HCA Mid-America Division

Medical Staff Leadership Education

September 24, 2026

Susan Lapenta and Moises A. Tonoc Bonilla

Horty, Springer & Mattern, P.C.

Jointly sponsored by the University of Pittsburgh School of Medicine

Center for continuing education in the health and science and HortySpringer Seminars

AGENDA

8:00 to 8:30 a.m. **Challenges of Leadership – Patient Safety Starts with You!**

8:30 to 9:30 a.m. **Credentialing For Excellence – Tools, Tips, and Tactics**

- Align recruitment and credentialling
- Threshold eligibility criteria – Avoiding "denials"
- Don't process applications with misstatements and omissions
- Responding to reference requests
- Make reappointment more meaningful

9:30 to 10:00 a.m. **Let's Take "The Peer Review Challenge"**

- Peer review basics
- Understanding FPPE and OPPE
- Tips, traps, and tools
- Effective action plans

10:00 to 10:15 a.m. **BREAK**

10:15 to 10:45 a.m. **"The Peer Review Challenge" (continued)**

10:45 to 11:15 a.m. **Conducting a Collegial Meeting – A Case Study**

- Planning and implementing an effective collegial meeting
- Making sure you don't get thrown off track
  - When the practitioner does not show up
  - When the practitioner brings a lawyer to the meeting
  - When the practitioner starts recording the meeting on their iPhone

11:15 a.m. to Noon **How to Deal with Disruptive Behavior that Undermines a Culture of Safety**

- Classic characteristics of disruptive conduct
- Behaviors that undermine a culture of safety
- Best practices in dealing with disruptive behavior

AGENDA

Noon to 12:45 p.m. **LUNCH**

12:45 to 1:30 p.m. **Conducting Effective Investigations (with a Capital "I")**

- When does an Investigation begin?
- How do you protect patients while the Investigation proceeds?
- Sources of clinical expertise
- Preparing the Investigation report

1:30 to 2:00 p.m. **Precautionary Suspension: A Life-Defining Event**

- Lessons learned from battles lost
- Process matters and more process is better than less

2:00 to 2:15 p.m. **BREAK**

2:15 to 3:00 p.m. **Practitioner Health**

- How common are health concerns?
- Best practice tips for reviewing health issues using the Practitioner Health Policy
- How common are health concerns?
- What about "late career practitioners"?

3:00 to 3:45 p.m. **Medical Staff Governance Documents Best Practices**

- Common challenges for new leaders – How to Make the Bylaws Your "Best Friend"
- Overview of key bylaws provisions and their importance
- Best practices for revisions and ensuring compliance

3:45 to 4:00 p.m. **Final Q & A**

Accreditation Statement

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

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

The University of Pittsburgh designates this live activity for a maximum of 6.50 AMA PRA Category 1 Credits™. Physicians should claim only the credit commensurate with the extent of their participation in the activity.

Educational Intent

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

Target Audience

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

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

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

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

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MOISES A. TONOC BONILLA is an associate attorney with the law firm of Horty, Springer & Mattern, P.C. in Pittsburgh, Pennsylvania. He handles projects from each of the firm's practice areas, assisting clients on a broad range of corporate, regulatory, and transactional matters.

Moises earned his J.D. from the University of Pittsburgh School of Law. While there, Moises participated in various clinics and practicums, including a landlord-tenant practicum and a wage theft clinic. He also translated for his peer's Spanish-speaking clients at Pitt Law's family law clinic.

Prior to attending law school, Moises obtained his B.A. in Criminal Justice and Minor in Sociology at the University of Wyoming.

Conflict of Interest Disclosure

No 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 with any proprietary entity producing, marketing, re-selling, or distributing health care goods or services, used on, or consumed by, patients to disclose.

Disclaimer Statement

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

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1

Agenda

- **Patient Safety Starts with You!**
- **Credentialing for Excellence**
- **Peer Review Challenge!**
- **Collegial Meeting**
- **Disruptive Behavior**
- **Conducting an Effective Investigation**
- **Precautionary Suspension**
- **Practitioner Health**
- **Best Practices in Governance Documents**

2

Why do we have a Medical Staff?

3

American College of Surgeons 1916-1919

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

4

"National Program for the Standardization" of Hospitals

5

Medical Staff

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

6

Medical Staff

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

7

Medical Staff

- **Review clinical work of others based on medical records**

8

Core Functions of the Medical Staff

- **Credentialing**
- **Privileging**
- **Peer Review**

9

What happens when these core functions are not performed?

10

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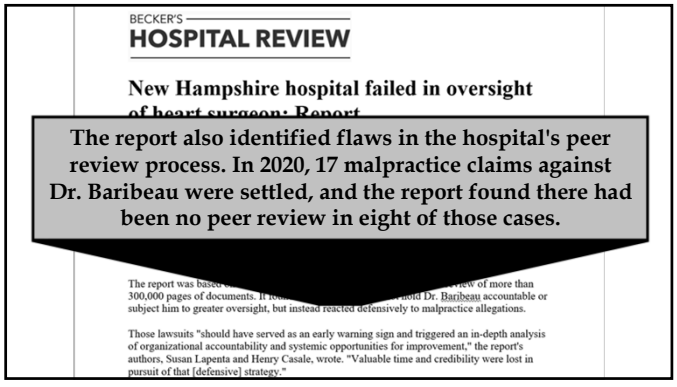

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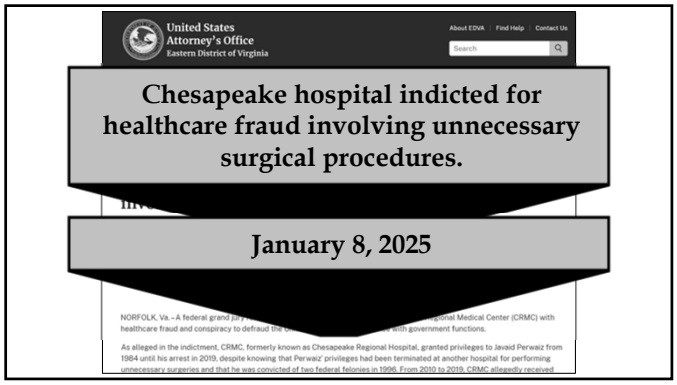

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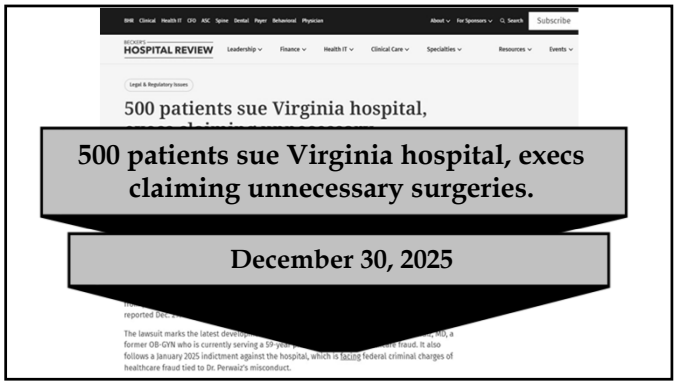

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Patient Safety

vs.

Suits by Physicians

15

When Balancing…

- Keep the focus on the patients!

16

Legal Protections

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

17

When Balancing…

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

18

Credentialing for Excellence – The Foundation of Quality Patient Care

19

Tip

Just OK, is <u>not</u> OK!!

20

Hospitals have an obligation to make sure that only qualified, competent practitioners are appointed and granted privileges.

21

Tip

Align recruitment and credentialing processes.

22

Sing from the Same Song Sheet

- **Know your counterparts**
- **Develop common objectives**
- **Share timelines and checklists**
- **Coordinate sharing of information**

23

What's the most common complaint about credentialing?

24

Practical suggestions:

- Get more information before contract is offered
- Coordinate timing of contract offer and appointment application
- Reinforce importance of credentialing

25

Tip

Develop and use objective threshold criteria.

26

Threshold eligibility criteria:

- Distinguish objective from subjective criteria
- Establish higher standards (e.g., weed out below-average applicants)
- Help you avoid the "D" word

27

Traditional Threshold Criteria

- **License**
- **Malpractice coverage**
- **Office and residence in defined area**

28

New Threshold Criteria

- **<u>Unrestricted</u> license and never had license denied, revoked, or restricted**
- **Board certification, including recertification**
- **Not currently under investigation by federal/state agency**
- **No felony or certain misdemeanor convictions**

29

New Threshold Criteria

- **Never terminated from another staff**
- **Never resigned during an investigation**
- **Never excluded from federal health care programs**

30

Objective criteria will help determine eligibility for appointment and clinical privileges.

31

Tip

Life's not black	**and white.**

Have a waiver process…

32

…use waivers	**sparingly.**

33

Waivers

- Have a defined process
- Place the burden on the individual requesting the waiver
- For exceptional circumstances
- Not to be granted routinely
- No right to a hearing if waiver is denied

34

Consider …

- The nature of the disqualifying factor
- The number of disqualifying factor(s)
- The timing of the disqualifying factor
- Whether the disqualifying factor has been resolved

35

Not…

- He's already employed by our System Group
- She's already received a signing bonus
- He's moved his family and closing on a house
- She's on the schedule next week

36

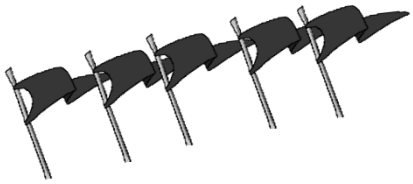
Document

- Minutes should reflect reasons
- Denial does not have to be explained

37

Tip

Spotting Red Flags



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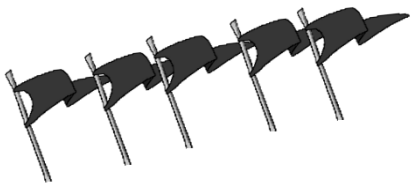
What makes the hair on the back of your neck stand up?



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- **Frequent moves**
- **Qualified references**
- **Gaps in professional experience**
- **Licensure actions**
- **Disciplinary actions**
- **Criminal history**
- **Malpractice claims**

40

Tip

Keep the burden on the applicant.

41

Dear Dr. Sconder:

A number of issues have been identified following a preliminary review of your application for medical staff appointment and clinical privileges to practice at Valiant Health.

1. **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 clean copy of Section V is enclosed. If you need more space, please attach an additional sheet.]

42

Tip

Don't process incomplete applications.

43

Evers v. Edward Hospital

No obligation to process incomplete application at initial appointment.

44

Tip

Manage misstatements and omissions effectively.

45

Misstatements and Omissions

- Made to intentionally deceive the credentialing process
- purposeful withholding and/or misstating
- Often intentional
- Concerns about honesty down the line

46

Misstatements and Omissions

- Stop processing the application
- Notify the applicant in writing
- Permit the applicant to respond
- burden on the applicant to explain misstatement and/or omission

47

Misstatements and Omissions

- Chair of Credentials Committee & CMO determine if application should be processed
- Decision to not process application is an administrative action with no right to a hearing/appeal & no reporting obligation

48

If discovered after individual is appointed

- Similar process can be followed
- If confirmed, appointment and privileges are relinquished
- Prohibition on re-applying for period of time

49

Tip

"Speak No Evil" has its cost.

50

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.

Your employment with Anesthesia Associates is terminated.

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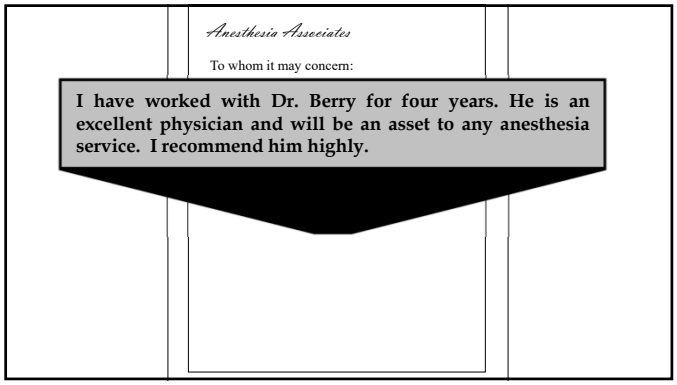

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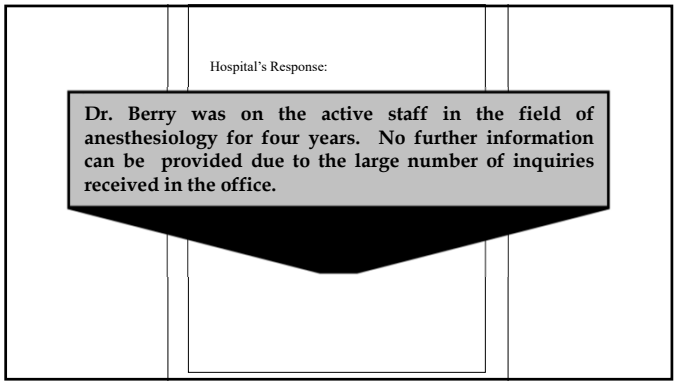

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Get specific release if information is not favorable.

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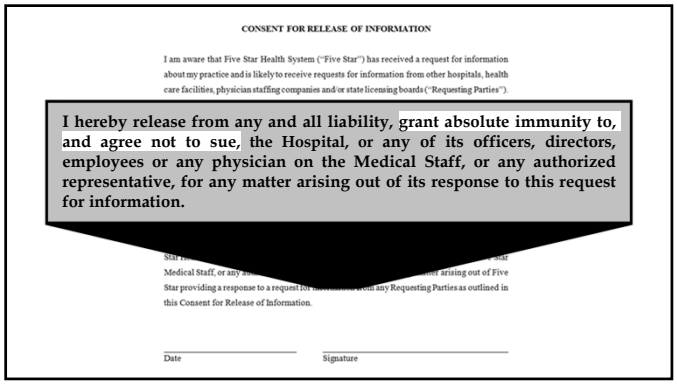

CONSENT FOR RELEASE OF INFORMATION

I am aware that Five Star Health System ("Five Star") has received a request for information about my practice and is likely to receive requests for information from other hospitals, health care facilities, physician staffing companies and/or state licensing boards ("Requesting Parties").

I hereby release from any and all liability, grant absolute immunity to, and agree not to sue, the Hospital, or any of its officers, directors, employees or any physician on the Medical Staff, or any authorized representative, for any matter arising out of its response to this request for information.

Star Five
Medical Staff, or any
arising out of Five Star providing a response to a request for
any Requesting Parties as outlined in this Consent for Release of Information.

Date Signature

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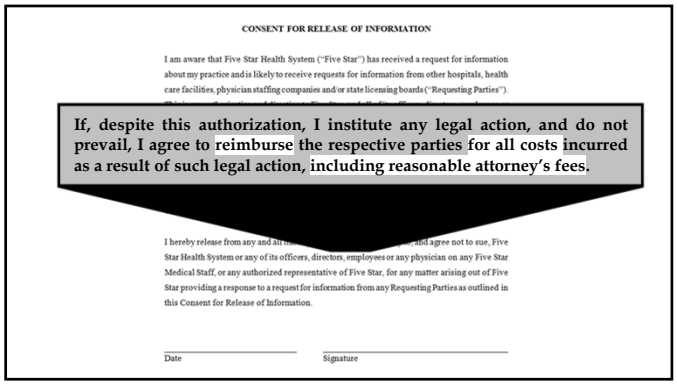

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I am aware that Five Star Health System ("Five Star") has received a request for information about my practice and is likely to receive requests for information from other hospitals, health care facilities, physician staffing companies and/or state licensing boards ("Requesting Parties").

If, despite this authorization, I institute any legal action, and do not prevail, I agree to reimburse the respective parties for all costs incurred as a result of such legal action, including reasonable attorney's fees.

I hereby release from any and all
and agree not to sue, Five Star Health System or any of its officers, directors, employees or any physician on any Five Star Medical Staff, or any authorized representative of Five Star, for any matter arising out of Five Star providing a response to a request for information from any Requesting Parties as outlined in this Consent for Release of Information.

Date Signature

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Tip

Make reappointment meaningful.

57

Got data?

58

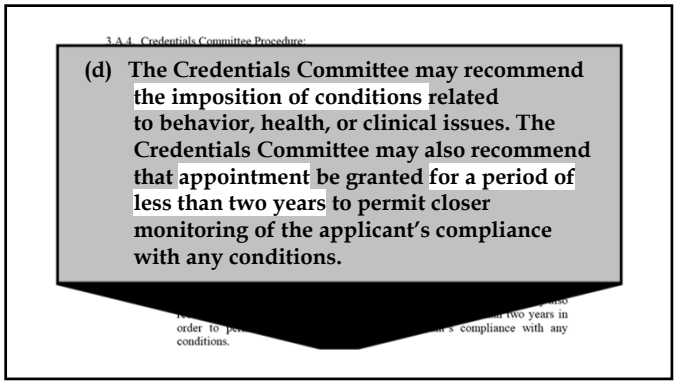
A robust peer review process is the solution!

59

Tip

Consider conditional reappointment.

60



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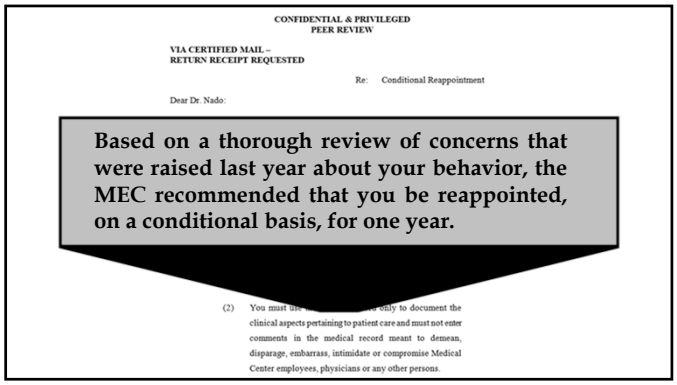

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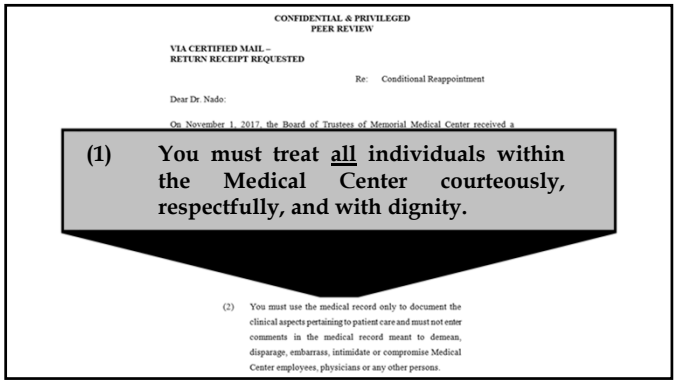

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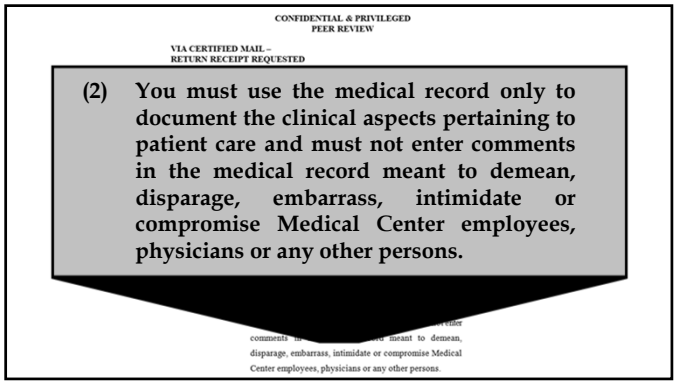
CONFIDENTIAL & PRIVILEGED
PEER REVIEW
VIA CERTIFIED MAIL –
RETURN RECEIPT REQUESTED
(2) You must use the medical record only to document the clinical aspects pertaining to patient care and must not enter comments in the medical record meant to demean, disparage, embarrass, intimidate or compromise Medical Center employees, physicians or any other persons.
meant to demean,
disparage, embarrass, intimidate or compromise Medical
Center employees, physicians or any other persons.

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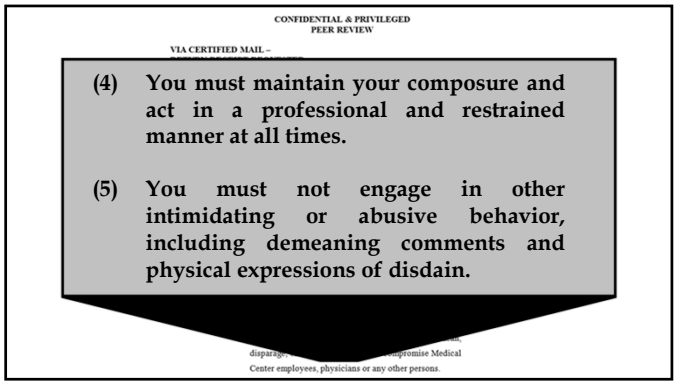
CONFIDENTIAL & PRIVILEGED
PEER REVIEW
VIA CERTIFIED MAIL –
(4) You must maintain your composure and act in a professional and restrained manner at all times.
(5) You must not engage in other intimidating or abusive behavior, including demeaning comments and physical expressions of disdain.
Center employees, physicians or any other persons.

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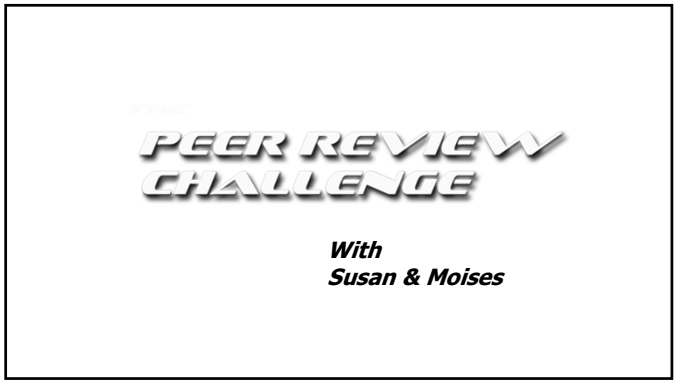

PEER REVIEW
CHALLENGE
With
Susan & Moises

66

PEER REVIEW CHALLENGE

- Focused Professional Practice Evaluation (FPPE)
- Ongoing Professional Practice Evaluation (OPPE)
- Focused Professional Practice Evaluation (FPPE)

67

George Foreman

… and his sons

1. George (Jr.)
2. George (III)
3. George (IV)
4. George (V)
5. George (VI)

68

PEER REVIEW CHALLENGE

Key Players in FPPE-2

- Peer Review Specialists
- Specialty Reviewers
- Peer Review Committee

69

OPPE

Criteria for surgery may include:

- **Operative outcomes**
- **Blood usage**
- **Return to surgery**

70

OPPE

Criteria for medicine may include:

- **LOS**
- **Morbidity and mortality**
- **Use of consultants**

71

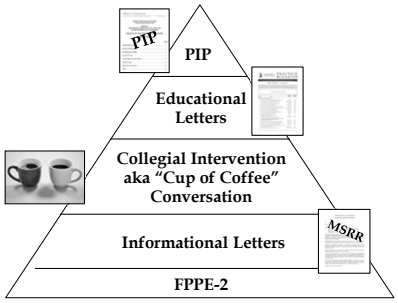
OPPE

Criteria for <u>ALL</u> may include:

- **Medical records completion**
- **Cut and Paste**
- **Core measures**
- **Readmissions**
- **Professionalism**

72

Options



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PEER REVIEW CHALLENGE

Performance Improvement Plan

- **Focused CME**
- **Monitoring/Mentoring**
- **Proctoring**
- **Second opinions**
- **Competency assessment**
- **Retraining**

74

Collegial Intervention Case Study

Dr. Van Winkle:
Is he asleep at the switch?

75

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

76

Dr. Prompt offers suggestions:

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

77

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

78

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

79

What did Dr. Prompt do well?

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

80

What could Dr. Prompt have done better?

- **Meeting rather than phone call**
- **Meet with others instead of one on one**
- **Advance notice of call and issues**
- **Start by discussing positive aspects of OPPE report**

81

What could Dr. Prompt have done better?

- **Review sooner than next OPPE report**
- **Discuss consequences of failure to improve**
- **Follow-up memo or e-mail to Dr. Van Winkle (as opposed to note in file)**

82

Plan for the inevitable "what ifs"!!

83

What if Dr. Van Winkle…

…wants to record the meeting?

…brings his lawyer?

84

What if Dr. Van Winkle…

…demands to know who reported him?

…demands to see the files of others?

…doesn't show up?

85

Anticipate these issues and address them in Medical Staff Bylaws Documents

86

No Right to Record:

There will be no recording (audio or video) or transcript made of any meetings that involve collegial efforts or progressive steps activities.

87

No Right to Counsel:

Members do not have the right to be accompanied by counsel when the Medical Staff Leaders and Administration engage in collegial efforts or other progressive steps. These efforts are intended to resolve issues in a constructive manner.

88

Confidentiality:

Appropriate steps will be taken to maintain the confidentiality of the information received. The identity of any individual reporting a concern or otherwise providing information about a matter will not be disclosed to the practitioner unless the individual consents.

89

Confidentiality:

While members will be permitted to review information in their own confidential files, no member is entitled to review information regarding other practitioners on the Medical Staff or Advanced Practice Professional Staff.

90

Failure to Attend Mandatory Meeting:

Whenever there is a concern regarding an individual's clinical practice or professional conduct, Medical Staff Leaders may require the individual to attend a mandatory meeting.
****
Failure of an individual to attend a mandatory meeting may result in an automatic relinquishment of appointment and privileges as set forth below.

91

Dealing with Disruptive Behavior

92

"Work in Progress"

93

"Disruptive"

94

"Opportunities for Improvement"

95

Common Characteristics

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

96

Common Characteristics

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

97

Behavior looks like….

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

98

Behavior looks like….

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

99

Behavior looks like….

- **Making humiliating, sarcastic or dismissive comments**
- **Using profanity or sexual innuendo**

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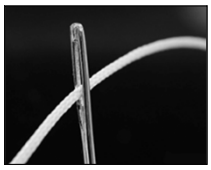

The common thread is that the disruptive conduct interferes with the orderly operation of the hospital and has the potential to adversely affect patient care.

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

The Joint Commission

Sentinel Event Alert

July 09, 2008

Issue 40, July 9, 2008

Behaviors that undermine a culture of safety

Intimidating and disruptive behaviors in health care [illegible] by the Institute for Safe Medication Practices found that 40 percent of clinicians have kept quiet or remained passive during patient care events rather than question a known intimidator.(2,10) While most formal research centers on intimidating and disruptive behaviors among physicians and nurses, there is evidence that these behaviors occur among other health care professionals, such as pharmacists, therapists, and support staff, as well as among administrators. (1,2) Several surveys have found that most care providers have experienced or witnessed intimidating or disruptive behaviors.(1,2,8,12,13) These behaviors are not limited to one gender and occur during interactions within and across disciplines.(1,2,7) Nor are such behaviors confined to the small number of individuals who habitually exhibit them.(2) It is likely that these individuals are not involved in the large majority of episodes of intimidating or disruptive behaviors. It is important that organizations recognize that it is the behaviors that threaten patient safety, irrespective of who engages in them.

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

***

(b) adherence to the ethics of the profession;

***

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

104

105

106

Freilich v. UCHS

107

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

108

Staff complained about comments made by Dr. Freilich…

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

109

Patients complained about comments made by Dr. Freilich…

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

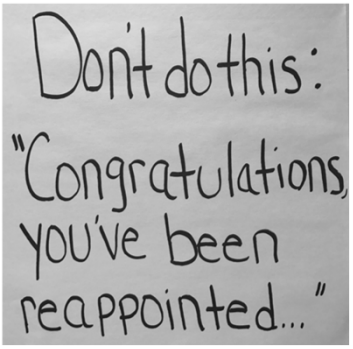
110

Freilich v. UCHS

Retaliation can be relevant to HCQIA immunity.

111

HCA Mid-America Division



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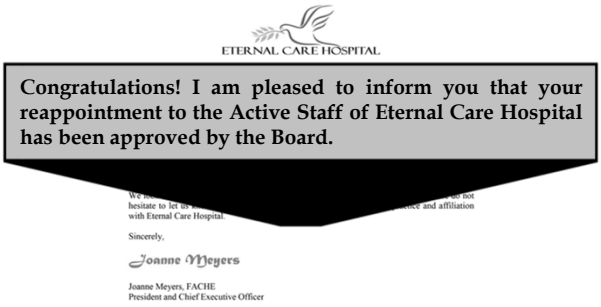

ETERNAL CARE HOSPITAL

Congratulations! I am pleased to inform you that your reappointment to the Active Staff of Eternal Care Hospital has been approved by the Board.

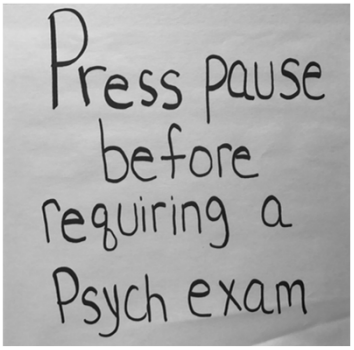
hesitate to let us ... not
with Eternal Care Hospital. ...tice and affiliation

Sincerely,

Joanne Meyers

Joanne Meyers, FACHE
President and Chief Executive Officer

113



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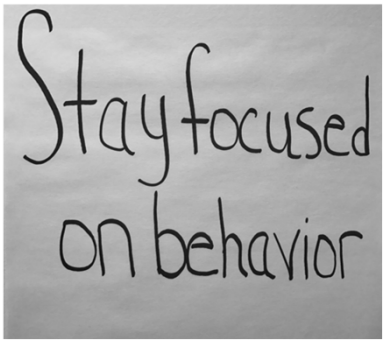

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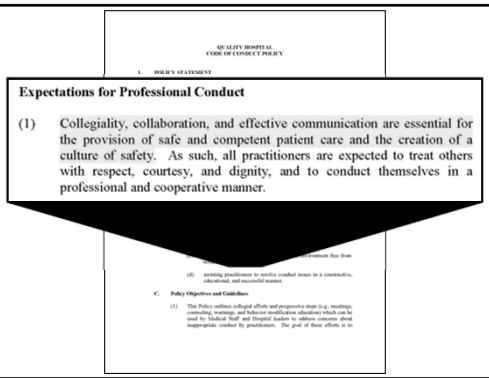

QUALITY HOSPITAL
CODE OF CONDUCT POLICY

I. POLICY STATEMENT

Expectations for Professional Conduct

(1) Collegiality, collaboration, and effective communication are essential for the provision of safe and competent patient care and the creation of a culture of safety. As such, all practitioners are expected to treat others with respect, courtesy, and dignity, and to conduct themselves in a professional and cooperative manner.

(d) assisting practitioners to resolve conduct issues in a constructive, educational, and successful manner.

C. **Policy Objectives and Guidelines**

(1) This Policy outlines collegial efforts and progressive steps (e.g., meetings, counseling, warnings, and behavior modification education) which can be used by Medical Staff and Hospital leaders to address concerns about inappropriate conduct by practitioners. The goal of these efforts is to

117

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

(a) threatening or abusive language directed at patients, nurses, other Hospital personnel, or other practitioners (e.g., belittling, berating, or non-constructive criticism that intimidates, undermines confidence, or implies incompetence);

(b) degrading or demeaning comments regarding patients, families, nurses, other practitioners, Hospital personnel, or the Hospital;

(c) refusing or failing to answer questions, return phone calls or pages;

(d) using condescending language or voice intonation conveying impatience with questions;

(e) using profanity or similarly offensive language while in the Hospital or while speaking with patients, families, nurses, other practitioners, or other Hospital personnel;

(f) retaliating against any individual who may report a quality or behavior concern;

(g) engaging in inappropriate physical contact with another individual that is threatening or intimidating;

118

119

This letter is to inform you that the Board accepted the recommendation of the Medical Executive Committee that your continued appointment to the Medical Staff be subject to your agreement to strictly adhere to the Personal Code of Conduct set forth below:

1. You must treat Hospital personnel and physicians practicing at the Hospital in a courteous and professional manner.

120

2. You must use appropriate administrative channels to register any complaint or concern that you might have about others practicing at the Hospital.

Specifically, any complaint or concern about any other member of the Medical Staff must be in writing addressed to either the Chief of Staff or the Chair of the Credentials Committee, with a copy to the CEO.

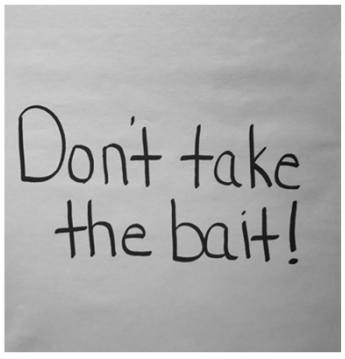
121

3. You shall not call, or otherwise attempt to communicate with, the patients of any ophthalmologist for the purpose of commenting on that physician's training, skill or competence or the procedure performed by such physician.

Committee, with a copy to the Credentials

3. You shall not call, or otherwise attempt to communicate with, the patients of any other ophthalmologist for the purpose of commenting on that physician's training, skill or competence or the procedure performed by such physician.

122



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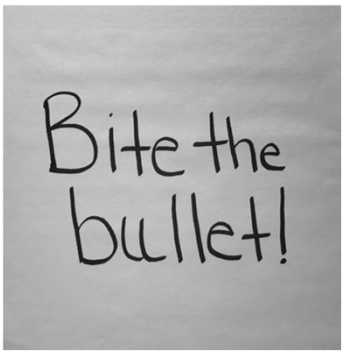
124



125

3. You shall not call, or otherwise attempt to communicate with, the patients of any other ophthalmologist for the purpose of commenting on that physician's training, skill or competence or the procedure performed by such physician.

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126

Leal v. Secretary, Health and Human Services

127

"Dr. Jorge J. Leal, was like Alexander in the classic children's book…

He was having 'a terrible, horrible, no good, very bad day.'"

128

"He pitched a fit."

129

HCA Mid-America Division

	The Hospital said Dr. Leal became so enraged he:	Dr. Leal said he:	
	1. broke a telephone	1. accidentally broke a telephone when he tripped on its cord	
	2. shattered the glass on a copy machine	2. closed the lid of a copy machine with 'some force' and the glass cracked	
	3. shoved a cart into the doors of the operating suite so hard that it damaged one of them	3. moved a cart that was blocking the doors of the operating suite	

130

	The Hospital said Dr. Leal became so enraged he:	Dr. Leal said:	
	4. threw jelly beans down the hallway in the surgical suite	4. he ate jelly beans, some of which fell on the floor when he tried to throw away flavors he did not like	
	5. flung a medical chart to the ground	5. when he was handed a chart, some of the loose papers fell to the floor	

131

"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."

132

"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.

133

The Hospital <u>WAS</u> required to report its disciplinary action to the Data Bank, even though its halls were not littered with injured patients."

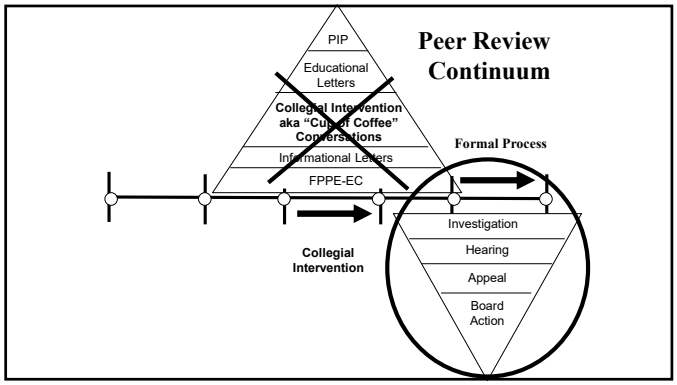
134

Conducting an Effective Investigation

135

Exhaust collegial efforts and progressive steps before commencing an investigation.

136



137

What happens from a practical perspective when you start an investigation?

138

What happens from a legal perspective when you start an investigation?

139

Investigation should begin after decision by Medical Executive Committee.

140

NPDB Guidebook

To be considered an investigation…, the activity generally should be a precursor to a professional review action.

141

Informational and educational letters, collegial interventions and performance improvement plans should NOT be considered a "precursor to a professional review action."

142

The Peer Review Committee should not have disciplinary authority. This helps to reinforce that actions taken by committee are NOT restrictions and are NOT reportable to the NPDB.

143

MEC Should Outlined Scope of the Investigation

- **Not limited to case(s) that triggered investigation**
- **Don't ignore past problems**
- **Concerns uncovered during investigation may be considered.**

144

Expect to be challenged on every front.

145

Expect challenges to the people involved.

146

Composition of Investigating Committee

- **Check the Bylaws**

147

Members of the Investigating Committee should be:

- **Experienced**
- **Well respected**
- **Objective and unbiased**

148

Turn to external experts for clinical review — the experts don't need to serve on the Investigating Committee.

149

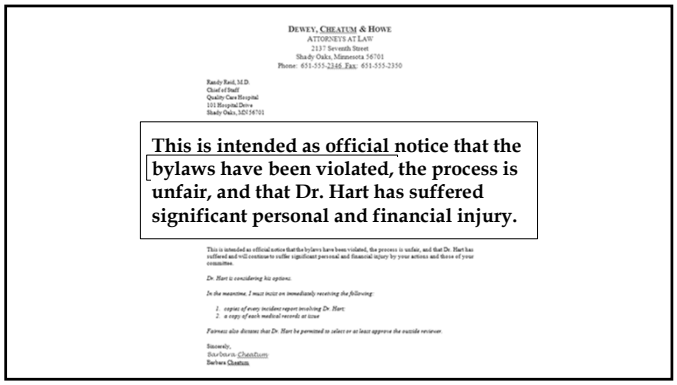
External Clinical Reviewers

- **No recommendations**
- **Stick with one reviewer**
- **Concerns about other practitioners should be in a separate report**
- **Reviewer should meet with Investigating Committee**

150

Expect challenges to the process.

151



DEWEY, CHEATUM & HOWE
ATTORNEYS AT LAW
2137 Seventh Street
Shady Oaks, Minnesota 56701
Phone: 651-555-2346 Fax: 651-555-2350

Randy Reid, M.D.
Chief of Staff
Quality Care Hospital
101 Hospital Drive
Shady Oaks, MN 54701

This is intended as official notice that the bylaws have been violated, the process is unfair, and that Dr. Hart has suffered significant personal and financial injury.

This is intended as official notice that the bylaws have been violated, the process is unfair, and that Dr. Hart has suffered and will continue to suffer significant personal and financial injury by your actions and those of your committee.

Dr. Hart is considering his options.

In the meantime, I must insist on immediately receiving the following:

1. *copies of every incident report involving Dr. Hart;*
2. *a copy of each medical records at issue*

Fairness also dictates that Dr. Hart be permitted to select or at least approve the outside reviewer.

Sincerely,
Stan Dewey, Cheatum
Barbara Cheatum

152

Follow your Bylaws. Only deviate to provide <u>more</u> process.

153

Investigating Committee Should Conduct Witness Interviews

- **Prepare questions in advance**
- **Interview may be conducted by committee or individual members (more is better)**
- **Prepare summaries**
- **Get summaries signed**
- **Counsel should assist in the process**

154

Don't sideline your lawyer!

155

But attorneys do not be present during interview

156

Prior to Interview with Physician

- **Provide summary of concerns, including medical record numbers**
- **Provide copy of expert report**
- **Physician may be asked to respond in writing**

157

You don't have to find a perfect solution. A performance improvement plan that puts the burden on physician may be an option.

158

Prepare detailed report including

- **Process that was followed;**
- **Documents that were reviewed;**
- **Individuals who were interviewed;**
- **Prior actions taken;**
- **Bylaws, policies, and procedures that were violated**

159

Sometimes the employment path is the best solution, especially after collegial efforts have failed and before an investigation is commenced.

160

Never bite when a growl will do.

161

- **Remember the real audience**
- **Reflect peer review objectives**
- **Bend where possible**

162

Precautionary Suspension:

A LIFE-DEFINING EVENT!

163

- ☑ **Notify other hospitals and managed care organizations**
- ☑ **Notify malpractice carrier**
- ☑ **Report to National Practitioner Data Bank**
- ☑ **Report to State Board**

164

"Once the damage is done, it is hard to undo."

165

HCQIA immunity applies when action is taken:

- **in the reasonable belief it was in furtherance of quality care**
- **after an opportunity to obtain the facts**
- **after notice and hearing**

166

HCQIA immunity applies to a suspension:

When failure to act may result in "imminent danger to the health of any individual."

167

Poliner v. Texas Health Systems

- **Interventional cardiologist has three serious complications in first year of practice**
- **While these cases are being reviewed, there is a fourth case in which he stents the wrong artery**

168

HCA Mid-America Division

Poliner v. Texas Health Systems

At meeting, he is told:

- **Agree to refrain from Cath privileges or all privileges will be suspended**
- **Decide in 3 hours**
- **Don't call an counsel**
- **There was no discussion of 4th case**

169

Poliner v. Texas Health Systems

- **Dr. Poliner agreed to refrain from exercising privileges.**
- **Investigation was conducted and concerns confirmed in more than 30 cases.**
- **Suspension imposed on all privileges.**
- **Following hearing, Dr. Poliner is reinstated with conditions, then he sues.**

170

Poliner v. Texas Health Systems

Immunity Denied

$366 million jury verdict

Reduced to $36 million

171

Poliner v. Texas Health Systems

Jury verdict overturned on appeal

172

It's a life defining event when it takes a decade to resolve.

173

Lessons Learned From Battles Fought

174

Lesson 1

Be nice, appearances matter.

175

Lesson 2

Follow your Bylaws!

176

Lesson 3

Meet with the physician <u>before</u> imposing a suspension.

177

Lesson 4

Suspension should be imposed because "failure to act may result in imminent danger."

178

Poliner

The department chief testified that "he did not have enough information to assess whether Dr. Poliner posed a present danger to his patients."

179

Lesson 5

Consider less restrictive alternatives.

180

- **Proctoring**
- **2nd Opinion**
- **Agreement to refrain from exercising privileges**
- **Suspension of some but not all privileges**

181

Managing Practitioner Health

182

An impaired physician is unable to practice safely because of physical or mental health.

183

Physicians suffer from impairment at the same rate as the general population.

184

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

185

It's not a question of if you'll face a practitioner health problem…

it's a question of when and how often.

186

The Ultimate Balancing Act

- **Protect patients**
- **Be fair to the practitioner**
- **Accreditation standards**
- **Americans with Disabilities Act (ADA)**
- **Age Discrimination in Employment Act (ADEA)**

187

When in doubt, always err on the side of patient safety!

188

Nikki Natale, M.D.

189

Credentialing Concerns?

- **Signed employment contract before credentialing started**
- **4-month LOA**
- **Luke warm reference**
- **DUI**
- **Misstatement on application**

190

Health Concerns?

- **4 month LOA**
- **Luke warm reference**
- **DUI**
- **Misstatement on application**

191

Do the health concerns create legal concerns?

192

Americans with
Disabilities
Act

193

ADA Protects

Qualified individuals who:

- **Have physical or mental impairment**
- **Have record of impairment**
- **Are perceived as having an impairment**

194

ADA prohibits pre-offer "medical examinations and inquiries."

195

Medical Examinations and Inquiries

- **Physical examinations**
- **TB tests and**
- **Other medical examinations or inquiries that are likely to elicit information about a disability**

196

What questions can we ask Dr. Natale without violating the ADA?

197

Can we ask about…

- ☑ **Four-month LOA during training?**
- ☑ **Other interruptions in training?**
- ☒ **Hospitalizations?**
- ☑ **Lukewarm peer reference?**
- ☑ **Whether she treated patients while under the influence?**

198

Can we ask about…

- [X] **Diagnosis of and treatment for alcohol use disorder?**
- [✓] **DUI?**
- [X] **Participation in State Health Program?**

199

★★★★★
FIVE STAR HEALTH SYSTEM

CONFIDENTIAL & PRIVILEGED
PEER REVIEW

VIA CERTIFIED MAIL ...
RETURN RECEIPT REQUESTED

1. Fellowship Training Program

We noted that you took a four-month LOA during your fellowship training program. Please provide a detailed explanation.

While we received your peer evaluations, in at least some of these concerns were raised about your practice. The peer evaluation forms are a very important part of the credentialing process because they assist us in evaluating an applicant's ability with respect to the six core competencies identified by the ACGME. As such, please explain why you think concerns would be raised about you in these areas.

3. DUI

We learned that you had been charged and convicted with a DUI. You failed to disclose this on your application. The Credentials Policy expressly states that any misstatement or omission is grounds to stop processing the application. Please provide a copy of the criminal complaint or charges and any related documentation regarding the resolution of this matter.

4. Health Status

As an applicant you must "have the physical and mental health to exercise the privileges granted." Therefore, it may be necessary for you to provide additional information related to your current health status as well as your management of any past health issues. You are not required to provide

1

200

★★★★★
FIVE STAR HEALTH SYSTEM

2. Peer Evaluation

Your peer evaluations raised concerns about your practice. These are a very important part of the credentialing process because they assist us in evaluating core competencies identified by the ACGME. Please explain why you think concerns would be raised about you in these areas.

you in these areas.

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We learned that you had been charged and convicted with a DUI. You failed to disclose this on your application. The Credentials Policy expressly states that any misstatement or omission is grounds to stop processing the application. Please provide a copy of the criminal complaint or charges and any related documentation regarding the resolution of this matter.

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1

201

FIVE STAR HEALTH SYSTEM

3. DUI

We learned that you have been charged with a DUI. You failed to disclose this on your application. The Credentials Policy expressly states that any misstatements are grounds to stop processing the application. Please explain your answer and provide a copy of the criminal complaint or charges and any related documentation regarding this matter.

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As an applicant you must "have the physical and mental health to exercise the privileges granted." Therefore, it may be necessary for you to provide additional information related to your current health status as well as your management of any past health issues. You are not required to provide

202

4. Health Status

As an applicant you must "have the physical and mental health to exercise the privileges granted." You are not required to provide any information about health status at this point in time. Any consideration of your health status will be deferred until after a determination is made regarding whether you are otherwise qualified for appointment and clinical privileges to practice at the Hospital.

4. Health Status

As an applicant you must "have the physical and mental health to exercise the privileges granted." Therefore, it may be necessary for you to provide additional information related to your current health status as well as your management of any past health issues. You are not required to provide

203

Redo – Nikki Natale, M.D.

- **No qualified reference**
- **No DUI**
- **No misrepresentation**
- **But disclosure that LOA was to address substance use disorder**

204

After determining that the applicant is otherwise qualified, the Credentials Committee can require a fitness for practice evaluation.

205

Fitness for practice evaluation should focus on whether Dr. Natale is safe and competent to practice.

206

Lewis v. UPMC Bedford

"I need the entire file…"

207

Lewis v. UPMC Bedford

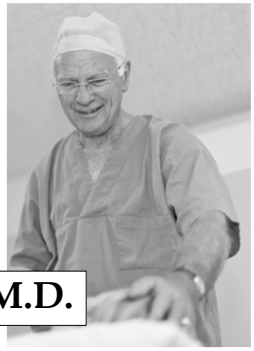
Request for information was appropriate, but too broad.

208

Conditions for appointment/reinstatement may include:

- **Appropriate coverage**
- **Changes in practice – reduced hours/call**
- **Ongoing monitoring**
- **Sporadic alcohol or drug screens**
- **Compliance with Physicians Health Program**
- **Periodic reports of health status**
- **Attendance at AA/NA meetings**

209



Edwin Elder, M.D.

210

"Man/Woman Legend"

Your biggest challenge!!

211

Aging

- Between 3% and 11% of Americans 65 or older have dementia
- Approximately 240,000 physicians are 65 or older

212

6.E. FITNESS FOR PRACTICE EVALUATION

(c) A request for an immediate evaluation may be made when two Medical Staff Leaders (or one MS Leader and one Hospital Administrator), or VPMA are concerned with the individual's ability to safely and competently care for patients.

213

Goal of evaluation is to assess whether Dr. Elder can continue to safely and competently practice.

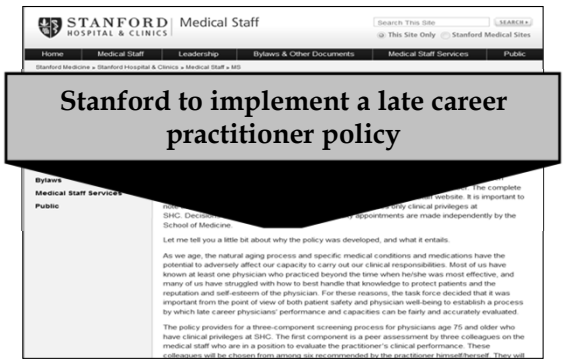
214

Person performing evaluation should be provided with information supporting concerns.

215

Can we create a rule to help address the "late career practitioner"?

216



217

Age Discrimination in Employment Act

218

ADEA

It is unlawful for an employer to discriminate against an individual in employment-related decisions because of age.

219

HCA Mid-America Division

EEOC v. Yale New Haven Hospital

Filed February 11, 2020

***Allegation* – Yale New Haven violated the ADEA by adopting the Policy and applying it to physicians over the age of 70.**

("the Policy"), that requires any individual age 70 and older ("age 70+") who applies for, or seeks

220

Complaint alleges that policy violates ADEA.

221

Complaint alleges that policy violates ADEA and ADA.

222

HCA Mid-America Division


COURT & JUSTICE

Jury slaps Cleveland Clinic Foundation with $28 million judgment in age discrimination suit

A Cuyahoga County jury awarded more than $28 million to a former Cleveland Clinic doctor who sued the hospital for age discrimination and retaliation. (Tracy Boulian, The Plain Dealer)

3.1k

Jurors awarded Dr. Katz, a 77-year-old ENT physician, $1.95 million in compensatory damages, $325,000 in emotional distress damages and $26.375 million in punitive damages to send a message to the Clinic after it found that the hospital violated laws against age discrimination and retaliation.

223

Your Guide – Practitioner Health Policy

Key Elements

- **Identify reporting channels**
- **Provide for a fact-finding process**
- **Identify options for reinstatement**
- **Stress confidentiality including separate health file**

224

Education is key to success.

225

When in doubt, always err on the side of patient safety!

226

Medical Staff Governance Documents (aka Bylaws)

227

Medical Staff Bylaws: Best Friend

or Worst Enemy

228

Best Friend Bylaws

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

229

Worst Enemy Bylaws

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

230

Best Practices for Medical Staff Documents

231

BYLAWS

Medical Staff Bylaws

232

Structure

- **Staff categories**
- **Process for selecting/appointing leaders**
- **Medical Executive Committee**
- **Medical Staff meeting issues, including quorum, attendance and voting**
- **Amendment process**

233

Staff Categories –
How many do you need?

234

Staff Categories: Options

- **Active**
- **Courtesy**
- **Consulting**
- **Community Affiliate**
- **Locums? Telemedicine?**
- **Honorary**

235

Staff Categories – What to do about Advanced Practice Professionals?

236

APPs: Options

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

237

APPs: Options

- **Typically**
  - **May not serve as officer**
  - **May not vote at department or Medical Staff meeting**
  - **May serve on committees, with vote**

238

Medical Staff Officers
Qualifications, Roles and Responsibilities

- **Review and consider qualifications and nomination process**
- **Terms of office**

239

What about Service Lines Leaders??

240

What about Service Lines Leaders??

- **Build in language to reflect that service line leaders "may participate in credentialing, privileging and peer review."**

241

Quorum Requirements

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

242

Quorum Requirements

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

243

Amendment Process

- **Only the Bylaws need to be amended by the Medical Staff**
- **Allow for voting by electronic ballot**
- **Amendment process can vary for different documents**

244

CREDENTIALS POLICY

Credentials Policy

245

CREDENTIALS POLICY

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

246

Qualifications

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

247

Threshold Eligibility

- Unrestricted license
- Board certification
- Not terminated from another staff
- No felony convictions
- Not excluded from Medicare
- Never resigned appointment during investigation

248

Threshold Eligibility

- Document compliance with immunization and health screening requirements adopted by the Hospital or System (e.g., TB testing, mandatory vaccines, and infectious agent exposures)

249

Qualifications

- Failing to satisfy threshold eligibility qualifications renders individual ineligible to have application processed

250

Waivers

- Waivers may be granted when appropriate
- Only for exceptional circumstances
- Not to be used routinely
- Not intended as precedent

251

Misstatements and Omissions

- Notify applicant of misstatement and permit written response
- Credentials Committee Chair and CMO review response and determine if application should be processed further
- Include a similar process if misstatement or omission is discovered after appointment

252

Collegial Efforts and Progressive Steps

- **Intervene early!**
- **Document appropriately!**
- **Address common issues**

253

Physician's counsel should be neither heard

254

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

255

Recording of meetings is not permitted!

256

Precautionary Suspension

- **A life changing event.**
- **"Once the damage is done, it is hard to undo."**

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Precautionary Suspension

- **Only when failure to act "may result in imminent danger"**
- **Consider voluntary agreement**
- **Document reasons for suspension and process followed**

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Investigations

- **When all else fails**
- **Draw a bright line!**
- **Only MEC has authority to commence an Investigation**

259

Hearings

- **Identify situations that trigger a hearing and those that do not**
- **Address exchange of documents**
- **No "discovery" about other physicians**

260

Administrative Relinquishment

- **Not an adverse professional review action**
- **Administrative in nature**

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Administrative Relinquishment

- **Failure to:**
  - **complete medical records**
  - **satisfy threshold criteria**
  - **provide requested information**
  - **attend mandatory meeting**
  - **obtain fitness for practice evaluation**

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Administrative Relinquishment

- **Reinstatement – have a process**
- **If not reinstated with 90 days = resignation**

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Actions Occurring in Other System Hospitals

- **Conditional grant of appointment;**
- **Grant or imposition of LOA;**
- **Administrative relinquishment;**
- **Adoption of a PIP;**
- **Precautionary suspension; and**
- **Professional review action.**

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Actions Occurring in Other System Hospitals

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

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Thank you!

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