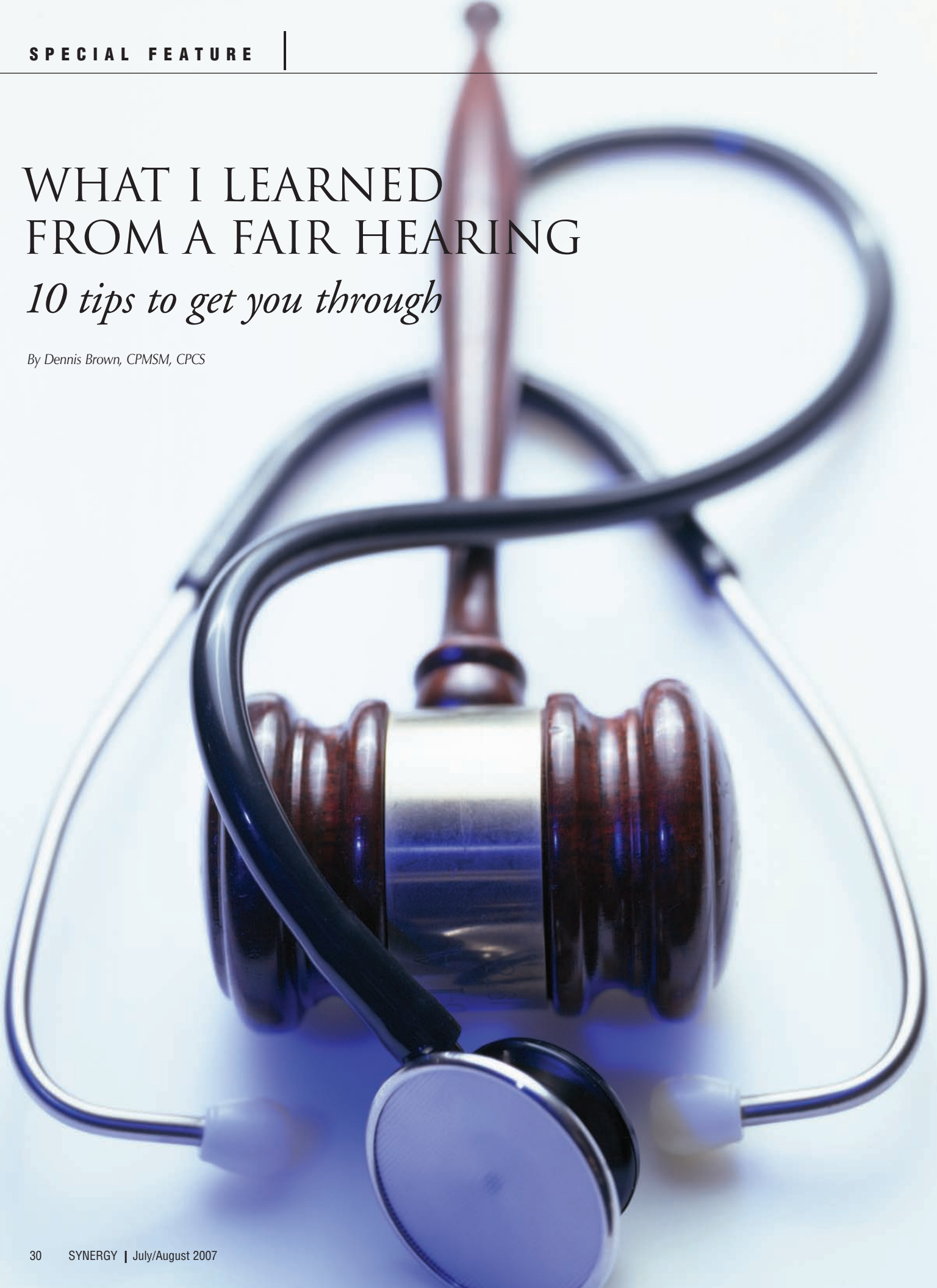


WHAT I LEARNED FROM A FAIR HEARING

10 tips to get you through

By Dennis Brown, CPMSM, CPCS



Our medical staff, like many others in the country, is taking a strong, proactive position when dealing with disruptive physicians. Behavior that would have mostly been ignored a few years ago is now being addressed firmly and quickly. The emphasis on “good citizenship” in the workplace is increasing, and behavior, like clinical competence issues, is being examined and monitored more closely.

The downside to this shift in attitude is that disruptive physicians may push back even more, challenging the hospital’s bylaws, taking legal action—and sometimes demanding a fair hearing when they are held accountable for inappropriate behavior.

Through talking to other medical staff professionals, doing research and making personal observations, I’ve learned that there seems to be a common pattern: Disruptive physicians tend to have a lack of self-awareness that they are disruptive. The paradox of many disruptive physicians is that, rather than seeing themselves as disruptive, their self-concept is that of a whistle-blower, holding on to a “David vs. Goliath” mentality—the lone physician fighting the big, evil hospital. This attitude may be fed by some legitimate concerns about clinical care or about a particular hospital policy. And of course, having concerns or being proactive does not make a physician disruptive. It’s the attitude plus actions. When one mixes the way those concerns are handled with a sprinkling of greed, anger, pride, rude and obnoxious behavior, and stubbornness, one has a recipe for great disruption in the medical staff.

When the medical staff takes decisive action, a fair hearing may result.

This happened recently in our facility. It was my first fair hearing. While it was an incredible amount of work over a span of several months, it was a wonderful learning experience. I have to admit that, despite the stress and long hours, in some ways it was actually fun (though I’m in no hurry to repeat this “fun” soon). There were even moments of high drama that one would only expect to see in a TV courtroom production.

Here are some things I learned (or were reinforced to me) leading up to and during the fair hearing:

1. Always follow your bylaws. It was important to demonstrate to the fair hearing panel that our medical staff had fully and accurately followed the processes described in the bylaws. I am glad that, throughout the three-year ordeal that led to the hearing, we had a team of medical staff professionals, physicians, and attorneys who made sure that everything was done by the book. In moments of frustration it seemed like the process took longer than we would have wished. And yet it was a satisfying feeling to present our actions to the hearing panel and not worry that we had taken shortcuts that would undermine our position.

But what if there is a weakness in your bylaws? What if a judge looks at your bylaws and determines that something is amiss? Our bylaws were structured in such a way that the particular actions taken by the MEC against the physician in question didn’t rise to the level of a fair hearing. The physician went to court to seek, among other things, a court order compelling the hospital to conduct a fair hearing. Though the MEC had used a measured response, trying to act compassionately toward the physician even while attempting to correct inappropriate behavior, the Court felt that “fundamental fairness” had somehow been denied the physician.

Leading up to the fair hearing, our chief of staff said more than once, “We may as well find out how good our bylaws really are.” We did. That section has since been repaired.

2. Keep accurate, complete records of all past proceedings. Weeks before the proceeding, we compiled a comprehensive timeline that included all the medical staff committee meetings that dealt with the disruptive physician. We had a large volume of supporting documents that illustrated the disruptive pattern of the physician in question. We had detailed minutes of the medical executive committee, our physician review committee (which deals with physician behavior issues), and the medical staff department to which this physician belonged. Having such good records (not to mention the sheer volume) helped the hospital’s side tremendously.

3. Hire the sharpest, most aggressive attorney you can find. If you don’t already have a great attorney, a good rule of thumb is:

get the one that you’d most want not to be working against you! Our hospital’s attorney has had a lot of courtroom experience. He was very adept at handling hostile witnesses (of which there were some). He was well organized, used state-of-the-art electronic media to emphasize his points, and stayed on top of his game through three long days of the hearing. He knew the law, the facts of the case and fair hearing procedures (which differ in some ways from civil courtroom procedures). A corollary: Work closely with your attorney. Let your attorney be the one to compose formal letters or decide what documents should be released. The opposing side should communicate through their attorney to your attorney and not directly with the medical staff office.

4. Obtain a hearing officer (equivalent of a judge) with plenty of experience in fair hearing cases, and choose the hearing panel wisely. Our hearing officer was an attorney who has acted as the hearing officer in numerous fair hearings around our state. He was knowledgeable, fair and firm. Our hearing panel (the equivalent of a jury) consisted of two retired physicians and a university professor with a PhD in psychology. They were seasoned professionals who took their time in deliberations, asked intelligent questions and put together a balanced, reasoned opinion.

5. Do your best to show marvelous hospitality to all the parties involved. Whether it was the hearing officer, panel, opposing attorney or our own counsel, we tried to make them feel as comfortable as possible. We provided well planned catered meals, delicious and plentiful snacks, fresh coffee and assorted beverages. We offered top-quality hotel accommodations to the hearing officer and panel. We worked to make sure lighting, room temperature and chairs were comfortable. We showed them where restrooms, water fountains and telephones were located. We provided plenty of fresh notepads, pens and Post-it notes. Be sure that projectors, screen, computer portals (for both sides) and extension cords are available and are in good working condition. The bottom line: Try to anticipate anything that may be needed and provide it quickly and with a smile. As the medical staff office, we represent the hospital. We wanted everything to be first class, and we received numerous compliments to that effect.

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6. Work with your attorney and hearing officer a few days before the hearing to arrange the room furniture the way they want. Most meeting rooms are not set up for such proceedings. Interestingly, the first thing the attorneys argued about when they arrived the first day was the layout of the room-and that was before the hearing panel or witnesses showed up! The hearing officer made the final decision-retaining a "U" configuration for the meeting tables: opposing counsel on opposite sides, with the hearing panel and officer in the middle. All could then see the projector screen in the front of the room. Witnesses sat in a comfortable chair near the front of the "U."

7. Hold the hearing as close as possible to your office. You will be running back and forth for documents and other materials that will not have been previously anticipated. Though we had a large, suitable meeting room next to our offices, it was decided to hold the fair hearing in a quieter, more private location at our campus across the

street. This decision was made to ensure privacy for all parties. While that was a reasonable and kind decision, the meeting room that was chosen is literally a one-mile round trip from our medical staff office! It takes much longer to retrieve documents expeditiously for the attorney when one must walk that distance. Which brings me to my next point....

8. Have a phone and an assistant available at all times. You won't think of everything you need, and unexpected requests for documents frequently arise, so having someone available who can copy documents, run errands, notify witnesses, etc. is invaluable.

9. Expect the proceedings to run longer than officially planned. Our hearing was expected to last for two eight-hour days, with a couple of hours for panel deliberations on the third day. Instead, it extended to three full days (one day lasted for 10 hours), and the hearing panel returned to deliberate

for several hours on the weekend. This happened even though neither side called all the witnesses that were initially listed. Fortunately, we reserved the meeting rooms for extra time just in case.

10. A fair hearing will consume most of your time. The work involved is not only during the actual hearing, but sometimes several months leading up to it. Depending on whom the medical staff bylaws state must choose the hearing panel, the MSP may provide a large amount of clerical support to the chief of staff. Coordinating schedules, e-mailing documents to attorneys, numerous and lengthy phone calls, photocopying reams of documents, and planning final details of the hearing (see #5 above) consume an increasing amount of time as the date of the fair hearing approaches. A medical staff professional must delegate routine tasks to others if possible. Committee chairs, physicians with whom you regularly interact and other employees need to be made aware that, for a while at least, some things are going to have to be placed on the back burner. It took weeks after the fair hearing to finally catch up with all the tasks that are normal for the position.


The fair hearing was costly in finances, time and energy. It's unfortunate that it couldn't be avoided. Yet there were several benefits. In the short term, the case was settled in our favor. In the long term, this hopefully sends a message to other disruptive physicians that inappropriate behavior will not be tolerated, and that the medical staff is serious about enforcing its code of conduct. Our bylaws are stronger and probably less vulnerable to a successful legal challenge. It reinforced to me, as a medical staff professional, the value of paying close attention to bylaws, keeping detailed, organized records, and how important the medical staff services professional is in circumstances such as these. All these lessons will be valuable in the future if I am ever again involved with a fair hearing. ■

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