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### EMERGENCY COVERAGE OBLIGATIONS FOR MEDICAL STAFF

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More and more frequently, hospitals are finding themselves unable to provide 24-hour coverage in the emergency department due to insufficient physician coverage.

The ultimate responsibility for the governance and management of a hospital rests with the board of directors. This responsibility includes the monitoring of activities in the hospital and the taking of measures to ensure compliance with the *Public Hospitals Act* ("PHA"), regulations, hospital by-laws and medical staff rules and regulations. In accordance with the regulations under the PHA, the hospital's board of directors must approve medical staff by-laws governing, among other things, the credentialing of physicians at the hospital.

#### GENERAL OBLIGATIONS

The provision of an on-call system is a joint undertaking by the hospital and the medical staff. Once the hospital holds itself out as providing identifiable services, a duty is created on the part of the hospital to ensure that the services are readily available to members of the community. The creation of an on-call roster is necessary to ensure that health care practitioners are available to provide emergency care. It should be a joint decision of administration and the medical staff and must be sanctioned by the Board.

The relationship between individual physician and hospital, identified as privileges, is a contractual relationship. In general, the hospital is providing the physician with access to resources in exchange for the physician providing the hospital and community served by the hospital with services. The terms of this contract are set out in writing through a hospital's bylaws, medical staff rules and regulations, as well as the provisions of the *Public Hospitals Act*. In addition, terms may be implied from the conduct and actions of the parties, including historical access to resources.

Generally speaking, the bylaws create an obligation upon each physician accepting privileges at a hospital to provide on-call coverage to that hospital. In addition, medical staff policies may set out additional responsibilities for Department Chiefs or the Chief of Staff to ensure appropriate on-call coverage. A hospital is entitled to require physicians to provide emergency coverage in order to provide necessary medical services to residents of the community.

#### CASE LAW

The Health Professions Appeal and Review Board and the courts have held that medical staff membership carries with it both privileges and responsibilities. Commonly included in the latter is the responsibility to participate in an emergency call roster.

In *Miles and Humber Memorial Hospital*, for example, the then Hospital Appeal Board found that the hospital was justified in its expectation that Dr. Miles provide emergency plastic surgery coverage. The ability of the hospital to require a physician to perform certain duties was found in the medical staff bylaws.

The authority of a hospital, through and with department heads or chiefs of staff, to set requirements of the medical staff, was also confirmed in *Cockings v. University Hospital*. In this case, the Saskatchewan Queen's Bench held that additional rules and "directives" by departmental heads were contemplated by the hospital by-laws and were not something that a physician in a department could ignore with impunity.

Based on the above, a hospital is entitled to require physicians who enjoy privileges at the hospital to provide emergency coverage in the interests of providing the highest standard of patient care. In turn, physicians have the ability to challenge decisions made by the Hospital if they feel aggrieved by any decision cancelling or substantially altering their privileges.

## **RISK MANAGEMENT**

To ensure that on-call expectations are clearly delineated, hospitals should make sure that their bylaws and medical staff rules and regulations support the obligations being imposed. Bylaws, particularly those based on older prototypes, may not provide the framework that a hospital Board needs to adequately address current medical staff needs. In addition, hospitals may set out the rights and obligations of both parties more explicitly by entering into resource agreements with their physicians in relation to the granting of privileges and the hospital resources to which they will have access. We would be pleased to assist hospitals with the review or development of medical staff bylaws, rules or policies or the development of physician resource contracts.

## **ABOUT THE AUTHOR:**

Kathryn Frelick is a lawyer practising in our Health Industry Practice Group and supervises the Legal Retainer Program. Kathryn provides advice to clients in areas of privacy, administrative law, regulatory law, and health policy issues.

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