

HEADNOTES

Peer Review Hearings & Medical Quality Assurance

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Your doctor-client calls and has been noticed for a peer review hearing. He wonders why is this happening? Why now? What is peer review? How do you and your client respond?

As of January 19, 2009, new federal policies were implemented requiring a physician code of conduct that defines acceptable, disruptive and inappropriate behavior; these policies originated from the Implementation Task Force of the Joint Commission's Board of Commissioners, the health care industry's national standard-setting and accrediting body.

Hospital boards are required by fiduciary obligation imposed by law and their own medical staff bylaws to monitor their physicians' admission privileges and accountability through the peer review process. The mandated medical staff bylaws have extensive provisions regarding credentialing and physician discipline.

The peer review process may result in disciplinary action, including denial of appointment or reappointment to staff, summary suspension, practice restrictions or termination of a physician's hospital privileges.

If your client receives a written notice of the peer review process, as counsel, you should review the letter immediately. Usually, the letter notice is quite thorough, outlining the problem, investigation, deadlines for action and response, hearing schedule and selection process for the peer review board. Failure to respond can be a waiver, resulting in termination of all hospital privileges.

Counsel should initiate communication with the signatory on the letter and/or the medical staff office to obtain the bylaws, investigative file, including medical records related to the complaint, and copies of any complaints. Establishing a relationship early with the hospital's attorney and medical director is a best practice.

Compare the notice to the bylaws' requirements to ensure the notice is proper. Serious consideration of possible alternatives to a full-blown peer review hearing, such as interim review with the medical director, the medical advisory committee or mediation, may benefit your doctor-client. Mediation pursuant to Texas law with a health care-savvy mediator could save time, money and workplace trauma. The bylaws may include a fair hearing guidelines appendix for your review.

Advise your client to limit any communications about this matter. The Health Care Quality Improvement Act of 1986 provides for confidentiality of peer review information and im-



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munity from lawsuits and monetary damages for the hospital and peer review committee.

While a doctor successfully sued a hospital and received a \$366 million jury verdict for breach of contract, defamation, business disparagement, interference with contractual relations and intentional infliction of emotional distress as a result of a peer review process, this case was reversed and rendered by the Fifth Circuit in July 2008. *Poliner v. Texas Health Systems*.

The *Poliner* case outlines the parameters of peer review under HCQIA. Since *Poliner*, hospitals are ensuring strict compliance with the medical bylaws and HCQIA.

Before the hearing, counsel should consider applicable rules of evidence and procedure, witness statements vs. live testimony, and cross-examination and necessity of a court reporter. This is not a court of law; a comparison to other doctors' actions and the hospital's response is probably not admissible. Expert witness testimony may need to be procured.

The hearing may take several sessions to accommodate medical emergencies. Continuances are common. The hearing officer who conducts the hearing should be distinguished from the peer review's committee or hospital counsel. The selected hearing officer should have experience, training, impartiality and health law knowledge. Due process is the goal for all parties in the hearing.

If the worst happens, in addition to the hospital's actions, professional review actions adversely affecting a physician's clinical privileges for a period longer than 30 days must be reported to the National Practitioner's Data Bank within 15 days and to the Texas Medical Board.

To protect your client's livelihood, consider these procedural, substantive and practical aspects of the peer review process. A review of recent developments in this area is a must.

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