



Pulse Newsletter Health Care Practice

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Hospital negligent credentialing liability

Many hospitals are drawn into lawsuits that involve physician negligence via the allegation of “negligent credentialing.” How can risk management help?

A medical organization has a responsibility to credential physicians properly to prevent patient harm and to assure the public that the physicians practicing in the hospital have been properly vetted. However, when a physician is involved in a medical malpractice law suit, the hospital often finds itself along for the ride under an allegation of negligent credentialing.

In more and more jurisdictions, a common way to tie a hospital to an employed physician’s malpractice suit is to claim that the hospital was negligent in its credentialing process and that this resulted in harm to the patient. This leads to the hospital sharing in the liability award or settlement. Typically, the hospital carries more professional liability insurance than the physician and can become the deep pocket.

A hospital can be found negligent in two ways: 1) If the hospital had a sound credentialing process but failed to follow it, or 2) if the hospital followed its credentialing process, but the process was inadequate. As this allegation has become more prevalent, it is more important than ever that those hospitals have sound credentialing programs and rigorously apply their requirements in making hiring and privileging decisions.

http://www.shieldscreening.com/resources/Shield_Screening_Negligent_Credentialing.pdf

Case example

Larson v. Wasemiller was a Minnesota case that resulted in a seven-million-dollar verdict against a hospital for the manner in which it credentialed a physician. The plaintiff sued two physicians following gastric bypass surgery which did not go well. After suing the doctors, the plaintiff amended her complaint to sue the hospital after she discovered that one of the doctors had been the subject of 10 prior medical malpractice claims or lawsuits and had struggled to obtain medical malpractice insurance. He had also been disciplined and failed his board certification three times before passing. In upholding the verdict, the Supreme Court analogized the claim of negligent credentialing to negligent hiring, because negligence could be shown based on what was known or should have been known at the time of the credentialing decision.

A case involving negligent credentialing usually requires that the injured person demonstrate that:

1. The hospital did not meet its duty of due care to perform the credentialing process or election to grant staff privileges to the doctor.
2. The physician acted negligently when providing patient care.
3. The hospital’s negligent credentialing was a proximate cause of the resulting injuries.

So how can we defend against negligent credentialing allegations?

Risk management has several tools to mitigate potential liability for negligent credentialing.

- Review the credentialing process periodically for compliance and loss prevention opportunities.
- Share lessons learned with the medical staff office and chief medical officer on claim and loss trends.
- Review bylaws and code of ethics.
- Support timely and effective peer review.

The credentialing process

All medical facilities must comply with credentialing requirements and complete the credentialing process before a physician is permitted to practice medicine in the hospital. Adherence to the process and good documentation will make allegations much harder for a plaintiff to prove. The risk manager has a role in ensuring that documentation of the process is done according to the standards of practice. The process includes:

- Verifying all levels of medical training and education
- Contacting the American Board of Medical Specialties or other qualified boards
- Confirming the validity of any claimed medical licenses
- Making an inquiry with the National Practitioner Data Bank
- Looking at the Medicare/Medicaid system for potential problems and requirements
- Examining Drug Enforcement Administration Certification for doctors who will be prescribing controlled substances
- Verifying malpractice coverage and considering any claims for medical malpractice
- Investigating any disciplinary actions

<https://www.hg.org/article.asp?id=6854>

Sharing lessons learned

Communication is key to preventing and defending allegations of negligent credentialing. It is important to communicate with the medical staff office and the chief medical officer on issues involving physicians, even when it has not risen to the level of a claim or lawsuit. Potential physician negligence, disruptive behavior and ethical violations should be communicated immediately as well as information learned in handling existing claims and incidents. This can prevent issues from arising and mitigate current issues. The hospital staff should be encouraged to communicate concerns regarding a physician's practice or behavior to the risk manager.

Bylaws and code of ethics

Review bylaws and physician contracts to ensure that proper policies and references to ethical behavior and responsibilities are included in the policies. A physician's understanding of what is expected is important in preventing issues from arising.

Timely peer review

When an issue arises with a physician, the peer review process can provide feedback and plans of action or additional education for the physician. The risk manager has a responsibility to bring issues forward that need to be communicated and to go through the approved peer review process.

Many cases involving physicians include allegations of failure to diagnose, negligent techniques and judgement decisions. It is sometimes difficult for the hospital to prevent these issues from arising via the credentialing process, but good documentation of credentialing can make the case against the hospital for negligent credentialing much more defensible.

Conclusion

Proper policies, procedures and implementation of the credentialing process are key to defending an allegation of negligent credentialing. The risk manager has a role in ensuring that this very important process meets regulatory and standard-of-care requirements. Documentation of the process and its findings can go a long way to defending a lawsuit of this nature.

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