

Inappropriate Credentialing, Re-Appointment and Performance Management

The discourse around credentialing has increased in recent years, partly due to increased litigation resulting from lapses in the credentialing process. As evidenced by HIROC claims and related Canadian inquests, credentialing, privileging and performance management processes are closely linked to the provision of safe and high quality patient care and more than an administrative duty of healthcare organizations. Decisions made should be based on standardized criteria and processes that are transparent, freely accessible, fair, balanced and equally applied to all. Consequently, inconsistent and questionable credentialing and privileging practices may directly impact patient safety and the culture of an organization.

COMMON CLAIM THEMES

Claims by Patients

- Perceived and actual 'rubber stamping' of recommendations for appointment and reappointment by healthcare organizations.
- Perceived and actual over reliance on information from provincial/territorial professional regulatory authorities to inform appointment and privileging decisions.
- Alleged multi-patient harm incidents involving the same practitioner resulting in class actions.
- Allegations that re-appointment processes did not include quality and utilization data and performance reviews.
- Lack of performance evaluation processes for professional staff and chiefs/heads.
- Alleged failure to have a robust process that asks for all pertinent malpractice claim settlements (versus those with a legal judgment) and complaints resulting in a regulatory body hearing (versus those with negative finding/undertaking).

CASE STUDY 1

(claim by a patient)

A hospital requested an external review of a physician's practice in response to concerns expressed by colleagues and patients. During the course of the investigation it came to the hospital's attention that the physician went to trial on a separate matter which resulted in a judgment against the physician. Shortly after the commencement of the external review, civil action was initiated by another patient alleging the hospital knew or ought to have known the physician lacked the requisite skills and knowledge to perform their duties. While the external review identified technique deficiencies in a couple of cases, there was nothing in the physician's file to suggest this physician had longstanding practice concerns. Experts felt the hospital had acted appropriately (e.g. external review and investigation, no prior complaints) and the hospital was dismissed from the action.

CASE STUDY 2

(claim by a credentialed staff)

A surgeon with a history of 'problems in the workplace', including a pattern of disruptive behavior, was subject to three progressive disciplinary measures. The surgeon, in consultation with legal counsel, agreed in writing to accept certain undertakings to correct the behaviour and enhance collegiality. Four months later, leadership investigated a complaint where it was alleged that the surgeon's behavior negatively impacted the quality of care provided to a patient. Following the investigation the hospital requested that the surgeon resign. The surgeon successfully appealed the hospital's decision arguing that they had not been given sufficient time to deal with the behavioural issues, that the incident that prompted resignation was not properly investigated and the hospital failed to create an environment conducive to the surgeon improving relationships with colleagues.

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COMMON CLAIM THEMES cont'd

- Perceived and actual lack of independent verification of information provided by applicants.

Claims by Credentialing Staff

- Allegations that appointment, re-appointment, privileging and disciplinary decisions were unreasonable, arbitrary and/or made in bad faith.
 - Out-of-date professional staff by-laws.
 - Breakdown in the process for revoking privileges:
 - Not previously defined and/or not related to quality of care issues (e.g., to resolve interdisciplinary/conflicts among practitioners);
 - Without following due process (e.g., progressive disciplinary and natural justice).
- Perceived and actual systemic tolerance of unprofessional/disruptive behaviour, in particular in surgical and obstetrical/perinatal settings.
 - Lack of documentation of:
 - Discussions with credentialed staff regarding their unprofessional and/or disruptive behavior resulting in ongoing conflicts and denial of the conversations and the behaviour;
 - The rationale to support appointment, reappointment, privileging and disciplinary decisions.
 - Perceived lack of independent verification of information provided by applicants.

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MITIGATION STRATEGIES

Reliable Appointment, Re-Appointment and Privileging Processes

- Ensure hospital/health region/healthcare facility credentialing processes conform to all statutory requirements.
- Ensure the written application for appointment and re-appointment require applicants to agree to disclose whether the applicant:
 - Is involved in business or research relationships for personal profit or gain (or related financial activities) based upon their appointment or reappointment;
 - Is named (or has been since last appointment), as a defendant in any civil legal action arising from their professional conduct, competence or capacity, including whether the claim is resolved or a judgment rendered;
 - Is currently or has ever been involved in any regulatory body investigation resulting in a referral to a disciplinary or quality committee, and/or a decision of a regulatory body affecting the applicant's licensure or registration;
 - Has ever been (or has been since last appointment), found liable in any Canadian or international court of competent jurisdiction as a result of a breach of the standard of care, professional misconduct, etc.;
 - Has ever been (or has been since last appointment), charged or convicted with a criminal offence in Canada or internationally, including the reason;
 - Has voluntarily or involuntarily relinquished any professional license or registration, terminated medical, midwifery, dental, or nurse practitioner staff membership or have had their clinical privileges restricted, reduced or removed.
- Ensure the written application for re-appointment requires the applicant to disclose continuing education courses, training and re-training.
- Adopt a standardized process for applicant background checks including:
 - A release form to enable any third party to release information related to the applicant;
 - Standardized criteria for references to rate the applicant;
 - Ensuring all references are personally contacted for a verbal discussion prior to the granting of privileges.
- Implement strategies to validate the applicant's clinical competency, judgment and skills (e.g., direct observation by discipline lead, department chief clinical evaluation) prior to offering or renewing privileges to practitioners:
 - In higher risk areas or specialty roles;
 - With low or no patient volumes.
- Adopt a standardized process for delegating new categories of privileges whenever new technology or changes to a discipline's scope of practice are introduced.
- Maintain a registry of privileges granted to each applicant; ensure a current copy of the registry is provided to each appropriate department, service, program or clinic.
- Adopt a standardized policy for credentialed staff regarding maternity or parental and other leaves of absence including the obligations on the staff member to ensure proper coverage within the department, permitted time away from the role and the process for returning to active duties following a leave.

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- Ensure appropriate legal advice is sought before refusing or limiting an application or re-application for privileges.
- Ensure privilege delineations are kept up-to-date and consider equipment, staffing and resources to provide the procedure or services.

Performance Management and Professional Practice Evaluation Processes

- Adopt a fair, effective and timely complaint management process for credentialed staff, including tracking and reviewing complaints to identify trends and themes.
- Ensure policies, by-laws and processes for the immediate and non-immediate suspension, restriction or revocation of privileges clearly define:
 - The roles of the Board, Chief Executive Officer, Chief of Staff and Professional or Medical Advisory Committee (MAC);
 - Confirmation that provincial or territorial regulatory colleges will be notified where required;
 - Rights of the professional whose privileges are at risk of suspension, restriction or termination;
 - Process for investigating quality of care issues and for bringing issues of concern to the attention of the Chief of Staff who can then assess whether it is a matter that ought to be considered by the MAC.
- Ensure a performance management and/or professional practice evaluation is conducted (and documented) prior to the annual re-application and appointment renewal process.
- Implement formal strategies to minimize and address unprofessional or disruptive behaviour by credentialed staff and what will be done if such behaviour is identified (e.g., code of conduct, practitioner or physician compact or engagement agreement, just culture and progressive approaches to interventions and consequences based on the severity of the infractions and frequency of incidents).

- Ensure complete and timely documentation of all attempts to address the credentialed staff's:
 - Unprofessional or distributive behavior (including confirming the expectations of the disruptive practitioner in writing);
 - Clinical skills and competency issues.

Education

- Provide ongoing education to professional staff administration and leaders (e.g., conducting performance management and peer reviews, leading teams of professionals and developing a culture of patient safety).

Retention of Records

- Adopt best practices for the retention, storage and destruction of applications for appointment and re-appointments and professional practice reviews.

Monitoring and Measurement

- Implement formal strategies to monitor compliance with the facility's appointment, privileging, reappointment and professional practice evaluation processes.
- Prior to obtaining an external review of an applicant or credentialed staff's practices or records (e.g., required due to lack of internal expertise, new technology or conflict of interest), consider whether the investigation should be carried out through a quality assurance or legally protected forum; obtain risk management and legal advice where indicated.

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- The Joint Commission. (2007). *Credentialing and privileging your medical staff: Examples for improving compliance*. Oak Brook, IL: Joint Commission Resources.
- Ontario Hospital Association & Ontario Medical Association. (2010 February). Hospital prototype board-appointed professional staff by-law.
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- Statutory Powers Procedure Act, R.S.O. 1990, c.S.22.
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