

Health Law Bulletin

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Physician Involvement In Drafting Hospital Medical Staff Bylaws

Many physicians underestimate the importance of the Medical Staff Bylaws at hospitals where the physicians hold privileges. In the past, physicians often have ceded control over those bylaws to the hospital, resulting in some bylaws that were very favorable to the hospital and not so favorable to the Medical Staff. Since Medical Staff Bylaws control, among other things, how the medical staff will self-govern, how physicians will be disciplined, and whether physicians will be liable for the hospital's attorneys' fees in some circumstances, physicians should protect themselves by being actively involved. The best practice is for the Medical Staff to engage its own attorney to assist it in proposing, drafting and negotiating the Medical Staff Bylaws.

Physicians are sometimes reluctant to invest their own time and money in a review of Medical Staff Bylaws, and many have become accustomed to leaving the task to the hospital. This is virtually always a mistake. The hospital's attorney represents the *hospital*, not the Medical Staff. The Medical Staff can get the *physician's* perspective on issues in the bylaws by using its own experienced counsel. Since the bylaws govern the physician's rights and responsibilities for years to come, any time a revision to Medical Staff Bylaws is being considered, the Medical Staff should obtain its own legal review. By way of example, some older bylaws may contain provisions that permit the hospital board to control the outcome of, or otherwise interfere in, the election or removal of medical staff officers. Counsel for the physicians can explain that Joint Commission standards require a "self-governing" medical staff and can set out for the physicians and the hospital the requirements to meet that standard.

The objective for both the Medical Staff and the hospital should be to enact Medical Staff Bylaws that are fair and are consistent with current applicable federal and state law. Health care law changes frequently, and as a result Medical Staff Bylaws must be updated more often than many physicians realize. For example, the Joint Commission now requires bylaws to include a section on disruptive conduct by physicians.

There is more than one way to write a bylaw. By having their own legal representation in the process, physicians can craft better relationships with hospitals, ensure appropriate Medical Staff autonomy, and avoid the unpleasant, after-the-fact realization that a particular bylaw provision is adverse to physicians.