UCHealth

Medical Staff Leadership Training

October 16, 2026

Susan Lapenta and Charles Chulack

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 8:10 a.m. **Introduction and Opening Remarks**

8:10 to 8:40 a.m. **Medical Staff Jeopardy!**

8:40 to 10:15 a.m. **Credentialing For Excellence – Tips to Make Your Life Easier**

- Dr. Alfred Flagg Application
- Dr. Sconder Case Study

10:15 to 10:30 a.m. **BREAK**

10:30 to 11:15 a.m. **Privileging Challenges and Solutions**

- Privileging principles and temporary privileges
- Own your DOP!
- Setting criteria for privileges
- Handling requests for privileges that cross specialty lines (aka, turf battles)

11:15 to 11:45 a.m. **Conducting an Investigation**

11:45 a.m. to 12:30 p.m. **LUNCH**

12:30 to 1:15 p.m. **Peer References: The Consequences of Providing Too Much, Too Little, and Just the Right Amount of Information**

- Your troubles are over now that Dr. Aaron Gant is gone, or so you thought. Now, you have to deal with a request for a peer reference
- What do you say?
- How do you protect yourself and your hospital but provide the next hospital with enough information so it can protect its patients?

© HortySpringer Seminars

AGENDA

1:15 to 2:15 p.m. **Dr. Earnest Case Study – Peer Review Principles in Action**

- Precautionary suspension vs. voluntarily refrain
- Routing of concerns that require immediate attention
- Managing conflicts of interest
- Reports to the National Practitioner Data Bank
- Sharing information with an employer

2:15 to 2:45 p.m. **Peer Review in a System**

- Can we share information with the practitioner's employer?
- What actions can be administratively implemented at other system facilities?
- Does a System Peer Review Oversight Committee make sense?

2:45 to 3:30 p.m. **Practitioner Health**

- The scope of practitioner health issues
- Credentialing challenges
- Managing health issues during appointment
- Addressing the late career practitioner

3:30 p.m. **Adjournment**

© HortySpringer Seminars

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

© HortySpringer Seminars

SUSAN LAPENTA
SLapenta@hortyspringer.com

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

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

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

CHARLES CHULACK
CChulack@HortySpringer.com

CHARLES 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 Lawyers Association *Peer Review Guidebook* and 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 Lawyers 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.

© HortySpringer Seminars

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.

© HortySpringer Seminars

Continuing Education Information

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.

Physicians:
The University of Pittsburgh School of Medicine 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.

Other health care 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.

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.

Disclaimer Statement
The information presented at this CME program 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.

1

UCHealth

Medical Staff Leadership Training

October 16, 2026

Susan Lapenta & Charlie Chulack
Horty, Springer & Mattern, P.C.

2

AGENDA

- **Medical Staff Jeopardy!**
- **Credentialing for Excellence**
- **Privileging Challenges and Solutions**
- **Conducting an Investigation**
- **Providing Peer References**
- **Peer Review Principles in Action**
- **Peer Review in a System**
- **Practitioner Health**

3

© HortySpringer Seminars

MEDICAL STAFF JEOPARDY!

4

Credentials Committee Meeting

VALIANT HEALTH

October 16, 2026

5

VALIANT HEALTH

1. **Review of application for initial appointment – Alfred Flagg, M.D.**

2. Review [illegible]
3. Review request for waiver of threshold eligibility criteria – Robert Kirk, M.D.
4. Meeting adjourned

6



Alfred Flagg, M.D.

7

- No covering physician
- Did not complete first residency
- Year off between residency programs
- Gap between Fellowship and practice at Main General Hospital
- 6-month gap between Main General and Five Star Hospital
- Changed practice locations
- Did he move before he was appointed elsewhere?
- Gap between Five Star and Flatline Memorial
- Hospital appointments relatively short
- Suspension
- Settlement
- WV license, never worked in state
- Dr. Benson reference – too long ago
- Ms. Friend reference – CRNA
- Altered release

8

Check for:

- ☑ **Compliance with threshold criteria (e.g., covering physician; bd certification, disciplinary/licensure actions)**
- ☑ **Misstatements and omissions (e.g., practice in WV)**
- ☑ **Application otherwise incomplete (e.g., unexplained moves, gaps, inappropriate or missing references)**

9

© HortySpringer Seminars

Your Bylaws can help:

- **Define threshold criteria**
- **Keep the burden on the applicant**
- **Don't process incomplete applications**

10

Motion:

Send a letter to Dr. Flagg:

1. **Notify him of the issues on his application;**
2. **Request additional information; and**
3. **Inform him that his application will not be processed until required information is received.**

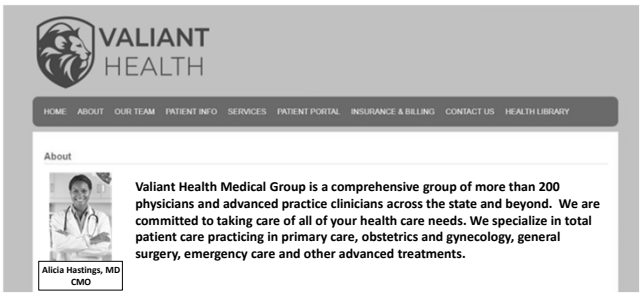
11

VALIANT HEALTH

2. Review application for initial appointment – Abe Sconder, M.D.

2. Review applica... M.D.
3. Review request for waiver of threshold eligibility criteria – Robert Kirk, M.D.
4. Meeting adjourned

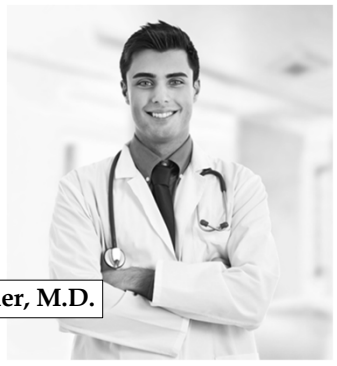
12


VALIANT
HEALTH
HOME ABOUT OUR TEAM PATIENT INFO SERVICES PATIENT PORTAL INSURANCE & BILLING CONTACT US HEALTH LIBRARY
About
Valiant Health Medical Group is a comprehensive group of more than 200 physicians and advanced practice clinicians 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

13


Alicia Hastings, M.D.
CMO, Valiant Health
Medical Group

14


Abe Sconder, M.D.

15

VALIANT

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

PHYSICIAN:

Abe Sconder, M.D.

Abe Sconder, M. D.

VALIANT HEALTH MEDICAL GROUP:

By: *Alisha M. Hastings, M.D.*

Alisha Marie Hastings, M.D.
Chief Medical Officer

WHEREAS, Valiant Health Medical Group operates physician clinics; and

WHEREAS, Physician practices in the Specialty described in Exhibit A; satisfies the qualifications set forth herein; and shall be employed by Valiant Health Medical Group under the terms and conditions stated in this Agreement; and

16

VALIANT HEALTH



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 th being answered.
4. If not previously provided, please attach copies of the following documents to this application:
   - (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/activity 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 [or] *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 numbers of procedures performed, morbidity, mortality, infection rates and other complications.

17

ABE SCONDER, M.D.

CURRICULUM VITAE

HIGHER EDUCATION

UNDERGRADUATE DEGREE:
- August 2012 to May 2016 Belknap College, Concord, NH 03301

MEDICAL SCHOOL:
- September 2016 to May 2020: Southern College of Medicine, Long Branch, NJ 08080

RESIDENCY:
- July 2020 to June 2023: 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 2023 to September 2024
- Eternal Care Hospital: March 2024 to September 2025
- Valiant Health: March 2026

18

ABE SCONDER, M.D.

WORK HISTORY

- **Staffing Solutions, Inc.: July 2023 to Sept. 2024**
- **Eternal Care Hospital: March 2025 to May2026**

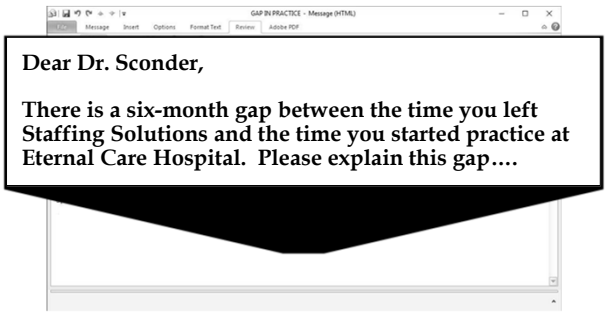
19

ABE SCONDER, M.D.

WORK HISTORY

- **Staffing Solutions, Inc.: July 2023 to Sept. 2024**
  (Six-month gap)
- **Eternal Care Hospital: March 2025 to May 2026**

20



21



22

3. Has your appointment or clinical privileges ever been relinquished, restricted, suspended,

6. Have you ever withdrawn your application for appointment, reappointment or clinical privileges at any hospital or health care facility, or for participating provider status in a managed care organization?
Yes ___ No _X_

of such entities?
Yes ___ No _X_

7. Are there presently any proceedings or investigations taking place at any hospital, health care facility, or managed care organization relating to your clinical competence or professional conduct?
Yes ___ No _X_

23

ABE SCONDER, M.D.
CURRICULUM VITAE

WORK HISTORY

- **Eternal Care Hospital: March 2025 to May 2026**
- **(Six-month gap)**
- **Valiant Health: October 2026**

24

ANOTHER GAP IN PRACTICE - Message (HTML)

There is also a six-month gap between the time you left Eternal Care Hospital and the present. Please explain this gap.

Sincerely,
Dawn Moore, CPCS
Director CVO

Sincerely,
Dawn Moore, CPCS
Director CVO

25

●●●○○ Verizon LTE 4:08 PM 75%

Messages **Dr. Abe Sconder** Details

Thx for email. Here's scoop. Recruited by 3 Midnite MC. Got there and realized it was bad fit. There was no committment to pt safety. Got another offer and took it...

There were personal issues. Making plans to move to Valiant. Can't wait to get started.

26

VALIANT HEALTH

PHYSICIAN EVALUATION FORM
CONFIDENTIAL AND PRIVILEGED PEER REVIEW DOCUMENT

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

NAME OF APPLICANT Abe Sconder M.D.
NAME OF HOSPITAL Eternal Care Hospital

I. VERIFICATION OF STATUS

Dates applicant was at your institution: _____ to _____
Applicant's status at your institution: _____

II. EVALUATION

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

	NO CONCERNS	SOME CONCERN	UNABLE TO ASSESS
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 nurses and hospital staff			
Relationship with patients and their families			
Communication skills, including ability to understand, speak and write English			
Effective communication with patients and families concerning proposed treatments, alternatives and unanticipated outcomes			
Timely, comprehensive and legible completion of medical records			

27

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 March 2025 through May 2026.

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

Sincerely,

Amanda Meyers

Amanda Meyers CPCS, CPMSM
Medical Staff Services Manager

28

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

Name & Address | Dates From | Dates To

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***

5. Date(s) of next required recertification examination (if applicable):

29

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

Name & Address | Dates From | Dates To

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?

August 2027

My father passed away right before last board cert exam

3. If not certified, have you applied for the certification examination? Yes X No

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

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?

August 2027

5. Date(s) of next required recertification examination (if applicable):

30

Issues:

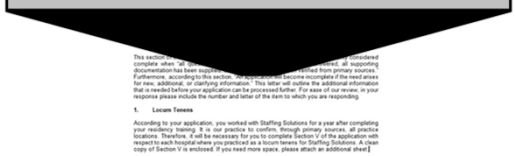
- **Hospitals worked at - as locum tenens**
- **6-month gap after locum tenens**
- **Three Midnight Medical Center**
- **Little more than a year at Eternal Care Hospital**
- **Need more information from Eternal Care Hospital**
- **6-month gap after Eternal Care Hospital**
- **Not board certified**

31

VALIANT HEALTH

Dear Dr. Sconder:

A number of issues have been identified by a preliminary review of your application to practice at Valiant Health.

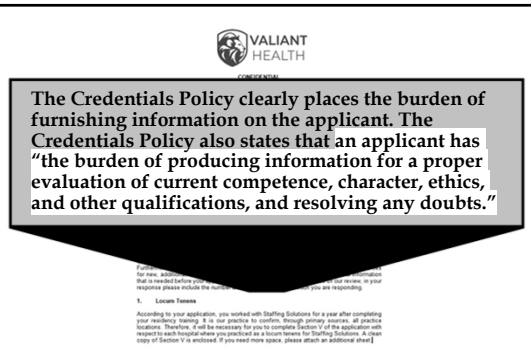


32

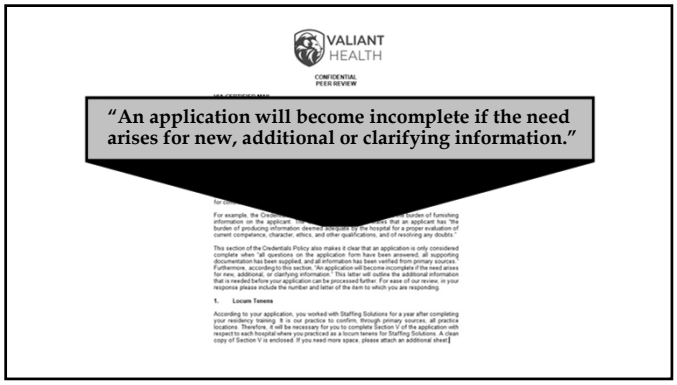
VALIANT HEALTH

CONFIDENTIAL

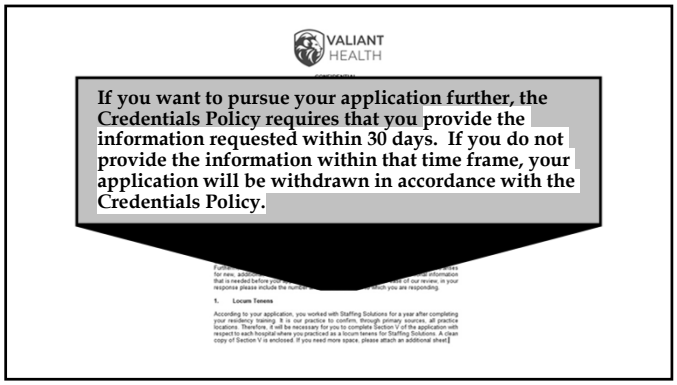
The Credentials Policy clearly places the burden of furnishing information on the applicant. The Credentials Policy also states that an applicant has "the burden of producing information for a proper evaluation of current competence, character, ethics, and other qualifications, and resolving any doubts."



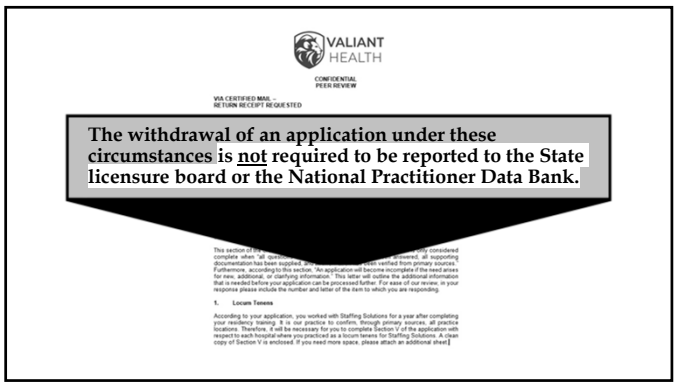
33


VALIANT HEALTH
CONFIDENTIAL PEER REVIEW
"An application will become incomplete if the need arises for new, additional or clarifying information."

34


VALIANT HEALTH
If you want to pursue your application further, the Credentials Policy requires that you provide the information requested within 30 days. If you do not provide the information within that time frame, your application will be withdrawn in accordance with the Credentials Policy.

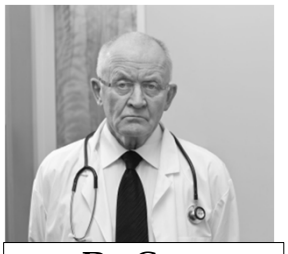
35


VALIANT HEALTH
CONFIDENTIAL PEER REVIEW
VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED
The withdrawal of an application under these circumstances is not required to be reported to the State licensure board or the National Practitioner Data Bank.

36



Dr. Lee
Member, Credentials Committee



Dr. Caan
Director, Hospitalist Service Three Midnight

37

What did we learn from Dr. Caan?

- **Dr. Sconder drove a hard bargain with employer**
- **Nice enough guy**
- **Things didn't work out, never practiced there**

38

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**

39

© HortySpringer Seminars

What did we learn from Dr. Caan?

- Dr. Sconder 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

40

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

41

Issues with sharing information:

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

42

© HortySpringer Seminars

Authorization to Share Information Among Affiliated Entities

Include on:

- **Application form**
- **Bylaws/Credentials Policy**

43

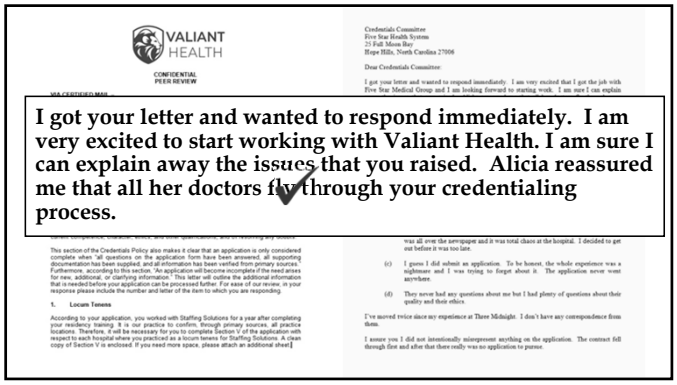
Sharing Peer Review Information Among Affiliated Entities

- **Authorization to share information**
- **Information sharing policy**

44



45



VALIANT HEALTH

CONFIDENTIAL
PEER REVIEW

Credentials Committee
Five Star Health System
25 Full Moon Bay
Hope Hills, North Carolina 27006

Dear Credentials Committee:

I got your letter and wanted to respond immediately. I am very excited that I got the job with Five Star Medical Group and I am looking forward to starting work. I am sure I can explain away the issues that you raised. Alicia reassured me that all her doctors fly through your credentialing process.

I got your letter and wanted to respond immediately. I am very excited to start working with Valiant Health. I am sure I can explain away the issues that you raised. Alicia reassured me that all her doctors fly through your credentialing process.

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, "An application will become incomplete if the need arises for new, additional, or clarifying information." This letter will outline 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.

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.

was all over the newspaper and it was total chaos at the hospital. I decided to get out before it was too late.

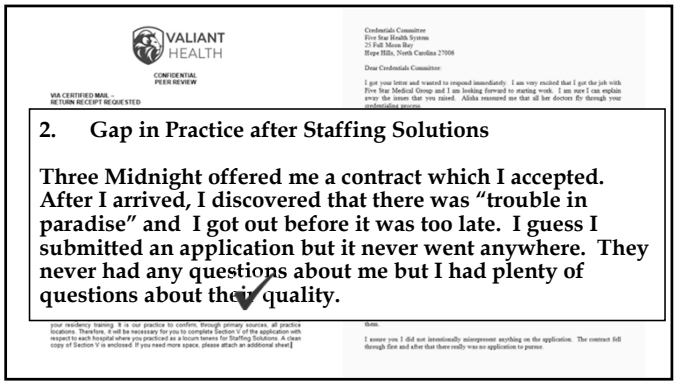
(c) I guess I did submit an application. To be honest, the whole experience was a nightmare and I was trying to forget about it. The application never went anywhere.

(d) They never had any questions about me but I had plenty of questions about their quality and their ethics.

I've moved twice since my experience at Three Midnight. I don't have any correspondence from them.

I assure you I did not intentionally misrepresent anything on the application. The contract fell through first and after that there really was no application to pursue.

46



VALIANT HEALTH

CONFIDENTIAL
PEER REVIEW

VIA CERTIFIED MAIL –
RETURN RECEIPT REQUESTED

Credentials Committee
Five Star Health System
25 Full Moon Bay
Hope Hills, North Carolina 27006

Dear Credentials Committee:

I got your letter and wanted to respond immediately. I am very excited that I got the job with Five Star Medical Group and I am looking forward to starting work. I am sure I can explain away the issues that you raised. Alicia reassured me that all her doctors fly through your credentialing process.

2. Gap in Practice after Staffing Solutions

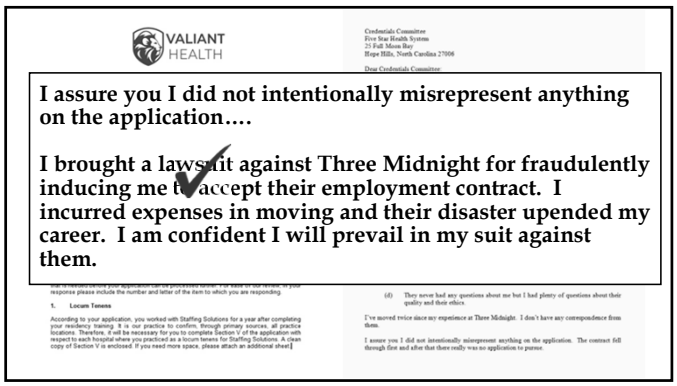
Three Midnight offered me a contract which I accepted. After I arrived, I discovered that there was "trouble in paradise" and I got out before it was too late. I guess I submitted an application but it never went anywhere. They never had any questions about me but I had plenty of questions about their quality.

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.

them.

I assure you I did not intentionally misrepresent anything on the application. The contract fell through first and after that there really was no application to pursue.

47



VALIANT HEALTH

Credentials Committee
Five Star Health System
25 Full Moon Bay
Hope Hills, North Carolina 27006

Dear Credentials Committee:

I assure you I did not intentionally misrepresent anything on the application….

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.

response please include the number and letter of the item to which you are responding.

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.

(d) They never had any questions about me but I had plenty of questions about their quality and their ethics.

I've moved twice since my experience at Three Midnight. I don't have any correspondence from them.

I assure you I did not intentionally misrepresent anything on the application. The contract fell through first and after that there really was no application to pursue.

48



Alicia Hastings, M.D.
CMO Valiant Health

49

CLINICAL PRIVILEGES

50

Appointment

vs.

Clinical Privileges

51

Appointment ≈ Membership

- **Citizenship Responsibilities**
- **Rights/Prerogatives**

52

Clinical Privileges = Breadth, scope and nature of practice

53

Clinical Privileges

- **Temporary Privileges**
- **DOPs**
- **Setting Criteria for Privileges**
- **Privileges that Cross Specialty Lines**

54

TEMPORARY CLINICAL PRIVILEGES

55

Temporary Privileges

New Applicants:

Application must be both complete and clean.

56

Complete Application Means:

- **All information received**
- **All information verified**
- **Review complete except MEC and Board**

57

© HortySpringer Seminars

Clean Application Means:

- **No current or previously successful challenges to licensure or registration**

58

Clean Application Means:

- **No involuntary termination of appointment or involuntary limitation, reduction, denial, or loss of clinical privileges at another healthcare facility**

59

Temporary Privileges

- **New applicants**
- **Important patient care need**

60

Important patient care need:

- ✓ **Verification of licensure and DEA**
- ✓ **Verification of competence**

61

Important patient care need:

- ✓ **Recommendation of Department Chair**
- ✓ **Recommendation of Chief of Staff**

62

Important patient care need:

- **Care of a specific patient**
- **Proctoring**
- **Locum Tenens**

63

© HortySpringer Seminars

Locum Tenens Privileging Tips

Do your homework!

64

Do:

- **Criminal background check**
- **Google search**

65

Locum Tenens Privileging Tips

Have an easy exit strategy

66

© HortySpringer Seminars

4.B.3. Withdrawal of Temporary Clinical Privileges:

(a) The granting of temporary clinical privileges is a courtesy that may be withdrawn by the Chief Executive Officer at any time, after consulting with the Chief of Staff, the Chairperson of the Credentials Committee, or the department chairperson.

(b) The department chairperson or the Chief of Staff will assign to another member of the Medical Staff responsibility for the care of patients until they are discharged. Whenever possible, consideration will be given to the wishes of the patient in the selection of a substitute physician.

67

OWN YOUR DOPS

DELINEATION OF PRIVILEGES

68

"Block" Privileges

"All procedures and medical regimens necessary to treat conditions and ailments of _____."

69

DOP should include criteria for clinical privileges such as:

- **Education**
- **Training**
- **Experience**
- **Elements of FPPE**

70

As part of the core, the DOP for plastic surgery includes gender-affirming surgery. Physicians with no specific training are performing these procedures – and not very well.

71

The DOP for interventional cardiology requires the performance of a defined number of cases. A cardiologist requests the privilege after performing the required number of procedures at your hospital.

72

© HortySpringer Seminars

The COPs, accreditation standards, and state law require that hospitals develop and adhere to reasonable DOPs.

73

Frigo v. Silver Cross Hospital and Medical Center (App. Ill.)

- **Patient sues the podiatrist, who performed the bunionectomy, and the hospital.**
- **During case it is discovered that the podiatrist failed to satisfy privileging criteria**
- **Podiatrist settled**

74

Frigo v. Silver Cross Hospital and Medical Center (App. Ill.)

- **Jury finds hospital liable.**
- **Awards Ms. Frigo $7.7 million.**

75

Columbia/JFK Medical Center v. Sangounchitte (Fla. App)

Court upheld $8.5 million verdict against hospital for allowing surgeon to perform unapproved procedure.

76

Lessons:

- **If you purchase a template, make sure you tailor it.**
- **Know what the DOP requires and make sure physicians satisfy the requirements.**
- **Don't make DOPs too complicated.**

77

Lessons:

- **Don't assume physicians understand they are only allowed to perform procedures for which they have been privileged.**
- **Education is key.**

78

Criteria for Clinical Privileges

79

Paul Monary, M.D.
Case Study

80

Can Coast Regional Medical Center change its criteria?

81

The Medical Staff Bylaws must describe the privileging process used that considers "character, *competence,* training, *individual experience,* and judgment"

- CMS Conditions of Participation

82

Grants of clinical privileges are based on a review of "training, *experience, current competence,* and *ability to perform the requested privilege.*"

- The Joint Commission

83

The medical staff bylaws should include criteria for determining the privileges to be granted to individual practitioners.

- DNV

84

Vascular surgery *residents* are expected to have done a minimum of 80 endovascular therapeutic procedures and 100 endovascular diagnostic procedures

- Society for Vascular Surgery

85

"When there isn't a clear cut standard in the community then the hospital has to decide for themselves."

***Nahas v. Shore Medical Center* (2019)**

86

Best Practices

1. **Set threshold eligibility criteria for clinical privileges (both core and specialty) in advance**
2. **Use multi-disciplinary committee to recommend appropriate threshold eligibility criteria for clinical privileges (e.g., Credentials Committee) with input from appropriate specialties**
3. **Criteria based on literature and research**

87

Threshold Eligibility Criteria

Apply to:

1. **Initial appointment,**
2. **Reappointment, and**
3. **CLINICAL PRIVILEGES!**

88

Coast Regional Medical Center

Clinical Privileges for Endovascular Procedures

Effective January 1, 2023, to be eligible for clinical privileges to perform endovascular procedures at Coast Regional Medical Center, an applicant must satisfy the following requirements:

(c) [illegible] interventions to demonstrate clinical current [illegible] a minimum of 80 endovascular therapeutic procedures and 100 endovascular diagnostic procedures.

(d) for those applicants whose training was not completed within the last two years, have performed a sufficient number of endovascular interventions in the previous two years to demonstrate current clinical competence, including a minimum of 40 endovascular therapeutic procedures and 50 endovascular diagnostic procedures.

89

Coast Regional Medical Center

Clinical Privileges for Endovascular Procedures

(d) for those applicants whose training was not completed within the last two years, have performed a sufficient number of endovascular interventions in the previous two years to demonstrate current clinical competence, including a minimum of 40 endovascular therapeutic procedures and 50 endovascular diagnostic procedures.

demonstrate [illegible] endovascular therapeutic procedures and [illegible] procedures.

90

Volume-Based Credentialing

- **Eligibility for privileges based on specified number of clinical activities**
- **Common for surgical and invasive procedures**
- **Better outcomes associated with higher volume**
- **May have alternative means for demonstrating competence (e.g., simulation)**

91

Turf Battles

(Clinical Privileges that Cross Specialty Lines)



92

Stan Osis, MD
Case Study

93

What are the Credentials Committee's Options?

94

Unresolved, or poorly resolved, turf battles have the potential to lead to litigation.

95

Risks of Poorly Handled
Turf Battles
Patient Safety
Antitrust

96

Patient Safety Risks

Goldenberg v. Woodard

OB/GYN begins performing colonoscopy after attending weekend CME course. Sued for malpractice and fraud after perforating a patient's colon.

97

Patient Safety Risks

Goldenberg v. Woodard

Jury award the patient over $1.5 million.

98

Antitrust Risks

Nurse Midwifery Assocs. v. Hibbett

Two nurse midwives sued hospitals and obstetricians for violations of the antitrust laws when their request for privileges to deliver babies was denied.

99

Antitrust Risks

Nurse Midwifery Assocs. v. Hibbett

The CEO was encouraging but said he did not know what the doctors would do.

100

Antitrust Risks

Nurse Midwifery Assocs. v. Hibbett

One obstetrician said: "If nurse midwives started delivering babies, the next thing they would want to do is brain surgery."

101

Antitrust Risks

Nurse Midwifery Assocs. v. Hibbett

Another OB said nurse midwives would get privileges "over my dead body."

102

Antitrust Risks

Nurse Midwifery Assocs. v. Hibbett

Antitrust conspiracy claim allowed to go forward.

103

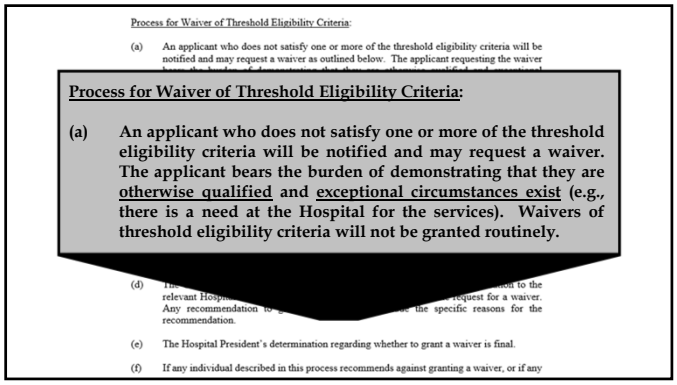
When there is a turf battle, process is the key.

104

Options

- **Determine that Dr. Osis is ineligible for spine privileges**
- **Grant a waiver of the training requirements under the neurosurgery DOP**

105

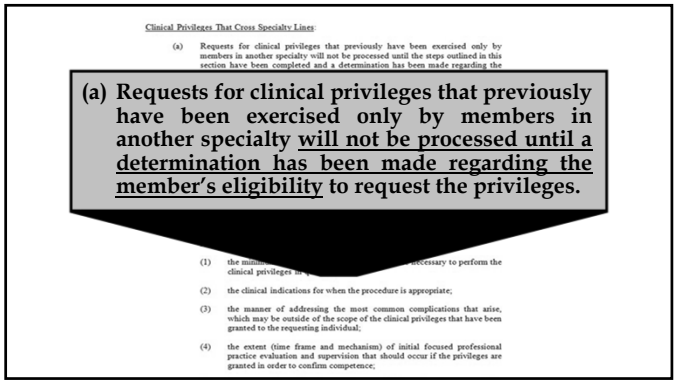


106

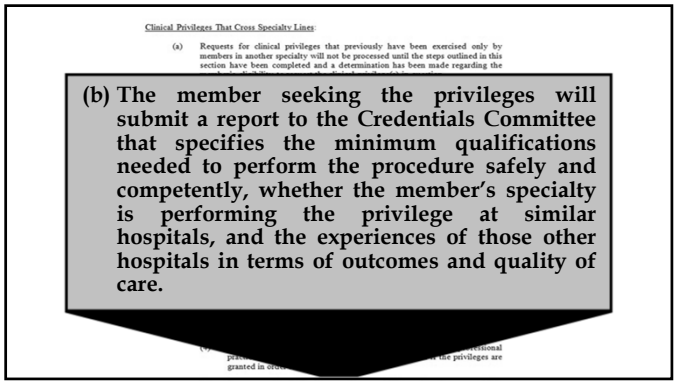
Options

- **Determine that Dr. Osis is ineligible for spine privileges**
- **Grant a waiver of the training requirements under the neurosurgery DOP**
- **Evaluate the request under your process for clinical privileges that cross specialty lines**

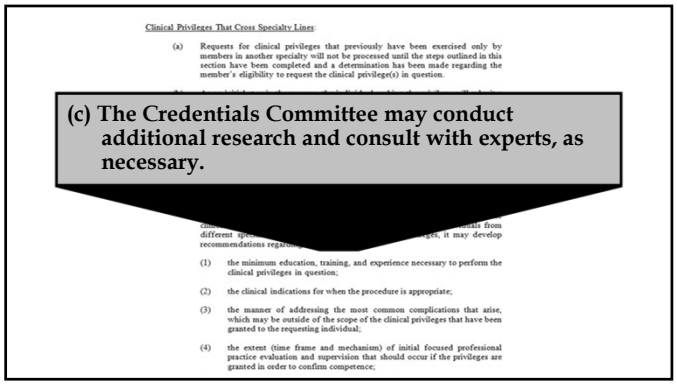
107



108



109



110

Consider:

- **Training requirements (e.g., residency? Fellowship? CME?)**
- **Coverage (for both inpatients and ED)**
- **Experience (e.g., case logs)**
- **Standards in the industry (e.g., recommendations by specialty societies, requirements of similarly situated hospitals)**
- **Options available to patients**

111

Also Consider:

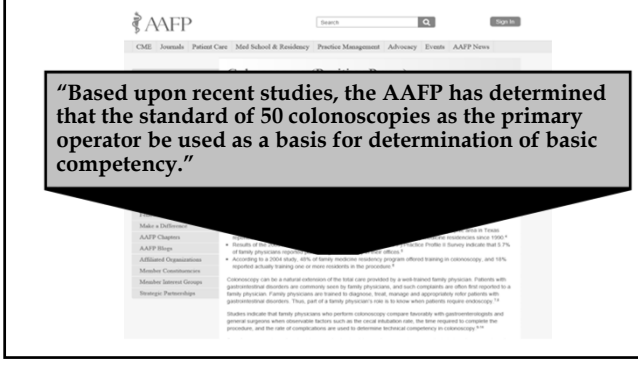
At reappointment:

- **Outcome data, including from OPPE (e.g., complication rates, patient experience)**
- **Results of peer review**

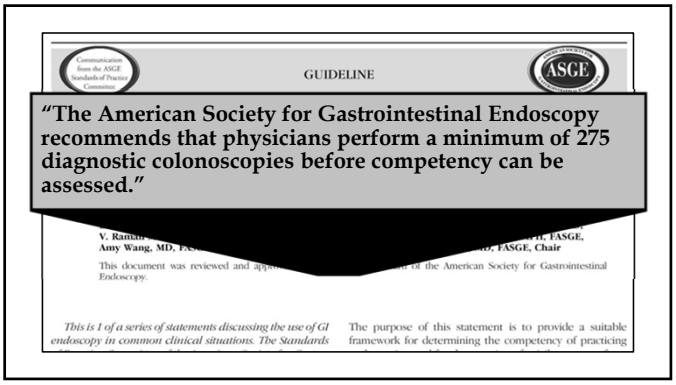
112

What if different medical societies have different criteria for a procedure?

113



114



115

Numbers aren't everything!

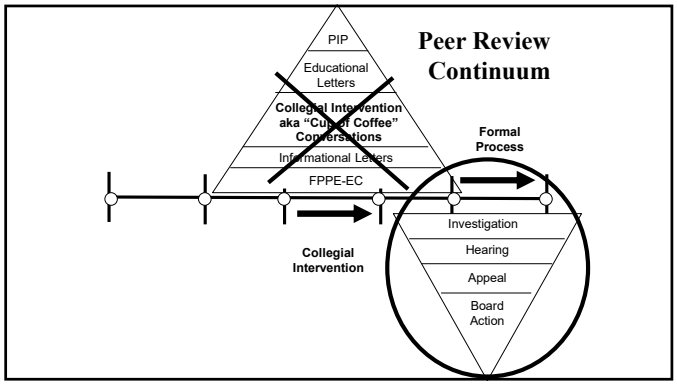
116

Conducting an Effective Investigation

117

Exhaust collegial efforts and progressive steps before commencing an investigation.

118



119

MEC resolution initiates investigation.

120

"Bright Line" Important for:

- **Bylaws compliance; know what requirements apply**
- **NPDB reporting**

121

NPDB Guidebook

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

122

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

123

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.

124

Notify the Physician

Dear Dr. _____:

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

125

Notify the Investigating Committee Member

Dear Investigating Committee Member:

- **Duties**
- **Information to consider**
- **Time frames**
- **Indemnification**

126

Who Should Conduct Formal Investigations?

- **HCQIA does not address**
- **Think about what's fair, who will be effective, and what arguments opposing counsel will make**

127

Manage conflicts of interest.

128

What About Economic Competitors?

129

Virmani v. Presbyterian Health Services (N.C. Ct. App. 1997)

- **Patient injured in procedure performed by OB/GYN**
- **102 cases reviewed, 24 problems (some "potentially lethal")**
- **Under Bylaws, OB/GYN should have been given opportunity to respond**
- **Privileges ultimately revoked**

130

OB/GYN Alleged

- **Investigation violated Bylaws**
- **Investigation was unfair because it was conducted by his competitors**

131

Trial Court

- **Ordered another investigation; physician must be permitted to respond to written questions**
- **Investigating Committee members "are not to be OB-GYN physicians who maintain an office within the town limits of Matthews, North Carolina"**

132

Key Point

Bylaws do not (and should not) require the department or a department committee to conduct formal investigations.

133

Best Practice

- **Carefully selected Ad Hoc Committee**

134

Composition of Ad Hoc Committee

- **Three members**
- **Impartial reviewers (no friends, partners, referral relationships, prior to involvement in review)**
- **Past Medical Staff leaders**

135

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

136

External Clinical Reviewers

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

137

External Clinical Reviewers

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

138

External Clinical Reviewers Content of Report

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

139

External Clinical Reviewers Agreement for Follow-Up

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

140

Scope of the Investigation

- **MEC should outline**
- **Not limited to cases that initially triggered the investigation; other problems that are uncovered may be addressed**

141

© HortySpringer Seminars

How far back can you go?

142

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

143

Do not use standard reappointment letter if a concern has been identified.

144

Witness Interviews

- Draft questions in advance
- Entire committee or single member may conduct
- Prepare signed witness summaries
- Counsel may assist

145

Involving the Physician Under Review

- Ideally, communications have been ongoing (through collegial intervention, Peer Review Policy, etc.)
- Follow Bylaws

146

Prior to Interview

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

147

© HortySpringer Seminars



Attorneys should not be present during interview.

148

Form of Investigative Report

- **Findings**
- **Conclusions**
- **Recommendations**

149

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

150

When Does an Investigation End?

- **Once an investigation begins, it continues until the hospital either takes a final action or formally closes the investigation**

151

Responding to References

152

Aaron Gant, M.D.

153

Option 1 –
Name, Rank, and Serial Number



154

VALIANT HEALTH

To whom it may concern:

Aaron Gant, M.D. was on the Active Staff in urology for two years. No further information can be provided due to the large number of inquiries received in the office.

155

Not Enough Information

156

What could go wrong?



157

Dear Dr. Berry:

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 [illegible] 2001, your employment is terminated.

158

I have worked with Dr. Berry for four years. He is an excellent physician and will be an asset to any anesthesia service. I recommend him highly.

[illegible] is an excellent physician and will be an asset to any anesthesia service. I recommend him highly.

159

October 26, 2001

Dr. Berry was on the Active Staff in the field of anesthesiology from March 4, 1997 to September 4, 2001.

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

Sincerely,

Chief Executive Officer

160

When you receive a request for a peer reference consider:

- **what information you would want if you were processing the application**
- **whether there is a safer option (aka Option 3)**

161

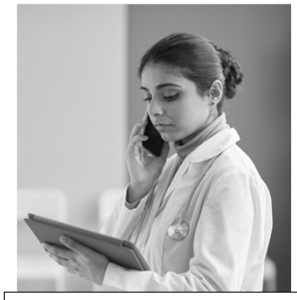
Option 2 – Verbal Response "Off the Record"



162



CMO
Indigo Health



Department Chair of Surgery
Valiant Hospital

163

Too Much Information?!?!

164

What could go wrong?



165

When you receive a call, consider:

- **Get request and put response in writing**
- **Stick to the confirmed/documented facts**
- **Stay away from provocative/memorable opinions ("I wouldn't let him treat my dog")**

166

When you receive a call and you have negative things to say, consider:

- **whether there is a safer option (aka Option 3)**

167

Option 3 – Specific Release



168

Just Enough Information!

169

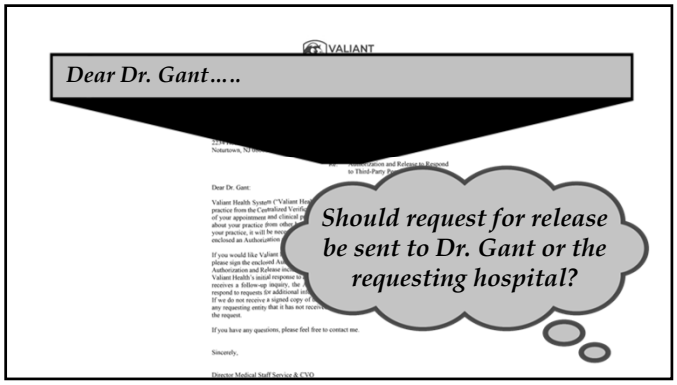
Just Enough Information

If you do it right.

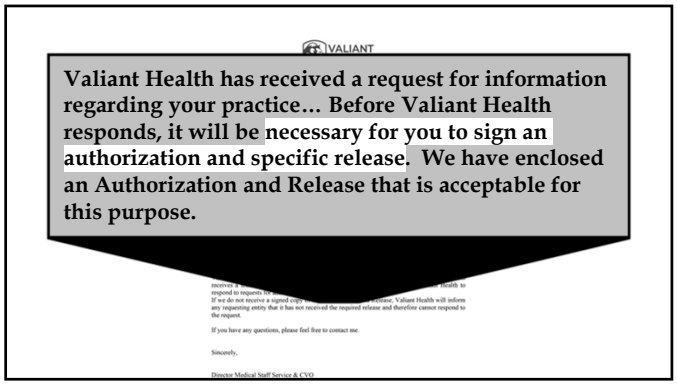
170

Prepare your own authorization and "specific" release.

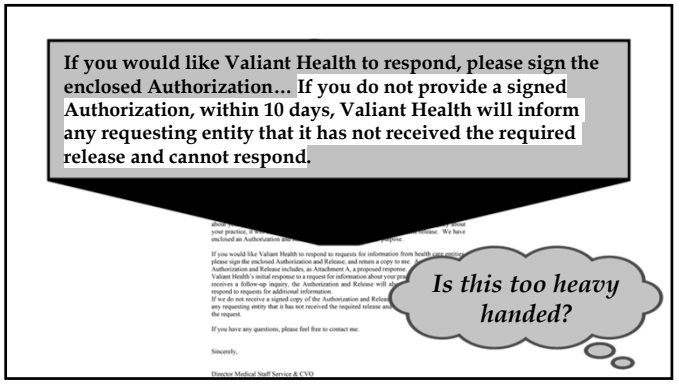
171


VALIANT
Dear Dr. Gant…..
Should request for release be sent to Dr. Gant or the requesting hospital?

172


VALIANT
Valiant Health has received a request for information regarding your practice… Before Valiant Health responds, it will be necessary for you to sign an authorization and specific release. We have enclosed an Authorization and Release that is acceptable for this purpose.

173


If you would like Valiant Health to respond, please sign the enclosed Authorization… If you do not provide a signed Authorization, within 10 days, Valiant Health will inform any requesting entity that it has not received the required release and cannot respond.
Is this too heavy handed?

174

AUTHORIZATION AND SPECIFIC RELEASE FROM LIABILITY

I authorize Valiant Health … to provide any Requesting Entity with information about my practice … as set forth in Attachment A.

Why share the response with Dr. Gant?

175

Attachment A will be Valiant Health's initial response. If Valiant Health receives a follow-up inquiry, Valiant Health will respond and that response will be covered by this Authorization.

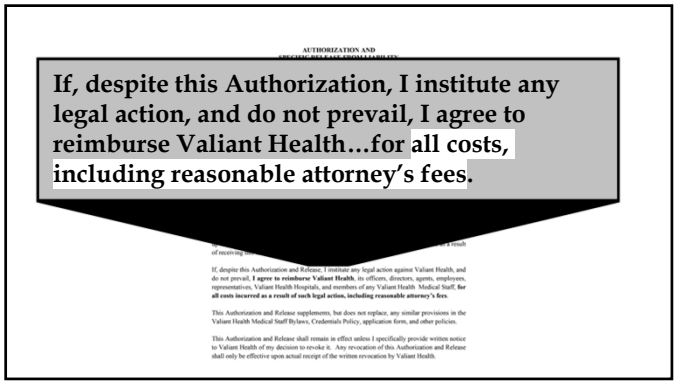
Should there be some limitation on the follow-up response?

176

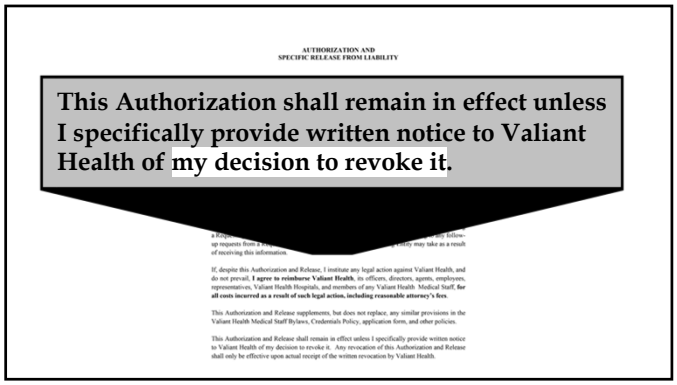
I hereby release from any and all liability, grant absolute immunity to, and agree not to sue Valiant Health…

Should immunity be conditioned on "good faith" and acting "without malice"?

177



178



179

Key Components of Specific Release

- **Include the name of your hospital**
- **DO NOT qualify immunity by "good faith" and "without malice language"**
- **Include award of attorney's fees if lawsuit is filed**
- **Allow for revocation of authorization**
- **Proposed response (aka Attachment A)**

180

Try your hand at drafting Attachment A – the response to Indigo Health!

181

SHARE OR DON'T SHARE?

Yes ☑ No ☐ Maybe ☐

~~Almost immediately,~~ there were ~~a flurry of~~ safety reports.

There were safety reports.

182

SHARE OR DON'T SHARE?

Yes ☑ No ☐ Maybe ☐

These involved ~~inappropriate patient selection, intraoperative~~ medical decision-making, failure to timely complete postop reports, and unavailability.

The reports related to medical decision-making, failure to timely complete postop reports, and unavailability.

183

SHARE OR DON'T SHARE?

Yes ☑ No ☐ Maybe ☐

~~The CMO, Department of Surgery Chair, and Chair of the Peer Review Committee~~ met with Dr. Gant to discuss the reports.

Leadership met with Dr. Gant to discuss the reports.

184

SHARE OR DON'T SHARE?

Yes ☑ No ☐ Maybe ☐

When additional concerns were raised, he was placed on a performance improvement plan.

185

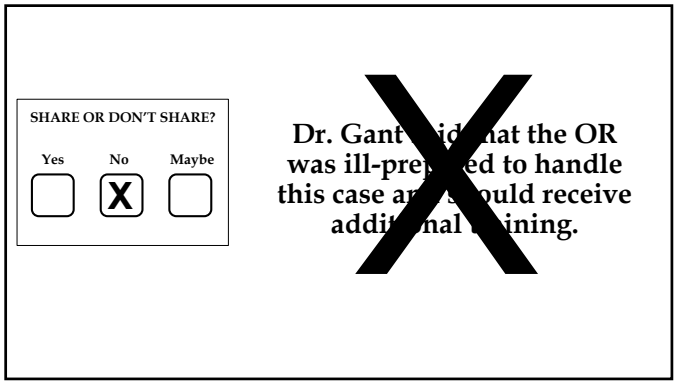
SHARE OR DON'T SHARE?

Yes ☑ No ☐ Maybe ☐

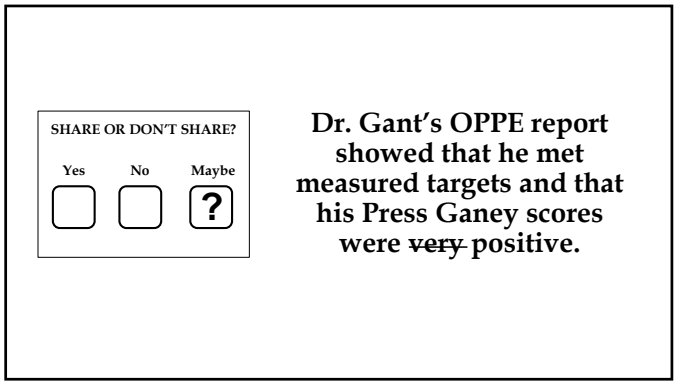
~~One month later, he performed surgery on a 95-year-old patient. The patient bled to death on the OR table. When the case was reviewed, Dr. Gant said if faced with a similar situation, he wouldn't do anything different.~~

After adoption of PIP, he had a significant surgical complication. Dr. Gant failed to acknowledge any opportunity for improvement.

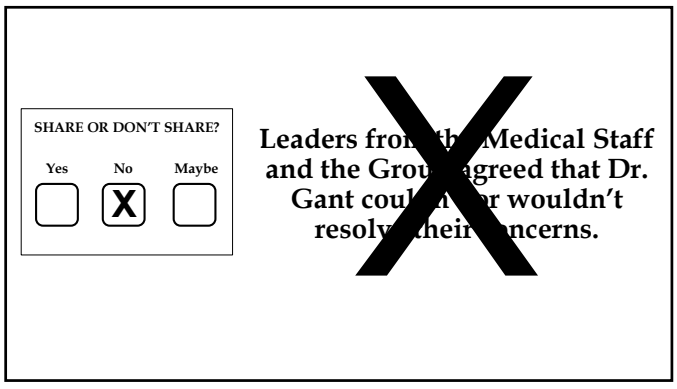
186


SHARE OR DON'T SHARE?
Yes
No
Maybe
X
Dr. Gant said that the OR was ill-prepared to handle this case and should receive additional training.

187


SHARE OR DON'T SHARE?
Yes
No
Maybe
?
Dr. Gant's OPPE report showed that he met measured targets and that his Press Ganey scores were very positive.

188


SHARE OR DON'T SHARE?
Yes
No
Maybe
X
Leaders from the Medical Staff and the Group agreed that Dr. Gant could or wouldn't resolve their concerns.

189

SHARE OR DON'T SHARE?

Yes ☑ No ☐ Maybe ☐

The Grou~~p decided to~~ terminated his employment contract, "without cause." His appointment and privileges expired at same time.

190

You control the narrative and the timing!

Don't feel pressured into responding too quickly or into saying more than you want to say.

191

Meet Dr. Earnest



192

Summary

- Concerns raised about Dr. Earnest at prior hospital; Dr. Earnest agreed to not exercise certain privileges
- Left job, wanted to move closer to aging parents
- Now employed by Bright Beginnings, independent 5-member OB/GYN group
- Appointment at New Horizons Medical Center subject to enhanced initial FPPE to confirm competence
- No problems identified during initial FPPE to confirm competence

193

Summary

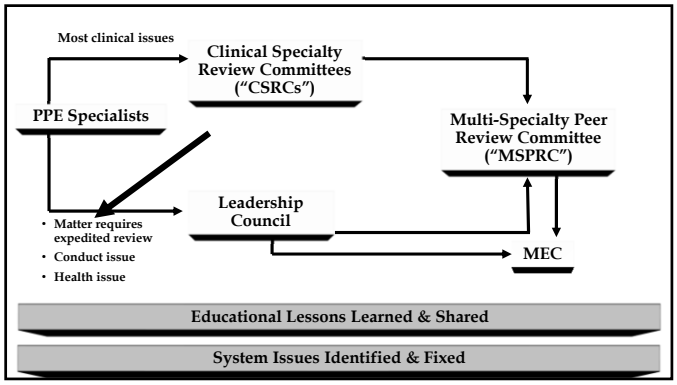
- Three recent complications:
  - Two weeks ago, ureter injury during hysterectomy
  - Last week, ureter injury during laparoscopic sling operation for stress incontinence
  - Next day, bowel and bladder perforation during an emergency peri-partum hysterectomy

194

What's the first step?

Keep patients safe!

195



196

Leadership Council

Matter requires expedited review

Leadership Council takes initial steps (e.g., evaluates action that may be needed to protect patients during review; arranges subsequent review) then refers case to Clinical Specialty Review Committee or MSPRC

197

Fundamental Principle:

Always use the least restrictive action needed to protect patients

Will practitioner agree to voluntarily refrain from exercising relevant privileges while information is gathered?

198

When Should a Precautionary Suspension Be Used?

- **Only as a last resort; and**
- **Only when "failure to take action may result in imminent danger to the health and/or safety of any individual." (Per federal Health Care Quality Improvement Act)**

199

In their discretion, Medical Staff Leaders may permit a Practitioner to invite another Practitioner to the meeting. In such case, the invited Practitioner must be approved by the Medical Staff Leaders, may not participate in the discussion or serve as an advocate for the Practitioner under review, must sign a Confidentiality Agreement, and may be required to leave the meeting at any time.

200

- **Dr. Halper spoke with Dr. Earnest, explained the process, and provided a copy of the PPE Policy**
- **Dr. Earnest agreed to attend meeting on her own**

201

Purpose of Meeting

- **Obtain agreement of Dr. Earnest to voluntarily refrain from exercising privileges while more information is gathered**
  - **Listen to what Dr. Earnest has to say, but fact-finding and detailed input from Dr. Earnest will come later**

202

What should be the tone of the meeting?

Collegial!

203

Don't go into the meeting with a precautionary suspension letter ready to deliver.

204

Agreement to Voluntarily Refrain – Implementation Tips

- **Be very specific in identifying procedures**
- **Notify relevant hospital staff as needed to ensure practitioner does not continue to practice**

205

Agreement to Voluntarily Refrain – Implementation Tips

- **Arrange for care of physician's patients (as needed)**
  - **Work with physician to identify substitute (e.g., a partner)**
  - **Develop script to talk with patients**

206

Agreement to Voluntarily Refrain – Implementation Tips

- **Remove physician from on-call schedule**
- **Consult Bylaws/Credentials Policy for subsequent review requirements**

207

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**

208

Adversely Affects Clinical Privileges

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

209

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

210

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**

211

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!

212

No NPDB Reports For:

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

213

Examples

214

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

Is that reportable?

No.

215

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.

216

If a physician agrees to voluntarily refrain from exercising clinical privileges while a review by the MSPRC is pending…

Is that reportable?

No.

217

If a physician's privileges are precautionarily suspended pending the outcome of a review or an Investigation…

Is that reportable?

Yes, if the suspension lasts longer than 30 days.

218

Is Dr. Earnest surrendering privileges "while under Investigation" if she agrees to the Leadership Council's request?

219

Use Your Documents to Help Provide Clarity on Investigations

- **Leadership Council and MSPRC:**
  - **Do not have "disciplinary authority"**
  - **Cannot compel a practitioner to do anything**
  - **Work with practitioners on a voluntary basis**
- **Only the MEC or Board can begin investigation**

220

Dr. Earnest

- **The Leadership Council has no disciplinary authority**
- **The MEC and Board - which do have disciplinary authority - are not involved**
- **The cases are still within the collegial peer review process - not a precursor to professional review action**
- **No one has threatened Dr. Earnest with an investigation or adverse action**

221

Don't forget to check state law!

222

What now, once Dr. Earnest has agreed to voluntarily refrain?

1. **Call Dr. Earnest's senior partner to discuss**

223

Can we do that????

224

Information Sharing Key Points

- **Check state law**
- **Policy, Resolution, or Agreement**
- **Application Forms**
- **Bylaws/Credentials Policy**
- **Release & Confidentiality Agreement**

225

"Best Practice"

Address information sharing in relevant Medical Staff policies, Bylaws, and consider adopting an Information Sharing Policy, to:

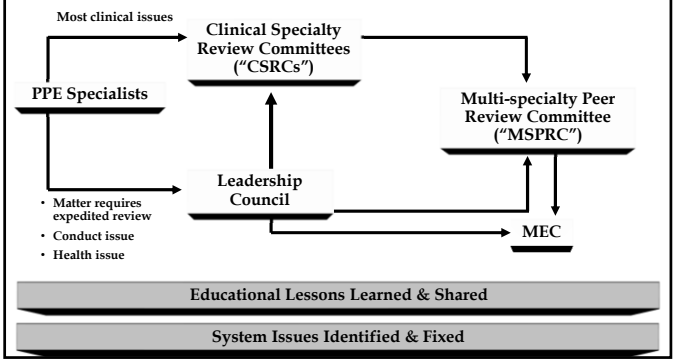
- **Prevent waiver of peer review privilege**
- **Avoid allegations of "tortious interference"**
- **Be transparent and show commitment to confidentiality**

226

What Now?

1. **Call Dr. Earnest's senior partner to discuss**
2. **Refer for review by one of our OB/GYN?**

227



228



Is it okay for Dr. Earnest's own group to review her case? What about a competing group?

229

Managing COIs is essential to:

- **Be fair to the physician under review**
- **Protect integrity of the process**
- **Protect person with COI**

230

The Problem?

231

Best Practice for Managing COIs

- **Identify most common conflict situations**
- **Create specific guidelines for participation at the various Medical Staff committee levels**
- **Establish clear rules for recusal!**

232

Rules for Recusal

- ✓ **Can provide information and answer questions**
- ✓ **Must *leave meeting* prior to deliberation and decision-making**
- ✓ **Document recusal in minutes**
- ✓ **Whenever possible COI should be raised and resolved prior to meeting by committee chair**

233

What Now?

1. **Call Dr. Earnest's senior partner to discuss**
2. **Refer for review by one of our OB/GYNs**
3. **Obtain an external review?**

234

Consider an external review when:

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

In this case…

235

The inevitable letter…

236

St. Mary's Regional Medical Center
1223 South 15th Street
Belle Vernon, Washington 98284
360-555-9645

Dr. Elaine Earnest is applying for privileges at St. Mary's Medical Center. She has indicated that she currently has privileges at your facility.

We would appreciate your candid assessment of Dr. Earnest. Please complete the attached form and return it to me at your earliest convenience.

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,

237

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

238

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**

239

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."

240

System Peer Review

An Idea Whose Time Has Come

241

1990s-early 2000s

Many hospital systems tried to coordinate medical staff functions.

242

In 2012, CMS had said "Each hospital must have a medical staff."

243

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

244



245

Benefits of System Peer Review

- **More resources – e.g., can tap into specialists from other hospitals for external reviews**
- **Allows hospitals to learn from other hospitals in the system**
- **Promotes consistency in peer review across system hospitals**

246

Options for System Peer Review:

- **Template/System Peer Review Policy with Information Sharing Policy/Mechanism in place**
- **System Clinical Specialty Review Committees ("CSRCs")**
- **External Review by System Practitioners**
- **System Peer Review Committee as an Advisory/Consulting Body**
- **System Peer Review Committee Serving as a Peer Review Committee for each System Hospital**

247

Template/System Peer Review Policy and Information Sharing Policy

- **System develops template Peer Review Policy for adoption by each hospital (minor variation on local needs permitted) or a System Peer Review Policy**
- **Each hospital adopts the same triggers for review**
- **Promotes consistent standards and procedures across the System**
- **System can also adopt an Information Sharing Policy (information sharing should also be addressed in the Credentials Policy)**

248

System CSRCs

- **System appoints CSRCs at the System level to serve as a source of specialty expertise for all hospitals within the system (e.g., OB/GYN, orthopedic surgery with representatives from each hospital)**
- **If a hospital has a question in a specialty for which it does not have the necessary specialty expertise, it can rely on the System CSRC**
- **Hospital that requests review maintains authority for interventions (i.e., System CSRC acts as an external reviewer)**

249

© HortySpringer Seminars

External Reviews by System Practitioners

System identifies individuals who provide external reviews for other System hospitals

250

System Peer Review Committee as Advisory Body

- Resource for each System hospital – only acts when requested
- Assists in identifying peer review triggers
- Compiles and shares best practices and lessons learned
- Identifies individuals or entities for external reviews
- Identifies other resources (e.g., assessment programs, training programs, Performance Improvement Plan language)
- Recommends revisions to PPE Policy
- Recommends documents to implement PPE process
- Each hospital's MSPRC remains responsible for making decisions

251

System Peer Review Committee as MSPRC for Each Hospital

- Plays a central role in the PPE process for each hospital
- Responsible for reviewing cases, obtaining input, developing and overseeing interventions
- Promotes the most integration
- Check state law to confirm that this option is permitted

252

Legal Issues

Any option used must comply with your state peer review statute

253

Legal Issues - Considerations

Does state law limit composition of a hospital's peer review committee to Medical Staff members or those with privileges?

254

Legal Issues - Considerations

Is the peer review privilege and immunity from liability limited to individuals who are licensed under state law (relevant if System crosses state lines)?

255

Legal Issues - Considerations

Does state law address peer review protections for external reviewers?

256

Legal Issues - Considerations

Does state law limit the peer review privilege to committees or are reviews by individuals protected as well?

257



A physician on your Medical Staff has their clinical privileges precautionarily suspended because of a finding of a reasonable likelihood of imminent danger in their clinical practice…

258



…you realize that the physician has the same clinical privileges at two other hospitals within the System.

259

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.**

260



Actions Occurring at Affiliated Entities – Credentials Policy Language

261

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

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.

(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.

262

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

Notification will be provided with respect to the following actions:

****

(g) Imposition of a precautionary suspension or agreement to modify clinical privileges or to refrain from exercising some or all clinical privileges

263

The MEC may recommend to the Board waiving the automatic effectiveness of any action at the receiving System Hospital. Waivers are within the discretion of the Board 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.

The burden is on the affected Practitioner to provide evidence showing that a waiver is appropriate.

264



Our sole orthopedic surgeon had several concerning cases identified through our peer review process. We don't have the specialty expertise to adequately review the cases because we are small community hospital

265

Yes!



- **Consider potential conflicts of interest (it's a small world, even in health systems)**
- **Consider formality of agreement with external reviewer**
- **Consider access to needed medical records**

266



There is significant variation in the OPPE and Initial FPPE criteria and methods used by the hospitals within our system.

267

Develop System Initial FPPE and OPPE Criteria

- **No prohibition on representatives from each Medical Staff working together to reach consensus on criteria which each Medical Staff approves.**
- **Promotes uniform decision making and a single standard of care across the System.**

268

4.C. SYSTEM PEER REVIEW OVERSIGHT COMMITTEE

4.C.1. Composition:

(a) The System Peer Review Oversight Committee may consist of the following voting

4.C. SYSTEM PEER REVIEW OVERSIGHT COMMITTEE

4.C.1. Composition:

(a) The System Peer Review Oversight Committee may consist of the following voting members:

(1) the chair of each Hospital's Multi-Specialty Peer Review Committee; and

(2) the Chief Medical Officers for the Hospitals.

(a) serve as a [illegible] their conduct of peer review activities, including

- offering advice and second opinions regarding the review of any individual cases and/or any actions that may be necessary, such as the development of

269

4.C. SYSTEM PEER REVIEW OVERSIGHT COMMITTEE

4.C.1. Composition:

(a) The System Peer Review Oversight Committee may consist of the following voting

4.C. SYSTEM PEER REVIEW OVERSIGHT COMMITTEE

****

4.C.2. Duties:

The System Peer Review Oversight Committee may perform the following duties:

****

(d) assess and develop policies, procedures, standards, indicators, OPPE and FPPE data elements, case review forms, checklists, template letters, and other documents related to the peer review processes;

(a) serve as a [illegible] their conduct of peer review activities, including

- offering advice and second opinions regarding the review of any individual cases and/or any actions that may be necessary, such as the development of

270

Managing Practitioner Health

271

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

272

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

273


SANTA FE NEW MEXICAN .com

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

Santa Fe woman charged with DWI and vehicular homicide

Julie Ann Grimm | The New Mexican

Posted: Saturday, December 31, 2011

Comments

Print | Font Size

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

Juliana Reyes Vasquez was pronounced dead at the hospital at about 1 a.m. Yeretez Jasmine Reyes Vasquez was flown to Albuquerque for further treatment. A report on her condition was not available Saturday afternoon.

The nose of the late-night crash woke Edward Santana, who lives on Siringo Road. He walked to the intersection and saw one vehicle upside down, he said, along with a swarm of emergency vehicles. On Saturday morning, he returned to the crash site, where among remaining debris he found a Crayola marker and a bag of Cheetos that he suspects came from the family vehicle.

Recent articles by Julie Ann Grimm:

- Firefighters live in RVs during station work
- Ordinance change would shift funds from water rights to river improvements
- San Francisco bumps Santa Fe today as city with highest minimum wage
- Celebrate safely: Use caution when opening Champagne
- Police unravel tangled web of relationships in city Recreation Division director's firing
- Water-rate hike takes effect Jan. 1
- City diverts downstream agricultural water to ensure future supply
- Bowling to return to Santa Fe
- St. Catherine campus, on market for $4M, could be site of new senior living facility
- Solstice celebrants welcome sunrise at ancient pueblo

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

274

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

it's a question of when and how often.

275

The Ultimate Balancing Act

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

276

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

277



Nikki Natale, M.D.

278

Credentialing Concerns?

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

279

Health Concerns?

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

280

Do the health concerns create legal concerns?

281

Americans with
Disabilities
Act

282

ADA Protects

Qualified individuals who:

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

283

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

284

Medical Examinations and Inquiries

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

285

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

286

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?

287

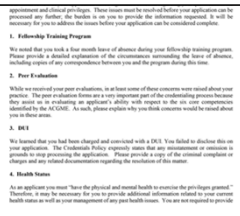
Can we ask about…

- ☒ Diagnosis of and treatment for alcohol use disorder?
- ☑ DUI?
- ☒ Participation in State Health Program?

288

1. Fellowship Training Program

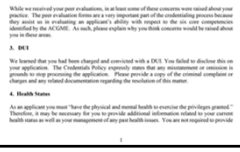
We noted that you took a four-month LOA during your fellowship training program. Please provide a detailed explanation.



289

2. Peer Evaluation

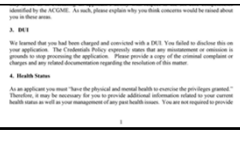
Your peer evaluations raised concerns about your practice. These are a very important part of the credentialing process because they assist us in evaluating core competencies identified by the ACGME. Please explain why you think concerns would be raised about you in these areas.



290

3. DUI

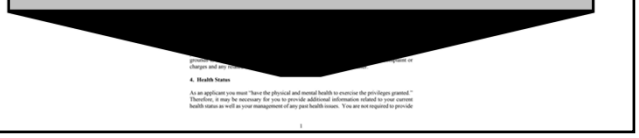
We learned that you have been charged with a DUI. You failed to disclose this on your application. The Credentials Policy expressly states that any misstatements are grounds to stop processing the application. Please explain your answer and provide a copy of the criminal complaint or charges and any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



291

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.



292

Redo – Nikki Natale, M.D.

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

293

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

294

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

295

Lewis v. UPMC Bedford

"I need the entire file…"

296

Lewis v. UPMC Bedford

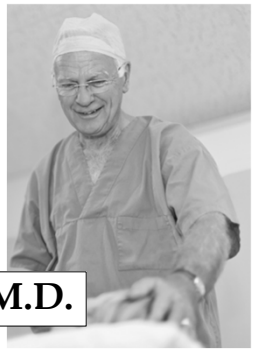
Request for information was appropriate, but too broad.

297

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

298



Edwin Elder, M.D.

299

"Man/Woman Legend"

Your biggest challenge!!

300



Aging

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

301

6.E. FITNESS FOR PRACTICE EVALUATION

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

competently safely and

302

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

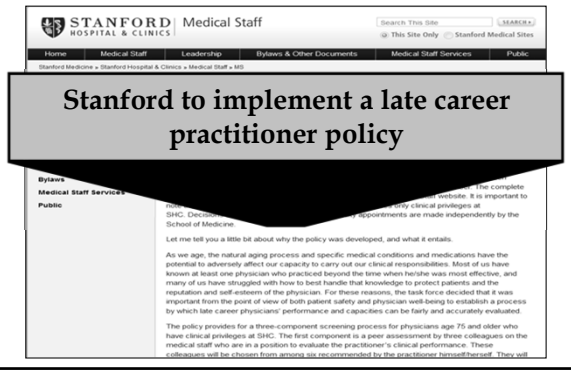
303

Person performing evaluation should be provided with information supporting concerns.

304

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

305



306

Age Discrimination in Employment Act

307

ADEA

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

308

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

309

Complaint alleges that policy violates ADEA.

310

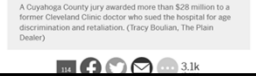
Complaint alleges that policy violates ADEA and ADA.

311

COURT & JUSTICE

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

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.



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

312

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**

313

Education is key to success.

314

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

315

Thank you!

HortySpringer Seminars
20 Stanwix Street, Suite 405
Pittsburgh, PA 15222

phone: (412) 687-7677 • fax: (412) 687-7692

email: info@hortyspringer.com
www.hortyspringer.com

HORTY SPRINGER