# Sanford Black Hills Surgical Hospital

*Medical Staff Leadership Program*

November 18, 2026

LeeAnne Mitchell

Horty, Springer & Mattern, P.C.

Jointly sponsored by the University of Pittsburgh School of Medicine

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# AGENDA

9:00 to 9:45 a.m. **Understanding Medical Staff Leadership – Pitfalls And Protections**

- Roles and Responsibilities of Medical Staff Leaders
- Legal Protections for Medical Staff Leaders
  - Health Care Quality Improvement Act
  - State Peer Review Statutes
  - Protections in Medical Staff Bylaws and Application Forms
- Maintaining Confidentiality

9:45 a.m. to Noon **Credentialing In Action – New Applicant Case Study And Take-Home Tips For A High-Quality Credentialing Process**

Work through an initial applicant with a few "unusual" issues identified in his background, addressing key credentialing tips:

- Aligning recruitment, employment, and credentialing
- Identifying and managing "red flags" in the credentialing process
- When - and how - to ask for information to resolve concerns?
- How much of a response is enough of a response?
- The incomplete application as a "tool"
- Did the applicant misstate information? Now what?
- Implementing and utilizing threshold eligibility criteria
- Waivers – how (and how not) to manage
- Avoiding "denials" of applications

Noon to 1:00 p.m. **LUNCH**

1:00 to 2:00 p.m. **Managing Tough Clinical Privileging Issues**

- What could go wrong?
- New Procedures
- Privileges that Cross Specialty Lines
- Privileging Advanced Practice Professionals – what's the same and what isn't?


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## AGENDA

2:00 to 3:00 p.m. **The Peer Review Continuum – An Overview**

Stuff happens on the very best of Medical Staffs! What do you do first to help your colleagues improve? What if you have to go further?

- FPPE? OPPE?
- Performance improvement – communication is critical!
- Progressive steps versus "formal" action? What's the difference?
- What is the role of the PEC? What should it be?
- The PEC's and Board's role in the routine peer review process
- How to make clinical performance improvement plans as effective as possible – and hopefully help save your colleagues!
- Reportable?

3:00 to 3:15 p.m. **AFTERNOON BREAK**

3:15 to 4:30 p.m. **Getting Disruptive Behavior Under Control Before It Ruins Your Culture And Jeopardizes Patient Care**

There are many shades of unprofessional conduct, all of which disrupt the care environment and undermine employee morale and patient safety, work through key tips in addressing this difficult issue:

- Elements of a comprehensive professionalism policy review process
- Where does employment fit in all of this?
- Heading off retaliation against those who report conduct
- The dangers of diagnosing
- Managing avoidance tactics administratively
- How to conduct an effective collegial intervention session
- Performance improvement plans for conduct issues
- Are these things reportable?


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The University of Pittsburgh designates this live activity for a maximum of 6.25 AMA PRA Category 1 Credits™. Physicians should claim only the credit commensurate with the extent of their participation in the activity.

## 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


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**LEEANNE MITCHELL**
**Lmitchell@hortyspringer.com**

LEEANNE M. MITCHELL is a partner with the law firm of Horty, Springer & Mattern, P.C. in Pittsburgh, Pennsylvania. She has worked extensively on medical staff matters, including working with hospitals and their medical staffs on the development of new Medical Staff Bylaws, credentials policies, and other medical staff related policies and procedures, advising on practitioner-specific credentialing, privileging, and peer review matters, and working with medical staff leaders involved in formal investigations and medical staff due process hearings. She also works with hospitals on matters related to institutional review boards and research-related compliance issues. She has served as a faculty member on the HortySpringer seminars Strategies for Managing Physician Health and Disruptive Conduct, The Credentialing Clinic, and, along with Rachel Remaley, she currently leads The Complete Course for Medical Staff Leaders.

LeeAnne earned her J.D. from the University of Pittsburgh School of Law. While in law school, she also completed the coursework toward a master's degree in bioethics and was the recipient of the CALI Award for Excellence in Health Care Fraud and Abuse.

LeeAnne has served as a Community Member of the University of Pittsburgh Institutional Review Board since 2000 and is a member of the Board of Directors of the Carlynton School District. She is also a member of the American Health Lawyers Association, as well as the Allegheny County, Pennsylvania and American Bar Associations.

## Conflict of Interest Disclosure

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# Sanford Black Hills Surgical Hospital

*Medical Staff Leadership Program*

**November 18, 2026**

**LeeAnne Mitchell**
**Horty, Springer & Mattern, P.C.**

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# Maximizing Legal Protections for Medical Staff Leaders *under the law and organizational documents*

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## What is a "Medical Staff Leader?"

- **Medical Staff Officers**
- **Chiefs of Service**
- **Medical Staff Committee Chairs/Members**
- **Vice President Medical Officer**

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## Medical Staff Leader Roles

### Chief of Staff

- **Chair the PEC**
- **Front line in addressing significant Medical Staff issues (policy and practitioner-specific)**
- **Nominate committee chairs/members**
- **Involved in leadership succession planning**

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## Medical Staff Leader Roles

### Vice Chief of Staff

- **Serve on PEC**
- **Supportive role to Chief of Staff**
- **Involved in addressing significant practitioner-specific issues**
- **Involved in leadership succession planning**

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## Medical Staff Leader Roles

### Chief of Service

- **Lead the clinical service**
- **Assist with addressing practitioner-specific issues**
- **Assess qualifications of applicants for appointment, reappointment, and clinical privileges**
- **Involved in issues related to delineations of privileges (development, review, modifications)**

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## Medical Staff Leader Roles

### Vice President Medical Officer (VPMO)

- **Supportive role to "volunteer" Medical Staff leaders**
- **Involved in addressing significant practitioner-specific issues, in conjunction with Medical Staff Officers**
- **Manages the "administrative" side of Medical Staff functions (i.e., threshold eligibility determinations, incomplete applications, automatic relinquishments)**
- **Helps facilitate committee and leadership functions**

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## Medical Staff Leader Roles

### Physician Executive Council

- **Primary "governance" committee of the Medical Staff**
- **Responsible for development, adoption, review, and enforcement of primary Medical Staff policies**
- **Develop/review and comment on Medical Staff Bylaws issues**
- **Review and make recommendations on delineations of privileges**

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## Medical Staff Leader Roles

### Physician Executive Council

- **Make recommendations on applicants for appointment, reappointment, and clinical privileges**
- **Oversight for formal investigations**
- **"Disciplinary" committee of the Medical Staff**

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## Medical Staff Leader Roles

### Credentials Committee

- **Make recommendations on applicants for appointment, reappointment, and clinical privileges**
- **Primary role in review/development of delineations of privileges**
- **"Advisory" authority only**

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## Medical Staff Leader Roles

### Peer Review Committee and Care Monitoring Committee

- **Responsible for oversight and implementation of the clinical peer review process**
- **Assess and modify indicators for review**
- **"Advisory" authority only**

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**How do Medical Staff Leaders Perform Their Role?**

- **Put patients first - always**
- **Make difficult decisions**
- **Read policies / follow policies**
- **Maintain confidentiality**
- **Manage conflicts of interest**
- **Model appropriate behavior**
- **Devote necessary time and energy to role**

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**How do Medical Staff Leaders Perform Their Role?**

**Finally - know when to seek advice!**

- **Before initiating a significant process (like an investigation)**
- **Before making an adverse recommendation**
- **Before sending an "institutional" reference**
- **Before including an "or else" in correspondence to a Medical Staff member**

**Consult your MSSP, VPMO, and legal counsel**

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# Medical Staff Law 101

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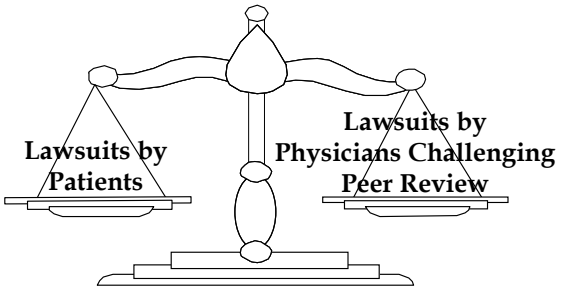
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**The Law Is on *Your* Side!**

***Don't worry about personal risk!***

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**What leaders fear . . .**




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**Lawsuits by Patients**

**"Corporate Negligence"**

- **Appointment and Privileges**
- **Peer Review Issues — Retention**
- **New Technology**
- **Guidelines/Protocols**

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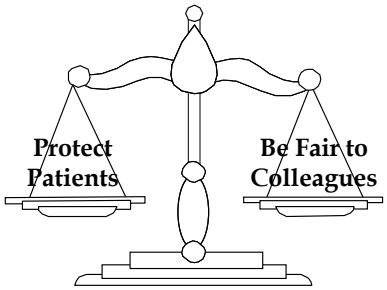
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## Lawsuits by Physicians

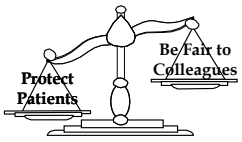
- **Fairness — Due Process**
- **Antitrust**
- **Defamation**
- **Discrimination (ADA, ADEA)**
- **Whistleblowers**

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## Guiding Principles to Minimize Risk




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## When Balancing…

- **Always put the patient first!**
- **Don't worry about personal legal risk!**

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## Legal Protections for Leaders

- **Federal Law**
- **State Law**
- **Bylaws, Policies, and Forms**

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## Legal Protections for Medical Staff Leaders

- **Health Care Quality Improvement Act of 1986**

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## Health Care Quality Improvement Act (HCQIA)

***Provides "<u>immunity</u>" from money damages***

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**Health Care Quality Improvement Act (HCQIA)**

**Immunity for:**

- **Those who provide information**

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## NO LIABILITY UNLESS:

**Information is false**

**-AND-**

**You knew it was false**

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**Health Care Quality Improvement Act (HCQIA)**

**Immunity for:**

- **Those who provide information**
- **Peer reviewers**

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## NO LIABILITY IF:

- **Reasonable belief**
- **In furtherance of quality health care**
- **After reasonable effort to obtain facts**
- **After notice and hearing**

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## *Also*... NO LIABILITY FOR:

- **Immediate suspensions (i.e., "precautionary")**
- **If failing to act *may* result in imminent danger**
- **So long as subsequent notice and hearing or "*other adequate procedures*" are provided**

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## Health Care Quality Improvement Act (HCQIA)

**Immunity: YES!**

- **Federal antitrust actions**
- **State law claims**

**Immunity: NO!**

- **Civil rights actions**
- **Adverse action re: non-physicians**
- **Policy decisions**

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**HCQIA Scorecard**
**Hospitals and Medical Staff leaders win 90% of the time**




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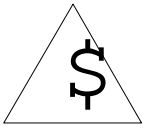
**Health Care Quality Improvement Act (HCQIA)**

**The law includes a "presumption" of immunity**

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## How to Lose Immunity?

- **Conduct "sham" peer review**

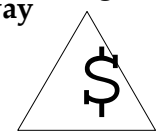


**Not common!**

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## How to Lose Immunity?

- **Conduct "sham" peer review**
- **Do the right thing – but do it the wrong way**



**More common!**

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## *Poliner v. Texas Health Systems*

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## Poliner:

**During his first year on the staff, Dr. Poliner had three serious cases identified through the peer review process**

***No one told Dr. Poliner that those cases were under review***

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## Poliner:

**A fourth case occurred, where Dr. Poliner performed an angioplasty on the wrong artery**

***At 2:00 p.m., medical staff leaders met with Dr. Poliner and asked him to sign an "abeyance" agreement – to voluntarily refrain from exercising his interventional cardiology privileges pending review***

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## Poliner:

**Dr. Poliner asked if he could have more time to consult with his attorney, who was not immediately available**

***The leaders gave him until 5:00 p.m. – and said if he did not sign the agreement by then, they would revoke ALL of his privileges – not just interventional***

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## Poliner:

- **A committee was appointed to conduct a review.**
- **After it reviewed 40 cases, the committee invited Dr. Poliner to meet, to discuss. He was given the medical record numbers.**

***The meeting was scheduled for just 3 days later…***

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## Poliner:

**Dr. Poliner asked for more time, so that he could review the records to prepare…**

***The leaders said, "No"***

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## Poliner:

**When Dr. Poliner met with the committee, he was given one hour** ***to discuss 29 cases***

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***The jury awarded Dr. Poliner ~~$366~~ million.***

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# Sanford Black Hills Surgical Hospital

**The jury award was reduced to $36 million.**

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*Verdict overturned!*

*Why?*

**The trial court applied the wrong standard – the "immediate suspension" standard was applicable!**

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## Lessons Learned:

- **Early notification of concerns (don't track and trend)**
- **Use progressive steps to intervene**
- **Follow your policies**
- **Avoid any appearance of impropriety**
- **Bend over backwards to be fair, when you can**

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## Legal Protections for Medical Staff Leaders

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

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## S.D. Codified Laws Ann. §36-4-25

There is no monetary liability on the part of, and no cause of action for damages may arise against, any member of a duly appointed peer review committee engaging in peer review activity comprised of physicians licensed to practice medicine or… or the governing board of a licensed health care facility for any act or proceeding undertaken or performed within the scope of the functions of the committee, if the committee member or consultant acts without malice, has made a reasonable effort to obtain the facts of the matter under consideration, and acts in reasonable belief that the action taken is warranted by those facts.

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## "acts without malice" vs. absolute immunity

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## S.D. Codified Laws Ann. §36-4-25

**The proceedings, records, reports, statements, minutes, or any other data whatsoever, of any committee.. relating to peer review activities… are not subject to discovery or disclosure… and are not admissible as evidence in any action of any kind in any court or arbitration forum, except as hereinafter provided. The prohibition relating to discovery of evidence does not apply to deny a physician access to or use of information upon which a decision regarding the person's staff privileges or employment was based. The prohibition relating to discovery of evidence does not apply to deny any person or the person's counsel in the defense of an action against that person access to the materials covered under this section.**

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## Legal Protections for Medical Staff Leaders

- **Health Care Quality Improvement Act of 1986**
- **South Dakota Peer Review Statute**
- **Release Provisions in Medical Staff Bylaws and Application Forms**
- **Director's and Officer's Insurance and Indemnification Policies**

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## *Confidentiality*

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**Risk #1 — Malpractice**

**"You have *waived* the privilege by your own actions."**

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**Risk #2 — Peer Review**

**"Your breaches evidence *bad faith* peer review."**

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## Keys

- **Develop a Confidentiality Policy**

***OR***

- **Revise Existing Policy to Reflect Best Practices**
- **Teach It!**
- **Reinforce at Every Opportunity!**

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**Documentation**

**General Rule –**
***The Less Said, the Better***

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**Think a Lot,**
**Speak Little,**
**and Write Less!**

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- **Who was in attendance?**
- **Quorum present**
- ***"After Full Discussion,* [Action Taken]"**

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- **Details of discussion**
- **Who said what to whom**
- **Record of how each member voted**

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*Any Exceptions?*

- **When making an adverse recommendation**
- **When granting a waiver**

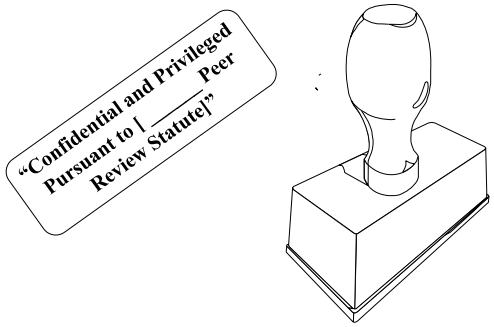
**Even then – no verbatim discussions - but include more detail of factors considered**

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## Distribution of Documents

**Consider...**

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- **Not providing copies of confidential documents in advance of meetings**
- **Numbering copies of confidential documents that may be distributed before or at meeting**
- **Collecting and destroying copies after meetings**
- **Secure e-mail/secure intranet**
- **Projections/screen share during meetings**

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**No Discussions Outside Committee Meetings EXCEPT…**

- **To another authorized individual with a need to know, and *in private*! OR**
- **Authorized by CEO/legal counsel**

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**Layers of Protection**

- **Laws**
- **Good policies**
- **Good work**

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***Dr. Ember***

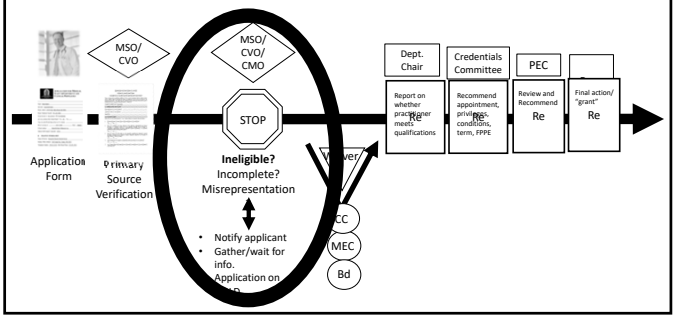
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## Ember Application Issues:

- **Gap - 4 years out, with just "a few months" of locum tenens**
- **Most references not meaningful (too old, wrong specialty, hardly know)**
- **The ONE meaningful reference (ASC) revealed performance review at time of departure**
- **Still haven't heard from his old group or received ASC affiliation verification form**

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## The Credentialing Continuum




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## *But...Is Dr. Ember Ineligible?*

- **Gap - 4 years out, with just "a few months" of locum tenens**
- **Most references not meaningful (too old, wrong specialty, hardly know)**
- **The ONE meaningful reference (ASC) revealed performance review at time of departure**
- **Still haven't heard from his old group or received affiliation verification form from ASC**

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*It depends on what the Bylaws say!*


DESPERADO RANCHO MEDICAL CENTER

MEDICAL STAFF CREDENTIALS POLICY

*Part of the*
*Medical Staff Bylaws,*
*Policies, and Rules and Regulations*

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**Threshold Criteria: Current Clinical Competence**

**To be eligible to apply for or maintain membership or clinical privileges, an individual must continuously demonstrate satisfaction of all of the following threshold eligibility criteria:**

***

- *demonstrate recent clinical activity in an acute care facility for at least six (6) of the previous twenty-four (24) months;*

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**Threshold Criteria: Current Clinical Competence**

**To be eligible to apply for or maintain membership or clinical privileges, an individual must continuously demonstrate satisfaction of all of the following threshold eligibility criteria:**

***

- *demonstrate recent clinical activity in an acute care facility during the last two years;*

*Medical Staff Bylaws,*
*Policies, and Rules and Regulations*

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**Threshold Criteria: Resignation while under investigation**

**To be eligible to apply for or maintain membership or clinical privileges, an individual must continuously demonstrate satisfaction of all of the following threshold eligibility criteria:**

*******

- ***have never resigned membership or relinquished clinical privileges during an investigation or in exchange for not conducting an investigation at any health care facility;***

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***But...Was Dr. Ember Under "Investigation" When He Departed?***

## We Have No Idea!

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**Do not process an *incomplete* application.**

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**You have no obligation to process incomplete applications**

- ***Skelly v. Hackensack Med. Ctr. N. at Pascack Valley*** **(N.J. App. Div. Dec. 19, 2023)**
- ***Powell v. Bear Valley Cmty. Hosp.,*** **D072616 (Cal. Ct. App. Mar. 26, 2018)**
- ***Talwar v. Mercer County Joint Township Comm. Hosp.,*** **(N.D. Ohio 2009)**
- ***Lee v. Hosp. Auth. of Colquitt,*** **(M.D. Ga. 2004)**
- ***Spindle v. Sisters of Providence,*** **(Alaska 2002)**
- ***Carreon v. AHM SMA, Inc.,*** **(Super. Ct. Cal. 2002)**
- ***Eyring v. East Tenn. Baptist Hosp.,*** **(Tenn. Ct. App. 1997)**
- ***Evers v. Edward Hosp. Assoc.,*** **617 N.E.2d 1211 (Ill. Ct. App. 1993)**
- ***Scott v. Sisters of St. Francis Health Services,*** **(N.D. Ill. 1986)**

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**An application is incomplete if there are:**

- **Unanswered questions**
- **Gaps in professional experience that are unexplained**
- **Supporting information that has not been supplied**

**Concerns that have not been *fully* resolved**

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**Credentials Policy Language Addresses "Incomplete" – USE IT!**

- **Application becomes incomplete *at any time* if need arises for additional information**
- ***No right to hearing or appeal***
- **Incomplete applications will not be processed, and will be deemed *withdrawn after 30 days***
- ***No reapplication*...for two years**

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### Burden to Complete Application

**An application shall be complete when all questions on the application form have been answered, all supporting documentation has been supplied, all information has been verified from primary sources, and sources, and any required application fees and applicable fines have been paid. An application *shall become incomplete* if the need arises for new, additional, or clarifying information at any time during the credentialing process.**

*Medical Staff Bylaws, Policies, and Rules and Regulations*

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### Burden to Complete Application

**If the application continues to be incomplete 30 Days after the individual has been notified of the additional information required, the application will be deemed to be withdrawn, and the individual may not submit another application for appointment or clinical privileges for a period of two years. *An incomplete application shall not be processed.***

*Part of the Medical Staff Bylaws, Policies, and Rules and Regulations*

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## Is it time to have a chat with Dr. Ember?

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## TIP:

**Verbal communications can be risky**

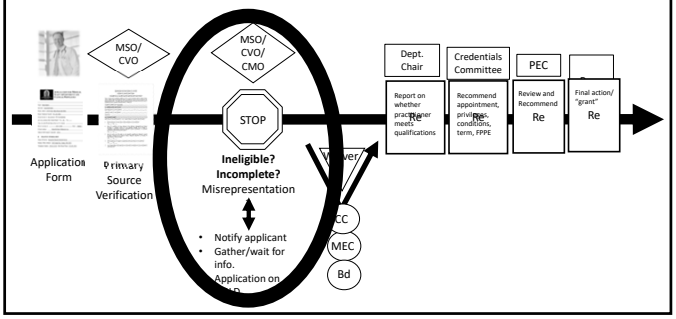
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## *Who* should be communicating with Dr. Ember?

- **MSSP?**
- **Department Chair?**
- **Credentials Committee Chair?**
- **Credentials Committee?**
- **CEO?**
- **VPMO?**
- **Hospital lawyer?**

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## The Credentialing Continuum




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## *Who* should be communicating with Dr. Ember?

- MSSP?
- Department Chair?
- Credentials Committee Chair?
- Credentials Committee?
- CEO?
- VPMQ?
- Hospital lawyer?

*Can assist with drafting, but should not sign*

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**In the process of conducting our routine primary source verification process, DRMC has become aware of additional information regarding your qualifications that has raised questions which must be fully resolved if you desire your application to be considered complete and processed further.**

clinical privileges, including, but not limited to, information from other hospitals, information from the individual's office practice, information from insurers or managed care organizations in which the individual participates, and/or receipt of confidential evaluation forms completed by referring/referred to physicians.

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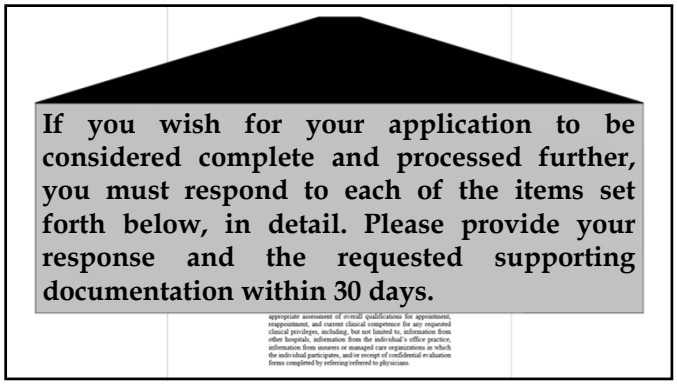
**Section 2.B of the Medical Staff Credentials Policy provides that the applicant has the burden of producing information deemed adequate by the Hospital for a proper evaluation of competence, character, ethics and other qualifications, and of resolving any doubts about such qualifications.**

clinical privileges, including, but not limited to, information from other hospitals, information from the individual's office practice, information from insurers or managed care organizations in which the individual participates, and/or receipt of confidential evaluation forms completed by referring/referred to physicians.

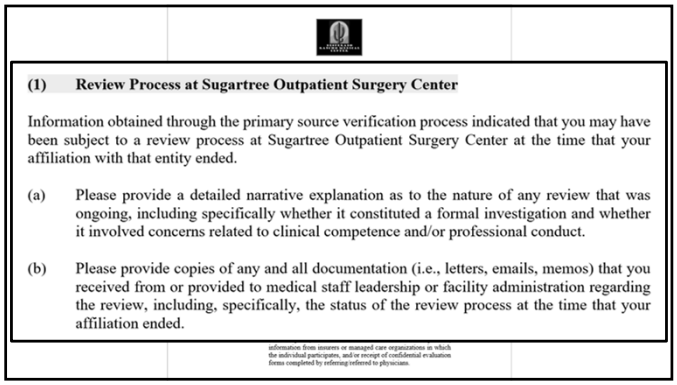
87

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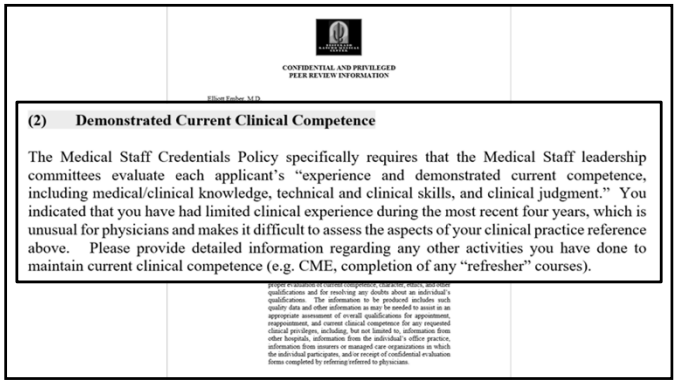
# Sanford Black Hills Surgical Hospital




88

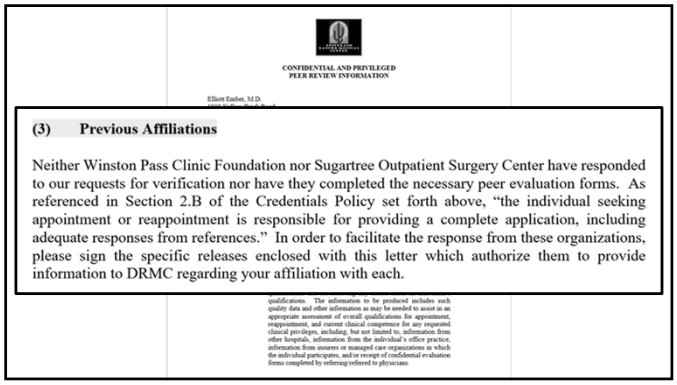



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90

# Sanford Black Hills Surgical Hospital



CONFIDENTIAL AND PRIVILEGED
PEER REVIEW INFORMATION

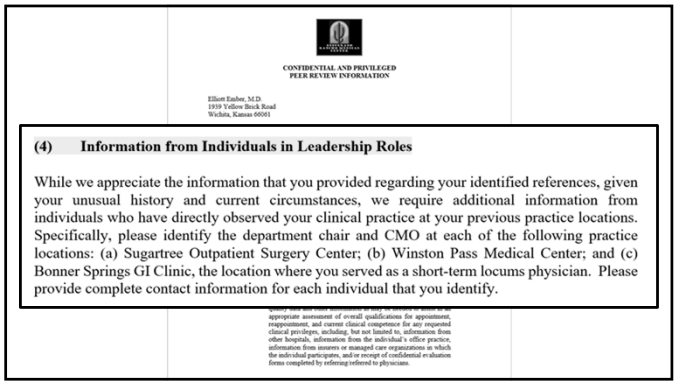
Elliott Ember, M.D.

**(3) Previous Affiliations**

Neither Winston Pass Clinic Foundation nor Sugartree Outpatient Surgery Center have responded to our requests for verification nor have they completed the necessary peer evaluation forms. As referenced in Section 2.B of the Credentials Policy set forth above, "the individual seeking appointment or reappointment is responsible for providing a complete application, including adequate responses from references." In order to facilitate the response from these organizations, please sign the specific releases enclosed with this letter which authorize them to provide information to DRMC regarding your affiliation with each.

qualifications. The information to be produced includes such quality data and other information as may be needed to assist in an appropriate assessment of overall qualifications for appointment, reappointment, and current clinical competence for any requested clinical privileges, including, but not limited to, information from other hospitals, information from the individual's office practice, information from insurers or managed care organizations in which the individual participates, and/or receipt of confidential evaluation forms completed by referring/referred to physicians.

91



CONFIDENTIAL AND PRIVILEGED
PEER REVIEW INFORMATION

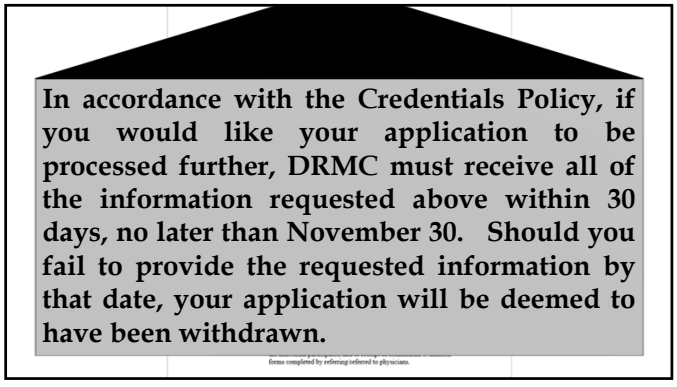
Elliott Ember, M.D.
1939 Yellow Brick Road
Wichita, Kansas 66061

**(4) Information from Individuals in Leadership Roles**

While we appreciate the information that you provided regarding your identified references, given your unusual history and current circumstances, we require additional information from individuals who have directly observed your clinical practice at your previous practice locations. Specifically, please identify the department chair and CMO at each of the following practice locations: (a) Sugartree Outpatient Surgery Center; (b) Winston Pass Medical Center; and (c) Bonner Springs GI Clinic, the location where you served as a short-term locums physician. Please provide complete contact information for each individual that you identify.

appropriate assessment of overall qualifications for appointment, reappointment, and current clinical competence for any requested clinical privileges, including, but not limited to, information from other hospitals, information from the individual's office practice, information from insurers or managed care organizations in which the individual participates, and/or receipt of confidential evaluation forms completed by referring/referred to physicians.

92



**In accordance with the Credentials Policy, if you would like your application to be processed further, DRMC must receive all of the information requested above within 30 days, no later than November 30. Should you fail to provide the requested information by that date, your application will be deemed to have been withdrawn.**

forms completed by referring/referred to physicians.

93

# Sanford Black Hills Surgical Hospital

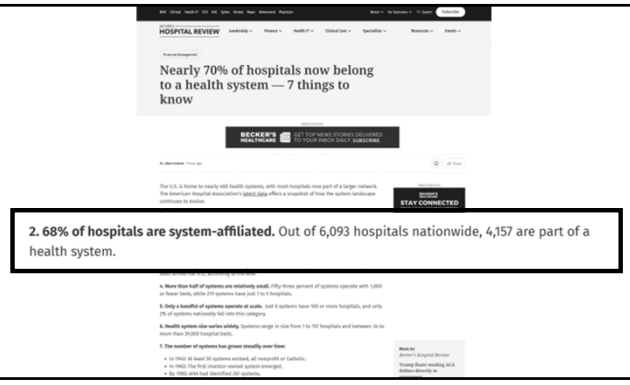
*Can we talk to the group about Dr. Ember's application?*

94

*Maybe!*

*...helpful, huh?*

95




96

**TIP:**

**Systems should consider**
***Information Sharing Policies***

***AND***

**Including language in Medical Staff Bylaws and on application forms acknowledging sharing**

97

**Authorization to Share Information Among Sanford Facilities:**

**The individual specifically authorizes Sanford entities (as defined below) to share with one another any information maintained in any format (verbal, written, or electronic) that involves (i) the evaluation of the quality, safety, necessity, and compliance with applicable law of services ordered or performed by the individual, or (ii) the individual's professional qualifications, competence, conduct, health/ability to safely practice, experience, or patient care practices.**

98

***HOWEVER – Sharing is NOT automatic.***

**It depends on whether the entity on the other side is a *"Sanford Entity"* as specifically defined in the Credentials Policy.**

99

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*Policy on Sharing Peer Review Information among Sanford Entities*

- **Is it directly or indirectly controlled by Sanford?**
- **Does it have a peer review process with an established peer review committee?**

***Bottom line? Ask first, share second!***

100

**What Now?**

101

## *Dr. Ember Application Summary:*

- **Application form completed**
- **Primary source information received**
- **Gap in practice**
- **Performance review at surgery center**
- **He's on the call roster - last week!**

102

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**Did this applicant make any misrepresentations?**

103

**Manage misstatements and/or omissions *administratively.***

104

**Administratively does NOT mean offering a "free pass" on misrepresentations:**

~~**If information obtained during the credentialing process varies substantially from the information provided to the organization by the provider, the Medical Staff Office will notify the provider within seven (7) days by email that a discrepancy has been found and it is the responsibility of the provider to correct the discrepancy by providing details and supporting information requested by the Medical Staff Office.**~~

105

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**Do provide the practitioner an opportunity to explain**

106

**TIP:**

**Address possible misrepresentations/omissions IN WRITING**

107

**The applicant shall be informed in writing of the nature of the misstatement or omission and permitted to provide a written response.**

108

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**Any misstatement in, or omission from, an initial or reappointment application shall constitute grounds to stop processing the application.**

109

**If appointment or reappointment has been granted prior to the discovery of a misstatement or omission, appointment and privileges may be deemed to be automatically relinquished.**

110

*Fool me once, shame on you.*
*Fool me twice, shame on me.*

111

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*Incorporated into eligibility criteria:*

- **the individual has never had an application deemed ineligible for processing due to a misstatement/ omission, nor relinquished privileges for the same**
- **at this Hospital or any of its affiliates**

112




**Seal of Approval:**
**Tips for Effective Credentialing**

113

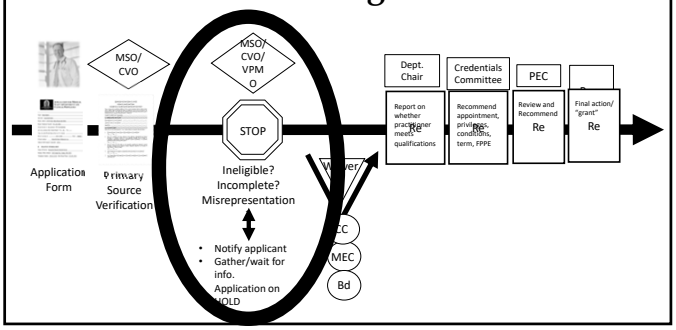



**Eligibility**

**Eligibility is *more than* half the battle**

114

## The Credentialing Continuum




115

## Eligibility Criteria

**Eligibility criteria fall on a spectrum!**

116

| Lenient | Stringent |
|---|---|
| • **Allows more applicants to receive consideration** | • **Allows fewer applicants to receive consideration** |
| • **More work with applicant to "complete" applications** | • **Fewer applications requiring back-and-forth follow-up** |
| • **More subjective credentialing *and peer review* determinations** | • **Fewer subjective credentialing *and peer review* determinations** |
| • **More hearings?** | • **Fewer hearings?** |

117

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**Threshold Criteria must be OBJECTIVE**

- **Based upon observable phenomenon**
- **Uninfluenced by emotions or personal prejudices**

* American Heritage Dictionary

118

| Lenient | Stringent |
|---|---|
| • **Current license to practice in this state** | • ***Unrestricted* license to practice in this state**<br>• **License has *never been* restricted or revoked**<br>• **License has never been restricted or revoked *in any state*** |

119

**Sanford Threshold Eligibility Criteria**

**<u>Section 2.A.1. Threshold Eligibility Criteria</u>:**

**To be eligible to apply for initial Appointment, Reappointment, and/or Clinical Privileges and as a condition of maintaining ongoing Appointment and/or Clinical Privileges, individuals must satisfy the applicable eligibility criteria…**

120

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## Sanford Threshold Eligibility Criteria

- **have a current, unrestricted license to practice in the relevant state that is not subject to any restrictions, conditions or probationary terms**
- **have never had a license to practice denied, revoked, restricted or suspended by any state licensing agency and never surrendered a license in lieu of disciplinary action**
- **where required, have a current, unrestricted DEA registration and state-controlled substance license and have never had a DEA registration or state-controlled substance license denied, revoked, restricted, or suspended**

121

## Sanford Threshold Eligibility Criteria

- **have not been involuntarily released from a post-graduate training program for reasons related to clinical competence or professional conduct, nor resigned from such a program during an investigation**
- **have not had appointment, clinical privileges, or scope of practice denied, suspended, revoked, or terminated by any health care facility for reasons related to clinical competence or professional conduct**
- **have not resigned appointment or relinquished clinical privileges during an investigation or in exchange for not conducting such an investigation**

122

## Sanford Threshold Eligibility Criteria

- **have not been, and are not currently, excluded, precluded, or debarred from participation in Medicare, Medicaid, or other federal or state governmental health care program, nor paid civil monetary penalties**
- **have not been convicted of, or entered a plea of guilty or no contest to, any felony**
- **have not been convicted of, or entered a plea of guilty or no contest to any misdemeanor relating to the practice of medicine or the practitioner-patient relationship; health care fraud or abuse; the use or abuse of illegal drugs or controlled substances; sexual misconduct; violent acts; or conduct involving children, the elderly or other vulnerable populations**

123

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## Sanford Threshold Eligibility Criteria

- **have current, valid professional liability insurance coverage in a form and in amounts satisfactory to the Hospital**
- **demonstrate recent clinical activity in their primary area of practice during the last 24 months**
- **have or agree to make appropriate coverage arrangements with another credentialed Practitioner for those times when the individual will be unavailable**
- **agree to personally fulfill all responsibilities regarding emergency service call coverage for their specialty or to obtain appropriate coverage by another Practitioner with appropriate clinical privileges**

124

## Sanford Threshold Eligibility Criteria

- **be certified in their primary area of practice at the Hospital by the appropriate specialty/subspecialty board applicable to their clinical specialty, achieving certification within five years from the date of completion of their residency or fellowship training**
- **maintain board certification in their primary area of practice at the Hospital on a continuous basis by the relevant board**

125

## *Objective* threshold eligibility criteria:

- **Screens out individuals with the most significant red flags in their background**
- **Reduces the risk of discrimination claims**
- **Helps manage NPDB reporting obligations**
- **Required for all practitioners (as applicable)**

126

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*Biggest benefit of threshold criteria?*

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

127




**Waivers**

**Waivers are a necessary evil**

128



**Disregarding your Bylaws and policies makes you an easy target**

129

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**No one should be able to count on getting a waiver of an eligibility criterion.**

**But *exceptional* circumstances can exist.**

130

## Use Waivers Sparingly

**"The applicant requesting the waiver bears the burden of demonstrating (i) that they are otherwise qualified such that their qualifications are equivalent to, or exceed, the criterion in question, and/or (ii) that exceptional circumstances exist."**

**Credentials Policy, Section 2.A.2 (a)**

131

## Use Waivers Sparingly

**Is *this applicant* and their situation *exceptional*?**

- **Why did the applicant fail to satisfy the criterion?**
- **What's the nature of the disqualifying factor?**
- **Was the disqualifying factor completely resolved?**
- **Was the disqualifying factor recent?**
- **Does the applicant have other exceptional qualifications?**
- **Is there other information demonstrating the relevant qualification (e.g., internal OPPE/quality data)?**

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## Use Waivers Sparingly

**Is *the Hospital's* situation *exceptional*?**

- **Is the hospital having a lapse in coverage?**
- **Is there a need in the community for the services of the applicant?**

133

## NOT Exceptional Circumstances

***(Normal applicant excuses and outcomes...)***

- **Failure to maintain certification due to being busy**
- **Failing to complete a training program in the relevant specialty, but providing evidence of a weekend CME course**
- **Having an arrest or privileging action, but showing that the matter is being disputed in a lawsuit or hearing**
- **Showing the state licensure board gave them an unconditional license despite the issue that renders them ineligible**

134

## NOT Exceptional Circumstances

***("Internal" issues...)***

- **NOT because the threshold criteria are more stringent than you are willing to apply**
- **NOT because the practitioner has been recruited and/or already moved to town**

135

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**Waiver Process**

| | |
|---|---|
| **Credentials Committee** | **Recommendation** |
| ⇩ | |
| **PEC** | **Recommendation** |
| ⇩ | |
| **Board** | **Decision** |

136

***Articulate*** **and** ***Document***
**the reason for granting a waiver**

137

**In the absence of a waiver, the individual remains ineligible to apply.**

138

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"Red Flags"

**Eligibility determinations are easy. Managing red flags?**

**Not so much!**

139

**Threshold criteria captures significant objective occurrences, red flags will always involve less significant and *subjective information* regarding an applicant's qualifications or background.**

140

**Typical red flags in credentialing:**

- **Attending *more than one training program* - when the change wasn't after the first year to change specialty**
- ***Licensure actions* short of revocation, suspension, or restrictions**
- **Obtaining a *license in a state never practiced***
- ***Leave of absence* for atypical or non-verifiable reason (i.e., leaves related to childbirth/childrearing)**

141

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# Sanford Black Hills Surgical Hospital

**Typical red flags in credentialing:**

- **Being subject to an *investigation or a focused review* at a hospital for competence or conduct**
- **Having had *conditions* imposed on appointment or privileges or a *performance improvement plan***
- **Having agreed to *voluntarily refrain* from practicing**
- **Having *relinquished some privileges* (absent verified, logical reasons, i.e., OB/GYN transitioning to GYN only towards end of career)**

142

**Typical red flags in credentialing:**

- **Employment *terminations***
- **Questionable *gaps* in work history**
- ***Multiple relocations* in a short time period**
- ***Unfavorable references* from healthcare entities**
- ***Failed board certification* exam**
- ***Problematic malpractice history* ***

143

**The key when assessing red flags**

**Receiving enough *credible information* to:**

- **fully understand the issue; AND**
- **conclude that it does not raise concerns about an applicant's qualifications and ability to exercise privileges requested**

144

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**Sources you cannot rely on to give you the "full picture" about red flags:**

- **The applicant**
- **The applicant's (current/soon to be) employer**
- **The applicant's office manager**
- **The NPDB**
- **References chosen by the applicant**

145

***REMEMBER:* Do not process incomplete applications**

146

**Credentials Policy -**
**An application is *incomplete* if there are:**

- **Unanswered questions**
- **Gaps in professional experience that have not been explained or confirmed**
- **Supporting information that has not been supplied**

***Concerns that have not been fully resolved***

147

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**Recruitment**

**Align recruitment and credentialing**

148

## Get on the same page!

- **Know your counterpart**
- **Share timelines and checklists**
- **At a minimum, screen for threshold eligibility criteria – EARLY!**
- **Waivers are not a guarantee!**
- **Have *and share* "red flag" and "yellow flag" lists**

149




**References**

**Seek meaningful references**
***-AND-***
**Provide meaningful references**

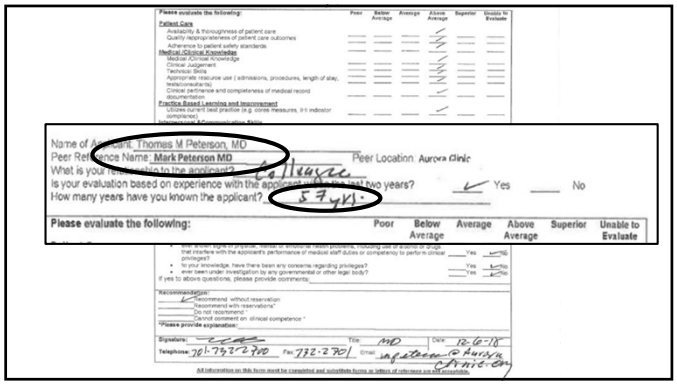
150

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# Sanford Black Hills Surgical Hospital

**Consider whether references are qualified to comment on applicant's qualifications**

151


Please evaluate the following:

Poor | Below Average | Average | Above Average | Superior | Unable to Evaluate

Patient Care
- Availability & thoroughness of patient care
- Quality /appropriateness of patient care outcomes
- Adherence to patient safety standards

Medical /Clinical Knowledge
- Medical /Clinical Knowledge
- Clinical Judgement
- Technical Skills
- Appropriate resource use ( admissions, procedures, length of stay, tests/consults/etc)
- Clinical pertinence and completeness of medical record documentation

Practice Based Learning and Improvement
- Utilizes current best practice (e.g. cores measures, H-I indicator compliance)

Name of Applicant: Thomas M Peterson, MD
Peer Reference Name: Mark Peterson MD
Peer Location: Aurora Clinic
What is your relationship to the applicant? Colleague
Is your evaluation based on experience with the applicant in the last two years? ✓ Yes ___ No
How many years have you known the applicant? 5.7 yrs

- Are there signs or symptoms, abuse or chronic use of alcohol or drugs that interfere with the applicant's performance of medical staff duties or competency to perform clinical privileges? ___ Yes ___ No
- To your knowledge, have there been any concerns regarding privileges? ___ Yes ___ No
- ever been under investigation by any governmental or other legal body? ___ Yes ___ No

If yes to above questions, please provide comments.

Recommendation:
___ Recommend without reservation
___ Recommend with reservations*
___ Do not recommend
___ Cannot comment on clinical competence *

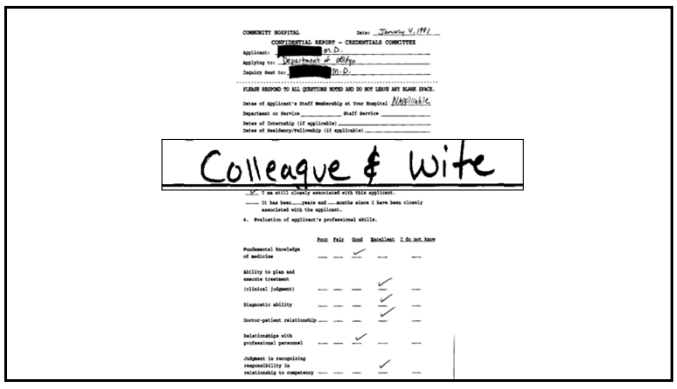
*Please provide explanation:

Signature: ✓ Title: MD Date: 12-6-18

Telephone: 761-732-2700 Fax: 732-2701 Email: mpeterson@sbhsh.com

All information on this form must be completed and submitted forms or letters of reference are not acceptable.

152


COMMUNITY HOSPITAL Date: January 4, 1991

CONFIDENTIAL REPORT - CREDENTIALS COMMITTEE

Applicant: [redacted] M.D.

Applying for: Department of Medicine

Inquiry sent to: [redacted] M.D.

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

Dates of Applicant's Staff Membership at Your Hospital Nashville

Department or Service _____ Staff Service _____

Dates of Internship (if applicable) _____

Dates of Residency/Fellowship (if applicable) _____

Colleague & Wife

✓ I am still closely associated with this applicant.

___ It has been ___years and ___months since I have been closely associated with the applicant.

4. Evaluation of applicant's professional skills.

| | Poor | Fair | Good | Excellent | I do not know |
|---|---|---|---|---|---|
| Fundamental knowledge of medicine | ___ | ___ | ✓ | ___ | ___ |
| Ability to plan and execute treatment (clinical judgment) | ___ | ___ | ___ | ✓ | ___ |
| Diagnostic ability | ___ | ___ | ___ | ✓ | ___ |
| Doctor-patient relationship | ___ | ___ | ___ | ✓ | ___ |
| Relationships with professional personnel | ___ | ___ | ✓ | ___ | ___ |
| Judgment in recognizing responsibility in relationship to competency | ___ | ___ | ___ | ✓ | ___ |

153

**What sort of information can credentialers rely on?**

154

**Is it okay to contact people NOT listed as references on the application form?**

- **Department chairs and residency directors?**
- **Other doctors?**
- **Former employer?**
- **Anyone?**

155



**What if some references do not respond?**

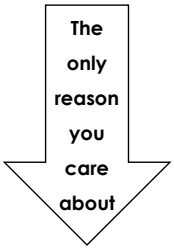
156

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**Some references will NEVER, EVER, return your form:**

- **because they're busy**
- **because their lawyer told them to use their own form**
- **because the hospital burned down/flooded**
- ***because they do not want to disclose negative information about the practitioner***
- **because of a million other reasons**

157




158

**Factors to consider:**

- **Would alternative information suffice?**
- **Has enough information already been supplied by other sources?**
- **If conflicting information: are you confident in the credibility of one set of facts?**
- **Reason to believe something is being hidden?**
- **Reasonable explanation for why info. not provided?**

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**But remember, default "rule" if there is no reasonable way to resolve the lack of response:**

> **"The individual seeking Appointment or reappointment is responsible for providing a complete application, which specifically includes receipt of adequate responses from references. An incomplete application shall not be processed."**
>
> **Credentials Policy Section 2.B.2 (c)**

160

## Are your hands tied?

- **"You have to keep this *anonymous*..."**
- **"If anyone asks, *you didn't hear it from me*, but..."**
- **"*I can't swear* to this, but..."**
- **"I'm glad to talk with you *off the record*."**

161

**All conversations should be *documented***



162

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**When *you* are contacted for a reference, you have options.**

***Some are better than others.***

163

## When you are called?

***If only <u>positive</u> things to say:***

- ☑ **Request made in writing**
- ☑ **For an appropriate purpose**
- ☑ **Signed Authorization & Release** *from the requesting entity's application form*

164

## When you are called?

***If something <u>unfavorable</u> to say:***

- ☑ **Know that you have *many* legal protections**
- ☑ **Take steps to give yourself *extra* protection**
- ☑ **Answer accurately and factually**

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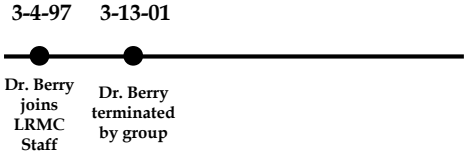
**Managing reference requests…**

***Option 1 – Only provide dates and privileges held***

166

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

167




168

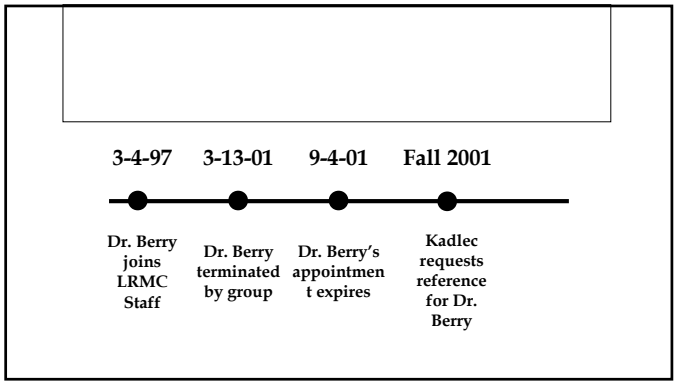
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Lakeview Anesthesia Associates

**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 Lakeview Anesthesia Associates is terminated.**

169




170

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

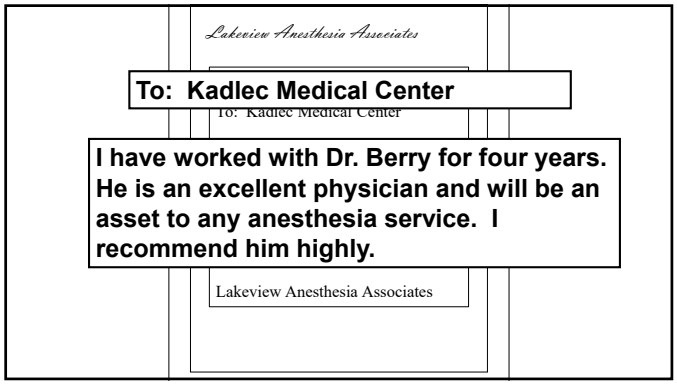
**No further information can be provided due to the large volume of inquiries received in the office.**

the office.

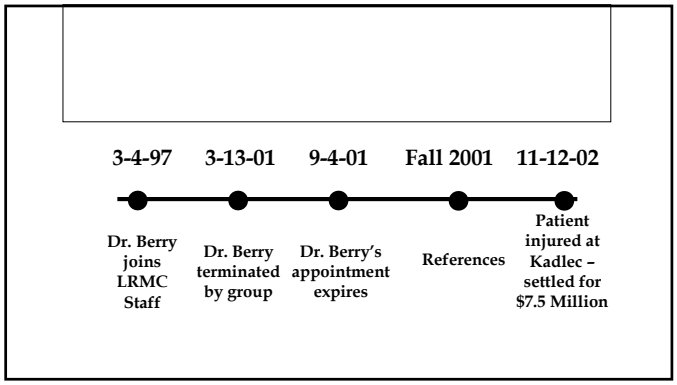
***There is no information of a derogatory nature in Dr. ____'s file.***

171

# Sanford Black Hills Surgical Hospital




172




173

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

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

**Conclusion? The group *AND* the hospital violated these duties in their responses, both have liability.**

174

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**5th Circuit Court of Appeals**

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

- **Not to misrepresent affirmatively, and**
- **Not to omit ~~"material"~~ information**

175

*Kadlec Medical Center*
**(5th Cir. 2008)**

**The hospital's response was *not affirmatively misleading*.**

176

**So, what should they have done?**

177

## Managing reference requests…

*Option 2 — We'd love to tell you more...*

**Thank you for submitting a "Hospital Affiliation Request" for Dr. Berry. Dr. Berry was appointed to the Medical Staff on March 4, 1997. His privileges expired on September 4, 2001 and he did not seek reappointment. Dr. Berry did not exercise privileges after March 13, 2001.**

**We would be happy to provide additional information regarding Dr. Berry's tenure at LRMC after obtaining his authorization and release for our response.**

178

## Managing reference requests…

*Option 2 — We'd love to tell you more...*

**A copy of our authorization and release form is enclosed. Once you provide an executed copy of this authorization form, we would be happy to provide additional information.**

179

## *Good* Release Language

- **Fullest immunity allowed by law**
- **Practitioner agrees not to sue**
- **If sues – and does not prevail – pays attorneys' fees, costs, and lost opportunity damages to hospital, medical staff leaders, and anyone else named in suit**

*All of which tracks the Credentials Policy!*

180

**Managing reference requests…**

*Option 3 - Consider fully transparent responses*

- **Prepared upon receipt of a reference request and sent to practitioner along with authorization and release form that must be signed; or**
- **Negotiated at the time of departure (and always used thereafter)**

181

**Designate WHO is authorized to provide references –**

***Otherwise, you never know what you're gonna get.***

182

***Consider a Reference Response Policy (and train leaders on it!)***

- **The difference between personal references vs. institutional references**
- **The process for institutional references (usually through Medical Staff Services)**

183

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*Privileging Disasters and Challenges*

184

TIP

***Privileges* and *Appointment:***
**Two distinct concepts, granted through the same process**

185

**No one can do anything to a patient in a hospital without authorization – provided *in advance*.**

186

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**Types of Authorization**

- *Clinical privileges*
- **Scope of practice**
- **Employment/HR process**
- **Vendor approval**
- **Observer approval**
- **Trainee affiliation**

187

**Clinical privileges define the patient care and treatment services that can be provided by qualified individuals.**

***You* define, through your privileging process, who is qualified...and for what.**

188

**The Board has the final authority to grant privileges.**

189

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**Elements of Every Privilege Delineation:**

- **Description of Privileges/ Procedures Included (Core or Laundry List)**
- **Education, Training, Experience**
- **Elements of FPPE**

190

**TIP**

**Privilege delineations only work if they are *applied***

191

*Frigo v. Silver Cross Hosp.*
**(Ill. App. Ct. 2007)**

- **A 50-year-old critical care nurse had an elective bunionectomy**
- **Though she was diabetic and had an ulcer on her foot, her podiatrist decided to proceed**
- **Infection resulted in amputation**

192

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# Sanford Black Hills Surgical Hospital

*Frigo v. Silver Cross Hosp.*
**(Ill. App. Ct. 2007)**

- **The podiatrist had not completed a podiatric *surgical* residency**
- **Nor was he certified by the American Board of Podiatric Surgery**

***...both of which were required by the Hospital's own documents!***

193

*Frigo v. Silver Cross Hosp.*
**(Ill. App. Ct. 2007)**

- **The podiatrist had been "grandfathered" for category II surgical privileges at the hospital**
- **But had not submitted any evidence of training or experience for these privileges**

194

*Frigo v. Silver Cross Hosp.*
**(Ill. App. Ct. 2007)**

- **Podiatrist settled in malpractice lawsuit**
- **Negligent credentialing adopted as a theory of liability in Illinois for the first time resulting in . . .**

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*Frigo v. Silver Cross Hosp.*
**(Ill. App. Ct. 2007)**

**. . . a verdict against the hospital for $7.75 million**

196

TIP

*New Procedures:*
**You Can't Grant Privileges that have Not Been Delineated**

197

*Columbia/JFK Med. Ctr. v. Sangounchitte*

- **Long-standing neurosurgeon member of medical staff schedules a patient for a cervical spine procedure**
- **The procedure involved a posterior approach to implanting a rod to stabilize the cervical spine**

198

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# Sanford Black Hills Surgical Hospital

*Columbia/JFK Med. Ctr. v. Sangounchitte*

- **He had never performed a posterior approach**
- **Used a Luque Rod in the cervical spine - an "off-label" use - and subject to a black box warning**
- **Surgery resulted in paralysis**

199

*Columbia/JFK Med. Ctr. v. Sangounchitte*

**$8.5 million negligent credentialing verdict**

200

**Who decides *and how*?**

201

**THE KEY:**
**Establish a consistent, fair *PROCESS***

202

**Who considers?**

*Feasibility*

- **Administration (with Medical Staff leadership/specialty expert input)**

*Privileging Issues*

- **Credentials Committee**
- **New Technology Committee**
- **Appointed ad hoc committee**

203

***Feasibility* factors to consider:**

- **Is different equipment/technique required?**
- **Is there sufficient space?**
- **Must others, besides physician, be familiar with this technique/modality to employ it effectively?**
- **Does it require increased or new staffing?**

204

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## Is this new?



**Or an extension of a current procedure (privilege)?**

205

## *Privileging* factors to consider:

- **Is a different skill set required?**
- **Are there different/greater risks?**
- **Is this something in which proficiency is volume-sensitive, and would the requisite volume be available?**
- **Is it likely that multiple specialties will be/are interested in this procedure?**

206

## New Procedures

**Ultimately - Board decides - based on:**

- **Hospital's mission statement**
- **Newness, riskiness, and general acceptance of new procedure**
- **Hospital's resources and personnel**
- **Recommendation of the Medical Staff**

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TIP

*Privileges that Cross Specialty Lines:*
**Neutrality is Key**

208

*Nurse Midwifery Assoc v. Hibbett* **(6th Cir. 1990)**

- **Two nurse midwives asked for privileges**
- **The hospital had never privileged midwives before**
- **MEC appointed an ad hoc committee... of OB/GYNs**
- **The committee took very damaging minutes**

209

*Nurse Midwifery Assoc v. Hibbett* **(6th Cir. 1990)**

- **The committee concluded: No need for nurse midwives**
- **Court: OB/GYNs conspired, as individuals, to prevent competition. Not shielded by committee action**

210

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**While criteria for privileges can vary between specialties, the hospital must provide *a single standard of care*.**

211

**Privileges that Cross Specialty Lines**

- **Process is key!**
- **Limit role of competitors**
- **Allow all interested parties to provide input**
- **Utilize neutral review body (Credentials Committee or ad hoc committee)**
- **Exclusive contract involvement?**

212

**Final decision is made by Board.**



**No applications processed until delineation complete!**

213

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TIP

*Privileges for*
*Advanced Practice Providers*

**…the same, except where it's different!**

214

**What Does CMS Say?**

**Practitioners who provide a "medical level of care" and/or conduct surgical procedures in the hospital must be credentialed and *privileged through the Medical Staff process.***

*Director, CMS Survey and Certification Group*
*Memorandum, November 14, 2004*

215

**Should APP applicants be required to establish "*current clinical competence*" before privileges are granted, as with physicians?**

**YES!**

216

**Does "current clinical competence" mean the *demonstration of specialty-specific experience* for the APP to be eligible for certain privileges?**

**Can it? Maybe?**

217

**Delineating privileges for APPs when:**

- **APPs are pursuing specialty work?**
- **APPs are changing specialty practice areas during a career?**

218

**Is "on-the-job" training for specialty practice in hospitals acceptable, where specialty-specific training programs are few and evolving?**

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**Options for APP Privilege Delineation**
***(Training/Experience):***

- **Maintain specialty-specific APP delineation of privileges that require defined period of specialty-specific experience**
- **Require CAQ or postgraduate specialty training**
- **"On-the-job" training with supervising physician in the form of *tight* FPPE**

220

**What About Peer Review?**

**Focused Professional Practice Evaluation (FPPE)**
**and**
**Ongoing Professional Practice Evaluation (OPPE)**
**for *anyone* with clinical privileges**

221

**Hot Topics…**

- **Should APPs be permitted to practice at the top of their licenses?**
- **Should APPs be appointed to the Medical Staff?**
- **Should APPs be appointed to serve on Medical Staff committees? With vote?**

222

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**Super *Hot* Topic?**

***Privileging*** **of non-physicians who "perform surgical tasks"**

- **Surgical Assistants**
- **First Assists**
- **Registered Nurse, First Assistant (RNFAs)**
- ***Surgical Technicians?***

223

**Super *Hot* Topic?**

**Privileging of non-physicians who "perform surgical tasks"**

- **Long required by Medicare Conditions of Participation (circa 2004!)**
- **Now being enforced by accrediting bodies**
- **"Wait and see" approach has risk**

224

**The "peer review" world has changed dramatically —and for the better!**

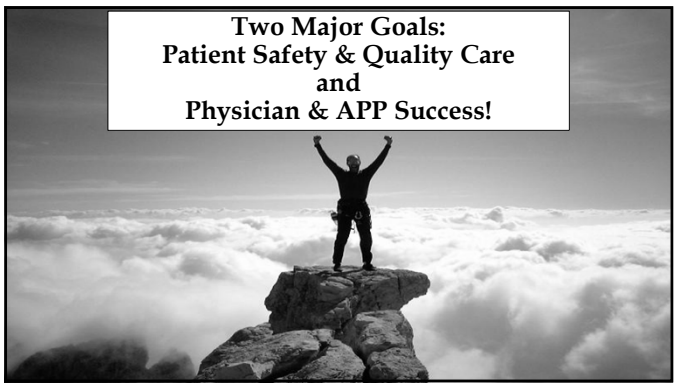
***Thinking!***

***Techniques!***

***Governing Documents!***

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226

***"Stuff" happens on the very best of Medical Staffs!***

227

**So, what's the "*scope*" of peer review anyway?**

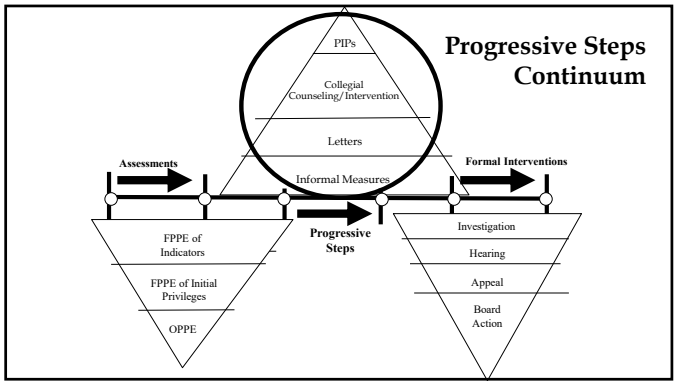
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**Clinical Quality**

**Unprofessional Conduct / "Disruptive" Behavior**

**Health Issues**

229




230

***Collegial Efforts***
**and the**
***Progressive Steps Continuum***
**will successfully resolve almost all issues!**

231

**PROGRESSIVE steps mean:**

**Intervene early!**

**"Discipline" is a last resort!**

232

## The Basics

- **Be *explicit* and *consistent* about the *"Progressive Steps Continuum"* in your documents:**
  - **Medical Staff Bylaws**
  - **Clinical Peer Review Policies**
  - **Professionalism Policy**
  - **Practitioner Health Policy**

233

## The Basics

- **Provides helpful *guidance* to leaders**
- **Important for *peer review protection***

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## The Basics

- **Focus on *performance improvement* – not coding or scoring - no TRACKING AND TRENDING!**
- ***What replaces scoring/coding:***
  - **Is there an issue or concern?**
  - **What performance improvement tool can best help our colleague?**

235

**Small issue?**

***SMALL INTERVENTION!***

236

**Why do we "track and trend'?**
**Traditional Bylaws Language: All or Nothing**

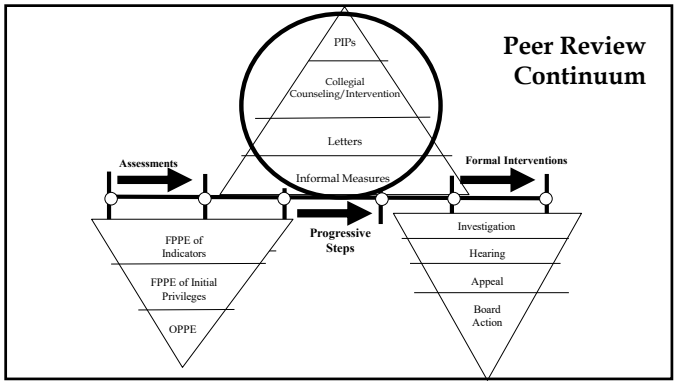




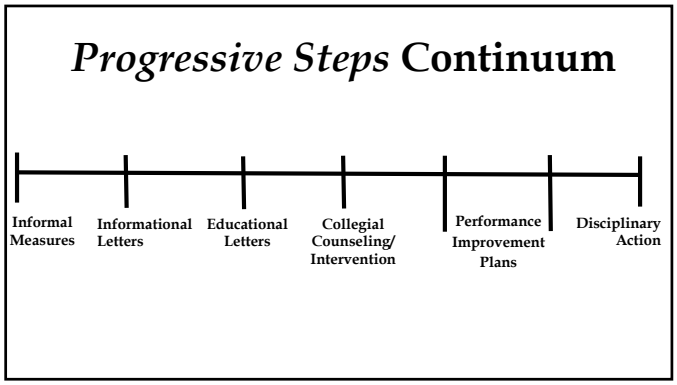
***Progressive Steps:* All, Nothing, and Everything in Between**

237

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239

**The *"Progressive Steps Continuum"* includes:**

- ***Initial Mentoring Efforts/Informal Measures:***
  - **Informal discussions and coaching**
  - **Sharing comparative data/variations from clinical practice (OPPE)**
- ***Informational letters* to address minor, but still important, issues**
- ***Educational letters* to provide more specific guidance/suggestions**
- ***Collegial Counseling/Intervention,* planned and face-to-face meeting to more directly provide assistance**
- ***Performance Improvement Plans* for more significant issues/pattern**
- ***"Disciplinary" Action* at PEC level**

240

## The Basics

- *Empower* **leaders and committees to implement progressive steps (i.e., no PEC involvement!)**
- *Early progressive steps* **available to more leaders**
- **More** *intensive progressive steps* **for committees only**
- *Disciplinary action* **reserved for PEC/Board**

241

## The Basics

- **With very limited exceptions,** *always* **get a colleague's input** *before* **making a final determination**
- **Don't confuse or blend a** *fact-finding meeting* **with formal** *"Collegial Counseling"*

242

## The Basics

**Use the** *least restrictive approach* **that is consistent with** *safe care and good quality!*

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## The Basics

- *VOLUNTARY* – Not Professional Review *Action*
- Most require no hearing
- Most require no NPDB Report

244

## The Basics

- Be very careful using the word *"Investigation!"*
- Term of art – NPDB
- Investigation begins *ONLY* after formal resolution of MEC

245

## The Basics

Last but not least… Progressive Steps *improve legal position* — even if it does not work!

246

## Obtaining Input from Practitioner

- *No questions or issues identified* **in the initial review, no need to obtain input**
- *If any questions or issues identified,* **key details noted in order to obtain input from Practitioner**
- *Letter or e-mail* **sent to Practitioner seeking written input**
- **In addition to written input, did reviewer speak with Practitioner? If so, relevant details documented**
- *After* **input obtained, proceed to assessment and determination**

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## General Rules

- **Input can be sought at *any time***
- ***Multiple requests* may be made**
- **Request can include *office records***
- **Request should include *time frame* for practitioner input**

248

## How does the practitioner provide input?

- ***Written explanation* of care, responding to specific questions – gold standard!**
- **Practitioner may also meet to discuss (in addition to written input)**
- **Stress professionalism/utilize effective, modern *consequences* for failure to provide input *(encourages adult behavior!)***

249

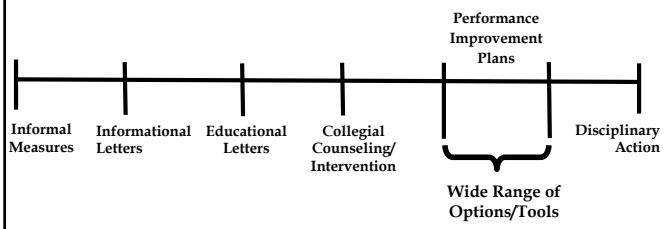
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## How does the practitioner provide input?

- **Decide whether request should notify practitioner of *consequences of failure to provide input*:**
  - **For most Practitioners, first letter probably doesn't need to discuss consequences**
  - **For outliers, or for those who ignore first request, identify consequences**

250

## *Progressive Steps* Continuum




251

## PIP Options for *Clinical Performance Issues*

252

**Who develops and recommends PIPs?**

***Clinical Issues***

253

Peer Review Committee/ Care Monitoring Committee (PRC or CMC)

**Role of Multi-Disciplinary PRC**

- **"Policy" Decisions**
- **Practitioner-Specific Reviews**
- **Lessons Learned & Shared**
- **Monitoring "System" Fixes**
- **Public Relations!**

254

Peer Review Committee/ Care Monitoring Committee (PRC or CMC)

**Practitioner-Specific Reviews**

- **Educational letter**
- **Collegial Counseling/Intervention**
- ***Performance Improvement Plan***
- **Refer to Employer *(maybe)***
- **Refer to PEC**

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**Performance Improvement Plans**
*(options used individually or in combination)*

- **Additional education/CME**
- **Monitoring of next X cases**
- **Procedure indications checklist**
- **Second opinions/consultations**
- **Observational proctoring**
- **Retrospective proctoring (review of videos)**

256

**Performance Improvement Plans**
*(options used individually or in combination)*

- **Participation in formal evaluation and assessment program**
- **Additional training/simulation**
- **Voluntary agreement to temporarily refrain from exercising privileges/Educational LOA**
- ***"Other"***

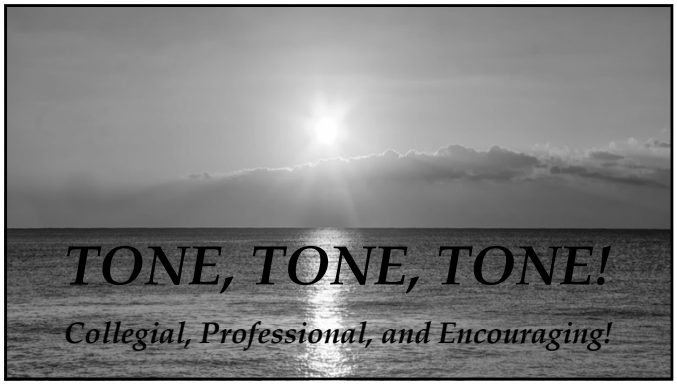
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***Keys to PIP Success***

- **You can't be *nice* enough!**
- **Be *explicit on details/expectations* — develop and utilize a PIP checklist tool!**
- **Personal meeting with colleague, be transparent and helpful — *have a script!***
- **PIPs never leave PRC's agenda until they are successfully completed!**

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**Confidential Peer Review**

**Re: Performance Improvement Plan**

- **PRC/CMC conducted review/developed PIP to successfully and constructively address issue**
- **Thanks for cooperation and input to date**
- **PIP details *(enclose applicable parts of checklist)***
- **Your voluntary agreement — not considered a "restriction" or "disciplinary action"**
- ***No* hearing/reporting**

260

**Confidential Peer Review**

**Re: Performance Improvement Plan**

- **Demonstrate your commitment to work with us — sign and return within X days**
- **Next steps if fail to do so**
- **Copy placed in your file/may respond if you wish**

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**Confidential Peer Review**

**Re: Performance Improvement Plan**

**"Thank you for your cooperation and participation in the Medical Staff's ongoing efforts to improve the care that we all provide."**

262

## *Keys to PIP Success*

- **You can't be *nice* enough!**
- **Be *explicit on details/expectations* — develop and utilize a PIP checklist tool!**
- **Personal meeting with colleague, be transparent and helpful— *have a script!***
- **PIPs never leave PRC/CMC's agenda until they are successfully completed!**

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### *Be EXPLICIT on PIP details and implementation!*

- **Additional education/CME**
- **Monitoring/retrospective chart review of next X cases**
- **Develop procedure indications/checklist**
- **Second opinions/consultations**
- **Observational proctoring**
- **Retrospective proctoring (review of videos)**

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### Second Opinions/ Consultations

*Before the practitioner proceeds with a particular treatment plan or procedure, he/she must obtain a second opinion/consultation*

266

### Second Opinions/Consultations

- **What types of cases are subject to the second opinions/consultations?**
- **How many cases should be reviewed, at least initially?**
- **Based on practice patterns, estimated time for completion?**
- **Must consultant evaluate patient in person prior to treatment/procedure?**

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## Second Opinions/Consultations

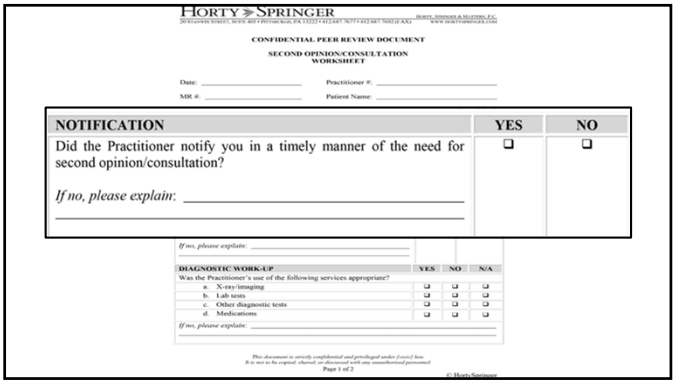
- *Responsibilities of Practitioner subject to PIP:*
  - **Provide reasonable notice to consultant (e.g., two days prior to scheduled, elective procedures? As soon as patients are admitted for medical consults?)**
  - **Ensure that all information necessary for effective consultation is available in the medical record (e.g., H&P, results of diagnostic tests)**
  - **Discuss proposed treatment/procedure with consultant**
  - ***If consultant must personally evaluate patient, inform patient in advance that consultant will be visiting and examining patient***

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## Second Opinions/Consultations

- **PRC approves consultant(s) *prior* to PIP implementation**
- **Chair or CMO/VPMO meets with consultant to outline expectations and discuss legal protections**
- ***Responsibilities of the consultant:***
  - **Review medical record, evaluate patient (if applicable), discuss proposed treatment/procedure with Practitioner**
  - **Complete Second Opinion/Consultation Form and submit to leadership *(not for inclusion in the medical record!)***

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CONFIDENTIAL PEER REVIEW DOCUMENT

SECOND OPINION/CONSULTATION WORKSHEET

Date: _____ Practitioner #: _____

MR #: _____ Patient Name: _____

| NOTIFICATION | YES | NO |
|---|---|---|
| Did the Practitioner notify you in a timely manner of the need for second opinion/consultation? | ❑ | ❑ |
| *If no, please explain:* _____ | | |

*If no, please explain:* _____

| DIAGNOSTIC WORK-UP | YES | NO | N/A |
|---|---|---|---|
| Was the Practitioner's use of the following services appropriate? | | | |
| a. X-ray/Imaging | ❑ | ❑ | ❑ |
| b. Lab tests | ❑ | ❑ | ❑ |
| c. Other diagnostic tests | ❑ | ❑ | ❑ |
| d. Medications | ❑ | ❑ | ❑ |

*If no, please explain:* _____

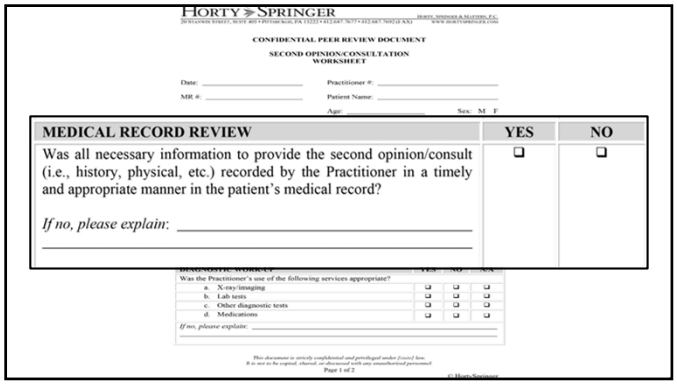
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# Sanford Black Hills Surgical Hospital



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CONFIDENTIAL PEER REVIEW DOCUMENT

SECOND OPINION/CONSULTATION WORKSHEET

Date: _____ Practitioner #: _____

MR #: _____ Patient Name: _____

Age: _____ Sex: M F

| MEDICAL RECORD REVIEW | YES | NO |
|---|---|---|
| Was all necessary information to provide the second opinion/consult (i.e., history, physical, etc.) recorded by the Practitioner in a timely and appropriate manner in the patient's medical record?<br><br>*If no, please explain*: _____ | ❑ | ❑ |

Was the Practitioner's use of the following services appropriate?

a. X-ray/imaging ❑ ❑ ❑
b. Lab tests ❑ ❑ ❑
c. Other diagnostic tests ❑ ❑ ❑
d. Medications ❑ ❑ ❑

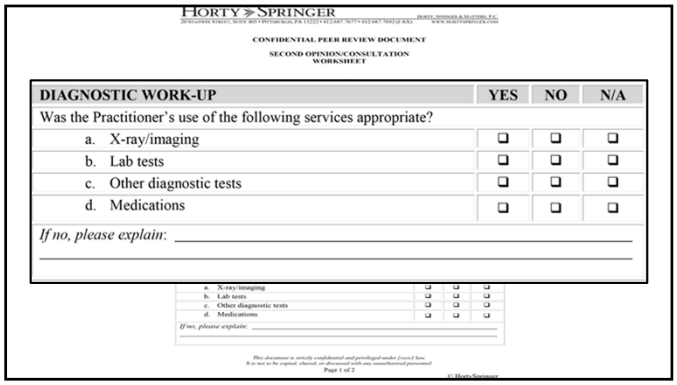
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CONFIDENTIAL PEER REVIEW DOCUMENT

SECOND OPINION/CONSULTATION WORKSHEET

| DIAGNOSTIC WORK-UP | YES | NO | N/A |
|---|---|---|---|
| Was the Practitioner's use of the following services appropriate? | | | |
| a. X-ray/imaging | ❑ | ❑ | ❑ |
| b. Lab tests | ❑ | ❑ | ❑ |
| c. Other diagnostic tests | ❑ | ❑ | ❑ |
| d. Medications | ❑ | ❑ | ❑ |

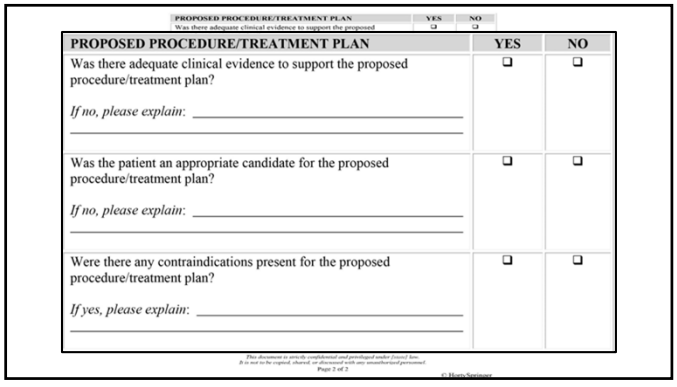
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| PROPOSED PROCEDURE/TREATMENT PLAN | YES | NO |
|---|---|---|
| Was there adequate clinical evidence to support the proposed procedure/treatment plan?<br><br>*If no, please explain*: _____ | ❑ | ❑ |
| Was the patient an appropriate candidate for the proposed procedure/treatment plan?<br><br>*If no, please explain*: _____ | ❑ | ❑ |
| Were there any contraindications present for the proposed procedure/treatment plan?<br><br>*If yes, please explain*: _____ | ❑ | ❑ |

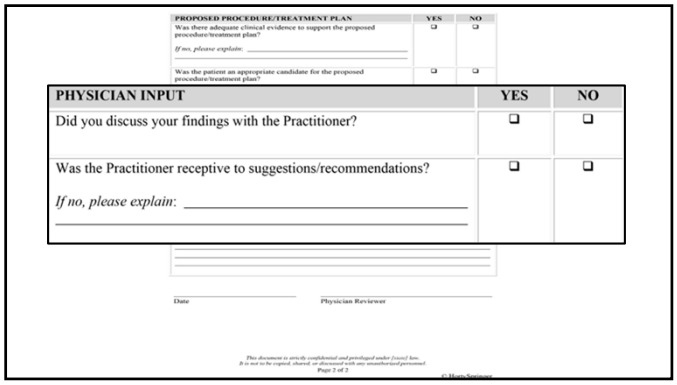
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# Sanford Black Hills Surgical Hospital



| PROPOSED PROCEDURE/TREATMENT PLAN | YES | NO |
|---|---|---|
| Was there adequate clinical evidence to support the proposed procedure/treatment plan? | ❑ | ❑ |
| *If no, please explain:* _____ | | |
| Was the patient an appropriate candidate for the proposed procedure/treatment plan? | ❑ | ❑ |

| PHYSICIAN INPUT | YES | NO |
|---|---|---|
| Did you discuss your findings with the Practitioner? | ❑ | ❑ |
| Was the Practitioner receptive to suggestions/recommendations? *If no, please explain:* _____ | ❑ | ❑ |

Date Physician Reviewer

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| PROPOSED PROCEDURE/TREATMENT PLAN | YES | NO |
|---|---|---|
| Was there adequate clinical evidence to support the proposed procedure/treatment plan? | ❑ | ❑ |
| *If no, please explain:* _____ | | |
| Was the patient an appropriate candidate for the proposed | ❑ | ❑ |

| ADDITIONAL COMMENTS |
|---|
| Please provide any additional comments or suggestions regarding your review of this case: _____ _____ _____ |
| Date Physician Reviewer |

Date Physician Reviewer

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## Second Opinions/Consultations

- **Compensation for consultant? If yes, who pays?**
  - **Practitioner subject to PIP?**
  - **Medical Staff?**
  - **Hospital?**
  - **Combination?**
- **Who will review the results with the Practitioner? After each case? After total number of cases?**
- **Will the Practitioner be removed from on-call responsibilities until the PIP is completed?**

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**Is this a NPDB "restriction?"**

277

## *NO!!!*

- **Recommended by PRC, *a non-disciplinary committee* with no authority to restrict privileges**
- ***Voluntarily* accepted by Practitioner, and**
- **If there is any disagreement between Practitioner and consultant, others are included in the discussion to resolve the disagreement!**

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## Is this a NPDB "restriction"?

**Only if it is a**

**MANDATORY, CONCURRING CONSULTATION**

- **Imposed by PEC**
- **Consultant has "veto power"**
- **In place for more than 30 days**

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# OTHER

280

**PIP Options for**
***Conduct/Behavior Issues***

281

***Who manages behavioral concerns (and should therefore develop PIPs)?***

282

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***Leadership*** **expertise – not** ***clinical*** **expertise – is the key to addressing behavior, health, and urgent clinical concerns!**

283

**The wisdom of a *Physician Leadership Council!***

284

**Not more bureaucracy – a vehicle for leaders to lead more effectively!**

285

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**PLC Options for Conduct Concerns**
**(outlined in a Professionalism Policy)**

- **No further review or action required**
- **Educational Letter**
- **Collegial Counseling/Intervention**
- ***Performance Improvement Plan***
- **Refer to Employer *(maybe)***
- **Refer to PEC**

286

## PIP Options for Conduct

- **CME courses/education**
- **Required review of literature regarding behavior/safety and report to Leadership Council**
- **Heightened Collegial Counseling meeting involving full Leadership Council or other designated group, which can include Board Chair or member!**
- **Periodic/scheduled meetings involving Medical Staff Leaders or mentors**

287

## PIP Options for Conduct

- **"Charm School"**
  - **Behavior Coach**
  - **Behavior Modification Course**
- **"Personal Code of Conduct"**
  - **(Continued Appointment/Conditional Reappointment)**
- ***"Other"***

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**What's the role of the *PEC* in clinical peer review or reviewing concerns about conduct or health?**

289

PEC

## PEC's Role

- **Approves relevant "routine review" Medical Staff policies (clinical peer review, practitioner health, professionalism policies)**
- **Broad oversight of process — review of aggregate data**
- **Policy committee — support for:**
  - **Protocols**
  - **Performance improvement initiatives**

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PEC

## PEC's Role

- ***NO* involvement in day-to-day "routine review" activities**
- ***NO* review of detailed committee minutes!**
- **Disciplinary action, when necessary**

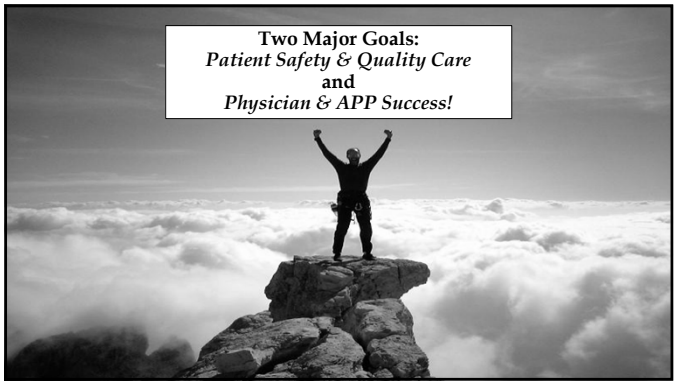
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## Disciplinary Action

- **Formal Investigations**
- **Long-term suspensions**
- **Revocations of appointment or clinical privileges**
- **Hearings**

292




293

## Introducing...

## The Dos Ruptive Guy

294

# Sanford Black Hills Surgical Hospital




295



He isn't always charming.

But, when he is, it's with "important" people.

296

He doesn't want to treat nurses badly.

But, when he does, it's because they're incompetent.



297

# Sanford Black Hills Surgical Hospital

He doesn't always complete his medical records on time.

But, when he does, it's to bash the ER doctor who "did not run the right tests over the weekend."



298



He doesn't always complain about the hospital.

But, when he does, it's loudly and in front of patients.

299



He doesn't always break the rules.

But, when he does, it's because your rules are dumb and he's very busy, with important things to do.

300

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He's too busy for your peer review meeting.

But, he wouldn't mind a few minutes of your time to tell you how to do your job.



301

**Disruptive behavior is <u>not</u> just a matter of quirky personalities.**

302

**Professionalism Policies are essential – because they are written for the 1%**

303

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**Leal**
**v.**
**Secretary, U.S. Department of Health and Human Services**

304

**"Like Alexander in the classic children's book, Dr. Leal was having 'a terrible, horrible, no good, very bad day'"**

305

**"[A]t around 6:30 p.m., he was told that his use of the operating room was going to be delayed."**

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**"Apparently, that was the final straw for him."**

307

**"What Dr. Leal did after he was told he would have to wait to use the operating room..."**

308

**"...he pitched a fit."**

309

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# Sanford Black Hills Surgical Hospital

| Hospital | Dr. Leal |
| --- | --- |
| He became so enraged that he broke a telephone | He accidentally broke a telephone when he tripped on its long cord |

310

| Hospital | Dr. Leal |
| --- | --- |
| He shattered the glass on a copy machine | He closed the lid of a copy machine with "some force" and the glass cracked |

311

| Hospital | Dr. Leal |
| --- | --- |
| He shoved a metal cart into the doors of the operating suite so hard that it damaged one of them | He moved a metal cart that was blocking the doors of the operating suite |

312

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# Sanford Black Hills Surgical Hospital

| Hospital | Dr. Leal |
| --- | --- |
| He flung a medical chart to the ground when a nurse asked him for written authorization to proceed with surgery | When he was handed a medical chart by a nurse some of the chart's loose papers fell to the floor |

313

| Hospital | Dr. Leal |
| --- | --- |
| He threw jelly beans down the hallway in the surgical suite | He ate jelly beans, some of which may have fallen on the floor when he tried to throw away flavors that he did not like |

314

**"In other words, this urological surgeon, who earns his living wielding a razor-sharp scalpel on some of the most delicate parts of the body, does not have a bad temper…**

***he is just clumsy."***

315

**"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.*"**

316

**"…Disruptive and abusive behavior by a physician, even if not resulting in actual or immediate harm to a patient, *poses a serious threat to patient health or welfare.* [A] hospital is one place where no one can do his job alone, where better teamwork means better care, *and where disruptive behavior threatens lives.*"**

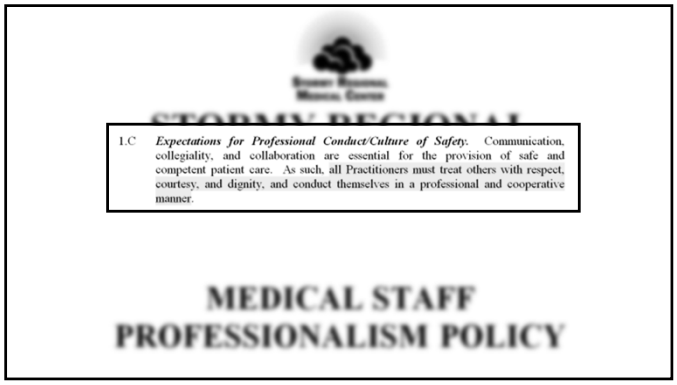
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**To avoid disputes and misunderstandings – use the Professionalism Policy to define appropriate vs. inappropriate conduct**

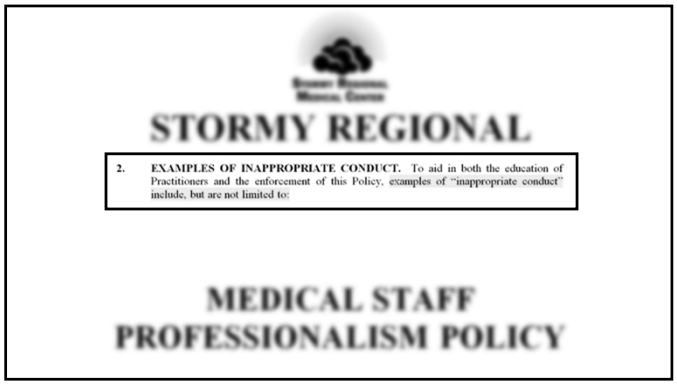
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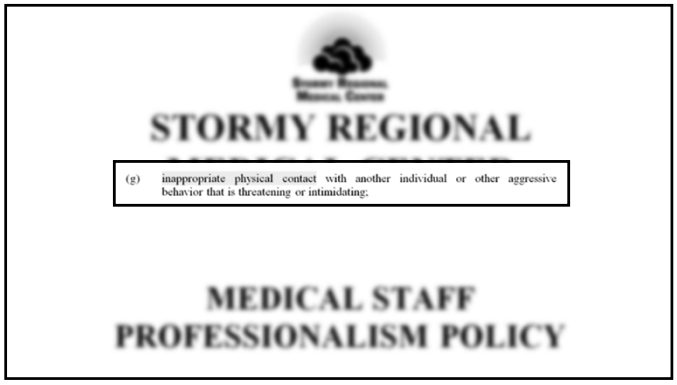
# Sanford Black Hills Surgical Hospital




319




320




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**Dr. X wants the nurse to stop talking…**

**so he reaches out and covers her mouth.**

322

**In response to the Director of Care Management addressing Dr. X's continued insistence on scheduling inpatient procedures with an outpatient classification, in violation of hospital policy, Dr. X spit on her**

323



**STORMY REGIONAL MEDICAL CENTER**

(g) inappropriate physical contact with another individual or other aggressive behavior that is threatening or intimidating;

**MEDICAL STAFF PROFESSIONALISM POLICY**

324

**Frustrated that a case started two hours late – and a tech chose an incorrect piece of equipment – Dr. X punched the wall and stormed out of the OR**

325

STORMY REGIONAL MEDICAL CENTER

(c) refusal or failure to answer questions, or return phone calls or pages in a timely manner as defined in the Medical Staff Bylaws documents or other applicable policies;

**MEDICAL STAFF PROFESSIONALISM POLICY**

326

**After questioning why a nurse called him (the on-call ortho) to order an MRI, Dr. X provided the following phone number for follow-up the next day:**

**867-5309**

327

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**STORMY REGIONAL**

(j) derogatory comments about the quality of care being provided by the Hospital, another Practitioner, or any other individual outside of appropriate Medical Staff and/or Hospital administrative channels;

**MEDICAL STAFF PROFESSIONALISM POLICY**

328

**In front of a patient, in response to a nurse's request for signature:**

**"Signatures don't matter when the nurses are busy killing my patients."**

329

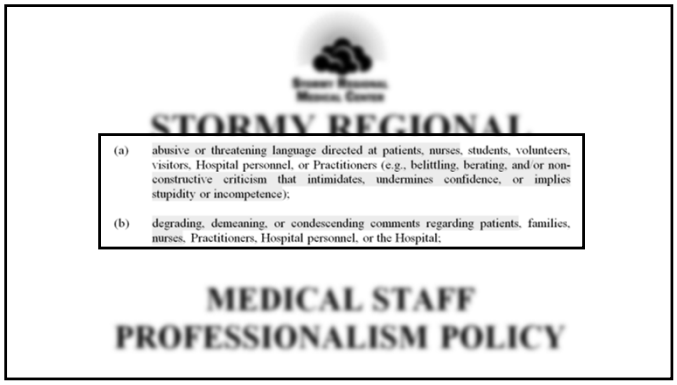
**Following a patient death, the surgeon says to the anesthesiologist (*in front of the OR team*):**

**This was a very poor effort.**
**You didn't really try.**
**You…purposefully didn't resuscitate him.**
***You just euthanized my patient.***

330

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# Sanford Black Hills Surgical Hospital




331

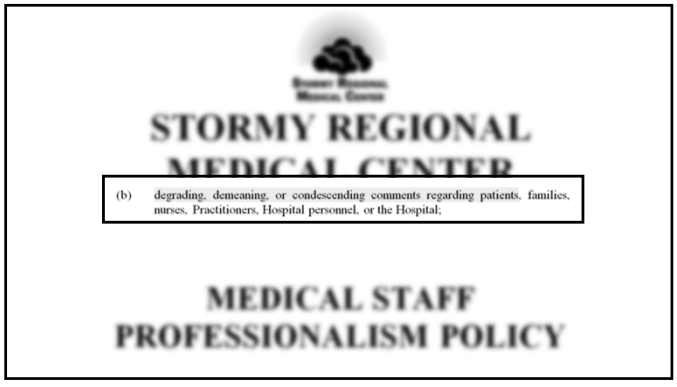
**In response to a noted question, Dr. X writes, in the medical record:**

**"Congratulations. This is without a doubt the most asinine question that has ever been posed to me in my 30 years as a surgeon.**

**You are to be commended for your stupidity.**

**I don't know how you make it to the hospital unassisted on a daily basis, but bully for you."**

332




333

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**Dr. X has a known dislike of alcoholic and drug addicted patients.**

**When called to the ED to treat a patient who is suffering from cirrhosis of the liver, he documents the prognosis and treatment plan as:**

**"A Song and A Prayer"**

334

**Dr. X writes, in the H&P:**

**"I have a chunky, persistently overweight Mexican male who still speaks no English, in no acute distress, who is cooperative. I have encouraged him to take some of his cigarette money and buy English lessons."**

335

**STORMY REGIONAL MEDICAL CENTER**

(v) engaging in identity-based harassment as described in this Policy.

**MEDICAL STAFF PROFESSIONALISM POLICY**

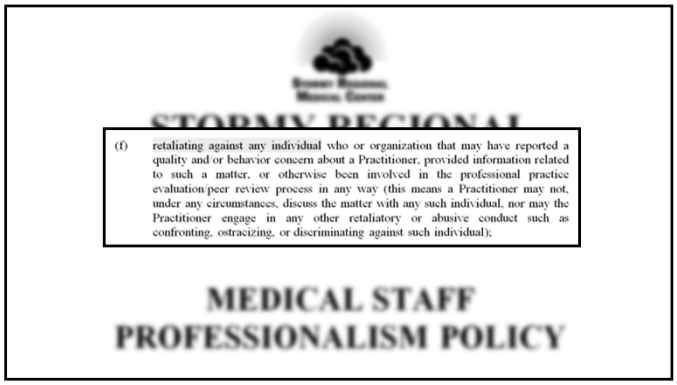
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**Dr. X asks a nurse, in a room full of people:**

**"Should I call you JJ or Jugs?"**

337



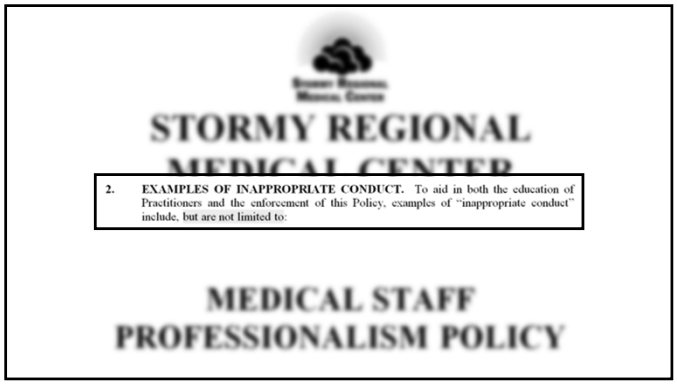

338

**Dr. X was sent a letter inviting him to meet with the MEC to discuss a reported incident.**

**The next day, he wrote a letter to the individual who filed the report, her husband, her children, and her elderly parents – and dismissed all of them from his group's medical practice.**

339

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340

**"My way of joking is to tell the truth. It's the funniest joke in the world."**

**- George Bernard Shaw**

341

# Dr. Cross

342

INVESTIGATIONS:
Whenever a serious question has been raised, or where collegial efforts have not resolved an issue… the Medical Executive Committee will review the matter in question, may discuss the matter with the individual, and will determine whether to conduct an investigation or direct that the matter be handled pursuant to another policy. An investigation will commence only after a determination by the Medical Executive Committee.

343

## *Peer Review of Employed Physicians:*

- **Involvement of Employer should be optional**
- **Leadership should decide if Employer involvement would be *helpful to the process***

344

**What is "the beginning" with Dr. Cross?**

345

**Dr. Cross:**

- **Several non-documented "cup of coffee" conversations**
- **One letter of guidance on behavioral expectations after sharp exchange with nurse**
- **One letter of reprimand after Starbucks "excursion" and computer rage**
- **Pending complaint alleges bullying and hostile work environment**

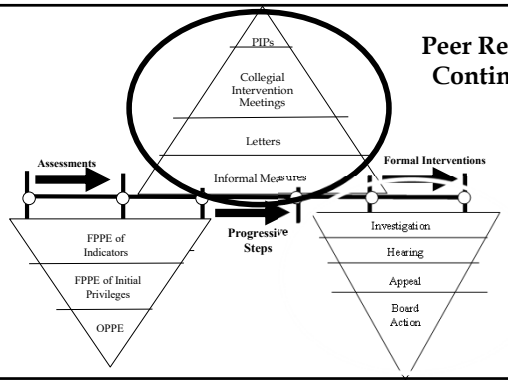
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**How Do You Decide Which *Review Process* to Follow?**

- **Practitioner history (pattern?)**
- **Previous intervention efforts?**
- **Number of incidents/concerns**
- **Severity of incidents/concerns**
- **Unique legal implications (sexual harassment, EMTALA, HIPAA violations, etc.)**

347

**Peer Review Continuum**




348

**When considering the process to use - is Dr. Cross an *employed* or *contracted* physician?**

***...If so, you may have additional options!***

349

*Remember –*
**Build in Early Notification to Facilitate Employer Awareness/Involvement.**

350

**What Does the Contract Say?**

- **...about employment duties/performance?**
- **...about termination (cause/ without cause?)**
- **...about effect of termination/removal on clinical privileges (co-terminous?)**
- **...about ability of Hospital to request removal of individual providers (contracts for services)?**

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**Options:**

| Exercise Contract Rights | Refer for Management Through Medical Staff Peer Review Process |
|---|---|
| • Quick and easy<br>• Employer can more easily impose conditions<br>• Also – often best option if ready to "cut loose" | • Long and arduous<br>• Also – creates good record, for protected class/ whistleblower situations<br>• Best when hoping to "fix and keep" practitioner |

352

*Reasonable outcome?*

353

**Keys for Successful Collegial Interventions**

- **Preparation!**
- **Preparation!**
- **Preparation!**
- **Preparation!**
- **Preparation!**
- **Preparation!**

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## Collegial Interventions

- **Gather any missing information**
  - ***Facts verified? Practitioner history reviewed? Previous interventions known?***
- **Develop a game plan *before* you meet with the physician**
  - ***Who is meeting? What's the goal? Likely physician perspective? Personality? Talking points developed - in advance!***
- **Provide adequate notice**

355

## Provide Adequate Notice

- **Date/time/location**
- **No lawyers!**
- **Description of concerns**
- **Consequences?**
- **Confidentiality/ Non-Retaliation Agreement**

356

**What if Dr. Cross responds to our letter notifying her of the meeting by demanding to see her *"secret"* file?**

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**Address Confidentiality and Retaliation**

- **Have a Policy on Access to Confidential Files**

358

**LEVELS OF ACCESS**

*Routine Credentialing and PPE/Peer Review Documents*

*Sensitive Internal Documents*

*Sensitive External Documents*

359

**Sensitive documents (internal or external):**

**Sensitive documents that would reveal the identity of the individual who prepared or submitted the document will be *summarized or redacted*.**

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## Address Confidentiality and Retaliation

- **Have a Policy on Access to Confidential Files**
- **Appointment made to review the file with Medical Staff Services and/or VPMO depending on whether routine or sensitive information**
- **Get the practitioner's signed agreement (if necessary)**

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## Collegial Intervention

- **Gather any missing information**
- **Develop a game plan before you meet with the physician**
- **Provide adequate notice**
- ***At the meeting*: Don't get thrown off track**

362

## No Matter What Happens: *Don't Get Thrown Off Track*

- **Remember the plan**
- **Focus on desired outcome**
- **Do not discuss the credentials and actions of others**
- **Stay focused on the inappropriate behavior, not its cause**

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**Be prepared for avoidance tactics**

364

## Avoidance Tactics are Common

- **Lawyers + threats to sue**
- **Threats to take their business elsewhere**
- **Refusal to engage (won't meet/ won't write)**
- **Whistleblower claims (targeted champion of quality)**
- **Discrimination claims (targeted class member)**
- **Red Herrings ("Dr. Doe does it too!")**
- **Excuses (health, "he made me do it!")**

365

## *Don't Get Thrown Off Track*

**What If...**

***"I'm sorry. I'll try to do better."***



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### Collegial Intervention

- **Gather any missing information**
- **Develop a game plan before you meet with the physician**
- **Provide adequate notice**
- **Don't get thrown off track**
- **Follow-up after the meeting**

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### Follow-Up After the Meeting

- **Look into any quality concerns raised by Dr. Cross – *but don't get thrown off track!***

368

### Follow-Up After the Meeting

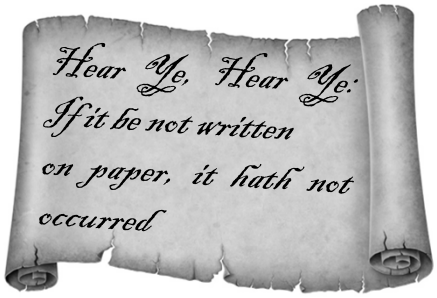
- **Look into any quality concerns raised by Dr. Cross**
- **Document!**

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**Documentation is increasingly important as you move up the peer review continuum!**

370




371

**Collegial Intervention Follow-Up Letter**

- **"Thank you for meeting with us"**
- **"We know these conversations can be difficult"**
- **"We appreciate your participation"**

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### Collegial Intervention Follow-Up Letter

- **"As you know, we discussed _____"**
- **"The Bylaws state _____"**
- **"You agreed _____"**
- **"As you are aware, this is the second/third/fourth time we have had to revisit these issues. This causes us great concern" (*if applicable*)**

373

### Collegial Intervention Follow-Up Letter

- **"I'm sure we do not need to mention this, but as a reminder, retaliation is not permitted" (*if applicable*)**
- **"A copy of this letter will be placed in your confidential peer review file"**
- **"You may submit a response, which will also be kept in your file"**

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# Thank you!

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