1.1 What Is the Medical Staff Membership and Its Relationship to the Hospital?

The term medical staff in the context of a hospital refers to an organized body of licensed physicians (MD and DO), dentists (DDS and DDM), and other healthcare providers (including podiatrists and psychologists) who are authorized by state law and by a hospital through its Medical Staff Bylaws (“Bylaws”) to provide medical care to patients within the hospital. Some hospitals include allied health professionals (e.g., nurse practitioners, physician assistants, surgical assistants, and doctors of pharmacy) and postgraduate trainees (e.g., residents and fellows) within the term medical staff, although hospitals are not legally required to include these nonphysician practitioners on their medical staff. Furthermore, not all members of the hospital’s medical staff are employees of the hospital. Although a significant portion of the hospital’s medical staff may be employees of the hospital, the majority are
not employees. They are often independent healthcare providers who have been credentialed and granted privileges to render medical care at the hospital.

The medical staff may be deemed “open” if the hospital is continually accepting applications for new members or “closed” if the hospital has determined that only a finite number of providers will be allowed to become members and applications for membership will be accepted only when vacancies exist.

A healthcare provider’s membership at a hospital is governed by the hospital’s Bylaws, which are approved by the hospital’s governing body. Each hospital defines the purpose of the medical staff membership in its Bylaws that often includes one or more of the following definitions:

a. to provide quality medical care to patients admitted to or treated in the hospital consistent with the applicable standards of care;

b. to enhance and improve the quality of care, including patient safety, effectiveness, efficiency, and the equity of care for all patients admitted to or treated in the hospital;

c. to provide graduate, postgraduate and continuing education and maintain educational standards;

d. to support and promote medical research while maintaining and ensuring appropriate protection of human subjects;

e. to be accountable to the Board for the appropriateness of the professional performance and ethical conduct of its Members;

1. Whether a member of a hospital’s medical staff is an employee or an independent contractor typically requires legal analysis and is governed by such issues as to whether the state has a prohibition against the corporate practice of medicine Federal and state law setting forth various relevant factors (e.g., the IRS has a number of publications that provide guidance on the topic) and is outside the scope of this publication. [RSI—I am confused by this revised footnote. I believe it should be revised to read as follows: “Whether a member of a hospital’s medical staff is an employee or an independent contractor can have significant legal consequences (e.g., vicarious liability for the hospital if a member is an employee) and typically requires legal analysis of both state and Federal law setting forth various relevant factors (e.g., the IRS has a number of publications that provide guidance on the topic) and is outside the scope of this publication.”]
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f. to promulgate and maintain such rules, regulations and internal organization necessary to allow the medical staff to discharge its responsibility within the Hospital in an organized and effective manner; and

g. to advise the Board of Trustees and Hospital Administration on medical and related matters, including assisting the hospital with its compliance plan.

Under a hospital’s Bylaws and the standards promulgated by The Joint Commission [f/k/a “Joint Commission on Accreditation of Healthcare Organizations (JCAHO)” and previous to that the “Joint Commission on Accreditation of Hospitals (JCAH)”], a healthcare provider’s membership at a hospital must be reviewed for reappointment at least every two years. Such review and reappointment is based on ongoing monitoring of specific information regarding the healthcare provider’s performance, medical judgment, clinical skills, and professional behavior and is described in more detail in the hospital’s Bylaws and/or credentialing manual. Reappointment is the process of reevaluating the healthcare provider’s competency to ensure that patients in the hospital are receiving quality care.

The information reviewed during the reappointment process is usually just an updated version of the information reviewed during the initial membership appointment. However, if concerns arose regarding the healthcare provider’s performance, medical judgment, clinical skills, or professional behavior during the last two years of membership, additional information may be sought and confidential consultations may be had with departmental heads/staff to further assess such concerns. The Bylaws and its fair hearing rights provisions contain the healthcare provider’s due process rights in such circumstances. If information regarding a healthcare provider’s activity at a hospital is sparse due to inactive use, the hospital may, with written authorization of the healthcare provider applying for reappointment, seek information from other hospitals where the healthcare provider was more active to help the hospital assess the healthcare provider’s competency.
1.2 What Is the Difference between Credentialing and Clinical Privileges?

Medical staff membership is not synonymous with clinical privileges in that a member of the medical staff is not entitled to perform procedures or treat patients simply by virtue of being a member of the medical staff. To perform procedures or treat patients at a hospital, a healthcare provider must first become a member of the hospital’s medical staff. To do so, a healthcare provider must obtain, complete, and submit an application for membership. Once the application is accepted (e.g., the hospital has open membership for the specialty and class of provider seeking membership), it must go through the credentialing process as discussed below. Once the healthcare provider has been vetted through the credentialing process, his/her request for clinical privileges must be reviewed and a determination made as to which clinical privileges will be granted. Such privileges will dictate which procedures and treatments the healthcare provider has the hospital’s authority to perform at the hospital.

The credentialing process is most often set forth in a document referred to as a credentialing manual that describes the procedures used by the hospital to review and verify the credentials of the healthcare provider applying for medical staff membership to ensure that he/she is competent and qualified to perform the areas and levels of patient care sought in the application. The credentialing manual sets forth what type of information will be used to assess and evaluate the healthcare provider in terms of his/her qualifications to become a medical staff member and to maintain his/her medical staff membership. The credentialing manual also typically describes the procedures used by the hospital to modify and/or renew privileges for existing medical staff members. As discussed in the following section, there are different categories or levels of medical staff membership such as active, affiliate, temporary, and honorary. Such categories or membership levels distinguish between what clinical privileges, if any, will be available to the healthcare provider.
Credentialing can be a very lengthy process. As such, over recent years, an increasing number of hospitals have relied upon outside, third-party centralized data collection and storage entities to gather and verify much of the information needed from the applicant/healthcare provider. The use of such entities not only benefits the hospitals by significantly reducing the administrative costs and time associated with gathering and verifying the large amount of information needed for credentialing but also benefits the healthcare provider because he/she need only submit the information once to the entity as opposed to every hospital to which he/she is applying for medical staff membership/privileges. The most well-known of these entities is Council for Affordable Quality Healthcare (“CAQH”), which operates the Universal Provider Datasource (“UPD”). Launched in 2002, the CAQH’s UPD is supported by the American Medical Association, the American Academy of Family Physicians, the American College of Physicians, the Medical Group Management Association, America’s Health Insurance Plans, the American Health Information Management Association, and other healthcare provider organizations.

### 1.2.1 Credentialing Process

Credentialing for an initial appointment generally includes (1) verifying the initial application, including a broad release from liability and the application fee; (2) collecting a significant amount of information from applicant such as photo identification, educational background, healthcare training, work history, curriculum vitae, board eligibility/certification, state licensure, DEA registration, and proof of malpractice insurance; (3) performing a thorough background check, including but not limited to verifying the accuracy and truthfulness of the aforementioned information collected from the applicant, conducting a criminal background check, querying the National Practitioner Data Bank (“NPDB”), checking the U.S. Department of Health and Human Services (“HHS”) Office of Inspector General (“OIG”) Exclusion Database, verifying the status of staff privileges at other hospitals and healthcare facilities listed on the
application, and checking on peer references listed on the application; (4) following up with the applicant for an explanation on any gaps in education, training, and work history or other curious points that might have arisen during the credentialing process; and (5) obtaining from applicant and verifying peer recommendations. Once these steps have been accomplished, the credentialing committee typically sends the application and all of its findings and recommendations to the Medical Executive Committee (“MEC”) that then formulates a recommendation for approval or disapproval to the hospital’s board who is often the final decision maker. A disapproval by the MEC typically triggers the applicant’s fair hearing right, which means the applicant has a right to request a hearing to appeal the adverse recommendation as described in more detail in another chapter. However, the hospital’s board usually remains the final decision maker. The medical staff privileges reappointment process often follows a similar but somewhat streamlined procedure, which may vary from hospital to hospital.

For healthcare providers seeking medical staff membership with privileges, the credentialing and recredentialing applications typically contain a section wherein the healthcare providers indicate the type of privileges they are seeking. In broad terms, there are two (2) types of privileges at a hospital: admitting privileges and clinical privileges. Admitting privileges allow the healthcare provider to admit patients in the hospital and serve as attending physician during the hospitalization. Clinical privileges allow the healthcare provider to provide specific patient care services in the hospital to patients based on the healthcare provider’s own training, experience, and skills as long as such services are consistent with the hospital’s mission and needs. The types of clinical privileges available and granted to a healthcare provider depend on the provider’s specialty and departmental affiliation. For example, the privilege to perform a certain surgical procedure may be available to a surgeon but not to a psychiatrist applying for clinical privileges at a hospital.

Determining which clinical privileges to grant to a particular healthcare provider is a significant aspect of the credentialing
process. Criteria for clinical privileges are based on numerous factors, including the complexity and levels of care needed by the patients, documentation of training, and demonstrated competency in the performance of the requested procedures. Criteria for new procedures and treatment modalities are continually being developed and revised as technology progresses, with the goal being a uniform application of such criteria across different fields of practice. To be deemed competent, healthcare providers requesting clinical privileges in new procedures and treatment modalities often must document sufficient hands-on training achieved through supervised programs. Provisional privileges may be granted allowing a healthcare provider to perform certain procedures under the supervision of a proctor until such time that the provider demonstrate a certain level of competency and is deemed capable of performing such procedures safely and without supervision. The decision whether to grant or deny the privileges requested by a healthcare provider typically follows the same path as the decision whether to grant or deny medical staff membership at a hospital. The input is received from the credentialing committee and the MEC before the Board makes the final decision. However, for granting clinical privileges, input from the director of the applicant’s affiliated department is also sought and considered.

1.3 Levels of Membership

As set forth above, there are often different categories of medical staff membership, including but not limited to Active, Affiliate, Temporary, and Honorary. Of these categories, Active staff membership represents the highest level of membership, which has the highest criteria standards and qualifications requirements. To maintain Active staff status, medical staff members typically must meet a certain minimum number of patient admissions per year (for the purpose of having a reasonably sufficient number of admissions that can be reviewed for quality of care control), actively participate in
administrative meetings and quality of care measures, and actively participate in on-call and specialty coverage programs. Affiliate membership may be available to healthcare providers who do not meet the criteria standards and qualifications requirements for Active staff membership but do meet the applicable criteria standards and qualifications requirements for Affiliate membership category. Affiliate staff members typically do not enjoy the same voting rights as active staff members. Temporary staff membership is typically offered under specific circumstances where unique patient care circumstances arise and warrant an expedited manner in which a healthcare provider can obtain limited membership and admitting and clinical privileges to meet the hospital’s needs on a temporary basis. Honorary or Emeritus medical staff membership is usually available to a select few healthcare providers who have demonstrated past distinguished service to the hospital and/or the medical community in which they serve and is often viewed as an award or formal recognition for a provider’s significant contribution to the hospital, patient care, and medical sciences. Honorary members do not have admitting or clinical privileges and do not typically have any voting rights. The actual levels of membership may vary from hospital to hospital; however, the rights and obligations of the healthcare providers for each membership category are described in detail in the hospital’s Bylaws.