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Coffee Talk - Directors Series

A Health Industry Seminar Series

Professional Staff Credentialing: Roles and Responsibilities

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AGENDA

1. Duties and responsibilities of the Board
2. The Legislative and Common Law environment
3. Comprehensive credentialing policies
4. Appointment and privileging disputes
5. Legal protections afforded to directors of the Board

Duties and Responsibilities of the Board

Governance

Sources of Directors' Duties and Responsibilities:

- Common law governing corporations
- Ontario *Corporations Act*
- *Public Hospitals Act* and *Regulation 965*
- Articles and by-laws of institution
- Any general legislation that applies to all Directors (e.g. Employment Standards, OHSA, etc.)

Fiduciary Relationship

1. Directors hold a relationship of trust with stakeholders
2. Highest standard of conduct
3. Duty owed to the Corporation (not to any one group or interest) – oversight; policies
4. All directors owe same duty – elected; appointed; “ex officio”
5. Role of the “Comprehensive Appointment and Credentials” policy

Legislative and Common Law Environment Respecting Professional Staff Credentialing

Public Hospitals Act

- Board powers under *Public Hospitals Act* (s. 36)
 - Appointment (and re-appointment)
 - Determine privileges
 - Revoke, Suspend, Deny
- Board to pass by-laws (Reg. s. 4)
 - Criteria for appointment & reappointment of physicians
 - Procedures for appointing Chief of Staff & Dept. Chiefs
 - Establishment & duties of medical staff committees
 - Criteria for appointment and duties of dentists, midwives and extended class nurses

...*Public Hospitals Act*

- Medical Advisory Committee (s. 35)
 - Consider and review
 - Recommendations re: appointment and reappointment
 - Other duties as assigned by Act or Board

Regulation 965 of the *Public Hospital Act* sets out that the MAC shall supervise the practice of medicine, dentistry, midwifery, and extended class nursing in the hospital.

...Public Hospitals Act

- Appointment/Reappointment Process (s. 37)
 - Physician entitled to apply or reapply; MAC to consider recommendation 60 days
 - MAC may delay recommendation
 - Notice to applicant and board
 - Physician has a right to reasons for recommendation of MAC and has a right to a hearing before the Board
 - Board decisions reconsidered through Health Professions Appeal Review Board (HPARB)
 - HPARB decisions are subject to review at the Divisional Court

Common Law Obligations of the Board

- Board has duty to appoint physicians (professional staff) who:
 - Meet the needs of the community
 - Effectively utilize the resources of the hospital
 - Are skilled & experienced
 - Will work as an effective member of the healthcare team (collaborative, respectful, follow rules, ensure patient and staff safety)

A View from the Bench

- The **Board of Governors** of a public hospital is entrusted by its community with the responsibility of providing a program of health care tailored to the particular needs of that community. The **Board must** establish objectives that are within the capacity of its plan and resources. It must create a balance within its medical staff to ensure a broad base of expertise, and select the staff capable of developing excellence in health care while obtaining the most efficient utilization of the facilities and resources of the hospital... It is the task of a **Board of Governors** to balance the operation of its hospital and tune it to that level of optimum performance permitted by its inherent limitations. The **Board of Governors** has a responsibility to determine the pace at which the facilities of its hospital will be operated and to establish those staffing policies which satisfy the requirements of that operation.

Comprehensive Credentialing Policies

- Board policy
- Must address duties and responsibilities related to:
 - New applications – form and content
 - Criteria for Appointment, Re-appointment
 - Expansion or alteration of privileges
 - Ongoing review of quality of care by privileged physicians
- Ensure and monitor quality of care, minimize risks to patients
- Responsive to organizational structure
- Include procedure for ongoing review during each privilege year

Appointment and Privileges Disputes

Foundation for Review (Appointment/Re-appointment)

- Competency and quality of care
- Human resource needs and resource availability
- Collegiality/Disruptive Behaviour
 - Disruptive behaviour can be defined as any action, verbal or physical, which is disrespectful of others and adversely affects staff morale or service provision. It can include behaviours inconsistent with rules and policies as well as behaviours that put patients or staff at risk.

...Appointment Disputes

Foundation for Action (mid-term)

- An issue of patient safety
- Immediate risk supporting extreme action
- Urgent need to accommodate risk
- Authority of Chief of Staff, Administrator and Board

...Appointment Disputes

Section 39 *Public Hospitals Act*

- Parties: MAC; physician; others
- Directors as tribunal members, cannot have prejudged or received information
- Adversarial
- Burden rests with the MAC

Remediation

Remediation vs Discipline:

- Zero Tolerance
- Repeat Behaviour
- Insight
- Practical Opportunity for Remediation
 - supervision
 - mentors
 - level of retraining

Remediation

- Effective procedures will allow issues to be handled in a non-adversarial environment
- Opportunity for an informal resolution may be possible
- Engagement of counsel
- Engagement of PHP

Legal Protections Afforded to Directors of the Hospital

- *Public Hospitals Act*
 - **Section 13:**

13 (1) No action or other proceeding for damages or otherwise shall be instituted against any member of a committee of the medical staff of a hospital or of a board or of the staff thereof for any act done in good faith in the execution or intended execution of any duty or authority under this Act or the regulations or for any alleged neglect or default in the execution in good faith of any such duty or authority.

(2) No action or other proceeding for damages or otherwise shall be instituted against any witness in a proceeding or investigation before a committee of the medical staff of a hospital or a board or the Appeal Board for anything done or said in good faith in the course of a meeting, proceeding, investigation or other business of such committee or board.
 - **Section 44 (5):**

44 (5) No action or other proceeding for damages or otherwise shall be instituted against a corporation which owns or operates a hospital for any act done in good faith in the execution or intended execution by a board of its authority under subsection (1) or (2) or for any alleged neglect or default in the execution in good faith by a board of such authority.

Section 44 (5) relates to matters concerning a:

- a) Board's determination to cease operating as a public hospital,
- b) LHIN's integration decision, or
- c) Board or LHIN's decision to cease providing a service.

and the impact of same on a physician's hospital privileges.

- *Beattie v. Women's College Hospital*

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