

Spring, 2024

LOSING HOSPITAL PRIVILEGES

In many areas of the practice of medicine, physicians depend upon having privileges at a hospital in order to take care of their patients and perform procedures that necessitate the resources of a hospital. As a result, maintaining hospital privileges is often a necessity.

Unfortunately, circumstances may arise where a hospital seeks to limit, temporarily suspend, or even completely revoke, a physician's privileges. Such a situation can be devastating not just in the short term, but in the long term as well. Adverse actions taken by a hospital with respect to a physician's privileges is reported to the National Practitioner Data Bank ("NPDB"). A physician who thereafter seeks employment and/or privileges at another institution may have difficulty securing a position since a new employer or hospital will see the adverse NPDB filing. Furthermore, any malpractice insurance application, professional license application or third party payor participating provider application, will seek information about the facts and circumstances of the adverse action taken by a hospital. This can lead to denials of hospital privileges, insurance coverage or third party payor participation. In other words, such a situation can be career ending!

It is therefore critical that if a physician finds themselves in a situation where adverse action is being contemplated or actually occurs with respect to hospital privileges, experienced legal counsel should be retained to represent the physician. Hospitals invariably have by-laws or medical staff policies that contain mechanisms to challenge or appeal adverse actions. Depending upon the institution, availing oneself of these due process rights to challenge the adverse action may or may not be easy.

In a recent matter handled by our firm on behalf of a client, a hospital suspended a surgeon's operating privileges pending an investigation into certain surgical concerns. The hospital convened a committee to investigate the matter and concluded that a suspension was not warranted but the physician should undergo some additional training. Notwithstanding the committee's findings, the hospital nonetheless extended the physician's suspension and filed a devastating report with the NPDB. Pursuant to the hospital's by-laws, the determination was challenged, and a hearing committee was constituted by the hospital to review matter. After an extensive hearing that included many witnesses including an expert witness, the hearing committee, like the initial investigatory committee, concluded that the physician's privileges should not have been suspended but some additional training was warranted. The hearing committee also found that the hospital had violated the physician's due process rights under the by-laws. Amazingly, the hospital responded to the hearing committee's findings by completely terminating the physician's privileges. Thereafter, we

prosecuted an appeal of the hospital's actions to the hospital's Board of Governors. After a hearing before an appeals committee constituted by the Board of Governors, our client finally got his privileges reinstated and the Board of Governors ordered the hospital to amend the NPDB filing.

Although the hospital in the above scenario behaved in a particularly egregious manner, it is not uncommon for hospitals to take aggressive positions against physicians. Although sometimes their actions may be warranted, unfortunately sometimes they are motivated by internal personal, political, or economic considerations.

In any event, it cannot be understated how important it is to properly address such situations with experienced legal counsel. Your career may depend upon the outcome!

Please contact Gary S. Sastow for further information about losing your hospital privileges.

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