

A man with a beard and a brown cowboy hat stands in a desert landscape. He is wearing a brown poncho over a light-colored shirt. The background shows a dry, hilly terrain under a clear sky.

**GS38 The Peer Review
Process: The Good, The Bad,
and The Ugly**

**The Private Practice
Physician's View**

-George F. Indest III

**GEORGE F. INDEST III,
J.D., M.P.A., LL.M.**

THE HEALTH LAW FIRM

1101 Douglas Avenue
Altamonte Springs, FL 32714

Telephone: (407) 331-6620

Telefax: (407) 331-3030

Website:

www.thehealthlawfirm.com

www.healthattorneys.com



**In the next fifteen minutes we
have to create enough confusion
to get out of here alive."**

***-Smith [Clint Eastwood]
Where Eagles Dare***

Subtitle:

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



**"If you want to play the
game, you'd better know the
rules...."**

***-Inspector Harry Callahan
[Clint Eastwood]
The Dead Pool***

TERMINOLOGY

“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

The “Private Practice Physician” We are Discussing

1. Not a Hospital employee.
2. Does not have a direct contract with the Hospital.
3. Not a member of a group with an exclusive contract.
4. Does have clinical privileges at the Hospital.

Two components of a physician's medical staff relationship in a Hospital (often used interchangeably & incorrectly):

1. "Clinical Privileges"

- Based on proven clinical skills and competence to perform certain defined procedures in the hospital

2. Medical Staff Membership

- "Good citizenship" issues

Assuming the Private Practitioner's Perspective:

The Good = The Physician

The Bad = The Hospital Staff
and Medical Staff
Leadership

The Ugly = The process, and
especially the
litigation process

Indest's Maxims for Peer Review

1. The process is different in every hospital

“What are you talking about, ‘routine?’ There’s no routine.”



-Robert [Clint Eastwood]

The Bridges of Madison County

Indest's Maxims for Peer Review

1. The process is different in every hospital
 - Medical Staff Bylaws are different
 - Hearing procedures are different
 - Attorneys may not be allowed to participate

Indest's Maxims for Peer Review

1. The process is different in every hospital
 - Hearings may not be allowed for certain types of adverse actions
 - Burden may placed on the physician

Indest's Maxims for Peer Review

1. The process is different in every hospital
 - Physician may have to pay for certain parts of it like the court reporter
 - Investigation and appeals processes may be different

Indest's Maxims for Peer Review

2. The Hospital's resources are unlimited.
 - Speaks for itself

Additionally:

- Use of certain experienced companies and organizations with hospital "leanings"
- Use of certain law firms which specialize in doing nothing but hospital representation

Indest's Maxims for Peer Review

2. The Hospital's resources are unlimited.
 - Hospital's personnel and Hospital's attorneys do all of the work and provide all of the support for the Medical Staff and the peer review committee.

Indest's Maxims for Peer Review

2. The Hospital's resources are unlimited.
 - The Hospital/Medical Staff has unlimited access to Hospital employees and documents

Indest's Maxims for Peer Review

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

Indest's Maxims for Peer Review

3. You need legal representation from the time of the first rumor.

Incorrect Attitudes:

"I'm going to wait and see what happens."

"I'm going to wait and see if charges are filed."

**"...You've got to ask yourself
one question: 'Do I feel
lucky?' Well, do ya, punk?"**

***-Inspector Harry Callahan
[Clint Eastwood]***

Dirty Harry

Clint Eastwood

Indest's Maxims for Peer Review

3. You need legal representation from the time of the first rumor.

Incorrect Attitudes:

"My friend is president of the Medical Staff and he told me he would make this all go away."

Indest's Maxims for Peer Review

3. You need legal representation from the time of the first rumor.

Incorrect Attitudes:

"There are plenty of other physicians on that committee who have had far worse outcomes than mine. They can't say anything bad about me."

Indest's Maxims for Peer Review

3. You need legal representation from the time of the first rumor.

Incorrect Attitudes:

"I was one of the first physicians at that hospital. They're not going to do anything to me." (or any variation of the foregoing)

A close-up shot from the movie Sudden Impact. Clint Eastwood, as Inspector Harry Callahan, is in the foreground, looking off-camera with a serious, intense expression. He is wearing a dark, textured jacket. In the background, another man with dark hair and a mustache is looking down, his face partially obscured by a hand in the foreground. The lighting is dramatic, highlighting the textures of the clothing and the intensity of the scene.

**"You're a legend in your
own mind."**

***-Inspector Harry Callahan
[Clint Eastwood]
Sudden Impact***

Indest's Maxims for Peer Review

4. You must be represented by an experienced, knowledgeable healthcare attorney. The hospital will be.

"A man alone is easy prey."



-Preacher [Clint Eastwood]

Pale Rider

Indest's Maxims for Peer Review

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

Indest's Maxims for Peer Review

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.

Indest's Maxims for Peer Review

6. If hospital administration (including nursing staff) is out to get you, you will be gotten.
 - Your prior cases may be reviewed and scrutinized retrospectively for problems that were “overlooked.”
 - Every poor result or outcome will be scrutinized.

Indest's Maxims for Peer Review

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

Indest's Maxims for Peer Review

6. If hospital administration (including nursing staff) is out to get you, you will be gotten.
 - 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.”

Indest's Maxims for Peer Review

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

"Sometimes trouble just follows a man."

***-Josey Wales [Clint Eastwood]
The Outlaw Josey Wales***

Indest's Maxims for Peer Review

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

A close-up shot of Clint Eastwood as Manco, looking slightly to the right with a serious expression. In the background, another man in a vest and shirt stands near a stone wall in a desert setting.

**"I guess I better leave
before you go and lose your
temper."**

***-Manco [Clint Eastwood]
For a Few Dollars More***

Indest's Maxims for Peer Review

8. But you will foolishly turn down the opportunity to resign.

**"Well, right now I don't
feel too agreeable."**

***-Stranger [Clint Eastwood]
High Plains Drifter***



Indest's Maxims for Peer Review

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

**"A man's got to know his
limitations."**

A photograph of Clint Eastwood as Inspector Harry Callahan from the movie Magnum Force. He is wearing a brown jacket over a white shirt and is holding a black revolver. The background shows a clear blue sky, a body of water, and some hills.

***-Inspector Harry Callahan
[Clint Eastwood]
Magnum Force***

Indest's Maxims for Peer Review

9. Options & alternatives may include:
 - Agreement not to admit, treat, or perform certain procedures
 - Taking a leave of absence (LOA)
 - Assessment by independent organization (P.A.C.E., C.C.A.T., etc.)

Indest's Maxims for Peer Review

9. Options & alternatives may include:
 - Agreement to undertake additional training.
 - Resignation (prior to any proceedings being commenced.)

Indest's Maxims for Peer Review

10. A “fair hearing” is not fair.

**"I'm afraid you've misjudged
me."**

***-Inspector Harry Callahan
[Clint Eastwood]***

Magnum Force

Indest's Maxims for Peer Review

10. A "fair hearing" is not fair.

- The resources are stacked in favor of the hospital/ administration.
- Peer review proceedings are very expensive (for all parties).
- The burden can be and may be placed on you to prove you are currently clinically skilled and competent.

Indest's Maxims for Peer Review

10. A "fair hearing" is not fair.

- There may be external motivations, other than quality (Especially in cases of tenured professors senior physicians and minorities).
- Economics & economic motivation

Indest's Maxims for Peer Review

10. A "fair hearing" is not fair.
 - Economics & economic motivation:
 - Proceedings Initiated by your competitors
 - Complaints made by your competitors
 - You allegedly bring in too many cases (e.g., your cases monopolize the operating room or prime O.R. time)

Indest's Maxims for Peer Review

10. A "fair hearing" is not fair.
 - Economics & economic motivation:
 - You bring in the wrong cases (e.g., too many Medicaid, indigent)
 - One medical group is allowed to control an entire department (in absence of an exclusive contract).

Indest's Maxims for Peer Review

10. A "fair hearing" is not fair.

– Economics & economic motivation:

- You are an "overutilizer" (you use too many resources, overtime for hospital staff, etc.)
- You "cherry pick" the best cases (e.g., all of the non-indigent/non-Medicaid cases)
- You refuse to participate in managed care plans with the hospital & other physicians

Indest's Maxims for Peer Review

10. A "fair hearing" is not fair.

- 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

Indest's Maxims for Peer Review

10. A "fair hearing" is not fair.

- You may find the same individual(s) on:
 - a. The Investigation Committee
 - b. The Peer Review/Hearing Committee
 - c. The Appeals Committee
 - d. The Board of Directors/Trustees
(Responsible for final recommendations)

Indest's Maxims for Peer Review

10. A "fair hearing" is not fair.

Gag Orders and law suits

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

Indest's Maxims for Peer Review

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

Indest's Maxims for Peer Review

11. It does not matter. . . .
 - 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 and recommendations.

Indest's Maxims for Peer Review

11. It does not matter. . . .
 - The Board of Directors can and will. . . .
 - Be sure you ask the peer review committee to do this.
 - You (or your attorney) should present to them a proposed or recommended report.

Indest's Maxims for Peer Review

12. Those who judge you are not 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.)

Indest's Maxims for Peer Review

13. The only rights you have are those in your Medical Staff Bylaws (unless you are at a "public hospital" or in California)

Indest's Maxims for Peer Review

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

Consequences:

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

Indest's Maxims for Peer Review

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

Indest's Maxims for Peer Review

14. The consequences to you of an adverse outcome will be lifelong and career altering.
 - You will unlikely ever get clinical privileges at another hospital.
 - You may lose medical malpractice insurance coverage.
 - 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)

Indest's Maxims for Peer Review

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 is going to make it go away.

A close-up, profile shot of Clint Eastwood as Inspector Harry Callahan. He is wearing a light-colored, short-sleeved button-down shirt. He has a serious, intense expression and is holding a black revolver in his right hand, pointing it upwards and to the right. The background is a soft-focus outdoor setting with green foliage and a bright light source, possibly the sun, creating a hazy atmosphere.

**"We're not just gonna let
you walk outta here."**

***-Inspector Harry Callahan
[Clint Eastwood]
Sudden Impact***

Indest's Maxims for Peer Review

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.

Indest's Maxims for Peer Review

17. You have no power, no control, and no leverage.

– You must get some.

**"When you have to shoot...
shoot.... Don't talk."**



-Tuco [Eli Wallach]

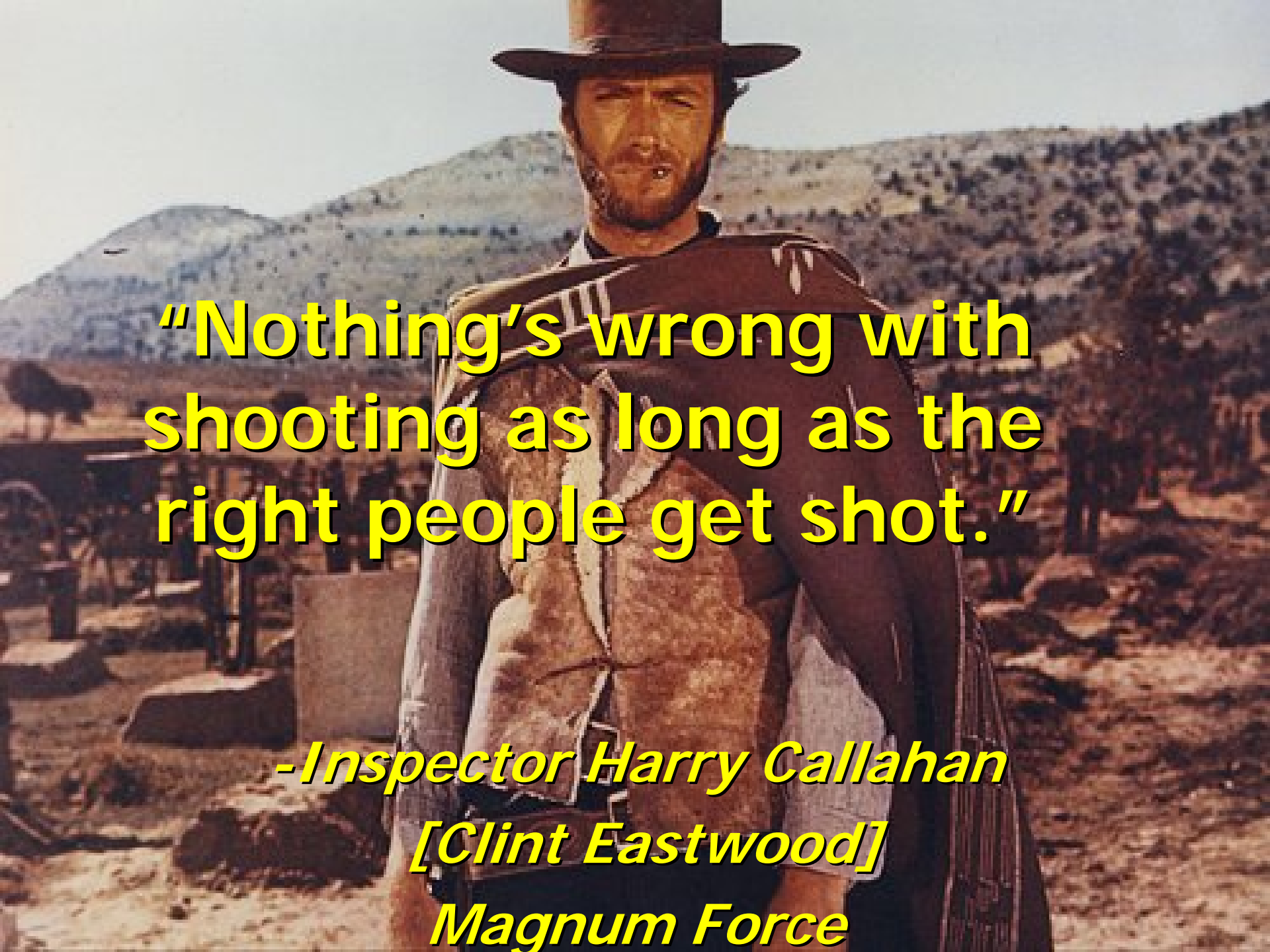
The Good, the Bad, and the Ugly

Indest's Maxims for Peer Review

17. You have no . . . leverage. Get some:
 - Assemble an experienced legal team.
 - Begin preparing early and prepare seriously.
 - Get experts. Credible, established experts.

Indest's Maxims for Peer Review

17. You have no . . . leverage. Get some:
 - Sue the hospital and certain individuals involved in the proceedings, circumstances permitting.

A full-body shot of Clint Eastwood as Inspector Harry Callahan. He is wearing a dark brown cowboy hat, a dark brown coat with a light-colored fur collar, and a dark vest over a light-colored shirt. He is standing in a desert landscape with mountains in the background. The text is overlaid on the image.

“Nothing’s wrong with shooting as long as the right people get shot.”

-Inspector Harry Callahan

[Clint Eastwood]

Magnum Force

Indest's Maxims for Peer Review

17. You have no . . . Leverage. Get some:

- Consider “political” or “public relations” avenues
 - Timing of funding for critical projects, buildings, or programs.
 - Letters to other physicians on medical staff.
 - Letters to patients.

Indest's Maxims for Peer Review


17. You have no . . . leverage. Get some:
 - Consider “political” or “public relations” avenues
 - Full-page newspaper ads.
 - Get your state or county medical society involved.
 - Have a friendly state legislator introduce a bill to require due process in all hospital adverse actions.

Indest's Maxims for Peer Review

17. You have no power, no control, and no leverage.
 - Have a friendly state legislator introduce a bill to require due process in all hospital adverse actions.

Indest's Maxims for Peer Review

18. You are going to have to spend lots of money to properly defend yourself and you will not get it back if you win.

A still from the movie "Thunderbolt and Lightfoot" showing Clint Eastwood as Thunderbolt. He is wearing sunglasses and a blue and white checkered shirt, sitting in the driver's seat of a car with red leather seats. He is looking towards the passenger seat where another man is sitting. The background shows a desert landscape with mountains.

**"Sometimes you have to pay
for your pleasure."**

***-Thunderbolt [Clint Eastwood]
Thunderbolt and Lightfoot***

Indest's Maxims for Peer Review

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.

Indest's Maxims for Peer Review

20. However, court litigation can give you the leverage you need to obtain a favorable outcome on the peer review proceeding.

Recommendations

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

**"Well, I'm broken up about
that man's rights."**

Clint Eastwood

***-Inspector Harry Callahan
[Clint Eastwood]***

Dirty Harry

Recommendations

2. You should attempt to have state legislation passed that requires all hospital to afford physicians certain due process rights in peer review proceeding similar to what California has done.

Recommendations

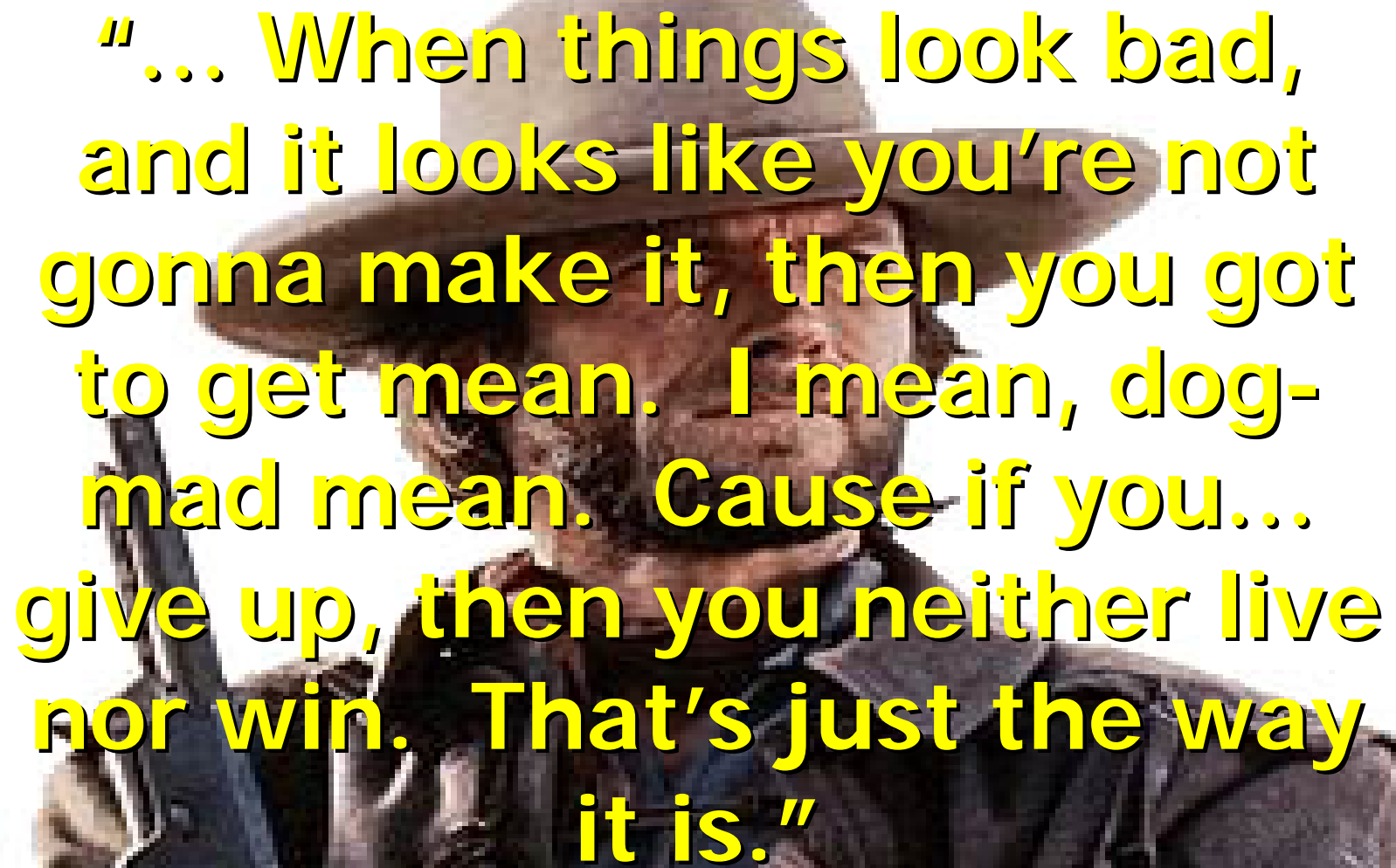
3. The Medical Staff should never allow hospital administration (or the hospital parent corporation) to force them to adopt bylaws amendments that lessen due process protections.

Recommendations

4. 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.

Recommendations

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

A close-up photograph of Clint Eastwood as the character Josey Wales. He is wearing a brown hat, a dark vest over a blue shirt, and a brown leather jacket. He has a serious expression and is looking slightly to the right. The background is plain white.

**"... When things look bad,
and it looks like you're not
gonna make it, then you got
to get mean. I mean, dog-
mad mean. Cause if you...
give up, then you neither live
nor win. That's just the way
it is."**

-Josey Wales [Clint Eastwood]

The Outlaw Josey Wales

Recommendations

6. If the subject of a peer review proceeding, immediately retain experienced, knowledgeable health care counsel to represent you.

Recommendations

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

Recommendations

8. If your hearing procedures/peer review procedures are not in your Medical Staff Bylaws, make sure that both documents state that the Hearing Procedures have the same force and effect as the Medical Staff Bylaws.

A still from the movie 'The Dead Pool' featuring Clint Eastwood as Inspector Harry Callahan. He is wearing a grey suit, a light blue shirt, a dark tie, and dark sunglasses. He is looking down and to the right, holding a small, dark, circular object in his right hand. Another man in a suit is partially visible on the right side of the frame, looking towards Callahan. The background shows a building with large windows and some greenery.

**"Opinions are like assholes.
Everybody has one."**

***-Inspector Harry Callahan
[Clint Eastwood]***

The Dead Pool

**GEORGE F. INDEST III,
J.D., M.P.A., LL.M.**

THE HEALTH LAW FIRM
220 E. Central Pkwy., Suite 2030
Altamonte Springs, FL 32701
Telephone: (407) 331-6620
Telefax: (407) 331-3030
Website:
www.thehealthlawfirm.com
www.healthattorneys.com