DR. DEATH: CREDENTIALING AND PEER REVIEW GONE WRONG
Desert CAMSS Chapter

April 12, 2019
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Hospitals & the Organized Medical Staff
Title 22, Sec. 70701 (a)(1)(F):

“The governing body shall... adopt written bylaws... which shall include provision for... Self-government of the medical staff with respect to the professional work performed in the hospital...”
The hospital must have an organized medical staff that operates under bylaws approved by the governing body and is responsible for the quality of medical care provided to patients by the hospital.

42 CFR §482.22
Caring for patients is the nucleus of activity around which all health care organization functions revolve. *The organized medical staff is intricately involved in carrying out, and in providing leadership in, all patient care functions conducted by practitioners privileged through the medical staff process.*  *MS.03.01.01* (Introduction)
The organized medical staff is responsible for establishing and maintaining patient care standards and oversight of the quality of care, treatment, and services rendered by practitioners privileged through the medical staff process. The organized medical staff designates member licensed independent practitioners to provide oversight of care, treatment, and services rendered by practitioners privileged through the medical staff process. **MS.03.01.01 (Rationale)**
Medical Staff Office

SUPPORT

INFORMATION

HELP

ADVICE

ASSISTANCE

DIRECTION

GUIDANCE

SOLUTION

COMPETENCE
“Nurse, get on the internet, go to SURGERY.COM, scroll down and click on the "Are you totally lost?" icon.”
Title 22, Sec. 70701 (a)

Medical staff members are required to:

- Demonstrate current competence, to a medical staff committee, on initial appointment, and every two year thereafter.
Legal Requirements

- **Conditions of Participation**
  - The governing body must “ensure the criteria for selection [of the medical staff] are individual character, competence, training, experience, and judgment.” 42 CFR 482.12
  - The medical staff must examine credentials of candidates for medical staff membership and make recommendations to the governing body on the appointment of the candidates.
MS. 06.01.03

The hospital collects information regarding:

– Current license
– Training
– Experience
– Competence, and
– Ability to perform the requested privileges
Privileges must be

- **Individualized**
  - Practitioner
  - Facility/Service

- **Relevant**
  - Current
  - Realistic

- **Supported by Objective Evidence**
  - Training
  - Experience

- **Continuously Monitored**
  - OPPE
Risk to the Hospital of a Bad Doctor

- Reputation
- Undesired Media Attention
- Third Party Lawsuits
- Reimbursement – Challenging Contract Negotiations
- Loss of Medical Staff
- Loss of Employees
- Unwillingness to engage in peer and quality review
- DOJ Investigation
- Loss of Accreditation
What you don't know about me could hurt you.
Ex-Neurosurgeon Christopher Duntsch
Sentenced to Life   Feb. 17, 2017
https://www.youtube.com/watch?v=agknsYW_Uew
• MD & PhD – Univ. of Tenn. Health Science Center
• Neurosurgery residency – 2004-2010
  – Program Director
  – Sent to impaired MD program
  – Not allowed to operate independently
• Post residency stayed in research and ran Discgenics
• July 1, 2011 recruited to Baylor Plano
Residency letter
- “His work ethic, character, and ability to get along with others were beyond reproach.”

Fired from group after first surgery

November 2011 Kenneth Fennel – wrong site surgery

December 30, 2011 – Robert Passmore - Asst. surgeon grabs Duntsch and begs him to stop. Nurses fail to report incident
January 11, 2012 - Barry Morguloff – Dr. Randall Kirby was the assistant surgeon – Surgery was a “horror”

February 12, 2012 – Jerry Summers – Woke up a paraplegic

Summary suspension – not reported – Privileges reinstated

March 12, 2012 – Kelly Martin – Dead – Post operative hemorrhage following laminectomy

April 2012 – Suspended & Resigned
April 20, 2012 resignation letter states relocating practice

April 20, 2012 reference letter provided to Duntsch from Baylor
April 20, 2012

Christopher Duntsch, MD
4706 Alliance Blvd.
Pavilion I — Suite 630
Plano, Texas 75093

Dear Dr. Duntsch:

On behalf of the Medical Executive Committee of the Medical Staff of Baylor Regional Medical Center at Plano, I am authorized to notify you of the following:

All investigations with respect to any areas of concern regarding Christopher D. Duntsch, M.D. have been closed.

As of this date, there have been no summary or administrative restrictions or suspensions of Dr. Duntsch's Medical Staff membership or clinical privileges during the time he has practiced at Baylor Reg. Medical Center at Plano.

Yours Very Truly

[Signature]
Patricia Sproles, CPCS
Director, Medical Staff Services
Christopher Duntsch

- July 2012 – Dallas Medical Center grants temporary privileges
- July 2012 – Feolla Brown does from post operative hemorrhage
- July 2013 – Texas Medical Board suspends license
- March 2014 – lawsuit filed against Baylor
- July 2015 - Indicted
Dr. Death

Plano neurosurgeon allegedly botched surgeries in Dallas and Plano in 2012 and 2013, killing or maiming up to 15 patients.

1. "Building an empire"

“Unfortunately, you cannot understand that I really am building an empire, and I am so far out of the box that the earth is small!"

4. "A manner that borders on abuse"

“The thing I would go faster do better and honor by f***ing every one in emotionally and mentally controlling"

5. "Become a cold blooded killer"

2. "Between god, Einstein and the antichrist"

“Anyone close to me thinks that I likely am something between god, Einstein and the antichrist.

5. "My vodka bottle and neurostimulants"

“1 week and then everything unraveled. At first..."
6. "Stone cold killer"

“What I am being is what I am, one of kind, a mother f***** stone cold killer that can buy or own or steal or ruin or build whatever he wants.”

Ezra_Kadezra

This is beyond medical negligence. All these signs lead me to believe that the doctor is a sadistic psychopath. I am surprised that it took his staff that long to stop the botched surgeries and misdiagnoses.

Kishmir_Intuches

I've seen incompetency in the OR. How come no assistant or nurse or technician didn't march into the chief of surgery or hospital administrator and rat this miscreant out?
How Does it Happen?

Deviation from the Process....Not the performance of any individual
How Does it Happen?

- Pressure for quick results
- Presumption that everything is fine
- Money! Profit!!!
Examples of medical staff documents that can be used to defend the process:

- Medical Staff Bylaws, Rules & Regs
- Credentials procedure manual
- Hearing and appeal procedure manual
- Performance improvement/peer review policy
- Disruptive behavior policy
- Impaired physician policy
Negligent Credentialing

*Elam v. College Park Hospital*
Lessons Learned (Again)

- Credentialing –
  - Watch for red flags & follow up
- Impairment –
  - Identify and manage
- Action –
  - Take when necessary
- Reporting –
  - Follow the law
- Reference letters
  - Factual – notice to others
- Information Sharing
  - Proactive
Risks of Failing to Credential and Privilege

- **Patient Harm**
- Regulatory violations
- Licensure sanctions
- Loss of accreditation
- Negligent credentialing claims
- Civil fines and penalties
- Criminal fines and penalties
- **Patient Harm**
• https://www.youtube.com/watch?v=JO0f2ue_ecl
Why we do what we do...

- **Blind Eye: The Terrifying Story Of A Doctor Who Got Away With Murder**, James B. Stewart, June 15, 2000
- **How Peer Review Failed at Redding Medical Center and Why it is Failing Across the Country; A Congressional Report** June 1, 2008
- **Kadlec v. Lakeview Anesthesia Associates**, 527 F.3d 412 (5th Cir, 2008)
- **Behind the Murder Curtain**, Bruce Sackman, 2018
- **Dr. Death** – Podcast - Wondery
Don’t Let the Tail Wag the Dog!
Corrective Action Tenets

- Corrective action must be taken when necessary to protect current and future patients.
- Corrective action should be based on credible facts capable of independent verification (e.g., documents, witness statements).
- Corrective action imposed should be the least restrictive to the practitioner but sufficient to protect patients.
Medical Board of California 805 & 805.01 Reports

- Medical disciplinary cause or reason
  - Restriction
  - Suspension
  - Termination
  - Denial of membership or privileges
  - Summary suspension over 14 days
  - Resigns or leave of absence while under investigation
National Practitioner Data Bank

- Professional review action based on competence or conduct that affects or could affect patient care and adversely affects privileges or membership for more than 30 days
  - Reduction
  - Restriction
  - Denial
  - Revocation
  - Surrender or failure to renew
  - Resignation while under investigation
  - Summary suspension of more than 30 days
Q. 22: If a physician agrees not to exercise his/her privileges in lieu of a summary suspension or an investigation by the MEC, based on competence or conduct, the agreement is a restriction of privileges which must be reported to the NPDB as a surrender of privileges while under investigation. This is true even if the agreement is in place less than 31 days.

Q. 23: If physician takes a leave of absence while under an investigation, for competence or conduct, the leave of absence is reportable as a resignation of privileges while under investigation to the extent the leave of absence restricts the physician’s ability to exercise privileges.

Virtually all medical staff bylaws provide that once a leave of absence is granted, physician is restricted from exercising privileges until the hospital grants his/her request for reinstatement.

Q. 24: If a physician resigns privileges and/or membership during a routine review by the Medical Staff Office or Credentials Committee of a reappointment application (asking the physician the same type of questions it would ask similarly situated physicians) the resignation probably is not reportable. If the credentials process, however, is not routine and instead questions are focused upon a particular physician’s competence or conduct, the resignation may be while under an investigation. If that is the case, the resignation should be reported to the NPDB.

Q. 25. If a quality improvement plan, approved by the MEC, restricts a physician’s privileges, the restriction must be reported to the NPDB.

If the quality improvement plan meets the criteria of an “investigation”, and the physician resigns while under the plan, the resignation must be reported to the NPDB as a resignation while under investigation.

**Q. 31:** Per the NPDB, if one specific surgeon is restricted from performing surgeries for more than 30 days without a first assistant in the room, based on concerns regarding the surgeon’s competence or conduct, the restriction is reportable to the NPDB.

Q. 46. The NPDB requires a report be made if the physician applies for reappointment and his/her privileges lapse while an adverse recommendation by the MEC is pending, but before the hearing is held and final Board decision made.

Q. 49: A hospital terminates a physician’s privileges based on competence or conduct and reports the termination to the NPDB in an Initial Report. The physician sues the hospital. The court, after a trial, enters an order reversing the termination of the privileges. The hospital should void the Initial Report.

New Case

- **Economy v. Sutter**
  - February 16, 2019
Corrective Action & Fair Hearings
Encouraging Effective Peer Review
Protections and Immunities
Peer Review Protections

- Evidence Code Section 1157
- “Neither the proceedings nor the records of organized committees of medical...staffs in hospitals, or of a peer review body, have the responsibility of evaluation and improvement of the quality of care rendered in the hospital or for that peer review body...shall be subject to discovery.”
Health Care Quality Improvement Act

- Encourages peer review
- Provides immunity from damages for those who engage in peer review
- Applies to peer review actions in any state
Civil Code Section 43.8

- "...there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person on account of the communication of information in the possession of that person to any hospital, hospital medical staff...when the communication is intended to aid in the evaluation of the qualifications, fitness, character, or insurability of a practitioner of the healing arts."
Confidentiality & Information Sharing

- Medical Staff Bylaws Requirement
- *Waiver of protections if fail to maintain confidentiality*
- Harm to reputation of others
- Share information through
  - Process
  - Factually
I wonder what it feels like to win the lottery.

Probably the same as being adopted from an animal shelter.
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