

Chapter 5

The Board's Role in the Credentialing Process

One of the most important governance roles undertaken by hospital boards is credentialing professional staff. Credentialing includes a range of activities and processes, such as reviewing applications for initial appointments, verifying qualifications, identifying the scope and nature of privileges, granting privileges, performing periodic reviews, and conducting annual re-appointments.

Although a variety of health care professionals work in hospitals, credentialing is only required for physicians, dentists, midwives, and extended class nurses. These professionals are not generally employed by the hospitals. They are usually independent contractors who bill the Ontario Health Insurance Plan for their services and are granted privileges to practice in the hospital pursuant to the process set out under the *Public Hospitals Act* and the hospital's by-laws.

One of the most important governance roles undertaken by hospital boards is credentialing professional staff.

Professional staff members have a direct impact on the quality of care provided in a hospital. For that reason, there must be an effective method to ensure the hospital recruits and maintains an appropriate complement of skilled professionals.

OVERVIEW OF THE APPOINTMENT PROCESS

Under the *Public Hospitals Act* and the hospital by-laws, it is the board that is responsible for appointing professional staff to the hospital and determining their privileges. The board is also responsible for revoking, suspending or refusing the re-appointment of professional staff, where necessary. There must be an effective method of review, both initially and ongoing. The failure to properly evaluate applicants exposes patients to harm and may result in hospital liability.

The duties and responsibilities of the board are detailed in the *Public Hospitals Act* and its regulations, as well as the by-laws of the hospital. There is also a considerable body of case law that interprets these provisions.

Every physician is entitled to apply for hospital privileges and have his or her application considered by the hospital in accordance with the hospital's by-laws and the *Public Hospitals Act*. With every application, the medical advisory committee must meet and make a written recommendation to the board.

The medical advisory committee must give the applicant written notice of its recommendation. The applicant is entitled to request written reasons for the recommendation and to request a hearing before the board about the application. If a hearing is not requested by the applicant, the board may implement the recommendation. If a hearing is requested, the board will

hold a formal hearing during which the medical advisory committee and the applicant will present evidence for and against the recommendation. After hearing the evidence, the board is required to decide whether or not to appoint the applicant to the medical staff.

Each appointment to the medical staff is for a maximum of one year. Physicians must re-apply annually, and the re-applications are considered by the medical advisory committee and board following the same re-applications process.

The board may also revoke or suspend a physician's appointment when it considers this necessary. This is referred to as 'mid-term action', and there is usually a process for this outlined in the hospital's by-laws.

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If an applicant or member of the medical staff considers himself or herself aggrieved by a decision of the hospital board to not appoint or re-appoint them, or by a decision that cancels, suspends or substantially alters his or her hospital privileges, he or she is entitled to ask for written reasons for the decision, and to request an appeal of the decision to the Health Professions Appeal and Review Board (HPARB). HPARB is a tribunal appointed pursuant to the *Ministry of Health Appeal and Review Boards Act*. There is also a further right of appeal from HPARB decisions to the court.

The above process pertains specifically to physicians, as set out in the *Public Hospitals Act*. A similar process for dentists, midwives and extended class nurses may be addressed in a hospital's by-laws.

HOSPITAL BY-LAWS

Regulation 965 under the *Public Hospitals Act* states that the board shall pass by-laws that provide for the organization of the medical staff, including criteria for the appointment of dental, midwifery and extended class nursing staff to the hospital. Extended class nurses are registered nurses who are registered with the College of Nurses of Ontario as extended class nurses under the *Nursing Act*. Many hospitals now collectively refer to these categories of staff as the Professional Staff, and the Medical Staff By-Laws are now referred to as the Professional Staff By-Laws.

The by-laws of each hospital will provide for the organization of the medical staff in the hospital and, as applicable, for the organization of the dental, midwifery, and extended class nursing staff. While each hospital's by-laws will be different, in general terms, the by-laws will cover such things as:

- The qualifications and criteria for appointment to the professional staff (the medical, dental, midwifery and extended class nursing staff) of the hospital. This includes license to practice and appropriate specialist qualifications where applicable; skills, training and

experience for the privileges requested; ability to work and communicate with other staff in a professional manner; hospital resource plans and the need for the professional's services.

- The process for the appointment of the dental, midwifery and extended class nursing staff is usually the same or very similar to the process for medical staff.
- The categories (e.g., active, associate, courtesy staff) and departments (e.g., surgery, emergency, pediatrics) of the hospital staff and the privileges and duties that attach to each category or department. For instance, active staff members typically have the privilege of admitting patients to the hospital, whereas other categories may not have admitting privileges. Also, professional staff in certain categories or departments may have on-call responsibilities, whereas others do not.
- The process to be followed to fulfill each of the requirements of the *Public Hospitals Act* set out above. This includes the handling of initial applications, annual re-appointments, changes in appointments, and the steps to be taken when it is considered necessary to revoke or suspend an appointment. For each of these, there will be a process set out for how the issue is to be considered by the medical advisory committee and possibly by other committees or officers of the hospital, leading to a recommendation by the medical advisory committee, and then a decision by the board.

THE ROLE OF THE MEDICAL ADVISORY COMMITTEE

The medical advisory committee is the primary committee responsible for supervising medical and other professional staff in the hospital. It is responsible under the *Public Hospitals Act* for making recommendations to the board concerning the appointment, re-appointment, dismissal, suspension or restriction of the hospital privileges of the medical, dental, midwifery, and

extended class nursing staff. The by-laws of the hospital set out the process by which the medical advisory committee makes its recommendations.

Most hospitals have a credential committee that is responsible for investigating the qualifications and experience of new applicants, and often with assessing applications for re-appointment. In performing its duties, the credential committee will undertake any specific investigations required by the by-laws (e.g., obtaining proof of license and other qualifications) and other investigations it considers appropriate. The credential committee then reports to the medical advisory committee.

The *Public Hospitals Act* requires the medical advisory committee to meet and make a written recommendation to the board within 60 days from the date of the application. The medical advisory committee may make its recommendation after 60 days if it advises the board and the applicant in writing before the expiry of the 60-day period that it is unable to make its recommendation within 60 days and gives the reasons for the delay. The medical advisory committee will review the application and the information provided by the credential committee. It will consider whether the applicant meets the criteria set out in the by-laws for appointment or re-appointment. It will also consider the hospital's resource plans and whether there is a need for additional professional staff members in the applicant's area.

Aside from applications for appointment and re-appointment, the hospital's by-laws will also set out the process to be followed when it is believed that some form of mid-term action (i.e., action between the annual re-appointments) is necessary relating to a professional staff member's privileges. This typically occurs if a professional staff member's actions are potentially putting patients at risk or otherwise adversely affecting the quality of patient care and the operation of the hospital.

The *Public Hospitals Act* requires the medical advisory committee to meet and make a written recommendation to the board within 60 days from the date of the application.

The 'mid-term action' process involves a number of steps required to investigate the issues and report to the medical advisory committee, including provision for immediate action where it is felt necessary. Once the matter is reported to the medical advisory committee, it will meet and consider whether to make a recommendation to the board for mid-term action. The professional staff member whose actions are at issue is often given the opportunity to attend the medical advisory committee meeting and present his/her answers to the complaints against him/her.

For all of its deliberations, the medical advisory committee is required to make a written recommendation to the board. The professional staff member is entitled to written notice of the recommendation and can ask for written reasons for the recommendation.

THE BOARD'S ROLE IN THE CREDENTIALING PROCESS

The board becomes involved in the credentialing process once the medical advisory committee has made its recommendation. What the board does depends on whether or not the applicant or the professional staff member requests a hearing before the board.

If a Hearing is Not Requested

The *Public Hospitals Act* provides that, if a hearing before the board is not requested, the board may implement the recommendation of the medical advisory committee. Typically, the medical advisory committee's recommendation will be provided to the board by its chair or the chief of staff. It may be a combination of a written and verbal report. It may deal with one or more applicants or with the re-appointments of all professional staff for a particular year. The person making the report will provide some information on the basis of the medical advisory committee's recommendation. Board members may ask questions if they wish (i.e., the process that has been followed).

The board then votes on whether or not to accept the medical advisory committee's recommendation.

If a Hearing is Requested

If a hearing before the board is requested by the applicant, the board is required to appoint a time and hold a hearing to decide whether to appoint/re-appoint or revoke/suspend the privileges of the applicant.

This is a formal legal hearing. The medical advisory committee will present its case in support of its recommendation. The applicant is given an opportunity to respond. Both sides may call witnesses and present documents. The medical advisory committee and the applicant are usually represented by legal counsel. The board often has its own independent legal counsel.

The issues the board is required to consider at a contested credentials hearing depend on the circumstances of the particular application or matter in question. The types of issues that are addressed can include the competence of the professional staff member for the position; collegiality, including the ability to work with others and comply with codes of workplace conduct and other hospital policies; and human resources plans and resource allocation decisions.

After the hearing is concluded, the board considers what it has heard and decides whether or not to appoint, re-appoint, revoke or suspend the applicant's privileges. It must give written notice of its decision to the medical advisory committee and the applicant. The applicant is entitled to ask for written reasons for the decision and, as set out above, can appeal to HPARB.

PRINCIPLES OF NATURAL JUSTICE

The phrase "principle of natural justice" is a legal term that refers broadly to the procedural protections given to individuals affected by the decisions of administrative decision makers. There are two basic principles of natural justice:

1. The decision-maker must be impartial and unbiased; and
2. The individual affected must receive, before the decision is made, sufficient notice of the case against him/her and have the opportunity to respond to it.

The principles of natural justice are applied on a sliding scale, depending on the provisions of the decision-maker's enabling legislation, the nature of the matter being decided, and the circumstances of the case. Natural justice at least requires sufficient notice to the individual of the case against him or her and some opportunity to respond. The response may be written but, at times, an oral hearing is required. If the decision-

maker does not follow these principles appropriately, the decision can be overturned by a court or other appeal body.

There have been many cases before HPARB and the courts that have considered how hospitals have handled questions concerning physician privileges, and whether or not the principles of natural justice have been properly applied. Hospital board decisions have been overturned when it is concluded that the hospital did not provide appropriate procedural protections.

When considering privilege matters under the *Public Hospitals Act*, hospital boards must therefore abide by these principles. What is required often depends on the particular circumstances of the individual case. The board should have its own independent legal advice in this regard. The two basic principles set out in this section should always be kept in mind and followed appropriately in all appointment and privilege decisions that the board makes.

SUMMARY OF THE BOARD'S ROLE IN THE CREDENTIALING PROCESS

1. Approves the by-laws that establish the criteria for appointment and re-appointment, and creates the process for appointment, re-appointment and changes in privileges.
2. Approves the form of application or, if not the form then, the required content of the application – in effect approving the scope of the due diligence that must be undertaken in respect of each applicant for appointment and re-appointment.
3. Ensures that reviews are undertaken as part of the re-appointment process and that there is a process for more robust, periodic reviews.
4. Appoints the senior officers and medical staff leaders who are responsible for the process (i.e., chief of staff/chair of the medical advisory committee, department chiefs).

5. Receives reports and briefings from the chief of staff/chair of the medical advisory committee on the overall credentialing process to satisfy itself that the process is fair, thorough, etc.
6. Reviews the performance of the senior officers and medical staff leaders.
7. Establishes the medical advisory committee and may establish a credentials committee.
8. Makes decisions on the strategic directions of the hospital that will impact professional staff resource plans.
9. Exercises oversight to ensure the established process is followed.
10. Makes decisions on appointments, re-appointments and changes in privileges.
11. Holds hearings and decides on contested matters involving professional staff appointments, where required.

More comprehensive information on the board's role in the credentialing process can be found in the Ontario Hospital Association's *Professional Staff Credentialing Toolkit* (toolkit), which includes template forms such as application forms and guidelines for appointment processes. The toolkit provides practical guidance to assist hospitals in managing one of their most critical resources: board-appointed professional staff (physicians, dentists, midwives, and extended class nurses). It provides a detailed overview of the credentialing process and of the roles and responsibilities of key players. The toolkit consists of a number of customizable tools and templates for hospitals that support sound credentialing practices. You can learn more and purchase the toolkit on the Resources page on the Governance Centre of Excellence website. The *Professional Staff Credentialing Video Series* is available online at www.thegce.ca. The video series consists of 12 videos – one for each chapter of the toolkit.

FREQUENTLY ASKED QUESTIONS

1. How much information does the board usually receive about the physicians that it appoints?

As set out above, the board will receive a combination of a written and/or verbal report from the chair of the medical advisory committee or chief of staff in his/her capacity as chair of the medical advisory committee on behalf of the medical advisory committee. This typically does not go into a lot of detail about individual physicians. This is detail that the board does not need to implement the medical advisory committee's recommendation, so long as it is satisfied with the process followed by the credentials committee and the medical advisory committee in arriving at the recommendation.

2. Are dentists, midwives and extended class nurses entitled to the same procedural protection as physicians under the *Public Hospitals Act*?

The provisions of the *Public Hospitals Act* apply to physicians and members of the medical staff only. The Act itself does not refer to other professional staff members. However, the regulations under the Act allow hospital boards to pass by-laws for other professional staff groups and, when hospital boards do so, the by-laws typically apply the same processes to all groups. In any particular case, where there is a question of what particular procedural protection should be afforded to an individual applicant or group of applicants, the board should consult its own legal counsel.

3. Should the appointment of physicians and other professional staff members be dealt with in an *in camera* session of the board?

As these decisions deal with professional staff personnel matters, it is more appropriate to hold the meeting *in camera*. While some boards may deal with re-appointments in the open portion of a board meeting, if any re-appointment is other than routine, or if questions

are asked, the matter should be moved to an *in camera* portion of the meeting. Under the *Freedom of Information and Protection of Privacy Act*, which applied to hospitals as of January 1, 2012, records of meetings regarding hospital appointments are excluded from the right of access to hospital records.

4. Can the board appoint physicians for more than one year?

No. The *Public Hospitals Act* specifically states that appointments can be for a “period of not more than one year”.

5. Do all re-appointments need to come up at the same time?

In most hospitals, for administrative convenience, all re-appointments or re-appointments for particular departments are considered together, but they do not have to be. Each hospital can decide on the process that works best.

6. Can anyone other than the board appoint a physician? Can the board's role be delegated to a committee?

No. The *Public Hospitals Act* provides that only the board can appoint a physician. However, most hospital by-laws allow an officer of the hospital (e.g., the chief executive officer) to temporarily appoint a physician to fill an immediate need, but this usually requires board confirmation at its next meeting.

7. What if the board is considering not implementing the recommendation of the medical advisory committee?

If the board receives a recommendation from the medical advisory committee that, for some reason it is considering not implementing, it is recommended that the board receive specific legal advice before making its

decision. The issue should be deferred to the next board meeting and legal counsel consulted by the board chair in the interim.

8. Should board members sit on the medical advisory committee?

Section 35 of the *Public Hospitals Act* requires that the “board establish a medical advisory committee composed of such elected and appointed members of the medical staff as are prescribed by regulation”. The composition of the medical advisory committee is set out in section 7 of Regulation 965 under the *Public Hospitals Act*, and it is clear that it is to be comprised of physicians only.

The only non-physician member provided for in the regulation is the chief of dental staff for Group A hospitals. Otherwise, only physicians can be members. Therefore, any other attendees at medical advisory committee meetings should be non-voting, particularly for decisions pertaining to appointments and privileges.

If board members sit as non-voting members of medical advisory committee, they may acquire information regarding a matter that may later disqualify them from sitting as a member of the board on a hearing regarding the same matter. Section 39(4) of the *Public Hospitals Act* provides that no member of a board holding a hearing should have taken part in any investigation or consideration of the subject matter of the hearing. Accordingly, it is usually recommended that the medical advisory committee not include members of the board, other than as required under Regulation 965.

9. Increasingly, hospitals are moving to a common credentials model. What is it and how does it work?

Under the *Public Hospitals Act*, the board of a hospital must grant an appointment and privileges to a physician for that physician to provide care in that hospital. To create efficiencies in the application and appointment

process, and to facilitate physicians working at more than one hospital, many hospitals are adopting a common credentials model. While there may be more than one way in which to create a common credentials model or a process whereby physicians are appointed to more than one hospital (sometimes referred to as 'cross credentialing'), generally speaking, the key elements of such models are as follows:

- Each board retains its authority to make a decision regarding the appointment of physicians;
- The criteria for appointments at hospitals participating in the cross-credentialing model must be the same or substantially similar; and
- A common form of application is adopted by the hospitals and, accordingly, the physician provides the same information to two or more hospitals.

Sometimes, a single application form is adopted that lists every hospital in the LHIN. The physician then indicates to which of those hospitals he or she is applying, and the application form is provided to all of those hospitals.

In some models, the credential committee and medical advisory committee at one of the hospitals take a lead role in reviewing the credentials and investigating the background of the applicant. The applicant would consent to that information being shared with the other hospitals.

In other models, two or more hospitals may adopt a common medical advisory committee and appoint the same individual as a chief of staff. In this model, the common medical advisory committee reviews the application and makes a recommendation to each of the boards of the independent hospital corporations participating in the common credentials model.

Regardless of which process is followed, each hospital remains responsible to ensure that it has put in place and followed a process to ensure that physicians are qualified for the privileges that they are granted. Accordingly, the board must ensure that there is a structure in place that enables the proper credentialing and recommendation process for initial appointments and re-appointments.