HIDING IN PLAIN SIGHT
CREDENTIALING AND PEER
REVIEW GONE WRONG

CAMSS Annual Meeting
May 24, 2019

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Hospitals & the
Organized Medical Staff

Medical Staff Self-Government

- 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 . . . ."
Conditions of Participation

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

Management of Patient Care, Treatment, and Services

- 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)

Management of Patient Care, Treatment, and Services

- 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)
Legal Requirements

- 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.

Nurse, get on the internet, go to SURGERY.COM, scroll down and click on the 'Are you totally lost?' icon.
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.

The Joint Commission

- 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

Hiding in Plain Sight

William Husel, D.O.

- 35 Deaths 2014-2018
- Critical Care Intensivist Privileges
  - Must be MD or DO
  - And have completed a fellowship in critical care
  - And have completed a residency in internal medicine
  - And must obtain board certification in internal medicine within 5 years of residency or fellowship

William Husel, D.O.

- “Mount Carmel says that 35 patients received either ‘excessive’ or in some cases ‘potentially fatal doses’ of pain medications”
- “…at least five patients could have seen their conditions improve with treatment”
- 27 wrongful death lawsuits
- CMS has “threatened to terminate Medicare funding…”

William Husel, D.O.

- “Dr. Husel used an override function on the hospital’s automated medication dispensing system to bypass the hospital’s pharmacy and gain access to large amounts of pain medications like fentanyl, versed or dilaudid.”
William Husel, D.O.

- “Mount Carmel is committed to doing what is right and fair throughout our community, including our interactions with families involved in cases related to Dr. Husel. As we continue the legal process with these families, we will not publically discuss our conversations and related action in detail. Our thoughts and prayers continue to be with them and everyone affected by this tragedy.”

Ex-Neurosurgeon Christopher Duntsch
Sentenced to Life  Feb. 17, 2017

- https://www.youtube.com/watch?v=agknswYW_Uew
Christopher Duntsch

- 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

Christopher Duntsch

- 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

Christopher Duntsch

- 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
Christopher Duntsch

- April 20, 2012 resignation letter states relocating practice
- April 20, 2012 reference letter provided to Duntsch from Baylor

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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 medicine or suspension of Dr. Duntsch’s Medical Staff membership or clinical privileges during the time he has practiced at Baylor Regional Medical Center at Plano:

Yours very truly,

[Signature]

Vicente Nuevo
President, Medical Staff Services

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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 can't. I'm building an empire, and I can't stop it."

2. "Between god, Einstein and the antichrist"

"Any close to me think that I likely am something between god, Einstein and the antichrist."

5. "My vodka bottle and neurostimulants"

"It's wet and then everything unravelled, at first...

6. "Stone cold killer"

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

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!!!

Stanley Patrick Weber

PREDATOR ON THE RESERVATION

- A Pedophile Doctor Drew Suspicions for 21 Years. No One Stopped Him.

Stanley Patrick Weber

- Pediatrician who joined Indian Health Services in 1992
- Unmarried new doctor who hoarded children’s toys in his basement
- By 1995 the hospital was convinced he was a pedophile and pushed for his removal from the government run hospital
Stanley Patrick Weber

- Instead of being fired, he was transferred to Pine Ridge, S.D. and treated Native American children for the next 21 years
- An investigation by The Wall Street Journal and FRONTLINE found the IHS repeatedly missed or ignored warning signs, tried to silence whistleblowers and allowed Mr. Weber to continue treating children despite the suspicions of colleagues up and down the chain of command.

Stanley Patrick Weber

- Investigation found IHS tolerated a number of problem doctors because it was desperate for medical staff.
- CEO said did not know of “any IHS doctor who was ever fired, even if they had problems.”
- She alerted IHS regional officials
- When Weber was confronted he said he was leaving anyway

Stanley Patrick Weber

- He then landed in S.D.
- Complaints started immediately
- 12/2/08 – Another pediatrician reported him to the SD Board. No action.
- May 25, 2009 – request for corrective action
Stanley Patrick Weber

- Suspended but returned to work
- 2012 arrested for possession of child-pornography
- Still practiced
- CEO was convicted of accepting a $5000 gift in 2013 from Weber
- 2015 another investigation and he resigned from the hospital in May 2016
- Indicted 2017 and 2018 for sexual assault on six teenage boys
- Sept. 6, 2018 found guilty and sentenced to 18 years

Jailed Fayetteville doctor's office and home raided, staff arrested
Ginari Price, M.D.

- Psychiatrist
- Arrested in 2016 for DUI
- Failed to Appear and jailed in 2018
- Nurse practitioners continued to prescribe while she was in jail
- 1000+ prescriptions

Dr. Allen Amorn

Youngstown cardiologist arrested at St. E’s following threats
- The doctor was arrested wearing scrubs inside the cardiac lab

Dr. Allen Amorn

- Arrested after threatening to kill wife and kids and self
- Pulled knife out of backpack on police
- Hospital asked to check on him but he was uncooperative which led to arrest
- Booked for resisting arrest and domestic violence
Dr. Dzung Pham

California doctor allegedly linked to five people who died of opioid overdose arrested

– He wrote prescriptions for narcotics he knew would be sold on the street, prosecutors allege, "flooding Southern California with huge quantities of opioids."

Dr. Dzung Pham

Prosecutors say that among Pham's text messages was one expressing concern after he received information that one of his prescriptions was tied to Ian David Long, the gunman who killed 12 people at the Borderline Bar and Grill in Thousand Oaks, the release said.

Dr. Daniel Smith III

Police arrest local doctor on assault charge after woman attacked
Dr. Daniel Smith

- Repeatedly kicked “acquaintance” in face and chest
  - Broken teeth
  - Multiple bruises
- Pathologist ??!!??!!

Dr. Ogechukwu Adekweh
Emergency Medicine

- Northern Minnesota Doctor Arrested In Sex Solicitation Sting
  - Arrested after responding to an ad to meet a minor female
  - Fired immediately from Grand Itasca Clinic and Hospital

Healthgrades

- Dr. Ogechukwu Adekweh, MD
- Emergency Medicine · Male · Age 34
- 2 Reviews  * (1 star)
Chico Doctor Arrested: Charged with Sexually Assaulting Patient

Dr. Annamalai Ashokan

“I’ve been reading a lot of stuff online is it true his license was taken in 4 states and he’s not supposed to be in the room alone with women? My last 2 visits were fine but his nurse and social worker were in the room.”

Former Redding doctor faces 71 new charges of sexual abuse towards patients

Dr. Hamid Rabiee
Neurology

- 25 victims
- 99 Felony counts
- $4 million bail
- Charges
  - Sexual battery by restraint
  - Sexual battery by fraudulent representation
  - Sexual penetration by fraudulent representation
  - Sexual exploitation of a patient
  - False imprisonment

Negligent Credentialing

*Elam v. College Park Hospital*

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
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

Information Sharing

- Kadlec v. Lakeview Anesthesia Associates, 527 F.3d 412 (5th Cir, 2008)
  https://www.texasobserver.org/anatomy-tragedy/
Barriers to Sharing

- Fear of litigation from provider
- Lack of understanding of roles and responsibilities –
  - Quality/Patient Safety
    - Duty to the other hospital’s patients
- Lack of understanding of what information is protected and how to keep it protected
- Cloak of Silence

Breaking Down the Barriers

- Education
- Structure
- Process
- Ethics
- **COMMUNICATION**

The Law

- Civil Code 43.7 & 43.8
  - No monetary liability for
    - Communication from committee to peer review body
    - Communication from individual to peer review body
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.”

The Law

- The Legislature hereby finds and declares that the sharing of information between peer review bodies is essential to protect the public health.
  - Business and Professions Code 809.08

What is protected?

- Peer Review Body Activities related to
  - Medical research
  - Quality assurance
  - Utilization review
  - Credentialing
  - Education
  - Training and supervision of physicians
- Any connection to grant, denial, restriction or termination of clinical privileges.
What is protected?

- All oral communications or written reports to a peer review body, and
- All notes or records created by or at the direction of a peer review body,
- including the communications, reports, notes or records created in the course of an investigation undertaken at the direction of a peer review body.

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
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

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
- 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

Reporting

- 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

Reporting

- 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