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# Methodist Healthcare

## *Peer Review Training*

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February 23, 2023

Phil Zarone  
Horty, Springer & Mattern

JOINTLY SPONSORED BY THE UNIVERSITY OF PITTSBURGH SCHOOL OF MEDICINE  
CENTER FOR CONTINUING EDUCATION IN THE HEALTH SCIENCES AND HORTYSPRINGER SEMINARS

**METHODIST HEALTHCARE**

**Peer Review Training**

**February 23, 2023**

Time	Topic
12:30 – 1:30 p.m.	<p><b>Effective Peer Review</b></p> <ul style="list-style-type: none"> <li>• Overview of process</li> <li>• Obtaining specialty expertise</li> <li>• Obtaining meaningful input from those under review</li> <li>• Role of multi-specialty committee</li> <li>• Increasing focus on educational sessions and system/process issues</li> <li>• Performance Improvement Plan options</li> </ul>
1:30 – 2:00 p.m.	<p><b>Case Study on Peer Review of Clinical Concerns</b></p>
2:00 – 2:30 p.m.	<p><b>Break and Networking</b></p>
2:30 – 3:15 p.m.	<p><b>Collegial Counseling</b></p> <ul style="list-style-type: none"> <li>• Tips for preparing for and conducting collegial counseling</li> <li>• Case studies</li> <li>• Documentation and access to files</li> </ul>
3:15 – 3:40 p.m.	<p><b>Investigations (with a Capital “I”)</b></p> <ul style="list-style-type: none"> <li>• When does an Investigation begin?</li> <li>• How do you protect patients while the Investigation proceeds?</li> <li>• Sources of clinical expertise</li> <li>• Preparing the Investigation report</li> </ul>
3:40 – 4:10 p.m.	<p><b>The Behavior/Patient Safety Connection (Professionalism Policy)</b></p> <ul style="list-style-type: none"> <li>• What do the courts, colleagues, and accrediting agencies say?</li> <li>• Performance Improvement Plan options for conduct</li> </ul>
4:10 – 4:30 p.m.	<p><b>Practitioner Health</b></p> <ul style="list-style-type: none"> <li>• How common are health issues among practitioners?</li> <li>• Tips for addressing health issues</li> </ul>

## 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 3.5 *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 intended for Department Chairs, Medical Staff Officers, Peer Review Committee members, CMOs, VPMAs, Quality Improvement specialists, Medical Staff Professionals and any other individuals involved in the peer review process. Upon completion of this program, participants should be able to identify “best practices” for medical staff peer review and recognize potential legal risks or inefficient or ineffective peer review procedures.

## TARGET AUDIENCE

- Medical Staff Officers
- Department Chairs
- CMOs and VPMAs
- Peer Review Committee Members
- Medical Executive Committee Members
- Credentials Committee Members
- Quality Improvement Specialists
- Medical Staff Services Professionals

## PHIL ZARONE

**PZarone@HortySpringer.com**

PHIL ZARONE is a partner with the law firm of Horty, Springer & Mattern, P.C. in Pittsburgh, Pennsylvania, which specializes in the practice of hospital and health care law. For almost 20 years, he has worked with hospital and physician leaders from across the country on Medical Staff matters related to credentialing, privileging and peer review, and on compliance with federal and state regulatory requirements. He serves as a faculty member for HortySpringer's *The Peer Review Clinic*, and has spoken frequently about credentialing, peer review, and other topics of interest to physician leaders. He teaches a health law class for the *Master of Medical Management* program at Carnegie Mellon University and has taught a health law class at the Duquesne University School of Law.

Prior to joining Horty, Springer & Mattern, Phil served as an officer in the United States Coast Guard and as a regulatory counsel and prosecuting attorney for the Commonwealth of Pennsylvania's Bureau of Professional and Occupational Affairs. Phil earned his B.A. from the University of Pittsburgh (*summa cum laude, Phi Beta Kappa*) (1989), his M.A. from Ohio State University (1994) and his J.D. from the University of Pittsburgh (*cum laude*) (1998).

## 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:

Phil Zarone, Partner  
Horty, Springer & Mattern, PC

## Disclaimer Statement

The information presented at this activity represents the views and opinions of the individual presenters, and does not constitute the opinion or endorsement of, or promotion by, the UPMC Center for Continuing Education in the Health Sciences, UPMC/University of Pittsburgh Medical Center or Affiliates and University of Pittsburgh School of Medicine. Reasonable efforts have been taken intending for educational subject matter to be presented in a balanced, unbiased fashion and in compliance with regulatory requirements. However, each program attendee must always use his/her own personal and professional judgment when considering further application of this information, particularly as it may relate to patient diagnostic or treatment decisions including, without limitation, FDA-approved uses and any off-label uses.



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## Methodist Healthcare

### Peer Review Training

Phil Zarone  
Horty, Springer & Mattern  
February 23, 2023

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## Effective “Professional Practice Evaluation” (f/k/a “Peer Review”) for Clinical Issues

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## The “peer review” world has changed dramatically —for the better! Thinking Techniques Governing Documents

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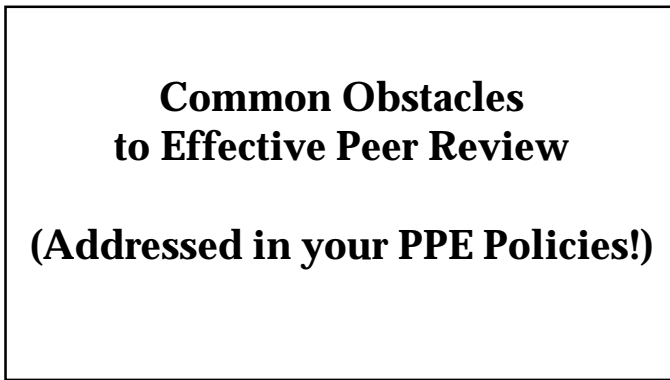
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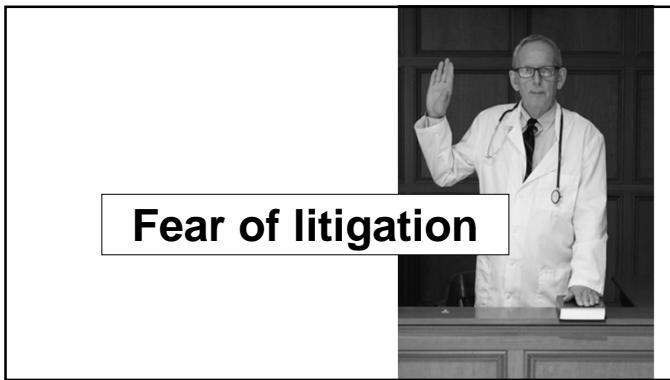
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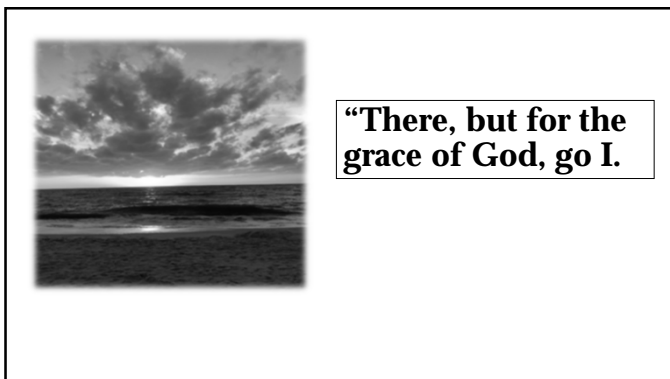
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**Based on 20/20 hindsight**



CASES FOR REVIEW MAY BE MORE COMPLEX THAN THEY APPEAR

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**No opportunity for meaningful input**



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**Lack of necessary tools**



**“If I have seen further it is by standing on the shoulders of Giants.”**  
*Isaac Newton*

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**“Many have found peer scoring to be a nonproductive aspect of traditional peer review because it tends to foster defensiveness, be extremely subjective and unreliable while giving a false impression of accuracy, and distract from the true objectives of individual and organizational improvement [1-3, 17-22].”**

American Journal of Roentgenology, 210, March 2018, pg 578.

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## **What are the costs of not doing “peer review” well?**

### ***The Human Factors...***

- Patient injury
- Physician careers jeopardized
- Reputation and trust of community
- Employee morale
- Medical staff leadership burnout
- Distraction from performance improvement activities

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## What are the costs of not doing “peer review” well?

### *Regulatory and Legal Risks...*

- Compliance with accreditation standards
- Medical malpractice lawsuits
- Negligent credentialing lawsuits
- Litigation related to adverse professional review actions
- False Claims Act / Qui Tam lawsuits

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## *So, What Works?*

### *Clinical Quality Issues*



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## Constantly Reinforce the Three Main Goals of Modern Clinical PPE



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## Goal #1

### Practitioner-Specific Reviews that Focus on Education and Improvement

- Emphasize input from colleagues, feedback, and practical, specific recommendations to promote improvement
- Many non-disciplinary tools available

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A process that does not require MEC involvement in day-to-day reviews, and that does not require reports to government agencies, is more likely to be viewed as educational.

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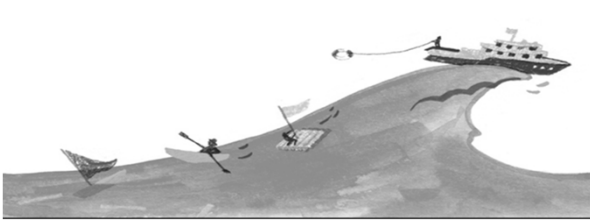
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## Goal #2

### Elevate Performance of ALL Physicians in Specialty



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## Peer Review Should Be a Tool for the Best CME Ever

- Adopt practices to identify “lessons learned” from reviews (e.g., case review form, algorithm for committee review, meeting minutes)
- Share with relevant specialties

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## Goal #3 Improve “Systems” of Care



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## Fixing System/Process Issues

- Adopt practices to identify “system/process” issues (e.g., case review form, algorithm for committee review, meeting minutes)
- Issue referred to appropriate committee or person for resolution
- Issues stays on agenda of MS CRC and/or CPE until notice of resolution is received

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## How Are These Three Goals Constantly Reinforced?

1. One big thing
2. Lots of small things



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## The BIG thing: PPE Policy states:

- Routine PPE is distinct from disciplinary action
- The committees implementing the PPE Policy:
  - Use performance improvement tools;
  - Have no disciplinary authority;
  - Seek voluntary agreement of practitioners
- Medical Executive Board receives oversight reports but is not involved in day-to-day PPE

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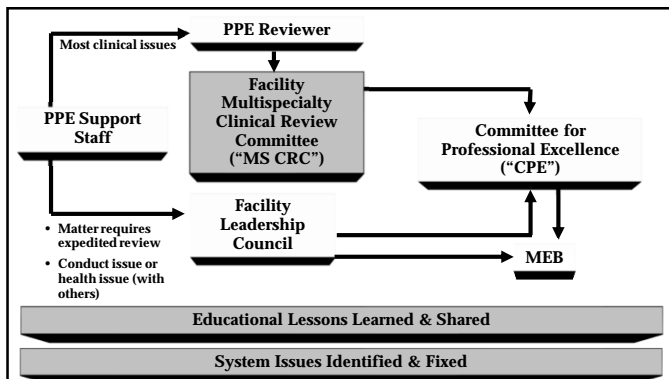
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**How Are These Three Goals  
Constantly Reinforced? Lots of small things.**



*"It's the little details that  
are vital. Little things  
make big things happen."*

**John Wooden**

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## **Little details:**

- Starts with first paragraph of PPE Policy
- Every letter and e-mail (use templates)
- Case review forms
- Every meeting with practitioner (have talking points)
- Performance improvement options
- Committee minutes
- Periodic reports to Medical Staff

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## **GET THE WORD OUT TO THE MASSES!**

- 1. PPE Activity Report:** Number of cases reviewed through the PPE process and the dispositions (in aggregate form)
- 2. Top 10 Lessons Learned...**and Shared
- 3. System Issues Identified...**and Fixed

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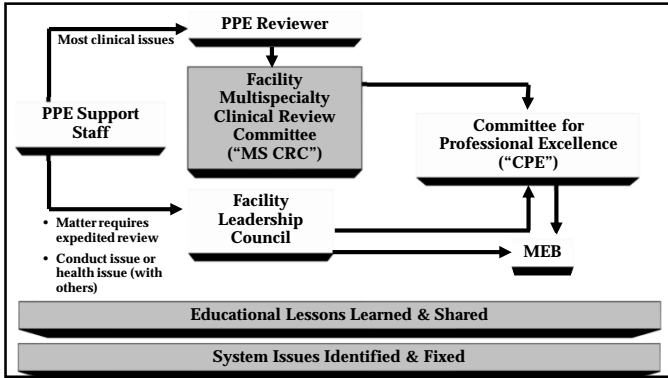
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**PPE Support Staff**

**PPE Support Staff**

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**PPE Support Staff Role of the PPE Support Staff**

- Conserve physician time - empower staff to use their skills!

**Leading cause of physician burnout?**

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**PPE Support Staff**    **Role of the PPE Support Staff**

- **Conserve physician time - empower staff to use their skills!**

“Too many bureaucratic tasks (e.g., charting, paperwork),” according to 60% of survey respondents

(“Lack of respect from administrators/employers, colleagues, or staff” a distant 2<sup>nd</sup> place at 39%)

2022 Medscape Survey

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**PPE Support Staff**    **Who Are PPE Support Staff?**

- **Not necessarily a title; instead, an “umbrella” definition:**
- **Typically includes:**
  - **Quality Management Staff; and**
  - **Medical Staff Services**

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**PPE Support Staff**    **Functions**

- **Log case into “Central Repository”**

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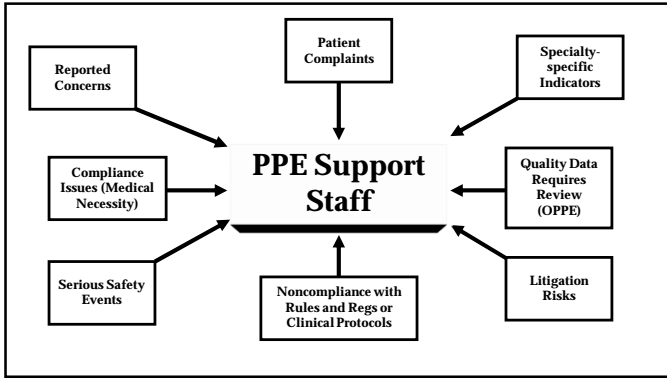
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**PPE Support Staff**      **Functions**

- **Log case in to “Central Repository”**
- **Initial review**
  - **Is physician review required?**

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**PPE Support Staff**      **No Physician Review Required**  
(PPE Support Staff with PPE Reviewer or Chief of Service)

- **The case is unfounded or unrelated to a physician**
  - **Close case or forward appropriately**
  - **Include in periodic reports to CPE**

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**PPE Support Staff**    **No Physician Review Required – Prepare “Informational Letter”**

- Objective circumstances chosen by CPE (i.e., “black/white” “yes/no”)
- Medical record deficiencies
- Failure to follow Rules & Regulations
- Failure to follow adopted protocol or document reason for not doing so
- Pre-drafted and tactfully worded
- Limits exist (e.g., third letter in “x” time frame triggers review)
- Include in periodic reports to CPE

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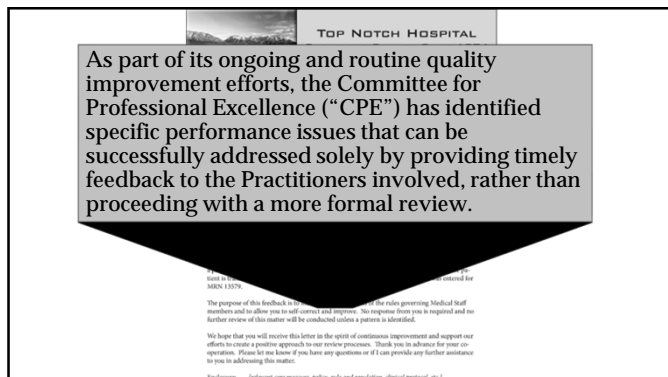
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**TOP NOTCH HOSPITAL  
CARING FOR FAMILIES SINCE 1974**

One such opportunity for improvement has been identified with respect to your compliance with Section \_\_\_ of our Medical Staff Rules and Regulations. Section \_\_\_ states “[i]f a full operative procedure report cannot be entered into the record immediately after the operation or procedure, a progress note must be entered by the Attending Physician in the medical record before the patient is transferred to the next level of care.” No operative report or progress note was entered for MRN 13579.

The purpose of this feedback is to increase your awareness of the rules governing Medical Staff members and to allow you to self-correct and improve. No response from you is required and no further review of this matter will be conducted unless a pattern is identified.

We hope that you will receive this letter in the spirit of continuous improvement and support our efforts to create a positive approach to our review processes. Thank you in advance for your cooperation. Please let me know if you have any questions or if I can provide any further assistance to you in addressing this matter.

Feedback - Patient care measures, safety, risk and resolution, clinical, medical, etc. |

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Feedback - Patient care measures, safety, risk and resolution, clinical, medical, etc. |

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**PPE Support Staff**      **Physician Review Is Required**

- **Prepare Case for Review**
  - Obtain medical record
  - Summarize case
  - Interview witnesses and others
  - Pull applicable Rules and Regs, protocols and guidelines, etc.
  - Research medical literature

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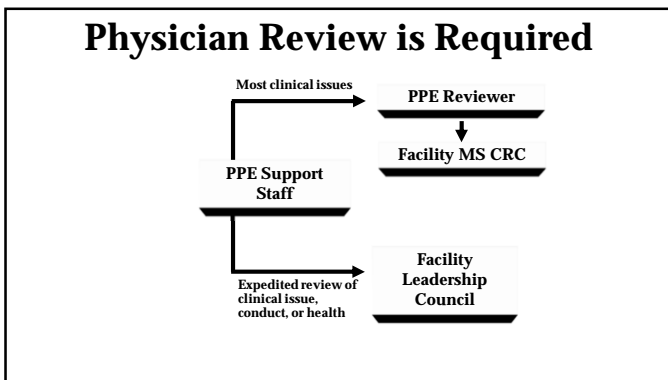
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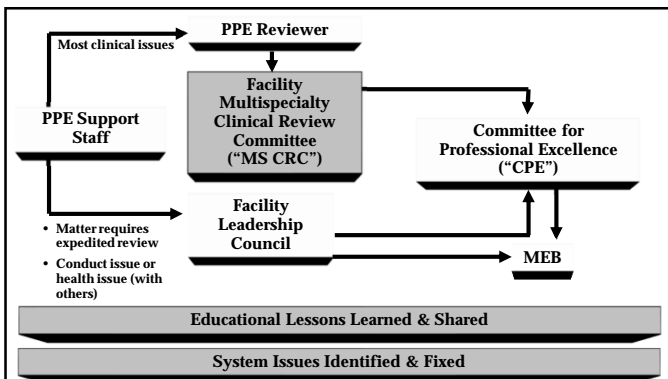
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**PPE Reviewer**      **For necessary  
specialty  
expertise**

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**PPE Reviewers**      **Use  
effective  
review  
forms!**

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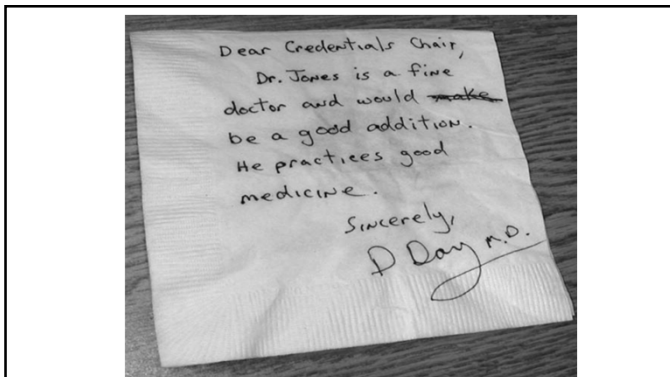
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## Assessment of Care

- No focus on patient outcomes
- No “scoring”
- Instructions to reviewer
- List elements of care (e.g., judgment; technical skill), and then “No issue” or “Some issue”
- Brief description of why concerns continue after input, if applicable

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## Lessons Learned and System Issues

- Once this review is concluded, would this patient scenario be of *educational benefit* to other members of the specialty or Medical Staff?
- Based on your review, are there any *system process or policy changes* that could improve patient safety and care?
  - Recommendations (e.g., new policy or checklist; handoff breakdown; training for staff)?
  - Who should be involved to most effectively address the issue?

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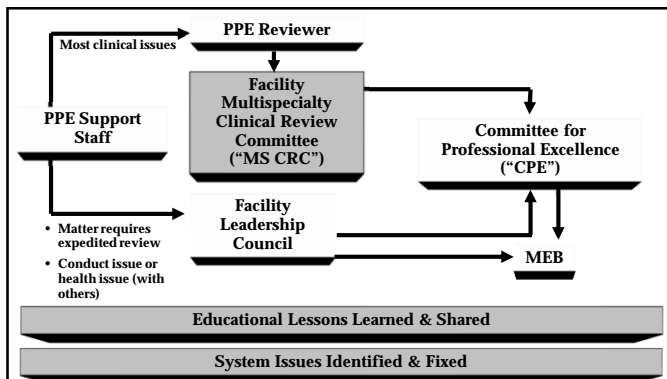
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Facility  
Multispecialty  
Clinical Review  
Committee  
("MS CRC")

**Foundation of an  
effective process!**

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**Remember, the Multi-  
Specialty Clinical Review  
Committee (MS CRC) has  
*No Disciplinary Authority!***

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Multi-Specialty  
Clinical Review Committee

## **Role of Highly-Functioning MS CRC**

- **Practitioner-Specific Reviews**
- **Policy Decisions**
- **Lessons Learned & Shared**
- **Monitoring "System" Fixes**
- **Public Relations**

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Multi-Specialty  
Clinical Review Committee

## MS CRC Deliberations

1. Are there any opportunities for improvement?
2. If so, what improvement tool will be help? (e.g., Educational Letter, Collegial Intervention, VEP)
3. "Loop Closure"...how to monitor to ensure:
  - The plan was completed as designed?
  - Improvement obtained and sustained

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Multi-Specialty  
Clinical Review Committee

## Improvement Tools (and Other Options)

- Educational letter
- Collegial Intervention
- Voluntary Enhancement Plan
- Refer to Employer
- Refer to MEC

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## Voluntary Enhancement Plans *(options used individually or in combination)*

- Additional education/CME
- Monitoring/retrospective chart review of next X cases
- Procedure indications checklist
- Second opinions/consultations
- Concurrent proctoring

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## **Voluntary Enhancement Plans** *(options used individually or in combination)*

- Participation in formal evaluation and assessment program
- Additional training/simulation
- "Other"

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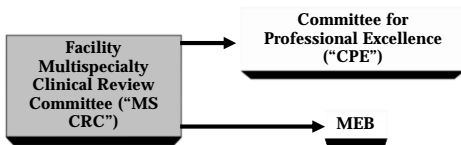
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## **Further Review Required?**



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**No Improvement Efforts...  
Even Low-Level Ones...  
*Without First Seeking Input!***

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## General Rules

- ***No improvement tool*** (Educational Letter, Collegial Intervention, VEP) until practitioner is notified of specific concerns and provides input

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## General Rules

- **Input can be sought at any time**
- **Multiple requests may be made**
- **Request can include office records**



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## General Rules



- **Identity of person who reported or provided information generally not disclosed**
- **Why? This is a collegial discussion, not an interrogation**

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## How does the practitioner provide input?

- Written explanation of care, responding to specific questions



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## How does the practitioner provide input?

- In person, at request of person or committee conducting review, or at request of practitioner:
  - Committee decides – full committee or representatives

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## Dr. Early Case Study

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## Summary

- Five OB/GYNs on the Medical Staff
- Dr. Early left to compete with former group
- Dr. Patience is Section Chair; also serves on Clinical Specialty Review Committee (1 of 2 members of CSRC)
- OB/GYNs adopted ACOG/SMFM guidelines for inducing labor
- Reported concern about two inductions

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**Is this an appropriate use of evidence-based guidelines in the PPE process?**

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## Tips for Evidence-Based Guidelines

- Start small
- Choose non-controversial, widely accepted protocols (look to payors)
- Choose high-volume procedures; get the “most bang for your buck”
- Use transparent process to approve protocol; invite input

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## Tips for Evidence-Based Guidelines

- If physician chooses not to follow protocol, must document rationale
- Identify method to monitor compliance
- Re-assess periodically

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**Should we respond to the nurse who reported the concern?**

**Yes.**

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74

## Respond to Those Who Report

- Thank you for reporting concern and participating in our culture of safety and quality care
- Medical Staff leaders are reviewing matter and may/may not need more information
- No retaliation is permitted; please report any incidents
- Due to confidentiality, can't provide specific outcome

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75

# Methodist Healthcare

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**Can we assure the nurse that her name won't be disclosed to Dr. Early?**

**Yes.**

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**Should the matter be referred for further review? If so, who should review the case?**

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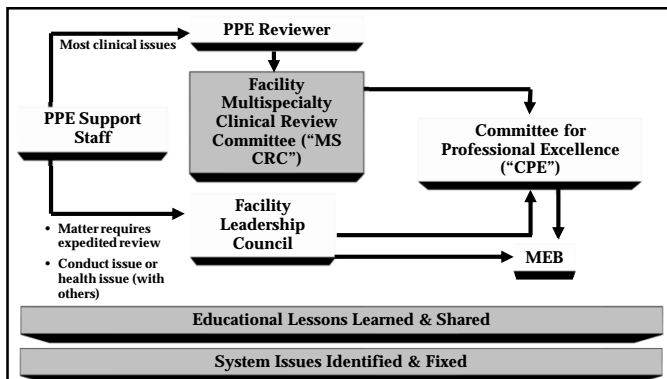
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# Methodist Healthcare

Can Dr. Patience take part in the review?

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Potential Conflicts	Provide Information	Levels of Participation							
		Committee Member							
		CSRC	Credentials Committee	Leadership Council	CPE	N	Hearing	Board	
Employment/contract relationship with Hospital	Y	Y	Y	Y	Y				
Self or family member	Y	R	R	R	R				
Relevant treatment relationship	Y	R	R	R	R				
Significant financial relationship	Y	Y	Y	Y	Y				
Direct competitor	Y	Y	Y	Y	Y				
Close friends	Y	Y	Y	Y	Y				
History of conflict	Y	Y	Y	Y	Y				
Provided care in case under review (but not subject of review)	Y	Y	Y	Y	Y				
Involvement in prior VEP or disciplinary action	Y	Y	Y	Y	Y				
Formally raised the concern	Y	Y	Y	Y	Y	R	N	N	R

**Y** means  
 - May generally serve in this role because of no disciplinary authority and checks and balances  
 - Credentials/LC/CPE chair always has authority and discretion to recuse a member in particular situation

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**To promote education and continuous improvement, the Medical Staff routinely reviews certain types of cases through its professional practice evaluation ("PPE") process.**

You have been invited to participate in a peer review process. If you would like to participate, please contact the Medical Staff at (800) 451-1111. Thank you for your cooperation and ongoing efforts to improve care.

Sincerely,  
**Perry Patience, M.D.**  
 Perry Patience, M.D.  
 Section Chair for OIR  
 PP  
 P-1234567

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# Methodist Healthcare

Placid Valley Medical Center  
Caring for the Placid Valley Community Since 1981



MR# 11279 and MR# 33472 are two cases that were identified for review. To assist with the review process, I would appreciate your input and perspective on these cases.

No final conclusions on the review process will be made until the review is carefully considered as part of the review process. If you have any questions or would like to arrange that meeting, please contact me. Thank you for your cooperation and participation in the Medical Staff's ongoing efforts to improve care.

Sincerely,  
**Perry Patience, M.D.**  
Perry Patience, M.D.  
Section Chair for OB  
PP:  
Enclosures

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Placid Valley Medical Center  
Caring for the Placid Valley Community Since 1981



Specifically, the medical record does not indicate why these women were induced at 37 weeks. As you know, the OB Section agreed to follow the guidelines for inducing labor published by ACOG and the Society for Maternal-Fetal Medicine.

No final conclusions on the review process will be made until the review is carefully considered as part of the review process. If you have any questions or would like to arrange that meeting, please contact me. Thank you for your cooperation and participation in the Medical Staff's ongoing efforts to improve care.

Sincerely,  
**Perry Patience, M.D.**  
Perry Patience, M.D.  
Section Chair for OB  
PP:  
Enclosures

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Placid Valley Medical Center  
Caring for the Placid Valley Community Since 1981



Also, my review of the data indicates that your rate of early inductions has increased noticeably in the past few months and is much higher than other OB/GYNs. Those data are enclosed. I would appreciate your perspective on this data.

No final conclusions on the review process will be made until the review is carefully considered as part of the review process. If you have any questions or would like to arrange that meeting, please contact me. Thank you for your cooperation and participation in the Medical Staff's ongoing efforts to improve care.

Sincerely,  
**Perry Patience, M.D.**  
Perry Patience, M.D.  
Section Chair for OB  
PP:  
Enclosures

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# Methodist Healthcare

Placid Valley Medical Center  
Caring for the Placid Valley Community Since 1981

CONFIDENTIAL PEER REVIEW DOCUMENT

No final conclusions or opinions have been reached on these issues. Your input will be carefully considered as part of the review process.

Dear Dr. Farley,

No final conclusions or opinions have been reached on these issues. Your input will be carefully considered as part of the review process. If you would also like to meet with me to discuss these issues, please contact me to arrange that meeting.

Thank you for your cooperation and participation in the Medical Staff's ongoing efforts to improve care.

Sincerely,  
**Perry Patience, M.D.**  
Perry Patience, M.D.  
Section Chair for OR  
PP  
Enclosures

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Placid Valley Medical Center  
Caring for the Placid Valley Community Since 1981

CONFIDENTIAL PEER REVIEW DOCUMENT

Please provide your written comments within 10 days. If you would also like to meet with me to discuss these issues, please contact me to arrange that meeting.

Dear Dr. Farley,

No final conclusions or opinions have been reached on these issues. Your input will be carefully considered as part of the review process. If you would also like to meet with me to discuss these issues, please contact me to arrange that meeting.

Thank you for your cooperation and participation in the Medical Staff's ongoing efforts to improve care.

Sincerely,  
**Perry Patience, M.D.**  
Perry Patience, M.D.  
Section Chair for OR  
PP  
Enclosures

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Placid Valley Medical Center  
Caring for the Placid Valley Community Since 1981

CONFIDENTIAL PEER REVIEW DOCUMENT

Thank you for your cooperation and participation in the Medical Staff's ongoing efforts to improve care.

Dear Dr. Farley,

Thank you for your cooperation and participation in the Medical Staff's ongoing efforts to improve care.

Sincerely,  
**Perry Patience, M.D.**  
Perry Patience, M.D.  
Section Chair for OR  
PP  
Enclosures

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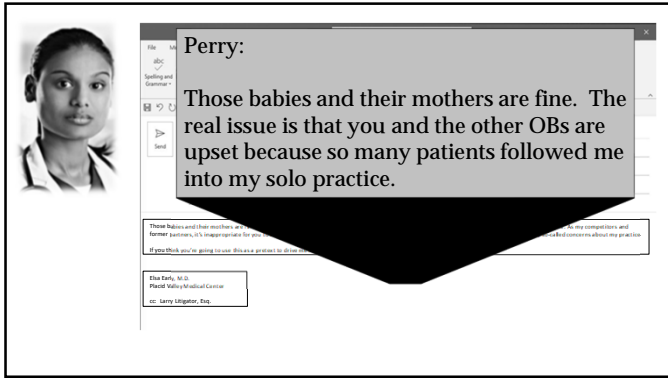
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# Methodist Healthcare

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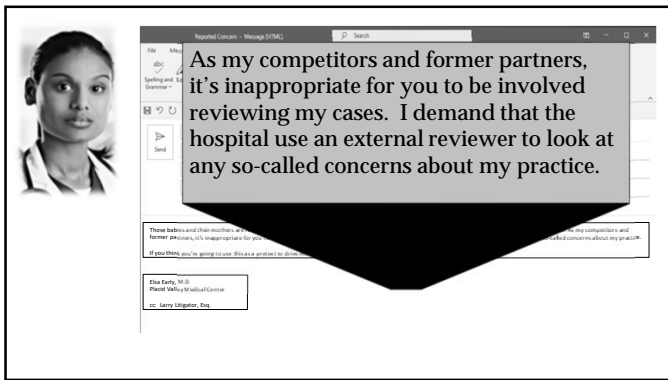
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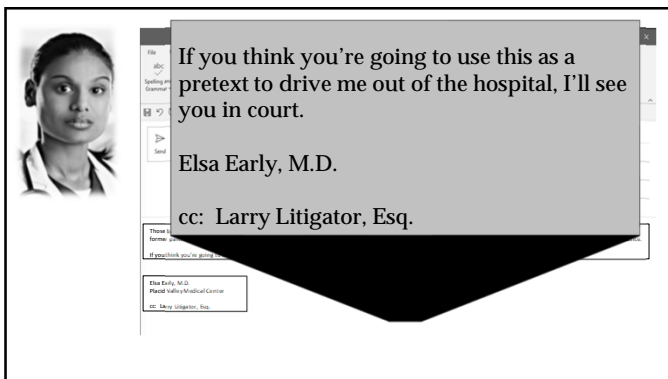
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# Methodist Healthcare

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**Was it OK for Dr. Patience to compile data on Dr. Early's rate of early inductions, or is that a "witch hunt" that goes beyond the scope of the original reported concern?**

**It's always acceptable to gather additional data, but try to be consistent.**

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**Should Dr. Patience have simply called Dr. Early and asked for her input over the phone?**

**Probably not.**

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**Can Dr. Early compel the hospital to obtain an external review?**

**No.**

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# Methodist Healthcare

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Consider an external review when:

- **Conflicting internal reviews**
- **Lack clinical experience internally**
- **Concerns about bias**
- **Best interest of all involved to ensure a thorough, objective review**

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94

**How concerned should you be that  
Dr. Early copied her attorney on her e-mail?**

**No reason for concern, but  
always be smart.**

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95

## **Legal Protections for Medical Staff Leaders**

- **Health Care Quality Improvement Act of 1986**
- **State Peer Review Statute**
- **Release Provisions in Medical Staff Bylaws/Credentials Policy**
- **Release Provisions in Application Forms**
- **Hospital D&O Insurance**

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96

## Maximizing Legal Protections

- Always assume everything you write or say will be used in a lawsuit
- Follow your policies
- Err on the side of extra fairness and due process
- Always take least restrictive action necessary
- Involve your attorney early and often

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How should Dr. Patience respond?

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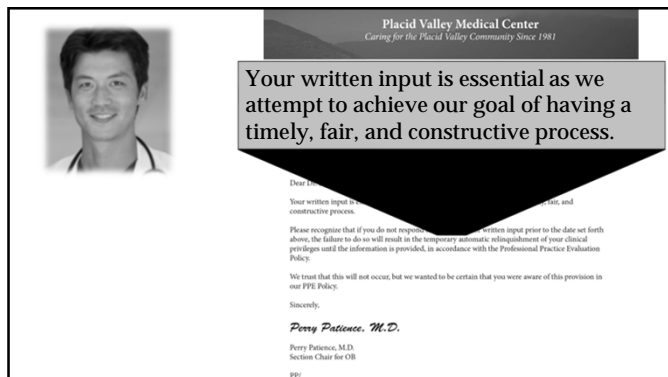
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Placid Valley Medical Center  
Caring for the Placid Valley Community Since 1981

Your written input is essential as we attempt to achieve our goal of having a timely, fair, and constructive process.

Dear [Name],

Your written input is essential as we attempt to achieve our goal of having a timely, fair, and constructive process.

Please recognize that if you do not respond to our written input prior to the date set forth above, the failure to do so will result in the temporary automatic relinquishment of your clinical privileges until the information is provided, in accordance with the Professional Practice Evaluation Policy.

We trust that this will not occur, but we wanted to be certain that you were aware of this provision in our PPE Policy.

Sincerely,

*Perry Patience, M.D.*  
Perry Patience, M.D.  
Section Chair for OB  
PP:

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# Methodist Healthcare

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Placid Valley Medical Center  
Caring for the Placid Valley Community Since 1981



Please recognize that if you do not respond to this request for written input prior to the date set forth above, a process will commence that could result in the temporary automatic relinquishment of your clinical privileges until the information is provided, in accordance with the Professional Practice Evaluation Policy.

PP:

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Placid Valley Medical Center  
Caring for the Placid Valley Community Since 1981



We trust that this will not occur, but we wanted to be certain that you were aware of this provision in our PPE Policy.

Your response is appreciated, and constructive feedback is encouraged.

Please recognize that if you do not respond to this request for written input prior to the date set forth above, the failure to do so will result in the temporary automatic relinquishment of your clinical privileges until the information is provided, in accordance with the Professional Practice Evaluation Policy.

We trust that this will not occur, but we wanted to be certain that you were aware of this provision in our PPE Policy.

Sincerely,  
*Perry Patience, M.D.*  
Perry Patience, M.D.  
Section Chair for OB  
PP:

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- **Additional points for letter and/or meeting:**
  - **Conflict of Interest issues have been considered**
  - **No external review**
  - **Review occurring under PPE Policy; Multi-Specialty Peer Review Committee has no authority to “drive anyone out of the hospital”**

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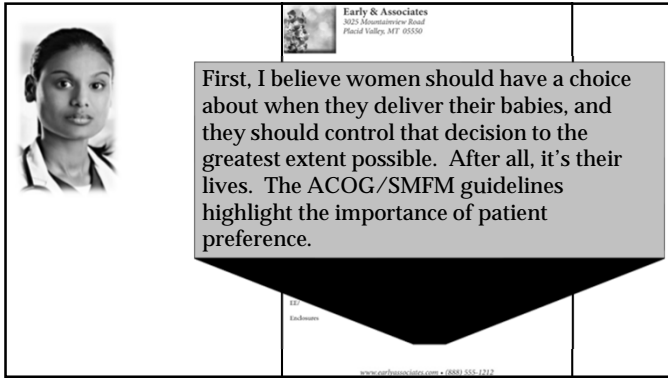
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# Methodist Healthcare

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Early & Associates  
3023 Mountaintop Road  
Pleasant Valley, NY 10550

First, I believe women should have a choice about when they deliver their babies, and they should control that decision to the greatest extent possible. After all, it's their lives. The ACOG/SMFM guidelines highlight the importance of patient preference.

Enclosures

www.earlyandassociates.com • (888) 655-1212

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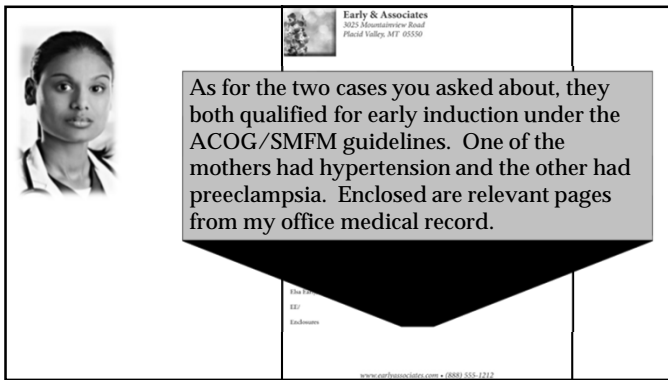
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Early & Associates  
3023 Mountaintop Road  
Pleasant Valley, NY 10550

As for the two cases you asked about, they both qualified for early induction under the ACOG/SMFM guidelines. One of the mothers had hypertension and the other had preeclampsia. Enclosed are relevant pages from my office medical record.

The following are  
MF  
Enclosures

www.earlyandassociates.com • (888) 655-1212

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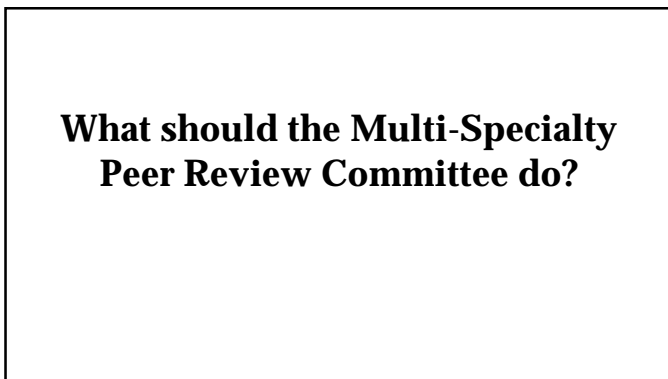
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**What should the Multi-Specialty Peer Review Committee do?**

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## The K.I.S.S. Principle!

1. Is there an issue or concern?
2. If so, what performance improvement tool can best help our colleague?

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106

## Options

- No further review required
- Obtain additional input
- Educational Letter
- Collegial Counseling
- Performance Improvement Plan (PIP)
- Refer to MEC

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## PIP Options

- Additional CME
- Monitoring/Retrospective Chart Review
- Procedure Indications Checklist
- Second Opinions/Consultations
- Concurrent Proctoring
- Formal Assessment Program
- Additional Training/Simulation
- Educational LOA/Voluntarily Refrain from Practice
- Other

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# Methodist Healthcare

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**Confidential Peer Review**

**Re: Performance Improvement Plan**

- **Thanks for cooperation and input to date**
- **MS CRC conducted review/developed voluntary PIP to successfully and constructively address issue**
- **PIP details**
- **Your voluntary agreement — not a “restriction” that requires hearing or reporting**

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109

**Confidential Peer Review**

**Re: Performance Improvement Plan**

- **Demonstrate your commitment to work with us — sign and return within X days**
- **If you disagree with need for PIP, MS CRC has no further authority; matter will be referred to MEB for independent review**
- **Pleased to meet again if you have any questions or need any clarification**

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110

**Confidential Peer Review**

**Re: Performance Improvement Plan**

**“Thank you for your cooperation and participation in the Medical Staff’s ongoing efforts to improve the care that we all provide.”**

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111

**Collegial Efforts  
and the  
Progressive Steps  
Continuum  
Will Successfully Resolve  
Almost All Issues!**

112

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**The Basics**  
**Get input from the physician  
before any intervention.**

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**The Basics**  
**Use the Least Restrictive Approach  
Consistent With Good Quality!**

114

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# Methodist Healthcare

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## The Basics

Most Options:

- No Hearing
- No Data Bank Report

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## The Basics

Last But Not Least...  
Improves Legal Position —  
Even if it Doesn't Work!

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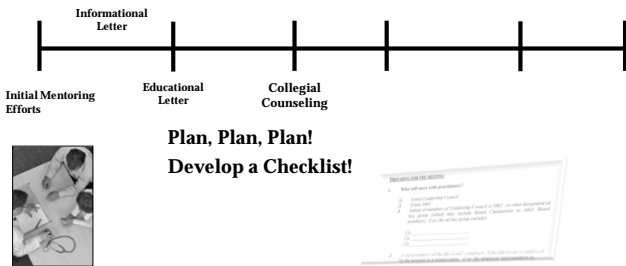
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## Progressive Steps Continuum



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# Methodist Healthcare

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**Progressive Steps Continuum**

**Plan, Plan, Plan!**  
**Tip #1: Provide Notice and an Opportunity to Provide Input**

- Input Prior to "Collegial Counseling"
- Combine fact-finding and "intervention"?

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**Progressive Steps Continuum**

**Plan, Plan, Plan!**  
**Tip #2 Who and Where**

- Is this a one-on-one or do you need additional people?
- Who is going to meet with the physician?
- Where are you going to meet?

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**Progressive Steps Continuum**

**Plan, Plan, Plan!**  
**Tip #3: Objectives / Talking Points**

- What is the desired outcome/objective?
- What are your talking points?
- If multiple people participate, who is going to address each talking point?

120

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# Methodist Healthcare

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**Progressive Steps Continuum**

Initial Mentoring Efforts      Informational Letter      Educational Letter      Collegial Counseling



**Plan, Plan, Plan!**  
**Tip #4: Steal a Tip from Abe**

- Spend twice as much time thinking about your colleague's perspective
- What reactions/responses can you anticipate... and be prepared to address
- Must exhaust options before done preparing

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121

**Progressive Steps Continuum**

Initial Mentoring Efforts      Informational Letter      Educational Letter      Collegial Counseling



**Tip #5: Follow-Up with a Letter!**

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122

**Progressive Steps Continuum**

Initial Mentoring Efforts      Informational Letter      Educational Letter      Collegial Counseling      Performance Improvement Plan      Disciplinary Action

Wide Range of Options/Tools

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123

**Collegial Efforts  
Case Study  
Dr. Van Winkle:  
Is he asleep at the switch?**

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124



**Dr. Van Winkle**  
**Internist,  
Solo practitioner**  
**Has one NP**

**Average inpatient census: 20+ patients**  
**Recent OPPE Report:  
ALOS 54% above expected  
Data confirmed by Department Chair**

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125



- **Dr. Van Winkle received 6-month OPPE report**
- **ALOS 54% higher than average**
- **Dr. Van Winkle doesn't see a problem; patients are doing well**

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126

# Methodist Healthcare

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**Dr. Prompt offers suggestions:**

- Round earlier, set priorities
- Have NP round
- Don't admit for non-staff physicians

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- Dr. Prompt asks about lack of documentation for patients in hospital six days or more
- Dr. Prompt suggests these patients could have been cared for in another setting

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- Dr. Prompt closes by saying "let's see how this length of stay looks on the next report"
- Dr. Prompt also says he will be putting a note in the file of Dr. Van Winkle about their conversation

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# Methodist Healthcare

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## What did Dr. Prompt do well?

- Respectful tone
- Well prepared
- Had his own talking points/suggestions
- Anticipated Dr. Van Winkle's arguments

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130

## What could Dr. Prompt have done better?

- Meeting rather than phone call
- Advance notice of call and issues
- Opportunity to provide input
- Start by discussing positive aspects of OPPE report
- Encourage Dr. Van Winkle to take ownership (e.g., "what would you suggest?")
- Review sooner than next OPPE report

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131

## What could Dr. Prompt have done better?

- Provide measurable, intermediate goals
- Acknowledge economic implications of certain advice, offer to discuss alternatives/support
- Discuss consequences of failure to improve?
- Follow-up e-mail to Dr. Van Winkle (as opposed to note in file)

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132

**Dr. Buck**  
**Collegial Counseling Case Study**

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### Summary

- Young general surgeon from elite program
- Confident with leadership experience
- Independent surgical group; senior partner recently retired
- Two other young surgeons in group
- Two employed general surgeons on Medical Staff
- Dr. Buck increasingly busy in past year
- Recent Educational Letter from Dr. Carver

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Shady Oaks Memorial Hospital  
2023 S. 25th Street  
Phoenix, AZ, 85029  
Phone: 404-555-1202 www.shadyoaksmh.org

Thank you for providing written input regarding MR# 13579. I appreciate your constructive participation in our review process.

Your technical skills in addressing the patient's needs were not in dispute. However, the procedure likely would have had a different outcome if you had asked another surgeon to be present at the operation at the outset. In the future, please consider whether such difficult surprises would benefit from the presence of another surgeon.

This letter is being sent to you solely for education and guidance. I hope it is helpful. No response is required from you.

Most importantly, we know that you share our commitment to providing quality care to our patients in an environment most conducive to doing so and we look forward to working with you toward this goal.

Sincerely,  
Caroline Carver, MD  
Caroline Carver, M.D.  
Vice Chair, Department of Surgery

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# Methodist Healthcare

	<p>Shady Oaks Memorial Hospital 2023 S. 25th Street Peasportville, OH 43409</p> <p><b>As you know, this case involved a scheduled abdominal surgery on an elderly patient with significant co-morbidities and several prior abdominal surgeries. The patient experienced significant bleeding during the procedure followed by a cardiac arrest. Fortunately, the patient was resuscitated and you got the bleeding under control.</b></p> <p><small>This letter is being sent to you solely for education and guidance. I hope it is helpful. No response is required from you.</small></p> <p><small>Most importantly, we know that you share our commitment to providing quality care to our patients in an environment most conducive to doing so and we look forward to working with you toward this goal.</small></p> <p>Sincerely, <i>Caroline Carver, M.D.</i> Caroline Carver, M.D. Vice Chair, Department of Surgery</p>
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	<p>Shady Oaks Memorial Hospital 2023 S. 25th Street Peasportville, OH 43409</p> <p><b>Your technical skills in addressing the patient's bleeding are not in dispute. However, the procedure likely would have had a different outcome if you had asked another surgeon to be present at the operation from the outset. In the future, please consider whether such difficult surgeries would benefit from the presence of another surgeon.</b></p> <p><small>This letter is being sent to you solely for education and guidance. I hope it is helpful. No response is required from you.</small></p> <p><small>Most importantly, we know that you share our commitment to providing quality care to our patients in an environment most conducive to doing so and we look forward to working with you toward this goal.</small></p> <p>Sincerely, <i>Caroline Carver, M.D.</i> Caroline Carver, M.D. Vice Chair, Department of Surgery</p>
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	<p>Shady Oaks Memorial Hospital 2023 S. 25th Street Peasportville, OH 43409</p> <p><b>This letter is being sent to you solely for education and guidance. I hope it is helpful. No response is required from you.</b></p> <p><small>This letter is being sent to you solely for education and guidance. I hope it is helpful. No response is required from you.</small></p> <p><small>Most importantly, we know that you share our commitment to providing quality care to our patients in an environment most conducive to doing so and we look forward to working with you toward this goal.</small></p> <p>Sincerely, <i>Caroline Carver, M.D.</i> Caroline Carver, M.D. Vice Chair, Department of Surgery</p>
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# Methodist Healthcare



**Shady Oaks Memorial Hospital**  
2023 S. 25th Street  
Pleasantville, OH 43409

Most importantly, we know that you share our commitment to providing quality care to our patients in an environment most conducive to doing so and we look forward to working with you toward this goal.

Your technical assistance was invaluable. However, the procedure likely would have been completed another surgeon to be present at the operation at the time of the procedure. Whether such difficult surgeries would benefit from the presence of another surgeon.

This letter is being sent to you solely for education and guidance. I hope it is helpful. No response is required from you.

Most importantly, we know that you share our commitment to providing quality care to our patients in an environment most conducive to doing so and we look forward to working with you toward this goal.

Sincerely,  
*Caroline Carver, M.D.*  
Caroline Carver, M.D.  
Vice Chair, Department of Surgery

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**Shady Oaks Memorial Hospital**  
2023 S. 25th Street  
Pleasantville, OH 43409  
Phone: 404-555-1202 www.shadoxohm.org

To promote education and continuous improvement, the Medical Staff routinely reviews certain types of cases through its professional practice evaluation ("PPE") process.

Also, I think that the review process is the most effective way to increase the quality of care. Your input will be carefully considered as part of the review process.

No final conclusions or opinions have been reached. Please provide your written comments within 30 days. If you would also like to meet with me to discuss these issues, please contact me to arrange that meeting.

Thank you for your cooperation and participation in the Medical Staff's ongoing efforts to improve care.

Sincerely,  
*Caroline Carver, M.D.*  
Caroline Carver, M.D.  
Vice Chair, Department of Surgery

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**Shady Oaks Memorial Hospital**  
2023 S. 25th Street  
Pleasantville, OH 43409

MR# 24680 is one such case that was identified for review. To assist with the review process, I would appreciate your input and perspective on this case. Specifically, please explain why you believed it was appropriate to attempt a complicated surgical repair of a trauma patient's injuries in our community hospital rather than having the patient transferred to a tertiary care facility. As you know, the ED physician had concluded that the patient was stable for transfer.

Sincerely,  
*Caroline Carver, M.D.*  
Caroline Carver, M.D.  
Vice Chair, Department of Surgery

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# Methodist Healthcare



Shady Oaks Memorial Hospital  
2023 S. 25th Street  
Phoenixville, PA 19380  
Phone: 484-555-1202 www.shadyoakarmh.org

Also, I noted that your complication rate has increased markedly over the past 6 months. Enclosed are the relevant data. Please explain why you believe your complication rate in that time period has increased so significantly.

No final conclusions or opinions have been reached on these issues. Your input will be carefully considered as part of the review process.

Please provide your written comments within 10 days. If you would also like to meet with me to discuss these issues, please contact me to arrange that meeting.

Thank you for your cooperation and participation in the Medical Staff's ongoing efforts to improve care.

Sincerely,  
Carol Ann Carver, MD  
Carol Ann Carver, M.D.  
Vice Chair, Department of Surgery  
Enclosure

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Shady Oaks Memorial Hospital  
2023 S. 25th Street  
Phoenixville, PA 19380  
Phone: 484-555-1202 www.shadyoakarmh.org

No final conclusions or opinions have been reached on these issues. Your input will be carefully considered as part of the review process.

Also, I noted that your complication rate has increased markedly over the past 6 months. Enclosed are the relevant data. Please explain why you believe your complication rate in that time period has increased so significantly.

No final conclusions or opinions have been reached on these issues. Your input will be carefully considered as part of the review process.

Please provide your written comments within 10 days. If you would also like to meet with me to discuss these issues, please contact me to arrange that meeting.

Thank you for your cooperation and participation in the Medical Staff's ongoing efforts to improve care.

Sincerely,  
Carol Ann Carver, MD  
Carol Ann Carver, M.D.  
Vice Chair, Department of Surgery  
Enclosure

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Shady Oaks Memorial Hospital  
2023 S. 25th Street  
Phoenixville, PA 19380  
Phone: 484-555-1202 www.shadyoakarmh.org

CONFIDENTIAL

Please provide your written comments within 10 days. If you would also like to meet with me to discuss these issues, please contact me to arrange that meeting.

Also, I noted that your complication rate has increased markedly over the past 6 months. Enclosed are the relevant data. Please explain why you believe your complication rate in that time period has increased so significantly.

No final conclusions or opinions have been reached on these issues. Your input will be carefully considered as part of the review process.

Please provide your written comments within 10 days. If you would also like to meet with me to discuss these issues, please contact me to arrange that meeting.

Thank you for your cooperation and participation in the Medical Staff's ongoing efforts to improve care.

Sincerely,  
Carol Ann Carver, MD  
Carol Ann Carver, M.D.  
Vice Chair, Department of Surgery  
Enclosure

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# Methodist Healthcare



Shady Oaks Memorial Hospital  
2023 S. 20th Street  
Pleasantville, OH 43409  
Phone: 404-555-1202 www.shadyoaksmh.org

CONFIDENTIAL  
PER REVIEW DOCUMENT

Dear Dr. Buck,

To promote education and continuous improvement, the Medical Staff routinely reviews specific types of cases through its professional practice evaluation (PPE) process.

Please provide your comments on the PPE process. If you have any questions or need to discuss these issues, please contact me at [redacted].

Thank you for your cooperation and participation in the Medical Staff's ongoing efforts to improve care.

Sincerely,  
Caroline Curran, MD  
Caroline Curran, M.D.  
Vice Chair, Department of Surgery  
Enclosure

**Thank you for your cooperation and participation in the Medical Staff's ongoing efforts to improve care.**

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FROM THE DESK OF Y. BUCK, M.D.

**Thank you for your request for information. I appreciate the chance to provide these comments.**

Regarding the ED patient in MR# 24680, I operated on patients with similar injuries during my residency at [redacted] in [redacted]. Unfortunately, the patient's injuries were more extensive than they first appeared.

Still, if one or two more things had gone right, we could have addressed the patient's needs in our hospital and avoided the need for a transfer. Transferring the patient to a tertiary care facility in the city is inconvenient for the patient and the family. Under the circumstances, I thought someone had to step up to the plate and treat this patient, so that's what I did.

As for my complication rate, I believe I've been caring for more difficult patients that other general surgeons won't touch. Someone has to treat these people. If the hospital was better at risk-adjusting its data, I'm sure the numbers would support me.

Sincerely,  
*Y. Buck*  
Y. Buck, M.D.

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FROM THE DESK OF Y. BUCK, M.D.

**Regarding the ED patient in MR# 24680, I operated on patients with similar injuries during my residency, so I felt qualified to treat this patient as well. Unfortunately, the patient's injuries were more extensive than they first appeared.**

Still, if one or two more things had gone right, we could have addressed the patient's needs in our hospital and avoided the need for a transfer. Transferring the patient to a tertiary care facility in the city is inconvenient for the patient and the family. Under the circumstances, I thought someone had to step up to the plate and treat this patient, so that's what I did.

As for my complication rate, I believe I've been caring for more difficult patients that other general surgeons won't touch. Someone has to treat these people. If the hospital was better at risk-adjusting its data, I'm sure the numbers would support me.

Sincerely,  
*Y. Buck*  
Y. Buck, M.D.

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# Methodist Healthcare

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FROM THE DESK OF Y. BUCK, M.D.

Still, if one or two more things had gone right, we could have addressed the patient's needs in our hospital and avoided the need for a transfer. Transferring the patient to a tertiary care facility in the city is inconvenient for the patient and family. Under the circumstances, I thought someone had to step up to the plate and treat this patient, so that's what I did.

Sincerely,  
*Y. Buck*  
Y. Buck, M.D.

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FROM THE DESK OF Y. BUCK, M.D.

As for my complication rate, I believe I've been caring for more difficult patients that other general surgeons won't touch. Someone has to treat these people. If the hospital was better at risk-adjusting its data, I'm sure the numbers would support me.

Sincerely,  
*Y. Buck*  
Y. Buck, M.D.

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**Summary**

- **Young general surgeon from elite program**
- **Confident with leadership experience**
- **Independent surgical group; senior partner recently retired**
- **Two other young surgeons in group**
- **Two employed general surgeons on Medical Staff**
- **Dr. Buck increasingly busy in past year**
- **Educational Letter on seeking assistance**

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# Methodist Healthcare

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**Who is going to meet with Dr. Buck?**

**Dr. Caroline Carver**

Clinical Specialty  
Reviewer for Surgery

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**What change in circumstances may be contributing to Dr. Buck's problems?**

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**What would you suggest Dr. Buck do to address those changed circumstances?**

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# Methodist Healthcare

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**What personality traits of Dr. Buck may be relevant to his performance?**

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**What advice would you give Dr. Buck?**

**What are Dr. Buck's talking points?**

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**I have the necessary clinical privileges and I'm qualified. Sometimes bad outcomes just happen.**

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**I'm willing to take patients other physicians won't take. Someone has to treat these patients.**



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**Documenting Collegial Intervention (and Other Progressive Steps)**

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**Best Practice?  
Document All "Formal" Counseling Sessions  
... Constructively!!**

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# Methodist Healthcare

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## Document All Formal Sessions

- Fosters consistency and fairness
- Aids education of new leaders
- Facilitates communication through a central repository (be careful of separate files)
- Improves effectiveness of interventions

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## KEY: Tone is as Important as Content!

- Collegial, respectful, and empathetic (i.e., *nice*)
- Find a way to start with “Thank you”
- Exception? When necessary to reflect individual’s failure to change (“we’re disappointed...” “we regret you have chosen...”)

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## Topics to Address in Follow-Up Letters

- Summarize background
  - describe incident
  - identify relevant Bylaws or policy provision
  - discuss history
- Describe expectations going forward
- Describe consequences of failing to meet expectations (as needed)
- Monitoring, non-retaliation (as needed)

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# Methodist Healthcare

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## Five Audiences

(especially for letters after pattern)

- Physician under review
- Physician's attorney
- Future physician leaders
- Defense counsel
- Judge

Also, ask yourself: How would this look on the front page of the local paper?

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163

## Whenever You Document...

- Individual given opportunity to respond in writing
- Response kept in file

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## Investigations (with a Capital I)

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# Methodist Healthcare

## What is an “Investigation”?

- A formal process described in the Medical Staff Bylaws and Credentials Manual
- Results reported to the MEB for action

Avoid using the term “Investigation” unless referring to the process described in the Credentials Policy.

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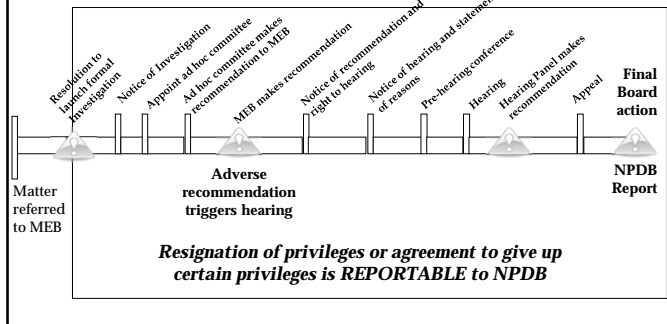
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## Investigation Decision Points



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## Medical Staff Bylaws say MEC will decide whether to initiate an Investigation. Important for:

- Compliance with policies; know what requirements apply
- NPDB reporting

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# Methodist Healthcare

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## Notify the Physician

Dear Dr. \_\_\_\_\_:

- Notice
- "In follow-up to \_\_\_\_\_"
- Next steps
- Investigating Committee members
- Physician's obligations

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## Notify the Investigating Committee Members

Dear Investigating Committee Member:

- Duties
- Information to consider
- Time frames
- Indemnification

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## Who Should Conduct Formal Investigations?

- Health Care Quality Improvement Act does not address
- Bylaws say:
  - MEB investigates; or
  - MEB designates a committee (ad hoc or standing)

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## Composition of Ad Hoc Committee

- 3 – 5 members is generally best
- Past Medical Staff leaders
- Impartial reviewers (no friends, partners, referral relationships, prior to involvement in review)
- Consult Conflict of Interest Guidance

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172

## Scope of the Investigation

- MEB should outline
- Not limited to cases that initially triggered the Investigation; other problems that are uncovered may be addressed

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## How far back can you go?

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# Methodist Healthcare

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- Was the prior incident isolated, or part of a trend?
- Was the prior incident documented at the time?
- Are witnesses to the prior incident available, and would they remember events?
- What looks reasonable?

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**Remember to follow your policies!**



**Disregarding policies gives plaintiffs' attorneys an easy target, which distracts from quality issues.**

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**External reviewers can be used to obtain additional expertise, as needed.**

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## External Clinical Reviewers

- **Qualifications should withstand cross-examination; review CV, check references**
- **Match between reviewer's background/practice setting and hospital setting**

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## External Clinical Reviewers

- **Expectations outlined in a written agreement**
  - **Nature of report**
  - **Use of review worksheets?**
  - **Confidentiality**
  - **Indemnification**
  - **HIPAA Business Associate Agreement**

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## External Clinical Reviewers Content of Report

- **“Just the facts, Ma’am” – No recommendations as to course of action**
- **Comments about care provided by other individuals should be included in a separate report**

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# Methodist Healthcare

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## External Clinical Reviewers Agreement for Follow-Up

- Meet with committee (or be available by phone)
- Respond to physician or physician's expert
- Participate in hearings or litigation

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181

**Do not use standard  
reappointment letter if an  
Investigation is underway!**

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## Witness Interviews

- Draft questions in advance
- Avoid obtaining only general statements; obtain specific, verifiable information
- Entire committee or single member may conduct
- Prepare signed witness summaries
- Counsel may assist

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# Methodist Healthcare

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## How can prior documentation be used?

- No need to re-do everything in file; can rely on work of MS CRC, Facility Leadership Council, CPE, etc.
- Can use interviews and other fact-finding to fill in holes, gain better understanding of documentation in file

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## Involving the Physician Under Review

- Ideally, communications have been ongoing (through collegial intervention, PPE Policy, Professionalism Policy, etc.)
- Follow Credentials Manual; err on the side of seeking more input rather than less

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## Prior to Interview

- Provide summary of concerns, with associated medical record numbers
- Provide report of external reviewer, if one was obtained
- Physician may be asked to respond in writing prior to interview

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# Methodist Healthcare

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**NO audio or  
video recording  
(consider transcription)**



**NO Counsel  
at Meeting!**

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**How Do We Protect Patients  
While We Investigate?**

**Remember the guiding principle:**

**What is the least restrictive option  
that will protect patients during  
the Investigation process?**

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**Before you suspend ...**

- Meet with physician; seek voluntary agreement to:
  - Limit practice; or
  - Refrain from ALL practice
- Reportable to NPDB if longer than 30 days (because being done by MEC during an Investigation)
- Advantages to physician:
  - Professionalism/how it can be characterized
  - Future application answers

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## **Precautionary Suspension**

- If physician won't agree to voluntary action
- Only should be used if there is imminent danger to the health and/or safety of any individual
- Document why such concerns exist

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## **Form of Investigative Report**

- Findings
- Conclusions
  - Findings and conclusions should be supported by specific cases or MRNs
  - Not enough to say "showed poor judgement." Describe specific instances
- Recommendations

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191

## **When Does an Investigation End?**

- Once an Investigation begins, it continues until the hospital either takes a final action or formally closes the investigation
- MEB may take certain actions based on Investigation, or make recommendation to Board

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192

**The Connection Between  
Physician Behavior  
and  
Patient Safety**

*Does Any Doubt Remain?*

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**Not From ...**

**Those Who Provide Care  
The Joint Commission  
The Courts**

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*Journal of the American College  
of Surgeons, July 2006*  
**Impact and Implications of Disruptive  
Behavior in the Perioperative Arena**

195

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***Ear, Nose and Throat Journal,  
March 2008***

***Disruptive Physicians: Sound More Familiar  
Than You Thought?***

196

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***Neurology, April 2008***

***Managing Disruptive Physician Behavior:  
Impact on Staff Relationships and  
Patient Care***

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***Annals of Surgery, June 2008***

***When Good Doctors Go Bad: A Leape  
of Faith***

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***American Journal of Medical Quality,  
April 2011***

***The Quality and Economic Impact of  
Disruptive Behaviors on Clinical  
Outcomes of Patient Care***

199

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***Academic Radiology, September 2013***

***The Cost of Disruptive and Unprofessional  
Behaviors in Health Care***

200

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***Journal of the American Medical Association,  
December 2014***

***Disruptive Behaviors Among Physicians***

201

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***American Journal of Surgery, January 2015***  
***Effects of Disruptive Surgeon Behavior in the Operating Room***

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**Not From ...**  
**Those Who Provide Care**  
**The Joint Commission**  
**The Courts**

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**Joint Commission 2009**  
**L.D.03.01.01**  
**“Leaders create and maintain a culture of safety and quality throughout the hospital.”**

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# Methodist Healthcare

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**Rationale for  
Joint Commission Standard  
L.D.03.01.01**

**“Safety and quality thrive in an environment that supports teamwork and respect for other people, regardless of their position in the hospital.”**

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**LD.03.01.01**

**EOP 4**  
Leaders develop a code of conduct that defines acceptable behavior and behaviors that undermine a culture of safety.

**EOP 5**  
Leaders create and implement a process for managing behaviors that undermine a culture of safety.

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**Not From ...**

**Those Who Provide Care  
The Joint Commission  
The Courts**

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# Methodist Healthcare

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*Abu-Hatab v. Blount Memorial Hospital*  
*Arunsalam v. St. Mary Medical Center*  
*Awwad v. Largo Medical Center, Inc.*  
*Badri v. Huron Hospital*  
*Blau v. Catholic Healthcare West*  
*Blau v. Northridge Hospital Medical Center*  
*Bolt v. Halifax Hospital Medical Center*  
*Bricker v. Crane*  
*Bricker v. Sceva Speare Memorial Hospital*  
*Bryan v. Holmes Regional Medical Center*

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*Bryant v. Glen Oaks Medical Center*  
*Catipay v. Humility of Mary Health Partners*  
*Cipriotti v. Board of Directors of Northridge Hospital*  
*Cotie v. Cortland Memorial Hospital*  
*Courtney v. Shore Memorial Hospital*  
*Curtsinger v. HCA, Inc.*  
*Dunbar v. Hospital Authority of Gwinnett County*  
*Eden v. Desert Regional Medical Center*  
*Eidelson v. Archer*

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*Even v. Longmont United Hospital Association*  
*Friedman v. Delaware County Hospital Association*  
*Freilich v. Board of Directors of Upper Chesapeake*  
*Gaenslen v. Board of Directors of St. Mary's Hospital*  
*Gekas v. Seton Corporation*  
*Ghanem v. Presbyterian Intercommunity Hospital*  
*Gilbert v. Johnson*  
*Ginzburg v. Memorial Healthcare Systems*  
*Gordon v. Lewistown Hospital*

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# Methodist Healthcare

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*Greer v. Medders*  
*Grodjesk v. Jersey City Medical Center*  
*Guier v. Teton County Hospital District*  
*Hagan v. Osteopathic General Hospital*  
*Hayes v. Northern Hills General Hospital*  
*Hildyard v. Citizens Medical Center*  
*Hoberman v. Lock Haven Hospital*  
*Huffaker v. Bailey*  
*Jablonsky v. Sierra Kings Healthcare District*

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*Johnson v. Galen Health Care*  
*Johnson v. Riverside Healthcare System*  
*Kellerman v. Virtua W. Jersey Hospital*  
*Kibler v. Northern Inyo County Local Hospital District*  
*Kiracofe v. Reid Memorial Hospital*  
*Ladenheim v. Union County Hospital District*  
*Laje v. R.E. Thomason General Hospital*  
*Lambert v. Baptist Memorial Hospital*  
*Langenberg v. Warren General Hospital*

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*Leach v. Jefferson Parish Hospital District*  
*Leal v. Health and Human Services*  
*Lees v. Asante Health System*  
*Leitgen v. Franciscan Skemp Healthcare, Inc.*  
*Leonard v. Board of Directors, Prowers County*  
*Lohrmann v. Iredell Memorial Hospital*  
*Lurie v. Mid-Atlantic Permanente Medical Group*  
*Magrinat v. Trinity Hospital*  
*Mahmoodian v. United Hospital Center, Inc.*

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# Methodist Healthcare

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*Manasra v. St. Francis Medical Center*  
*McElhinney v. Medical Protective Co.*  
*McKee v. St. Paul Eye Clinic, P.A.*  
*McMillan v. Anchorage Community Hospital*  
*Meyers v. Logan Memorial Hospital*  
*Miller v. Eisenhower Medical Center*  
*Miller v. St. Alphonsus Regional Medical Center*  
*Morgan v. Peace Health, Inc.*  
*Nanavati v. Burdette Tomlin Memorial Hospital*

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*Nathan v. Ohio State University*  
*Nieto v. Kapoor*  
*Northeast Georgia Medical Center v. Davenport*  
*Obey v. Frisco Medical Center, L.L.P.*  
*Oksanen v. Page Memorial Hospital*  
*Peterson v. Tucson General Hospital*  
*Peyton v. Johnson City Medical Center*  
*Pick v. Santa Ana-Tustin Community*  
*Ponca City Hospital, Inc. v. Murphree*

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*Pourzia v. St. Mary Medical Center*  
*Ritter v. Board of Commissioners of Adams County*  
*Rooney v. Medical Center Hospital of Chillicothe*  
*Robbins v. Ong*  
*Ross v. William Beaumont Hospital*  
*Santos v. Puerto Rico Children's Hospital*  
*Schueller v. Norman*  
*Siegel v. St. Vincent Charity Hospital & Health Center*  
*Silver v. The Queen's Hospital*

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# Methodist Healthcare

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*Skeete v. North American Partners in Anesthesia, LLP*  
*Smith v. Cleburne County Hospital*  
*Smith v. Our Lady of the Lake Hospital*  
*Spencer v. Children's Hospital*  
*Sternberg v. Nanticoke Memorial Hospital, Inc.*  
*Straznicki v. Desert Springs Hospital*  
*Sussman v. Children's Hospital*  
*Theissen v. Watonga Municipal Hospital Board*  
*Truly v. Madison General Hospital*  
*Vankrimpen v. Holland Community Hospital*

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*Vesom v. Atchison Hospital Association*  
*Vranos v. Skinner*  
*Walls Regional Hospital v. Altaras*  
*Wei v. Bodner*  
*Welchlin v. Fairmont Medical Center*  
*Wheeless v. Maria Parham Medical Center*  
*Wieters v. Roper Hospital, Inc.*  
*Wood v. Archbold Medical Center*  
*Yarnell v. Sisters of St. Francis Health Services, Inc.*  
*Zipper v. Health Midwest*

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**Dr. Leal and the  
Terrible,  
Horrible,  
No Good,  
Very Bad Day**

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## **The Court Said:**

**“The plaintiff, Dr. Jorge J. Leal, was like Alexander in the classic children’s book... He was having ‘a terrible, horrible, no good, very bad day.’”**

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- **Dr. Leal’s use of an operating room was delayed (for 20 minutes, as it turned out)**
- **“He pitched a fit.”**

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**The Hospital suspended his privileges for 60 days and reported the suspension to the Data Bank.**

**Dr. Leal sued to have the report removed.**

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According to the Hospital, Dr. Leal became so enraged he:	According to Dr. Leal's affidavits, he:
1. broke a telephone	1. accidentally broke a telephone when he tripped on its cord
2. shattered the glass on a copy machine	2. closed the lid of a copy machine with 'some force' and the glass cracked
3. shoved a cart into the doors of the operating suite so hard that it damaged one of them	3. moved a cart that was blocking the doors of the operating suite
4. threw jelly beans down the hallway in the surgical suite	4. ate jelly beans, some of which fell on the floor when he tried to throw away flavors he did not like
5. flung a medical chart to the ground	5. and when he was handed a chart, some of the loose papers fell to the floor

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**The Court Said:**  
  
**“In other words, this urological surgeon, who earns his living wielding a razor-sharp scalpel on some of the most delicate parts of the body, does not have a bad temper –  
  
he is just clumsy.”**

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**Dr. Leal argued that the suspension was not reportable because “he was not suspended for conduct which ... affects or could affect adversely the health or welfare of a patient or patients.”**

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**The Court Said:**

**“The fact that no patients were hit by pieces of the broken telephone, or by the shattered copy machine glass, or by the careening metal cart, or by the flying jellybeans, or by the airborne medical chart, is not dispositive.**

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**The Court Said:**

**“The Hospital was required to report its disciplinary action to the Data Bank, even though its halls were not littered with injured patients.”**

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**The Court Said:**

**“...Disruptive and abusive behavior by a physician, even if not resulting in actual or immediate harm to a patient, poses a serious threat to patient health or welfare. A physician must work collaboratively with other members of a medical staff in order to provide quality care to patients.**

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## The Court Said:

“...A hospital is one place where no one can do his job alone, where better teamwork means better care, and where disruptive behavior threatens lives.”

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## Best Practices for Addressing Behavior Issues

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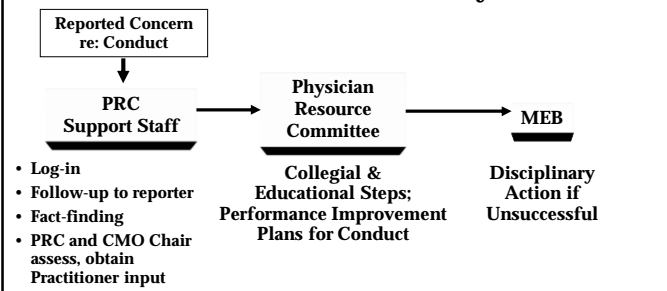
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## Unified Medical Staff Professionalism Policy



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## Professionalism Policy

- Explains the “Why?” and Promotes a Positive Tone  
“Communication, collegiality, and collaboration are essential for the provision of safe and competent care.”

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## Professionalism Policy

Provides *Specific* Examples of Inappropriate Conduct

- Educates all Medical Staff members and APPs
- Facilitates enforcement of Policy

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## Professionalism Policy

STEP #1  
Fact-finding

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## Professionalism Policy

- Review documentation of concern and interview witnesses
  - Develop script and sample interview questions to promote consistency
  - Can have interviewee sign short confidentiality acknowledgement
- PRC Chair and CMO then decide if concern should to PRC

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## Professionalism Policy

### STEP #2

- If PRC Chair and CMO decide that further review is required, share details with colleague for written response (but protect identities)
- Gently remind colleague to avoid even the perception of retaliation

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## Chooses not to participate?

Physician  
Resource  
Committee

- Practitioner must meet with PRC to explain
- **AUTOMATIC SUSPENSION** of privileges if Practitioner fails to provide input prior to meeting date or attend meeting when requested

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## Professionalism Policy

### STEP #3

Physician Resource Committee reviews summary of incident, input received from Practitioner, Practitioner's history, and determines most effective improvement tool if necessary

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## Physician Resource Committee Options

(outlined in Professionalism Policy)

- No further review or action required
- Letter of guidance or counsel
- Collegial intervention
- Performance Improvement Plan
- Refer to MEB

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## PIP Options for Conduct

(beyond Educational Letters and Collegial Intervention)

- Additional CME/training (many options)
- Intervention meeting involving full Physician Resource Committee or other designated group
- Periodic/scheduled meetings involving Medical Staff Leaders or mentors
- Required review of literature regarding behavior/safety and report to Physician Resource Committee

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## PIP Options for Conduct

- Behavior Coach
- Behavior Modification Course
- Personal Code of Conduct
- "Other"

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## Professionalism Policy

**Special Process for Allegations of Sexual Harassment and other Identity-Based Harassment**

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**DOs**

**AND**

**DON'Ts**



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243

# Methodist Healthcare

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**DO**

**Use Progressive Steps to address concerns early.**

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**DON'T**

**Ignore quality concerns.**



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**Most disruptive practitioners view themselves as quality “champions.”**

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**DO**

**Stay focused on the inappropriate behavior, not its cause.**

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**Psychiatric Evaluations?**

- **Be careful! Generally, not a good idea unless good cause exists**
- **Stay focused on inappropriate behavior, not possible causes**

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**Psychiatric Evaluations**

If you do ...

- **Practitioner must sign release to allow leadership to inform psychiatrist of concerns**
- **Practitioner must sign release to allow psychiatrist to report directly to leadership**
- **Questions for psychiatrist:**
  - **Can the practitioner function in an organized setting?**
  - **If not, what steps are needed to permit practitioner to do so?**

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**DO**

**Document,  
document, document!!!**

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**“Discipline” is a last resort**  
**(But there is little doubt about how  
the courts feel about the issue  
if it ever ends up there!)**

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**Practitioner Health:  
Protect Patients,  
Help the Practitioner**

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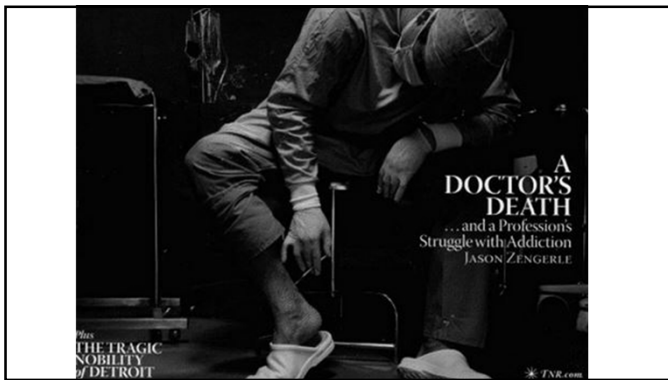
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**The AMA defines physician impairment as “any physical, mental, or behavioral disorder that interferes with the ability to engage safely in professional activities.”**

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## Examples in Practitioner Health Policy

- use of any medication, whether prescription or over-the-counter, that can affect alertness, judgment, or cognitive function
- medical condition (e.g., stroke or Parkinson's disease), injury, or surgery resulting in temporary or permanent loss of fine motor control or sensory loss
- any form of diagnosed dementia (e.g., Alzheimer's disease, Lewy body dementia), or other cognitive impairment

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## What's the Scope of the Problem?

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Stress and Burnout Among Surgeons

## Mental Health

- 2021 Medscape survey, 6% of physicians described themselves as “clinically depressed”
- The lifetime prevalence of clinically significant depression in two studies was:
  - 12.8% of 1,300 male physicians
  - 19.5% of 4,500 female physicians

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## Substance Abuse

**10% – 14% of physicians may become chemically dependent (i.e., drugs or alcohol) at some point in their careers. This mirrors the general population.**

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## Doctor charged with DWI crash that kills 4-year-old.

Center for treatment. The drivers suddenly noticed that were not the threatening, police said. Both agreed to have their blood drawn. Police say the tests won't be ready until Tuesday, however.

Juliana Reyes, 36, was hospitalized with a fractured skull at the hospital at about 11 a.m. Tuesday, according to Reyes. Velez was taken to a hospital for further treatment. A report on her condition was not available Saturday afternoon.

The cause of the late night crash was Edward Santana, who lives on Santa Fe Blvd. He walked to the intersection and saw one vehicle speed down the road, along with a stream of emergency vehicles. On Saturday morning, he returned to the crash site, where among remaining debris he found a Chrysler marker and a bag of Cheetos that he suspects came from the family vehicle.

**Recent articles by Julie Ann Green:**

- Highway 66 in 2011: 100th anniversary
- Downtown change would send funds from water rights to local government
- Santa Fe Police: Santa Fe today as city with regional history in mind
- Children's report: 100th anniversary celebration
- Christmas
- Holiday events: biggest sale of residences in city
- Anniversary: 100th anniversary
- Santa Fe: Santa Fe has been a hot spot for 100 years
- The Santa Fe Foundation: 100th anniversary
- Santa Fe: Santa Fe has been a hot spot for 100 years
- Santa Fe: Santa Fe has been a hot spot for 100 years
- Santa Fe: Santa Fe has been a hot spot for 100 years
- Santa Fe: Santa Fe has been a hot spot for 100 years

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## Caught on video: Boston-area 'Doctor of the Year' is busted for drunk driving after hitting two other vehicles.



- 1. The story
- 2. Father of India rape victim identifies suspect
- 3. Sen. Rand Paul's son charged with underage drinking
- 4. FBI agent caught stealing money from wife's car
- 5. Shooting and for crisis team still
- 6. Video: 100th anniversary of Santa Fe
- 7. Santa Fe: Santa Fe has been a hot spot for 100 years
- 8. Santa Fe: Santa Fe has been a hot spot for 100 years
- 9. Santa Fe: Santa Fe has been a hot spot for 100 years

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**Kimberly Jones**

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## Aging Doctors Face Greater Scrutiny

### Aging

- Approximately 242,000 physicians are 65 or older
- Approximately 10% of Americans 65 or older have dementia
- What about physicians?

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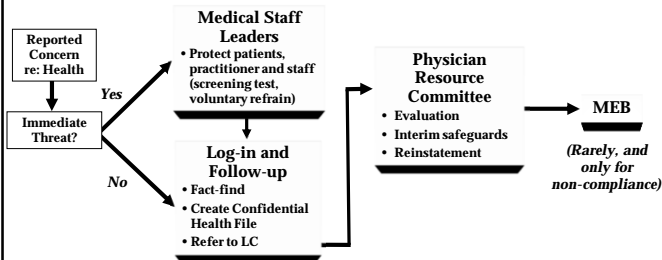
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## Practitioner Health Policy



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## Physician Resource Committee May Obtain Assistance

- Employer (who may be recused from a meeting at any point, at the Chair's discretion)
- Department Chair
- Subject matter expert (e.g., an addictionologist, neuropsychologist, or psychiatrist)
- All bound by same responsibilities and legal protections as Physician Resource Committee members (e.g., confidentiality, indemnification, etc.)

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## Process

- Reporting
- Fact-finding
- Meeting
- Evaluation
- Resolution
- Follow-up

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## Reporting

What if immediate action is needed?

- E.g., Practitioner seems disoriented or is acting erratically while rounding, or smells of alcohol while scrubbing for surgery
- No time for Physician Resource Committee to meet

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## If immediate action is needed:

- **Practitioner Health Policy :**
  - identifies Medical Staff leader(s) who will assess Practitioner
  - authorizes immediate testing (refusal leads to automatic relinquishment)
  - provides guidance on use of agreement not to exercise privileges or precautionary suspension
  - addresses care of Practitioner's patients

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## Fact-Finding

- Review any relevant documentation
- Interview those who reported or observed
  - Emphasize confidentiality (have interviewee sign short confidentiality acknowledgement)
  - Emphasize non-retaliation

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## Meeting with Colleague

### Plan the Meeting with Care

- Do your homework! Know your policy and options
- Entire committee? Select leaders?
- Have a pre-meeting and reach agreement on desired outcomes

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## Meeting with Colleague

### Plan the Meeting with Care

- Have a script — never shoot from the hip!
- Emphasize non-punitive nature of process and confidentiality
- Anticipate denial and evasive tactics
- Think about what questions to ask; be a skilled interviewer

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## Evaluation

### Who performs?

- Evaluating entity must be selected by, or acceptable to, the Physician Resource Committee

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## Evaluation

### Communications:

- Have physician sign authorization to permit hospital and evaluating entity to communicate with one another
- How much information should hospital provide to evaluating entity?

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## Evaluation

### Format of report:

- Have evaluator complete form that addresses issues relevant to the physician in question (no one line letters!)
- How much information should Physician Resource Committee receive from evaluator (different for medical vs. psychiatric issue)?

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## Resolution

- Conditions of reinstatement should be described in detail
- For substance abuse:
  - Compliance with PHP contract
  - Agree to random screening
  - Workplace monitor
  - Coverage

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## Documentation

- Create “Confidential Health File” (separate from Credentials File and Quality File)
- During reappointment, Physician Resource Committee prepares Summary Health Report based on information in file
- Credentials Committee, MEC, and Board may request additional information if necessary

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**What about the Americans with Disabilities Act (ADA)?**

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**Under the ADA, an employer may exclude an applicant or employee with a disability from a particular position if that individual would pose a “direct threat to health or safety.”**

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## **Aging Physicians**

- **Studies exploring proficiency of senior physician have varying results**
- **Key point: Age affects everyone – eventually**
- **Knowing that, how do you identify physicians whose practice is adversely affected by age?**
  - **Rely on your PPE process?**
  - **Have an age-based screening process?**

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## Benefits of a Rule (e.g., a Bylaws Provision)

- Protect patients
- Reduce risk of negligent credentialing claims
- Treat all physicians the same (thus reducing risk of discrimination claims)
- Depersonalize issue
- Protect physician; prevent late-career tragedy

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JAMA Performance Improvement

January 14, 2020

## Cognitive Testing of Older Clinicians Prior to Recredentialing

Leo Cooney, MD<sup>1</sup>; Thomas Balcezak, MD<sup>2</sup>

➤ Author Affiliations

JAMA. 2020;323(2):179-180. doi:10.1001/jama.2019.18665

- 141 clinicians, age 69 to 92, tested over 2+ years
- Battery of 16 brief tests; 50 to 90 minutes to complete
- Single neuropsychologist (for consistency)
- Medical Staff Review Committee reviewed results

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Result	Number / Pct
Normal limits (re-screened in 2 years)	81 / (57%)
Minor abnormalities (re-screened in 1 year)	34 / (24%)
Some weakness – further assessment needed	7 / (5%)
Acceptable results after further assessment	4
Change in practice after further assessment	3
Substantial deficits – further assessment needed	7 / (5%)
Acceptable results after further assessment	4
Change in practice after further assessment	3
Very substantial deficits – change in practice	12 / (9%)

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**“After completion of screening and/or full neuropsychological testing, the MSRC determined that 18 clinicians (12.7%) of the 141 tested demonstrated cognitive deficits that were likely to impair their ability to practice medicine independently.”**

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**“None of these 18 clinicians had previously been brought to the attention of medical staff leadership because of performance problems.”**

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### **Drawbacks of a Rule**

- **Overly inclusive (affects physicians with no problems)**
- **Controversial, inconvenient, expensive**
- **Unnecessary if peer review process is working properly? (*JAMA article illustrates potential difficulties with this argument*)**
- **Difficulty interpreting test results (especially if no baseline)?**

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## Drawbacks of a Rule

- **Increased risk of discrimination claims under ADEA and ADA -- *EEOC v. Yale New Haven Hospital***
  - Federal EEOC sued hospital, alleging Late Career Practitioner Policy violated the ADEA and ADA
  - Hospital policy required neuropsychological testing and eye exam after age 70
  - “Age is not a bona fide occupational qualification.” Individual assessment required.
  - Employment status didn’t matter
  - Complaint filed Feb. 11, 2020; case being litigated

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## Drawbacks of a Rule

- **January 2021 EEOC Settlement with Hennepin Healthcare System for Late Career Practitioner Policy:**
  - monetary relief
  - reimbursement for out-of-pocket costs associated with the exams not covered by insurance
  - commitment from Hennepin to not require employees to undergo medical inquiries

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## If considering an age-based policy:

- Consult counsel and executive leaders
- Appropriate committee should review literature addressing:
  - Physical and mental effects of aging (e.g., pilot studies)
  - Relationship between age and patient outcomes
- Minutes should justify decision

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**Stay Tuned...**

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**Questions?**



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**Thank You!**

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Thank you.

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