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PEER REVIEW PRIMER; PART II: THE ORGANIZED MEDICAL STAFF. HOW A DOCTOR REQUESTS AND RECEIVES PRIVILEGES TO TREAT HOSPITAL PATIENTS

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Part I of this Peer Review Primer examined the fundamentals of how the medical staff and the hospital, together, monitor and regulate the quality of the physicians' care provided at the hospital. In Part II, this primer will discuss in more detail how a physician acquires the privilege to treat hospital patients and how the hospital physicians, as a group, organize themselves to govern the services they provide in the hospital.

Semi-autonomous from the hospital itself, the organized medical staff is an unincorporated, self governing association of licensed practitioners whose primary function is the oversight of the quality of patient care and services provided by its members. In order to gain entry into the staff organization, a prospective member (most commonly a physician) must formally submit his or her professional credentials and proof of competence to the hospital. A member of the hospital staff then verifies the information provided from the original sources, including authenticating information about the applicant's professional education, licensure, training, practical experience, board certifications, history of litigation, malpractice insurance coverage, the applicant's history with the National Practitioner Data Bank and data concerning the applicant's ability to work with other staff in a collegial manner. Once all of the materials submitted by the applicant is reviewed and verified, the application for admission to the medical staff is then evaluated by the medical staff committee.

If the committee recommends the candidate for membership, the recommendation is then for approval to the medical staff executive committee and eventually to the ultimate authority in the hospital, the Board of Trustees. The hospital Board of Trustees must approve every member of the medical staff prior to admission. Membership is typically granted in one of several graduated categories, each of which has different voting, committee attendance or minimum admission requirements.

Medical staff membership is not synonymous with privileging or the right to treat hospital patients. Membership is simply the delineation of a practitioner's organizational rights and responsibilities. Clinical privileging, on the other hand, is the process in which an member is granted the right to perform specific patient care diagnostic or therapeutic procedures within well defined limits. When an applicant requests the right to provide certain kinds of patient care, the request is reviewed by his or her peers through a designated medical staff committee. The requested privileges may or may not be granted, based on the applicant's expertise and experience. The decision criteria to grant both medical staff membership and specific clinical privileges should be unbiased and based on well defined national and local standards. The criteria must also be uniformly applied and be free of impermissible discriminatory or anticompetitive considerations.

Medical staff organizations are typically divided into departments based on clinical specialties and cross-specialty committees assembled to address the quality and executive functions of the organization. The governance of the organized medical staff is directed by a set of rules, or bylaws, which set out in great detail the criteria for membership and privileging, the processes for carrying out the functions of the organization and the manner in which members are selected and deselected. JCAHO (Joint Commission on Accreditation of Hospital Organizations) also plays a key role in the function and structure of the medical staff in an accredited institution. JCAHO requires the organized medical staff to be structured so that the medical staff itself is responsible for providing a uniform standard of quality patient care, treatments and services. To be JCAHO accredited, the hospital's medical staff must meet several requirements, including development of certain medical staff bylaws, rules and regulations, a mechanism for establishing and enforcing membership standards, and a means to continually upgrade and improve patient quality. JCAHO has recently required that some licensed, independent non-physicians, like nurse practitioners, may become members of the medical staff and be subject to the organization's oversight of the quality of their patient care delivery.

The legal relationship between the medical staff and the hospital itself is not easily defined. At least one state has statutorily designated the organized medical staff as an unincorporated association with a separate legal identity from the hospital and the right to sue and be sued in its own name. In contrast, other state courts have reasoned that the medical staff organization is not an independent entity because membership in the medical staff is subject to the approval of a hospital Board of Trustees. Even though mechanisms for limited self government are built into the bylaws, the medical staff lacks true independence and autonomy because it is a creation of the hospital board and thus an integral part of a hospital itself. In states with that view, the medical staff is unlikely to be sued as an entity separate from the hospital.

The legal effect of the bylaws as it influences the relationship between the medical staff and the hospital is also in flux. In some states, courts have held that the medical staff bylaws constitute a contract between the medical staff and the hospital Board of Trustees. In those states, the medical staff has been successful in bringing contractual causes of action against hospital boards when the medical staff bylaws have not been substantially followed in the Board's relationship with the medical staff. In other states, the medical staff bylaws have either not been held to be a contract or that the issue has yet to be addressed.

Future parts of this Peer Review Primer will examine how the organization of the medical staff and the medical staff's relationship to the hospital affects medical malpractice causes of action against hospitals for negligent credentialing of the medical staff physicians, the hospital's role in the medical staff's evaluation of physician care through the peer review process and under what circumstances the hospital is required to report to the National Practitioner Databank when a member of the medical staff provides substandard care to hospital patients.

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