OUTLINE

PRECAUTIONARY SUSPENSION: A TOOL TO PROTECT PATIENTS

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1. "Precautionary" vs. "summary" suspension (or restriction): What's in a word?

2. Case studies to set the stage:
   A. Poliner v. Texas Health Systems
   B. Johnson v. Christus Spohn

3. When should a precautionary suspension be used?
   A. This should be defined in the Bylaws. Appropriate circumstances include when failure to take action may result in "imminent danger to the health and/or safety of any individual or may interfere with the orderly operation of the Hospital."
   B. There is no need to wait until an identifiable patient is scheduled for a procedure to conclude that "imminent danger" exists.

4. Who should decide that a precautionary suspension is needed, and what process should be followed?
   A. There is no need to assign this determination to a committee; a single individual (or two individuals working together) may decide that action is needed to protect patients.
   B. The process that is used is the key to avoiding liability. There is no need to conduct a full "investigation," but the individual(s) who decide that a suspension is necessary should be satisfied that the facts of the matter are sufficiently understood before taking action.

5. What does the Health Care Quality Improvement Act ("HCQIA") say about the use of precautionary suspensions?
   A. HCQIA states that nothing in the section describing the standards for professional review actions shall be construed as requiring the notice and hearing procedures described in HCQIA:
      (1) where there is no adverse professional review action taken, or
in the case of a suspension or restriction of clinical privileges, for a period of not longer than 14 days, during which an investigation is being conducted to determine the need for a professional review action.

B. HCQIA also states that nothing in the section describing the standards for professional review actions shall be construed as "precluding an immediate suspension or restriction of clinical privileges, subject to subsequent notice and hearing or other adequate procedures, where the failure to take such an action may result in an imminent danger to the health of any individual."

6. In lieu of a precautionary suspension, how can a physician be offered the opportunity to not exercise certain privileges in a way that is truly voluntary?

7. What should happen immediately after a precautionary suspension takes effect?

A. The Medical Executive Committee ("MEC") should review the matter within 14 days. The individual may be given an opportunity to meet with the MEC as part of this review.

B. The MEC should decide if it has enough information to address the matter, or if a formal investigation should be commenced under the Bylaws. If an investigation is begun, the MEC should decide whether the precautionary suspension should continue pending completion of the investigation.

C. If the individual who has been suspended has patients in the hospital, another physician should be assigned to assume their care.

8. Does the imposition of a precautionary suspension have to be reported to the National Practitioner Data Bank? What if the suspension lasts for longer than 30 days while the MEC conducts an investigation?

A. A Data Bank report is not required if the Bylaws appropriately define a "precautionary suspension" as an "interim step in the professional review activity, but it is not a complete professional review action in and of itself." The Bylaws should also state that a precautionary suspension "will not imply any final finding of responsibility for the situation that caused the suspension or restriction."

B. This approach is based on guidance issued by the federal government in the Guidebook to the National Practitioner Data Bank. The Guidebook states:

A summary suspension of clinical privileges is not routinely considered a reportable event. However, if a summary suspension lasts longer than 30 days and is considered by the hospital or other health care entity to be a professional review action (which means that it is so defined in the organization's bylaws), then the entity must report the summary suspension. (Emphasis added.)
9. If an investigation is commenced following the precautionary suspension, how should it be conducted?

A. Anticipate and deal effectively with conflicts of interest (or even the appearance of a conflict).
   
   (1) Don't put competitors on an Ad Hoc Investigating Committee or Hearing Panel
   
   (2) Consider using external experts
   
   (3) Individuals with a conflict of interest should not participate in discussion or vote on recommendation
   
   (4) Review bylaws or policy language on conflicts of interest

B. Meet with the physician.
   
   (1) Limit the role of attorneys, so you can keep the focus where it should be - on what's best for patients
   
   (2) Prepare a written summary, and allow physician to review

C. Document the rationale for the MEC's recommendation in a detailed investigative report and use progressive steps where appropriate. Examples of progressive steps include:
   
   ? Focused retrospective review
   ? Mentoring
   ? Second opinions/consultations
   ? Concurrent monitoring (proctoring)
   ? Evaluation/assessment program
   ? Refrain from practice while obtaining additional training
   ? Educational leave of absence
   ? Conditional continued appointment (a.k.a. Personalized Code of Conduct)