

# Credentialing Resource Center Symposium

Privileging Challenges and Solutions

**Greeley**  
+HCPRO

# Best Practices in Initial Appointment and Reappointment Procedures

Michael R. Callahan, Esq.

Kathleen Muchin-Roseman, LLP

# Best Practices Are Linked to the Current Environment

- The best practices in initial appointment and reappointment procedures take into account the current healthcare environment

# Environmental Overview

- Identification of “never events” (i.e., unacceptable medical errors) resulting in reduced or denial of payments by CMS and private payers
- Emphasis on pay for performance (P4P) by private and public payers regarding expected compliance with certain protocols, healthcare practices, and quality outcomes

## Environmental Overview (cont.)

- Transparency to the general public via hospital rankings, published costs and outcomes, accreditation status, and mandatory reports to state and federal government
- Greater demands being placed on boards of directors and hospital management to develop sufficient resources to ensure that quality-of-care standards and expectations are met through the hospital's quality improvement program that adopts metrics and benchmarks to measure progress in meeting targeted clinical quality standards as part of the hospital's corporate and governance policies

## Environmental Overview (cont.)

- Good quality means good business
- The Joint Commission's focused professional practice evaluation (FPPE) and ongoing professional practice evaluation (OPPE)
- Adoption of new Joint Commission Leadership Standards, which view the medical staff as equal partners with board and management on issues affecting patient care and safety
- New Joint Commission Sentinel Alert on importance of working toward zero errors in the hospital through development of a culture of safety or "just culture"

# Environmental Overview (cont.)

- More aggressive enforcement environment, especially by the OIG, which is beginning to hold hospital boards and management responsible for the provision of substandard or unnecessary care that leads to “never events” or adverse patient outcomes
- Legal and accreditation expectations and requirements mandate that medical staff physicians are appropriately credentialed and privileged to exercise every one of the clinical privileges given to them during appointments
- Failure to abide by identified quality standards will give rise to more malpractice and corporate negligence liability claims

# Environmental Overview (cont.)

- Patient Safety Act
  - Implementation of Patient Safety Organizations (PSO) as a means of collectively improving quality, in part, through a “just culture”
- Healthcare reform?

# OIG's FY 2008 Top Management and Performance Challenges

- Grand Jury indicted a Michigan hospital based on its failure to properly investigate medically unnecessary pain management procedures performed by a physician on the medical staff
- A California hospital paid \$59.5 million to settle a civil False Claims Act allegation that the hospital inadequately performed credentialing and peer review of cardiologists on its staff who perform medically unnecessary invasive cardiac procedures

# Screening for Quality Applicants

- Doctrine of corporate negligence/accreditation and licensing standards require that a hospital and medical staff must appoint/reappoint physicians with demonstrated competence to exercise each and every clinical privilege they request and which are ultimately granted to them
- Hospitals have the most flexibility on the front end to decide which physicians do and do not qualify for membership
  - There is no constitutional or other legal right to medical staff membership

# Screening for Quality Applicants (cont.)

- State courts do not exercise jurisdiction to review initial application cases—rule of non-review
- Can deny membership based on medical staff development plans, exclusive contracts, lack of resources
- You can say no to mediocrity or to “splitters”
- You can say no to physicians who compete—utilize conflict of interest forms
- You can say no to physicians of questionable quality, disruptive behavior, or whose profile establishes that they are overutilizers

# Screening for Quality Applicants (cont.)

- Can arguably ask for FPPE/OPPE results from other hospitals
- Advise applicants at the outset about quality and utilization standards
- Burden is on the physician to produce any and all information that is needed to determine qualifications and competency; if not provided, application is considered withdrawn
- Bylaws and procedures should firmly state that providing false, misleading, or incomplete information can lead to withdrawal or denial of application and corrective action if discovered after the physician is approved

# Screening for Quality Applicants (cont.)

- Must explain why pre-app or application was denied, but rarely is this decision reportable to National Practitioner Data Bank
- Bylaws should not give a hearing right to denied applicants unless reportable
- Consider creation of category for physicians with membership rights only but no clinical privileges

# Maintaining a Quality Medical Staff

- Establishment of clear delineation standards that spell out qualifications for granting clinical privileges
- Development of FPPE/OPPE standards
- Are department chairs spending the time and are they getting enough resources to do the job?
- Do you have a robust medical staff and/or hospital quality or performance review committee? Are lines of authority and responsibilities clearly drawn?

## Maintaining a Quality Staff (cont.)

- Do your peer review/performance improvement procedures allow, if not require, early engagement and interaction with a physician if problems are identified?
- Goal is to identify errors and problems as early as possible so as to resolve and address initial reporting to corrective action
- Must change the tone of peer review and quality improvement so that it is viewed as an intra-professional dialogue rather than an adversarial procedure

## Maintaining a Quality Staff (cont.)

- Are you actually engaging in continuous, ongoing review, or does this only take place at time of reappointment?
- Are you gathering all relevant information from all sources in order to truly evaluate qualifications?
- What role is the board playing in terms of quality and privileging?

# Avoiding Information Errors

- Peer reference forms
  - Compare forms to best practice
  - Review state-mandated information
  - Make sure all forms of corrective and remedial actions are captured by the questions

# Avoiding Information Errors (cont.)

- Reprimand
- Probation
- Voluntary relinquishment of privileges
- Withdrawal of applications
- Monitoring
- Proctoring
- Mandatory consultations with and without prior approval
- Reductions in privileges

# Avoiding Information Errors (cont.)

- Concurrent review of cases
- Administrative suspensions
- Adverse licensure decisions
- Adverse employment decisions
- Transfers
- Resignations
- Full explanation of time gaps and moves

# Best Practices for Professional References

- Do not allow partners/relatives to provide sole references
- Multiplicity of professional references: program directors, department chairs, section chiefs, officers, etc.
- Not a sufficient response that hospital will not provide requested information; burden is to produce

# Best Practices for Professional References (cont.)

- Applicant obligated to provide any and all information updates responsive to the application questions during the pendency of the application
- Application should include an absolute waiver of liability and release form, which must be signed by the physician as a condition of processing the application

# Best Practices for Professional References (cont.)

- Application should make clear and require that physician signs and attests to the accuracy of the information
  - Avoids the “my assistant filled it out” excuse
- If physician does not sign, do not process the application
- Low threshold to pick up phone

# Best Practices for Professional References (cont.)

- For impairment, consider specific questions
  - Formal accusations
  - Disruptive behavior
  - Unprofessional conduct
  - Asked to seek evaluation or counseling
  - Need to comply with ADA for employment
  - Form of questions important to avoid discrimination
  - Authorization to review rehab records

# Best Practices for Professional References (cont.)

- If hospital or other professional references do not respond, application is not processed unless information can be obtained from reliable and independent source
- If physician provides false, misleading, or incomplete information, application deemed withdrawn or physician subject to corrective action!
  - Could be reportable to National Practitioner Data Bank

# Avoiding Information Errors: Red Flags

- Red flags
  - Resignation as partner from group
  - Gaps in CV, particularly with employment or medical staff membership
  - Moved significant distances or has moved a lot during professional career
  - Change of specialties
  - Requesting fewer privileges than normally granted under a core privileging system

# Avoiding Information Errors: Red Flags (cont.)

- Gaps in insurance coverage, change in carriers, reduction in coverage
- Professional liability history
- Reference letters are neutral
- Category ratings are “poor,” “fair,” or “average”
- Response from hospital simply gives dates of service or very limited information

# Placing the Burden on the Applicant

- Burden of proof policy
- Failure to meet burden will result in:
  - Withdrawal of application
  - Decision not to process
  - Declaration of incomplete application
- Physician not entitled to fair hearing under these circumstances

# Other Reappointment Considerations

- Is the physician a low- or no-admitter?
  - Hospital has obligation to make sure physician is currently competent to exercise each and every privilege on privilege form
  - Hospital needs to obtain additional, detailed information/representations regarding physician's competency
  - Where proof or information is not provided, physician's application need not be processed or can be moved to different category where physician is a member without privileges

## Other Reappointment Considerations (cont.)

- Consider adopting a utilization standard that will allow you to better evaluate the physician's qualifications
- Must collect information from all sources and route to department chair for evaluation
  - Patient complaints
  - Performance standard reports
  - Utilization
  - OPPE/FPPE

## Other Reappointment Considerations (cont.)

- Any measurement, assessment, and improvement information
- Peer review studies and evaluations
- Is there sufficient clinical performance information on which to make a decision?
- Physicians tend to accumulate privileges over time. Reappointment is perfect time to truly evaluate current competency.
  - Voluntary reductions are not reportable

## Other Reappointment Considerations (cont.)

- If physician reluctant to give privileges up, consider monitoring, proctoring, FPPE, etc.
- Core privileges
  - The fact that a hospital has core privileges process does not mean that “core” lasts forever
  - Still need to demonstrate current competency
- Have you developed specific eligibility criteria for specialized privileges?

## Other Reappointment Considerations (cont.)

- Have they been developed by each department?
- Are they uniformly applied?
- Need also to evaluate:
  - Technical quality of care—patient care
  - Quality of service—medical knowledge
  - Patient safety/patient rights—practice-based learning
  - Resource use—high, low, efficient utilization

# Other Reappointment Considerations (cont.)

- Relationships—professionalism
- Citizenship—systems-based practice
- Credentials committee
  - How do you use the credentials committee?
  - Who is on the committee?
    - Should be different from MEC
    - Consider adding board members

# Golden Rules of Peer Review

- Everyone deserves a second or third chance
- Implementation of “just culture”
- Medical staffs and hospitals should strive to create an intra-professional versus adversarial environment
- Steps should be taken to de-legalize process
- Develop alternative remedial options and use them
- Comply with bylaws, rules and regulations, and quality improvement policies

## Golden Rules of Peer Review (cont.)

- Apply standards uniformly
- Take steps to maximize confidentiality and immunity protections
- Know what actions trigger a National Practitioner Data Bank report and use this knowledge effectively
- Be fair and reasonable while keeping in mind the requirement to protect patient care
- Determine whether physician may be impaired before looking to impose corrective action

# Questions?

Michael R. Callahan

[\*Michael.callahan@kattenlaw.com\*](mailto:Michael.callahan@kattenlaw.com)

[\*www.kattenlaw.com/callahan\*](http://www.kattenlaw.com/callahan)