Emerging issues in medical staff affairs

2017 AMA Organized Medical Staff Section Annual Meeting

June 9, 2017

Hyatt Regency Chicago

Elizabeth Snelson, Esq.
Legal Counsel for the Medical Staff, PLLC
Agenda

• Introduction
• National Practitioner Data Bank reporting
• Telehealth
• Threats to self-governance
• Assessing senior physician competency
• Discussion
National Practitioner Data Bank reporting

• April 2015 revisions to the NPDB Guidebook clarified that:
  – An “investigation” begins as soon as an inquiry is made by the health care entity.
  – Any leave of absence is considered a “surrender of privileges.”

• What does it mean for physicians?
  – A physician’s surrender of privileges for any reason during an investigation into his or her competence or conduct is reportable to the NPDB, even when the investigation clears the physician of any wrongdoing and if a physician had no notice that he or she was under investigation
National Practitioner Data Bank reporting

• What should physicians do?
  – Before taking a leave of absence or otherwise surrendering any privileges, physicians should always seek to determine whether they are the subject of any investigation.

• What should your medical staff do?
  – Clearly define what constitutes an “investigation.”
  – Clearly define when an “investigation” begins and ends.
  – Require that members be notified before the initiation of an “investigation.”

National Practitioner Data Bank reporting

• Other perspectives:
  – Legal counsel
  – Medical staff services professional

• Audience Q&A
  – *Please limit all questions/comments to 30 seconds*
Threats to medical staff self-governance

• Foundation of self-governance:
  – AMA: See Physician’s Guide to Medical Staff Organization Bylaws
  – State law: Oregon, Mississippi, California et al
  – Joint Commission: “Self-governance of the organized medical staff includes the following and is located in the medical staff’s bylaws:
    • Initiating, developing, and approving medical staff bylaws and rules and regulations
    • Approving or disapproving amendments to the medical staff bylaws and rules and regulations
    • Selecting and removing medical staff officers
    • Determining the mechanism for establishing and enforcing criteria and standards for medical staff membership
    • Determining the mechanism for establishing and enforcing criteria for delegating oversight responsibilities to practitioners with independent privileges
    • Determining the mechanism for establishing and maintaining patient care standards and credentialing and delineation of clinical privileges” JC LD 01.05.01 ep 2/MS Overview
Threats to medical staff self-governance

• Incursion by non-representative authorities:
  – Physician Dyads?
  – Physician Council?
  – CEO’s Physician Advisory Group?
Threats to medical staff self-governance

• Other perspectives:
  – Medical staff leader
  – Medical staff services professional

• Audience Q&A
  – *Please limit all questions/comments to 30 seconds*
Telehealth

- **Telemedicine**: clinical diagnosis and monitoring that is delivered by technology.

- **Telehealth**: the wide range of diagnosis and management, education, and other related fields of health care.

**Delivery Options:**

- **Live Consultations**: video conferencing between providers and directly with patients
- **Store and Forward**: asynchronous digital content exchange of images, test results and data
- **Remote Monitoring**: synchronous and asynchronous exchange of patient’s biometric data
- **mHealth**: personal device monitoring and management
Telehealth

- Improve patient access to care with better care coordination
- Reduce unnecessary travel, keeping patients in their own community
- Reduce unnecessary transportation costs
- Continuous patient monitoring

- Live to consumer e.g. Connect Care
- Adult and Pediatric Critical Care
- Newborn Care
- Infectious Disease
- Oncology
- Stroke
- Mental Health/Crisis
- Trauma/ED
Telehealth

• Challenges
  – Accreditation Bodies and CMS
  – Credentialing and Privileging
  – Payment
  – Licensing
  – State Laws
    • Informed consent
    • Prescribing
  – Privacy
Telehealth

• Other perspectives:
  – Medical staff leader
  – Legal counsel

• Audience Q&A
  – *Please limit all questions/comments to 30 seconds*
Assessing senior physician competency:

Background

- Increase in physicians over age 65 providing patient care:

Source: AMA Physician Masterfile
Assessing senior physician competency: Background

- **Highly variable** effects of age on competency:
  - Cognitive function
  - Manual dexterity and visuospatial ability
  - Incorporation of new treatments

- But, many attributes needed to deliver quality health care increase with age—for example, wisdom, resilience, compassion, and tolerance for stress.
Assessing senior physician competency: Background

- AMA has been working on this issue since 2014.
- Resolution 308-A-14, Competency and the Aging Physician
  - “[AMA will] study the issue of competency in aging physicians and develop guidelines, if the study supports such a need, for appropriate mechanisms of assessment to assure that America’s physicians remain able to provide optimal care for their patients.”
- AMA House of Delegates adopts *CME Report 5-A-15: Assuring Safe and Effective Care for Patients by Senior/Late Career Physicians*
  - “It is the opinion of the Council on Medical Education that physicians should be allowed to remain in practice as long as patient safety is not endangered and that, if needed, remediation should be a supportive, ongoing and proactive process.”
- Stakeholder meeting March 2016
- More to come!
Assessing senior physician competency: Legal considerations

• Legal baselines:
  – State/federal law, licensure?
  – Board certification?
  – Accreditation standards?
  – Medical society eligibility?

• Since no one else looks at aging, should the medical staff?
Assessing senior physician competency: Legal considerations

• Can age be a criterion for membership or clinical privileges?
  – Consider state law (fair employment laws) and federal law (Age Discrimination in Employment Act)
  – An age-related requirement must be:
    • a bona-fide occupational requirement
    • a reliable proxy for a safety-based qualification
Assessing senior physician competency: What can your medical staff do?

• Joint Commission requirements:
  – “An applicant submits a statement that no health problems exist that could affect his or her ability to perform the privileges requested....The applicant's ability to perform privileges requested must be evaluated.....In instances where there is doubt about an applicant’s ability to perform privileges requested, an evaluation by an external and internal source may be required. The request for an evaluation rests with the organized medical staff.”
  
  Joint Commission Medical Staff Standard 06.01.05, Element of Performance 6

  – “The medical staff implements a process to identify and manage matters of individual health for licensed independent practitioners which is separate from actions taken for disciplinary purposes.”

  Joint Commission Standard MS11.01.01
Assessing senior physician competency: What can your medical staff do?

• Focus on core competencies for all
• Strengthen proctoring & monitoring
• Coordinate re-entry after rehab/re-education
• Activate thresholds for referral/reporting
• Promote Physician Health Programs
Discussion

• Please limit questions and comments to 30 seconds.

• If you wish for a specific faculty member to answer a question, please specify which faculty should answer your question.
Thank you to our speakers!

- Susan DuBois, CPCS, CPMSM
  President, National Association Medical Staff Services
  Susan.DuBois@imail.org

- Elizabeth “Libby” Snelson, Esq.
  Legal Counsel for the Medical Staff, PLLC
  easesq@snelsonlaw.com

- Arthur Snow, Jr., MD
  Immediate Past Chair, AMA-OMSS Governing Council
  adsnowjr@aol.com