Hospitals and their Medical Staffs: A Complex and Sometimes Contentious Relationship

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Can’t do with ‘em, Can’t do without ‘em: its still true that...

- Hospitals need physicians to help them
  - provide needed, high quality patient care and related services to the community
  - perform necessary quality oversight and peer review functions
  - offer a broad and deep array of services and referral options
  - generate the revenue necessary for survival
  - in short, perform their missions

- Physicians need hospitals to
  - enable them to augment their care with a range of outpatient and inpatient services
  - afford easy access to an array of specialists with whom to confer
  - in appropriate circumstances, offer them economic assistance and other benefits that facilitate clinical and economic sustainability
Key Hospital/Medical Staff Relationships

• What roles should Hospital Administration, on the one hand, and the Medical Staff, on the other, play in Medical Staff and Hospital Governance?

• Ideally, they should have complementary roles with respect to such key issues as
  – Hospital and physician finances
  – Medical Staff development (exclusive services, independent vs employed staff)
  – Network development and integration
  – ACO Development and expansion
Medical Staff Bylaws are a Focal Point

- To formalize governance at the Medical Staff and Governing Body level
- To establish the mechanisms for liaison and problem solving
- To identify the parties’ relative roles and influence
- To serve as a vehicle for discussion on multiple issues, levels—and as a laboratory
Medical Staff Bylaws-Where do they come from?

- The three “primary sources”:
  - Medicare COPs
  - State Licensing Laws
  - Accreditation Organizations
Conditions of Participation: Governing Body

• The Governing Body must:
  – Assure that the Medical Staff has Bylaws
  – Approve Medical Staff bylaws and other Medical Staff rules and regulations
  – Appoint members of the Staff
  – Ensure that the Medical Staff is accountable to the governing body for the quality of care provided to patients
Conditions of Participation-Medical Staff

- The Medical Staff must adopt and enforce bylaws to carry out its responsibilities
- The Medical Staff must be well organized and accountable to the governing body for the quality of medical care provided to patients
- The Medical Staff Bylaws must
  - describe the necessary qualifications for appointment to the staff
  - describe the organization of the staff
  - be approved by the Governing Body
State Licensing Laws

- Hospital Licensure Statutes-
  - Affirm the ultimate responsibility of the governing body for quality of care and operation of the facility
  - Generally include requirements re:, e.g.,
    - Approval of Medical Staff Bylaws
    - Appointment/Reappointment Process
    - Hearings/Appeals
    - Departmental/Committee Structure
State Licensing Laws

- Physician Licensure Statutes
  - often describe peer review protections, e.g., through medical staff committee “process”
  - this is a key consideration for physicians and hospitals and an important factor and hospital/physician relationships
    - Delicate balance between “quality improvement” and “discipline”, with implications for what (if anything) is filed in reports to state licensing boards and the National Practitioners Data Bank
State Licensing Laws

- Podiatrists, Dentists, Oral Surgeons, AHPs
  - Some states allow hospitals to consider privileges for specific categories of practitioner
  - Some states prohibit discrimination against particular categories of practitioner seeking privileges
  - The relative rights and responsibilities of physicians vs. non-physicians is an increasingly sensitive issue between hospitals and medical staffs as payment methodologies focus more on cost-savings
Accreditation Bodies

- TJC is the primary accreditation authority for acute hospitals, though it is not the only one
  - TJC accreditation can mean “deemed” compliance with state licensure requirements, as well as with Medicare and Medicaid COPs
  - TJC accreditation can also mean satisfaction of conditions of participation for many insurers and health plans
  - And TJC accreditation reflects achievement of a generally accepted standard of organizational and operational quality
- TJC is perhaps the single greatest influence on the structure and content of medical staff bylaws—and it can therefore have a significant ancillary impact on hospital/medical staff relationships
The Joint Commission (TJC)

- Recent “Update” of respective roles of:
  - Medical Staff
  - MEC
  - Governing Body
- Clarification of what must be in “Bylaws” vs. “Rules, Regulations, Policies” AND who must approve
- Requires mechanisms for conflict resolution
- THIS UPDATE MADE IT IMPERATIVE FOR STAFFS TO ADDRESS INTERNAL ISSUES, AND ISSUES RELATING TO STAFF/HOSPITAL RELATIONSHIPS
Medical Staff Bylaws

• What must be in the Bylaws?
  – Medical Staff Structure Considerations
    • What are the duties and privileges attendant to each category of the Medical Staff? (EP 15)
    • Who is eligible to vote? (EP 17)
    • How does the Medical Staff select and remove its officers? (EP 18)
    • What is the MEC function, composition, and authority (as delegated by the Medical Staff), and how authority is delegated and removed? (EP 20)
    • What is the process for (i) selecting and/or electing, and (ii) removing MEC members? (EP 21)
• All have implications for interactions among Medical Staff constituencies, and interactions between the Medical Staff and Hospital
Medical Staff Bylaws-TJC

• What must be in the Bylaws?
  – Processes for:
    • Credentialing/Privileging
      – Qualifications
      – Categories
    • Corrective Action/Suspension
      – Triggers, Process
    • Hearings and Appellate Reviews-re: both credentials and corrective actions decisions
Medical Staff Bylaws-TJC

• What must be in the Bylaws
  – Adoption, Amendment of Bylaws, Rules/Regs
    • Process for adopting and amending the Bylaws (EP 24)
      – Medical Staff cannot delegate adoption, amendment of bylaws to MEC
      – Bylaws are only effective upon Governing Body approval (EP 2)
    • Governing Body can recommend bylaw amendments, BUT
    • Bylaws may only be adopted or amended by the voting members of the Medical Staff, with the approval of the Governing Body. —According to the Joint Commission, bylaws cannot be amended unilaterally by either the Medical Staff or Governing Body
Medical Staff Bylaws-TJC

• NOTE, though, that the Joint Commission Standards provide:
  – If there is a documented need for urgent amendment to Medical Staff rules and regulations to comply with law or regulation, there should be a process by which the Medical Staff Executive Committee (MEC), if authorized to do so by the Medical Staff, may provisionally approve an urgent amendment, without first notifying Medical Staff

• NOTE: -this standard only applies to rules and regulations of the Medical Staff—not to bylaws
  -Also, the Governing Body is not given authority to act in urgent circumstances
Medical Staff Bylaws

• Observations
  – Jt Commission standards create/re-enforce inherent conflict between Medical Staff and Governing Body
    • Jt. Commission recognizes that Governing Body is legally responsible for quality and safety of hospital services
      – As do the Medicare COPs for Governing Bodies
      – As do most state hospital licensure laws
    • Jt Commission also states that the Medical Staff is accountable to the Governing Body to carry out Medical Staff responsibilities, including quality of care
    • Yet, Jt. Commission standards (i) preclude Governing Bodies from unilaterally amending bylaws; (ii) effectively require Governing Bodies to cede control over clinical practice, quality assurance and peer review, and (iii) leave Governing Bodies with limited power to ensure accountability....IS THIS A GOOD THING OR BAD?
Medical Staff Bylaws

- Important Bylaw Considerations in the Real World
  - Exclusive Contracts
    - The view from the Hospital
    - The view from the Medical Staff
  - The “Bylaw process” can be utilized to debate and resolve this issue, but is it/should it be a Bylaws question?
Medical Staff Bylaws

• Important Bylaw Considerations in the Real World
  – Categories of the Staff
    • E.g., Active v Courtesy v Community; Employed v Not
      – Who gets to vote? To hold office?
      – How much activity (admissions, encounters) will be required for those who want to govern?/influence hospital decisions?
      – Does hospital and/or staff want to require activity in order to encourage use of the hospital? Will that work? Will staff members do less to avoid responsibilities (like meeting requirements, “call”)?
      – Active Staff generally “controls” the Medical Staff, but “non-active community members” (who are referral sources) are necessary for hospital survival, so the balance/definitions are changing
    • Podiatrists, dentists, oral surgeons, AHPs—should they have rights? But will they dilute the power/prerogatives /decision-making authority of the Active Staff?
    • Many different constituencies/points of view
Medical Staff Bylaws

• Important Bylaw Considerations in the Real World
  – Quality Improvement v Corrective Action
  • Unintended consequences
    – FPPE intended as “improvement”, not corrective action, can trip state or NPDB reporting requirements
    – Also, e.g., “Voluntary” relinquishment of some or all privileges—or agreement not to practice—pending review—may be considered resignation or relinquishment of privileges when investigation pending—which may be reportable under both state law and NPDB
      » NPDB 30 days
      » E.g., Massachusetts-immediate
    » REQUIRES CAREFUL UNDERSTANDING, COLLABORATION BETWEEN ADMINISTRATION AND MEDICAL STAFF
Medical Staff Bylaws

• Important Bylaw Considerations in the Real World
  • The Role and Composition of the MEC
    – Generally, the primary role in Medical Staff governance, credentialing, peer review, quality assurance—what is the proper balance of power between Medical Staff and MEC?
      » Often combination of elected and appointed members
      » Medical Staff Officers are often ex officio voting members; sometimes Department Chairs too
      » Elected members may be elected by Medical Staff, MEC or combination—generally are not subject to approval or removal by Governing Body—BUT SHOULDN’T THEY BE?
      » WHAT IS/SHOULD BE THE ROLE OF ADMINISTRATION, NON-PHYSICIAN STAFF, AND/OR HOSPITAL-EMPLOYED PHYSICIANS ON THE MEC?
Medical Staff Bylaws

• Important Bylaw Considerations in the Real World
  – Medical Staff Officers
    • The President is the voice of the Medical Staff, and Staff’s liaison to the CEO, the Governing Body and the public
    • The President is also often an ex officio member of Governing Body
    • BUT, the nomination, election and removal of Medical Staff Officers is generally **NOT** subject to Governing Body approval—SHOULD IT BE?
What’s Not in the MS Bylaws?

- Should Medical Staff officers or members be guaranteed the opportunity to serve on hospital strategic planning committees?, facility development committees?, network development committees?, operating and capital budget committees?
- Should hospital administration or board members be guaranteed the opportunity to serve in similar capacities in Medical Staff governance?
Trouble in the Medical Staff

• And what if?
  • a hospital has rogue Medical Staff leadership, that makes committee appointments and referrals to “friends”, refuses to process or approve applicants who are not “friends”, fails to comply with Joint Commission standards, and jeopardizes the hospital’s accreditation and licensure status?
  • i.e, what if the Medical Staff just refuses to do what its supposed to do?
  • It can happen, but what is the hospital’s recourse?
Trouble in the Medical Staff

- The Joint Commission says that hospitals cannot unilaterally amend the bylaws—even though the COPs, Joint Commission and most state licensure laws recognize the hospitals’ ultimate responsibility for operations and quality of care
- Some states refer to the bylaws as a contract between the hospital and staff that cannot be amended without agreement
- Some hospitals have gone to court and prevailed; some haven’t
- WHAT IS THE RIGHT APPROACH?
Moving Forward

• Is the Joint Commission right? Is collaboration—perhaps even forced collaboration—the best strategy for success?

• In an era of healthcare reform, shared savings, and bundled payments, collaboration may well be the key as hospitals and physicians are increasingly confronted with:
  – Co-management and gain-sharing arrangements
  – Joint venture opportunities
  – Integrated networks and ACOs
Moving Forward

• Medical Staff Bylaws, and the Medical Staff/Hospital relationship are a framework for addressing current Hospital-centered issues; but they are also a laboratory for testing the types of interactive collaborations that will drive health care delivery in the years to come.
Questions?

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