

IHA Leadership Summit

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Achieving Medical Staff Greatness The Role of Trustees and Management

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Environmental Overview

- Identification of “Never Events”, i.e., unacceptable medical errors, resulting in reduced or denial of payments by CMS and private payors.
- Emphasis on Pay for Performance (“P4P”) by private and public payors regarding expected compliance with certain protocols, healthcare practices and quality outcomes.

Environmental Overview (cont'd)

- 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'd)

- Good quality means good business.
- Adoption and enforcement by Joint Commission of focused and ongoing performance monitoring (“OPPE” and “FPPE”).
- Adoption of new Joint Commission Leadership Standards which view the medical staff as co-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'd)

- 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 which lead 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 each and every one of the clinical privileges given to them at time of appointment and reappointment.
- Failure to abide by identified quality standards expectations will give rise to more malpractice and corporate negligence liability claims.

Environmental Overview (cont'd)

- Patient Safety Act
 - Implementation of Patient Safety Organizations (“PSOs”) as a means of collectively improving quality, through, in part, 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'd)

- 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 over-utilizers.

Screening for Quality Applicants (cont'd)

- 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'd)

- Must explain why pre-app or application was denied but rarely is this decision reportable to 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 which spell out qualifications for granting clinical privileges.
- Development of OPPE/FPPE 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'd)

- 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 try and 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 intraprofessional dialogue rather than an adversarial procedure.

Maintaining a Quality Staff (cont'd)

- 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?

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'd)

- Apply standards uniformly
- Take steps to maximize confidentiality and immunity protections
- Know what actions do and do not trigger a 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 false correction action

Actions Which Trigger Data Bank Report

- Data Bank requires a report for any of the following if related to professional competence or conduct or action affecting patient care and, except for summary suspensions, where they represent the final action of the hospital:
 - Termination
 - Summary suspension in excess of 30 days
 - Mandatory consultations which require prior approval before a procedure can be performed
 - Resignations or voluntary relinquishment of privileges in lieu of corrective action while under or to avoid investigations

Other Forms of Remedial Action

- Mandatory consultations which do not require prior approval
- Proctoring
- Monitoring
- Retraining/Re-education
- Voluntary relinquishment of clinical privileges at the time of reappointment
- Administrative suspensions, i.e., medical records
- Retrospective or concurrent audits
- Reduction in staff category
- Removal from ER call duty
- Probations
- Reprimand
- Conditional Reappointments
- Physician's Assistance Committee

General rule is that hearings should be limited to forms of corrective action which trigger a report to the state or to the Data Bank

- If lesser forms of corrective action also trigger hearing rights, then they are not likely to be used by a department chairperson or the Medical Executive Committee
- The department needs to be willing to impose and carry out these other forms of corrective action.
- As a general rule, a department chair or other physician who monitors or proctors a physician cannot be held liable for that independent physician's negligence.
- Again, the goal is to try to educate the staff and to develop a different mind set that acknowledges and accepts that physicians will make mistakes and that other forms of remedial action are available which do not trigger Data Bank reports. These measures should be used to work with the physician to avoid future quality of care problems.

General rule is that hearings should be limited to forms of corrective action which trigger a report to the state or to the Data Bank (cont'd)

- If patterns of unacceptable care or conduct persist, graduated forms of action should be considered
- Consider whether physician is impaired

Golden Rules of Hospital/Medical Staff Relations

- Medical staff leaders and medical staff members should be viewed as allies and not opponents.
- Medical staff Leaders are to be treated as co-equal partners on issues of quality and patient safety.
 - Voting members on Board of Directors
 - Voting members on Board Committees
 - Performance Improvement/Quality
 - Credentials
 - Strategic Planning
 - Executive Committee
 - Medical Staff Development Plan

Golden Rules of Hospital/Medical Staff Relations (cont'd)

- Similarly, Board members should consider sitting on Medical Staff Committees
 - Credentials
 - Quality
 - MEC?
- Participation in PSO and “just culture” approach to quality
 - Provides greater confidentiality and privilege protections than the Medical Studies Act
 - Admissions of medical errors and quality problems cannot be used in disciplinary proceedings
- Pro-active efforts to identify and support medical staff leaders who will advance hospital’s mission

Golden Rules of Hospital/Medical Staff Relations (cont'd)

- Identify win-win hospital/medical staff opportunities
 - Joint ventures
 - Contract arrangements
 - MS.01.01.01 (Joint Commission Bylaw Standard)
 - Closing medical staff departments sections when it makes sense
 - Stipends for officers/department/committee chairs
 - ED call
 - Paid call
 - Revised schedules
 - Community plan
 - Gainsharing initiatives

Golden Rules of Hospital/Medical Staff Relations (cont'd)

- Physician employment
- Electronic medical records
- Physician recruitment for existing practices
- Avoid the “economic credentialing” policies which exclude medical staff involvement or impinge on existing rights
 - Improving quality should be driving factor behind most initiatives
- Proactive ways of dealing with impaired or disruptive physicians