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Hospital Peer Review Guide I: Avoiding Money Damages

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Introduction

The Healthcare Quality Improvement Act of 1986 (“HCQIA”) provides protection against money damages for physicians, hospitals and other health care professionals and entities that engage in professional peer review. Underlying the passage of HCQIA are these determinations by the United States Congress:

“The threat of private money damage liability...unreasonably discourages physicians from participating in effective professional peer review.”

and

“There is an overriding need to provide incentive and protection for physicians engaging in effective professional peer review.”

However, the statute conditions this protection against money damages upon meeting certain standards. Failure to meet these standards means that the protection can be lost. This guide addresses how to avoid or remedy peer review mistakes and maintain the protection provided by HCQIA.

Most Common Costly Mistakes in Peer Review

The following are the most common mistakes by hospitals and medical staffs when preparing for and conducting professional review actions. Note, however, that, in most cases these mistakes can be remedied and the protection of HCQIA from money damages can be re-established.

1. Failure to Establish and Enforce Standards of Clinical Practice

The establishment of accepted standards of clinical practice by hospital leaders is vital to maintaining high quality care and preserving the hospital’s resources.

Developed by “at least the leaders of the governing body, the chief executive officer... department leaders, the elected and appointed leaders of the medical staff and the clinical departments and other medical staff members in organizational administrative positions, and the nurse executive and other senior nursing leaders” (the JCAHO definition of hospital “leaders”), standards of clinical practice provide a necessary basis for an effective peer review system. Without standards to enforce there is no sentinel effect on the practice of medicine at the hospital and:

- The conduct routine peer review activities becomes extremely problematic except in extreme cases
- The conduct of a professional review action becomes more difficult and expensive
- The quality of care at the hospital suffers
- The resources of the hospital are uncontrolled



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Without clinical practice standards:

- Each individual physician determines his/her level and quality of practice
- Physicians are not required to explain deviations from expected outcomes or standards of care
- Peer review committees remain focused solely on the outcome of an individual case, rather than performing a comprehensive review and investigation of any deviations from the standards of clinical practice
- A “no harm, no foul” rule may exist meaning that harm to a patient must occur before action is considered
- The insurance companies deny claims and perform de facto utilization management at significant expense to the hospital
- The individual physicians, through their practice patterns, control much of the allocation of the hospital’s resources instead of the Board (which has this legal obligation)
- The Medical Staff and the Board do not control or regulate the quality of care at the hospital

While the ultimate decision regarding the care of a patient lies with the attending physician, establishing clinical practice standards allows the hospital to screen cases for deviations from these standards, review these cases and request information from the attending physicians to explain why such deviations occurred.

With standards of clinical practice in place, each physician is on notice that:

- The leadership of the hospital has determined level and quality of practice required at the hospital
- Compliance with these standards is required, although variations from the standards may be expected in certain individual cases
- Variations from the standards, while expected in certain individual cases, will require an explanation in the medical record and, in many instances, to a peer review committee (JCAHO Standard 5.40)
- Patterns of variations from the standards will require an explanation to a peer review committee and may subject a physician to education or discipline under the peer review system (JCAHO Standard 5.40)
- If a physician disagrees with the standards, appropriate channels may be used to revise the standards, but the standards cannot be disregarded if the physician intends to continue to practice at the hospital
- Each physician will be judged, through the peer review system, based upon these standards
- The use of clinical standards facilitates an open discussion between the peer review participants.



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The members of the medical staff should be educated regarding the accepted standards of clinical practice and the need to fully document deviations from the protocols or unexpected results in the medical record. Such documentation will facilitate a comprehensive discussion regarding the rationale for such deviations between the physician and the peer review committee.

Incorporating the standards of clinical practice established by the hospital leaders into the peer review system also provides the peer review participants with an objective means to obtain and review cases. Cases can be automatically screened for deviations from the standards and do not require one physician to pull a questionable case performed by a colleague and peer review committee members are provided with an impartial basis for evaluating cases. Reducing the perceived level of subjectivity in the peer review process is particularly important for hospitals where peer review by business associates or referring physicians is typical.

2. Failure to Establish Standards for Professional Conduct.

Medical staff and administration decision-makers hesitate to initiate a review of certain physicians alleged to be “disruptive physicians.”

One reason for this hesitancy is that many hospitals do not have clear, established standards for professional conduct and, as a result:

- Politics at the hospital usually overrides action
- The medical staff leadership and administration sidestep the problem unless the conduct is particularly egregious or potentially embarrassing
- The peer review participants often find the evidentiary basis for the review to be too subjective to support a peer review action
- Differing interpretations of the behavior by the alleged disruptive providers prevents action
- An “us versus them” mentality may drive defensive viewpoints of the medical staff.
- Physicians and the staff tend to “work around the problems” because they are aware that disciplinary action will be avoided.

Hospitals cannot ignore the legal obligation to investigate and take action to protect the safety of patients and the hospital staff from the disruptive behavior of a physician. Eventually, if this behavior persists, it is likely that the EEOC or the judicial system will act and impose liability on the hospital for this failure. Rather than sidestep the problem until the EEOC or the legal system imposes a solution and possibly money damages, the hospital should be proactive in instituting standards of conduct and enforcing those standards through the peer review system.



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With standards of professional conduct in place, each physician is on notice that:

- The leadership has determined that certain behavior will not be tolerated at the hospital
- Compliance is required
- The standards cannot be disregarded if the physician intends to continue to practice at the hospital
- Each physician will be uniformly judged, through the peer review system, based upon these standards

See “Hospital Peer Review Guide III: Handling the Disruptive Provider” for additional information regarding this issue. Guide III is available for download at www.nationalpeerreview.com.

3. Failure to Recognize the Commencement of a “Professional Review Action”

Hospitals and medical staffs routinely conduct “professional review activities” (e.g. quality assurance, credentialing and other related activities). The key, however, is to recognize when these professional review activities become professional review actions that are subject to the standards of HCQIA and the due process protections afforded the physician by the medical staff bylaws.

HCQIA defines a professional review action as an “action or recommendation . . . in the conduct of a professional review activity which is based on the competence or professional conduct of an individual physician . . . which affects (or may affect) adversely clinical privileges, or membership in a professional society, of the physician.”

Therefore, at the time a professional review activity results in an adverse action or recommendation based on the physician’s competence or professional conduct the hospital and medical staff should comply with the HCQIA standards. Similarly, most medical staff bylaws set forth the rights and responsibilities of the hospital and the physician at the time an adverse action is taken.

The consequences of failing to recognize the commencement of a professional review action, whether intentional or unintentional, are serious. Legally, the hospital and the medical staff may lose the HCQIA protection against money damages. Politically, the hospital and the medical staff officers may lose credibility and the respect of the medical staff.

To remedy this situation, it may be proper to recommence the process in compliance with HCQIA and the medical staff bylaws.



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4. Failure to Follow the Due Process Provisions of HCQIA, the Medical Staff Bylaws and the Hospital Bylaws

Whether due to the failure to recognize the commencement of a professional review action, negligence or ignorance, the most common mistake in professional review activities is the failure by the hospital and the medical staff to comply with the due process provisions of HCQIA, the medical staff bylaws and the hospital bylaws.

In many cases bylaw protections are skipped, notices are not timely, reasons for actions are not given, witnesses are not identified, medical staff bylaws conflict with HCQIA, hearing panel members are competitors, practitioners are denied attorneys, hearings are conducted improperly, reports to the NPDB are defective and other similar occurrences which result in defective due process.

Although immediate and precise compliance with the due process provisions of HCQIA and the bylaws are preferable, remedying the defective due process actions may be sufficient to recover the immunity from money damages afforded by HCQIA.

5. Failure to Use Peer Review as Education

Peer review is an effective, established procedure for upgrading a physician's clinical knowledge, enhancing his/her medical practice, reducing medical errors and improving patient safety. However, too often, peer review is seen as a confrontational process designed solely to discipline practitioners.

The key to effective educational peer review is early detection and prompt action to re-educate the physician.

Approaching peer review as an opportunity to educate physicians promotes a professional atmosphere of collegiality to resolve issues. By avoiding adversarial activities, the hospital preserves its resources, both financial and political.

Most importantly, educational peer review, on an individual and institutional level, is instrumental in identifying, tracking and resolving inappropriate clinical performance and medical errors at their initial states, thereby increasing patient safety and the quality of patient care.

6. Failure to Involve Experienced Legal Counsel in the Early Stages of a Professional Review Action

HCQIA provides that “[i]f a professional review action ... meets all of the standards ...” the participants in the professional review action “shall not be liable in damages ...” Meeting the standards of HCQIA, complying with the medical staff bylaws and hospital bylaws and reconciling any differences between HCQIA and these bylaws is essential to avoiding damages. The early involvement of experienced legal counsel can guide this process to ensure compliance.



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Consulting with legal counsel is delayed for a variety of reasons. Failure to recognize when a routine professional review activity becomes a professional review action (see Section 1) or because the participants are not aware that the physician has due process rights at an early stage of a professional review activity (see Section 2). In addition, decision-makers attempt to resolve the situation themselves for fear that involving legal counsel will exacerbate the situation. Therefore, by the time legal counsel is consulted, the process may have moved too far or too fast to avoid remedial action to correct prior errors.

A professional review action, managed appropriately by experienced counsel in the early stages, will protect the hospital and the medical staff by preserving the HCQIA immunity from damages. In addition counsel's knowledge of settlement options may facilitate an early, and therefore less costly, settlement. Counsel need not be overtly involved initially, but may be effectively used to guide the process in the background.

Legal counsel should be experienced in handling medical staff matters and professional review actions. Without this expertise, legal counsel can cause or worsen many of the problems outlined in this Guide, including exposing the participants to liability, delaying the process and increasing the costs to the hospital.

7. Failure to Recognize Other Legal Issues in Medical Staff Cases

Professional review actions may involve other specialized legal issues in addition to medical staff legal issues. In particular, labor law has a significant bearing on the cases of disruptive providers. Expert legal counsel can assist the hospital and medical staff in recognizing and accommodating these specialized legal issues to avoid liability.

For example, if a physician is reported for sexual harassment or other employment issues, the Medical Executive Committee (MEC) and the hospital may determine that, under the medical staff bylaws, the actions of the physician require a reprimand. However, under applicable labor laws, stronger sanctions, such as suspension or termination, may be required. By considering only the requirements of the medical staff bylaws, the hospital and the members of the MEC may be exposed to liability, including personal liability, for failing to take appropriate disciplinary action.

Experienced medical staff legal counsel will understand when consultation with a labor relations attorney is necessary. Once the opinion of the labor relations attorney has been obtained, the medical staff attorney may guide the case appropriately through the due process requirements of HCQIA and the medical staff bylaws.

8. Failure to Approach Peer Review with a Sense of Urgency

When the internal mechanisms of the hospital identify patterns outside recognized standards, behavior problems or other circumstances which endanger the safety of patients, hospital decision-makers must act with a sense of urgency. Effective timely action includes steps to protect patients, assure due process to the physician under investigation and preserve the immunity of the hospital and medical staff.



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In many instances, however, this sense of urgency may be lacking. Whatever its cause - fear of the political consequences, inadequate peer review procedures, delays by the decision-makers or by the physicians under investigation, inattention or just plain negligence - the lack of urgency usually results in adverse consequences.

If the hospital acts with a sense of urgency and avoids delay, most physicians are receptive to education and appropriate adjustments to clinical practice patterns and behavior. Delay may exacerbate the situation to such an extent that adversarial remedial action becomes necessary. The issues, which may have been resolved earlier by education, can subsequently only be resolved by confrontation.

In addition, commencing and proceeding diligently with the peer review process when the event is fresh in the minds of the peer review participants typically results in a more effective peer review and improved acceptance by the medical staff and the physician of any corrective action.

9. Failure to Recognize that the Hospital Cannot “Plea Bargain” Clinical Privileges

The Rules and Regulations under HCQIA require a hospital to report to the National Practitioner Data Bank (NPDB) the “[a]cceptance of the surrender of clinical privileges or any restriction of such privileges . . . [w]hile . . . under investigation [for] incompetence or improper conduct; or . . . in return for not conducting such an investigation or proceeding.”

Therefore, once a complaint is lodged, an investigation starts, committee review is commenced or suspension is considered, the physician cannot resign, accept probation or take similar action to prevent an adverse report to the NPDB.

The practical result of enactment of these Rules and Regulations is that the physician is forced to proceed with all of the due process requirements of HCQIA and the medical staff bylaws rather than quit, even in the face of overwhelming odds. HCQIA, by preventing this type of “plea bargaining,” has substantially increased the costs of peer review cases.

With the advice of legal counsel, the hospital may wish to explore settlement options that could mitigate the costs to both the hospital and the physician while still complying with HCQIA.

10. Lack of Uniformity in the Conduct of Peer Review

One of the biggest fallacies in peer review is that physicians innately know how to conduct an effective peer review. In a good faith attempt to fulfill their obligations, a hospital’s medical staff and administration often develop their own peer review protocols and procedures. These protocols and procedures may be based upon the experience of individual peer review participants and include misinterpretations of law and unworkable operational procedures.



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Without sufficient written guidance on peer review activities (see “Peer Review System Manual” at www.nationalpeerreview.com) the peer review system may not develop or be applied uniformly for each peer review committees due to:

- The void in education, training and written documentation which exaggerates the variations in the peer review protocols and procedures between the peer review committees
- The lack of oversight for the peer review system
- The variations in the managerial style of the peer review committee chairs

This lack of uniformity means that the hospital does not have an effective peer review system. Physicians are being judged by different standards or not judged at all.

As a result, the hospital and the medical staff may be hindered in pursuing a professional review action because the physician under review will argue that the peer review system is biased because it is not applied in a uniform manner. Rather than conducting the investigation or taking appropriate actions the hospital and the medical staff may be on the defensive, thus diverting attention away from the issues of competence and professional behavior.

In addition, the lack of uniformity in the peer review system may provide plaintiff's attorneys with an argument that the medical staff and the hospital did not fulfill their legal mandate to protect patients when it knew or should have known of inappropriate medical care.

The development of a Peer Review System Manual as a comprehensive, single source of unambiguous instructions for the uniform performance of peer review activities is an essential first step. Legally reviewed and developed in conjunction with the medical staff, the Manual can be used to train physicians and hospital administration and provide a level of comfort to the peer review participants.

11. Failure to Provide a Hearing as Required by the Medical Staff Bylaws

One of the standards required by HCQIA to preserve immunity from money damages is the “adequate notice and hearing” requirement. Notice of a proposed action (except suspension) is required and the hearing date should be set “not less than 30 days after the date of the notice.”

In several cases, hospitals have not provided a hearing date or a hearing after the “proposed” action has been taken. This failure to promptly provide a hearing establishes a basis for the physician and the physician’s attorney to claim that the HCQIA immunity does not apply to the hospital and its medical staff.



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12. Failure to Provide a Hearing Not Required by the Medical Staff Bylaws

Even if there is a legal basis for a hospital's position that the right to a hearing has been waived by the physician (e.g., the physician did not respond to a notice in the prescribed period) or that the physician does not have a right to a hearing (e.g., excluded under the bylaws), the hospital and the medical staff may wish to provide the physician with the right to a hearing.

Rather than engage in a long, expensive court battle to determine if a hearing is necessary, it may be wise to exercise good faith by waiving the "technicality" and provide the physician with a hearing. Avoiding a hearing due to a technicality creates the impression that the hospital and the medical staff have something to hide. As a result, a court may be motivated to attribute suspect motives to the hospital's denial of a hearing.

In addition, the benefits of conducting a hearing sometimes outweigh the expense and risks of resisting a hearing. These benefits include allowing the hospital and the medical staff to:

- avoid the expensive court battle over the right to a hearing
- claim the immunity of HCQIA in court
- make the appropriate record
- rectify errors without damages, if HCQIA is satisfied
- avoid redirecting the issue from the competence or disruption of the physician to the credibility of the hospital

13. Failure to Proceed as if a Hearing Was Inevitable

Many professional review actions are routine and handled without resulting in a hearing or litigation. Therefore, as peer review activities proceed, due diligence often becomes lax, paper trails are brief or non-existent and the documentation of the peer review activities needed to conduct a hearing or an appellate review is not collected. In some instances, participants, believing that less documentation is legally safer, intentionally avoid a sufficient paper trail.

As a result, when a professional review action occurs the hospital and the medical staff have insufficient evidence and documentation to fulfill their obligations and legal burdens under HCQIA and the medical staff bylaws. Under these circumstances, proceeding with the action often forces the hospital to rebuild the case or, if the burden is too great, conclude the action. The potential cost in time, money and liability for such inadequate preparation is substantial.

Considering a hearing inevitable and preparing appropriately will ensure that appropriate documentation is maintained throughout the professional review action.



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14. Failure to Proceed as if Peer Review Records are Discoverable by the Physician

Due to the routine nature of many peer review activities, the paper trail for these activities becomes a careless collection of ill-conceived documentation.

This documentation may be based upon “a reasonable effort to obtain the facts of the matter” as required under HCQIA and the preliminary conclusions regarding the clinical competence or professional conduct of the physician may have been made in good faith. However, without careful preparation, the written records may be interpreted to the disadvantage of the hospital and the medical staff.

In most states, the documentation gathered for purposes of peer review are privileged and not discoverable during a hearing or litigation. However, the hospital and medical staff should consider the possibility that the records of the peer review process may be discoverable by the physician under investigation and, in some instances, the hospital and the medical staff may wish to provide these materials to the physician.

First, why would the hospital and the medical staff want to provide this information to the physician? The answer is credibility. In a hearing or subsequent litigation the hospital’s denial of the physician’s attorney’s request for the physician’s files, even if within the rights of the hospital, may give the impression to a hearing panel or a court that the hospital and the medical staff are hiding something. Constant references to “secret files” could provide an otherwise clinically incompetent or disruptive physician with sympathy or a legal argument in an appellate review or in litigation.

Second, the physician under investigation may be legally entitled to obtain these records. If the peer review privilege is weak or if the attorney for the physician provides a court with a sound legal argument, the records may be obtained by court order.

Courts have recognized several causes of action to compel complete or partial disclosure of peer review documents. Currently, these causes of action include federal and state discrimination laws and claims under the Americans with Disabilities Act (ADA).

Therefore, to avoid the loss of credibility in a hearing or in subsequent litigation and to avoid the expense of litigation, the hospital and medical staff should conduct peer review activities as if the entire record of the peer review process will be disclosed to the physician. With this understood from the beginning, the process should be conducted in an appropriate professional manner and the documentation should reflect this conduct.



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15. Permitting a Physician to Continue to Exercise Privileges During a Professional Review Action for Suspension or Termination

In many instances, acts by a physician are clearly indicative of impairment, incompetence or disruptive behavior which affects the safety of patients and the hospital staff. Physicians exhibiting behavior which poses an immediate threat to the safety of patients and staff should be suspended. Failure to suspend such a physician exposes the hospital to significant liability.

Often, when the MEC has recommended the reduction or termination of privileges, the physician is allowed to practice until due process is completed. The usual reasons for permitting a physician to continue to exercise privileges is either the fear of ruining the career of the physician if the charges are unfounded or the fear of litigation by the physician.

From a hospital perspective, allowing the physician to continue to practice during a professional review action may:

- adversely affect patient care which may legally be attributed to the hospital.
- infer that the hospital believes that the sub-standard care and/or disruptive behavior of the physician is relatively unimportant thereby damaging the hospital's standing with the medical staff and its position in a professional review action.

In addition, allowing the physician to practice during the professional review action provides incentive for the physician to delay the process. Without suspension from the medical staff, the physician is not motivated to expedite the process and may create intentional delays to avoid an inevitable loss of privileges. In addition to the unnecessary use of hospital resources, these delays may cause procedural problems when the professional review action is finally commenced.

Although suspending the privileges of the physician during the professional review action may result in litigation by the physician, enforcing a suspension in accordance with applicable law provides hospitals and medical staffs with the immunity from money damages afforded by HCQIA (see next section).

16. Fear of Litigation by the Physician

In many instances, peer review is paralyzed by the fear of litigation or by actual litigation by the physician.

However, if the hospital has substantial evidence that a physician is incompetent or disruptive and creates a risk to the safety of patients, the failure to act creates a greater risk of litigation by a patient.

Balancing the risk of litigation by a physician versus litigation by a patient would appear to be a "no win" situation. However, if the professional review action against the physician is conducted appropriately, the hospital has immunity from



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money damages from the physician. However, allowing the physician to continue practicing in the hospital when the practitioner clearly requires education or disciplinary action may result in patient litigation, and HCQIA does not provide immunity for patient lawsuits.

17. Failure to Use External Peer Review or a Peer Reviewer in the Same Specialty

In many hospital systems with large medical staffs there is an adequate supply of non-competitive physician expertise to properly investigate and review the competence of a physician.

However, it is difficult for many hospitals to find a non-competitive physician in the same specialty or with the expertise to judge a colleague.

Professional review actions require an appropriate analysis of the professional competence of a physician. Failure to provide the appropriate analysis may lead a hearing panel, an appellate panel of the board, the board or a court to reject the suspension, reduction of privileges or termination of a physician, even if there has been compliance with the due process procedures of HCQIA and the medical staff bylaws.

The result may be that, due to an inappropriate peer review, an incompetent physician continues to practice at the hospital and create liability for the hospital.

18. Use of Non-Bylaw Informal Remedies

In many instances, information about an incompetent or disruptive physician is formally or informally provided to the participants of the peer review system. Rather than commence the formal procedures required by the medical staff bylaws, a committee member, an officer of the medical staff or a member of the hospital administration “informally talks to” the physician under investigation. The physician may even be put on an undocumented “informal probation.”

If the informal probation is based upon issues of clinical incompetence, the hospital and possibly the other peer review participants may be exposed to liability. In addition, in a serious case, the participants may be disciplined for violating the medical staff bylaws or hospital bylaws.

If the informal probation is based upon disruptive behavior, the participants and the hospital may be exposed to liability for failure to take appropriate action based upon complaints of employees. For example, repeated charges of sexual harassment handled in this informal manner could result in employee litigation and significant liability.

In addition, nurses and other members of the hospital staff may view such informal actions as non-actions in response to complaints. Frustrated by the failure to address their complaints, nurses and other hospital staff often stop submitting written complaints. Later, when the physician is disciplined and a



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hearing is conducted there is usually a gap (sometimes years) between complaints. The disruptive physician argues that this gap exists because his behavior was exemplary during this period, when in fact, the nurses and other staff stopped filing complaints due to the non-action of the hospital and fear of retaliation.

19. Increasing the Burden of Proof for the Medical Staff and the Hospital

If the peer review system is operating effectively, professional review actions requiring a hearing and appellate procedures will be conducted jointly by the Medical Staff and the Administration. The Medical Staff will serve as the initiator of the peer review action and the Administration will serve as the coordinator of the peer review action.

The physician under review is entitled to due process rights to ensure that the peer review action is fair. The standard for judging the fairness of the actions of the medical staff and the administration in most fair hearing plans is a determination that the action was not initiated or conducted in an “arbitrary, capricious or unreasonable manner.” The rationale for this standard is that the medical staff and the board of a hospital should be entitled to set and judge the standards for the practice of medicine in the hospital. Their decisions on who qualifies under these standards should be final unless there is a misuse of power.

However, in many hospitals the medical staff bylaws shift the burden of proof from the physician to the medical staff and the hospital. This shift makes the process more difficult and expensive for the medical staff and the board to set and judge the standards for the practice of medicine in the hospital.

20. Political Use of Hospital Administration and Medical Staff Bylaws and Procedures

In many cases, politically powerful physicians and physician groups seek to use their leverage to eliminate competitors, political enemies or other unfriendly medical staff members.

However, politically motivated professional review actions may result in the loss of HCQIA immunity as not “taken in the reasonable belief that the action was in the furtherance of quality health care.” In addition, the participants may be exposed to liability for defamation and anti-trust violations, as well as other potential causes of action.

Due to this significant exposure to liability, if political motives are suspected, the hospital administration and/or the non-participant medical staff officers should avoid complicity by conducting a thorough professional review action in accordance with HCQIA and the medical staff bylaws, coordinated by legal counsel and using independent external peer review.



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21. Inappropriate Board Action Following Review by the Hearing Panel or Appellate Panel

The hearing panel or appellate panel may recommend the reversal of an action or recommended action of the Medical Executive Committee of the Medical Staff (“MEC”) or the Board to terminate or suspend an incompetent or disruptive physician. The basis for the Panel’s recommendation may be rational, irrational, clear or vague. In any event, such a recommendation for reversal requires that the Board act with extreme caution in making a final determination. The Board has several courses of action:

Request for Clarification

If the Panel recommendation is unclear, the Board should request and receive clarification of the reasons for the panel’s recommendation of the reversal of the action.

Board Conforms with an Unsubstantiated Panel Recommendation

If, upon review, the Board follows the panel recommendation despite clear evidence of the incompetence or disruptive behavior of the physician, the hospital may be held liable for any subsequent action or claim by a patient. Following the recommendation of the panel does not immunize the hospital from liability for reinstating an incompetent or disruptive physician. The Board is the final authority and must determine the action which is in the best interests of the patients and the hospital regardless of the panel’s recommendation.

Board Does Not Conform with a Substantiated Panel Recommendation

Following the due process requirements of HCQIA and the medical staff bylaws ensures that the physician is afforded due process protections and that a record is made of the process. This record may be used as evidence in a later court proceeding.

HCQIA requires action to be taken “in the reasonable belief that the action was in the furtherance of quality health care.” If the hearing panel provides sufficient documentation to justify its determination, the Board must appropriately consider the documentation proffered by the panel and take appropriate action to avoid liability.

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