A New Physician Accountability in Hospital Practice

Balancing Abusive Power with Abuse of Process
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Outline
1. Trends in hospital physician relationships
2. A new legal accountability
3. The Seeds of the Tree
4. The Dr. Daniel & Nurse Dupont Case
5. Professional capital punishment of something you say, or are perceived to be saying
6. Occupational health and safety regulations now include physicians personal works or gestures
7. Coroner’s jury decides hospital by-laws personally invasive provisions
8. CMPA critical of the new prototype by-laws
9. Difference between “reasonable” breaches of physician privacy and “unreasonable” breaches of physician privacy (sample reappointment forms)
10. Dangers of exercising power subjectively
Trends in Hospital Physician Relations

- Loss of privileges for personal behaviour (not compliance with standards) issues
- A shift in rights of physicians to participate in hospital governance
- Administration exercising greater control over the practices and conduct of physicians who work in our hospitals
The New Legal Accountability

- College disruptive physician behaviour initiative
- Hospital Association Handbook for managing disruptive physicians
- Hospital by-law changes in privileges process
The Seeds of the Tree

• Coroner’s jury recommendations in Dr. Daniel case
• Hotel Dieu Windsor, Ontario

History Included:
• Damage to equipment
• Verbal abuse of nurses
• Refusing to work with particular nurses
The Dr. Daniel/Dupont Case

- The culmination of physician behaviour
- Suspended short time
- Signed agreement to follow Code of Conduct
- Returned to work. Murdered girlfriend, R.N. Killed himself
Extract: Coroner’s Report in Dupont – Symptoms of Paternalism

15. Professional staff by-laws should include expectations regarding professional behavior and appropriate actions, including revocation or suspension of privileges, in order to address disruptive physician behavior.

18. The initial appointment process for physicians (including the requisite application form) should identify previous problematic behavior or social health problems, e.g. conclusions and findings related to prior professional care or behavior, reference concerns, criminal convictions and current legal actions or proceedings, previous voluntary or involuntary resignation during investigations, reasons for resignation from previous positions/employment/appointments, and relevant health history including drug abuse or attempted suicide.

19. The re-appointment process (including the requisite application form) should identify any concerns (as mentioned above) that have arisen since the last appointment or re-appointment date.
Capital Punishment for “What You Say Not What You Do!”

• By-laws changed to permit immediate revocation of appointment
• Credentialing suspended to inquire into mental health or emotional issues
• Progressive/staged discipline approach not always followed
• Informal discussion a thing of the past
Occupational Health and Safety Regulation Expanded to Include Harassment and Domestic Abuse

Governments urged to require hospitals to introduce provisions to permit verbal abuse, domestic violence (if you work together) and harassment into public hospital administrations investigative powers against physicians
CMPA Critical of New Prototype By-Law

- All applicants for appointment to be interviewed by chair of MAC, CEO and other Administrators
- Require disclosure of confidential personal information including: impairments, medical conditions, diseases, or illnesses
- Require disclosure of social problems, alcohol and drug uses, attempted suicide
- Providing consents to treating health professionals to disclose personal information
Unreasonable Breach of Privacy

Extract: Application for Renewal of Hospital Appointment

1. Have you ever voluntarily reduced, restricted or relinquished part or all of your hospital privileges (on a temporary or permanent basis)? Y/N

2. In the last twelve months have you been the subject of any hospital inquiries or investigations regarding concerns about your privilege status, competence, quality of care or other conduct affecting your professional performance? Y/N

3. Are you currently subject to any inquiry by the Discipline Committee or Fitness to Practice Committee of the College of Physicians and Surgeons of Ontario/Royal College of Dental Surgeons of Ontario or any other licensing body? Y/N

4. Since your last (re)appointment, have you been the subject of an investigation by the College of Physicians and Surgeons of Ontario, the Royal College of Dental Surgeons of Ontario or the College of Midwives of Ontario? Y/N

5. Since your last (re)appointment, are there currently any civil or criminal charges or judgments against you? Y/N

6. Has there been a failure to obtain or a reduction in classification or voluntary or involuntary resignation of any professional license or certification, fellowship, professional academic appointment or privileges at any hospital or health care institution? Y/N

7. Has there been any information regarding your health, including any impairments, medical conditions, diseases or illnesses that may impact on your ability to practice, or could reasonably be considered a concern to the Hospital’s patients, professional staff members or employees? Y/N

8. Has your professional practice ever been criticized in Coroner’s Jury recommendations
Reasonable Breach of Privacy

Extract: Application for Renewal of Hospital Appointment – A Balanced Approach

Suggested Amended Application to the Medical-Dental-Midwifery Staff

Current: Your primary clinical appointment is listed below, followed by status only appointments, if any:

_____________________________________________________________________________________________

Your current University Appointment is at the academic rank of: __________________________________________

If a change is requested for the 2009-2010 year, please give details below: _________________________________
_____________________________________________________________________________________________

1. Since your last (re)appointment, have you been charged with or convicted of a criminal offence? Y/N

2. Since your last (re)appointment have you been convicted of any Disciplinary Proceedings by the College of Physicians and Surgeons of Ontario, The Royal College of Dental Surgeons of Ontario or the College of Midwives of Ontario? Y/N

3. Since your last (re)appointment have you been the subject of an investigation by the Fitness to Practice Committee of the College of Physicians and Surgeons of Ontario, The Royal College of Dental Surgeons of Ontario or the College of Midwives of Ontario? Y/N

4. Since your last (re)appointment have you been the subject of any civil proceeding relevant to the practice of medicine in which a judgment has been entered against you or an out of court resolution or settlement has been arrived at? Y/N

I agree and undertake to voluntarily disclose promptly to the Chief of Staff and/or my Department Chief any medical, psychological or emotional illness which may affect my ability to practice safely and I recognize and accept that failing to honour this undertaking is ground for the immediate suspension of my hospital appointment and privileges.

Date____________________________________ Signature of Applicant __________________________________
The Dangers of Exercising Power Subjectively

1. Case #1: “For the record” letter to surgeon/head of department
2. Case #2: Full scale hospital investigation based on a faceless complaint
3. Case #3: Professional frustration with department leadership
Case #1: “For the Record” Letter to Surgeon/Head of Department

“I have been made aware of a number of instances where there have been some minor conflicts between you and members of the Hospital’s nursing staff.

At our meeting, I reminded you of the importance of professionalism and collegiality in terms of our interactions with our fellow workers.

Our expectations are that this disruptive behavior will not recur and that you will conduct yourself in accordance with the CPSO’s Policy regarding Physician Behavior in the Professional Environment.”
Case #2: Full Scale Hospital Harassment Investigation of Consultant Based on a Faceless Complaint

Extract from Response on Report:

With regard to the witness, while she is not willing to be identified in the investigation report, it appears to me that this is in fact Miss X who was personally interviewed. I cannot reconcile the content of the interview with the relationship between Ms. X and myself for the following reasons.

My relationship for years with Ms. X had been excellent. We have worked closely together and Ms. X is aware of my concerns about her own performance which are well documented in past performance appraisals. On two occasions, Ms. X was in danger of being fired and I personally defended her.

In a very real sense...while there may have been individual instances of impatient or frustrated workplace upsets, I have never perceived, nor have I ever been led to believe that Ms. X was unable, unwilling or afraid to approach me on workplace issues and in fact such has not been my experience."
Case #3: Professional frustration with department leadership – “The Winning Chief”

Extract from Chief of Staff Email to Discipline Members:

“The interpersonal conflict between the “…ologists” has to stop.

I don’t want to see anymore of these e-mail trails. Instruct your physicians to raise their concerns directly with you, and I leave it to you to manage the issues. I only need to be involved if, in your judgment, or in the Chief of Medicine’s judgment, there is an issue for the Chief of Staff. I am happy to work with you to discuss strategies and approaches to medical staff interpersonal conflict, and suggest we get you signed up for the PMI courses ASAP.

If we can’t settle this bickering internally I will need to bring in external facilitation.”
"Nurse, get on the internet, go to SURGERY.COM, scroll down and click on the 'Are you totally lost?' icon."