



Economic credentialing: When hospitals play hardball

This doctor's hospital threatened to terminate her privileges because of her husband's interest in a competing hospital.

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Medical Economics

In theory, hospitals are supposed to make staff appointments and grant privileges based on a physician's clinical competence, as judged by the medical staff leadership. But with many hospitals facing increasing competition, rising costs, and other financial pressures, a growing number are using "economic credentialing"—rather than clinical skill—as a criterion for making staff appointments.

In a trend the AMA considers alarming, these hospitals are using staff privileges to reward physicians likely to bring in lucrative business and punish those with financial interests in competing facilities. According to Alice Gosfield, a healthcare attorney in Philadelphia, "Hospitals are feeling more threatened by competitors these days, and economic credentialing is a way of consolidating their power."

While Medicare, Medicaid, and JCAHO regulations all require hospitals to appraise physicians' professional competence when making staff appointments, they don't specifically prohibit consideration of financial interests in competing hospitals as appropriate criteria in such decisions. In fact, although some states now bar hospitals from such economic credentialing, it's still not illegal in most states.

For a glaring example of such economic credentialing, consider the case of Janet Cathey, a gynecologist in Little Rock, AR. For the 20 years that she's practiced there, her professional life has revolved around Baptist Health Medical Center, the city's biggest hospital. Baptist Health, which owns BHMC and several other hospitals, is the largest healthcare system in the state. It's also the exclusive or preferred provider for Arkansas Blue Cross and Blue Shield, the state's biggest health insurer, which covers about half of Cathey's 4,000 patients. BHMC is also Little Rock's only acute care hospital in the Blue Cross network.

A warm relationship turns chilly

Until recently, Cathey's professional relationship with BHMC had been amicable and mutually beneficial: Her office is located on the campus of the hospital, where she does nearly all her procedures—which bring the hospital significant revenue. The relationship is personal as well as professional. Cathey's two children were born at the hospital, and she and her family get most of their healthcare from BHMC physicians. Her husband, Steven, a neurosurgeon, also practiced there for many years. Both have appeared in television commercials for the hospital, and both have served as chairpersons for its annual fund-raiser.

Relations began to cool, however, when Steven Cathey joined a group of BHMC surgeons who'd decided to establish their own surgical facility in Little Rock. In May 2003, in anticipation of competition from the new Arkansas Surgical Hospital, Baptist Health's board of trustees adopted a written "conflict-of-interest policy"—described in the document as "economic credentialing." According to the minutes of that meeting, one motivation for the new policy was to ensure the "ability to show loyalty to physicians who are loyal to Baptist Health."

The new policy states that staff physicians with a direct *or indirect* financial interest in a competing hospital will lose their appointments and clinical privileges at Baptist's hospitals. The policy applies not only to physician

investors in such facilities, but also to their immediate family members—with no right to a hearing or appellate review. (Prior to the new policy, all decisions regarding staff appointments and privileges at BHMC had been handled by the hospital's medical staff according to its bylaws, which include provisions for a hearing and appeal if disputes arise.)

In March 2005, just before the new surgical hospital opened, Janet Cathey wrote to Douglas Weeks, BHMC's administrator, asking if the new policy would affect her own privileges. She pointed out that she had no investment herself in her husband's new hospital. Besides, since she wasn't on its staff, and since it wasn't equipped to handle gynecological surgery, she wouldn't be referring patients there anyway. Cathey also noted that since most of her patients are enrolled in Blue Cross health plans that require exclusive use of Baptist Health hospitals, loss of her privileges at BHMC would have a "drastic" effect on her practice and on her patients.

In his reply, Weeks informed Cathey that under the terms of the new conflict-of-interest policy, she did hold an "indirect interest" in the new hospital through her husband's investment in it. Therefore, once that facility opened, he wrote, her appointment and clinical privileges at BHMC would "automatically terminate," and she would no longer be eligible to admit patients or do procedures there.

In a separate conversation with Weeks, Cathey explained that the loss of her privileges at BHMC would effectively destroy her practice, since most of her patients couldn't be treated elsewhere. According to Cathey, Weeks responded by suggesting that if she really wanted to retain her privileges, she and her husband might want to reconsider his investment in the new surgical hospital. They refused. As she told the *Arkansas Democrat-Gazette*, "Just as I care about my practice, he does for his. We shouldn't have to sacrifice one practice for the other."

Just before the Arkansas Surgical Hospital opened that spring, 15 of its physicians resigned from BHMC rather than contest its new conflict-of-interest policy. In solidarity with his wife, however, Steven Cathey refused to resign, whereupon the hospital revoked his privileges.

Cathey sues to protect her staff privileges

To stop Baptist Health from taking the same action against her, Cathey filed a suit in April 2005. Calling the new policy "unreasonable, arbitrary and capricious," the suit sought a court injunction to protect Cathey's staff appointment. By making physicians' privileges dependent on not participating in a competing hospital, the suit charged, the policy was part of a trend by which hospitals "try to squeeze out competition through economic coercion of the medical staff."

In an interview with the *Arkansas Democrat-Gazette*, Cathey claimed that losing her privileges at BHMC would effectively force her to start a new practice all over again. Admitting that her husband's investment in the surgical hospital technically endangered her staff position at BHMC under the new policy, she said, "I guess I was just naive. The human side of me just assumed they would make an exception in my case."

Cathey's suit accuses Baptist Health of restraint of trade, interference with the physician-patient relationship, and violation of public policy. Among the suit's specific charges:

Interference with the physician-patient relationship. Revoking Cathey's staff privileges, the suit claims, would cause a "drastic disruption" of her relationship with the majority of her patients, and interfere with patient choice. That would violate Arkansas public policy, which protects "the public's right to access the physician of their choice," and the "sanctity" of the physician-patient relationship. Since Baptist Health hospitals are the region's exclusive or preferred facilities for the state's Blue Cross health plans, Cathey's loss of privileges would automatically exclude her from those plans, which would mean that half her patients would no longer be able to see her in-network.

Improper credentialing. Noting that Cathey's clinical competence is not in question, the suit cites an annual poll conducted by the *Arkansas Times* newspaper, in which her peers have picked her as one of the state's "best doctors" for the past several years. Baptist's only reason for not renewing her staff privileges, the suit claims, is economic, not professional.

Damage to reputation. Any revocation of Cathey's privileges would have to be disclosed to insurance companies, health plans, the state medical board, and any other hospitals where she might practice, thereby damaging her professional standing. It would also become known among her patients, colleagues, and referring

physicians, who might incorrectly interpret her loss of privileges as a reflection on her professional competence.

In May 2005, the circuit court judge granted a temporary restraining order barring Baptist Health from revoking Cathey's privileges until the case is resolved. Baptist Health has since moved to dismiss the suit on several grounds. One major argument is that since the granting of staff privileges doesn't involve a contract, Cathey has no contractual rights to be violated, and thus no legitimate cause of action.

In support of its position, Baptist's attorneys cited the following judicial decision from a similar case in Connecticut: "A private hospital has the right to exclude any physician from practicing therein, and such exclusion rests within the sound discretion of the managing authorities. A physician has no vested right to practice in a hospital, but merely a privilege which may be granted or denied even though his qualifications are of the highest."

Baptist's motion is now pending before the court, with no trial date set yet. Meanwhile, the Arkansas Medical Society and the AMA are both supporting Cathey's suit. According to the AMA's Litigation Center website, "The sole purpose of [Baptist Health's] economic credentialing policy, as applied to Dr. Cathey, is to thwart competition."

Another case of economic credentialing

Baptist Health is also facing a similar suit brought by six cardiologists who are part-owners of Little Rock's Arkansas Heart Hospital. Since that facility competes directly with BHMC for cardiac patients, they have also sued Baptist Health to protect their staff privileges. In their suit, they argue that Baptist's conflict-of-interest policy is really economic credentialing, and therefore a violation of state law against restraint of trade. Like Cathey, they also claim that the loss of their privileges at BHMC would cause "irreparable harm" to their relationships with their patients and referring physicians.

The circuit court judge agreed, ruling that Baptist Health "knew that the adoption of the economic credentialing policy would inevitably result in a disruption of the relationship between Plaintiffs and a significant number of their patients." He therefore granted the physicians' request for a temporary injunction blocking their ouster. Baptist Health appealed that decision, but the state's supreme court upheld it last February.

Cathey's attorney, Emily Sneddon, called the decision "great news" for her client. The AMA's Litigation Center also hailed the ruling. According to its website, "Baptist Health's claim of an economic conflict of interest is nothing more than a pretext for a policy that intentionally creates a reward of professional staff privileges and clinical appointments to physicians who refer most of their patients to Baptist Health facilities."

With her case still unresolved, Janet Cathey looks on her experience with mixed feelings. "For almost 20 years I considered myself an ally, a supporter, even a partner with Baptist Health," she says. "I knew that my decision to sue them would change that relationship, and mark a turning point in my life, so I didn't make the decision lightly.

"I thought I knew how stressful, expensive, and time-consuming this case would be, but I wasn't even close. Would I do it again? Without question. Because if we let hospitals do this to us, where does it stop? Being a physician is not what I do; it's who I am, and I have always put my patients first. I took an oath to do that, and this lawsuit is really an extension of that oath."