Effective Hospital Boards: Credentialing

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Introduction

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Written Resources

- PowerPoint slides
- Boardroom Basics, *Medical Staff Credentialing*, Minn. Hosp. Ass'n
- B. Bader, *Educational Audit of the Physician Credentialing Process*, available at www.GreatBoards.org.

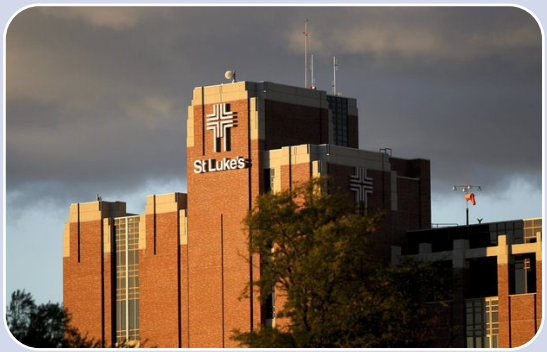
Disclaimer

- I hope this will be more of a discussion than lecture.
  - Please comment, ask question, share best practices.
- This is an overview of some of the principles, rules and laws.
  - Modify as appropriate to your situation.
  - Consider applicable
    - State statutes and regulations
    - Hospital and medical staff bylaws
    - Contracts

Rules may differ depending on type of hospital…

Public (govt owned)

- Subject to state laws regarding operations (e.g., open meeting, public records, elections, finance, etc.).
- Board must act per statutory obligations.
- Govt immunity.



Private nonprofit

- Subject to state and federal laws regarding nonprofit corporations.
- Operate for charitable purpose, community benefit.
- Board must further charitable mission.

Private for profit

- Greater flexibility in operations.
- Subject to state laws regarding corporations.
- May have national and local board.
- National board acts for benefit of shareholders.

Credentialing

- *Credentialing* = process by which governing body and medical staff determine which practitioners may practice at the hospital.
- *Corrective action* = process by which governing body and medical staff may take adverse action against a practitioner's privileges or medical staff membership.
- *Peer review* = includes any process by which the governing body and/or medical staff review the professional competence or conduct of practitioners, including but not limited to credentialing and corrective action.

Michael Swango, M.D.

- In 2000, plead guilty to murdering 3 patients by poisoning them while a hospital physician. He is suspected of administering lethal injections to 35-60 other patients.
- If hospital had done its job, it would have learned:
  - Medical school wrote warning letter.
  - Numerous deaths occurred during his rounds.
  - Convicted and imprisoned for 2 years for poisoning coworkers.
  - Plead guilty to fraud in applications to government hospitals.
  - Ohio revoked his medical license.
  - Dismissed from programs and rejected by hospitals.
  - Featured on *20/20* and *America's Most Wanted.*

(See Stewart, *Blind Eye: How the Medical Establishment Let a Doctor Get Away with Murder)*

Why credentialing?

Proper credentialing = preventive medicine

- Promotes quality health care.
- Avoids problem practitioners.
  - Incompetent.
  - Disruptive.
  - Poor fit for organization.
- Facilitates a professional workplace.
- Prevents liability to patients, practitioners, employees, and the government.

What does credentialing address?

- *Medical staff membership* = member of staff with rights and responsibility, including right and responsibility for quality patient care at hospital.
  - Initial appointment.
  - Reappointment.
- *Privileges* = license to use hospital resources and provide specified clinical services at hospital based on:
  - Applicant's education, training, experience and competence.
  - Facility's capability to support the requested privileges with proper equipment, personnel, capacity, etc.

Who is responsible for credentialing?

IDAHO

"Medical staff appointments and reappointments must be made by the governing body upon the recommendation of the active medical staff, or a committee of the active staff."
(IDAPA 16.03.14.250)

WYOMING

"Medical staff members shall be appointed by the governing body."
(Wyo. Admin. Rules Chap. 12 § 6)

Who is responsible for credentialing?

- Ultimately, the governing body of the hospital.
- Medical staff makes recommendations, but the governing body must make the final decision.
  - Appointment to medical staff
  - Reappointment to medical staff
  - Clinical privileges
  - Adverse action against privileges or medical staff membership

(IC 39-1395; IDAPA 16.03.14.200 and -.250; WSA 32-5-113; 42 CFR 482.12)

Board Responsibilities

- Quality patient care
- Qualified practitioners

} Effective Credentialing

- Hospital mission, vision and values
- Strategic planning
- Community relations
- Financial stability
- Effective administration
- Statutory and regulatory compliance
- Board education and efficient processes

Who must be credentialed?

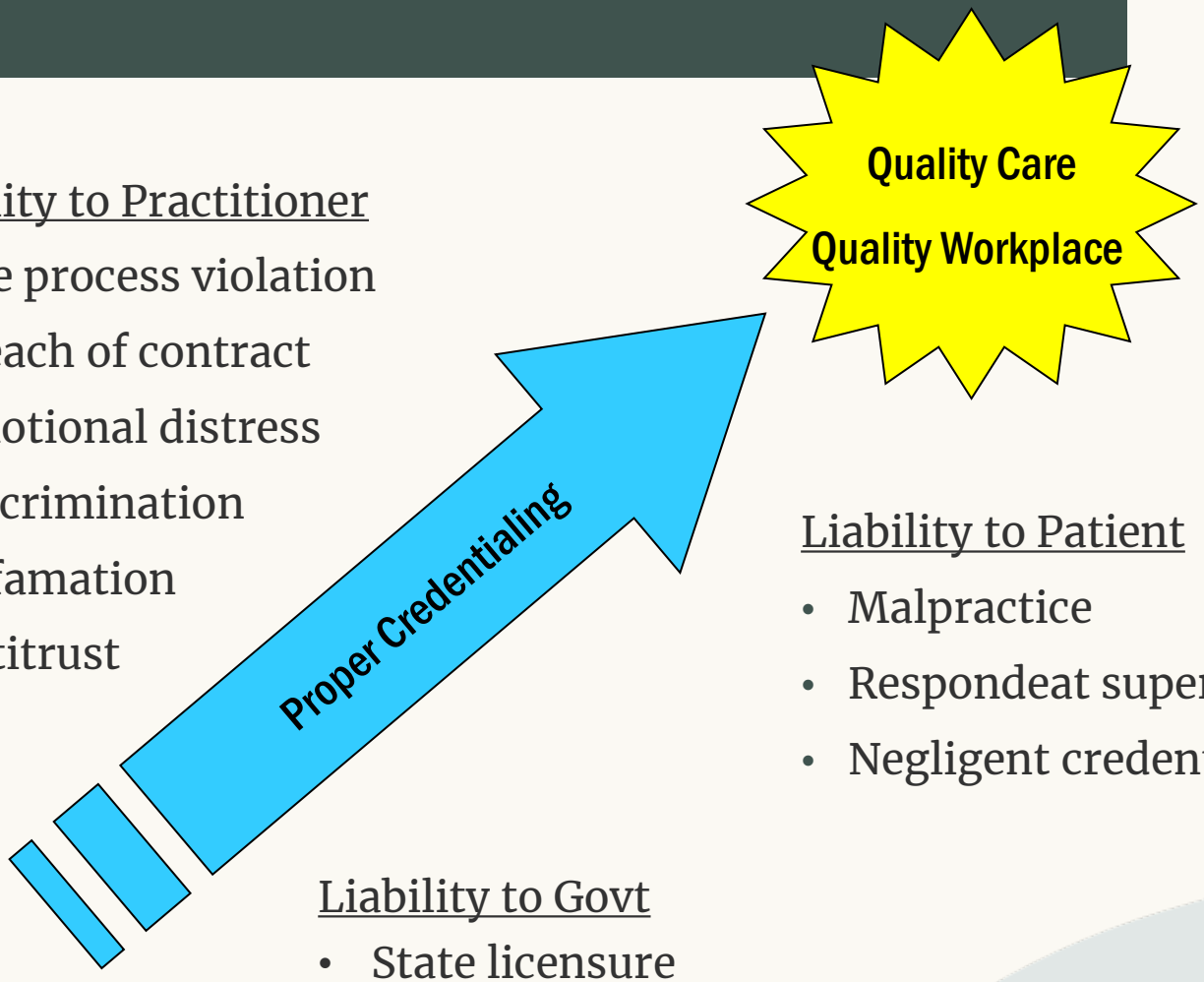
- All licensed independent practitioners ("LIP"), i.e., those who may order tests or procedures at the hospital, e.g.,
  - Physicians (e.g., MDs and DOs)
  - Podiatrists
  - Dentists and oral surgeons
  - Advance practice nurses (e.g., NPs, CRNAs, CNWs, etc.)
  - Physician assistants
  - Psychologists
  - Therapists
  - Chiropractors
  - Others?

Sometimes referred to in bylaws as "Limited License Practitioners" or something similar

Sometimes referred to in bylaws as "Allied Health Professionals" or something similar

- "Credentialing" may not apply to others (e.g., nurses, techs, etc.), but must ensure they are qualified.

Effective Credentialing



Liability to Practitioner

- Due process violation
- Breach of contract
- Emotional distress
- Discrimination
- Defamation
- Antitrust

Liability to Patient

- Malpractice
- Respondeat superior
- Negligent credentialing

Liability to Govt

- State licensure
- COPs
- Accreditation

Credentialing: Liability to Patient

Wyoming

- A hospital owes a legal duty "to exercise that degree of care and skill usually exercised or maintained by other reputable hospitals in the extension and continuation of medical staff privileges to a physician." (Greenwood v. Wierdsma (Wyo. 1987))
- A plaintiff may sue a hospital for "failure to properly exercise its authority in admitting practitioners to staff privileges and failure to monitor the conduct of those who are granted staff privileges." (*Harston v. Campbell Cty Mem. Hosp.* (Wyo. 1996))

Credentialing Liability to the Patient

Idaho

- *Facts*: Plaintiff in malpractice case moved to amend the complaint to allege negligent credentialing based on allegations that hospital should have known of physician problems.
- *Held*: Idaho's peer review statute does not provide immunity for peer review decisions.

(*Harrison v. Binnion* (Idaho 2009))

* *Case did not address elements or requirements for negligent credentialing claim.*

Credentialing: Liability to Patient and Government

To minimize liability to patient:

- Ensure you have qualified practitioners on staff.
- Conduct proper credentialing.
  - Initial medical staff appointment and privileges.
  - Biannual re-credrentialing.
  - Peer review ("Ongoing Professional Practice Evaluation").
  - Corrective action when needed.

Credentialing: Liability to Practitioner

Practitioners who are denied medical staff membership and/or privileges may sue.

- Denial may inhibit practitioner's ability to practice in the community if cannot provide services at local facility or contract with certain payers.
- Denials likely need to be reported and may adversely affect practitioner's privileges at other facilities, ability to get a job, or ability to contract with certain payers.
  - Adverse action against privileges may be reported to:
    - National Practitioners Data Bank (NPDB).
    - State medical boards.
    - In response to requests from employers, facilities, or payers.
  - Payer or services contracts may be conditioned on privileges.

Credentialing Liability to the Practitioner

Wyoming

- *Facts:* Hospital terminated privileges based on physician's disruptive behavior. Physician sued.
- *Held:* Upheld termination.
  - "In reviewing a decision of a public hospital to refuse to grant or to terminate staff privileges of a physician … the applicable standard of review is one which accords great deference to a hospital's decision. That review is limited to a determination of whether the exclusion was [1] made on a rational basis, supported by substantial evidence, in accordance with reasonable hospital bylaws, and [2] was not discriminatory, arbitrary or capricious."
  - Hospital complied with standards and process in its bylaws.
  - Hospital's decision was reasonable and supported by record; it was not arbitrary or capricious.

(*Guier v. Teton Valley Hosp. Dist.* (Wyo. 2011))

Credentialing Liability to Practitioner

Idaho

- *Facts:* St. Als denied medical staff privileges due to physician's alleged history of disruptive behavior.
- *Held:* Court upheld St. Als' decision.
  - Bylaws do not constitute a contract.
  - Hospital must comply with statutes and bylaws.
  - Hospital gave the process due in statute and bylaws.

(*Miller v. St. Alphonsus* (Idaho 2004))

Credentialing: Liability to Practitioner

- Courts usually do not second guess hospital's decision if:
  - Followed standards in bylaws and statutes.
  - Based on legitimate, documented reasons
    - Patient care or hospital operations
    - NOT arbitrary or capricious
    - NOT improper motive, e.g., discrimination, anti-competition, retaliation, etc.
- From legal liability standpoint, the process is more important than the decision.

Credentialing Decisions

Board's job: ensure the credentialing decisions:

- Are based on documented, legitimate reasons.
  - Not unreasonable, arbitrary, or capricious.
  - Not discriminatory.
  - Not in violation of antitrust laws.
- Are consistent with the process and standards in applicable statutes, bylaws, rules and regulations, and accreditation requirements.

Med Staff Categories

Must assign medical staff members to a medical staff category, e.g.,

- Active
- Courtesy
- Consulting
- Honorary
- Telemedicine
- Allied health professional
- Other?

For each, identify:

- Qualifications
- Privileges or rights
- Responsibilities
- Ability to modify

Medical Staff Categories

- May have "tiers" or different types of medical staff members:
  - Physicians (MD, DO)
  - Limited license practitioners (DPM, DDS, DMD, etc.)
  - Allied health professionals (PA, NP, CRNA, CNW, others)
- Medical staff privileges and rights may differ between types, e.g.,
  - Admissions
  - Clinical services
  - Voting
  - Medical staff offices
  - Full fair hearing rights

Medical Staff Categories

Should advanced practice providers (e.g., PAs, NPs, CRNAs, CNMs) be full medical staff members or members of allied health professional staff?

Pros

- Promotes unity on staff
- Shares responsibilities
- Helps ensure smaller hospitals have critical mass
- May facilitate accreditation

Cons

- May complicate bylaws as you distinguish between what APPs can and cannot do.
- May give them rights / responsibilities that are not required or appropriate (e.g., full voting, med staff officer, full hearing rights, etc.)

Privileges

Board must determine privileges.

- "Laundry list"
  - Contains list of clinical procedures available at facility.
  - Works well for small facilities with limited procedures.
  - Requires regular updating regarding practitioners and procedures.
- "Core privileging"
  - Identifies "core" qualifications to work in department.
  - Identifies privileges associated with the department.
  - Allows for additional privileges.
- *Ensure your facility has capability to support privileges.*

Credentialing Standards

- Statutes and regulations
  - U.S. Constitution (especially for govt entities)
  - IC 39-1392g, -1395 and -1396; IDAPA 16.03.14.200 and -.250
  - WSA 35-2-113, Wyo. Admin. R. Dept. of Health Ch. 12 §§ 6-7.
  - Hospital/CAH COPs, 42 CFR 482.12, -.22 and 45 CFR 616
  - Health Care Quality Improvement Act (HCQIA), 42 USC 11101
- Medical staff bylaws, rules and regulations
- Practitioner contracts
- Accreditation standards
  - Joint commission
  - Other?
- Common law, e.g., standard in community to avoid negligent credentialing claim

Credentialing Standards

Substantive Standards

- Factors that should or may be considered in determining whether to grant medical staff membership or privileges.

Procedural Standards

- Process that must be followed in making credentialing decisions.

Credentialing Standards

United States Constitution

- Practitioner does not have a constitutional right to privileges at a public hospital. (*Hayman v. Galveston*, (S.Ct. 1927))
- Once privileges granted at a public hospital, practitioner may have a property or liberty interest requiring due process before they are denied.
- Hospital may not deny privileges for reasons prohibited by the constitution, e.g., racial discrimination.

* *Check current law.*

Substantive Standards

Wyoming

- "Any hospital owned by the state, or any hospital district, county or city thereof, and any hospital whose support, either in whole or in part, is derived from public funds, shall be open for practice to doctors of medicine, doctors of osteopathy, doctors of chiropractic, doctors of dentistry and podiatrists, who are licensed to practice medicine or surgery, chiropractic, dentistry or podiatry in this state. Provided, however, that these hospitals by appropriate bylaws shall promulgate reasonable and uniform rules and regulations covering staff admissions and staff privileges. Admission shall not be predicated solely upon the type of degree of the applicant and the governing body shall consider the competency and character of each applicant."

(WSA 35-2-113; (*Guier v. Teton Valley Hosp. Dist.* (Wyo. 2011))

Substantive Standards

Idaho

- Recognizes "the authority of the governing body of any health care organization to make such rules, regulations, standards or qualifications for medical staff membership as it, in its discretion, may deem necessary or advisable, or to grant or refuse membership on a medical staff" subject to the following:
  - May not prohibit podiatrists.
  - May not prohibit members who own, are affiliated with, or are competitors.

(IC 39-1392g and -1395)

Substantive Standards

Credentialing decisions may be based on:

- Current licensure
- Education, experience, and competence
- Professional judgment
- Physical and mental capability
  - Beware potential ADA implications or similar laws
- Character and professionalism
- Hospital capacity and capabilities
  - E.g., availability of equipment and qualified support staff
- Geographic proximity to hospital
- Ability to satisfy medical staff responsibilities
- Any other reasonable, legal basis

(*See* WSA 35-2-113; IDAPA 16.03.14.200 and -.250; 42 CFR 482.12)

Substantive Standards

Credentialing decisions should **not** be based on:

- Licensure, professional privileges elsewhere, membership in society, etc. (IDAPA 16.13.14.250.01; 42 CFR 482.12)
- Credentialing done by other entities
  - Exception: telehealth if satisfy certain conditions. (42 CFR 482.12, 482.22, 485.616, 485.635)
- Illegal bases, e.g.,
  - Discrimination on basis of sex, disability, age, race, national origin, sexual orientation, etc.
  - Antitrust or anti-competitive basis
  - Retaliation
  - Others?

Substantive Standards

What about economic or business reasons?

- Exclusive contracts?
- Closed staff arrangements?
- Competitors on medical staff?
  - IC 39-1392g prohibits denying medical staff membership because practitioner owns, is affiliated with, or is a competitor.
- Utilization (i.e., "economic credentialing")?
  - OIG has expressed fraud and abuse concerns. (70 FR 4869)

* *Check your bylaws, statutes and case law*

Credentialing Process

IDAHO

- "A formal written procedure shall be established for appointment to the medical staff."
- "The procedure … shall involve the administrator, medical staff, and the governing body."

(IDAPA 16.03.14.200)

- "The process for considering applications for medical staff membership and privileges shall afford each applicant due process."

(IC 39-1395)

WYOMING

- "There shall be a formal procedure established, governed by written rules and regulations, covering the application and for medical staff membership and the method of processing applications."

(Wyo. Admin. R. Ch. 6 § 12; see WSA 35-2-113)

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Credentialing Process

Process usually set out in medical staff bylaws and policies.

- Application
  - Gather information
  - Verify information
  - Databank searches

  } Administration (e.g., Medical Staff Services)
- Active medical staff review
  - Review file
  - Interview practitioner
  - Recommendation to board
  - Fair hearing process, if required
- Board review and decision

** Process may vary for physicians v. allied health professionals.*

Credentialing Process

- See sample credentialing checklist.
- Make sure it complies with bylaws before using.

Credentialing Process

- Put burden on applicant to produce relevant and required info and documents.
  - Your hospital should not be required to chase down info.
  - Notify applicant of deficiencies, e.g., missing info or incomplete answers.
  - Notify applicant that you cannot process application until completed application is submitted.
- Confirm that misrepresentations in application are basis for automatic denial.

Credentialing Process

Beware warning light situations:

- Incomplete application or documentation
- References indicate problems
- Discrepancies in info submitted
- Privileges requested vary from usual requests.
- Unexplained gaps in time
- Loss or reduction in privileges, licensure, program participation, etc.
- Prior disciplinary actions
- Three or more malpractice claims in last five years
- Numerous jobs or affiliations in last five years
- More than five licenses across United States
- Unexplained refusal to disclose info

Credentialing Process

- *Remember: where there's smoke, there's usually fire…*

Credentialing Process

Following review, medical staff may:

- Require additional information, examination, or review.
- Recommend that membership and specified privileges be granted.
- Recommend that membership and/or privileges be denied, limited, or conditioned.
  - Usually triggers fair hearing process under bylaws.

** Check bylaws requirements.*

Credentialing Process

- Upon receipt of medical staff recommendation, board may
  - Accept recommendation.
  - Reject recommendation.
  - Send back for more action.
  - Take its own action, e.g., impose conditions.
- Board should review medical staff recommendation:
  - Appropriate process was followed consistent with statutes, bylaws, rules and regulations.
  - Decision is reasonable, not arbitrary or capricious.
  - Decision was based on legitimate considerations, not illegal considerations.
- Board is not required to be medical experts.

Credentialing Process: Board Review

Remember your duty of due care, i.e.,

- Review info.
- May rely on experts.
- May use committee.

Credentialing: Emergency or Temporary Privileges

- In limited circumstances, hospital may grant privileges on emergency or temporary basis, e.g.,
  - Practitioner needed but no time for full process.
  - Privileges temporarily granted while formal application processed.
- Subject to expedited review.
- Automatically expires within limited time period, e.g., 60 days.

- *Be very careful and use sparingly.*
- *Ensure bylaws allow for same.*

Credentialing: Reappointment

- Usually must occur at least every 3 years.
- Process similar to initial appointment.
  - Application
  - Review by active staff
  - Governing body determination
- Process should be stated in bylaws, rules or regulations.
- Beware situations where reappointment process allowed to drag on or not completed.

Credentialing Process Review

Best Board Practices Checklist

Educational Audit of the Physician Credentialing Process

By Barry S. Bader

Part I. Initial Appointment Process

Hospital boards approve medical staff appointments and clinical privileges, but how much do they know about the process that produces the medical staff's recommendations on individual physicians? Can the board feel confident that the medical staff's credentialing process is thorough and based on objective criteria?

One way to find out is to conduct an "educational audit" of the credentialing process. The board or a Board Quality Committee asks medical staff leaders to review how physician applications for staff membership and and clinical privileges are handled.

Here are some questions that might be addressed as part of an educational presentation and discussion of the initial appointment process.

1. **What information do we request on an application for medical staff membership?** Do we place the burden of proof on the applicant to demonstrate that he or she is qualified?
2. **Have we established *minimum* criteria for medical staff membership**, such as:
   - Current medical license in this state
   - Professional liability insurance from a recognized carrier
   - Evidence of current clinical competence, including documentation of medical school, residency training and satisfactory performance for all past and present hospital staff memberships
   - Board certification or admissibility
   - Close proximity to the hospital or suitable coverage arrangement
   - Applicant meets the needs of the hospital as indicated in the current medical staff manpower plan.
3. **What are the key steps in the initial appointment process?** How long does the process typically take? What are the responsibilities of:
   - Medical staff services office
   - Medical Director/Vice President for Medical Affairs
   - Department chairs
   - Credentialing committee
   - Medical Executive Committee
4. **How is the information on an application verified?**
   - What is a primary source, and why are primary sources so important to detect imposters and false statements?
   - Are photographs used to verify the applicant's identity?
5. **How are the applicant's clinical skills and ability to work with others evaluated? How are malpractice cases reviewed?**
6. **Are all applicants interviewed as part of the initial appointment process, usually by the credentials committee?** Is the applicant asked to explain any discrepancies or problems that surfaced during the credentials verification process, such as an adverse evaluation from a residency program director? Do the questions also include such questions as:
   - What are your plans for establishing an office in the area?
   - Why do you want to practice at this hospital? What will you contribute to the medical staff?
   - When was the last time you made an error in practice, and what did you learn from it?
7. **How often has a physician's application for initial appointment been rejected in the last five years?** How often do physicians withdraw their applications rather than provide information requested to document their competence?
8. **Has the medical staff established a "fast track" or expedited credentialing process** to provide rapid processing of well documented applications with no problems and a more through review of the smaller percentage of applications that have issues needing discussion?
9. **Do new applicants go through a proctoring or provisional period in which they must see a minimum number of patients and demonstrate satisfactory performance to a proctor?**
   - Who are the proctors?
   - Do proctors use formal evaluation criteria, observe the applicant's performance, or review patient records?
   - What happens if a practitioner fails to meet the minimum activity levels?
10. **What rights of appeal does a physician have?** How does the fair hearing process work? Is the process streamlined, or could it lead to a long, drawn appellate proceeding?

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Corrective Action

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Corrective Action

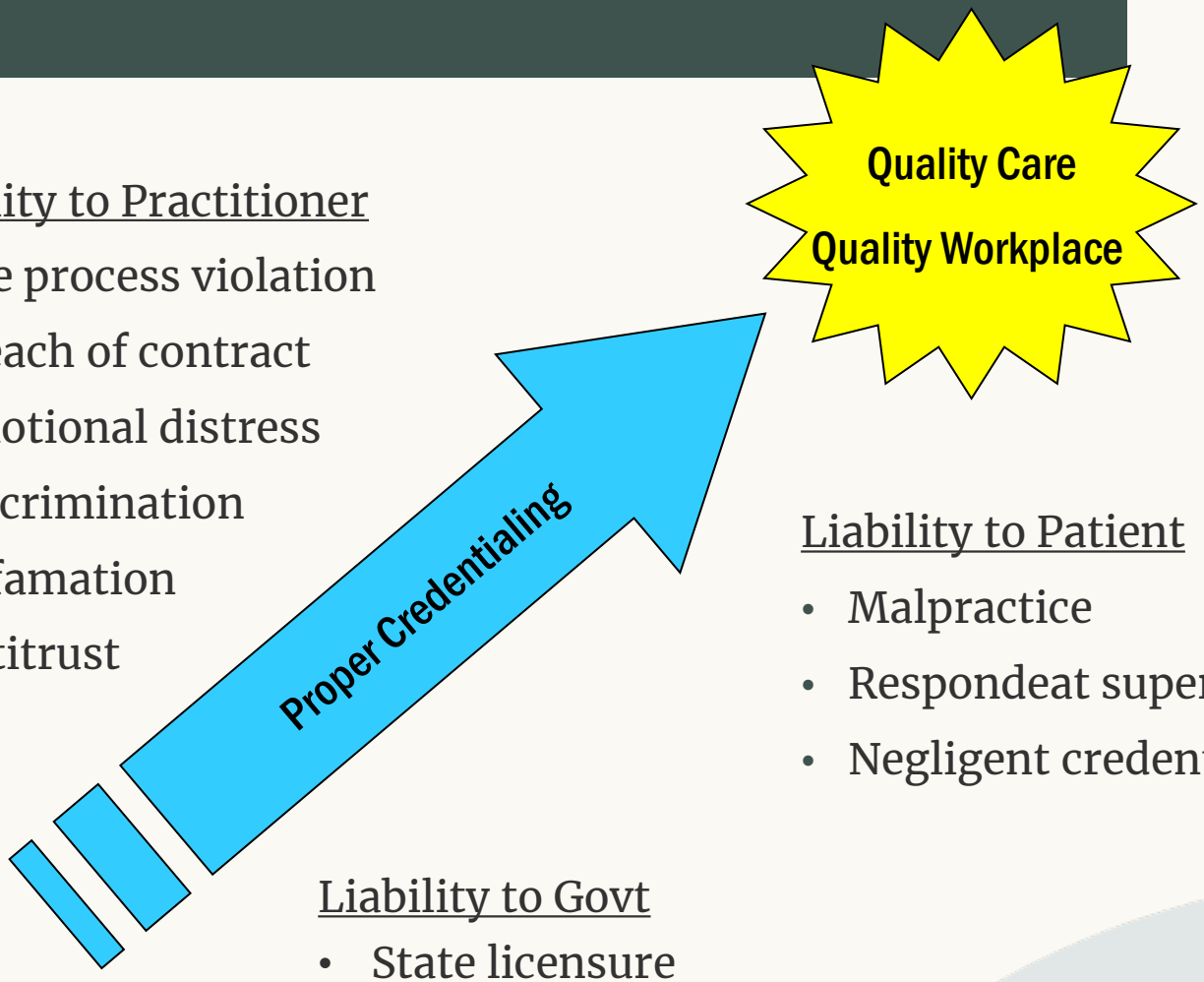
- Organization has right to ensure effective operations.
- Organization has duty to protect patients and employees.
- Medical staff responsible for medical care, professional practices, and ethical conduct of members. (IC 39-1396; IDAPA 16.03.14.250; Wyo. Admin. R. Ch. 12 § 7; 42 CFR 482.12)
  - Clinical concerns
  - Ethical concerns
  - Behavioral concerns (e.g, disruptive conduct)
  - Compliance (e.g., laws, bylaws, rules, regulations)
  - Licensure, credentials, program participation

Corrective Action

Remember…

- A plaintiff may sue a hospital for "failure to properly exercise its authority in admitting practitioners to staff privileges and failure to monitor the conduct of those who are granted staff privileges." (*Harston v. Campbell County Mem. Hosp.* (Wyo. 1996)).
- A hospital a legal duty "to exercise that degree of care and skill usually exercised or maintained by other reputable hospitals in the extension and continuation of medical staff privileges to a physician." (*Greenwood v. Wierdsma* (Wyo. 1987)).

Effective Credentialing



Liability to Practitioner

- Due process violation
- Breach of contract
- Emotional distress
- Discrimination
- Defamation
- Antitrust

Liability to Patient

- Malpractice
- Respondeat superior
- Negligent credentialing

Liability to Govt

- State licensure
- COPs
- Accreditation

Corrective Action: The Good News

Remember…

- Courts usually do not second guess an organization's corrective action if:
- Decision based on appropriate factors.
  - Valid patient care or business reason, not discrimination, retaliation, or unfair competition.
  - Not arbitrary and capricious.
  - Practitioner given process required by contract, bylaws, or laws.

** From a legal liability perspective, the process is usually more important than the result.*

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Corrective Action

Make sure action is consistent with:

- Practitioner's contract, if any
- Bylaws, policies, and procedures
- Statutes and regulations
- Constitutional due process, if public entity
- Health Care Quality Improvement Act (HCQIA), if action involves physicians

Corrective Action

ACTION ON CONTRACT FOR EMPLOYEES/CONTRACTORS

- **Pros**
  - More efficient.
  - Admin is skilled at handling.
- **Cons**
  - No HCQIA immunity.
  - Maybe no peer review immunity.
  - Med staff may want to be involved.
  - Depends on contract terms.
  - Exposed to contract claim.

ACTION BY MED STAFF

- **Pros**
  - HCQIA and peer review immunity.
  - Avoids breach of contract claim.
- **Cons**
  - Med staff is inefficient and rarely adept.
  - Med staff may be conflicted.
  - Process burdensome and expensive.
  - Depends on bylaws terms.

Corrective Action: Helpful Terms

CONTRACTS

- Condition contract on med staff membership and privileges.
- Robust performance standards.
- Robust termination provisions, e.g., cause and no cause.
- Termination of contract = automatic resignation of privileges without bylaws hearing.

BYLAWS

- Robust qualifications, responsibilities, standards.
- Confirm providers with contract are subject to contract terms; contract trumps contrary bylaws.
- Process complies with HCQIA.

Corrective Action: Informal Response

- Facts may warrant informal response, e.g.,
  - Practitioner interview
  - Oral or written reprimand and warning
  - Chart review or proctoring
  - Counseling and treatment
  - Education and training
  - Voluntary remediation agreements
- Ensure bylaws do not require progressive discipline.
- Informal response probably not reportable to NPDB because no action taken against privileges.
- Document action in file.
  - May support future action.
  - May help avoid negligent credentialing claim.

Corrective Action: Formal Response

- Complaint
- Investigation
- Precautionary suspension?
- Provider has opportunity to respond.
- MEC recommendation.
  - If no action or informal action→ process ends.
  - If adverse action against medical staff appointment or privileges → fair hearing process.
- Hearing.
- Recommendation to Board.
- Board decision.

- Usually set out in bylaws.
- If not set out in bylaws, establish process consistent with bylaws and HCQIA.

Corrective Action: Summary Suspension

- Appropriate where there is:
  - "Imminent danger to the health of any individual" (see HCQIA).
  - Need to remove practitioner.
- Subject to subsequent notice and hearing.
- Follow bylaws, rules and regulations if possible, including:
  - Standards for summary suspension.
  - Entity that can invoke summary suspension, e.g., administrator, chief of staff, etc.
- Report to NPDB applies if physician suspension is longer than 30 days.

Automatic Action, e.g., Termination or Suspension

- Specify grounds in the bylaws and contracts, e.g.,
  - Loss of licensure or DEA number
  - Loss of liability insurance
  - Exclusion from Medicare/Medicaid
  - Conviction of felony or health care fraud
  - Failure to complete medical records
  - Termination of exclusive contract
  - Adverse action by other facility?

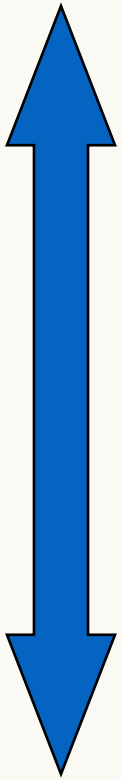
Permit expedited process

- Specify process in bylaws
- Identify entity who may terminate or suspend
- Do not require full hearing process?
- Coordinate with contracts
- Termination of contract = termination of privileges

Fair Hearing Process

- Generally must give due process (fair hearing) if deny or reduce privileges based on practitioner's professional conduct that may adversely affect patient care.
  - State law
  - Bylaws, regulations and rules
  - Accreditation standards
- Process that is "due" depends on circumstances.
  - Bylaws, rules and regulations
  - Type of practitioners involved
  - Severity of action
  - Basis for action, e.g., patient care
  - Contract requirements

Fair Hearing Process



- Full fair hearing process
  - Physicians
  - Denial or termination of privileges
  - Related to patient care concerns

* *Check bylaws and contract*

- Chance to complain
  - Allied health practitioners
  - Temporary or limited restriction of privileges
  - Unrelated to patient care

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Health Care Quality Improvement Act (HCQIA)

- HCQIA provides immunity for most claims arising from credentialing action against physician if the action is taken:
  - In reasonable belief that action furthered quality care,
  - After reasonable effort to obtain facts,
  - After adequate notice and hearing procedures, and
  - In reasonable belief that action warranted by the facts.
- Hospital presumed to have complied; physician must rebut.
- Hospital process is deemed to be fair if:
  - Proper notice given
  - Hearing before a fair-minded officer or panel
  - Physician has right to present evidence
  - Physician receives written recommendation

(42 USC 11101 et seq.)

Corrective Action: HCQIA Immunity

- *Facts:* Physician with provisional staff membership denied privileges following fair hearing process involving independent hearing officer. Physician sued hospital, trustees, and chief of staff for $2,000,000.
  - Breach of contract
  - Violation of due process
  - Intentional infliction of emotional distress
  - Intentional interference with contract
  - Antitrust
  - Defamation
  - Injunction

(*Laurino v. Syringa General* (D. Idaho 2005))

HCQIA Immunity

- *Held:* Court dismissed all claims on summary judgment.
  - HCQIA barred all claims except violation of due process.
  - Hospital's hearing satisfied due process.
  - Hospital awarded $120,000 in attorneys fees.

(*Laurino v. Syringa General* (D. Idaho 2005))

* *Moral:* document legitimate reasons and fair hearing process.

Credentialing and Corrective Action: Summary

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Credentialing and Corrective Action: Summary

- Make sure appropriate process is set forth in bylaws, rules and regulations.
  - Consistent with laws, accreditation standards, and process of other reputable hospitals.
- When reviewing a credentialing recommendation:
  - Ensure process in bylaws, rules and regulations was followed.
  - Ensure decision is reasonable and supported by facts.
    - Not arbitrary, capricious or discriminatory.
  - If there are concerns, send back to medical staff for further review or response to questions.
- If privileges denied, provide fair hearing process required by HCQIA.

Protections for Board Members

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Board Defenses / Protections: Statutory Immunity

- Volunteer Protection Act, 42 USC 14501
  - Applies to volunteers in non-profit or govt entities if receive <$500 per year in compensation and act within course and scope of duties.
  - Does not apply to willful, criminal or reckless misconduct; harm caused by motor vehicle; actions by nonprofit entity against volunteers; civil rights violations; sexual misconduct; intoxication; or non-monetary relief.
- Idaho Nonprofit Directors and Trustees Act, IC 6-1605
  - Applies to uncompensated directors and volunteers of nonprofit corp if act within course and scope of duties.
  - Does not apply to willful conduct, fraud, or knowing violation of law; bad faith intentional misconduct; intentional breach of fiduciary duty; derive personal benefit; or to extent there is insurance coverage.
- State Tort Claims Act, e.g., IC 6-901, WSA 1-23-107
  - Applies to state actors acting within scope of duties.
  - Does not apply to willful misconduct; federal claims; non-tort claims.

Liability Defenses / Protections: Statutory Immunity

- Health Care Quality Improvement Act ("HCQIA"), 42 USC 11101
  - Applies to claims by physicians arising out of peer review actions if gave certain due process rights.
  - Does not apply to non-monetary relief or civil rights claims.
- Peer Review Privilege, e.g., IC 39-1392, WSA 35-17-103
  - Applies to claims arising out of participation in peer review or credentialing actions.
  - Does not apply to ultimate decision by hospital.
  - But limits provider's ability to introduce evidence related to peer review action.
- Local Govt Antitrust Act, 15 USC 34
  - Applies to federal antitrust claims against public hospitals.
  - Does not apply to claims for non-monetary relief or claims under state antitrust laws.

Liability Defenses / Protections: Insurance and Indemnification

- Indemnification provisions in bylaws or contracts.
  - May not apply if act outside course and scope of duties.
  - May not apply if engage in intentional misconduct.
  - May not apply to claims by the hospital.
- Directors and officers liability insurance.
  - May be subject to policy limits or conditions, e.g.,
    - May only reimburse defense costs.
    - Defense costs may reduce policy limits.
    - Usually coverage is on a "claims-made" basis.
  - May not apply if act outside course and scope of duties.
  - May be subject to exclusions, e.g., intentional misconduct; certain types of claims; etc.

Additional Resources

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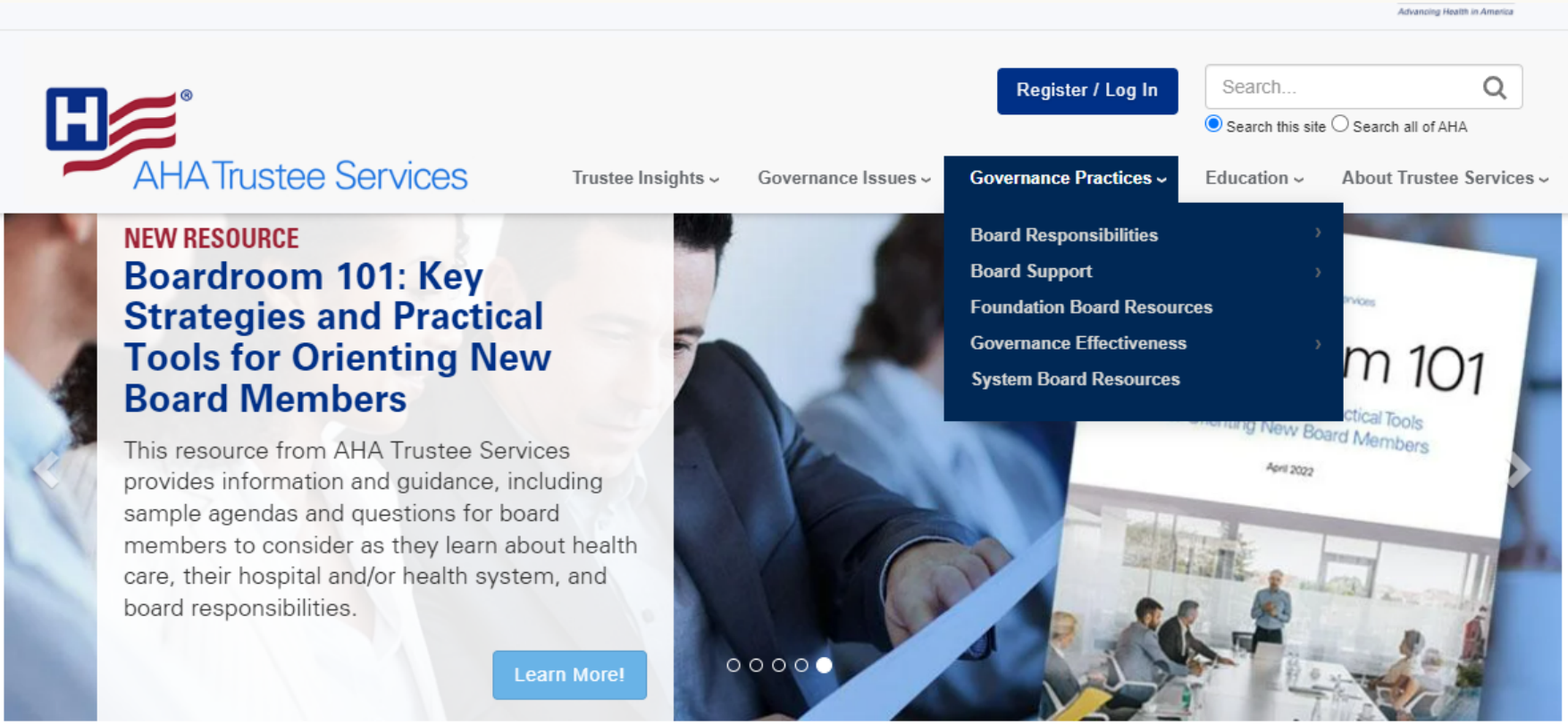
https://trustees.aha.org/



Resources, Tools and Education to Foster High-Performing Hospital and Health System Boards

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https://trustees.aha.org/sites/default/files/trustees/09-guide-to-good-governance.pdf

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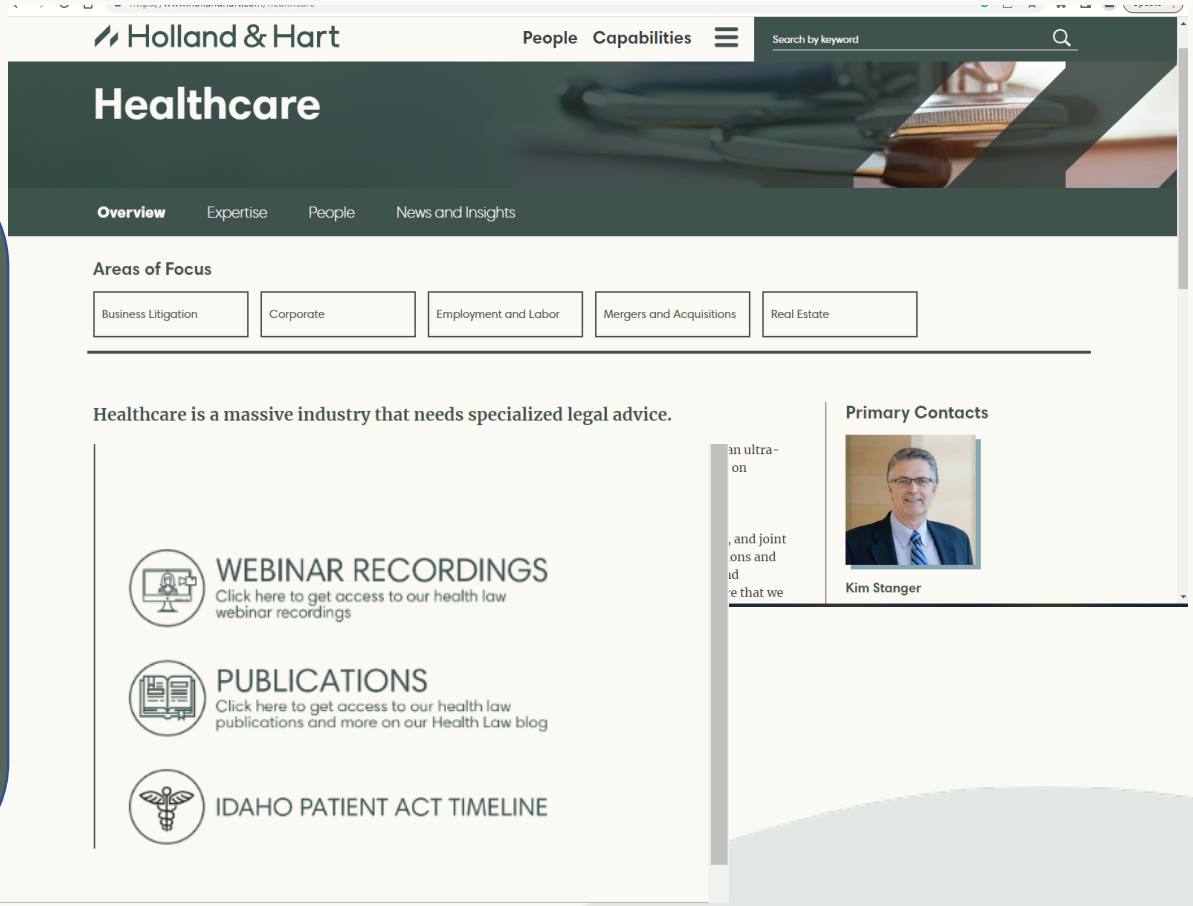

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Questions?

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