

# LEGAL AND ETHICAL ISSUES FACING PHYSICIAN WELL-BEING COMMITTEES

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# Issues Involving Applicants

An applicant may be protected under federal Americans with Disabilities Act and/or the federal Rehabilitation Act if:

- The applicant has certain types of health conditions; or
- The applicant is a former substance abuser who has been in recovery successfully for a significant period.

Application questions about health issues, including substance abuse, should be on a separate page that can be removed from the rest of the application materials for special processing.

# Issues Involving Applicants

If an application (or information gathered while processing it) indicates significant health issues that might affect the applicant's ability to provide patient care safely, then while the other relevant medical staff committees are determining whether the applicant meets the organization's criteria for training, experience, competence, etc., the WBC should be determining:

- Whether the applicant has a protected disability, and if so;
- Whether the organization could reasonably accommodate that disability, consistent with safe patient care.

# Issues Involving Applicants

If the medical staff finds the applicant otherwise qualified for membership and privileges, then the WBC should present its information and recommendations about the applicant's disability and whether/how it can be reasonably accommodated.

If the medical staff finds the applicant is **not** otherwise qualified, then the disability issue is moot and the medical staff can simply recommend denial, for the reasons why the applicant is unqualified.

# Issues Involving Applicants

## Sample Bylaws Provisions

### 1.1. INFORMATION ABOUT PHYSICAL OR MENTAL HEALTH STATUS

1.1.1 Any specific information relating to an applicant's physical or mental health status (other than the "yes" or "no" answer on the application form to the question whether the applicant is able to perform the requested Privileges safely) shall be maintained separately from the remainder of the application materials. Any such specific information will be forwarded to the Well-Being Committee (WBC) upon receipt from the applicant or from persons or entities providing information to the Medical Staff in connection with processing of the application, and will be maintained by the WBC as confidential except as expressly provided below.

# Issues Involving Applicants

## Sample Bylaws Provisions (continued)

1.1.2 The WBC will be responsible for evaluating any applicant who has or may have a physical or mental condition that might affect his/her ability to perform requested privileges. This evaluation may include requiring the applicant to undergo a physical or medical examination by a health professional selected by the WBC, at the applicant's expense,<sup>1</sup> and/or an interview of the applicant by the WBC.

<sup>1</sup> Payment for any resulting treatment also would be the responsibility of the applicant.

# Issues Involving Applicants

## Sample Bylaws Provisions (continued)

1.1.3 An application from an applicant who has or may have a physical or mental condition that might affect his/her ability to perform requested privileges will be processed by the Medical Staff Office, the Credentials Verification Service (CVS), the Credentials Committee, and the MEC in the usual manner without regard to that physical or mental condition, until such time as the MEC determines that the applicant is otherwise qualified to perform the requested privileges. (If the MEC determines that the applicant is *not* qualified, then the MEC will recommend denial of the application without regard to the physical or mental condition.)

# Issues Involving Applicants

## Sample Bylaws Provisions (continued)

1.1.4 If the MEC determines that the applicant is otherwise qualified, then the WBC will disclose to the MEC any information it has obtained regarding the applicant's physical or mental condition that might affect his/her ability to perform requested Privileges. Representatives of the WBC and the MEC will meet with the applicant to discuss the possibility of reasonable accommodations that might enable the applicant to perform the requested privileges in accordance with the Hospital's standards of practice.



# Issues Involving Applicants

## Sample Bylaws Provisions (continued)

1.1.5 The Hospital will attempt to devise reasonable accommodations for an applicant with physical or mental disabilities, as required by applicable law, if the applicant is otherwise qualified and can perform requested privileges in a manner that meets the Hospital's standards with such reasonable accommodations. If the MEC determines that reasonable accommodations are not possible, and recommends denial or limitation of the requested privileges, then the applicant will have the hearing and appeal rights set forth in Article \_\_\_\_ of these Bylaws.

# Issues Involving Applicants

Note that an applicant with a history of substance abuse may:

- lie about it; and/or
- withhold significant information in the application process.

If so, that may be an independent basis for refusing to complete processing of the application (because it is incomplete), or for denying it.

# Functioning of the WBC

## Sample Medical Staff Bylaws Provisions

### PRACTITIONER WELL BEING COMMITTEE (WBC)

**COMPOSITION:** The WBC shall consist of at least six (6) members appointed by the Chief of Staff.

**DUTIES:** The duties of the WBC shall be as follows:

- 1.1.1 assisting practitioners impaired by chemical dependency and/or physical or mental illness to obtain necessary rehabilitation;
- 1.1.2 serving as identified body within the Hospital to which information and concerns about the health of a practitioner can be directed for consideration as a result of self-referral or confidential referral by others;

# Functioning of the WBC

## Sample Bylaws Provisions (continued)

- 1.1.3 receiving and considering information and seeking corroboration and additional information as needed;
- 1.1.4 responding to the person or group who contacted the WBC (the referring source);
- 1.1.5 providing advice, recommendations and assistance to the affected practitioner and to the referring source; providing recommendations for treatment and/or education; providing assistance in obtaining what is recommended;

# Functioning of the WBC

## Sample Bylaws Provisions (continued)

- 1.1.6 monitoring the affected practitioner and the safety of patients until the rehabilitation and/or any disciplinary process is complete, and thereafter as appropriate;
- 1.1.7 educating its members and the members of the Medical Staff about practitioner health, well-being and impairment; about recognition of and appropriate responses to different levels and kinds of distress and impairment; about the responsibilities of the Medical Staff in response to concerns about a practitioner's health; and about appropriate resources for prevention, treatment, and rehabilitation;

# Functioning of the WBC

## Sample Bylaws Provisions (continued)

- 1.1.8 assisting the Chief of Staff in the resolution of situations in which the behavior of a member of the Medical Staff or the AHP Staff is alleged to be disruptive to the functions of the Medical Staff or the Hospital, if requested;
- 1.1.9 maintaining confidentiality of the practitioner seeking referral or referred for assistance, except as limited by law, ethical obligation, or when the safety of a patient or someone else is threatened; and

# Functioning of the WBC

## Sample Bylaws Provisions (continued)

- 1.1.10 reporting to the MEC in accordance with state and federal requirements and/or when the safety of patients or others may be in jeopardy.

**MEETING REQUIREMENTS:** The WBC shall meet on the call of the Chair, at least quarterly.

# Behavior or Return-to-Practice Agreements

The organization may want to require a recovering physician to sign a behavior agreement or return-to-practice agreement (following a leave of absence for treatment), with compliance to be overseen by the WBC.



# Outside Referral Options for WBCs

In California, the Pacific Assistance Group provides physician monitoring and counseling services similar to those that previously were being furnished through the Medical Board of California's Diversion Program.

## Possible Alternatives

### Southworth Associates:

- <http://www.southworthassociates.net/About-Us.html>
- <http://www.southworthassociates.net/recovery-enhancement-program.html>
- <http://www.southworthassociates.net/sobercompanion.html>

# Outside Referral Options for WBCs

The Farley Center at Williamsburg Place (Virginia)

- <http://www.farleycenter.com/about-us>
- <http://www.farleycenter.com/about-us/why-we-are-unique>  
Treatment of Addicted Professionals - The Farley Center is nationally renowned for its comprehensive assessment and treatment of addicted professionals. Many addicted physicians choose Farley for their treatment. The Farley Center also has an excellent reputation with physicians health programs and a long history of helping professionals restore their health, and in most cases, their careers. We have a proven track record of successfully treating thousands of professionals.

Individual addiction medicine specialists, psychiatrists, etc.

# Ethical Issues

Dealing with older physicians whose motor skills, mental acuity, etc. are declining

To Act or Not to Act: When is it time to refer a matter to the MEC, because the WBC's supportive role is not sufficient to address the problem?

To Report or Not to Report: Does the medical staff have an ethical obligation to notify the state medical board about an impaired physician, even if no formally reportable event has occurred?

Confidentiality of WBC Information