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Common Sense Guidelines for Hospital-Physician Peer Review

By Ronald Ravikoff

Hospitals regularly engage in Peer Review of their physicians. If a physician has exhibited problems or has otherwise run afoul of the hospital's rules and regulations, it is likely that the physician will be subject to the hospital's Peer Review process to address the physician's continued privileges on the medical staff.

Effective Peer Review is important to a hospital's efforts to continually improve patient safety and quality of care. The fairness, and appearance of fairness, of the hearing is critical to an effective Peer Review. Peer Review hearings are usually before a panel of physicians and presided over by a hearing officer. The hearing officer rules on procedural and evidentiary matters, but the physician panel makes the final recommendation.

This article will discuss some of the practical considerations for the hospital when navigating the Peer Review hearing process.

CONFIDENTIALITY:

All parties, particularly the panel, should be reminded repeatedly, in writing, of the need for confidentiality and not to engage in "water cooler" talk.

THE BYLAWS:

It goes without saying, the hospital must have well drafted bylaws in place and they have been continually reviewed by an attorney with expertise in the area. Then make sure the bylaws are followed. Failure to follow the bylaws precisely invites claims of bias in the process.

Notice:

The affected physician should have detailed notice of the nature of the issues to be heard and the reasons for the hearing. The hearing should be set for a mutually agreeable time and place giving the physician adequate time to prepare a defense.

Representation By Counsel:

It is in the hospital's best interest to see to it that the physician is well represented by competent counsel. This will militate against claims of unfairness later.

Appointment of the Hearing Officer:

The Hearing Officer should have no connection to any of the participants or witnesses, but be knowledgeable about conducting evidentiary hearings and be well

versed in health-care issues. The hearing office must avoid any ex parte communications.

THE PANEL:

The following criteria must be considered when picking the panel:

- **No Competitors.** The makeup of the panel is critical for the appearance of, and actual, impartiality. The panel should not include any competitors of the subject physician. However, sometimes, physicians who have a certain expertise maybe needed. If the physician is undergoing a hearing for certain non-clinical behavior, panel members don't have to be in the same specialty. However, if the physician is undergoing a hearing involving patient care, the hospital should appoint at least a few panel members who practice in the same or similar specialty, but are not direct competitors.
- **Allow Objections;** The bylaws should provide an opportunity for the subject physician to object to any proposed panel member for good cause.
- **One or More Panel Members to be Selected by Physician:** The bylaws should provide for the opportunity for the subject physician to select some portion of the panel.
- **No Prior Involvement:** Physicians who have a direct involvement with issues to be heard should, of course be excluded. However, those physicians who may have merely heard about the issue do not necessarily fall into that category. A good set of bylaws will address this issue ahead of time.
- **No Personal or Business Connection:** Prospective panel members should be questioned about personal feelings, positive or negative, toward the subject physician. Likewise, hospitals should also avoid appointing members that have a referral agreement with the physician.
- **Well Regarded:** For the recommendation to carry the necessary weight, the hospital should pick panel members who are well regarded within the hospital and perceived as professional and fair.

CONDUCT OF THE HEARING:

The hearing should be conducted with formality. Counsel should be required to resolve all evidentiary issues prior to the hearing or bring them to the hearing officer before

hand. Parties should be given the opportunity for opening statements. The hearing officer should conduct the hearing as a judge would and require objections and rulings. The parties should be given the opportunity for direct, cross and redirect questions. The panel should be allowed to ask questions as well. Rules of Evidence and Rules of Procedure need not be strictly adhered to unless specified in the bylaws. The goal for the hearing officer is to ensure a fair hearing. Given that the panel members are busy and usually volunteer medical staff members, written closings for later review by the panel are usually more desirable than an oral closing. A court reporter will assist the parties and the panel in preparing and reviewing the closing briefs.

WRITING THE RECOMMENDATION

Counsel and the hearing office would be well advised to make sure that the issue(s) to be decided are clearly defined for the panel. It should be made clear to the panel the scope of their authority. Generally, the panel is not limited to ratifying or rejecting the Medical Executive Committee's decision and may well recommend an alternative. Subject to the bylaws, or mutual agreement, it is suggested that the hearing officer sit in on the panel's deliberations solely for the purpose of reducing the panel's decision to a written recommendation. The recommendation is much more likely to clearly address the issues and be issued in timely fashion if it can be done by the hearing officer rather than a panel of busy volunteer physicians. See Generally, Code of Ethics for Hearing Officers in Peer Review Hearings, Canon V, AHLA 2013

Well drafted Hospital bylaws and consistent policies on fair hearing plans are important to ensure that all physicians that are the subject of Peer Review know what is expected. Such criteria also are key to creating a process that the physician believes is being fairly administered. If the rules are well understood and their application is applied consistently, perceived inequities in the process can be minimized.

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