Washington Association of Medical Staff Services

POLSINELLI

Incentivizing Your Medical Staff to Engage in Peer Review

Erin Muellenberg
emuellenberg@polsinelli.com
310.203.5322

MSPs ARE THE GATEKEEPERS FOR PATIENT SAFETY

MSP Challenges

- Engaging Medical Staff
- Credentialing
- Peer Review
- Disruptive, Aging, Burn-out, Impairment
- Collegial Interventions
- Disciplinary Action
- "S/He did what???"
- Information Sharing
- Government Investigations
- Surveys
- Medical Staff Funds
- Administration

MSP's are Leaders!

"You see any next generation leadership, you call me."

Where we are going…..

- Understanding Roles
- Credentialing and Peer Review
- Nightmare Cases
- Sharing
- Immunities & Protections

Understanding Roles

- **IN-CEN-TIV-IZE**
  - **Provide someone with a reason for doing something**
  - **Educate**
  - **Motivate**

Peer Review

- Clinical **peer review**. ... A committee of health care professionals examines the work of a **peer** and determines whether the person under **review** has met accepted standards of care in rendering **medical** services.
- **All** medical staff activities

Peer Review Goals

- Patient Safety
- Remediation and Education
- Objective Evaluation
- Distinguishes System Errors from Individual Performance

Medical Staff Basic Responsibilities

- **Credentialing**
- **Privileging**
- **Peer Review**

UNDERSTANDING ROLES

Board of Trustees	Medical Staff	Administration
Ultimate responsibility for Hospital; Operations and Quality of Care/Patient Safety	Responsible for Quality of Care	Responsible for Operations
Medicare Program - CMS TJC - Accreditation CDPH - licensing	Board cannot practice medicine and must rely on Medical Staff which is delegated the responsibility to conduct continuous monitoring, peer review and rigorous credentialing	Daily management and fiscal responsibility; regulatory compliance
Governs through Board as a whole and use of committees and sub-committees	Governs through committee structure; MEC, Departments and Committees. Medical Staff Office provides administrative support	Manages operations and departments that support medical staff functions

A Little Law

- Board and Medical Staff Legal Roles

Legal Requirements

- Conditions of Participation
  - The governing body must "ensure the criteria for selection [of the medical staff] are individual character, competence, training, experience, and judgment." 42 CFR 482.12
  - The medical staff must examine credentials of candidates for medical staff membership and make recommendations to the governing body on the appointment of the candidates.

The Joint Commission

- MS. 06.01.03
- The hospital collects information regarding:
  - Current license
  - Training
  - Experience
  - **Competence, and**
  - **Ability to perform the requested privileges**

Washington Protections

- **7.71.010**
  Legislative finding.
- ***The legislature finds the assurance of quality and cost-effectiveness in the delivery of health care can be assisted through the review of health care by health care providers***. It also recognizes that some peer review decisions may be based on factors other than competence or professional conduct. Although it finds that peer review decisions based on matters unrelated to quality and utilization review need redress, it concludes that it is necessary to balance carefully the rights of the consuming public who benefit by peer review with the rights of those who are occasionally hurt by peer review decisions based on matters other than competence or professional conduct.

Washington Protections

- **7.71.030**
  Actions by health care peer review body—Exclusive remedy.
- (1) If the limitation on damages under RCW 7.71.020 and P.L. 99-660 Sec. 411(a)(1) does not apply, this section shall provide the exclusive remedies in any lawsuit by a health care provider for any action taken by a professional peer review body of health care providers as defined in RCW 7.70.020.
- (2) ***Remedies shall be limited to appropriate injunctive relief, and damages shall be allowed only for lost earnings directly attributable to the action taken by the professional peer review body***, incurred between the date of such action and the date the action is functionally reversed by the professional peer review body.
- (3) Reasonable attorneys' fees and costs shall be awarded if approved by the court under RCW 7.71.035.
- (4) The statute of limitations for actions under this section shall be one year from the date of the action of the professional peer review body.

Washington Protections

- **7.71.035**
  Actions by health care peer review body—Award of costs to substantially prevailing party.
- (1) Except as provided for in subsection (2) of this section, at the conclusion of an action under RCW 7.71.030 the court shall award to the substantially prevailing party the costs of the suit attributable to any claim or defense asserted in the action by the nonprevailing party, including reasonable attorneys' fees, if the nonprevailing party's claim, defense, or conduct was frivolous, unreasonable, without foundation, or in bad faith.
- (2) At the conclusion of an action under RCW 7.71.030 the court shall award to the substantially prevailing defendant the cost of the suit, including reasonable attorneys' fees, if the nonprevailing plaintiff failed to first exhaust all administrative remedies available before the professional peer review body.
- (3) A party shall not be considered to have substantially prevailed if the opposing party obtains an award for damages or permanent injunctive relief under this chapter.

Washington Protections

7.71.040
Chapter does not limit or repeal other immunities conferred by law.
Nothing in this chapter limits or repeals any other immunities conferred upon participants in the peer review process contained in any other state or federal law.

Health Care Quality Improvement Act

- The Congress finds the following:
- (1) The increasing occurrence of medical malpractice and the need to improve the quality of medical care have become nationwide problems that warrant greater efforts than those that can be undertaken by any individual State.
- (2) There is a national need to restrict the ability of incompetent physicians to move from State to State without disclosure or discovery of the physician's previous damaging or incompetent performance.
- (3) ***This nationwide problem can be remedied through effective professional peer review.***

Health Care Quality Improvement Act

- (4) The threat of private money damage liability under Federal laws, including treble damage liability under Federal antitrust law, unreasonably discourages physicians from participating in effective professional peer review.
- (5) ***There is an overriding national need to provide incentive and protection for physicians engaging in effective professional peer review.***

Smigaj v. Yakima Valley Memorial Hospital

- HCQIA Immunity Not Applied
- Failure to follow bylaws
- Dr. Smigaj competitors served on ad hoc committee that recommended suspension
- Failed to investigate
  - No interviews of staff or investigation of alleged disruptive behavior
- Failed to give notice and opportunity to be heard

Barriers to Effective Peer Review

- Fear of litigation from provider
- Lack of understanding of roles and responsibilities –
  - Quality/Patient Safety
    - Duty to the other hospital's patients
- Lack of understanding of what information is protected and how to keep it protected
- Cloak of Silence

Breaking Down the Barriers

- Education
- Structure
- Process
- Ethics
- ***COMMUNICATION***
- ***PARTICIPATION***
- ***LEADERSHIP***

Why we need Effective Peer Review

- **Blind Eye: The Terrifying Story Of A Doctor Who Got Away With Murder,** James B. Stewart, June 15, 2000
- **Coronary: A True Story Of Medicine Gone Awry,** Stephen Klaidman, June 3, 2008
- **Christopher Dunstch, Anatomy of a Tradegy**, Dallas Observor, February 21, 2017, life sentence
- **Kadlec v. Lakeview Anesthesia Associates**, 527 F.3d 412 (5th Cir, 2008)
- **Morguloff v. Baylor Health Care System,** Settled, 2015 https://www.texasobserver.org/anatomy-tragedy/

Case Study

Christopher Dunstch

Sentenced to Life in Prison
February 21, 2017

Christopher Duntsch

- MD & PhD – Univ. of Tenn. Health Science Center
- Neurosurgery residency – 2004-2010
  - Program Director
  - Sent to impaired MD program
  - Not allowed to operate independently
- Post residency stayed in research and ran Discgenics
- July 1, 2011 recruited to Baylor Plano

Christopher Duntsch

- Residency letter
  - *"His work ethic, character, and ability to get along with others were beyond reproach."*
- Fired from group after first surgery
- November 2011 Kenneth Fennel – wrong site surgery
- December 30, 2011 – Robert Passmore - Asst. surgeon grabs Duntsch and begs him to stop. Nurses fail to report incident

Christopher Duntsch

- January 11, 2012 - Barry Morguloff – Dr. Randall Kirby was the assistant surgeon – Surgery was a "horror"
- February 12, 2012 – Jerry Summers – Woke up a paraplegic
- Summary suspension – not reported – Privileges reinstated
- March 12, 2012 – Kelly Martin – Dead – Post operative hemorrhage following laminectomy
- April 2012 – Suspended & Resigned

Christopher Duntsch

- April 20, 2012 resignation letter states relocating practice
- April 20, 2012 reference letter provided to Duntsch from Baylor

The truth may hurt for a little while but a lie hurts forever.

–Anonymous

BAYLOR
Regional Medical Center at Plano

April 20, 2012

Christopher Duntsch, MD
4708 Alliance Blvd.
Pavilion I – Suite 600
Plano, Texas 75093

Dear Dr. Duntsch:

On behalf of the Medical Executive Committee of the Medical Staff of Baylor Regional Medical Center at Plano, I am authorized to notify you of the following:

All investigations with respect to any areas of concern regarding Christopher D. Duntsch, M.D. have been closed.

As of this date, there have been no summary or administrative restrictions or suspensions of Dr. Duntsch's Medical Staff membership or clinical privileges during the time he has practiced at Baylor Reg. Medical Center at Plano.

Yours Very Truly

Patricia Sproles

Patricia Sproles, CPCS
Director, Medical Staff Services

Christopher Duntsch

- July 2012 – Dallas Medical Center grants temporary privileges
- July 2012 – Feolla Brown does from post operative hemorrhage
- July 2013 – Texas Medical Board suspends license
- March 2014 – lawsuit filed against Baylor
- July 2015 - Indicted

Christopher Duntsch

- **Dallas doctor who performed questionable surgeries gets life in prison**

Dallas Daily News, February 20, 2017

Morguloff v. Baylor Health System

- Filed March 25, 2014, US District Court, Northern District of Texas, Case 3:14-cv-01065-G
- Baylor recruited Duntsch with a salary of $600,000 + guarantee + relocation
- Alleged mental illness, drug and alcohol abuse
- Morguloff's primary physician was encouraged to refer to Duntsch

Morguloff v. Baylor Health System

- Surgery left Morguloff with spinal injury and debilitating pain
- Baylor suspended Duntsch but did not report to NPDB or TMB
- Reinstated and second surgery on Kelly Martin resulted in death
- Suspended again and again not reported
- Recruited and practiced at Dallas Medical Center

Morguloff v. Baylor Health System

- Morguloff alleged vicarious liability and that Dunstch was Baylor's agent and/or employee based on recruitment contract
- Baylor alleged to be negligent for credentialing, lack of supervision, lack of reporting, failure to investigate
- Case dismissed for lack of jurisdiction and failure to meet Texas requirement to show intent to harm (malice)

Lessons Learned (Again)

- Credentialing –
  - Watch for red flags & follow up
- Impairment –
  - Identify and manage
- Action –
  - Take when necessary
- Reporting –
  - Follow the law
- Reference letters
  - Factual – notice to others
- Information Sharing
  - Proactive

Credential and Privilege to include the Six Core Competencies

- Patient care
- Medical/clinical knowledge
- Practice-based learning and improvement
- Interpersonal and communication skills
- Professionalism
- System based practice

Privileges must be

- **Individualized**
  - Practitioner
  - Facility/Service
- **Relevant**
  - Current
  - Realistic
- **Supported by Objective Evidence**
  - Training
  - Experience
- **Continuously Monitored**
  - OPPE

Who granted him privileges?

Peer Review Protections






Encourage Information Sharing

- What is protected?
- What is not protected?
- How can information be shared internally and remain protected?
- Organizing and managing a joint investigation between Ambulatory Clinics, Hospital and Medical Group
- What information should not be shared?

Peer Review Protections

- State Peer Review Protections
- Patient Safety Quality Improvement Act
- Health Care Quality Improvement Act

What is protected?

- Peer Review Body Activities related to
  - Medical research
  - Quality assurance
  - Utilization review
  - Credentialing
  - Education
  - Training and supervision of physicians
- Any connection to grant, denial, restriction or termination of clinical privileges.

What is protected?

- All oral communications or written reports to a peer review body, and
- All notes or records created by or at the direction of a peer review body,
- including the communications, reports, notes or records created in the course of an investigation undertaken at the direction of a peer review body.

What is not protected?

- Information used in a disciplinary proceeding if the physician brings an action
- Information that is otherwise discoverable, e.g., medical records
- Administrative or automatic actions

Investigations & Corrective Action

- Medical Staff Bylaws
  - Acts, demeanor or conduct, either inside or outside the hospital, that is reasonably likely to be
    - Detrimental to patient safety or quality of care
    - Unethical
    - Contrary to the Bylaws, R&R
    - Below applicable standards
    - Disruptive
    - Improper use of hospital resources

Corrective Action Tenets

- Corrective action ***must be taken when necessary*** to protect current and future patients
- Corrective action should be ***based on credible facts*** capable of independent verification (e.g., documents, witness statements)
- Corrective action imposed should be the ***least restrictive to the practitioner but sufficient to protect patients***

Don't Let the Tail Wag the Dog!

Reporting

- Medical Board of Washington
  - Medical disciplinary cause or reason
    - Restriction
    - Suspension
    - Limited
    - Termination
    - Resigns or leave of absence while under investigation or to avoid

    For unprofessional conduct

    RCW 70.41.210

Reporting

- National Practitioner Data Bank
  - Professional review action based on competence or conduct that affects or could affect patient care and adversely affects privileges or membership for more than 30 days
    - Reduction
    - Restriction
    - Denial
    - Revocation
    - Surrender or failure to renew
    - Resignation while under investigation
    - Summary suspension of more than 30 days

Hot Topics

- **Burn-out**
- **Disruptive Practitioners**
- **Late Career Practitioners**
- **Impairment**

Burnout

- A state of physical, emotional or mental exhaustion combined with doubts about personal competence and value of work

Risk Factors

- Perfectionism
- Need for Control
- Increased sense of responsibility
- Need to please
- Difficulty asking for help
- Difficulty taking time for oneself

Red Flags for Burnout

- Emotional deadness
- Cynicism, disillusionment
- Loss of mental energy
- Anger
- Isolation
- Physical ailments
- Negative attitudes
- Deteriorating quality of patient care
- Self-medication

Avoiding Burnout

- Recognition
- Exercise, sleep, nutrition
- Supportive professional relationships
- Clinical variety
- Hobbies outside of medicine
- Humor
  - Swetz, J. Palliative Med. 2009

Disruptive Behavior

Causes of Disruptive Behavior

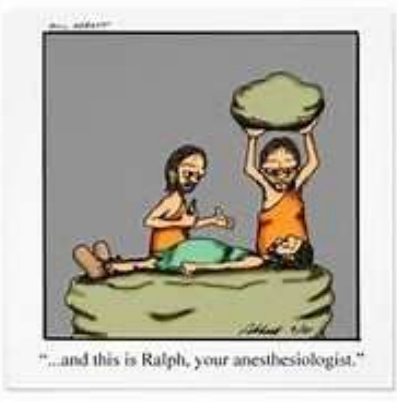
- Personality or affective disorder
- Stress, burnout
- Poor social skills
- Lack of insight
- Aging, Medical Problems
- Impairment (drugs, alcohol, addiction, etc.)
- The behavior "works" – *Practitioner gets her way*

Late Career Practitioners

Dr. Charles Godfrey | 100-Year-Old Doctor Still Practicing

Managing the Late Career Practitioner

- Policy and Guidelines
- Collegial Intervention
- Well-Being Committee
- Formal Action
- Identifying roles for Senior practitioners



Impairment

Impairment Definition

- Inability to practice medicine with reasonable skill and safety due to:
  - Mental illness
  - Physical illness, including but not limited to, the aging process or loss of motor skill
  - Addiction

Physician Well-Being Committee

- Not an “investigation”
- Not a disciplinary action
- Not reportable

Corrective Action

Confidentiality & Information Sharing

- Medical Staff Bylaws Requirement
- Waiver of protections if fail to maintain confidentiality
- Harm to reputation of others
- Share information through
  - Process
  - Factually

Peer Review Sharing Policy

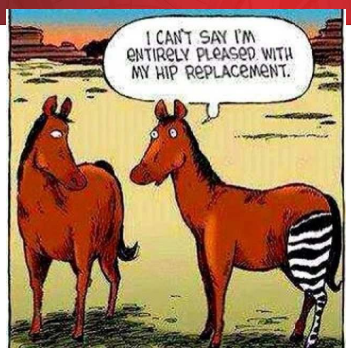
- Sharing Practitioner Information by, and Among, System Facilities

SYSTEMWIDE PEER REVIEW NETWORK

What may be shared?

Outside Facilities

Independent Duty to Evaluate



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