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UCHealth

*Medical Staff Leadership Training*

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October 20, 2023

Phil Zarone & Charlie Chulack  
Horty, Springer & Mattern

JOINTLY SPONSORED BY THE UNIVERSITY OF PITTSBURGH SCHOOL OF MEDICINE  
CENTER FOR CONTINUING EDUCATION IN THE HEALTH SCIENCES AND HORTYSPRINGER 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 6.0 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

**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).

**CHARLES CHULACK****CChulack@HortySpringer.com**

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

Mr. Chulack is an editor of the firm's *Health Law Express*, a weekly e-newsletter on the latest health law developments. Mr. Chulack also served as an editor for the fourth and fifth editions of the American Health Law Association *Peer Review Guidebook* and the first edition of the American Health Law Association *The Complete Medical Staff, Peer Review, and Hearing Guidebook*. He has also published articles in the *Duquesne Law Review* and the Allegheny County Bar Association's *Lawyer's Journal*. He is a frequent presenter for the Pennsylvania Bar Institute, has conducted numerous audio conferences on topics ranging from the Medicare Conditions of Participation to antitrust in the health care arena, and is currently a faculty member of the HortySpringer seminar *Credentialing for Excellence*. Mr. Chulack is a member of the Allegheny County Bar Association and the American Health Law Association and is admitted to practice in front of the Pennsylvania Supreme Court and the United States District Court for the Western District of Pennsylvania.

Mr. Chulack received his law degree from Duquesne University where he graduated *magna cum laude*, was a member of the *Duquesne Law Review* and served as the Executive Comment Editor. While in law school, Mr. Chulack was also the Executive Editor for Duquesne's *Juris Magazine*, a publication covering a diverse range of legal topics. Mr. Chulack received his master's degree from New York University and his undergraduate degree from the University of Pittsburgh.

## Conflict of Interest Disclosure

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

No relevant financial relationships with commercial entities were disclosed by:

Phil Zarone, Partner  
Horty, Springer & Mattern, PC

Charles Chulack., Partner  
Horty, Springer & Mattern, PC

## Disclaimer Statement

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

**UCHealth**  
**Anschutz Inpatient Pavilion 2, Bruce Schroffel Auditorium**  
**12505 East 16<sup>th</sup> Avenue**  
**Aurora, Colorado**  
**Presenters: Phil Zarone & Charles Chulack**  
**Medical Staff Leadership Training**  
**October 20, 2023**

Time	Topic
8:00 to 8:10 a.m.	<i>Introduction</i>
8:10 to 9:00 a.m.	<i>Spotting and Addressing Application Red Flags – Dr. Hotmas</i> <ul style="list-style-type: none"> <li>• Gaps in employment</li> <li>• Missing information</li> <li>• Past Medical Staff actions</li> </ul>
9:00 to 9:20 a.m.	<i>Legal Protections for Medical Staff Leaders</i>
9:20 to 10:00 a.m.	<i>Credentialing Case Study – Dr. Sconder</i>
10:00 to 10:15 a.m.	<i>Break</i>
10:15 to 10:45 a.m.	<i>System Credentialing</i>
10:45 to 11:30 a.m.	<i>Practitioner Health and Aging</i> <ul style="list-style-type: none"> <li>• How common are health issues among practitioners?</li> <li>• Tips for addressing health issues</li> <li>• Unique issues raised by aging</li> </ul>
11:30 to Noon	<i>Best Practices for Keeping Meeting Minutes</i> <ul style="list-style-type: none"> <li>• The purpose of meeting minutes</li> <li>• The general rule is “the less detail the better”</li> <li>• Exceptions to the general rule</li> </ul>
Noon to 1:00 p.m.	<i>Lunch</i>
1:00 to 1:20 p.m.	<i>Attracting and Preparing Medical Staff Leaders</i>
1:20 to 2:00 p.m.	<i>Behavior-Safety Connection</i> <ul style="list-style-type: none"> <li>• View of courts, colleagues and accrediting entities</li> <li>• Tips for addressing behavioral issues</li> <li>• Sexual harassment</li> </ul>

2:00 to 2:45 p.m.	<p><b><i>I Wish I Had Your Bylaws</i></b></p> <ul style="list-style-type: none"> <li>• Bylaws should be your best friend (not your worst enemy)</li> <li>• Case studies to demonstrate the importance of good Bylaws language</li> </ul>
2:45 to 3:15 p.m.	<p><b><i>Medical Staff Leader Potpourri</i></b></p> <ul style="list-style-type: none"> <li>• Responding to reference requests</li> <li>• National Practitioner Data Bank reporting requirements</li> <li>• Keys to confidentiality</li> </ul>
3:15 to 3:30 p.m.	<p><b><i>Q &amp; A</i></b></p>
3:30 p.m.	<p><b><i>Adjournment</i></b></p>



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**UCHealth**

***Medical Staff Leadership Training***

**Phil Zarone & Charlie Chulack  
Horty, Springer & Mattern, P.C.**

**October 20, 2023**

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**REVIEW OF APPLICATION FOR  
INITIAL APPOINTMENT**

**DR. HOTMAS**

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**Benjamin A.  
Hotmas, M.D.**



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FIVE STAR HEALTH SYSTEM

APPLICATION FOR MEDICAL STAFF AND ADVANCED PRACTICE CLINICIAN  
APPOINTMENT AND CLINICAL PRIVILEGES



**Instructions:**

1. **INCOMPLETE APPLICATIONS WILL NOT BE PROCESSED.**
2. All information must be typed or printed.
3. If more space is needed, attach additional sheets and make reference to the page being amended.
4. If not previously provided, please attach copies of the following documents to applications:
  - (a) Current license(s) to practice your profession.
  - (b) Current DEA registration and state controlled substance license, if applicable.
  - (c) Current certificate of professional liability insurance coverage from insurance carrier.
  - (d) ECFMG certificate (if foreign medical graduate).
  - (e) Evidence of Board certification.
  - (f) Government issued photo identification (passport, driver's license), and
  - (g) Current curriculum vitae.
5. Please attach evidence of your current clinical competence/ability to support your request for clinical privileges, as follows:
  - (a) If you have just completed your training and have not held medical staff membership at any hospital, please attach a copy of your residency log (and fellowship log if applicable).
  - (b) If you have completed your residency and/or fellowship within the past five years, please attach a copy of your residency log and fellowship log (if applicable) and your quality profile (or similar documentation) from the hospital(s) where you have practiced, showing your clinical activity, including number of procedures performed, morbidity, mortality, infection rates and other complications.

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**Begin your review now!**

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**What did you find??**

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**Motion:**

Send a letter to Dr. Hotmas:

- (1) notifying him of the issues with his application,
- (2) requesting additional information, and
- (3) informing him that his application will not be processed until required information is received.

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**The Law is on *Your* Side:**

**Legal Protections for  
Medical Staff Leaders**



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**Legal Protections for  
Medical Staff Leaders**

- Health Care Quality Improvement Act of 1986

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**Health Care Quality  
Improvement Act of 1986**

- Immunity from damages
- Peer reviewers winning overwhelmingly

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**Legal Protections for  
Medical Staff Leaders**

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

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

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

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## **Credentials Policy:**

**To the fullest extent permitted by law, the individual releases from any and all liability, extends immunity to, and agrees not to sue the Hospital, the Board, and the Medical Staff, their authorized representatives, any members of the Medical Staff, or Board, and any third party who provides information.**

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## **Credentials Policy:**

**If, despite this Section, an individual institutes legal action challenging any credentialing, privileging, peer review, or other professional review action or activity, or any report that may be made to a regulatory board or agency, and does not prevail, the individual will reimburse the Hospital, the Board, and the Medical Staff, their authorized representatives, any members of the Medical Staff, or Board, and any third party who provides information involved in the action for all costs incurred in defending such legal action, including costs and attorneys' fees, and expert witness fees.**

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## Legal Protections for Medical Staff Leaders

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

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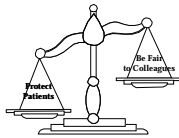
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## When Balancing...

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

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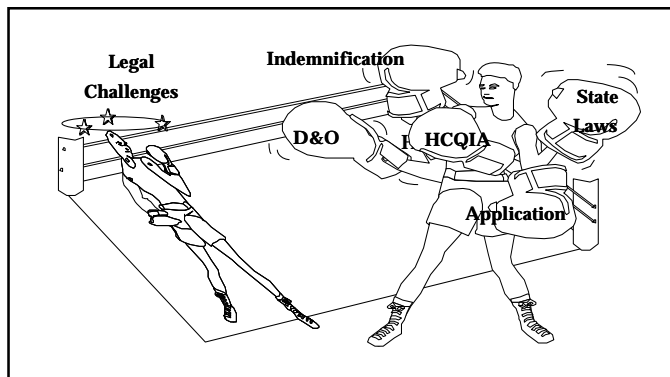
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**Keys to Reducing Legal Risk**

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**Lesson 1**

**Protect patients!**

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

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- **Proctoring?**
- **2<sup>nd</sup> opinion?**
- **Agreement to refrain from exercising some privileges?**
- **Suspension of some but not all privileges?**

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## **Lesson 2**

**Follow your policies.**

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## **Lesson 3**

**Document well.**

**Be sure documentation  
supports action.**

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## **Lesson 4**

**Consult with your  
attorneys early and often.**

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## **Lesson 5**

**Recognize the role of emotion;  
focus on facts.**

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## **Lesson 6**

**Communicate with the physician  
early and often.**

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## **Lesson 7**

**Appearances matter. Manage  
them carefully (conflicts of  
interest and otherwise).**

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## Lesson 8

Precautionary suspensions are a last resort

- First, try voluntary agreements to refrain or other less restrictive options
- Use a suspension if other options aren't available and there is imminent danger

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## REVIEW OF APPLICATION FOR INITIAL APPOINTMENT CASE STUDY

DR. SCONDER

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FIVE STAR HEALTH SYSTEM

HOME ABOUT OUR TEAM PATIENT INFO SERVICES PATIENT PORTAL INSURANCE & BILLING CONTACT US HEALTH LIBRARY

About

 Five Star Medical Group is a comprehensive group of more than 200 physicians and advanced practice providers across the state and beyond. We are committed to taking care of all of your health care needs. We specialize in total patient care practicing in primary care, obstetrics and gynecology, general surgery, emergency care and other advanced treatments.

Alicia Hastings, MD  
CMO

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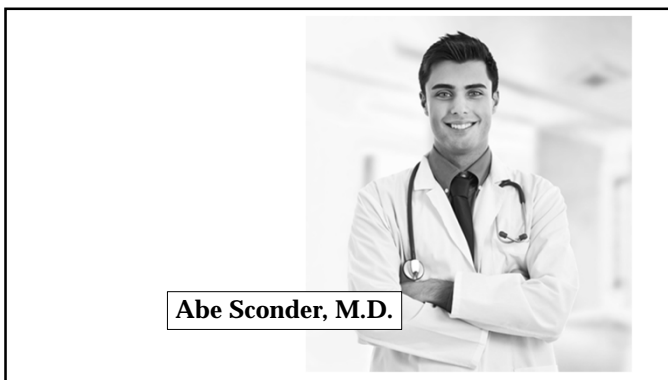
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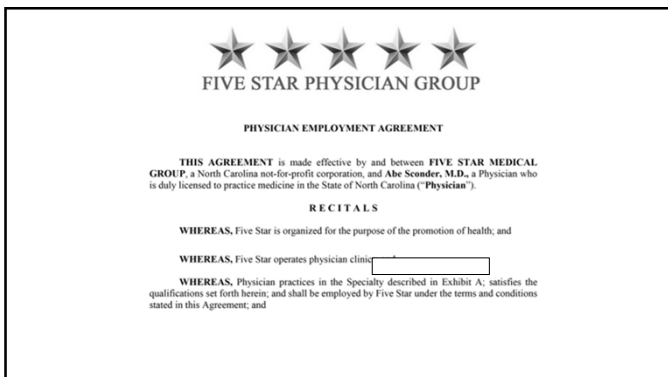
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**FIVE STAR PHYSICIAN GROUP**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

<b>PHYSICIAN:</b>	<b>FIVE STAR MEDICAL GROUP:</b>
Abe Sconder, M. D.	By: Alisha Marie Hastings, M.D. Chief Medical Officer

qualifications set forth herein, and shall be employed by Five Star under the terms and conditions stated in this Agreement, and

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**FIVE STAR PHYSICIAN GROUP**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

<b>PHYSICIAN:</b>	<b>FIVE STAR MEDICAL GROUP:</b>
<u>Abe Sconder, M.D.</u> Abe Sconder, M. D.	By: <u>Alisha M. Hastings, M.D.</u> Alisha Marie Hastings, M.D. Chief Medical Officer

stated in this Agreement, and

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**FIVE STAR HEALTH SYSTEM**

**APPLICATION FOR MEDICAL STAFF AND ADVANCED PRACTICE CLINICIAN POSITIONS AND CLINICAL PRIVILEGES**

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ABE SCONDER, M.D.

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CURRICULUM VITAE

HIGHER EDUCATION  
UNDERGRADUATE DEGREE:  
• August 2009 to May 2012: Belknap College, Concord, NH 03301

MEDICAL SCHOOL:  
• September 2012 to May 2016: Southern College of Medicine, Long Branch, NJ 08000

RESIDENCY:  
• July 2016 to June 2019: Internal Medicine, Cabrini Medical School, New York, NY 10003

LICENSURE  
• New Jersey State Board of Medical Examiners  
• New York Medical Board  
• North Carolina Medical Board

WORK HISTORY  
• Staffing Solutions, Inc.: July 2019 to January 2020  
• Eternal Care Hospital: July 2020 to September 2022  
• Five Star Medical Group: February 2023

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ABE SCONDER, M.D.

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**WORK HISTORY**

- Staffing Solutions, Inc.: July 2019 to Jan. 2020
- Eternal Care Hospital: July 2020 to Sept. 2022

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ABE SCONDER, M.D.

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**WORK HISTORY**

- Staffing Solutions, Inc.: July 2019 to Jan. 2020  
(Six-month gap)
- Eternal Care Hospital: July 2020 to Sept. 2022

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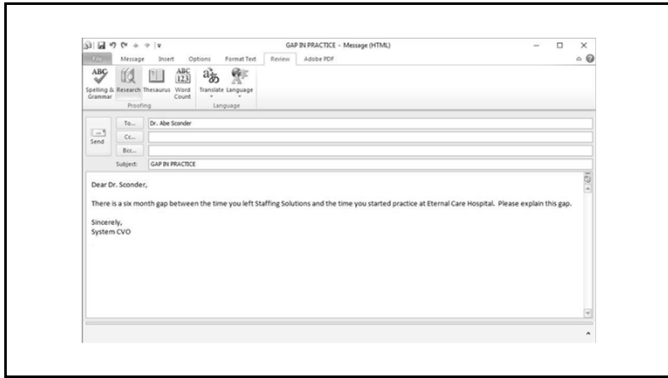
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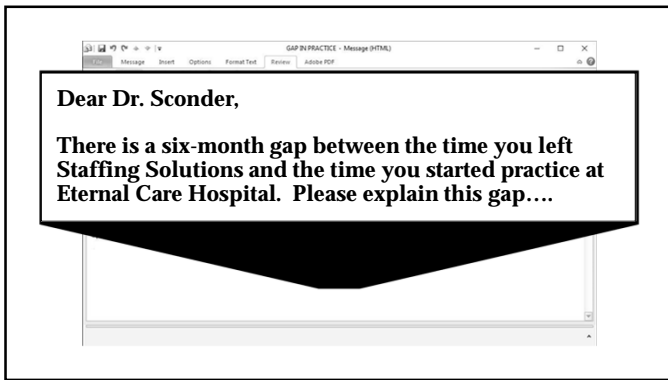
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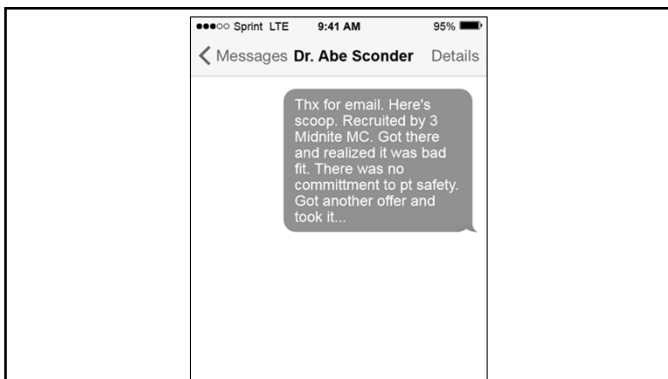
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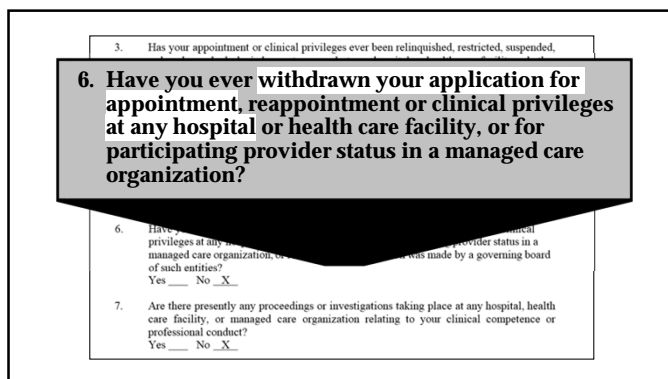
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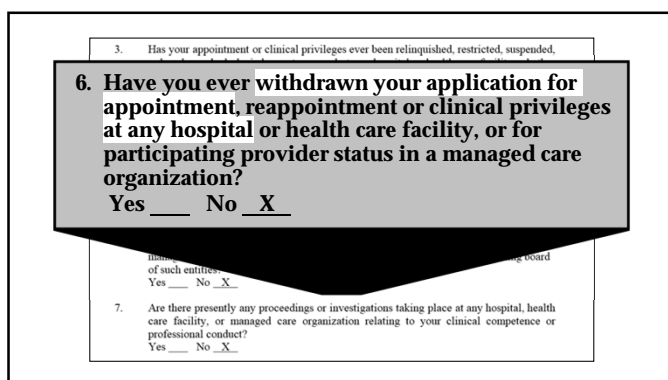
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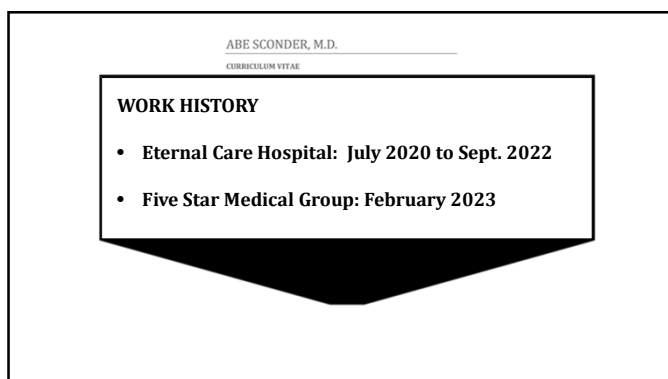
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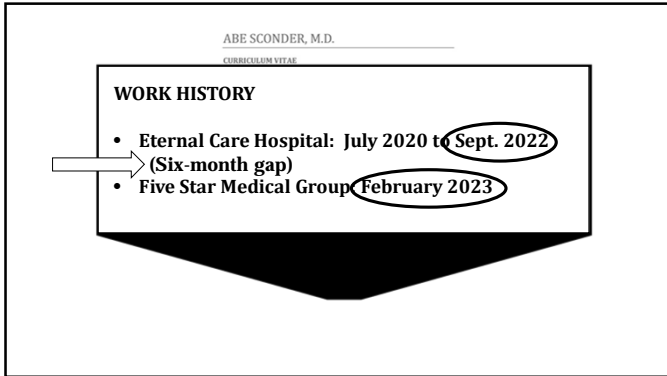
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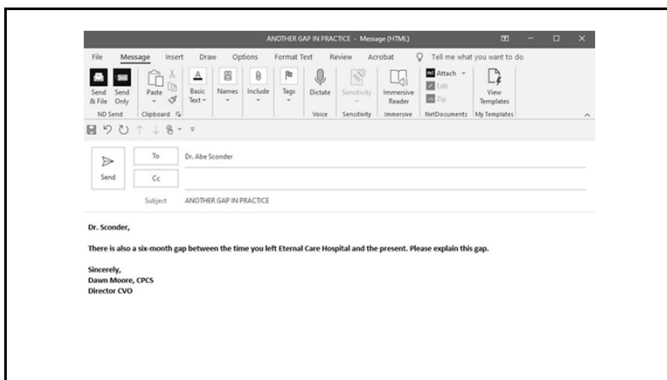
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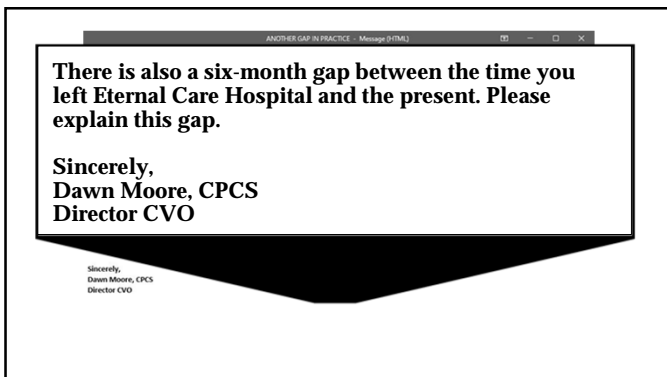
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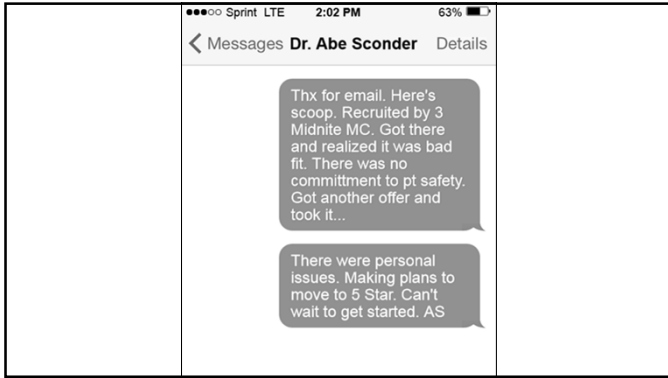
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**FIVE STAR HEALTH SYSTEM**  
 CONFIDENTIAL AND PRIVILEGED PEER REVIEW DOCUMENT

NAME OF APPLICANT: Abe Sconder MD  
 NAME OF HOSPITAL: Eternal Care Hospital

	NO CONCERNS	SOME CONCERNS	UNABLE TO ASSESS
Medical/clinical knowledge			
Staying 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 trainees and hospital staff			
Relationships 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 anticipated outcomes			
Timely, comprehensive and legible completion of medical records			

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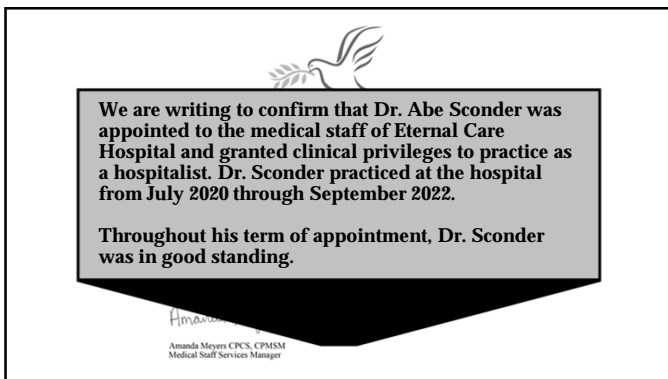
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We are writing to confirm that Dr. Abe Sconder was appointed to the medical staff of Eternal Care Hospital and granted clinical privileges to practice as a hospitalist. Dr. Sconder practiced at the hospital from July 2020 through September 2022.

Throughout his term of appointment, Dr. Sconder was in good standing.

Sincerely,  
*Amanda Meyers*  
Amanda Meyers CPSC, CPMSM  
Medical Staff Services Manager

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B. Membership in Professional Societies (local, state, or national)

Name & Address	From	Dates

2. Have you ever failed to pass a Board certification examination? Yes X No \_\_\_

If "yes," please explain on a separate sheet and attach. *My father passed away right before last board cert exam*

4. Have you been accepted to take the certification examination? Yes X No \_\_\_

If "yes," what dates are you scheduled to take the certification examination? *Next August*

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B. Membership in Professional Societies (local, state, or national)

Name & Address	From	Dates

4. Have you been accepted to take the certification examination? Yes X No \_\_\_

If "yes," what dates are you scheduled to take the certification examination?  
*May 2023*

*My father passed away right before last board cert exam*

1. If you certified, have you applied for the certification examination? Yes X No \_\_\_

2. If "no," do you intend to apply for the certification examination? Yes \_\_\_ No \_\_\_

3. Have you been accepted to take the certification examination? Yes X No \_\_\_

4. If "yes," what dates are you scheduled to take the certification examination?  
*May 2023*

5. Dates of next required recertification examination (if applicable)

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## Issues:

- Hospitals worked as locum tenens
- 6-month gap after locum tenens
- Three Midnight Medical Center
- Need more information from Eternal Care Hospital
- Two years at Eternal Care Hospital
- 6-month gap after Eternal Care Hospital
- Not board certified

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Dear Dr. Sconder:

**A number of issues have been identified by a preliminary review of your application for medical staff appointment and clinical privileges to practice at Five Star Health System.**

Comments are for informational purposes only. For new, additional, or updated information that is needed for your application, please refer to the items of our review. In your responses please include the number and name of the items to which you are responding.

**6. Locum Tenens**

According to your application, you worked with Staffing Solutions for a year after completing your residency training. It is our practice to confirm, through primary sources, all practice locations. Therefore, it will be necessary for you to complete Section V of the application with respect to each hospital where you practiced as a locum tenens for Staffing Solutions. A clear copy of Section V is enclosed. If you need more space, please attach an additional sheet.

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FIVE STAR HEALTH SYSTEM  
CONFIDENTIAL

**The Credentials Policy clearly places the burden of furnishing information on the applicant. The Credentials Policy also states that an applicant has “the burden of producing information deemed adequate by the hospital for a proper evaluation of current competence, character, ethics, and other qualifications, and resolving any doubts.”**

5. License Issues  
According to your application, you worked with Staffing Solutions for a year after completing your residency training. It is our practice to confirm, through primary sources, all practice locations. Therefore, it will be necessary for you to complete Section V of the application with respect to each hospital where you practiced as a locum tenens for Staffing Solutions. A clean copy of Section V is enclosed. If you need more space, please attach an additional sheet.

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FIVE STAR HEALTH SYSTEM  
CONFIDENTIAL  
PEER REVIEW

**“An application will become incomplete if the need arises for new, additional or clarifying information.”**

For example, the Credentials Policy states that the burden of furnishing information on the applicant, for example, to resolve any doubts, is on the applicant. The burden of producing information deemed adequate by the hospital for a proper evaluation of current competence, character, ethics, and other qualifications, and of resolving any doubts.  
This section of the Credentials Policy also makes it clear that an application is only considered complete when all questions on the application form have been answered, all supporting documentation has been supplied, and all information has been verified from primary sources. Furthermore, according to this section, the application will become incomplete if the need arises for new, additional, or clarifying information. It will also make the additional information that is needed before your application can be processed further. For ease of our review, in your response please include the number and letter of the item to which you are responding.

5. License Issues  
According to your application, you worked with Staffing Solutions for a year after completing your residency training. It is our practice to confirm, through primary sources, all practice locations. Therefore, it will be necessary for you to complete Section V of the application with respect to each hospital where you practiced as a locum tenens for Staffing Solutions. A clean copy of Section V is enclosed. If you need more space, please attach an additional sheet.

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FIVE STAR HEALTH SYSTEM  
CONFIDENTIAL

**If you wish to pursue your application and have it processed further, the Credentials Policy requires that you provide the information requested within 30 days of your receipt of this letter. If you do not provide the information within that time frame, your application will continue to be incomplete and will be deemed withdrawn in accordance with the Credentials Policy.**

5. License Issues  
According to your application, you worked with Staffing Solutions for a year after completing your residency training. It is our practice to confirm, through primary sources, all practice locations. Therefore, it will be necessary for you to complete Section V of the application with respect to each hospital where you practiced as a locum tenens for Staffing Solutions. A clean copy of Section V is enclosed. If you need more space, please attach an additional sheet.

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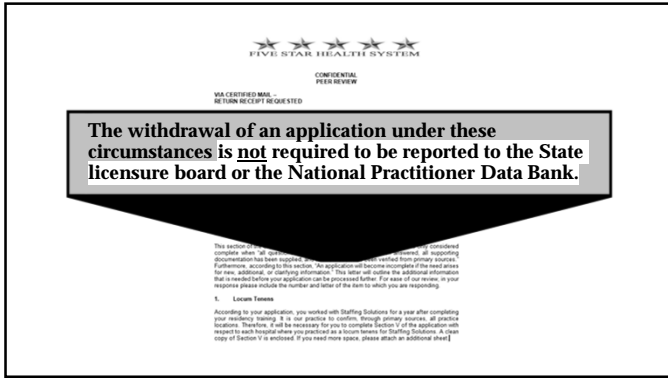
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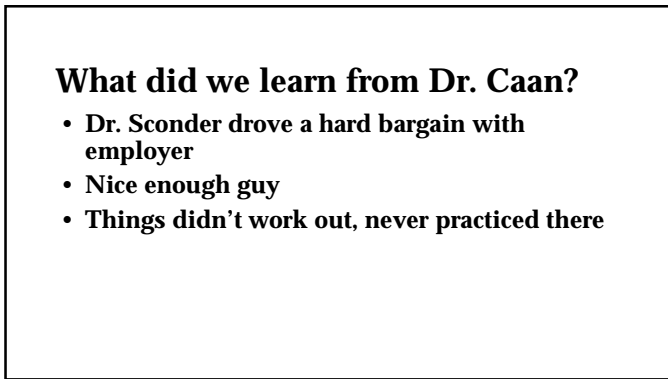
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## Getting more out of references:

- Remind them of credentialing goals
- Remind them of protections
- Plan ahead – ask detailed questions
- Ask about documents
- Ask who else might have information
- Ask about litigation/settlement

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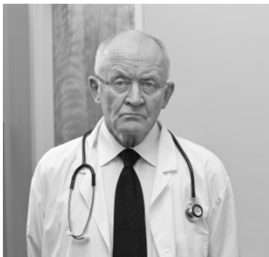
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**Dr. Caan**  
Director, Hospitalist Service  
Three Midnight

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## What did we learn from Dr. Caan?

- Dr. Scorder drove a hard bargain with employer
- Nice enough guy
- Things didn't work out, never practiced there
- Made unreasonable demands
- Hospital rethought whether he was right for job
- Submitted application
- MSO had questions, he was slow to respond
- Missed start date, contract pulled
- Didn't repay signing bonus
- Litigation over bonus

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**Issues with sharing information:**

- Waiver of peer review privilege
- Claim for breach of confidentiality
- Claim for tortious interference

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**Sharing Non-Privileged Information  
Among Affiliated Entities**

**Best Practice:**

- Authorization to share information among affiliated entities

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## Authorization to Share Information Among Affiliated Entities

Include on :

- Application form
- Bylaws/Credentials Policy

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## Sharing Peer Review Information Among Affiliated Entities

- Authorization to share information
- Information sharing policy

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### INFORMATION SHARING POLICY

#### I. GENERAL PROVISIONS

##### 1.A. Scope of Policy

(1) *(b) ("System")* adopts this Policy to govern the sharing of Confidential Information among entities that qualify as "System Entities" (as defined below).

(2) The sharing of Confidential Information with entities covered by the System that does not qualify as System Entities will be processed in accordance with applicable policy or practice on responding to reference requests about Practitioners.

1.B. **Rationale for Policy.** Information sharing is an essential and integral part of the understanding, planning, and professional practice enhancement review activities of System Entities. It promotes timely and informed administrative responses to inquiries in furtherance of two primary objectives: (1) ensuring compliance with the quality of care standards and self-improvement of continuous improvement for Practitioners; information sharing is particularly important in a health system such as the System where collaborative care is provided by multiple health care professionals and entities in an integrated setting.

1.C. **Two Types of Information Sharing.** This Policy promotes two types of information sharing by System Entities:

- (1) **responding to requests for Confidential Information from other System Entities ("pass" information sharing); and**
- (2) **proactively notifying other System Entities of certain events and disclosing Confidential Information related to those events ("push" information sharing).**

1.D. **No Waiver of Peer Review Privilege.** This Policy is intended to reinforce that the acceptance and disclosure sharing of Confidential Information is a component part of the peer review activities of all System Entities. As such, the information sharing procedures outlined in this Policy have been drafted in compliance with federal and state law and to prevent any waiver of the confidentiality protections that apply to peer review activities.

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 <b>FIVE STAR HEALTH SYSTEM</b>	<small>Confidential Committee Five Star Health System 25 Fall Moss Bay Rapel, NC, North Carolina 27966</small>
<small>CONFIDENTIAL FEES REVIEW</small>	<small>Dear Confidential Committee:</small>
<p><b>I got your letter and wanted to respond immediately. I am very excited to start working with Five Star Medical Group. I am sure I can explain away the issues that you raised. Alicia reassured me that all her doctors fly through your credentialing process.</b></p>	
<small>This section of the Confidential Policy also states that an application is only considered complete when all questions on the application have been answered, all supporting documentation has been supplied, and all information has been verified from primary sources. Furthermore, according to the website, "an application will become incomplete if the need arises for more information or clarifying information." This letter will outline the additional information that is needed before your application can be processed further. For some of our review, in your response please include the number and letter of the item to which you are responding.</small>	<small>I've still only got one page and it was total chaos at the hospital. I decided to get out before it was too late.</small>
<small>1. <b>Locum Tenens</b> According to your application, you worked with Staffing Solutions for a year after completing your residency training in an inpatient setting, through primary care, all practice locations. Therefore, it will be necessary for you to complete Section V of the application with respect to each hospital where you practiced as a locum tenens for Staffing Solutions. A clear copy of Section V is enclosed. If you need more space, please attach an additional sheet.</small>	<small>(f) I guess I did submit an application. To be honest, the whole experience was a nightmare and I was trying to forget about it. The application never went anywhere.</small>
<small>2. <b>Gap in Practice after Staffing Solutions</b> Three Midnight offered me a contract which I accepted. After I arrived, I discovered that there was "trouble in paradise" and I got out before it was too late. I guess I submitted an application but it never went anywhere. They never had any questions about me but I had plenty of questions about their quality.</small>	<small>(g) They never had any questions about me but I had plenty of questions about their quality and their ethics.</small>
<small>3. <b>I assure you I did not intentionally misrepresent anything on the application....</b> I brought a lawsuit against Three Midnight for fraudulently inducing me to accept their employment contract. I incurred expenses in moving and their disaster upended my career. I am confident I will prevail in my suit against them.</small>	<small>I've never twice done any experience at Three Midnight. I don't have any correspondence from them.</small>
<small>I assure you I did not intentionally misrepresent anything on the application. The content did through fine and after that there really was no application to pursue.</small>	<small>I assure you I did not intentionally misrepresent anything on the application. The content did through fine and after that there really was no application to pursue.</small>

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 <b>FIVE STAR HEALTH SYSTEM</b>	<small>Confidential Committee Five Star Health System 25 Fall Moss Bay Rapel, NC, North Carolina 27966</small>
<small>CONFIDENTIAL FEES REVIEW</small>	<small>Dear Confidential Committee:</small>
<p><b>2. Gap in Practice after Staffing Solutions</b></p> <p><b>Three Midnight offered me a contract which I accepted. After I arrived, I discovered that there was "trouble in paradise" and I got out before it was too late. I guess I submitted an application but it never went anywhere. They never had any questions about me but I had plenty of questions about their quality.</b></p>	
<small>This section of the Confidential Policy also states that an application is only considered complete when all questions on the application have been answered, all supporting documentation has been supplied, and all information has been verified from primary sources. Furthermore, according to the website, "an application will become incomplete if the need arises for more information or clarifying information." This letter will outline the additional information that is needed before your application can be processed further. For some of our review, in your response please include the number and letter of the item to which you are responding.</small>	<small>I've still only got one page and it was total chaos at the hospital. I decided to get out before it was too late.</small>
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 <b>FIVE STAR HEALTH SYSTEM</b>	<small>Confidential Committee Five Star Health System 25 Fall Moss Bay Rapel, NC, North Carolina 27966</small>
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<small>I assure you I did not intentionally misrepresent anything on the application. The content did through fine and after that there really was no application to pursue.</small>	<small>I assure you I did not intentionally misrepresent anything on the application. The content did through fine and after that there really was no application to pursue.</small>

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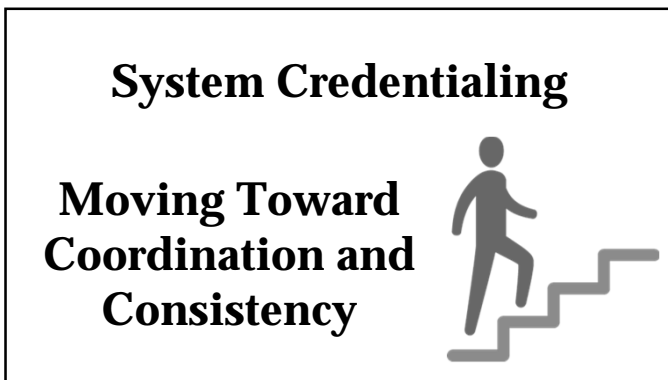
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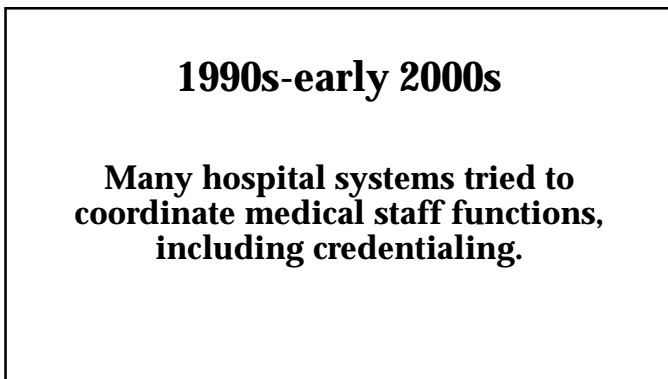
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**In 2012, CMS had said “Each hospital must have a medical staff.”**

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**In 2014, CMS revisited the issue and adopted new Conditions of Participation, which allowed for greater flexibility, including unification.**

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**Let form follow function!**

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**Methods for Achieving Coordination and Consistency:**

- **System Application Form**
- **System CVO**
- **System Credentials Policy**
- **System Credentials Committee**
- **Information Sharing Policy**
- **Good Bylaws/Credentials Policy Language**

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## **System Application Form**

**Each System Entity requests and obtains the same information from applicants**

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## **System CVO**

- **Primary source verification and collection information from reference and third parties only done once.**
- **Each System Entity receives the same information from primary sources, references and third parties.**

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## **System Credentials Policy**

- **One Credentials Policy for each System Hospital that is adopted by each Medical Staff and amended by agreement of each Medical Executive Committee.**
- **Each System Hospital has the same standards, criteria and processes in place when evaluating applicants and members qualifications for initial and ongoing membership and clinical privileges.**

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## **System Credentials Committee**

**One Credentials Committee making preliminary recommendations on applicants for each of the System Hospitals**

**BUT.....**

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**Each Medical Staff within System  
must have its own separate  
Medical Executive Committee**

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

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**...but not very far.**

**He meanders down the road to Hospital B, our sister hospital, and asks for an application.**

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**Oops, I forgot to mention that this physician had also applied at Hospital C and was granted appointment and privileges shortly after he withdrew his application at Hospital A?**

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## System Information Sharing Policy



- Outlines a process for affiliated entities to share information about practitioners in a legally safe and protected manner.
- Defines what information should be “pushed out” to affiliated entities.
- Defines how information should be shared when requested by affiliated entities.

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**An advanced practice provider is granted clinical privileges at Hospitals A, B and C.**

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

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**This Can Be Addressed in Your Bylaws/Credentials Policy!**

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6.H. Each System Hospital will share information regarding the implementation or occurrence of any of the following with all other System Hospitals at which an individual maintains appointment, clinical privileges, or any other permission to care for patients:

- a) automatic relinquishment or resignation of appointment and clinical privileges;
- b) voluntary agreement to modify clinical privileges or refrain from exercising some, or all, clinical privileges;
- c) denial, suspension, revocation or termination of appointment and/or clinical privileges; and
- d) Performance Improvement Plan.

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6.H. ACTIONS OCCURRING AT OTHER HOSPITALS AND FACILITIES WITHIN THE SYSTEM

(1) Each hospital and health care facility within the System will share information

**Upon receipt of notice that any of these actions have occurred at, or been implemented by, any hospital within the System, that action will automatically and immediately take effect at the System Hospital receiving the notice.**

(d) ...

(2) Upon receipt of notice that any of the actions set forth above have occurred at, or been implemented by, any hospital or facility within the System, that action will automatically and immediately take effect at the Medical Center.

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6.H. ACTIONS OCCURRING AT OTHER HOSPITALS AND FACILITIES WITHIN

The MEC may waive the automatic effectiveness of any action at the receiving System Hospital. Waivers are within the discretion of the MEC and are final. They will be granted only as follows:

- a) Based on a finding that the granting of a waiver will not affect patient safety, quality of care or Hospital operations; and
- b) After a full review of the specific circumstances and documents from the System Hospital where the action occurred.

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**And There Is More Good Language!**

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**Medical Staff Leadership has tried a wide variety of collegial efforts with a staff member about whom there are quality concerns. None have worked.**

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**The physician practices primarily at Hospital A, but also has privileges at Hospitals B and C. The MEC at Hospital A commences an investigation.**

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

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**Threshold Eligibility Criteria:**

**To be eligible for appointment or reappointment and/or clinical privileges, an applicant must:**

- (f) have never had appointment or privileges denied, suspended (for more than 30 days) revoked, or terminated by any health care facility for reasons related to clinical competence or professional conduct**

... program;

- (f) have never had appointment or privileges denied, revoked, or terminated by any health care facility for reasons related to clinical competence or professional conduct;

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6.G.2. Failure to Satisfy Threshold Eligibility Criteria:

**Failure to Satisfy Threshold Eligibility Criteria:**

**Failure of an individual to continuously evidence satisfaction of the threshold eligibility criteria will result in automatic relinquishment.**

indicated in the following categories: (a) felony or any misdemeanor involving the individual's professional conduct; (b) automatic relinquishment: (a) Medicare, Medicaid, or other governmental or private third-party payer fraud or program abuse; (b) controlled substances; (c) illegal drugs; (d) violent act; (e) sexual misconduct; (f) moral turpitude; or (g) child or elder abuse.

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



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

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**Examples for Practitioner Health Policy**

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

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**What's the Scope  
of the Problem?**

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109

STRESS AND BURNOUT  
Stress and Burnout Among Surgeons

**Mental Health**

- 2023 Medscape survey, 6% of physicians reported “clinical depression (severe depression lasting some time, not caused by a normal grief event)”
- The lifetime prevalence of clinically significant depression in two studies was:
  - 12.8% of 1,300 male physicians
  - 19.5% of 4,500 female physicians

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STRESS AND BURNOUT  
Stress and Burnout Among Surgeons  
Understanding and Managing the Syndrome and Avoiding the Adverse Consequences  
Journal of the American College of Surgeons, 2017, 124(1), 18-26

**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](http://acgme.org)

ACGME is an Equal Opportunity/Affirmative Action Employer. All qualified applicants are encouraged to apply. For more information, please contact: American College of Graduate Medical Education, 535 North Dearborn Street, Chicago, IL 60610. Phone: 312.462.2200. Fax: 312.462.2201. Email: [hr@acgme.org](mailto:hr@acgme.org). Website: [www.acgme.org](http://www.acgme.org). © 2017 American Medical Association. All rights reserved.

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**SPECIAL ARTICLE**  
**Stress and Burnout Among Surgeons**  
*Understanding and Managing the Syndrome and Avoiding the Adverse Consequences*  
Charles M. Bala, MD, John A. Fanning, MD, Tari D. Stangor, MD

Time for and practice support are essential solutions to reduce physician burnout.

**Mental Health**  
**Approximately 300 physicians commit suicide each year.**

The authors report that physician burnout is a result of excessive work and stress, and that burnout is linked to increased medical errors and reduced patient safety. The authors argue that burnout is a preventable condition and that it can be addressed through a combination of organizational changes and individual strategies. They propose a model of burnout that includes the following components: excessive work, lack of control, and loss of meaning. They suggest that organizational changes such as reducing work hours, increasing autonomy, and improving the work environment can help to reduce burnout. Individual strategies such as stress management, exercise, and seeking support can also help to reduce burnout. The authors conclude that burnout is a serious problem that needs to be addressed by both organizations and individuals.

**DEPRESSION AND SUICIDE**  
The prevalence of depression among physicians is high, and it is often undiagnosed and untreated. This leads to increased medical errors and reduced patient safety. The authors argue that depression is a preventable condition and that it can be addressed through a combination of organizational changes and individual strategies. They propose a model of depression that includes the following components: excessive work, lack of control, and loss of meaning. They suggest that organizational changes such as reducing work hours, increasing autonomy, and improving the work environment can help to reduce depression. Individual strategies such as stress management, exercise, and seeking support can also help to reduce depression. The authors conclude that depression is a serious problem that needs to be addressed by both organizations and individuals.

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112

**Physician Burnout** 

- **53% of physicians describe themselves as burned out, according to a 2023 Medscape Survey**

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113

**Substance Abuse**

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

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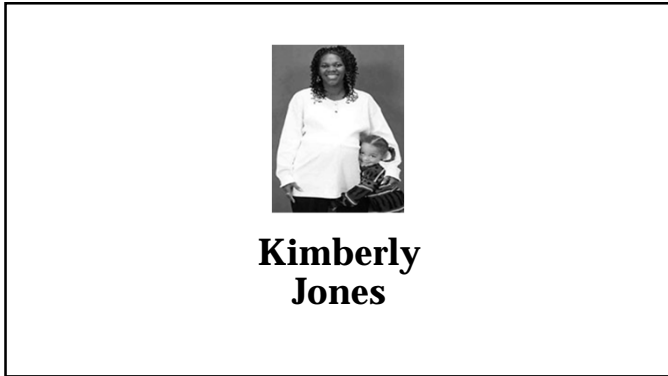
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**KHN**

## Aging

- About 15% of physicians are older than 65; expected to increase to 40% in next decade (AAMC Study 2021)
- Approximately 10% of Americans 65 or older have dementia and 22% have mild cognitive impairment (JAMA Neurology, Oct. 24, 2022)
- What about physicians?

Health Systems  
States

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## Practitioner Health Policy



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## Do you need a separate Practitioner Health Policy?

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## Joint Commission Standard MS 11.01.01

- Hospitals must have process to:
  - handle health matters separately from “discipline”
  - educate staff on impairment recognition
  - evaluate the credibility of a complaint regarding health
  - monitor practitioners until rehabilitation is complete
  - maintain confidentiality

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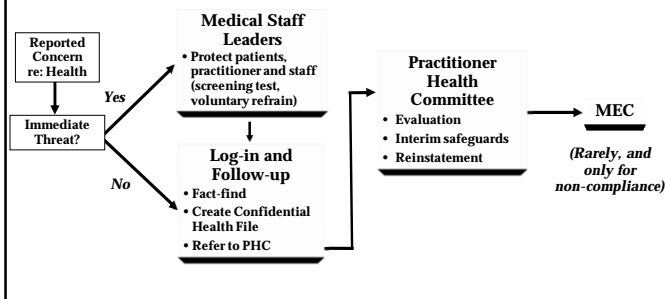
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## Practitioner Health Policy



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## Process

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

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## Reporting

- Practitioners are expected to self-report
- All others are encouraged to report to the CMO, Chief of Staff, any Medical Staff leader, Administrator on Call, or Medical Staff Services

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124

## Reporting

**What if immediate action is needed?**

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

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**If immediate action is needed, Practitioner Health Policy says:**

- two leaders will assess situation
- CMO or Chief of Staff may ask Practitioner to voluntarily refrain while matter is being reviewed
- if “Reasonable Suspicion” of impairment exists, testing process outlined in Policy will be followed

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126

## Reporting

### Education should address:

- Need to report, and downside of “enabling”
- Confidentiality
- Warning signs

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127

## Substance Abuse

### Know the

**⚠ WARNING**

### Signs

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128

**⚠ WARNING**

- Making rounds at odd or inappropriate times
- Inappropriate orders
- Patients with pain out of proportion to charted narcotic dose
- Unavailability or inappropriate responses to phone calls
- Unexplained absences or frequent illness

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129

**⚠ WARNING**

- **Odd behavior or significant personality change**
- **Mood changes**
- **Odor of alcohol on breath**
- **Intoxication at social events**
- **Arrest for DUI**
- **Neglect of patients or duties**
- **Increased problems in quality**

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130

## **Substance Abuse**

**⚠ WARNING**

**You are often  
the last to know!**

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131

**Fact-Finding**

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

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132

## Meeting with Colleague

### Plan the Meeting with Care

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

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133

## Meeting with Colleague

### Plan the Meeting with Care

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

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134

## Evaluate reporting requirements:

- Is a report to state Board of Medicine required?
- Is a report of theft of controlled substances to federal DEA required?

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135

**Evaluation**

**Who performs?**

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

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136

**Evaluation**

**Communications:**

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

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137

**Evaluation**

**Format of report:**

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

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**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).

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139

**Evaluation**

**Format of report:**

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

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140

**Resolution**

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

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141

## 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

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

The screenshot shows the ADA.gov website. At the top, it says "ADA.gov Information and Technical Assistance on the Americans with Disabilities Act". Below this is a search bar and a "More Search Options" link. There are four main navigation tabs: "Law / Regulations", "Design Standards", "Technical Assistance Materials", and "Enforcement". Under "New on ADA.gov", there are several links to recent news items, including "United States v. Massachusetts Trial Court Settlement Agreement", "Estate of LaRoux v. Montgomery County, MD Statement of Interest", "Luna Tattoo Studio Settlement Agreement", "Minnesota Department of Corrections Letter of Findings", and "United States v. Helping Hands Caregivers, LLC Settlement Agreement". There is also a section for "ADA Information Line" with contact details and a link to "Introduction to the ADA". A "Featured Topic" section highlights "Guidance on Non-discrimination in Telehealth".

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

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## Aging Physicians

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

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145

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

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

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146

JAMA Performance Improvement

January 14, 2020

### Cognitive Testing of Older Clinicians Prior to Recredentialing

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

➤ Author Affiliations

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

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

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147



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

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

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### **Drawbacks of a Rule**

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

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## Drawbacks of a Rule

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

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151

## Drawbacks of a Rule

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

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152

## Age Discrimination in Employment Act of 1967 (ADEA)

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

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153

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

**E.g., airline pilots, bus drivers**

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

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**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**

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## No Risk of Age Discrimination Claims

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

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## Less Risk

- Concurrent chart review of certain number of cases after age "x"
- Annual reappointment

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## More Risk

- Concurrent proctoring of certain number of cases
- Comprehensive physical and psychological evaluations

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**Stay Tuned...**

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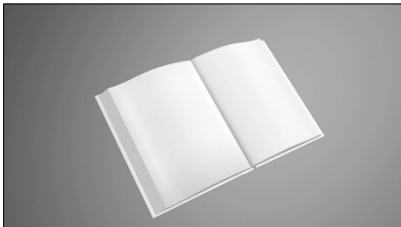
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**Meeting Minutes**



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**Meeting Minutes**

**Primary purpose:  
Make a record of action taken  
by the Committee.**

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## Contents of Minutes

**General rule —  
The less detail, the better**

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**Time, date, and place of meeting**

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**The meeting was called to order at 7:30 a.m.  
on Thursday, [DATE] in the Medical Staff  
Conference Room.**

- M.D., [Name], [Title], [Address]
- The following Committee members were present: [Name], M.D., Tom Starzel, M.D.
2. **Confidentiality**  
Drs. Lapenta and Chudask, Co-Chairs of the Committee, discussed the importance of confidentiality with regard to matters discussed and reviewed during meetings.
3. **Application of Dr. Ben A. Hotnas**
- An application and supporting materials were reviewed by the Committee.
  - Several issues were raised related to Dr. Hotnas' application.
  - After full and complete discussion, the Committee decided to draft a letter to

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- **Time, date, and place of meeting**
- **Confidentiality statement**

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- **Time, date, and place of meeting**
- **Confidentiality statement**
- **Who was in attendance?**
- **Quorum present**
- **“After full discussion, [action taken]”**

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**Details of discussion\***

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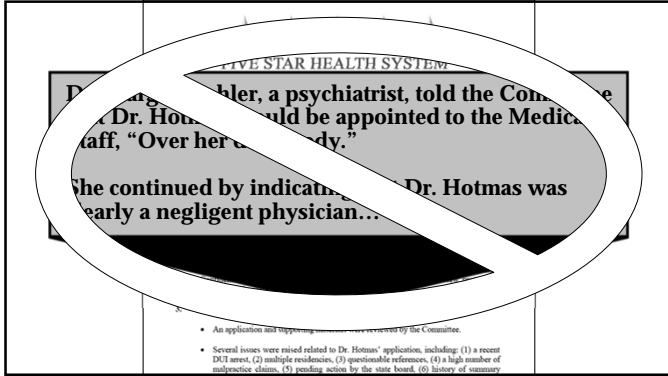
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**\*EXCEPTIONS**  
(situations in which objective details are helpful)

1. Adverse actions
2. Waivers
3. Conflicts of interest

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★ ★ ★ ★ ★  
FIVE STAR HEALTH SYSTEM

**After full and complete discussion, the Committee decided to grant Dr. Kirk's request for a waiver.... Dr. Kirk is otherwise exceptionally qualified as evidenced by his credentials....**

2. Confidentiality  
Dr. Laporta and Chaback, Co-Chairs of the Committee, discussed the importance of confidentiality with regard to matters discussed and reviewed during meetings. Confidentiality preserves the integrity of the process and any peer review protections available under state and federal law and regulation.
3. Application of Ben A. Hotmas, M.D.
  - An application and supporting materials were reviewed by the Committee.
  - Several issues were raised related to Dr. Hotmas' application, including: (1) a recent DUI arrest, (2) multiple residencies, (3) questionable references, (4) a high number of malpractice claims, (5) pending action by the state board, (6) history of summary

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- **Details of discussion\***
- **Who said what to whom**

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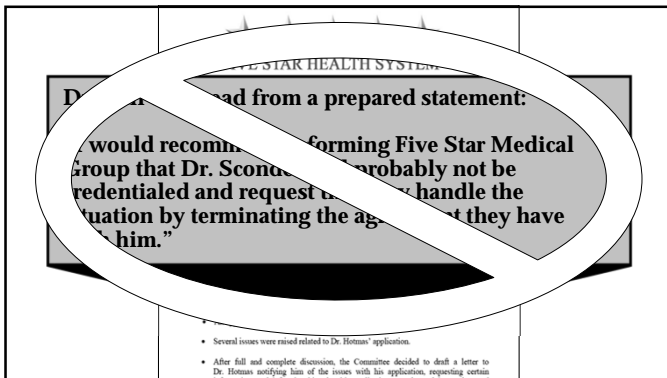
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- **Details of discussion\***
- **Who said what to whom**
- **Record of how each member voted (unless dissent request)**

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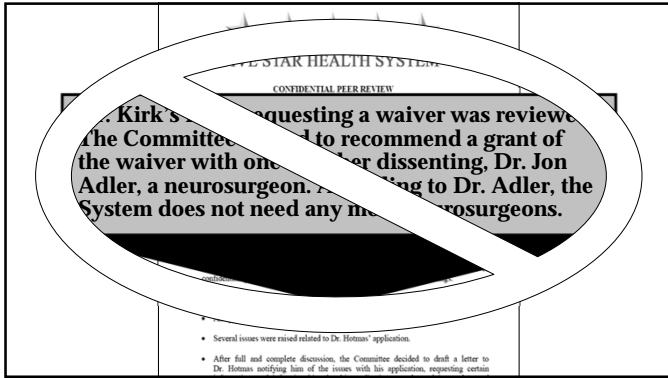
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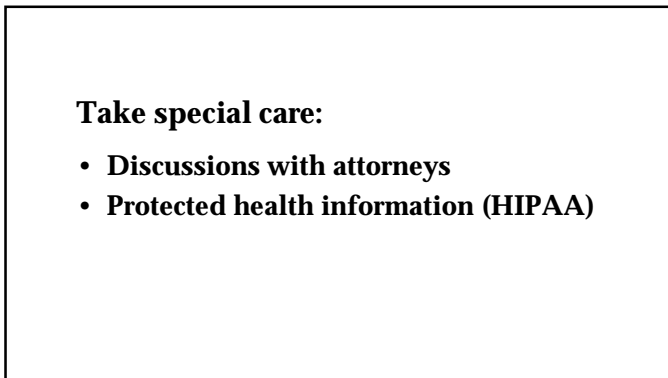
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**Preparing and Attracting  
Medical Staff Leaders**

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**What are the core  
responsibilities of the  
Medical Staff?**

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**1916**

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**American College of Surgeons  
1916-1919**

- First survey of 2,700 hospitals
- 89 hospitals passed

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**1919  
National Program for the  
“Standardization” of Hospitals**

- “Minimum Standard” for hospitals
- One page
- Precursor of Joint Commission standards, state hospital licensing laws and Medicare CoPs

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**Medical Staff**

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## **Medical Staff**

- **The Medical Staff consists of licensed medical graduates who are competent and worthy in character and matters of ethics**

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## **Medical Staff**

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

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## **Medical Staff**

- **Review clinical work of others**
- **Review is based on medical records**
- **Medical records must be accurate and complete**

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**Joint Commission  
1952**

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**Joint Commission**

**Medical Staff must be “responsible to the patient and to the governing body for the quality of all medical care provided patients in the hospital and for the ethical and professional practices of its members.”**

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**Joint Commission**

**Medical Staff must be “responsible to the patient and to the governing body for the quality of all medical care provided patients in the hospital and for the ethical and professional practices of its members.”**

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## **Medicare Conditions of Participation**

**The hospital must have an organized medical staff that operates under bylaws ... and which is responsible for the quality of medical care provided to patients by the hospital.**

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## **Medicare Conditions of Participation**

- **Medical staff must examine the credentials of candidates for membership and make recommendations to the board**
- **The medical staff must periodically conduct appraisals of its members.**

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## **Attracting New Medical Staff Leaders**

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**Identify and Nurture  
Leadership Pool**

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**Start with the right people.**

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**What are the qualities of a leader?**

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**What are the qualities of a Medical Staff Leader?**

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**Qualities of a Medical Staff Leader**

- Outstanding Clinician
- Effective Communicator
- Trustworthy
- Respect Confidentiality
- Knowledge and experience

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**Evaluate your nomination process.**

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**Keep your leaders longer.**

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**Reward your leaders.**

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**Rewards and Benefits**

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- **Other options –**  
**During Term of Office, EXCUSED from:**
  - **Service on unrelated committees**
  - **Payment of dues**
  - **Reappointment application fees**

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## Rewards and Benefits

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- **Other options -**
  - **Excused from On-Call rotation during term of office**

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## Rewards and Benefits

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- **Other options -**
- **Excused from On-Call rotation during term of office**  
**OR**  
**For every year served as leader, one less year of On-Call rotation**

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## Rewards and Benefits

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- **Scheduling priorities**
- **Parking space**
- **Paid conference attendance**
- **In-House Experts —  
Medical Staff Professionals!**

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**Preparing  
Medical Staff Leaders**

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**Provide meaningful  
education and training.**

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**Develop and Educate  
Upcoming Leaders**

- **Appoint to key committees**
- **Invite to meetings and seminars**
- **Medical staff college**
- **Mentor and train**

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## **Equip Leaders for Success**

- Orientation
- Staff Support
- Leadership Handbook

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**Celebrate and reward  
your work**



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

**Does Any Doubt Remain?**

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**Not From ...**

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

211

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

212

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*Ear, Nose and Throat Journal,  
March 2008*  
*Disruptive Physicians: Sound More Familiar  
Than You Thought?*

213

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***American Nurse Today, March 2008  
Don't Tolerate Disruptive Physician Behavior***

214

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***Neurology, April 2008  
Managing Disruptive Physician Behavior:  
Impact on Staff Relationships and  
Patient Care***

215

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***Annals of Surgery, June 2008  
When Good Doctors Go Bad: A Leape  
of Faith***

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

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

217

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***Academic Radiology, September 2013***

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

218

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

***Disruptive Behaviors Among Physicians***

219

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

220

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***Journal of the Academy of Medical-Surgical Nurses, July/August 2015***  
***"I'm Not Calling Him!" Disruptive Physician Behavior in the Acute Care Setting***

221

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***Pediatrics, September 2015***  
***The Impact of Rudeness on Medical Team Performance: A Randomized Trial***

222

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**Not From ...**

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

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**Joint Commission 2007/2008  
Credentialing & Privileging Standards  
ACGME General Competencies**

- Patient Care
- Medical/Clinical Knowledge
- Practice-Based Learning and Improvement
- Interpersonal and Communication Skills
- Professionalism
- Systems-Based Practice

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224

**Joint Commission  
Sentinel Event Alert  
July 9, 2008**

**Behaviors that undermine  
a culture of safety**

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225

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

**“Leaders create and maintain a culture of safety and quality throughout the hospital.”**

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

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

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**LD.03.01.01**

**EOP 4**

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

**EOP 5**

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

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**Not From ...**

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

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**The Physician's  
Terrible,  
Horrible,  
No Good,  
Very Bad Day**

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**"The plaintiff ... was like Alexander in the classic children's book. He was having 'a terrible, horrible, no good, very bad day.'"**



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

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

**The physician sued to have the report removed.**

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**According to the Hospital, the physician became so enraged he:**

1. broke a telephone
2. shattered the glass on a copy machine
3. shoved a cart into the doors of the operating suite so hard that it damaged one of them
4. threw jelly beans down the hallway in the surgical suite
5. flung a medical chart to the ground

**According to the physician's affidavits, he:**

1. accidentally broke a telephone when he tripped on its cord
2. closed the lid of a copy machine with 'some force' and the glass cracked
3. moved a cart that was blocking the doors of the operating suite
4. ate jelly beans, some of which fell on the floor when he tried to throw away flavors he did not like
5. and when he was handed a chart, some of the loose papers fell to the floor

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**The Court Said:**

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

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

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**The Court Said:**

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

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**The Court Said:**

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

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**The Court Said:**

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

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**The Court Said:**

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

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## Best Practices for Addressing Behavior Issues

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## Professionalism Policy Most Effective Committee to Address Behavioral Concerns? Leadership Council!

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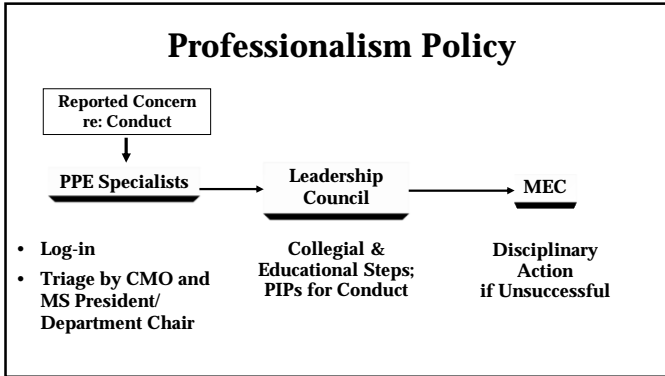
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**Professionalism Policy**

- Explain the “Why?” and promote a positive tone  
“Communication, collegiality, and collaboration are essential for the provision of safe and competent care.”
- Part of attributes of the successful Medical Staff member/expectations for our “brand”

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**Professionalism Policy**

Provide specific examples of Inappropriate Conduct

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

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**Professionalism Policy**

**EXAMPLES OF INAPPROPRIATE CONDUCT**

To aid in both the education of Medical Staff members and Allied Health Professionals and the enforcement of this Policy, examples of “inappropriate conduct” include, but are not limited to:

...abusive or threatening language directed at patients, nurses, students, volunteers, visitors, Hospital personnel, or Practitioners (e.g., belittling, berating, or non constructive criticism that intimidates, undermines confidence, or implies stupidity or incompetence);

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**Professionalism Policy**

**EXAMPLES OF INAPPROPRIATE CONDUCT**

... unprofessional medical record entries impugning the quality of care being provided by the Hospital, Practitioners, or any other individual

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**Professionalism Policy**

**EXAMPLES OF INAPPROPRIATE CONDUCT**

...retaliation against any individual who reports a concern about a Medical Staff member or Advanced Practice Professional (this includes approaching and directly discussing the matter with the individual who reported the concern);

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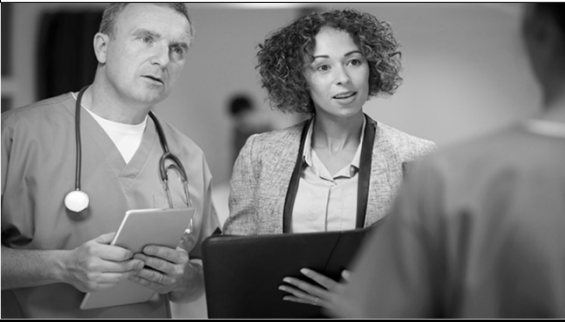
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## **Respond to those who report!**



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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

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## **Professionalism Policy**

**Initial “Triage Process” by  
Medical Staff President /  
Department Chair and CMO to  
quickly resolve minor concerns**

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## Initial Triage Process

- **Low level concern/no pattern or history with colleague**
- **No fact-finding, no request for written input from colleague in advance**
- **Conduct brief and informal collegial discussion or send note so that colleague is aware**
- **Document with brief note to file or in electronic reporting system**

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## Initial Triage Process

- **Specify that allegations of “Identity-Based Harassment” will not be resolved through initial triage process**
- **Consider when Human Resources (“HR”) should be notified of behavioral concern:**
  - **Any allegation of Identity-Based Harassment involving hospital employees?**
  - **Any allegation of Identity-Based Harassment, to take advantage of HR expertise?**

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## Professionalism Policy

**If complaint is more significant**

**OR**

**There is a pattern/history with your colleague...**

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## Four Steps to Success



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## Professionalism Policy

### STEP #1

**Timely and brief preliminary call or personal discussion with the colleague involved**

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## Have a script for discussion

- Give a “heads up” that a concern has been raised and that more details soon to follow
- No fact-finding has yet occurred, “courtesy call”
- Briefly explain review process, including colleague’s involvement in process
- Set tone — “we look forward to your good faith participation in the review”
- Non-retaliation reminder/protects colleague

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**Professionalism Policy**

**STEP #2**

**Fact-find to determine if further review is required**

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**Professionalism Policy**

- Review documentation of concern and interview witnesses
- Use script to introduce interviews
- Use sample interview questions that promote consistency and thorough review
- Have interviewee sign short confidentiality acknowledgement

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**Professionalism Policy**

**STEP #3**

**If MS President/Department Chair and CMO determine that further review is required, share details with colleague for response, (but protect the individuals who reported!)**

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261

**Provide enough detail  
so practitioner can  
respond to the concern.**



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262

## **Preventing Retaliation**

- **Cover letter to practitioner**
- **Make the expectations clear when providing specifics to colleague — no retaliation can occur!**
- **Identity of individual who reported not disclosed**

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## **Professionalism Policy**

### **STEP #4**

**Leadership Council reviews summary of incident, input received from Practitioner, Practitioner's history, and determines most effective improvement tool if necessary**

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## Leadership Council Options

(outlined in Professionalism Policy)

- No further review or action required
- Educational Letter
- Collegial Counseling
- Performance Improvement Plan
- Refer to MEC

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## Professionalism Policy Stress Collegial and Educational Objectives!

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**NO Counsel  
at Meetings!**



**NO audio or  
video recording!**

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## **PIP Options for Conduct**

(used individually or in combination)

- **CME courses/education (e.g., communication tools; anger management techniques)**
- **Review of literature regarding behavior/safety and report to Leadership Council**

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268

## **PIP Options for Conduct**

(used individually or in combination)

- **“Collegial Counseling on steroids” intervention meeting involving full Leadership Council or other designated group, which can include Board Chair or Member**
- **Periodic/scheduled meetings involving Medical Staff Leaders or mentors for feedback and reinforcement**

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## **PIP Options for Conduct**

(used individually or in combination)

- **Behavior Coach or Behavior Modification Course**
- **Personal Code of Conduct**
  - (Outlines specific expectations and specific consequences of further violations)
- **Other**

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**Behaviors that could be sexual harassment:**

- **Comments or jokes about sex or private body parts**
- **Sharing emails, texts, photos, videos, or online postings about sex or private body parts**
- **Teasing someone about their sexuality, sexual development, or gender identity**

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**Behaviors that could be sexual harassment:**

- **Describing one's sex life to another person or asking them about their sex life (outside of close friendship or treatment relationship)**
- **Leaving unwanted gifts of a sexual or romantic nature**
- **Spreading sexual rumors**

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**Behaviors that could be sexual harassment:**

- **Displaying posters, screensavers or other objects of a sexual nature**
- **Making insulting comments about someone's gender identity or sexual orientation**
- **Hugs, massages or other touching (such as back rubs or hands on shoulders)**

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## What about “pet names”?

- Bird, doll, chick, dear, love, sweetheart, babe, darling
- “It always sounded condescending. It made me feel inconsequential. The last thing I would have ever felt was respected.”

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## Sexual Harassment and Other Identity-Based Harassment

- Acknowledgement of significance of matter
- Collegial Counseling or PIP, as appropriate
- Second confirmed incident referred to MEC for review under Bylaws (i.e., disciplinary action possible)

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## Sexual Harassment and Other Identity-Based Harassment

- Single incident can always be referred to MEC
- Nothing in Professionalism Policy precludes action by HR, if individual under review is employed

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

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

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**Scenario 1:**  
**Dr. Fracas**

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**Scenario 1:  
Dr. Frank Fracas**

- “Youthful indiscretions”
- DUI when he was 19
- Receiving stolen property when he was 21
- No other run-ins with the law
- Before the MEC acted, we learn that 6 months ago, Dr. Fracas was arrested for DUI

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280

**Look at your Bylaws.  
What are you going to do?**

- Recommend denial
- Send application back to Credentials Committee
- Get additional information and then decide whether or not to process application because of misrepresentation
- Appoint with conditions
- Phone a friend

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**2.3.3 Burden on the Applicant**

(c) ....The applicant shall attest to the accuracy and completeness of the information provided. Any falsification or omission on the application shall be grounds for denial of Medical Staff appointment.

**Getaway Hospital**

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**7.1.1. Grounds for Hearing**

Any one or more of the following actions or recommended actions will constitute grounds for hearing.

- (a) Denial of initial membership
- (b) Denial of reappointment
- (c) Denial of requested clinical privileges

UCHealth  
Memorial Hospital

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## Better Language

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**2.C.2. Misstatements and Omissions:**

- (a) 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 Chief of Staff and Chief Medical Officer will review the response and determine whether the application should be processed further.

Memorial Hospital

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**2.C.2. Misstatements and Omissions:**

(a) 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 Chief of Staff and Chief Medical Officer will review the response and determine whether the application should be processed further.

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**2.C.2. Misstatements and Omissions:**

(a) 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 Chief of Staff and Chief Medical Officer will review the response and determine whether the application should be processed further.

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**2.C.2. Misstatements and Omissions:**

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(c) No action taken pursuant to this section will entitle the applicant or member to a hearing or appeal.

HEALTHY  
Spirit  
Memorial Hospital

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**7.A.2. Actions Not Grounds for Hearing:**  
None of the following actions constitutes grounds for a hearing...  
(k) determination that an application will not be processed due to misstatement or omission

**Memorial Hospital**

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**Scenario 2:  
Dr. Grubbs**

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**Scenario 2:  
Dr. Gregory Grubbs**

Eight months ago, the State Board entered into a Consent Order in which it was determined that Dr. Grubbs violated the Medical Practice Act by:

- committing malpractice in two cases, and
- failing to maintain timely, legible, accurate medical records.

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**Scenario 2:  
Dr. Gregory Grubbs**

According to Consent Order, Dr. Grubbs' license was suspended for six months (stayed) and the following conditions were imposed:

- Probation – two years
- 10 CME hours re: medical records
- 20 CME hours re: cervical spine surgery

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**Look at your Bylaws.  
What are you going to do?**

- Deem him ineligible for continued appointment
- Take disciplinary action because he failed to notify you of the licensure action
- Commence an investigation
- Impose the same conditions on his privileges
- Deem his appointment and privileges to be automatically relinquished



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**1.1 Application Requirements**

The applicant must have a current, valid license to practice in the state.

**Ocean Memorial  
Getaway Hospital**

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### **2.3.3 Burden on the Applicant**

- (a) The burden is on the applicant to provide the necessary information and documentation to support his or her request for clinical privileges, and evidence of current competency. This is applicable at the time of initial appointment, reappointment, return from leave of absence, requests for new clinical privileges, employment or at any time during the practitioner's affiliation with the Hospital.
- (b) The applicant must inform the Medical Staff Office if there is need to correct or clarify any information submitted. This notice must be in writing and/or electronic format and submitted prior to the file being presented to the Credentials Committee.

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### **5.5.2 License**

#### ***Probation***

Whenever a member is placed on probation by the applicable licensing authority, his or her applicable membership status, prerogatives, privileges and responsibilities, if any, will automatically become subject to the terms of the probation effective upon, and for at least the term of, the probation.

**Getaway Hospital**

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## **Better Language**

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**2.A.1 Threshold Eligibility Criteria:**

To be eligible to apply for initial appointment, reappointment or clinical privileges, an applicant must, as applicable:

- (a) have a current, unrestricted license to practice in the state that is not subject to any restrictions, probationary terms, or conditions not generally applicable to all licensees, and have never had a license to practice denied, revoked, restricted or suspended by any state licensing agency

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**6.G AUTOMATIC RELINQUISHMENT**

- (1) Any of the occurrences described in this Section may constitute grounds for the automatic relinquishment of an individual's appointment and clinical privileges...

**Healthy Spirit  
Memorial Hospital**

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**6.G.2. Failure to Satisfy Threshold Eligibility Criteria:**

Failure of an individual to continuously evidence satisfaction of any of the threshold eligibility criteria...

**Healthy Spirit  
Memorial Hospital**

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**2.B.2. Burden of Providing Information:**  
**(e) Applicants and members are responsible for notifying the Chief of Staff or the Chief Medical Officer of any change in status or any change in the information provided on the application form.**

**Memorial Hospital**

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**6.G.4. Failure to Provide Information:**  
**Failure of an individual to notify the Chief of Staff, the Chief Medical Officer, or Chief Executive Officer of any change in any information provided on an application for initial appointment or reappointment may, as determined by the Medical Executive Committee, result in the automatic relinquishment of appointment and clinical privileges.**

**Memorial Hospital**

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**Scenario 3:**  
**Dr. Elder**

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**Scenario 3:  
Dr. Eleanor Elder**

- Recently suffered a stroke
- She's been out of practice for four months
- When CMO called, Dr. Elder said, "I'm fine," and "I'm looking forward to returning to practice."
- CMO is concerned it'll be a long recovery
- Two weeks later, you see Dr. Elder's name on the OR schedule

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304

**Look at your Bylaws.  
What are you going to do?**

- Place her on a LOA and tell her she needs to request reinstatement
- Require her to get an evaluation
- Refer to Practitioner Health Policy
- Do nothing and hope for the best!
- A, B and C



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**6.8.1. Request and Term of Leave:**

Medical Staff members may request a voluntary leave of absence from the Medical Staff by submitting a written request, as set forth in Section 1.4.3 to the Medical Executive Committee stating the exact period of time of the leave, which may not be longer than two years. A copy shall be forwarded to the Chief Medical Officer by the President of the Medical Staff....

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**6.8.2. Reinstatement After Leave:**

At least thirty (30) days prior to the termination of the leave, or at any earlier time, the member...may request reinstatement by submitting a written request...The member shall submit a written summary of his or her relevant activities during the leave.

**Getaway Hospital**

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**Better Language**

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**6.I LEAVES OF ABSENCE**

**6.I.1. Initiation:**

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(c) Except for maternity leaves, members must report to the Chief Medical Officer any time they are away from ... patient care responsibilities for longer than 45 days and the reason is related to their physical or mental health or otherwise to their ability to care for patients safely and competently.

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**6.I LEAVES OF ABSENCE**

**6.I.1. Initiation:**

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(c) Upon becoming aware of such circumstances (whether by report of the Practitioner or otherwise), the Chief Medical Officer, in consultation with the Chief of Staff, may trigger an automatic medical leave of absence at any point after becoming aware of the member's absence from patient care.

Member Hospital

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**6.I LEAVES OF ABSENCE**

**6.I.3. Reinstatement:**

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(c) If the leave of absence was for health reasons..., the request for reinstatement must be accompanied by a report from a physician acceptable to the Practitioner Health Committee indicating that the individual is capable of resuming a hospital practice and safely exercising the clinical privileges requested. A request for reinstatement will be processed in accordance with the Practitioner Health Policy.

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**6.I LEAVES OF ABSENCE**

**6.I.3. Reinstatement:**

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(c) If the leave of absence was for health reasons..., the request for reinstatement must be accompanied by a report from a physician acceptable to the Practitioner Health Committee indicating that the individual is capable of resuming a hospital practice and safely exercising the clinical privileges requested. A request for reinstatement will be processed in accordance with the Practitioner Health Policy.

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**Scenario 4:  
Dr. Storm**

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**Scenario 4:  
Dr. Steven Storm**

- Based on a long history of disruptive behavior, Dr. Storm's appointment was terminated
- He sued the Hospital and every member of the MEC
- Two years later, while the litigation is pending, Dr. Storm calls the Medical Staff Office and announces: "I'm baaaaaaack!"
- He also demands an application

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**Look at your Bylaws.  
What are you going to do?**

- Give him an application and process it. People change!
- Tell him he's ineligible - no application
- Write him a letter asking him to explain how he's changed and why things would be different this time around
- Give him an application, but make sure everyone knows the plan is to deny it

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**7.4.1. Reapplication After Adverse Appointment Decision:**

An applicant or member who has received a final adverse decision regarding appointment or reappointment shall not be eligible to reapply to the Medical Staff for a period of two (2) years.

Any such reapplication shall be processed as an initial application, and the applicant shall submit such additional information as the Staff may require in demonstration that the basis for the earlier adverse action no longer exists.

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**1.1.1 Authorization and Conditions:**

By applying for or exercising clinical privileges within the Hospital an applicant or member:

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- (c) Agrees to be bound by the provisions of these Bylaws and to waive all legal claims against any representative who acts in accordance with the provisions of these Bylaws.

Getaway Hospital

317

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**1.1. Application Requirements:**

All applications for membership will be submitted to the Medical Staff Office. The applicant will receive a list of all required documents and must agree to sign a consent form allowing the Medical Staff Office to investigate any past educational, professional, or hospital affiliations. The applicant must have a current, valid license to practice in the state.

Getaway Hospital

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## Better Language

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### 2.A.1. Threshold Eligibility Criteria:

To be eligible to apply for initial appointment, reappointment or clinical privileges, an applicant must:

- (f) have never had Medical Staff...appointment, clinical privileges, or status as a participating provider denied, revoked, or terminated by any health care facility, including this Hospital, or health plan for reasons related to clinical competence or professional conduct...

Memorial Hospital

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### Bylaws best practices:

- Threshold eligibility criteria
- Misstatements and omissions
- Automatic relinquishments
- Burden/Incomplete Application
- Leaves of absence
- Right to a hearing

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## Responding to Reference Requests

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## *The inevitable letter*

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St. Mary's Regional Medical Center  
1521 South 15th Street  
Belle Vernon, Washington 98304  
(360) 244-3333

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,

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**St. Mary's Regional Medical Center**  
1221 South 174th Street  
Bellevue, Washington 98004  
206.455.9400

Peter D. Wallace, M.D.

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.

Beville 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,

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325

**Which Elvis song is the best response to this letter?**

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326

**Could we just say all good things about physicians, even if there were problems?**

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**3-4-97**

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**Dr. B joins  
Hospital Staff**

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**3-4-97      3-13-01**

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

329

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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,

330

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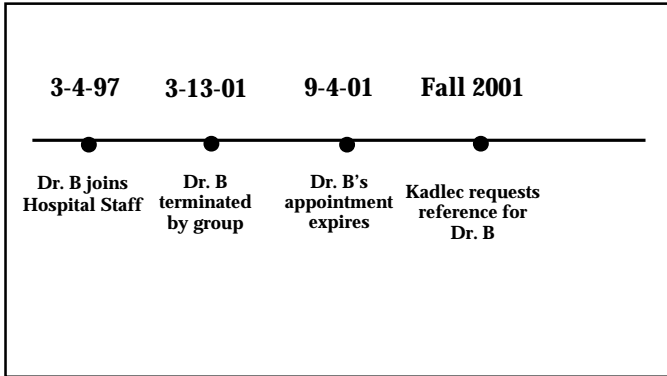
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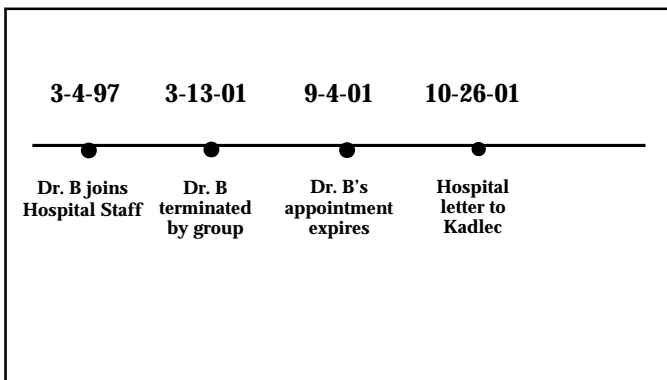
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October 26, 2001  
To: Kadlec Medical Center  
Dr. B was on the Active Staff in the field of anesthesiology at the hospital from March 4, 1997 to

**Dr. B was on the Active Staff in the field of anesthesiology at the hospital from March 4, 1997 to September 4, 2001.**

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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

**No further information can be provided due to the large volume of inquiries received in the office.**

Sincerely,  
Chief Executive Officer

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October 26, 2001  
To: Kadlec Medical Center  
Dr. B was on the Active Staff in the field of

**There is no information of a derogatory nature in Dr. \_\_\_\_\_'s file.**

volume of inquiries received in the office.

Sincerely,  
Chief Executive Officer

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*Dr. A. U. A.*

**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

336

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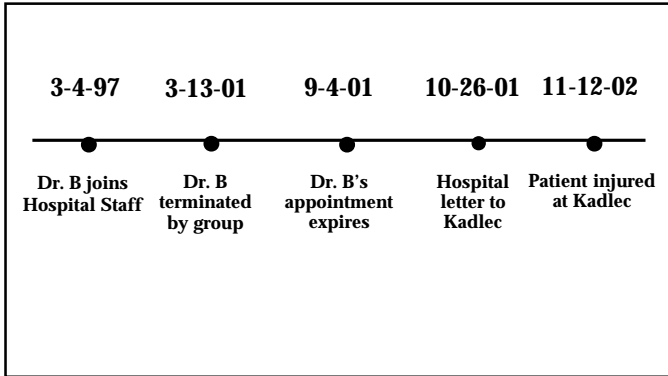
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**Silence isn't always golden...**

***Kadlec Medical Center***  
**v.**  
***Lakeview Anesthesia Associates***

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**Trial Court Ruled There Is a Duty:**

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

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## 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~~

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340

## When You Are Contacted

If no significant concerns, respond if:

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

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If significant concerns exist:



**SEVERAL OPTIONS**

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## Option 1

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

**But beware of problems with this approach**

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## Option 1 - Problems

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

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## Option 2

**If significant concerns exist:**

**Then — No Response  
UNLESS** 

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

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## What if physician won't sign?

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

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## 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.”

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## When You Are Contacted

- Remember legal protections
  - HCQIA (immune from liability in defamation suit unless false information is knowingly provided)
  - Georgia 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

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## Employed Physicians

**Scenario:**

- **Physician employed by hospital-related group**
- **Employment termination leads to automatic loss of privileges (“incident and coterminous clause”)**
- **Hospital not informed of cause for separation**
- **Settlement agreement between hospital-related group and physician includes negotiated reference language and non-disparagement clause**

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## Employed Physicians

**Result:**

- **Medical Staff should only describe first-hand, “official” knowledge about physician**
- **Refer requester to employer if lacking information: “Dr. Smith’s privileges terminated automatically when his/her employment with the group ended. Please contract the group for additional information.”**

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## Even if you get a release:

1. **Don’t spread rumors or guess**
2. **Share only what is relevant to job performance**
3. **Stay away from inflammatory remarks**
4. **Be sure reference response is consistent with actions at hospital**

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**Even if you get a release:**

5. **Mention positive information as well as negative**
6. **Review credentials and quality file before you respond, check with CMO and Medical Staff leadership**
7. **Identify who is authorized to provide references on behalf of hospital (only designated individual in leadership position)**

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**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**

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**Adversely Affects Clinical Privileges**

- **Reducing**
- **Suspending**
- **Revoking**
- **Denying**
- **Restricting**

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## 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*

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## 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**

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## 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!**

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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 Performance Improvement Plan options when properly implemented by the Peer Review Committee

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**Examples**

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

**Is that reportable?**

**No.**

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**If a peer review matter is referred to the MEC and the MEC commences an Investigation...**

**Is that reportable?**

**No.**

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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.**

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**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.**

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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.**

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## **Keys to Confidentiality**

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

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## Confidentiality Statement

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

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- *Quick reminder:* Everything we discuss today is very sensitive and protected by state law
- Let’s have robust and constructive discussions today, but remember everything is *strictly confidential*
- 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*

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## Distribution of Documents

Consider...

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- Not providing “hard” copies of confidential documents in advance of meetings
- Numbering copies of any confidential documents that may be distributed before or at meeting
- Collecting and destroying copies after meetings/ instructions to delete emailed documents
- Secure e-mail/secure intranet

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## Confidentiality Agreements

- Medical Staff Leaders
- Hospital Representatives
- Board Members

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[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 hard-pan 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 \_\_\_\_\_

Please document in records confidential and privileged under Federal law.

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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 Patient Law.

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**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 \_\_\_\_\_

This document is strictly confidential and privileged under Patient Law.

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**HORTY SPRINGER**  
[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.

**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 Patient Law.

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**HORTY SPRINGER**  
[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. I understand that all such information and any discussions regarding it are strictly confidential and 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.

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 Patient Care. Please do not disseminate or disclose this information.

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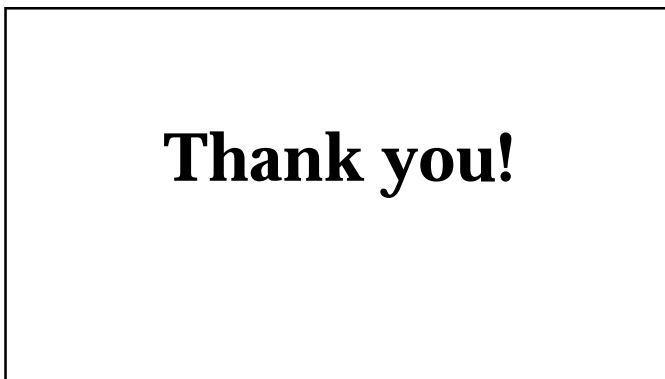
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Thank you.

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

HORTY  SPRINGER

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