
Arkansas Children's

Medical Staff Leadership Training Credentials Committee

July 10, 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

**ARKANSAS CHILDREN'S
Medical Staff Leadership Training (Virtual)
July 2023**

Date and Time	Committee
<p>July 10, 2023 5:00– 5:45 p.m.</p>	<p>Credentials Committee</p> <ul style="list-style-type: none"> • Legal protections for credentialing • Spotting red flags • Importance of eligibility criteria • Not processing incomplete applications
<p>July 13, 2023 Noon – 12:45 p.m.</p>	<p>Health Committee</p> <ul style="list-style-type: none"> • Legal protections for reviews of health concerns • How to support colleagues while protecting patients • Review of process in Practitioner Health Policy
<p>July 13, 2023 4:30 – 5:15 p.m.</p>	<p>ACNW Medical Executive Committee</p> <ul style="list-style-type: none"> • Legal protections for credentialing and peer review • Overview of PPE/Peer Review Policy • Overview of Professionalism Policy • Overview of Practitioner Health Policy
<p>July 18, 2023 4:30 – 5:15 p.m.</p>	<p>ACH Medical Executive Committee</p> <ul style="list-style-type: none"> • Legal protections for credentialing and peer review • Overview of PPE/Peer Review Policy • Overview of Professionalism Policy • Overview of Practitioner Health Policy
<p>July 26, 2023 4:00 – 4:45 p.m.</p>	<p>Committee for Professional Enhancement</p> <ul style="list-style-type: none"> • Legal protection for peer review • Overview of process • Obtaining meaningful input from those under review • Effective Voluntary Enhancement Plans

ACCREDITATION STATEMENT

Accreditation and Credit Designation

In support of improving patient care, this activity has been planned and implemented by the University of Pittsburgh and HortySpringer 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.

Physician (CME)

The University of Pittsburgh School designates this live activity for a maximum of 0.75 AMA PRA Category 1 CreditsTM. Physicians should claim only the credit commensurate with the extent of their participation in the activity.

Other Healthcare Professionals

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.

EDUCATIONAL INTENT

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

TARGET AUDIENCE

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

PHIL ZARONE

PZarone@HortySpringer.com

PHIL ZARONE is a partner with the law firm of Horty, Springer & Mattern in Pittsburgh, Pennsylvania, which specializes in the practice of hospital and health care law. For over 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.

Arkansas Children's

Arkansas Children's
Medical Staff Leadership Training:
Credentials Committee

July 10, 2023

Phil Zarone
Horty, Springer & Mattern

1

The Law is on *Your* Side:

**Legal Protections for
Medical Staff Leaders**

2

**Legal Protections for
Medical Staff Leaders**

- Health Care Quality Improvement Act of 1986

3

Arkansas Children's

Health Care Quality Improvement Act of 1986

- Immunity from damages
- Peer reviewers winning overwhelmingly

4

Legal Protections for Medical Staff Leaders

- Health Care Quality Improvement Act of 1986
- Arkansas Peer Review Statute
 - Immunity
 - Confidentiality Privilege

5

Legal Protections for Medical Staff Leaders

- Health Care Quality Improvement Act of 1986
- Arkansas Peer Review Statute
- Release Provisions in Medical Staff Credentials Policy

6

Arkansas Children's

Section 2.C.2 of Credentials Policy states:

To the fullest extent permitted by law, the individual releases from any and all liability, extends immunity to, and agrees not to sue the Hospital or any of its affiliates or subsidiaries, or any of their Boards, Board members, Medical Staffs, Medical Staff members, Advanced Practice Clinicians, Licensed Independent Practitioners, representatives or agents, or any third parties who provide information for any matter relating to appointment, reappointment, clinical privileges, or the individual's qualifications for the same.

7

Section 2.C.2 of Credentials Policy states:

If, despite this Section, an individual institutes legal action challenging any credentialing, privileging, peer review, or other action affecting appointment or clinical privileges, or any report that may be made to a regulatory board or agency, and does not prevail, he or she shall reimburse [everyone] for all costs incurred in defending such legal action, including reasonable attorney's fees, expert witness fees, and lost revenues.

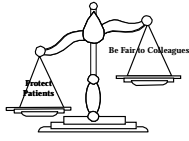
8

Legal Protections for Medical Staff Leaders

- Health Care Quality Improvement Act of 1986
- Arkansas Peer Review Statute
- Release Provisions in Medical Staff Credentials Policy
- Hospital D&O Insurance

9

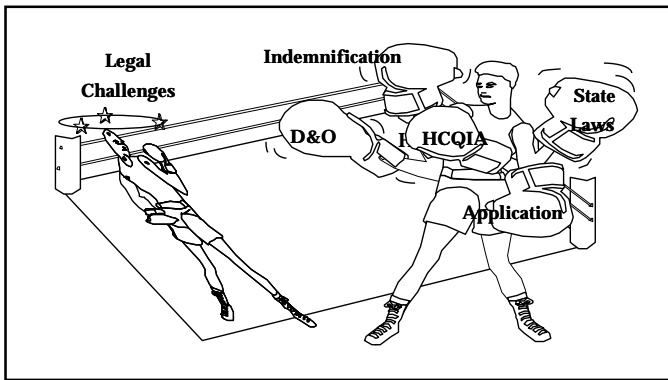
Arkansas Children's



When Balancing...

- Always Put the Patient First
- Don't Worry About Personal Legal Risk

10



11

Credentialing Tips

12

Tip

Follow your policies.

13



Disregarding policies gives an applicant's attorneys an easy target, which distracts from quality issues.

14

In Re Peer Review Action
(Minn. Ct. App. 2008)

"Significant" and "repeated" disregard of Bylaws can result in finding that hospital acted with "malice," resulting in loss of immunity.

15



Disregarding policies (e.g., skipping steps, obtaining less information than normal) gives malpractice attorneys an easy target

16

Tip

Apply the objective eligibility criteria in your Credentials Policy.

17

Benefits of Objective Eligibility Criteria

- **Screen applicants with a checkered past**
- **Reduce risk of discrimination claims**
- **Manage NPDB reporting obligations**

18

Arkansas Children's

Examples

(Section 2.A.1 of Credentials Policy)

- Current, unrestricted license that is not subject to probation
- No history of licensure problems in any state
- No resignation while under investigation
- Clinical activity in primary area of practice during past two years
- Compliance with health screening requirements (e.g., TB testing policy, any mandatory vaccines)

19

**Don't "deny" unnecessarily.
Only those who meet objective
criteria are eligible to apply.**

20

Tip

**Grant waivers sparingly,
carefully, and deliberately.**

21

Arkansas Children's

Pros

- Provides "second chance" to physicians
- Ensures hospital, medical staff, and patients do not miss out on talent unnecessarily

Cons

- Introduces subjectivity into otherwise objective process
- If implemented inconsistently, risk of challenge

22

Waivers

(Section 2.A.2 of Credentials Policy)

- Factors to consider may include:
 - What is the nature of the disqualifying factor?
 - Is there more than one disqualifying factor?
 - Was the disqualifying factor completely resolved?
 - Was the disqualifying factor recent?
 - Does the applicant have other exceptional qualifications?

23

Tip

Don't process incomplete applications.

24

Arkansas Children's

An application should be incomplete if there are:

- Unanswered questions
- Gaps in professional experience

25

An application should also be incomplete if:

- Supporting information is not supplied
- Concerns are not resolved

26

If questions arise, stop the credentialing process and deem the application incomplete until additional information is provided.

27

Arkansas Children's

**Apply your Credentials Policy language
(Section 2.B.2):**

- Application becomes incomplete if need arises for additional information
- Incomplete applications will not be processed, and will be deemed withdrawn after 30 days
- No right to hearing or appeal

28

**There is no obligation to process an
incomplete application.**

**E.g., *Spindle v. Sisters of Providence*
61 P.3d 431 (Alaska 2002)**

29

Tip

Avoid the "D" Word.

30

Arkansas Children's

Instead of "denying," rely on:

- Eligibility criteria
- Incompleteness
- Automatic relinquishment
- Voluntary action

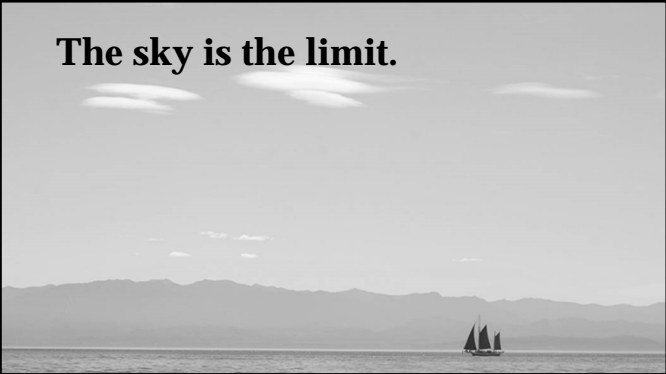
31

Tip

Get meaningful peer evaluations.

32

The sky is the limit.



33

Arkansas Children's

Consider whether references are qualified to comment on applicant's skill.

34

CONFIDENTIAL REPORT - CREDENTIALS COMMITTEE

Applicant: [REDACTED] DOB: [REDACTED]

Referring to: [REDACTED] # [REDACTED]

Expiring Date: [REDACTED]

PLEASE RESPOND TO ALL QUESTIONS NOTED AND DO NOT LEAVE ANY BLANK SPACES.

Date of Applicant's Most Recent License as Your Specialty: 2018/01/01

Relationship to Applicant: Colleague & Wife

Date of Interview (if applicable): _____

Date of last contact (if applicable): _____

3. I am currently employed with this applicant:

--- In last 6 months... have not... months since I have been closely associated with this applicant.

4. Evaluation of applicant's professional skills:

	Pass	Fail	Good	Excellent	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12
Professional knowledge of medicine	---	---	---	---	---
Ability to plan and execute treatment (clinical judgment)	---	---	---	---	---
Diagnostic ability	---	---	---	---	---
Doctor-patient relationship	---	---	---	---	---
Relationships with professional personnel	---	---	---	---	---
Judgment in recognizing responsibility as relationship to competency	---	---	---	---	---

35



What if some or all of the references do not respond?

36

Arkansas Children's

Some reference return

The only reason you care about **II NEVER, EVER, your form:**

- because they're busy
- because their lawyer is about to use their own form
- because the hospital is down/flooded
- **because they want to hide negative information about the practitioner**
- because of a million other reasons

37

Factors to consider:

- Reason to believe something is being hidden?
- Reasonable explanation for why information not provided?
- Would alternative information suffice?
- Has enough information already been supplied by other sources?

38

Bottom line:

Application may be held incomplete unless all reference evaluations are received.

39

Arkansas Children's

Alternative: If a reference simply refuses to respond, try to verify that this is standard for this person. Then find (or have applicant find) a substitute.

40

If response is limited to "name, rank and serial number," verify that such responses are standard for that hospital. Also verify that the standard form is being used.

41

Application may be held incomplete unless all reference evaluations are received.


42

Arkansas Children's


Use the telephone.



43


 Mercy Hospital 2101 Shreveport Blvd Charlottesville, TN 37043 615-595-4000 www.mercyhospital.org	
January 29, 2003	
January 29, 2003 To Whom It May Concern:	
This letter of reference is written regarding Dr. Roberts. I	
This letter of reference is written regarding Dr. Roberts. I was elected Chief of Surgery at Mercy Hospital effective January 1 of this year.	
Sincerely,	
David Jones, M.D. Chief of Surgery	

44

 Mercy Hospital 2101 Shreveport Blvd Charlottesville, TN 37043 615-595-4000 www.mercyhospital.org	
As the new Chief of Surgery, I am not particularly familiar with Dr. Roberts, other than to comment that she is a member of the Active Medical Staff, Division of Surgery, with unrestricted privileges in Neurosurgery.	
Sincerely,	
David Jones, M.D. Chief of Surgery	

45

Arkansas Children's

	 <p>January 29, 2003 To Whom It May Concern:</p>	
<p>I am referring your questionnaire to our Medical Staff Professional, Ms. Nancy Walters, for completion and to comment on areas with which I am unfamiliar.</p>		
<p>Sincerely,</p> <p>David Jones, M.D. Chief of Surgery</p>		

46

	<p>TELEPHONE REFERENCE CHECK</p> <p>APPLICANT: _____</p> <p>NAME OF REFERENCE: _____</p> <p>TITLE/POSITION: <u>Chief Surgery</u></p> <p>PHONE NUMBER: _____ DATE OF CALL: <u>1/18/03</u></p> <p><small>Instructions: Ask questions either verbatim or in your own words and record response. Include additional questions based on review of applicant's file.</small></p> <p>1. Do you personally know the applicant? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>2. Were the applicant's practice patterns acceptable and did they conform with high standards of professional conduct? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>3. Please provide your opinion about the clinical competency of the applicant and what you are basing this opinion on, i.e., direct observation, quality assessment profile, etc. <u>Chief Surgery. He practices what he says and correctly</u></p> <p>4. To your knowledge, has the applicant ever been the subject of disciplinary action? <u>Not at all/never will be. Past events may had to hand when (sent him)</u></p>	
--	---	--

47

	<p>5. Additional questions/responses:</p> <p><u>"many factors"</u></p> <p><u>Several cases that I did not think</u></p> <p><u>→ adjust in the scheduling that he</u></p> <p><u>→ ? I don't know for surgery - several cases for</u></p> <p><u>of surgery - not available; signed off</u></p> <p><u>to be responsible to read at times</u></p> <p><u># 2 - Strongly recommend him as chief of surgery</u></p> <p><u>He has a lot of → Dr. [unclear] "Chief" can say</u></p> <p><u>praised in scheduling room</u></p> <p><u>He has already worked for others</u></p> <p>6. Overall rating of applicant Excellent <input type="checkbox"/> Good <input type="checkbox"/> Fair <input type="checkbox"/> Poor <input checked="" type="checkbox"/></p> <p>Name and Signature of Person Calling for Telephone Reference Checks: <u>Chief Surgery</u></p> <p>Name and Signature of Department Chairperson: <u>Dr. [unclear] He has a lot of cases that I did not think he was responsible for, in critical, important surgery. #11</u></p>	
--	--	--

48

Arkansas Children's

Are your hands tied when the source wants to remain anonymous?

- “If anyone asks, *you didn't hear it from me, but...*”
- “*I'll deny I ever said this, but...*”
- “I'm glad to talk with you *off the record.*”

49

“I'm hesitant to provide a response, insomuch as the last time I did, Dr. Doe sued me for defamation of character...”

50

If reference will not stand behind comments:

- Offer to obtain special release
- Keep digging



51

Tip

Manage misstatements effectively (and consistently).

52

Section 2.B.1(z) of Credentials Policy:

[I]f there is any misstatement in, or omission from, the application, the Hospital may stop processing the application (or, if appointment has been granted prior to the discovery of a misstatement or omission, appointment and privileges may be deemed to be automatically relinquished).

53

Section 2.B.1(z) of Credentials Policy:

In either situation, there shall be no entitlement to a hearing or appeal. The individual will be informed in writing of the nature of the misstatement or omission and permitted to provide a written response for the Credentials Committee's consideration.

54

Arkansas Children's

Section 2.B.1(z) of Credentials Policy:

If the determination is made to not process an application or that appointment and privileges should be automatically relinquished pursuant to this provision, the individual may not reapply for a period of at least two years.

55

Questions?



56

Thank You!

57

Thank you.

HortySpringer Seminars
20 Stanwix Street, Suite 405
Pittsburgh, PA 15222
phone: (412) 687-7677 • fax: (412) 687-7692
email: info@hortyspringer.com
www.hortyspringer.com

HORTY  SPRINGER
