

Medical Staff Credentialing, Privileging and Peer Review

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Medical Staff Credentialing, Privileging and Peer Review

- The practice of allopathic medicine or osteopathic medicine is the practice of a learned profession.
 - The difference between a profession and a trade or craft is that professions are self-regulated.
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Medical Staff Credentialing, Privileging and Peer Review (cont.)

- The hospital does not possess the education, training and experience necessary to regulate the practice of allopathic medicine or osteopathic medicine.
 - The self-regulation of the practice of allopathic medicine and osteopathic medicine is the responsibility of the organized medical staff.
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Medical Staff Credentialing, Privileging and Peer Review (cont.)

- The organized medical staff is independent of the hospital governing body.
 - The relationship between the medical staff and the hospital governing body has existed since the late 1800s when the hospital industry began expanding based upon advances in treatment and technology.
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Medical Staff Credentialing, Privileging and Peer Review (cont.)

- The relationship between the medical staff and hospital governing body has been further defined by federal and state laws and regulations, which is the subject of our discussion today.
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Federal

- The Social Security Act - Medicare Conditions of Participation
 - Health Care Quality Improvement Act
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State

- Section 395.0191
 - Section 395.0193
 - Section 766.101
- 


Definitions

- Medical staff credentialing is the process through which a physician is granted status as a member of the medical staff.
 - Basically, medical staff membership is based upon the physician demonstrating the required education, training and character references to meet the minimum requirements for medical staff membership.
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Definitions (cont.)

- Hospitals may have different types of medical staff memberships that provide the physician with different rights and responsibilities. For example, a hospital may grant physicians active, courtesy, affiliated, honorary or inactive membership on the medical staff.
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Medical Staff Privileges

- The process through which a physician is authorized to perform specific procedures.
 - The physician must demonstrate the education, training and experience necessary to perform the procedure.
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Peer Review

- The process through which the quality of care provided by a physician is evaluated.
 - Peer Review is an ongoing process - privileges are renewed every two years through a formal process.
 - Peer Review may also be performed in response to a specific incident and may result in a formal hearing.
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Medicare Conditions of Participation - 42 C.F.R. Section 482.12(a)

- The governing body must determine in accordance with state law, which categories of practitioners are eligible candidates for appointment to the medical staff. At the very least, the medical staff must be composed of doctors of medicine and doctors of osteopathy.
- 


Medicare Conditions of Participation - 42 C.F.R. Section 482.12(a) (cont.)

- The governing body must appoint members of the medical staff after considering the recommendations of the existing members of the medical staff. Only the hospital governing body has the authority to grant medical staff membership and privileges to provide care in the facility.
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Medicare Conditions of Participation - 42 C.F.R. Section 482.12(a) (cont.)

- The governing body must assure that the medical staff has bylaws.
 - The governing body must approve the medical staff bylaws and rules and regulations.
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Medicare Conditions of Participation - 42 C.F.R. Section 482.12(a) (cont.)

- The governing body must ensure that the medical staff is accountable to the governing body for the quality of care provided to the patients. Incident Reporting.
 - The governing body must ensure that the criteria for selection to the medical staff are individual character, competence, training, experience and judgment.
- 


Medicare Conditions of Participation - 42 C.F.R. Section 482.12(a) (cont.)

- The governing body must ensure that under no circumstances is the granting of medical staff membership or professional privileges dependent solely upon certification, fellowship or membership in a specialty body or society.
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Accrediting Organizations


- Medicare does not have the time or manpower to inspect and regulate individual facilities.
 - Medicare has granted deeming authority to private organizations to accredit individual facilities.
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Accrediting Organizations (cont.)


- Joint Commission (16,000 hospitals)
 - Healthcare Facilities Accreditation Program (220 hospitals)
 - National Integrated Accreditation for Healthcare Organizations -DNV (international)
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Joint Commission Standard


MS.01.01.01

- The medical staff creates a written set of documents that describe its organization and structure. The medical staff bylaws, the medical staff rules and regulations, and the medical staff policies.
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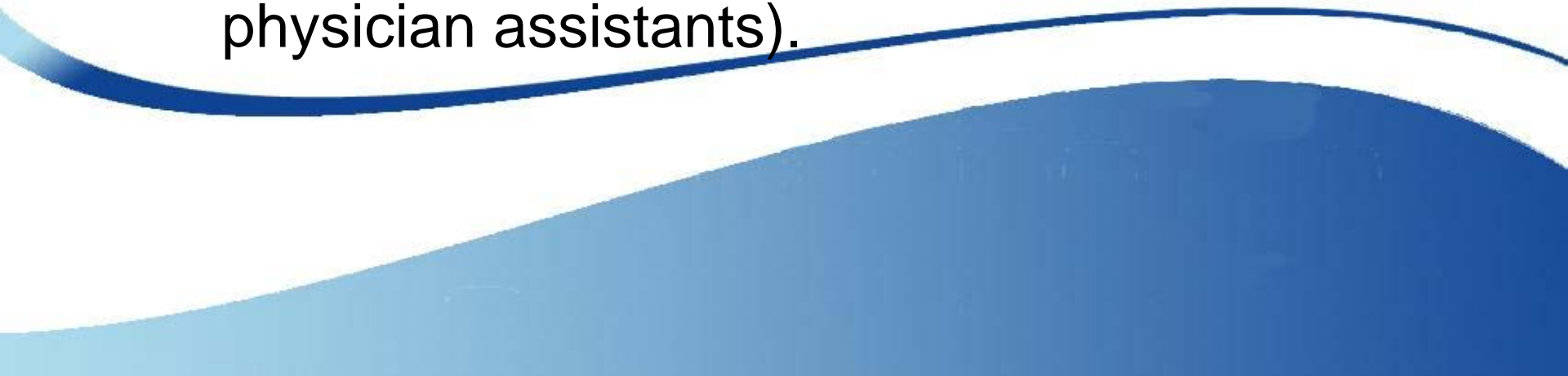
Joint Commission Standard MS.01.01.01 (cont.)

- The documents create a system of rights and responsibilities, and accountabilities between the organized medical staff and the governing body.
 - The documents must address self governance and accountability to the governing body.
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Joint Commission Standard MS.01.01.01 (cont.)

- The medical staff bylaws must contain the requirements for:
 - The structure of the medical staff.
 - The qualifications for appointment to the medical staff.
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Joint Commission Standard MS.01.01.01 (cont.)

- The medical staff bylaws must contain the requirements for: (cont.)
 - The process for privileging and re-privileging licensed independent practitioners, which may include the process for privileging and re-privileging other practitioners (ARNPs and physician assistants).
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Joint Commission Standard MS.01.01.01 (cont.)

- The medical staff bylaws must contain the requirements for: (cont.)
 - A statement of the duties and privileges related to each category of the medical staff (for example, active, courtesy). Not clinical privileges.
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Joint Commission Standard MS.01.01.01 (cont.)

- The medical staff bylaws must contain the requirements for: (cont.)
 - The requirements for completing and documenting medical histories and physical examinations. The medical history and physical examination are completed and documented by a physician, an oralmaxillofacial surgeon, or other qualified licensed individual in accordance with state law and hospital policy.
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Joint Commission Standard MS.01.01.01 (cont.)


- The medical staff bylaws must contain the requirements for: (cont.)
 - A description of those members of the medical staff who are eligible to vote (inactive and honorary usually do not vote).
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Joint Commission Standard MS.01.01.01 (cont.)


- The medical staff bylaws must contain the requirements for: (cont.)
 - The process, as determined by the organized medical staff and approved by the governing body, by which the organized medical staff selects and/or elects and removes the medical staff officers.
 - A list of all the officer positions for the medical staff.
- 

Joint Commission Standard


MS.01.01.01 (cont.)

- The medical staff bylaws must contain the requirements for: (cont.)
 - The medical executive committee's function, size, and composition, as determined by the organized medical staff and approved by the governing body; the authority delegated to the medical executive committee by the organized medical staff to act on the medical staff's behalf; and how such authority is delegated or removed.
- 


Joint Commission Standard MS.01.01.01 (cont.)

- The medical staff bylaws must contain the requirements for: (cont.)
 - The process, as determined by the organized medical staff and approved by the governing body, for selecting and/or electing and removing the medical executive committee members.
- 


Joint Commission Standard MS.01.01.01 (cont.)

- The medical staff bylaws must contain the requirements for: (cont.)
 - That the medical executive committee includes physicians and may include other practitioners and any other individuals as determined by the organized medical staff.
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Joint Commission Standard MS.01.01.01 (cont.)

- The medical staff bylaws must contain the requirements for: (cont.)
 - That the medical executive committee acts on the behalf of the medical staff between meetings of the organized medical staff, within the scope of its responsibilities as defined by the organized medical staff.
- 


Joint Commission Standard MS.01.01.01 (cont.)

- The medical staff bylaws must contain the requirements for: (cont.)
 - The process for adopting and amending the medical staff bylaws.
 - The process for adopting and amending the medical staff rules and regulations, and policies.
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Joint Commission Standard MS.01.01.01 (cont.)

- The medical staff bylaws must contain the requirements for:
 - The process for credentialing and re-credentialing licensed independent practitioners, which may include the process for credentialing and re-credentialing other practitioners.
- 


Peer Review

- Peer Review is an ongoing process conducted by the medical staff.
 - Peer Review may also be conducted on an individual basis and may become adversarial.
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Peer Review (cont.)

- Self-Regulation requires members of the medical staff to examine the care provided by their peers and may require the medical staff to take adverse action against a peer. This is the area where legislation in the last 20 years has further defined the relations between the medical staff, the governing body and the individual practitioner.
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Peer Review (cont.)

- Most individuals, including professionals, do not want to take action against their peers.
 - Federal and Florida laws provide protections for physicians participating in peer review.
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Peer Review - Federal Law

- Health Care Quality Improvement Act
 - The Health Care Quality Improvement Act sets forth four requirements to obtain immunity for physicians and institutions participating in a peer review activity, which is called a “professional review action” in the HCQIA.
 - The HCQIA provides immunity from money damages to participants in the peer review process.
- 


Peer Review - Federal Law (cont.)

- HCQIA immunity applies to peer review action that was taken:
 1. in the reasonable belief that the action is in the furtherance of quality health care;
 2. after a reasonable effort to obtain the facts of the matter;
- 


Peer Review - Federal Law (cont.)

- HCQIA immunity applies to peer review action that was taken: (cont.)
 3. after adequate notice and hearing procedures are afforded to the physician involved or after such other procedures are enacted as are fair to the physician under the circumstances; and
- 


Peer Review - Federal Law (cont.)

- HCQIA immunity applies to peer review action that was taken: (cont.)
 4. in the reasonable belief that the action was warranted by the facts known after such reasonable effort to obtain facts and after meeting the requirements of paragraph (3) above.
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Peer Review - Federal Law (cont.)

- Adversarial peer review must be conducted in accordance with the medical staff bylaws, rules and regulations and policies.
 - HCQIA affords immunity from suit and from monetary damages if due process is provided. Poliner v. Texas Health System, 537 F.3d 368 (5th Cir. 2008). \$33m judgment for physician overturned based upon HCQIA immunity.
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Florida Laws

- Section 395.0191(7), Florida Statutes.
 - There shall be no monetary liability on the part of, and no cause of action for injunctive relief or damages shall arise against, any licensed facility, its governing board or governing board members, medical staff, or disciplinary board or against its agents, investigators, witnesses, or employees, or against any other person, for any action arising out of or related to carrying out the provisions of this section, absent intentional fraud.
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Florida Laws (cont.)

- Section 395.0193(5), Florida Statutes.
 - There shall be no monetary liability on the part of, and no cause of action for damages against, any licensed facility, its governing board or governing board members, peer review panel, medical staff, or disciplinary body, or its agents, investigators, witnesses, or employees; a committee of a hospital; or any other person, for any action taken without intentional fraud in carrying out the provisions of this section.
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Florida Laws (cont.)

- Section 766.101, Florida Statutes
 - (2) A medical review committee of a hospital or ambulatory surgical center or health maintenance organization shall screen, evaluate, and review the professional and medical competence of applicants to, and members of, medical staff. As a condition of licensure, each health care provider shall cooperate with a review of professional competence performed by a medical review committee.
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Florida Laws (cont.)

- (3)(a) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any member of a duly appointed medical review committee, or any health care provider furnishing any information, including information concerning the prescribing of substances listed in s. 893.03(2), to such committee, or any person, including any person acting as a witness, incident reporter to, or investigator for, a medical review committee, for any act or proceeding undertaken or performed within the scope of the functions of any such committee if the committee member or health care provider acts without intentional fraud.

Florida Cases

- Cedars healthcare Group Ltd, et al. v. Mehta, M.D., 16 So. 3d 914 (Fla. 3d DCA 2009). All physician's claims against hospital and medical staff dismissed - physician did not plead intentional fraud with particularity.
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Florida Cases (cont.)

- Lawnwood Medical Center, Inc. v. Sadow, M.D., 43 So. 3d 710 (Fla. 4th DCA 2010). Suit allowed because hospital did not follow its own bylaws, \$5m in punitive damages for defamation upheld.


“Practical Matters the Physician Must Know When Confronted by a Peer Review Proceeding”




“Peer Review Hearing” a/k/a

- Privileges Hearing
 - Fair Hearing
 - Medical Review Hearing
 - Credentials Hearing
 - Medical Staff Hearing
 - Disciplinary Hearing
 - Credentials Committee Hearing
 - Ad Hoc Committee Hearing
- 


General Truths About Peer Review Hearings

1. The process is different at every hospital.
 - Medical staff bylaws are different.
 - Hearing procedures are different.
 - Attorneys may not be able to participate.
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General Truths About Peer Review Hearings

1. The process is different at every hospital.
(cont.)
 - Hearing may not be allowed for certain types of adverse actions.
 - Burden may be placed on the physician.
- 


General Truths About Peer Review Hearings

1. The process is different at every hospital.
(cont.)
 - Physician may have to pay for certain part of it. (Example: the court reporter)
 - Investigation and appeals processes may be different.
- 

General Truths About Peer Review Hearings

2. The hospital's resources are unlimited.
 - Use of certain experienced companies and organizations with hospital "leanings."
 - Use of certain law firms which specialize in doing nothing but hospital representation.
- 


General Truths About Peer Review Hearings

2. The hospital's resources are unlimited. (cont.)
 - Hospital's personnel and attorneys do all of the work and provide all of the support for the medical staff and the peer review committee.
 - The hospital/medical staff has unlimited access to hospital employees and documents.
- 

General Truths About Peer Review Hearings

3. You need legal representation from the time you hear a complaint has been filed or that a matter is being investigated.


Incorrect Attitudes:

- “I’m going to wait and see what happens.”
 - “I’m going to wait and see if charges are filed.”
- 


General Truths About Peer Review Hearings

3. You need legal representation. (cont.)

Incorrect Attitudes:

- “My friend is president of the medical staff and he told me he would make this all go away.”
 - “I was one of the first physicians at that hospital. They’re not going to do anything to me.”
- 

General Truths About Peer Review Hearings


4. You must be represented by an experienced, knowledgeable healthcare attorney. The hospital will be represented by an attorney experienced in peer review.
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General Truths About Peer Review Hearings


5. The “nonconformist” or “trouble maker” will be forced into a hearing situation. The guy everyone likes won’t be.




General Truths About Peer Review Hearings

6. If hospital administration (including nursing staff) is out to get you, you will be gotten.
 - If the hospital administration identifies you as a “bad physician,” “trouble maker” or “disruptive physician” you are dead.
 - Your prior cases may be reviewed and scrutinized retrospectively for problems that were “overlooked.”
- 


General Truths About Peer Review Hearings

6. If hospital administration (including nursing staff) is out to get you, you will be gotten. (cont.)
 - Every poor result or outcome will be scrutinized.
 - You will be written up for everything that happens.
 - You will be written up for incidents that others are never written up for.
- 

General Truths About Peer Review Hearings

6. If hospital administration (including nursing staff) is out to get you, you will be gotten. (cont.)
 - You will be written up for violations of hospital policies that others are not written up for.
 - Incidents where you were just “joking around” will be written up as “sexual harassment.”
- 

General Truths About Peer Review Hearings

6. If hospital administration (including nursing staff) is out to get you, you will be gotten. (cont.)
 - Any patient complaints over insignificant matters that would previously have been handled in a routine way, will now be treated as significant events.
- 

General Truths About Peer Review Hearings

7. You may be offered an opportunity to resign prior to the commencement of the investigation.



General Truths About Peer Review Hearings

8. You probably will reject the offer to resign instead of hiring an experienced healthcare attorney to help you assess the situation.




General Truths About Peer Review Hearings

9. There are many options and alternatives available early in the process, but only an experienced healthcare attorney will know them.

General Truths About Peer Review Hearings

9. Options & alternatives may include: (cont.)

- Agreement not to admit, treat, or perform certain procedures
 - Taking a leave of absence (LOA)
 - Assessment by independent organization
- 


General Truths About Peer Review Hearings

9. Options & alternatives may include: (cont.)

- Agreement to undertake additional training.
- Resignation (prior to any proceedings being commenced).
 - Note: Resignation while an investigation is pending is always bad.


General Truths About Peer Review Hearings

10. A “fair hearing” is not equal.

- The resources are stacked in favor of the hospital/administration.
 - Peer review proceedings are very expensive (for all parties).
- 


General Truths About Peer Review Hearings

10. A “fair hearing” is not equal. (cont.)

- There may be external motivations, other than quality (especially in cases of tenured professors senior physicians and minorities).
 - The burden can be and may be placed on you to prove you are currently clinically skilled and competent.
- 


General Truths About Peer Review Hearings

10. A “fair hearing” is not equal. (cont.)

- Economics & economic motivation
 - Proceedings initiated by your competitors.
 - Complaints made by your competitors.
 - Note: Poliner tried this unsuccessfully.
- 


General Truths About Peer Review Hearings

10. A “fair hearing” is not equal. (cont.)

- Economics & economic motivation (cont.)
 - You allegedly bring in too many cases (e.g., your cases monopolize the operating room or prime O.R. time).
 - You bring in the wrong cases (e.g., too many Medicaid, indigent).
- 


General Truths About Peer Review Hearings

10. A “fair hearing” is not equal. (cont.)

- Economics & economic motivation (cont.)
 - One medical group is allowed to control an entire department (in absence of an exclusive contract).
 - You are an “overutilizer” (you use too many resources, overtime for hospital staff).
- 

General Truths About Peer Review Hearings

10. A “fair hearing” is not equal. (cont.)

- Economics & economic motivation (cont.)
 - You “cherry pick” the best cases (e.g., the non-indigent/non-Medicaid cases).
 - You refuse to participate in managed care plans with the hospital & other physicians.
- 


General Truths About Peer Review Hearings

10. A “fair hearing” is not equal. (cont.)

- If suspended pending investigation/hearing and the suspension goes over 30 days, then a report to the NPDB is required.
 - Report to NPDB = Report to State Medical Board/Licensing Authority

General Truths About Peer Review Hearings

10. A “fair hearing” is not equal. (cont.)


- You may find the same individual(s) on:
 - The Investigation Committee
 - The Peer Review/Hearing Committee
 - The Appeals Committee
 - The Board of Directors/Trustees
- 

General Truths About Peer Review Hearings

10. A “fair hearing” is not equal. (cont.)


- Gag Orders and lawsuits
 - You may be gagged and not allowed to talk to witnesses or potential witnesses in order to prepare your case.

General Truths About Peer Review Hearings

11. It does not matter what the peer review or fair hearing committee recommends.
- The Board of Directors/Trustees may overrule the conclusions and recommendations of any peer review hearing (with the input of hospital admin & hospital attorney).
- 


General Truths About Peer Review Hearings

11. It does not matter...(cont.)


- The Board of Directors can and will. . .
 - Peer review committee must make solid, unequivocal findings supported by evidence.
 - Peer review comm. must make strong, precise, well-reasoned conclusions & recommendations.
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General Truths About Peer Review Hearings

11. It does not matter... (cont.)


- Be sure you ask the peer review committee to do this.
 - You (or your attorney) should present to them a proposed or recommended report.
- 

General Truths About Peer Review Hearings

12. Those who judge you may not be your peers.
- They may all be different specialties from yours.
 - None may be surgeons.
 - (Attempt to have the hearing committee appointed by your medical specialty association.)
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General Truths About Peer Review Hearings

13. The only rights you have are those in your medical staff bylaws (unless you are at a “public hospital” or in California).




General Truths About Peer Review Hearings

14. The consequences to you of an adverse outcome will be lifelong and career altering.

- Consequences:
 - NPDB Reports
 - On file for fifty (50) years.
 - Very difficult to get corrected or voided.
 - Reported to your state medical board at same time.


General Truths About Peer Review Hearings

14. The consequences to you of an adverse outcome will be lifelong and career altering.
(cont.)

- State licensure action (in every state in which you have a license) will probably result.
 - Medical specialty associations will commence proceedings if they learn of it.
- 

General Truths About Peer Review Hearings


14. The consequences to you of an adverse outcome will be lifelong and career altering.
(cont.)

- It is difficult for you to get clinical privileges at another hospital.
 - You may lose medical malpractice insurance coverage.
- 


General Truths About Peer Review Hearings

14. The consequences to you of an adverse outcome will be lifelong and career altering.

(cont.)


- You may be dropped from the panels of many HMOs, managed care plans, and insurers.
 - Contracts with employers and insurers may require you to report this (so you can be terminated).
- 

General Truths About Peer Review Hearings


15. Once a peer review proceeding is commenced, it's not just going to go away, and none of your friends on the Executive Committee or Board of Trustees will make it go away.
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General Truths About Peer Review Hearings

16. Once a peer review proceeding is commenced against you, you will be in the most important fight of your career and possibly your life.




General Truths About Peer Review Hearings

17. You have no power, no control, and no leverage.
- You must get some by retaining an experienced healthcare attorney.
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General Truths About Peer Review Hearings

17. You have no leverage. Get some: (cont.)


- Begin preparing early and prepare seriously.
 - Get experts. Credible, established experts.
- 

General Truths About Peer Review Hearings


18. Defending yourself is expensive, but not defending yourself is more expensive.




General Truths About Peer Review Hearings

19. If you think you will be successful in suing after the fact in court to have an incorrect result overturned, you are probably wrong.
- Intentional fraud
- 


Recommendations

1. You must ensure that your medical staff bylaws contain true “due process” rights for accused physicians.
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Recommendations

2. The medical staff should never allow hospital administration (or the hospital parent corporation) to force them to adopt bylaws amendments that lessen due process protections.
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Recommendations

3. The peer review committee (fair hearing committee) should have its own independent legal advisor in all hearings. This must be someone other than from the law firm which represents the hospital.
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Recommendations

4. You must treat the peer review process like you would a civil trial against you for medical malpractice.
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Recommendations

5. If the subject of a peer review proceeding, immediately retain experienced, knowledgeable healthcare counsel to represent you.
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Recommendations

6. Immediately retain a litigation attorney who has experience in this type of litigation. File suit immediately, if the matter is not proceeding fairly.
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