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Questions related to medical group peer review

On October 5, 2022, industry expert **Elizabeth A. "Libby" Snelson, Esq.,** presented a webinar entitled *Medical Group Peer Review: Legal Issues and Possible Protections*, as part of the free AMA Credentialing Insights Webinar Series. The following recaps questions and answers that resulted from that webinar.

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Q. Does there need to be a minimum number of doctors to be considered a medical group?

A. Not under federal law, but check state law which may set numbers for qualification for peer review protections and requirements.

Q. I live in Alabama. Where would I find the state laws regarding peer review?

A. Alabama Code Title 6. Civil Practice § 6-5-333

Q. What are your thoughts on adding a policy or language in the bylaws about late-aged physicians?

A. Age-based criteria exposes the group to liability for age discrimination. Use competence criteria that apply to all providers.

Q. We had a physician who was found to have a substantial concern and we were going to start a thorough review of documentation, but not

restrict privileges. He resigned before the focus review initiated. Is that reportable to NPDB?

A. Resignations are reportable only if they occur during or in lieu of an investigation.

Q. Can you share any information on how nursing peer review is protected? How do you carry out peer review or chart review for APCs since peer review applies to physicians and dentists only? Federal Reporting question, does this apply differently to NPs, PAs, RNs, etc.? Just to clarify, APPs are not covered under the federal law?

A. The Health Care Quality Improvement Act does not protect review of any other professions other than medicine and dentistry; however, there are National Practitioner Data Bank reporting quirks regarding APPs. And state law and accreditation standard—and best practices—may well demand review of APPs. Peer review of all providers is warranted, but the parameters vary from those that apply to MDs/DOs/DDSs. Peer review policies need to accommodate all these issues.

Q. Is peer reference response part of peer review?

A. Yes, that is credentialing, which is a peer review process, if structured correctly. Human resources/recruiting won't qualify as peer review.

Q. Are there resources available for peer review form templates? Do you have a sample policy or two that you are able to share with us as a template? Would you have any guidelines/examples in developing a Peer Review Policy to ensure we have all of the elements needed?

A. The AMA *Physician's Guide to Medical Staff Organization Bylaws* includes valuable AMA model documents. Full disclosure: I am the author. Any form or template must be tailored to the needs of the group and the law of that group's state. Do so with the advice of experienced counsel only.

Q. What is your take on partners completing peer reference forms for each other for hospital medical staff appointments? Any potential

conflict of interest? How can we be sure they are being honest about any potential issues?

A. Partnership itself is a peer reference—presumably a physician is working only with colleagues they can trust with their patients. The relationship should be disclosed so that the medical staff can make an informed assessment of the reference. Also check the hospital medical staff's conflict of interest bylaws/policy.

Q. I believe for our state of Florida, the members of a hearing committee cannot be a direct competitor. In this instance, would the hospital conduct the process through the hospital medical staff, not the medical group?

A. Hearing committee members should not be direct competitors. A hearing policy for a medical group (or hospital medical staff too) anticipating a need to avoid competitors on a hearing panel can provide for options for an arbitrator or hearing officer to hear the matter, and still be eligible for immunity under the Health Care Quality Improvement Act.

Q. Given the Austin precedent, what are acceptable criteria for summary suspension of privileges? Anything goes if done in "good faith?"

A. Under the Health Care Quality Improvement Act, summary suspension can be protected if implemented to prevent imminent danger to the health of a person. No other criterion is specified. Good faith and compliance with procedural requirements are also required for protection under federal law. State law provisions may add other requirements; for example under Illinois law, "A summary suspension may not be implemented unless there is actual documentation or other reliable information that an immediate danger exists," which "documentation or information must be available at the time the summary suspension is made...." 210 ILCS 85/10.4.

Q. Any advice on how to get providers to participate in OPPE-type review when, to them, it just seems like chart review that can be done by anyone?

A. Data gathering is important—it is, or should be, the basis of all peer review. The peer review policy should detail the standard setting and action responsibilities for physicians and other providers based on the result of chart review.

Q. Does a provider have any legal weight if they feel there is a perception of bias for panel members that are chosen?

A. The peer review policy should provide an opportunity for the provider to challenge the impartiality of the panel members.

Q. Is there a process for an annual review that is based on a summary/consolidation of quarterly reviews?

A. Review should be ongoing.

About the author

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As President of Legal Counsel to the Medical Staff, PLLC, attorney Elizabeth Snelson represents medical staffs across the country and works for many medical societies. She presents on topics such as peer review, medical staff bylaws, disruptive behavior, the National Practitioner Data Bank, and physician advocacy at medical staff leadership retreats and in programs sponsored by the American Medical Association (AMA) and other medical societies, the National Association of Medical Staff Services and state medical staff services associations, the American Bar Association, and other organizations. She also authors model medical staff bylaws published by state medical societies. Her most recent e-book—the seventh edition of Physician's Guide to Medical Staff Organization Bylaws—was published in January 2022 by the AMA.