
North Country Healthcare

Medical Staff Leadership Training

September 21, 2023

Susan Lapenta & 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

NORTH COUNTRY HEALTHCARE
Thursday, September 21, 2023
Medical Staff Leadership Training
Mt. Success Conference Room at AVH & Zoom

Time	Topic	Primary Audience
7:15 – 7:30 a.m.	Breakfast Served	All
7:30 – 8:00 a.m.	Challenges of Leadership – Patient Safety Starts with You!	All
8:00 – 8:15 a.m.	Medical Staff Jeopardy	All
8:15 – 9:00 a.m.	Credentialing for Excellence – Tools, Tips, and Tactics <ul style="list-style-type: none"> • Good policies and procedures – the road map for everything you do • Use your threshold eligibility criteria • Don’t process incomplete applications • Skills enhancement process • Avoid unnecessary “denials” • Responding to reference requests 	<ul style="list-style-type: none"> • Board • Credentials Committee • MEC
9:00 – 9:45 a.m.	Clinical Privileges Challenges – What Could Go Wrong? <ul style="list-style-type: none"> • Temporary privileges & locums • Telemedicine privileges • “Turf battles” and new procedures • Advanced Practice Providers 	<ul style="list-style-type: none"> • Board • Credentials Committee • MEC
9:45 – 10:00 a.m.	Break	
10:00 – 10:45 a.m.	Peer Review Case Study – Dr. Early <ul style="list-style-type: none"> • Conflicts of interest • External reviewers • Evidence-based guidelines • Responding to non-cooperative practitioners 	<ul style="list-style-type: none"> • Peer Review • Leadership Council • MEC
10:45 – 11:15 a.m.	The Art of the Collegial Meeting Case Study – Conducting a Collegial Meeting <ul style="list-style-type: none"> • Planning and implementing an effective collegial meeting • Making sure you don’t get thrown off track <ul style="list-style-type: none"> ○ when the practitioner does not show up 	<ul style="list-style-type: none"> • Peer Review • Leadership Council • MEC

Time	Topic	Primary Audience
	<ul style="list-style-type: none"> ○ when the practitioner brings a lawyer to the meeting ○ when the practitioner starts recording the meeting on her iPhone 	
11:15 – Noon	Medical Staff Leader Potpourri <ul style="list-style-type: none"> ● HIPAA ● National Practitioner Data Bank ● EMTALA ● Keys to Confidentiality 	All
Noon – 12:30 p.m.	Lunch	
12:30 – 1:30 p.m.	How to Deal with Disruptive Behavior that Undermines a Culture of Safety <ul style="list-style-type: none"> ● Classic characteristics of disruptive conduct ● Behaviors that undermine a culture of safety ● Best practices in dealing with disruptive behavior 	<ul style="list-style-type: none"> ● Leadership Council ● Medical Staff Leaders
1:30 – 2:15 p.m.	Practitioner Health <ul style="list-style-type: none"> ● How common are health concerns? ● Best practice tips for reviewing health issues using the Practitioner Health Policy ● Late career practitioners 	<ul style="list-style-type: none"> ● Leadership Council ● Medical Staff Leaders
2:15 – 2:30 p.m.	Wheel of Misfortune <ul style="list-style-type: none"> ● Try your hand at solving problematic situations involving Dr. Demeanor, Dr. Hopiate, Dr. Leed, Dr. Pawman and more! 	All

Notes:

1. All: Medical Staff Members, Board Members, Medical Staff office personnel, directors, managers, and supervisors are invited to attend any session.
2. CME credits will be awarded.
3. The presenters will be Susan Lapenta and Phil Zarone, partners with the law firm of Harty, Springer & Mattern. Susan and Phil have a combined 50 years of experience in working with physician and hospital leaders across the country on Medical Staff issues related to credentialing, privileging, and peer review, and have spoken frequently about such topics at Harty Springer seminars.

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 6.25 AMA PRA Category 1 Credits[™]. 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

SUSAN LAPENTA

SLapenta@HortySpringer.com

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

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

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

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:

Susan Lapenta, Partner
Horty, Springer & Mattern, P.C.

Phil Zarone, Partner
Horty, Springer & Mattern, P.C.

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.



SLIDE TEXT TABLE OF CONTENTS

	PAGE NO.
Introduction.....	1
Challenges of Leadership – Patient Safety Starts with You!	2
Medical Staff Jeopardy!.....	9
Credentialing Tips	10
Clinical Privileges Challenges: What Could Go Wrong?.....	35
Peer Review Case Study: Dr. Early	49
The Art of a Collegial Meeting Case Study	64
Medical Staff Leader Potpourri	
HIPAA	74
National Practitioner Data Bank.....	79
EMTALA: On-Call Basics	83
Keys to Confidentiality	87
Dealing with Disruptive Behavior	91
Practitioner Health	116
Wheel of Misfortune	133

North Country Healthcare

North Country Healthcare Medical Staff Leadership Training

Susan Lapenta & Phil Zarone
Horty, Springer & Mattern, P.C.

September 21, 2023

1

Voting can be done via text or by using the Poll Everywhere website directly.

If you're voting by text message, send a text to 22333 with the message HSM to join (you only have to do this step once). Select your answer of either A, B, C, D, or E for all questions in the presentation.

If you're voting via the website on any device, go to PollEv.com/hsm. The questions will appear automatically and you simply vote with your answer.



2

Agenda

- Patient Safety Starts with You!
- Medical Staff Jeopardy!
- Credentialing for Excellence
- Clinical Privileges
- Peer Review Case Study – Dr. Early
- The Art of a Collegial Meeting Case Study
- Medical Staff Leader Potpourri
- Dealing with Disruptive Behavior
- Practitioner Health
- Wheel of Misfortune

3

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**Why do we have a
Medical Staff?**

4



1916

5

American College of Surgeons

6

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**American College of Surgeons
1916-1919**

7

**American College of Surgeons
1916-1919**

- **Surveyed 2,700 hospitals**
- **89 hospitals passed**

8

**“National Program for the
Standardization” of Hospitals**

9

Medical Staff

10

Medical Staff

- Consists of licensed medical graduates who are competent and worthy in character and matters of ethics

11

Medical Staff

- With the Board will adopt and approve rules, regulations, and policies

12

Medical Staff

- Review clinical work of others based on medical records

13

Core Functions of the Medical Staff

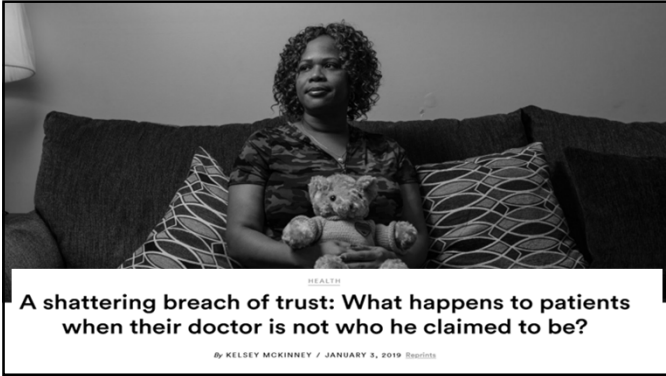
- Credentialing
- Privileging
- Peer Review

14

What happens when these core functions are not performed?

15

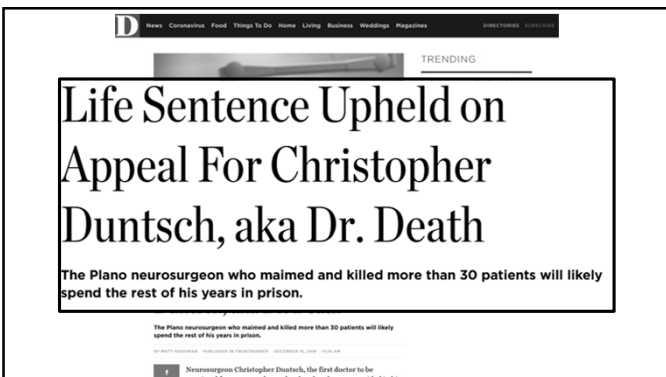
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16



17



18

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19



20



21

**Suits by Patients
vs.
Suits by Physicians**

22

When Balancing...

- **Keep the focus on the patients!**

23

Legal Protections

- **Health Care Quality Improvement Act**
- **State Peer Review Statute**
- **Release and Immunity in Bylaws and Application**

24

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When Balancing...

- Keep the focus on the patients!
- Legal protections
- Have good policies and procedures

25

When Balancing...

- Keep the focus on the patients!
- Legal protections
- Have good policies and procedures
- Follow your policies and procedures

26

Medical Staff Jeopardy!

27

Credentialing Tips

28

Tip

Follow your policies.

29



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

30

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.

31



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

32

Tip

Apply the objective eligibility criteria in your documents for appointment and privileges

33

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Benefits of Objective Eligibility Criteria

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

34

Examples

- 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)
- Volume requirements in delineation of privileges

35

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

36

Tip

Grant waivers sparingly, carefully, and deliberately.

37

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

38

Waivers

- 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?

39

Tip

Don't process incomplete applications.

40

An application should be incomplete if there are:

- Unanswered questions
- Gaps in professional experience

41

An application should also be incomplete if:

- Supporting information is not supplied
- Concerns are not resolved

42

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

43

Apply your Credentials Policy language:

- **Application becomes incomplete if need arises for additional information**
- **Incomplete applications will not be processed, and will be deemed withdrawn after 60 days**
- **No right to hearing or appeal**

44

There is no obligation to process an incomplete application.

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

45

Tip

Avoid the “D” Word.

46

Instead of “denying,” rely on:

- Eligibility criteria
- Incompleteness
- Automatic relinquishment
- Voluntary action

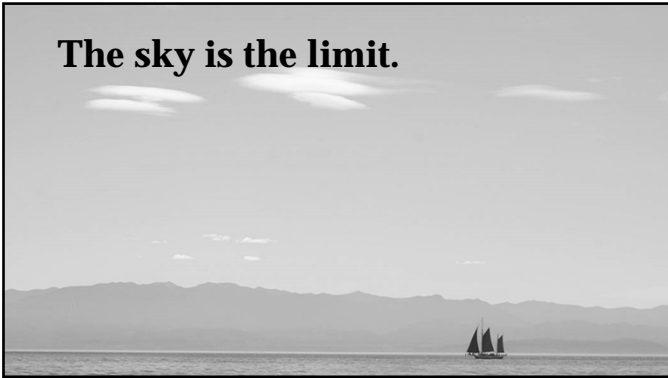
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Tip

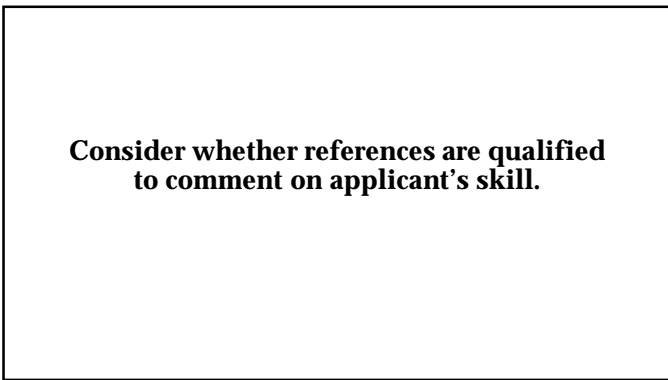
Get meaningful peer evaluations.

48

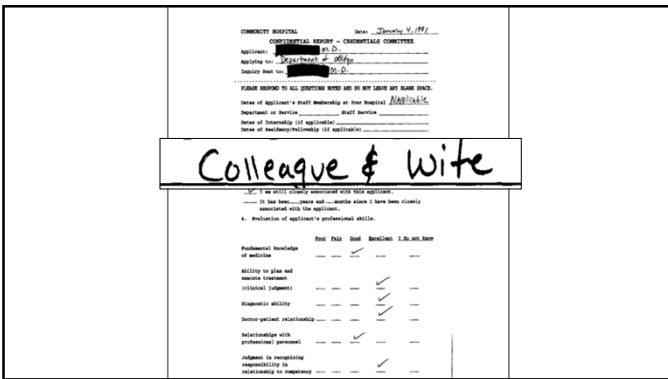
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49



50



51



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

52

Some references will NEVER, EVER, return your form:

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

53

Some references will NEVER, EVER, return your form:

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

54

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Factors to consider:

- Reason to believe something is being hidden, or is there a reasonable explanation for why reference has not responded?
- If no reason to believe something is being hidden:
 - Would alternative information suffice?
 - Has enough information already been supplied by other sources?

55

Bottom line:

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

56

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.

57

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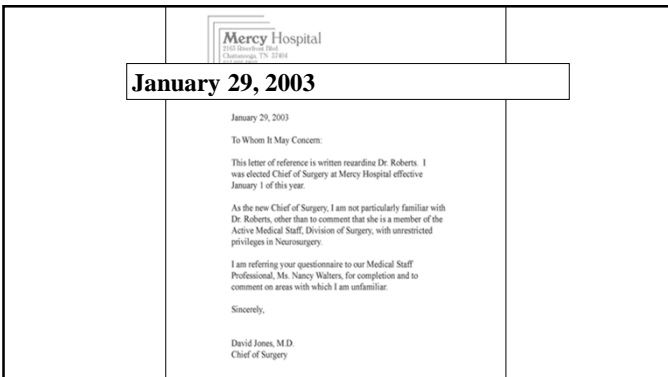
If response is limited to "name, rank and serial number," verify that such responses are standard for that hospital. Also verify that the standard form is being used.

58




Use the telephone.

59




60


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 <p>Mercy Hospital 2100 Sherrill Way Chattanooga, TN 37404 Tel: 423-499-4900 Fax: 423-499-4902 www.mercyhospital.org</p>	<p>This letter of reference is written regarding Dr. Roberts. I was elected Chief of Surgery at Mercy Hospital effective January 1 of this year.</p>
<p>Dr. Roberts, other than to comment that she is a member of the Active Medical Staff, Division of Surgery, with unrestricted privileges in Neurosurgery.</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>	

61

 <p>Mercy Hospital 2100 Sherrill Way Chattanooga, TN 37404 Tel: 423-499-4900 Fax: 423-499-4902 www.mercyhospital.org</p>	<p>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.</p>
<p>Sincerely,</p> <p>David Jones, M.D. Chief of Surgery</p>	

62

 <p>Mercy Hospital 2100 Sherrill Way Chattanooga, TN 37404 Tel: 423-499-4900 Fax: 423-499-4902 www.mercyhospital.org</p>	<p>January 29, 2003</p> <p>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>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>	

63

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	<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>1/1/03</u></p> <p>Instructions: Ask questions either verbatim or in your own words and record response. Include additional questions based on review of applicant's file.</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 profiles, etc. <u>Chief Surgery - PE profile, what</u> <u>doings done correctly</u></p> <p>4. To your knowledge, has the applicant ever been the subject of disciplinary action? <u>Not at all/never with Dr</u> <u>found none that had to be noted</u> <u>(cont none)</u></p>	
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64

	<p>5. Additional questions/responses:</p> <p><u>"many factors"</u> <u>Second case the PE of all time</u> <u>→ asking → to determine that for</u> <u>→ I determine for surgery → second case for</u> <u>PE surgery → not available; original case</u> <u>in PE surgery to read at time</u> <u>*** I strong experience from the chief of surgery</u> <u>to have some → Dr. John "Coke" → may</u> <u>present to determine etc.</u> <u>→ the PE surgery would be otherwise</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>Charles Surgery</u></p> <p>Name and Signature of Department Chairperson: _____</p> <p><u>Dr. should be many times but</u> <u>small file that is my responsibility,</u> <u>in ethical, thoughtful manner. #12</u></p>	
--	--	--

65

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.”**

66

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

67

If reference will not stand behind comments, keep digging.



68

Tip

Manage misstatements effectively (and consistently).

69

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Section 3.A.2 of NCH Credentials Policy:

Any misstatement in, or omission from, the application is grounds to stop processing the application. The applicant will be informed in writing of the nature of the misstatement or omission and permitted to provide a written response. The President of the Medical Staff and Chief Executive Officer will review the response and determine whether the application should be processed further.

70

If appointment has been granted prior to the discovery of a misstatement or omission, the individual will be informed in writing of the nature of the misstatement or omission and permitted to provide a written response. The individual will also have an opportunity to meet with the Leadership Council to explain the misstatement or omission. The Leadership Council will review the response and determine whether appointment and privileges should be deemed to be automatically resigned pursuant to this Policy.

71

Tip

Respond effectively to reference requests.

72

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The inevitable letter...

73

St. Mary's Regional Medical Center
1221 South 19th Street
Belle Vernon, Washington 98304
360-595-6646

Peter D. Wallace, M.D.
Vice President, Medical Staff Affairs
Belle Vernon General Hospital
201 Hospital Drive
Belle Vernon, WA 98267

Dear Peter:

I am writing in my position of Chief of Staff at St. Mary's Regional Medical Center regarding Dr. Travis Skully.

As you know, when Dr. Skully came to Belle Vernon two years ago, he joined the staffs of both Belle Vernon General and St. Mary's. We have recently learned that Dr. Skully's surgical practice is under investigation at Belle Vernon General.

While I certainly appreciate the confidential nature of such investigations, the members of the Medical Executive Committee here at St. Mary's are understandably concerned and would appreciate whatever information you can share with us.

Sincerely,

74

St. Mary's Regional Medical Center
1221 South 19th Street
Belle Vernon, Washington 98304
360-595-6646

I am writing in my position of Chief of Staff at St. Mary's Regional Medical Center regarding Dr. Travis Skully.

Belle Vernon, WA 98267

Dear Peter:

We have recently learned that Dr. Skully's surgical practice is under investigation at Belle Vernon General.

recently learned that Dr. Skully's surgical practice is under investigation at Belle Vernon General.

While I certainly appreciate the confidential nature of such investigations, the members of the Medical Executive Committee here at St. Mary's are understandably concerned and would appreciate whatever information you can share with us.

Sincerely,

75

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St. Mary's Regional Medical Center
1221 South 114 Street
Belle Vernon, Washington PA 15014
724-832-9400

[Redacted]

While I certainly appreciate the confidential nature of such Investigations, the members of the Medical Executive Committee here at St. Mary's are understandably concerned and would appreciate whatever information you can share with us.

recently learned that Dr. Skully's surgical practice is under investigation at Belle Vernon General.

While I certainly appreciate the confidential nature of such investigations, the members of the Medical Executive Committee here at St. Mary's are understandably concerned and would appreciate whatever information you can share with us.

Sincerely,

76

Which Elvis song is the best response to this letter?

77

Could we just say all good things about Dr. Skully?

78

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3-4-97

●

**Dr. B joins
Hospital Staff**

79

3-4-97 3-13-01

● ●

**Dr. B joins Dr. B
Hospital Staff terminated
 by group**

80

March 27, 2001

Dear Dr. B:

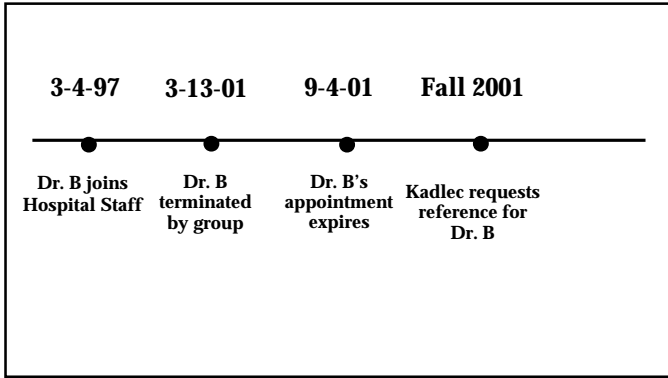
As we have discussed on several occasions, you have reported to work in an impaired physical, mental and emotional state. Your impaired condition has prevented you from properly performing your duties and puts our patients at significant risk.

Effective March 13, 2001, your employment with [the group] is terminated.

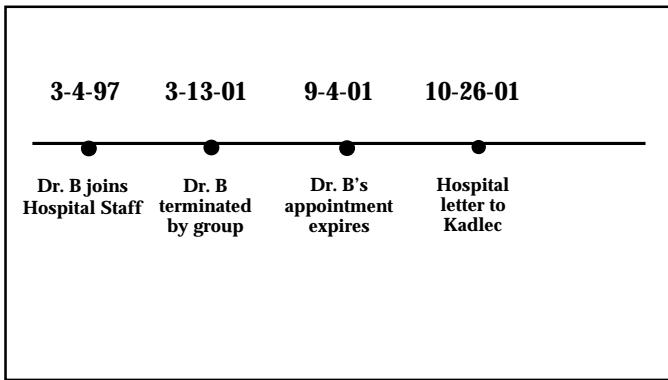
Sincerely,

81

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82



83

October 26, 2001
To: Kadlec Medical Center
Dr. B was on the Active Staff in the field of anesthesiology at the hospital from March 4, 1997 to September 4, 2001.
No further information can be provided due to the large volume of inquiries received in the office.

Sincerely,
Chief Executive Officer

84

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	October 26, 2001	
	Dr. B was on the Active Staff in the field of anesthesiology at the hospital from March 4, 1997 to September 4, 2001.	
	Sincerely, Chief Executive Officer	

85

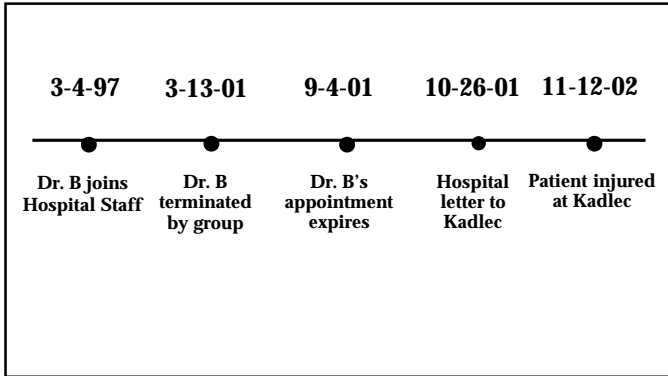
	No further information can be provided due to the large volume of inquiries received in the office.	
	No further information can be provided due to the large	
	There is no information of a derogatory nature in Dr. _____'s file.	
	Sincerely, Chief Executive Officer	

86

	To: Kadlec Medical Center	
	Fall 2001	
	To: Kadlec Medical Center	
	I have worked with Dr. B for four years. He is an excellent physician and will be an asset to any anesthesia service. I recommend him highly.	
	Lakeview Anesthesia Associates	

87

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88

Silence isn't always golden...

Kadlec Medical Center
v.
Lakeview Anesthesia Associates

89

Trial Court Ruled There Is a Duty:

- Not to misrepresent directly, and
- Not to omit "material" information

90

5th Cir. Appeals Court

Duty owed when responding to inquiries about a physician's status at the hospital:

- Not to misrepresent directly, and
- ~~Not to omit material information~~

91

When You Are Contacted

If no significant concerns, respond if:

- Request in Writing
- Appropriate Purpose
- Signed Authorization & Release from Application Form

92

If significant concerns exist:



SEVERAL OPTIONS

93

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Option 1

Ignore request or send “name, rank, and serial number.”

But beware of problems with this approach

94

Option 1 - Problem

Credentialing and peer review would break down if all hospitals used “name, rank and serial number” approach

95

Option 2

If significant concerns exist:

**Then — No Response
UNLESS** 

Specific Release
<input type="radio"/> _____
<input type="radio"/> _____

96

What if physician won't sign?

- No effect on hospital with information
- Incomplete application or automatic relinquishment at hospital seeking information

97

Option 3 — Brief, Factual Statement

“Dr. B was appointed to the Medical Staff on March 4, 1997. His privileges expired on Sept. 4, 2001 and he did not seek reappointment. After concerns were raised, Dr. B did not exercise his privileges after March 13, 2001. If further information is requested, please have Dr. B sign the enclosed specific release.”

98

When You Are Contacted

- Remember legal protections
 - HCQIA (immune from liability in defamation suit unless false information is knowingly provided)
 - State law protections
- Answer accurately and factually
- If discussing significant concerns, choose each word carefully; consider legal review (share file with counsel)
- Same rules for phone calls

99

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Even if you get a release:

1. Don't spread rumors
2. Don't guess
3. Share only what is relevant to job performance
4. Stay away from inflammatory remarks

100

Even if you get a release:

5. Be sure reference response is consistent with actions at hospital
6. Reference shouldn't foreclose future employment if hospital permitted physician to continue practicing
7. Mention positive information as well as negative

101

Even if you get a release:

8. Review credentials and quality file before you respond, check with CMO and Medical Staff leadership
9. Identify who is authorized to provide references on behalf of hospital (only designated individual in leadership position)

102

**Clinical Privileges Challenges:
What Could Go Wrong??**

103

Clinical Privileges

- Temporary
- Telemedicine
- Turf Battles and New Procedures
- Advanced Practice Professionals

104

**Appointment ≈ Membership
≈ Citizenship**

- Vote
- Hold office
- Serve on committees
- Participate in peer review
- On-call

105

**Clinical Privileges = Breadth, scope
and nature of practice**

106

Temporary Privileges

- New applicants
- Important and immediate patient care need

107

Important and Immediate Patient Care Need

- Care of a specific patient
- Prevent a lack of services
- Proctoring

108

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Temporary Privileges

- Important and immediate patient care need
 - Care of a specific patient
 - Prevent a lack of services
 - Proctoring
 - Locum Tenens

109

Privileging Tips

Do your homework!

110

PHYSICIAN EVALUATION FORM
CONFIDENTIAL AND PRIVILEGED PEER REVIEW DOCUMENT

Please complete all parts of this form. If more space is needed use a separate sheet.

NAME OF APPLICANT _____
 NAME OF EVALUATOR _____
 NAME OF FACILITY _____

I. VERIFICATION OF STATUS

Date applicant was in your institution _____
 Applicant's status in your institution _____

II. EVALUATION

Please base your evaluation of the following factors on the applicant's documented performance. If the answer is "yes" or "some concern," please give details on a separate sheet and attach.

	NO CONCERN	SOME CONCERN	UNABLE TO ASSESS
Medical/clinical knowledge			
History current with developments in specialty			
Clinical judgment			
Technical skills and proficiency			
Management of multiple complex problems			
Interpersonal skills, including:			
Ability to work in a collegial and cooperative manner with others, including nurses and hospital staff			
Relationship with patients and their families			
Communication skills, including ability to understand, speak and write English			
Effective communication with patients and families concerning proposed treatment, alternatives and associated consequences			
Timely, comprehensive and legible completion of medical records			

111

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Do your homework!

- Query the National Practitioner Data Bank and the OIG Exclusions List

112

Do your homework!

- Query the National Practitioner Data Bank and the OIG Exclusions List
- Get a criminal background check

113

Do your homework!

- Query the National Practitioner Data Bank and the OIG Exclusions List
- Get a criminal background check
- Google

114

Privileging Tips

Have an easy exit strategy.

115

Telemedicine Privileges

116

Options

- Use routine credentialing process
- Accept decisions made by distant hospital/entity as your own
- Reserve right to address any issues through the contract
- Consider building peer review obligation into credentialing contract

117

Turf Battles and New Procedures

118

Case 1

119

***Goldenberg v. Woodard* Nevada Supreme Court**

- Procedure started without proctor; hole in colon
- Surgery center “ignored its privileging criteria”

120

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“Doctor acted in a manner that led the patient to believe he was qualified to perform the procedure himself...”

121

Goldenberg v. Woodard
Nevada Supreme Court

- Jury — \$610,000 in damages, plus \$1 million
- OB/GYN liable for fraud — failed to tell patient her colonoscopy would be his first
- Fraud claim not subject to statutory \$350,000 cap for professional negligence

122

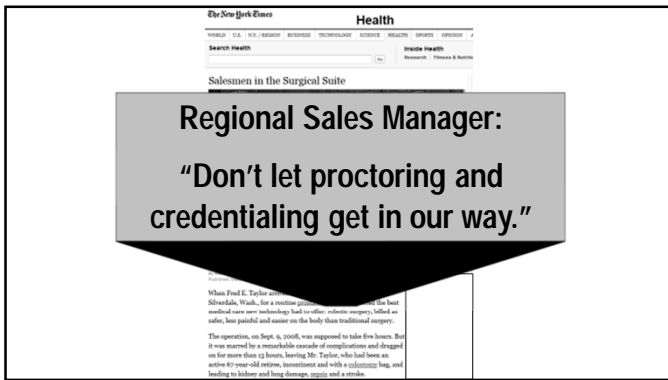
Case 2

123

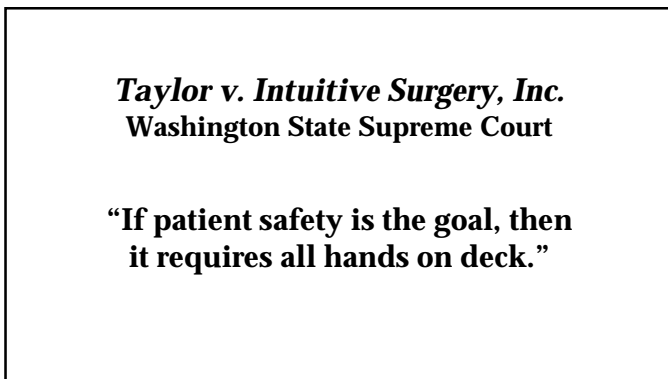
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124



125



126

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- **Manufacturers must warn hospitals**
- **Hospitals can require proctoring of more cases than manufacturers' minimum, as eligibility criteria for privileges**

127

- **A search firm provides an anesthesiologist to a rural hospital to start a new pain service**
- **Temporary privileges are granted before all information is verified**

128

Case 3

129

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Dr. Frank N. Stein is a neurosurgeon who has been on your staff for many years. He schedules a patient for a cervical spine procedure using a Luque Rod in an “off-label” manner.

130

***Columbia/JFK Medical Center
v. Sangounchitte***

Court upheld \$8.5 million verdict based on negligent credentialing.

131

Don't be pressured into making decisions you and your patients might regret!!!

132

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**There is no single
“right” answer.**

133

Best Practice

Credentials Committee receives and reviews individual recommendations.

OR

Multidisciplinary Task Force to address privileging decisions.

134

Best Practices

- **Seek input from those who are interested but keep competitors out of decision-making roles**
- **Obtain information from experts**
- **Consider examples from other hospitals**
- **Build a consensus**

135

Best Practices

Involve:

- Department Chair
- Credentials Committee
- Medical Executive Committee

136

Takeaways:

**To protect patients, and avoid legal risk,
you need to have a good process and
good criteria for privileges!**

137

Privileges for Advanced Practice Professionals

138

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Should applicants be required to establish “current clinical competence” before privileges are granted?

139

Is “on-the-job” training acceptable, where specialty training programs are few and evolving?

140

Since 2004, CMS has mandated that all practitioners who provide a medical level of care or conduct surgical procedures be privileged through the medical staff process.

141

**What Is a
“Medical Level of Care”?**

142

Eligibility for Privileges

- For physicians — eligibility criteria include education, specialty training, experience
- Harder for APPs (especially PAs) due to general nature of training

143

Sources of Guidance

- State Scope of Practice
- Supervising/Collaborating Physician
- Professional Bodies
- Training Programs
- Other Hospitals

144

Hospitals can define level of physician oversight, supervision, collaboration; may be more strict than state law.

145

Options

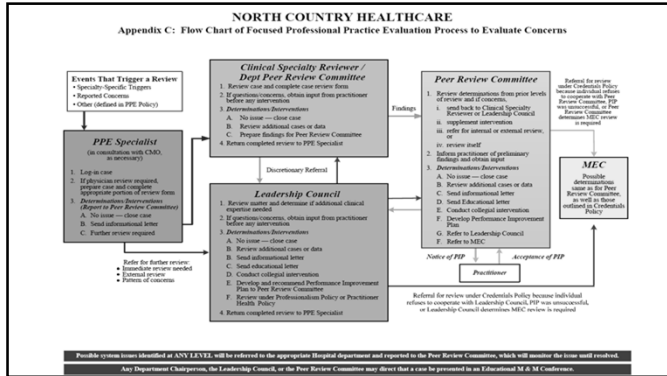
- **Require prior experience?**
- **Require CAQ or postgraduate training?**
- **“On-the-job” training with supervising physician?**
- **Develop guidelines for supervising physicians to promote consistency?**

146

Dr. Early Case Study

147

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148

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

149

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

150

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

151

Tips for Evidence-Based Guidelines

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

152

Should we respond to the nurse who reported the concern?

Yes.

153

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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

154

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

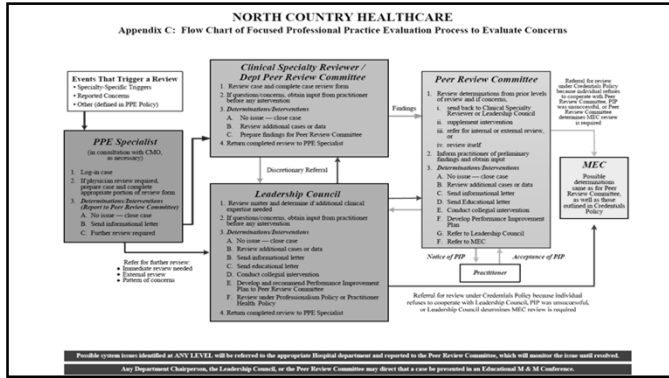
Yes.

155

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

156


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157

Can Dr. Patience take part in the review?

158



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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.

approval.

You find completion of this review process is mandatory considered as part of the review process. You have 10 days, if you would like to meet with me in person, please contact me at [phone number].


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
[email address]

159

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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.

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 or opinions have been reached. 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,
Perry Patience, M.D.
Perry Patience, M.D.
Section Chair for OB
PP:
Enclosures

160

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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.

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

161

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

162

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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.

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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

163

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Caring for the Placid Valley Community Since 1981

CONFIDENTIAL PEER REVIEW DOCUMENT

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

164

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CONFIDENTIAL PEER REVIEW DOCUMENT

The Farly, M.D.
Early & Associates
3025 Monticello Road
Placid Valley, NY 10950

Re: Request for Input

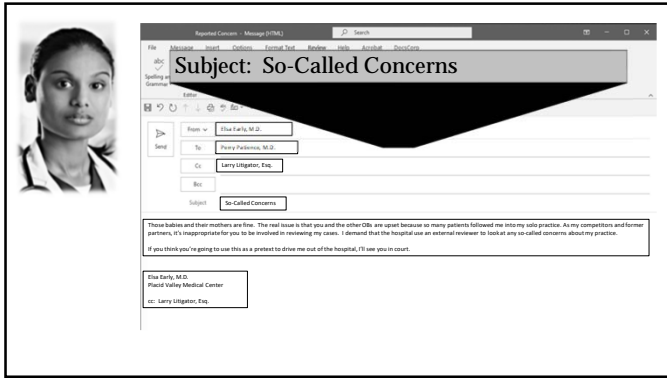
Dear Dr. Farly:

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

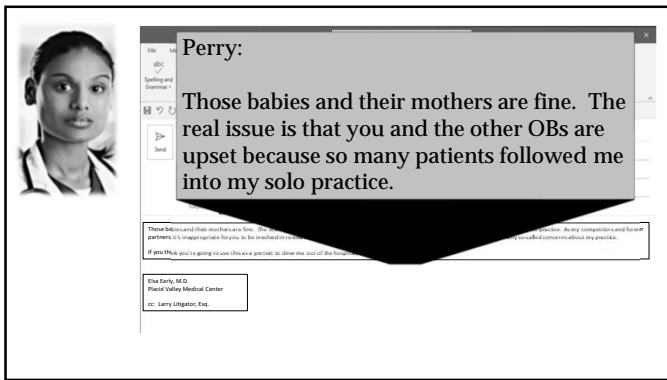
Sincerely,
Perry Patience, M.D.
Perry Patience, M.D.
Section Chair for OB
PP
Enclosures

165

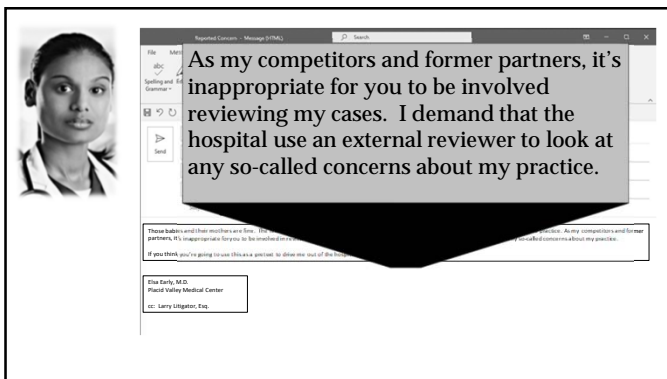
North Country Healthcare



166

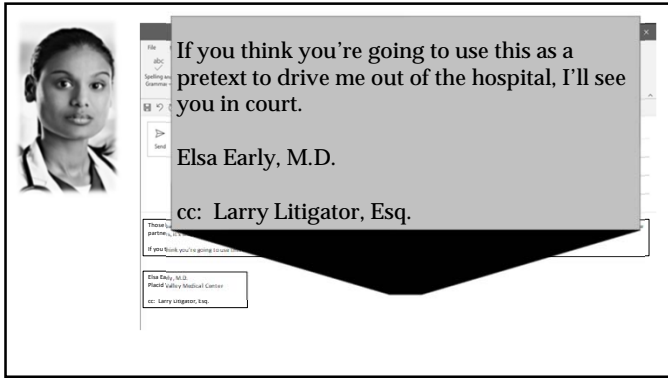


167



168

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169

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.

170

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

Probably not.

171

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

No.

172

Consider an external review (e.g., New Hampshire Peer Review Network for Critical Access Hospitals) when:

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

173

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

No reason for concern, but always be smart.

174

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

175

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


176

How should Dr. Patience respond?

177

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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 Dr. Smith:

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 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:

178

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.

Dear Dr. Smith:

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 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.

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

179

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



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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:

180

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Caring for the Placid Valley Community Since 1981




I respect your concerns about a potential conflict of interest. However, the Medical Staff leadership has discussed the matter and concluded that, consistent with our PPE Policy, I am permitted to participate in this review. We do not believe there is a need for an external review at this time.

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

181

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




Related to my last point, please recognize that this review is occurring under the PPE Policy, not the Medical Staff Bylaws. The Multi-Specialty Peer Review Committee has no authority to restrict anyone's privileges or otherwise drive them out of the hospital.

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

182

Early & Associates
3025 Montross Avenue
Placid Valley, NY 05550



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.

Elia Early, M.D.
Elia Early, M.D.
EE
Endorses
www.amboss.com • (800) 555-1212

183

Early & Associates
3023 Mountview 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 Early, SMFM
EE
Endnotes
www.smfm.org

184

What should the Multi-Specialty Peer Review Committee do?

185

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?**

186

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Options

- No further review required
- Review additional cases
- Obtain additional input from Dr. Early
- Educational Letter
- Collegial Counseling
- Performance Improvement Plan (PIP)
- Refer to MEC

187

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

188

Confidential Peer Review

Re: Performance Improvement Plan

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

189

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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 PRC has no further authority; matter will be referred to MEC for independent review**
- **Pleased to meet again if you have any questions or need any clarification**

190

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.”

191

Collegial Counseling

**The Case of
Dr. Tori Nado**

192

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Collegial Counseling

1. Review relevant policy

193

Collegial Counseling

1. Review relevant policy
2. Plan
 - Review past history
 - Decide who to involve
 - Decide whether there should be a meeting
 - Determine location of meeting

194

Collegial Counseling

1. Review relevant policy
2. Plan
3. Develop talking points

195

Talking Points

- **Reminder that this is part of peer review process**
- **Review incidents**
- **No retaliation**
- **Next steps**

196

Talking Points

- **This meeting is part of peer review process**
- **To Nurse**
 - “How did you ever graduate?”
 - “She’s too fat for an epidural.”
- **To ED**
 - “I’ll be there when I get there.”
- **To Surgeon**
 - “I thought it was ASSH....”
- **No retaliation**
- **Next steps**

197

Collegial Counseling

- 1. Review relevant policy**
- 2. Plan**
- 3. Develop talking points**
- 4. Remember to document**

198

Collegial Counseling

4. Remember to document

- Who was there
- Concerns that were discussed
- Expectations for change
- Next steps if expectations not met
- No retaliation
- Copy of letter in file
- Invitation to respond

199

Quality Care Hospital
CONFIDENTIAL PEER REVIEW DOCUMENT

We are writing to follow-up on our meeting earlier this week, with the Chair of Surgery, to discuss your conduct.

Dr. [Name] was present at the meeting on [Date] to discuss your conduct. [Name] advised that the meeting was held in a private setting and that the meeting was confidential. [Name] advised that the meeting was held in a private setting and that the meeting was confidential. [Name] advised that the meeting was held in a private setting and that the meeting was confidential.

We hope that there will be no further incidents. It is advised that another incident of inappropriate conduct will be referred to the [Board]. Your conduct with this letter is a part of ongoing review of history, discussion and will impact your future performance. The Leadership Council strongly recommends that you seek counsel of one of these resources.

Thank you for your cooperation. A copy of this letter will be placed in your confidential file. You may wish a copy of your work and your letter will be maintained along with this letter. Your cooperation, however, we hope you will work with us in our effort to provide quality care to our patients in an environment that is conducive to doing so.

Respectfully,
Frankie [Name], MD
Medical Staff President
Enclosure

200 Hospital Drive • 76 Miles, TN • 353-298-2829

200

Quality Care Hospital
CONFIDENTIAL PEER REVIEW DOCUMENT

Victoria [Name], MD
4 Apple Drive
Ward City, TN

Dr. [Name], MD
[Name]

Referring to a patient in a demeaning manner and berating an employee is never acceptable behavior. Although you denied making these comments, there were several witnesses who confirmed what you said.

Dr. [Name] was present at the meeting on [Date] to discuss your conduct. [Name] advised that the meeting was held in a private setting and that the meeting was confidential. [Name] advised that the meeting was held in a private setting and that the meeting was confidential.

We hope that there will be no further incidents. It is advised that another incident of inappropriate conduct will be referred to the [Board]. Your conduct with this letter is a part of ongoing review of history, discussion and will impact your future performance. The Leadership Council strongly recommends that you seek counsel of one of these resources.

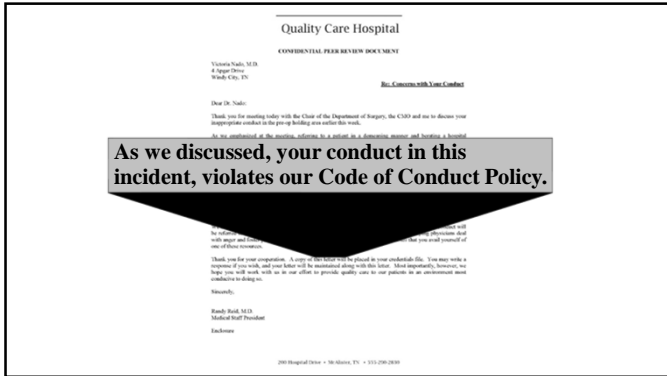
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Respectfully,
Frankie [Name], MD
Medical Staff President
Enclosure

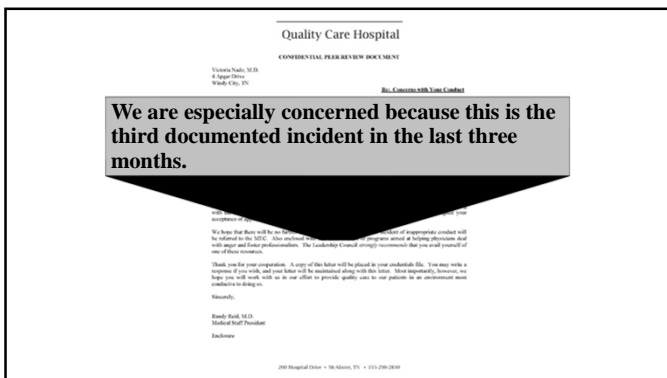
200 Hospital Drive • 76 Miles, TN • 353-298-2829

201

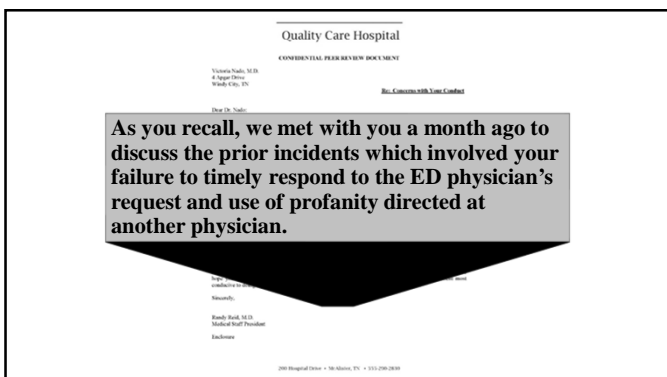
North Country Healthcare



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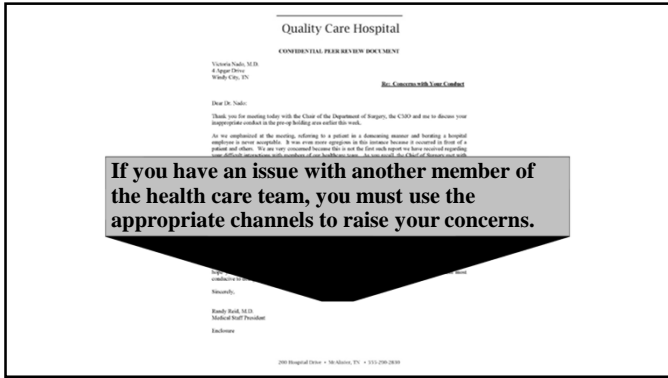


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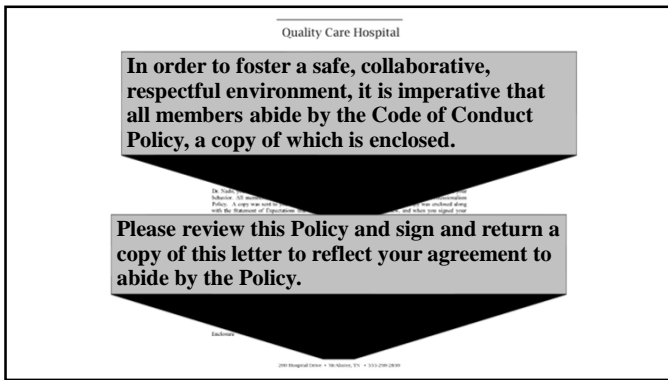


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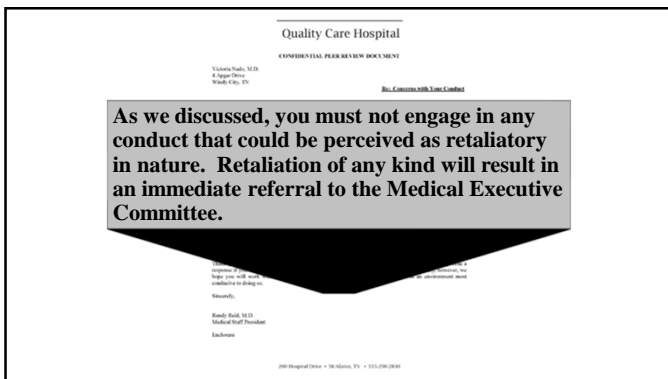
North Country Healthcare



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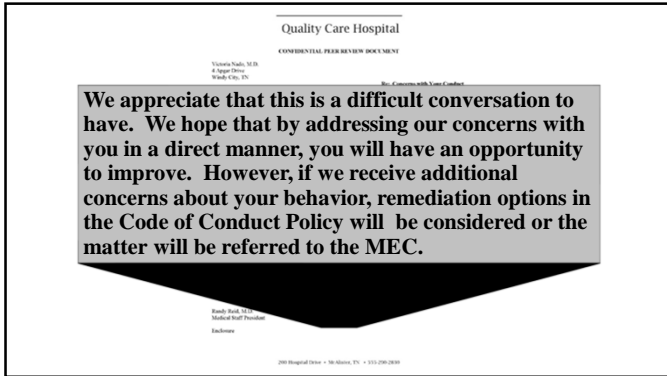


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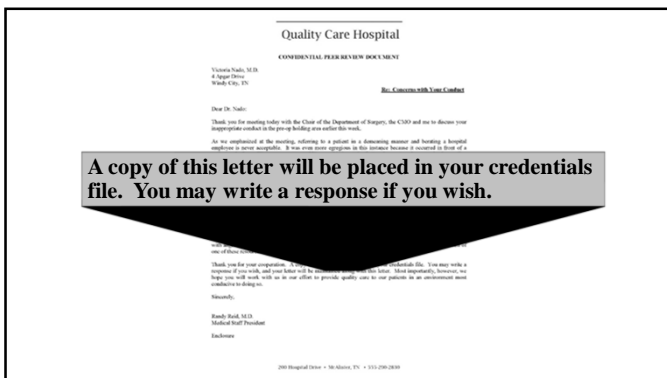


207

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208



209

Collegial Counseling

1. Review relevant policy
2. Plan
3. Develop talking points
4. Remember to document
5. Talk to your colleagues

210

**Plan for the inevitable
“what ifs”!!**

211

What if?

- The practitioner wants to record the meeting?
- The practitioner brings her lawyer?

212

What if?

- The practitioner demands to know who reported them?
- The practitioner demands to see the files of others?
- The practitioner doesn't show up?

213

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Anticipate these issues and address them in Medical Staff Bylaws Documents.



214



CREDENTIALS POLICY

Androscoggin Valley Hospital
Upper Connecticut Valley Hospital
Weeks Medical Center

Section 6.A.1(f)

There will be no recording (audio or video) or transcript made of any meetings that involve initial collegial efforts or progressive steps activities, unless approved by the CMO.

215



CREDENTIALS POLICY


Androscoggin Valley Hospital
Upper Connecticut Valley Hospital
Weeks Medical Center

6.A.3. No Right to Counsel:


Members do not have the right to be accompanied by counsel when the Medical Staff Leaders and Hospital Administration engage in initial collegial efforts. By agreement of the President of the Medical Staff and CEO, an exception may be made to this general rule.

216


North Country Healthcare

 <p>CREREDENTIALS POLICY</p> <p>Androscoggin Valley Hospital Upper Connecticut Valley Hospital Weeks Medical Center</p>	<p>6.B.1. Mandatory Meeting:</p> <p>Whenever there is a concern regarding an individual's clinical practice or professional conduct, Medical Staff Leaders may require the individual to attend a mandatory meeting.</p>
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217

 <p>PROFESSIONAL PRACTICE EVALUATION POLICY</p> <ul style="list-style-type: none">• Initial Focused Professional Practice Evaluation• Ongoing Professional Practice Evaluation• Focused Professional Practice Evaluation to Evaluate Concerns <p>Androscoggin Valley Hospital Upper Connecticut Valley Hospital Weeks Medical Center</p>	<p>1.G. Confidentiality</p> <p>Maintaining confidentiality is a fundamental and essential element of an effective professional practice evaluation process.</p> <p>Communications among those participating in the PPE process, including communications with the individual practitioner, will be conducted in a manner reasonably calculated to assure privacy.</p>
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218

 <p>CREREDENTIALS POLICY</p> <p>Androscoggin Valley Hospital Upper Connecticut Valley Hospital Weeks Medical Center</p>	<p>7.B.4. Provision of Relevant Information:</p> <p>No information will be provided regarding other practitioners on the Medical Staff.</p>
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219

 <p>MEDICAL STAFF PROFESSIONALISM POLICY</p> <p>Androsoggin Valley Hospital Upper Connecticut Valley Hospital Weeks Medical Center</p> <p>January 23, 2020</p>	<p>3.A. Reports of Concerns about Conduct: Appropriate steps will be taken to maintain the confidentiality of the information contained in any report, including the identity of the individual who raised the concern and any witnesses to the underlying incident.</p>
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220

<p>HIPAA</p> 
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221

<p>Covered Entities (e.g., hospitals and physician offices) may not use or disclose Protected Health Information (“PHI”) without a patient’s written authorization, unless an exception applies.</p>	
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222

What is PHI?

PHI is any information that can be used to identify a patient.

- Not limited to direct identifiers
- Not limited to medical information
- Person's status as a patient is PHI
- Demographic information about a patient is PHI

223

The well-meaning physician blogger:

- ED patient, serious heart attack
- Physician implanted pacemaker, patient did well
- Physician blogged to celebrate
- Changed details of case
- Family member of patient commented on blog post, thanked physician for saving patient



224



225

Under HIPAA, no patient authorization is required:

1. Treatment
2. Payment
3. Health care operations
4. Other specific reasons set forth in Privacy Rule

226

Intent is *NOT* relevant in determining whether HIPAA was violated.

227

Arkansas “Snooping” Case

- TV news anchor attacked in her home
- ED physician and two nurses access her record
- Curiosity, not profit, caused them to snoop
- Led to guilty pleas for *criminal* violations (highly unusual)

Arkansas TV anchor dies days after attack



228

NEWS

\$1.44M HIPAA award upheld after Walgreen pharmacist shared patient data

Tim Evans tim.evans@indystar.com
Published 3:02 p.m. ET Nov. 14, 2014 | Updated 11:21 a.m. ET Nov. 17, 2014

[View Comments](#) [f](#) [t](#) [e](#)

The Indiana Court of Appeals on Friday upheld a \$1.4 million verdict against Walgreen Co. and one of its pharmacists who shared confidential medical information about a client that had once dated her husband.

The order is the first published appellate court decision in the nation in which a health-care provider has been held liable for violations of the Health Insurance Portability and Accountability Act committed by an employee, according to Indianapolis attorney Neal F. Eggeson Jr., who represented the victim.

Eggeson and other legal experts said the order creates an important legal precedent that could be cited in future lawsuits — and inform other rulings — regarding HIPAA violations in Indiana and other states.

"By choosing to appeal," Eggeson said, "Walgreen has now created a precedent ... confirming that privacy breach victims may hold employers accountable for the HIPAA violations of their employees."

229

Walgreen v. Hinchy

- Tangled domestic web; always creates HIPAA risks
- Pharmacist reviewed prescription drug records of her fiancé's ex-paramour after learning of STD risk
- Pharmacist gave to her fiancé a copy of prescription history of his ex-paramour; he used it for paternity purposes claiming she tried to get pregnant
- Ex-paramour sued pharmacist and Walgreens
- \$1.4 million jury verdict against pharmacist AND Walgreens

230

HIPAA and Social Media

231

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232



233

Avoiding Social Media Pitfalls

- Rules are stricter in health care setting
- Health care personnel should avoid discussing work issues on social media
- Remind staff to never post any information about individual patients, even if they think it's de-identified
- No photos of patients except as authorized by hospital policy (e.g., patient care)

234



235

**National Practitioner
Data Bank (NPDB)**

1. Report required when:

- Action “adversely affects” clinical privileges for more than 30 days
- Based on professional competence or conduct

236

Adversely Affects Clinical Privileges

- Reducing
- Suspending
- Revoking
- Denying
- Restricting

237

What Is a “Restriction”?

“A ‘restriction’ is the result of a professional review action based on clinical competence or professional conduct that leads to the inability of a practitioner to exercise his or her own independent judgment in a professional setting.”

NPDB Guidebook

238

What Is a “Restriction”?

- **Mandatory concurring consultation (i.e., can’t do unless another physician agrees)**
- **Other involuntary actions that prevent the independent exercise of privileges**

239

NPDB

2. Reports also required for surrenders of clinical privileges:

- **While under Investigation**
- **In return for not conducting Investigation or “proceeding” (i.e., hearing and appeal)**

Have a bright line in Bylaws for when an “Investigation” starts!

240

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No NPDB Reports For:

- Suspensions for 30 days or less
- Commencement of Investigation
- Automatic relinquishment
- Loss of appointment and privileges due to "incident and coterminous" clause
- Any of the PIP options when properly implemented by the PPEC

241

Examples

242

If a peer review matter is referred to the MEC...

Is that reportable?

No.

243

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If a peer review matter is referred to the MEC and the physician resigns upon learning of the referral...

Is that reportable?

It depends on how the referral was made.

244

If the MEC precautionarily suspends a physician's privileges pending the outcome of an Investigation...

Is that reportable?

Yes, if the suspension lasts longer than 30 days.

245

If a physician agrees to voluntarily refrain from exercising clinical privileges while an Investigation by the MEC is pending...

Is that reportable?

Yes, if at MEC and voluntary agreement lasts longer than 30 days.

246

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If the MEC recommends termination of a physician's privileges but the physician remains on staff pending a hearing...

Is that reportable?

No, no final board action.

247

**EMTALA:
On-Call Basics**



248

Question

What is the required scope of the on-call list?

249

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Answer

On-call coverage must be consistent with the services provided by the hospital.

Consider what's "held out" to public, how often service is provided, and similar factors.

250

Question

How much call is required?

Is there a CMS "three-physician rule"?

251

Answer

The "three-physician rule" never made a formal, written appearance.

252

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CMS will apply “all relevant factors” test:

- Number of physicians
- Other demands on physicians
- Need for service
- Arrangements made when service not available

253

Question

What if there is disagreement about the nature of the patient’s problem?

254

Example

The ED physician calls the on-call surgeon. The surgeon thinks the patient has a medical problem. The on-call internist thinks the problem is surgical. Who is right?

255

Answer

**ED physician decides which
on call specialist is needed.**

256



257

Question

Can APPs take call?

258

Answer

Only physicians can be included in on-call schedule. However, APPs can be used to complement on-call schedule.

259

Answer

Contact must still be made by ED with on call physician. Then decision can be made to use APP.

260

Keys to Confidentiality

261

**Teach confidentiality best practices -
and reinforce at every opportunity!**

- **Respect for colleagues**
- **Legal protections**
- **Credibility of process**

262

Confidentiality Statement

- **Made by physician leader at the beginning of every committee meeting**
- **Content is practical, “physician-speak,” not threatening lawyer tone**

263

- **Everything we discuss today is sensitive**
- **New Hampshire law requires confidentiality**
- **Once you leave the meeting, no discussions except with another authorized individual and in private or we place everyone at risk**
- **Thanks for your professionalism**

264

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Distribution of Documents

- Consider not providing hard copies of confidential documents in advance of meetings
- Number copies of any confidential documents that may be distributed before or at meeting
- Collect and destroy copies after meetings/ instructions to delete emailed documents
- Secure e-mail/secure intranet

265

Confidentiality Agreements

- Medical Staff Leaders
- Hospital Representatives
- Board Members

266

HORTY SPRINGER
HEALTHCARE SEMINARS, 1000 WEST 10TH AVENUE, SUITE 1000, DENVER, CO 80202-1500

[NAME] HOSPITAL

PPE-37

[NAME] HOSPITAL

CONFIDENTIALITY AGREEMENT – MEDICAL STAFF LEADER

As a Medical Staff Leader, I recognize that I will have access to very sensitive and confidential credentialing and peer review information regarding other Practitioners on the Medical Staff.

- promoting the perception of a positive and hardy peer review culture rather than the educational and constructive one that is intended, and
- adversely affecting the willingness of our colleagues to trust us and to work with us on improvement efforts.

Therefore, if I breach confidentiality, I understand that my actions may result in:

- (1) dismissal from a committee assignment, loss of any Medical Staff Leader position, and/or removal from participation in Medical Staff activities;
- (2) loss of available legal protections (including loss of insurance coverage and indemnification for any litigation costs and expenses);
- (3) disciplinary action as deemed appropriate under applicable Medical Staff policies; and/or
- (4) other appropriate action that may be necessary to protect the Medical Staff and Hospital.

Date _____ Signature _____
Printed Name _____

Please document in writing all confidential and privileged under Federal law.

267

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HORTY SPRINGER
[NAME] HOSPITAL
CONFIDENTIALITY AGREEMENT – MEDICAL STAFF LEADER

I understand that all such information and any discussions regarding it are strictly confidential. I will not discuss this confidential information outside of appropriate committee meetings unless (i) I am legitimately working on an issue with another Medical Staff Leader or Hospital colleague who assists us and (ii) the discussions take place in a private, protected manner.

- damage to the integrity and credibility of our Medical Staff processes from everyone's perspective (other Medical Staff Leaders and Medical Staff members);
- promoting the perception of a punitive and harsh peer review culture rather than the educational and constructive one that is intended; and
- adversely affecting the willingness of our colleagues to trust us and to work with us on improvement efforts.

Therefore, if I breach confidentiality, I understand that my actions may result in:

- (1) dismissal from a committee assignment, loss of my Medical Staff Leader position, and/or removal from participation in Medical Staff activities;
- (2) loss of available legal protections (including loss of insurance coverage and indemnification for any litigation costs and expenses);
- (3) disciplinary action as deemed appropriate under applicable Medical Staff policies; and/or
- (4) other appropriate action that may be necessary to protect the Medical Staff and Hospital.

Date _____ Signature _____
Printed Name _____

This document is strictly confidential and privileged under Florida law.
This document is strictly confidential and privileged under Florida law.

268

HORTY SPRINGER
[NAME] HOSPITAL
CONFIDENTIALITY AGREEMENT – MEDICAL STAFF LEADER

I understand that breaches of confidentiality reflect a lack of professionalism and respect for others and have multiple, serious consequences not only for me but also my colleagues, including:

- loss of the significant legal protections afforded to us by our state peer review law;
- damage to the reputation of our colleague who is the subject of the breach;
- damage to the integrity and credibility of our Medical Staff processes from everyone's perspective (other Medical Staff Leaders and Medical Staff members);
- promoting the perception of a punitive and harsh peer review culture rather than the educational and constructive one that is intended; and
- adversely affecting the willingness of our colleagues to trust us and to work with us on improvement efforts.

Printed Name _____

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269

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Printed Name _____

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270

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I understand that breaches of confidentiality reflect a lack of professionalism and respect for others and have multiple, serious consequences not only for me but also my colleagues, including:

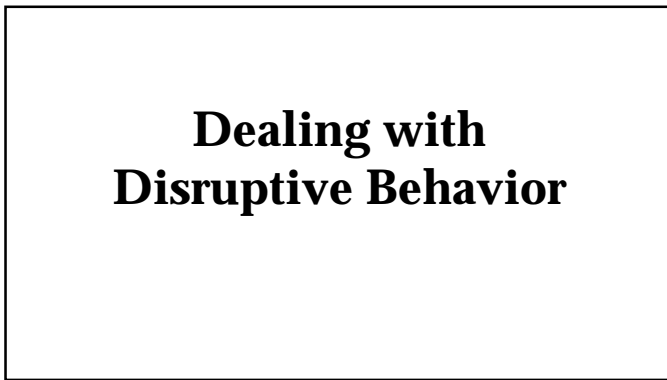
- loss of the significant legal protections afforded to us by our state peer review law;
- damage to the reputation of our colleague who is the subject of the breach;
- damage to the integrity and credibility of our Medical Staff processes from everyone's perspective (other Medical Staff Leaders and Medical Staff members);
- promoting the perception of a punitive and harsh peer review culture rather than the

Date _____	Signature _____
	Printed Name _____

Date _____ Signature _____
Printed Name _____

This document is strictly confidential and privileged under Florida law.
This document is strictly confidential and privileged under Florida law.

271



272



273

“Work in Progress”

274

“Disruptive”

275

**“Opportunities for
Improvement”**

276

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Common Characteristics

- **Clever**
- **Controlling**
- **Competent**
- **Charming**

277

Common Characteristics

- **Tenacious**
- **Unpredictable**
- **Lack Insight**

278

Behavior looks like....

- **Refusing to return calls**
- **Blaming complications or mistakes on others**
- **Refusing to follow rules or policies**

279

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Behavior looks like....

- Making inappropriate entries in medical records
- Making negative comments about others
- Using condescending language

280

Behavior looks like....

281

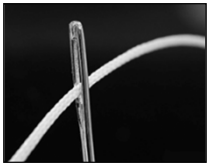
What about microaggressions?

282

What about microaggressions?

Slights, snubs, or insults that communicate hostile, derogatory, or negative messages to target someone based on their marginalized group membership.

283



The common thread is that the disruptive conduct interferes with the orderly operation of the hospital and has the potential to adversely affect patient care.

284

Issue 40: Behaviors that undermine a culture of safety | Joint Commission

The Joint Commission

Sentinel Event Alert

Issue 40, July 9, 2008

July 09, 2008

Behaviors that undermine a culture of safety

Intimidating and disruptive behaviors in health care settings include reluctance to ask for help, questioning of instructions, and impatience with questions. These behaviors can compromise the safety of patients.^(1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100)

Intimidating and disruptive behaviors in health care settings include reluctance to ask for help, questioning of instructions, and impatience with questions. These behaviors can compromise the safety of patients.^(1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100)

285

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286



287

The following factors will be evaluated as part of the appointment and reappointment processes:

- (b) adherence to the ethics of the profession;

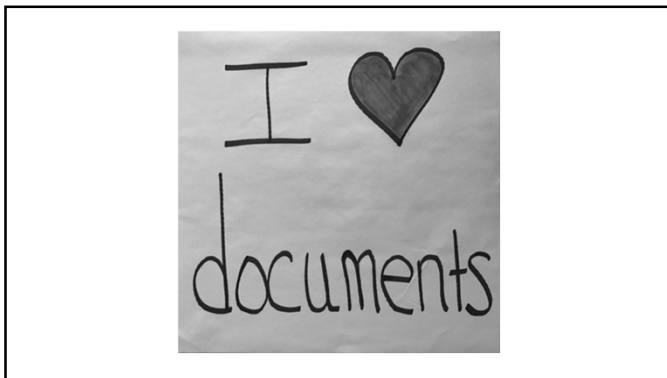
- (e) ability to work harmoniously with others, including, but not limited to, interpersonal and communication skills sufficient to enable them to maintain professional relationships with patients, families, and other members of health care teams;

288

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II. EVALUATION			
Please base your evaluation of the following factors on the applicant's demonstrated performance. If the answer to any is "some concern," please give details on a separate sheet and attach.			
	NO CONCERNS	SOME CONCERN	UNABLE TO ASSESS
Interpersonal skills, including:			
Ability to work in a collegial and cooperative manner with others, including nurses and hospital staff			
Relationship with patients and their families			
Relationship with patients and their families			
Communication skills, including ability to understand, speak and write English			
Effective communication with patients and families concerning proposed treatments, alternatives and anticipated outcomes			
Timely, comprehensive and legible completion of medical records			

289



290

Guler v. Teton Cnty. Hosp. Dist., 248 P.3d 623 (Wyo. Feb. 24, 2011)
 Leaf v. Secretary, U.S. Dep't of Health & Human Serv., 620 F.3d 1280 (11th Cir., Sept. 22, 2010)
 Arunasalam v. St. Mary Med. Ctr., (Cal. Ct. App. Feb. 27, 2009)
 Pardo v. Regents of the Univ. of California, (Cal. Ct. App. Jan. 28, 2009)
 Gekas v. Seton Corp., (Tenn. Ct. App. Mar. 28, 2008)
 Blau v. Northridge Hosp. Med. Ctr., (Cal. Ct. App. Aug. 22, 2007)
 Catipay v. Humility of Mary Health Partners, (Ohio Ct. App. Mar. 31, 2006)
 Gordon v. Lewistown Hospital, 423 F.3d 184 (3rd Cir. 2005)
 Eden v. Desert Reg'l Med. Ctr., (Cal. Ct. App. Jan. 24, 2006)
 Kibler v. Northern Inyo County Local Hosp. Dist., 126 Cal.App.4th 713 (Cal. Ct. App. Jan. 11, 2005)
 Lohrmann v. Iredell Mem. Hosp., Inc., 620 S.E.2d 258 (N.C. Ct. App. 2005)

291

Address
Quality
Concerns

292

Freilich v. UCHS

293

**Dr. Freilich had 35 complaints
from doctors and staff
and 33 complaints from patients.**

294

Staff complained about comments made by Dr. Freilich...

- “I can make life miserable for you.”
- “Every time I am written up, I will write you up ten times.”
- “I want [the patient] to be miserable. He did this to himself.”

295

Patients complained about comments made by Dr. Freilich...

- “I hate people who smoke.”
- “You are a three-time loser and you will be back.”
- “The ICU physicians were trying to kill [your] mother.”

296

Freilich v. UCHS

297

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Freilich v. UCHS

Retaliation can be relevant to HCQIA immunity.

298

Don't do this:
"Congratulations,
you've been
reappointed..."

299



Harry Hopiate, MD
5 Main Street
Hope Hills, North Carolina, 27066

Dear Dr. Hopiate:

Congratulations! I am pleased to inform you that your reappointment to the Active Staff of Eternal Care Hospital has been approved by the Board. Your clinical privileges were renewed as requested with this appointment. Your next reappointment date is November 10, 2019.

We look forward to working with you during the upcoming reappointment period. Please do not hesitate to let us know if we can be of any assistance to you with your practice and affiliation with Eternal Care Hospital.

Sincerely,

Joanne Meyers

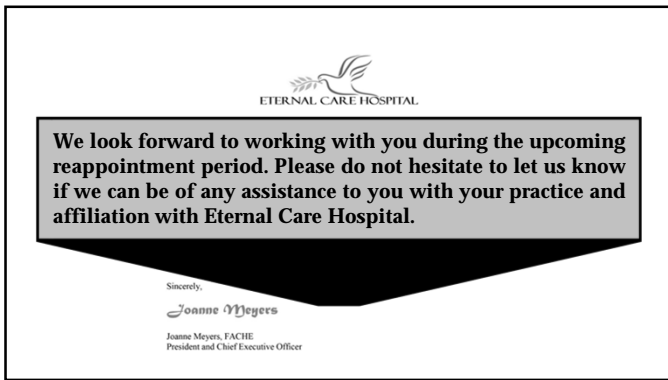
Joanne Meyers, FACHE
President and Chief Executive Officer

300

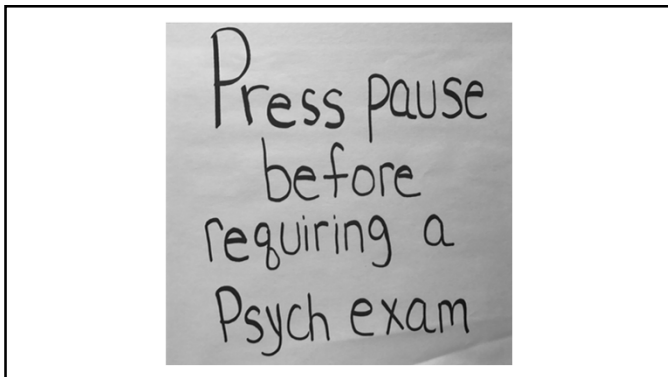
North Country Healthcare



301



302



303

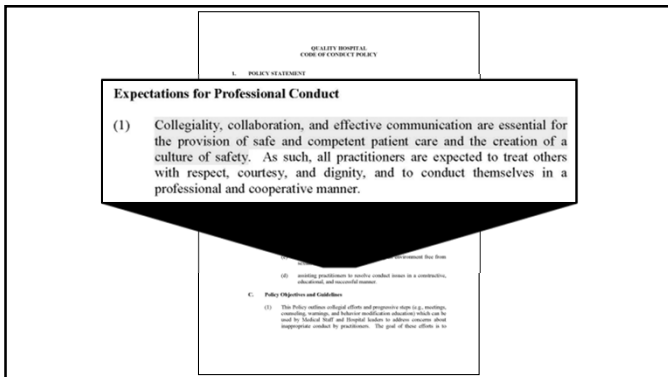
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304



305



306

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To aid in both the education of practitioners and the enforcement of this Policy, conduct that is inappropriate, unprofessional, and may undermine a culture of safety includes, but is not limited to:

- (a) threatening or abusive language directed at patients, nurses, other Hospital personnel, or other practitioners (e.g., belittling, berating, or non-constructive criticism that intimidates, undermines confidence, or implies incompetence);
- (b) degrading or demeaning comments regarding patients, families, nurses, other practitioners, Hospital personnel, or the Hospital;
- (c) refusing or failing to answer questions, return phone calls or pages;
- (d) using condescending language or voice intonation conveying impatience with questions;
- (e) using profanity or similarly offensive language while in the Hospital or while speaking with patients, families, nurses, other practitioners, or other Hospital personnel;
- (f) retaliating against any individual who may report a quality or behavior concern;
- (g) engaging in inappropriate physical contact with another individual that is threatening or intimidating;

307

308

The Professionalism Committee recommends the following conditions for a Performance Improvement Plan (PIP) for behavior:

3. You must attend the Professionalism and Communication - CPEP LIVE - LIVE course and participate in the first available program. (Information regarding this course is available here: <https://www.cpepdocs.org/cpep-courses/inf/setting-notice-professionals>)

2. You will resign from the MEC effective immediately. Please submit a written resignation via e-mail to @MedicalStaff Office.

6. You must identify a peer support or anger management coach ("Life Coach"). The Life Coach must have experience with anger management and be pre-approved by the department chair. Please submit the name and qualifications of the Life Coach for pre-approval via e-mail to @MedicalStaff Office

309

North Country Healthcare

CONDITIONS OF PERFORMANCE IMPROVEMENT PLAN FOR BEHAVIOR

The Professionalism Committee, pursuant to the Professionalism Policy, recommend the following conditions for a Performance Improvement Plan (PIP) for behavior:

3. **You must enroll in and fully complete “Improving Inter-Professional Communication – CPEP LIVE – Live, Interactive Video Education” and participate in the first available program. (Information about the course is available here: <https://www.cpepdoc.org/cpep-courses/improving-inter-professional-communication/>.)**

5. You must read, sign, and return the signed copy of Medical Staff Professionalism and Code of Conduct Policy via e-mail to @MedicalStaff Office. A copy of the Professionalism and Code of Conduct Policy is attached for your convenience.

6. You must identify and hire (at your own expense) a life coach/anger management coach (“Life Coach”). The Life Coach must have experience with anger management and be pre-approved by the department chair. Please submit the name and qualifications of the Life Coach for pre-approval via e-mail to @MedicalStaff Office.

310

CONDITIONS OF PERFORMANCE IMPROVEMENT PLAN FOR BEHAVIOR

The Professionalism Committee, pursuant to the Professionalism Policy, recommend the following conditions for a Performance Improvement Plan (PIP) for behavior:

1. Given the significant concerns raised about both your professional conduct, and prior incidents, **you are being issued a formal reprimand.** This document will serve as that reprimand. A copy of this document will be placed in your confidential file.

5. **You must read, sign, and return the signed copy of Medical Staff Professionalism Policy via e-mail to @MedicalStaff Office.**

4. You must identify and hire (at your own expense) a life coach/anger management coach (“Life Coach”). The Life Coach must have experience with anger management and be pre-approved by the department chair. Please submit the name and qualifications of the Life Coach for pre-approval via e-mail to @MedicalStaff Office.

5. You must read, sign, and return the signed copy of Medical Staff Professionalism and Code of Conduct Policy via e-mail to @MedicalStaff Office. A copy of the Professionalism and Code of Conduct Policy is attached for your convenience.

6. You must identify and hire (at your own expense) a life coach/anger management coach (“Life Coach”). The Life Coach must have experience with anger management and be pre-approved by the department chair. Please submit the name and qualifications of the Life Coach for pre-approval via e-mail to @MedicalStaff Office.

311

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The Professionalism Committee, pursuant to the Professionalism Policy, recommend the following conditions for a Performance Improvement Plan (PIP) for behavior:

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6. **You must identify and hire a life coach/anger management coach (“Life Coach”). The Life Coach must have experience with anger management and be pre-approved by the CMO. Please submit the name and qualifications of the Life Coach for pre-approval via e-mail to @MedicalStaff Office**

6. You must identify and hire (at your own expense) a life coach/anger management coach (“Life Coach”). The Life Coach must have experience with anger management and be pre-approved by the department chair. Please submit the name and qualifications of the Life Coach for pre-approval via e-mail to @MedicalStaff Office.

312

North Country Healthcare

CONDITIONS OF PERFORMANCE IMPROVEMENT PLAN FOR BEHAVIOR

9. You must engage in behavior that is consistent with the Professionalism Policy. Specifically:

- a. you must treat all individuals in the Hospital with respect, courtesy, and dignity;
- b. manage your temper when you are in the Hospital, especially in the PACU and OR (e.g., not raising your voice or yelling at staff and no profanity);
- c. you must communicate professionally, appropriately, and responsibly with patients, their families, nursing personnel, administrators and other health care professionals, including other physicians and APPs;

5. You must review the Professionalism and Code of Conduct Policy in the Medical Staff Office. A copy of the Professionalism and Code of Conduct Policy is attached for your convenience.

313

CONDITIONS OF PERFORMANCE IMPROVEMENT PLAN FOR BEHAVIOR

The Professionalism Committee requests the Professionalism Policy requires the following:

- d. you must not make threatening, demeaning, or accusatory comments to administrators, nursing personnel, or other health care professionals;
- e. you must not yell at, degrade, or demean administrators, nursing personnel, or other health care professionals; and
- f. you must not engage in any conduct that could be perceived as retaliatory in nature.

5. You must review the Professionalism and Code of Conduct Policy in the Medical Staff Office. A copy of the Professionalism and Code of Conduct Policy is attached for your convenience.

6. You must identify and hire (at your own expense) a life coach/anger management coach ("Life Coach"). The Life Coach must have experience with anger management and be pre-approved by the department chair. Please submit the name and qualifications of the Life Coach for pre-approval via e-mail to @MedicalStaffOffice

314

CONDITIONS OF PERFORMANCE IMPROVEMENT PLAN FOR BEHAVIOR

- 13. You are responsible for all costs associated with your compliance with this PIP.
- 14. Your compliance with the terms and conditions of the PIP will be considered when you seek reappointment and renewal of privileges.
- 15. We will continue to monitor Safety Reports, to ensure your compliance with the Professionalism Policy. If there are any additional validated events related to behavior, you will be referred to the MEC.

5. You must review the Professionalism and Code of Conduct Policy in the Medical Staff Office. A copy of the Professionalism and Code of Conduct Policy is attached for your convenience.

6. You must identify and hire (at your own expense) a life coach/anger management coach ("Life Coach"). The Life Coach must have experience with anger management and be pre-approved by the department chair. Please submit the name and qualifications of the Life Coach for pre-approval via e-mail to @MedicalStaffOffice

315

North Country Healthcare

CONDITIONS OF PERFORMANCE IMPROVEMENT PLAN FOR BEHAVIOR

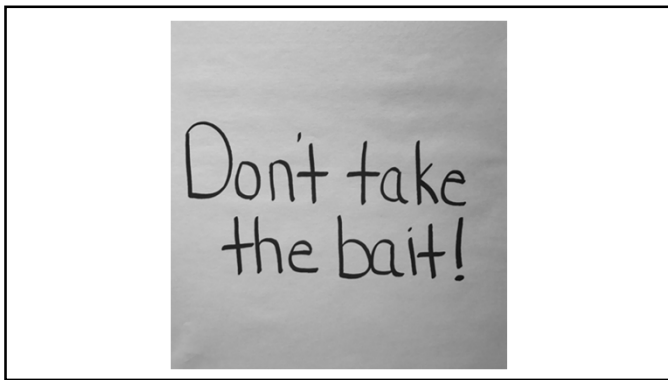
The Professionalism Committee, pursuant to the Professionalism Policy, recommend the following conditions for a Performance Improvement Plan (PIP) for behavior:

These are the expectations we have for all members of the Medical Staff. As a physician, you are viewed as a leader. It is imperative that you set an example and exhibit the highest standards of professionalism. Others will model your behavior and follow the example that you set.

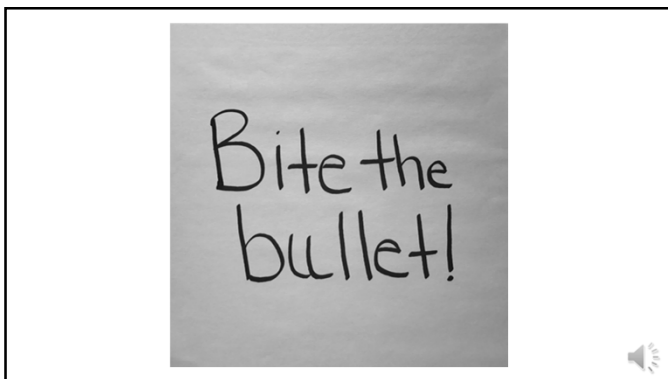
5. You must read, sign, and return the signed copy of Medical Staff Professionalism and Code of Conduct Policy via e-mail to @MedicalStaff Office. A copy of the Professionalism and Code of Conduct Policy is attached for your convenience.

6. You must identify and hire (at your own expense) a life coach/anger management coach ("Life Coach"). The Life Coach must have experience with anger management and be pre-approved by the department chair. Please submit the name and qualifications of the Life Coach for pre-approval via e-mail to @MedicalStaff Office.

316



317



318

**Leal v. Secretary,
Health and Human Services**

319

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



320

“He pitched a fit.”

321

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	<p>The Hospital said Dr. Leal became so enraged he:</p> <ol style="list-style-type: none">1. broke a telephone2. shattered the glass on a copy machine3. shoved a cart into the doors of the operating suite so hard that it damaged one of them	<p>Dr. Leal said he:</p> <ol style="list-style-type: none">1. accidentally broke a telephone when he tripped on its cord2. closed the lid of a copy machine with 'some force' and the glass cracked3. moved a cart that was blocking the doors of the operating suite	
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322

	<p>The Hospital said Dr. Leal became so enraged he:</p> <ol style="list-style-type: none">4. threw jelly beans down the hallway in the surgical suite5. flung a medical chart to the ground	<p>Dr. Leal said:</p> <ol style="list-style-type: none">4. he ate jelly beans, some of which fell on the floor when he tried to throw away flavors he did not like5. when he was handed a chart, some of the loose papers fell to the floor	
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323

“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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“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.

325

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

326

**Bullying and
Workplace Violence**

327

What is “Workplace Violence”?

- **Joint Commission: An act or threat occurring at the workplace that can include any of the following:**
 - Verbal, nonverbal, written, or physical aggression
 - Threatening, intimidating, harassing, or humiliating words or actions
 - Bullying
 - Sabotage
 - Sexual harassment
 - Physical assaults
 - Other behaviors of concern involving staff, licensed practitioners, patients, or visitors

328

How common is workplace violence?

- **2021 survey:**
 - 31% of nurses experienced emotional abuse from peers
 - 41% experienced verbal abuse from peers
- **Peer abuse (from other nurses) more common than abuse from physicians**

329

How common is workplace violence?

- **Healthcare workers five times more likely to be punched, kicked, bitten, beaten, choked and assaulted on the job than all other workers (U.S. Bureau of Labor Statistics)**

330

Effects of Workplace Violence

"These bullying experiences NEVER leave you. It fractures our dignity, humanity and makes us question the profession we worked so hard to be a part of. How are we supposed to be compassionate to our patients when we can't even show respect and dignity towards each other?"

(Survey respondent, Salamone, 2019)

331

Effects of Workplace Violence

"Becoming a nurse has broken my spirit. A career that was my dream for so long turned out to be a nightmare."

(Survey respondent, Evans, 2022).

332

Effects of Workplace Violence

- Nurses experiencing workplace violence suffer from
 - Irritability
 - Anxiety
 - Depression
 - Loss of confidence
 - Diminished self-esteem
 - Increased substance use



333

Effects of Workplace Violence

- **Physical symptoms**
 - Fatigue
 - Sleep disturbances
 - Gastrointestinal upset
 - Headaches
 - Hypertension
 - Higher body mass index
 - Increased rates of chronic illnesses



334

Effects of Workplace Violence

- **Job performance**
 - Less likely to ask questions or seek help
 - Impaired decision-making
 - Greater professional disengagement
 - Absenteeism
 - Turnover (abused employees have negative feelings towards abusers & employing organization)
 - Employees may retaliate against employer due to perceived unfair rules, practices, or work conditions

335

Effects of Workplace Violence

- **Effect felt beyond targeted individual**
 - Staff trying to avoid situation
 - Others feel pressure to join the bullying



336

Barriers to Addressing Workplace Violence

- **Reporting is necessary to identify trends or problem areas**
- **Underreporting is common**
 - Only 57% of physical violence reported
 - Only 40% of non-physical violence reported



337

- **Why so little reporting?**
 - “It’s part of the job”
 - Supervisor is the perpetrator
 - Perception that “Nothing will be done”



338

Pennsylvania survey:

- **42% of nurses and healthcare workers reported that their employer ignores their reports of workplace violence incidents**
 - Possible that employer was simply maintaining confidentiality
 - Illustrates importance of responding to reports

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Barriers to Addressing Workplace Violence

- “Customer is always right”
- Lack of understanding of effects of behavior by staff engaged in bullying
- Inconsistent enforcement of standards



340

What if I Experience or Observe Sexual Harassment or Bullying?

- Tell the harasser the behavior is unwelcome (if directed at you)
- Don't laugh or give harasser an audience (if you witness)



341

What if I Experience or Observe Sexual Harassment or Bullying?

- NCH policies require that report be made as soon as possible (within 24 hours)
 - Compliance Hotline (toll free at 1-844-678-2673)
 - NCH Intranet Portal, Compliance /Privacy Reporting tab)
 - www.wearenc.ethicspoint.com



342

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Retaliation Prohibited!

- No adverse action may be taken for:
 - Reporting
 - Objecting to inappropriate behavior
 - Co-operating with complaint review process
- Hospital and physician leaders should remind participants in review process of need to avoid even the perception of retaliation

343

Hospital's Actions

- Hospital will promptly and thoroughly investigate the claim
 - interviews of reporter, alleged harasser, and any witnesses
 - review of documentation and other information

344

Hospital's Actions

- Hospital will take appropriate action (depending on circumstances)
 - Collegial/educational discussion
 - Warning/reprimand
 - Performance Improvement Plan
 - Termination of employment / Medical Staff appointment
- Recognize that Hospital may not be able to share the specific results of the review

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

346



347



348

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

349

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

350

What’s the Scope of the Problem?

351

Stress and Burnout Among Surgeons
Understanding and Managing the Syndrome and Avoiding the Adverse Consequences

Mental Health

- 2022 Medscape survey, about 5% 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

352

Stress and Burnout Among Surgeons
Understanding and Managing the Syndrome and Avoiding the Adverse Consequences

Mental Health

“The suicide rate among male physicians is 1.41 times higher than the general male population. And among female physicians, the relative risk is even more pronounced — 2.27 times greater than the general female population.”

acgme.org

353

Stress and Burnout Among Surgeons
Understanding and Managing the Syndrome and Avoiding the Adverse Consequences

Mental Health

Approximately 300 physicians commit suicide each year.

354

Physician Burnout



- 47% of physicians describe themselves as burned out, according to a 2022 Medscape Survey

355

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.

356



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

Center for treatment. The driver's sustained injuries that were not life-threatening, police said. Both agreed to have their blood drawn. Police say lab tests won't begin until Tuesday, however.

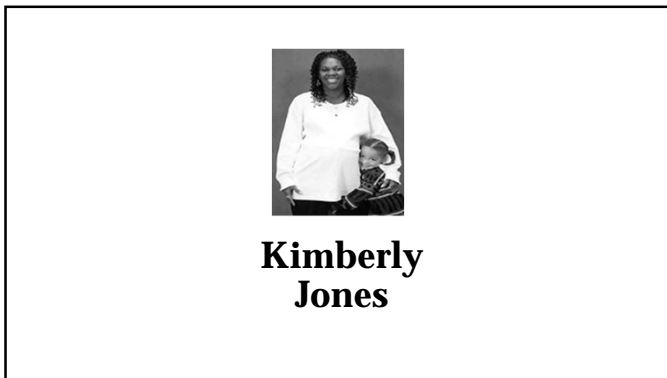
Juliana Reyes Viquez was pronounced dead at the hospital at about 7 a.m. Venetec gastroenterologist Viquez was flown to Albuquerque for further treatment. A report on her condition was not available Saturday afternoon.

The driver of the late-night crash was Edward Santana, who lives on Springs Road. He walked to the intersection and saw one vehicle upside down, he said, along with a bevy of emergency vehicles. On Saturday morning, he returned to the crash site, where among remaining debris he found a Toyota pickup and a bag of Chexios that he suspects came from the family vehicle.

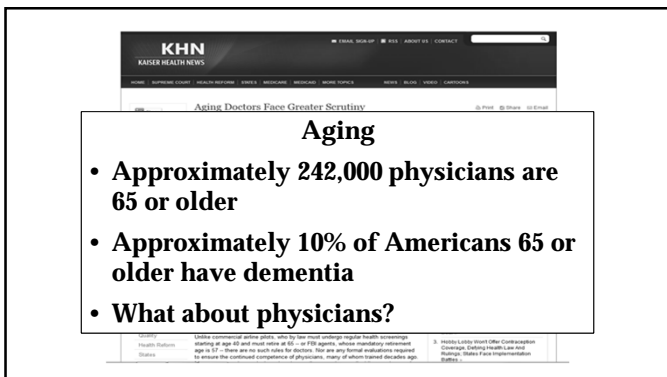
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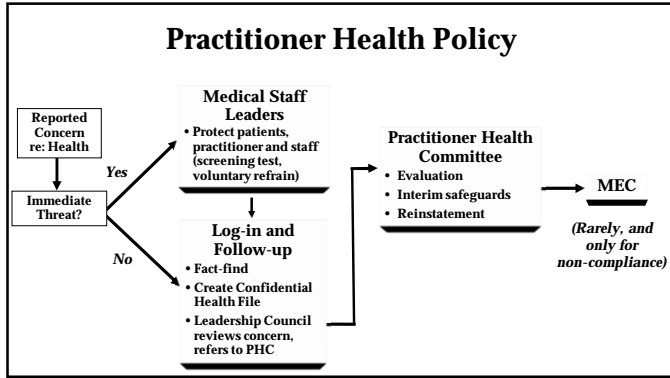


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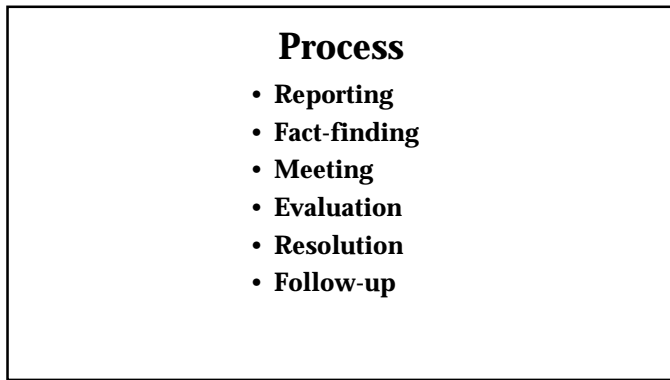


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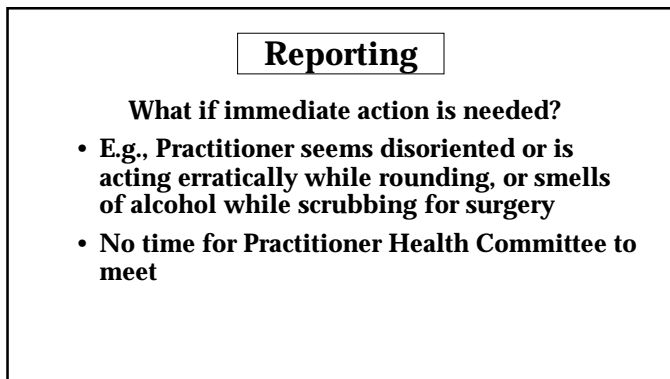
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361



362



363

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If immediate action is needed:

- **Practitioner Health Policy:**
 - identifies Medical Staff leaders 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

364

Fact-Finding

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

365

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

366

Meeting with Colleague

Plan the Meeting with Care

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

367

Evaluate reporting requirements:

- Is a report to any state licensing board required?
- Is a report of theft of controlled substances to federal DEA required?

368

Evaluation

Who performs?

- Evaluating entity must be selected by, or acceptable to, the Practitioner Health Committee

369

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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?

370

Evaluation

Format of report:

- Have evaluator complete form that addresses issues relevant to the physician in question (no one line letters!)

371

Fitness-To Return to Work-Certification

2. Is the employee now able to perform those essential functions of his or her job that he or she could not previously perform because of the serious health condition for which the employee has been on leave?
 Yes No Yes, with restrictions
3. Employee is released to return to work effective 9/4/2023 (indicate date).
4. If the Employee is released to work but is restricted in his or her ability to perform the essential functions of his or her job as a result of the serious health condition for which the employee has been on leave, please describe those restrictions.
one wk/mo for now
5. The foregoing restrictions are:
 Permanent Temporary until 12/19/2023 (indicate date).

372

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Evaluation

Format of report:

- **How much information should Practitioner Health Committee receive from evaluator (different for medical vs. psychiatric issue)?**

373

Resolution

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

374

Resolution

- **Reinstatement scenario:**
 - **Plan of care includes outpatient treatment for alcoholism and participation in AA meetings**
 - **Two weeks after beginning outpatient treatment program, the physician resigns from Medical Staff?**

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- Is report to state Board of Medicine required?
- Is NPDB report required?

376

- For substance abuse, outline conditions of reinstatement in detailed letter:
 - Compliance with PHP contract
 - Agree to random screening
 - Workplace monitor
 - Coverage
 - Statement that resignation prior to complying with conditions for given period of time, absent good cause, will be viewed as resignation to avoid Investigation

377

Documentation

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

378

What about the Americans with Disabilities Act (ADA)?

379

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.”

380

Courts have deferred to hospitals in deciding if an impaired physician poses a “direct threat” to patients.

381

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 (e.g., a Late Career Practitioner Policy)?

382

Benefits of a Late Career Policy

- 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

383

JAMA Performance Improvement

January 14, 2020

Cognitive Testing of Older Clinicians Prior to Recredentialing

Leo Cooney, MD¹; Thomas Balczak, MD²

➤ 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

384

“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.”

385

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

386

Drawbacks of a Late Career Policy

- **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 Late Career Policy

- 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

388

Drawbacks of a Late Career Policy

- 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

389

Age Discrimination in Employment Act of 1967 (ADEA)

- Applies to “employees” over age 40
- Some courts – and apparently the EEOC – also apply ADEA to non-employees
- Prohibits employment action based on age
- Applies to mandatory retirement, mandatory testing, etc.

390

Use of age is permitted if age is a “bona fide occupational qualification,” or “BFOQ”

E.g., airline pilots, bus drivers

391

- **Courts have not yet addressed if age can be a BFOQ for physicians.**
- **EEOC believes age is not a BFOQ for physicians.**

392

If age is to be used as a BFOQ:

- **Consult counsel**
- **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**

393

No Risk of Age Discrimination Claims

- **Eliminate Any Focus On Age**
 - Comprehensive examinations for all at initial appointment and reappointment?
 - 360 evaluations for all?

394

Less Risk

- Concurrent chart review of certain number of cases after age "x"
- Annual reappointment
- Work with physician to change practice conditions (e.g., day off after night call, etc.)

395

More Risk

- Concurrent proctoring of certain number of cases
- Require physician to have assistant at surgery, or back-up immediately available
- Comprehensive physical and psychological evaluations

396

High Risk

- Automatic loss of privileges after certain age

397

Stay Tuned...

398

Wheel of Misfortune!!!

399

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Questions?



400

Thank You!

401

402

Thank you.

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