Steer clear of negligent credentialing and other legal missteps with this useful book. It provides you with a comprehensive overview of the complex legal issues related to medical staff credentialing, including:

- Landmark cases
- Healthcare law
- Legal terminology
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Attestations
Information on the application is true
Qualified to perform requested privileges
Agrees to be bound by the bylaws, etc.
Agrees to notify hospital of any material changes to application information
Has read and understood attestations, etc.

Acknowledgements
Acceptance of application does not constitute contract for employment
Pledges to provide continuous care for patients
Applicant has burden to produce any requested documentation
Misstatements, etc., on application constitute cause for denial, etc.,
of membership or appointment
Information obtained is not a violation of privacy
Authorization to obtain consumer report
Releases
Releases hospital, etc., from liability when gathering application information
Authorizes third parties to release information relating to qualifications, etc.,
in good faith
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Medical Staff Law: A Guide for Medical Staff Professionals and Physician Leaders

Chapter 1

Introduction

Over the years, the role of a medical staff professional (MSP) has evolved to include a diverse set of responsibilities. Years ago, MSPs were departmental or administration secretaries, and managing the credentialing and privileging process was just another basic administrative function—it included preparing meeting agenda and performing basic activities such as ensuring that there was an application and that copies of licenses were obtained. One long-time MSP describes those duties as “your basic paper pushing.”

The role of a medical staff leader was different as well. In the past, medical staff leadership relied mainly on documentation that indicated an applicant had the appropriate training before granting privileges or recruiting. Sometimes it wasn’t until after a physician had been at organization for a few months that they could determine his or her clinical competence or lack thereof.

For years the old process was enough—hospitals were not legally liable for the quality of the care provided by independent medical staff because those physicians were considered to be independent contractors, over whom the hospital had no control. Additionally, in most states, non-profit hospitals were shielded from liability under charitable immunity laws.

But everything changed in 1966, when a hospital was first held liable for the negligence of a member of its independent medical staff. Moreover, new statutory requirements, such as anti-trust laws and the Americans with Disabilities Act, began to affect hospitals. Suddenly, creating and following a basic set of procedures to validate the education and clinical experience of physicians and, in many states, licensed independent practitioners (LIP), as well as their qualification to perform specific hospital-based procedures, was only the first step.

Other legally related duties include maintaining up-to-date medical staff bylaws, rules and regulations, and policies and procedures (with the MSP often assisting in the initial drafting of the language); organizing peer review committees; managing the graduate medical education department (in teaching institutions); handling privilege disputes; ensuring regulatory compliance; and helping to deal with disruptive or impaired physicians or other practitioners.

Additionally, as malpractice costs have soared and demands for payment have increased, more and more lawsuits have named both hospitals and individual physician leaders as defendants. These lawsuits include negligent credentialing claims, allegations of inadequate or biased peer review processes, anti-trust charges, and more. Thus, MSPs and physician leaders must understand the legal issues related to credentialing and medical staff leadership. Understanding their potential legal liability also makes medical staff leaders less like-
Sample legal issues for medical staff leaders

An incident report regarding a high-volume surgeon expresses concerns about the surgeon's health. The chief of staff discusses the issue with the surgeon but conducts no further investigation or review before dismissing it as having no merit. Perhaps the surgeon is in fact fine, but if not, this approach exposes the hospital to a potential suit for negligent credentialing if that surgeon's impairment causes harm to a patient.

During the re-credentialing process, a verification from another hospital indicates that the internist has had prior disciplinary action. The MSP asks the hospital for additional information, which it refuses to provide, so the chair asks the applicant for an explanation. The internist states that she had delinquent medical records but blames the medical records department for poor communication. The chair accepts the explanation and states that no additional follow-up is needed.

Again, perhaps the internist is telling the whole story, but perhaps not—the delinquent medical records might have caused a delay in treatment and adversely affected patient care. Failing to confirm the information puts the organization at risk for a claim of negligent credentialing. The hospital should make the applicant responsible for ensuring that the other hospital provides the requested documentation before the current hospital makes a recommendation.

Sample policy conflicts an MSP should identify

A new policy regarding the performance of criminal background checks states that any conviction will be reviewed on a case-by-case basis. However, the hearing and appeals document states that any practitioner who is convicted of a felony will be automatically suspended. The MSP should have identified this conflict when the new policy was being drafted and raised the issue for resolution.

The medical executive committee (MEC) recommends recruiting certified registered nurse anesthetists (CRNA) to help with a staffing shortage. The MEC asks the medical director in anesthesiology to begin the recruiting process and to develop privileges. However, according to existing policy, CRNAs first must be approved by the governing body to provide services at your facility. An MSP should recommend that the MEC first request a policy change that would add CRNAs as an approved discipline to provide services. The MSP then should help develop minimum threshold criteria for CRNA applicants and help to develop privileges.
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