat to review and revise template documents
4. HSM to revise drafts

74

Process to Revise Bylaws Documents

5. Further review and revision of documents by Task Force
6. Documents presented to each MEC
7. Documents posted for Medical Staffs
8. Town Hall meetings to answer questions
9. Vote by each Medical Staff

75

Thank you.

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