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## Medical Staff Boot Camp

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# Medical Staff Boot Camp

Sharp Memorial Hospital – New Department Chair Orientation

February 10, 2015

**Richard D. Barton**

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# Responsibility for Oversight of Quality of Care

- **Medical Staff**

- Federal Law- Health Care Quality Improvement Act (“HCQIA”)
  - 42 USC Section 11101 *et seq.*
  - 42 CFR 482.22 Conditions of Participation for Medicare
    - Requires organized medical staff operating under Bylaws approved by Governing Body
    - Responsible for the quality of care rendered to patients in the hospital
- California Law
  - Health & Safety Code Section 1250(a)
    - Title 22 California Code of Regulations § 70703
      - » Each hospital shall have organized medical staff responsible to Governing Body

## Responsibility for Oversight of Quality of Care – cont'd

- Right to self-governance
- Prohibition of the corporate practice of medicine
- Operates under bylaws, rules and regulations, policies and procedures, approved by the board of directors
- Responsible for ensuring the quality of care



# Responsibility for Oversight of Quality of Care – cont'd

- **Protections For the Peer Review Process**

- 42 USC Section 11112

- Provides immunity from damages if:

- Based on the reasonable belief that the action was in furtherance of quality health care;
- After reasonable effort to obtain the facts of the matter;
- After adequate notice and fair hearing procedures;
- In the reasonable belief that the action was warranted

- California Civil Code § 43.7

- Provides immunity from damages if :

- Part of duly appointed medical committee of the medical staff
- Act without malice
- Made reasonable effort to ascertain the facts
- Acts in reasonable belief action is warranted by facts

- California Evidence Code § 1157

- Protects all records and proceedings of organized committee from discovery



# Governing Body Responsibility

- Business & Professions Code § 809.05 and bylaws vest governing body with responsibility and authority to:
  1. Investigate
  2. Initiate corrective action
  3. Summarily suspend
- *El-Attar v. Hollywood Presbyterian Medical Center* (2013) 56 Cal. 4th 976, 301 P.3d 1146.

# Appointment and Reappointment- Article V Bylaws

- § 5.2 Burden is on Applicant to:
  - Produce information for adequate evaluation of the applicant's qualifications, current competence and suitability on privileges in the category requested
  - Resolve any reasonable doubts about these matters
  - Satisfy requests for information
- Denial of Application for Appointment or Reappointment gives rise to hearing rights under Article VIII



# Failure to Exercise Oversight Responsibilities

- Corporate liability for failure to protect patient from practitioner with known impairment or sub-standard knowledge & skill – *Elam v. College Park Hospital*, (1982) 132 Cal.App.3d 332
- California Department of Public Health
- Joint Commission
- CMS – Conditions of Participation



# Corrective Action – Article VII of Bylaws

- Quality of care concerns
- Disruptive behavior
  - Joint Commission Sentinel Event Alert 2008
    - “Behaviors that undermine a culture of safety”
    - “Intimidating and disruptive behaviors can foster medical errors, contribute to poor patient satisfaction and to preventable adverse outcomes.”
    - Disruptive Physician Policy
      - Active- verbal outbursts, threats, behavior which is intimidating, condescending, and harassing
      - Passive- refusing to return calls, answer questions, answer pages.



# Corrective Action – Article VII of Bylaws – cont'd

- **Grounds for Corrective Action**

- §1.A – whenever the activities or professional conduct are considered to be:
  - lower than standards or aims of the Medical Staff
  - disruptive to operations of the hospital
  - a violation of rules, regulations or policies of the staff or hospital

- **Procedure**

- Request for corrective action can be initiated by:
  - Officers of Medical Staff
  - Chief of Service
  - Medical Staff Committee
  - Chief Executive Office
  - Governing Body

## Investigation – Article VII, Sec. 1.B

- Investigation can be conducted by:
  - MEC
  - Ad hoc committee
  - Appropriate Chief of Service
  - Medical Staff Committee
  - Report must be made to MEC if done by committee within 3 weeks
- MEC must act on request for corrective action within 45 days of request
- Practitioner shall be permitted to make an appearance before the MEC prior to it taking action
  - This does not constitute a hearing

# Effective Investigations

- Impartial investigating body
- Clearly define scope of investigation and tasks for investigating body
- Give practitioner an opportunity to speak with investigating body and MEC
- Interview anyone and everyone with information
- Document all interviews and meetings
- Provide written and verbal report to MEC
- Report to MEC within 3 weeks



## MEC Action After Investigation – Article VII, Sec. 1.D

- **Possible Actions:**

1. Reject or modify request for corrective action
2. Letter of admonition, censure, reprimand or warning
3. Probation or limit medical staff membership or privileges
4. Reduction, suspension or revocation of clinical privileges and/or staff membership
5. Terminate, modify, or sustain already imposed summary suspension
6. Refer to well-being committee
7. Behavioral contract
8. Any other action deemed appropriate under the circumstances

# Managing Poor and Marginal Performance, Disruptive Behavior and Impairment

- Document, document, document
- Incremental steps
- Provide resources, mentoring, training and support



## Summary Suspension – Article VII, Section 2

- Immediate suspension or restriction if failure to take action may result in imminent danger to the health of any individual
- Physician may not exercise suspended privileges during hearing
- Practitioner may request informal hearing with Medical Executive Committee within 7 days
- If suspension lasts in excess of 14 days, report must be filed under B&P § 805



# Issues to Consider in Deciding Whether to Impose Corrective Action

- Will it keep patients safe?
- Reportable under B&P Code § 805 or National Practitioner Data Bank (“NPDP”)?
- Hearing rights?
- Will the proposed final action protect the hospital?
  - Corporate liability
- Ability to advance severity of action in the future
- Reporting to hospitals, medical groups, health plans etc.



# Strategies to Prevent Judicial Review Hearings

- Clear communication
- Avoid alienating practitioner
- Try to reach a mutually agreeable resolution
- Formalize agreement in a written contract



# Overview of Administrative Proceedings Following Corrective Action

- **Judicial Review Committee (“JRC”)**
  - Was MEC or Board decision reasonable and warranted?
- **Appeal to Board of Directors**
  - Was physician afforded a fair procedure?
  - Was JRC decision supported by substantial evidence?
- **Petition for Writ of Mandamus to Superior Court CCP § 1094.5**
  - Was physician afforded a fair procedure?
  - Was the Board decision supported by substantial evidence?
- **Court of Appeal**
  - Was physician afforded a fair procedure?
  - Was the Board decision supported by substantial evidence?
- **California Supreme Court**



# Judicial Review Committee Hearing

- **Governed by bylaws and B&P § 809**
- **Grounds for hearing:**
  - Denial of application for medical staff membership/privileges
  - Revocation, suspension, restriction, involuntary reduction of medical staff membership/privileges
  - Involuntary imposition of significant consultation or Level III proctoring requirements



# Judicial Review Hearing – Article VIII

- Unless Summary Suspension, member continues to practice
- Notice of Charges
- Hearing Officer
  - Responsible for evidentiary and procedural issues
- Judicial Review Committee
  - Not less than 3 members of medical staff
    - At least one within specialty of member
  - Not in direct competition with member requesting hearing
  - Cannot have acted as accuser, fact finder or actively participated in decision
  - Knowledge of matter does not preclude serving



# Judicial Review Hearing – Article III – cont'd

- Right to counsel?
- Pre-Hearing procedure
  - Exchange of documents
- Hearing procedure
  - Witness must testify
  - MEC has burden of demonstrating that MEC decision was reasonable and warranted
  - Dates are set based on availability of JRC members
  - JRC deliberates after all evidence presented
    - Must prepare written decision



# Appellate Review

- **Grounds for appeal:**
  - Substantial non-compliance with procedures
  - Decision not supported by substantial evidence
  - Report to MBC and/or NPDB inaccurate
- **Levels of appeal:**
  1. Board of Directors
  2. Petition for writ of mandate to superior court
  3. Court of Appeal



# THANK YOU!!!!

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