

Medical Staff, Credentialing, and Peer Review Listserve Exchange

Post Title

1. A Question About Reporting

Post

I have an interesting and very real question that I would like to pose to the list serve members for your thoughts and comments.

I recently represented a hospital that was evaluating an orthopedic surgeon who was up for reappointment. Since 1979, he had been a defendant in 57 malpractice lawsuits with judgments/settlements in several of them. Many of the lawsuits had been dismissed but he was a defendant in about 4 or 5 pending cases. Interestingly, he never was identified as having any quality of care issues at this particular hospital although few physicians would refer cases to him. Over the years, he either lost or "voluntarily resigned" or did not reapply to 8 other hospitals at which he had privileges leaving my client as the only acute care facility where he still had privileges. Needless to say, the hospital as well as others were concerned about future exposure from a negligent credentialing standpoint if he was reappointed. To make a long story short, at least for this portion of the tale, he was not reappointed because we found out during the course of our due diligence that he gave up insurance coverage on any suits filed regarding back cases during an identified one year period in return for a significant premium reduction. We only discovered that he was "bare for back" because when reviewing pending cases my client was informed by a co-defendant hospital in one of these cases that the surgeon had no coverage. The surgeon, however, never notified my client that he did not have coverage for back cases during this one year period in which he performed several cases. Because the bylaws required him to notify the hospital immediately if there was a change in coverage and viewed his failure as purposeful because it would have resulted in the automatic suspension of his privileges, and because this was the second time he lost coverage but did not immediately notify the hospital, the medical staff recommended non-reappointment. This decision was upheld by the Hearing Committee, the Appellate Review Committee and the Board. A decision was made, however, that although he violated the rules and did not report loss of coverage as well as other required disclosures, it was not reportable because there were no quality of care issues ever identified and therefore they could not say that he was a threat to patients although he was perceived as an accident waiting to happen given his malpractice history. The lawsuit he filed against the hospital was quickly dismissed and no appeal was brought.

This is not the end of the story. This same physician applied to another client hospital shortly after his non-reappointment. I was contacted because they were likely to deny his application based on the malpractice history and pending cases and wanted to know if their denial was reportable. When I found out that it was the same physician, without yet revealing the background and history summarized above, I asked to see his application. Upon review of the application, I identified several misrepresentations as well as failures to disclose pertinent information to the client. Because the matter involving the first hospital was decided on non-quality grounds and therefore was not confidential, coupled with the fact that there was litigation filed by that physician was a matter of public record, in addition to the waiver and release form signed by the surgeon as part of the application, I was able to reveal what occurred generally at my other client hospital, at least with respect to the facts. As it turns out, this surgeon had been on staff for several years at an affiliate hospital. When I reviewed the surgeon's reappointment application, I discovered similar misrepresentations and disclosure failures.

When these issues were identified and brought to the attention of the surgeon and his counsel, the surgeon withdrew his application but refused to resign from the other system hospital where he had privileges. He was asked to resign because of his violation of a number of bylaw provisions that required truthful responses on the application form and also due to his failure to disclose loss of insurance and the fact that he had been investigated by the state two years ago. The bylaws stated that such failures could result in disciplinary action. Because he has refused to resign, the President of the Medical Staff recommended termination of his membership and privileges. We are now in the middle of the corrective action phase. Interestingly, no quality of care issues have been identified at this hospital either.

The question has been raised as to whether a decision to terminate, if that be the final result, is reportable to the Data Bank. On the one hand, no quality of care issues have been identified at this particular facility and termination would be based on bylaw violations as described, including loss of insurance which was never reported and would have resulted in his administrative but non-reportable suspension. On the other hand, this physician, with now 60 lawsuits to his name and a number of pending cases, clearly has misrepresented his way on to medical staffs in order to continue to do complex surgery. Fortunately, the various Data Bank reports due to the settlements and other information he truthfully has revealed has made it difficult to obtain privileges elsewhere but is this the type of behavior that was intended to be reported.

There are arguments on both sides of this question and all of this is on the heels of a consumer group report which concluded that a majority of hospitals have never reported a physician to the Data Bank. The allegation is that hospitals are shirking their responsibilities and/or cutting deals in order to avoid a report.

For those of you who have weathered through this very long message, your thoughts and comments would be appreciated. Thanks.