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Guest Column

Peer review systems in hospitals can take different forms

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Under Florida law, a licensed facility must provide for peer review of physicians who deliver health care services at the facility. A peer review investigation must be undertaken if there is a reasonable belief that a staff member has committed acts that may constitute grounds for discipline — including medical negligence or the failure to comply with the facility policies, procedures or directives.

Hospital bylaws under which reviews are conducted can vary and decisions rendered by committees can have far-reaching consequences so a basic understanding of the review process will benefit companies doing business with physicians and facilities.

Generally there are two basic models utilized. One model, which I call the "de novo review," provides for procedures similar to those utilized in criminal justice and professional regulatory systems.

The other model, which I call the "appeal model," places more emphasis and responsibility on the first peer review committee recommendation. This model shifts the burden to the physician to establish that the initial recommendation is improper.

Before we take a closer look at these two models, it's important to note that regardless of which one a facility follows, it is well settled law in Florida that no liability be posed if a facility and its peer review panels act without intentional fraud and in a manner consistent with its written peer review process.

So, let's take a typical issue relating to a concern regarding quality of care rendered by a physician. In most cases, a concern initially will be considered by a quality improvement committee.

Typically, the physician is notified of a concern and invited to meet with the committee to discuss it. If the committee is satisfied with the physician's explanation, generally the matter will not proceed any further.

If the quality improvement committee continues to have concerns, they will be reviewed by the peer review committee.

If the peer review committee agrees that there's a concern regarding the quality of care, it may make a recommendation, such as a restriction barring the practitioner from performing certain procedures in the hospital.

If the physician is in agreement, the restriction is implemented. If the physician disagrees, the formal disciplinary process is engaged.

In de novo review, the burden is placed on the hospital or its organized medical staff to prove the allegations made against a physician. A hearing panel is responsible for determining whether the allegations have been proven, and, if so, it then makes a recommendation as to the sanction or remedial action to be imposed.

By contrast, in the appeal model, the recommendation of the peer review committee is presumed to be appropriate and it is the physician who has the burden of establishing that the recommendation of this committee is not appropriate. Often, the appeal model requires that the physician bear an enhanced burden of proof such as "clear and convincing evidence."

The appeal model does place a significant burden on the physician and thus "favors" the facility and its organized medical staff. This model may have significant unintended consequences.

Under the appeal model, the subject matter of the hearing is potentially expanded.

The burden is typically on the physician to show that the peer review committee's recommendation was arbitrary, capricious or not supported by fact. Evidence of the manner in which the committee proceeded — and any possible motive or bias of any member of the committee or others providing evidence or services to the committee — become "fair game."

The affected physician can change the focus of the hearing from his or her quality of care to an attack of the peer review process and its participants. In light of these potentially serious consequences, facilities and organized medical staffs should carefully review their bylaws to ensure that they are comfortable with the system that has been created.

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