Navigating the Rough Waters of Credentialing, Hiring and Terminating Employed Physicians: The Medical Services Professional's Critical Role on the Crew

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Navigating the Rough Waters of Credentialing, Hiring and Terminating Employed Physicians: The Medical Staff Professional's Critical Role on the Crew

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What's sailboat racing got to do with it...

Crew Coordination is everything:
- Do your job – not someone else’s job
- Think ahead – You know where you are now. Where will you be in 5 minutes?
- Constant Communication – What are you seeing? What are your concerns? What can we do better?

The boat around the mark in first place is usually the quietest and the last boat is usually the loudest!
The Start Line... Chaos

Traditional Approach to Physician Onboarding:
• Business Leader recruits physician for service line
• Business Leader negotiates contract with physician, which includes a signing bonus.
• Physician completed HR application:
  • Does not include NPDB Report
  • Does not include Peer References
  • Does not include malpractice claims history
  • Does not inquire into prior investigations and corrective actions
• Physician passes HR review and MSO is asked to credential by next month.

The Start Line... Chaos

What happens when we don’t have team work:
• The Medical Staff Office begins to process application and learns:
  • NPDB shows prior history of suspended privileges
  • NPDB shows numerous medical malpractice settlements
  • Two of three Peer Review References are not favorable
  • Credentials Committee will not recommend for appointment…. NOW WHAT?

The Start Line... Need to Work as a Team

Coordinated Approach to Physician Onboarding:
• Business Leader recruits physician for service line
• Business Leader negotiates contract with physician, which includes a signing bonus.
  • Contract includes clause that contract is effective upon successful medical staff credentialing or
  • Contract may be terminated immediately and any signing bonuses returned if not successfully credentialled in 90 days.
• HR application and MSO application are identical or similar.
Coordinated Approach to Physician Onboarding:
• HR conducts review of application.
• MSO processes credentials review.
• Physician is notified immediately (before final action by the Board) if their Medical Staff application may be denied.
• Physician should be encouraged to not terminate current employment or begin moving process until Medical Staff Credentialing process is sufficiently far along to assume no credential problems.
• Consider requiring a self-query report to identify all facilities that have queried the doctor.

Recommended Employment Contract Provisions
1) Condition Effective Date of Employment Agreement on Medical Staff Credentialing
This Agreement shall be in effect commencing upon the date well all of the following have occurred: (i) the Physician obtains her [State] licensure, (ii) qualifies for the professional liability insurance described in Section 11, and (iii) obtains Medical Staff Membership and Clinical Privileges at the Hospital; and shall remain in effect for a period of twelve (12) months (the "Initial Term"). Thereafter, this Agreement shall automatically renew for successive twelve (12) month terms (the "Renewal Terms") unless and until otherwise terminated in accordance with the provisions of Section 8 of this Agreement. If the Effective Date does not occur on or before December 31, 2014, this Agreement shall terminate on such date, and neither party shall have liability or obligation to the other party under this Agreement.

Recommended Employment Contract Provisions
2) Medical Staff Membership and Qualifications
The Physician shall be required to do all things necessary to become and remain members of the Department of Medicine and the Medical Staff of the Hospital. Except as otherwise provided in this contract, the granting of Medical Staff membership and clinical privileges to Physician shall be governed by the Bylaws of the Hospital Medical Staff. In the event of a conflict between this Agreement and the Medical Staff Bylaws concerning the Medical Staff status or privileges of the Physician, the terms of this Agreement shall prevail. The Physician shall be appropriately licensed to practice in the State of Louisiana. Physician shall at all times be board certified in her specialty, unless the Hospital agrees otherwise in writing.
The Start Line...
Need to Work as a Team

Recommended Employment Contract Provisions

2) Clean Sweep

Upon termination of this Agreement, the medical staff membership and all clinical privileges of Physician shall immediately and automatically be terminated, unless the Hospital elects otherwise. In addition, in the event Physician shall cease to be an employee or contractor of the [Exclusive Group] while this Agreement is in effect, the Medical Staff membership and all clinical privileges of such Physician shall automatically and immediately terminate. In the event this Agreement is terminated, the provisions of the Medical Staff Bylaws relating to termination of privileges shall not apply, and Physician shall not be entitled to a hearing or any other due process to which the Physician might otherwise be entitled under the Bylaws.

FPPE for employed physicians:
• Peer Review and Quality Assurance activities are privileged and may be immune under the HCQIA.
• Human Resource employment files may be subject to disclosure and HR actions are not immune.
• Need to consider how the Medical Staff process will coordinate with any HR process.

Avoid this

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Strive for this
What to do when you foul...

When you hit rough waters with the physician, you need to decide whether to handle through:
• Human Resource process; or
• Medical Staff Process.

The benefits of the Human Resource Process:
• Typically streamlined through the actions of Administration
  ➢ Do not need to coordinate Peer Review Committees, Medical Executive Committee, Offer Fair Hearings, etc.
• Reduces the impact of Professional Protectionism
• Likely have a better understanding of ADA/ADEA issues.
• May permit easier grounds to discipline or terminate
  ➢ Medical Staff Bylaws govern when corrective action is permitted
  ➢ Employment agreement may provide for additional grounds, such as harm to the mission or purpose of the Hospital or termination without cause.

What to do when you foul...

The benefits of the Medical Staff Process:
• May provide for immunity through HCQIA
  ➢ Except for Civil Rights Claims (ADA/ADEA)
• Results in buy-in of the Medical Staff Leadership
• Involves your subject matter experts, i.e. Doctors, in evaluating the issues and possible solutions.
• Helpful in implementing a corrective action plan that uses medical staff resources to address the concerns
What to do when you foul...

Considerations in choosing a path:

• Does the matter involve potential civil rights issues.
• If yes, likely use the HR process
• Does the employment agreement include a clean sweep?
• Do the Bylaws give the authority to address the problem behavior?
• Will your medical staff leadership take action
• What is your end goal? Rehabilitate or Terminate?
• Need for prompt action

What to do when you foul...

Examples of HR v. MS path:

• Employed Physician hears about a neighbor that was taken to the hospital via ambulance. The Employed Physician accesses the EHR to find out what is going on with the neighbor. This inappropriate accessed is discovered through HIPAA Security Software.
  ➢ Is the HR disciplinary process for HIPAA violations administered equally between physicians and other employees?
  ➢ Does the Medical Staff understand HIPAA violations? Is there a culture of enforcement?

What to do when you foul...

Examples of HR v. MS path:

• Employed Physician arrives late to the OR for a scheduled procedure. He is confronted by Nurse Coordinator and the Physician begins yelling at the Nurse.
  ➢ Does the Medical Staff have a disruptive physician policy?
  ➢ Is the Medical Staff Leadership capable of establishing clear behavioral standards?
  ➢ How is the Employed Physician’s relationship with management v. medical staff leaders?
  ➢ Is there a history of disruptive behavior that has not been addressed.
What to do when you foul...

Examples of HR v. MS path:

- Employed Physician has a high rate of complications arising out of C-section deliveries.
  - Need to ensure peer review data used to implement a corrective action plan remains confidential. Therefore, Medical Staff process may be more appropriate?
  - Will likely need the support of fellow OBs to monitor performance on corrective action plan?
  - Is the Medical Staff leadership willing to impose necessary action to promote patient safety?

What to do when your not in the same boat...

- Physician is employed by LLC owned by the Health System & Physician is credentials by the Hospital owned by the Health System:
  - Solely office based physicians?
    - What information is provided by the practice to the Medical Staff?
    - Is the information provided confidential under state law?
    - How do you handle disruptive behavior in the office but not at the Hospital?

- Providing Hospital Quality Data to the Practice?
  - How do you handle providing quality data obtained in the medical staff OPPE/PPPE process to the medical practice for HR decisions?
  - How do you segregate out employee information from medical staff information?
What to do when your not in the same boat...

- Physician is employed by LLC owned by the Health System & Physician is credentials by the Hospital owned by the Health System:
  - Solutions?
    - Information sharing policies between entities that complies with state law confidentiality provisions?
    - The development of medical practice peer review committees that can help obtain state law confidentiality and potential HCQIA immunity?
    - The use of PSOs.
    - The use of waivers, releases and authorizations.

Finishing the race...

- Understand that terminating an employed physician has both HR and Medical Staff implications

  - Reporting Implications:
    - Terminating the employment agreement may not be reportable to the NPDB but could be reportable to state licensing board.
    - An HR process could still be considered a professional review action that is reportable to the NPDB.
    - States have more liberal reporting requirements such as reporting for simply terminating the employment agreement.
    - Need to coordinate HR and Medical Staff on nature of report being submitted.
    - Are you medical staff leaders aware of a report being made.

Finishing the race...

- Understand that terminating an employed physician has both HR and Medical Staff implications

  - Severance/Settlement Agreement with “non-disparaging” language:
    - Can you report events to the NPDB?
    - Can you respond to a inquiry from another facility as to medical staff membership status?
    - How do you control future calls to medical staff leaders for referrals?
Who won the race?

- America’s Cup - Queen Victoria “Who was second…”
  “There is no second, your Majesty” August 22, 1851

Thank you... This is your Captain...

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