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Terminating Hospital Employment Agreements

Don’t Forget About Your Clinical Privileges

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What would happen if you resigned from your job tomorrow or were fired? This is an uncomfortable question to consider whether you are currently employed, negotiating an agreement for a new position, or considering a job in the future. However, the answer to this question is important to know in any employment relationship, especially if your employment also includes privileges on the medical staff at a hospital.

It is no secret that hospitals are a major employer of physicians, especially in Northeast Ohio. By entering into an employment relationship with physicians, hospitals assume a greater degree of control over physicians that they would otherwise not have, and most hospitals preserve the traditional medical staff structure and require their employed physicians to also maintain membership and privileges on the medical staff. As such, these physicians assume a dual role as a hospital employee and a member of the hospital’s medical staff. This dual role implicates several important issues, including whether the physician has certain rights, which are typically afforded in medical staff peer review actions, in connection with employment termination actions, and the obligation to report employment termination actions to the federal government’s National Practitioner Data Bank (NPDB). If you are one of these physicians, your employment agreement with the hospital may not address your rights under the medical staff bylaws in the event that your employment is terminated or you resign. Furthermore, depending on the nature of your termination or resignation, the hospital may have to make a report to the NPDB in certain circumstances when you leave.

Issues arise in this context because there are many differences (legal and practical) between termination of employment and termination of medical staff privileges. Unless otherwise addressed in a physician’s employment agreement or the medical staff bylaws, termination of a physician’s employment does not automatically terminate the physician’s clinical privileges. In that case, the hospital would have to institute proceedings under the medical staff bylaws to terminate the physician’s privileges after the physician’s employment is terminated. For most physicians employed by a hospital, however, the physician’s employment agreement with the hospital provides that termination of employment, whether for cause or without cause, may be automatic grounds for termination of staff privileges. In such a case, any due process rights under the medical staff bylaws as they relate to staff privileges are waived, and the physician has no rights under the fair hearing plan or other appeal mechanisms that may be available to other members of the medical staff, such as non-employed, community physicians.

Alternatively, a physician’s employment agreement with the hospital may contractually require the physician to resign from the hospital’s medical staff upon termination of the employment relationship. Some employment agreements may even prohibit the physician from re-applying for medical staff privileges at that hospital during a specified period of time.

As you can see, an important issue to consider is whether your employment agreement with the hospital is subject to the terms of the hospital’s medical staff bylaws. Language in your employment agreement may state that in the event of a conflict between the employment agreement and the medical staff bylaws, the medical staff bylaws control. Or, certain provisions in your employment agreement may state that its terms are subject to the medical staff bylaws. When entering into an employment agreement with a hospital, the medical staff bylaws should be carefully considered in conjunction with the employment agreement so that you understand how your employment is affected by the medical staff bylaws.

You may be thinking that if your employment agreement with the hospital provides for termination of your clinical privileges, there are no additional considerations. Be cautious, though, because if you are the subject of a professional review action when your employment terminates, or if the hospital performs a professional review of your privileges in conjunction with or as a result of termination of employment, the hospital may be required to make a report to the NPDB. Hospitals must report adverse clinical privileges actions to the NPDB that meet NPDB reporting criteria—that is, any professional review action that adversely affects the clinical privileges of a physician for a period of more than thirty days or the acceptance of the surrender of clinical privileges, or any restriction of such privileges by a physician, (1) while the physician is under investigation by a hospital relating to possible incompetence or improper professional conduct, or (2) in return for not conducting such an investigation or proceeding. A professional review activity means an activity of a hospital with respect to a physician: (1) to determine whether the physician may have clinical privileges at the hospital; (2) to determine the scope or conditions of such privileges; or (3) to change or modify such privileges. Adverse clinical privileges actions must be reported when based on a physician’s professional competence or professional conduct that adversely affects, or could adversely affect, the health or welfare of a patient.

The most recent version of the NPDB Guidebook maintains the distinction between professional review under a hospital’s medical staff bylaws and employment termination procedures. As long as a physician is not subject to a professional review action, the termination of a physician’s clinical privileges is not a reportable event. The Guidebook states that it does not matter that the employment termination, which was a result of the hospital’s employment termination process, automatically resulted in the end of the practitioner’s clinical privileges. However, if the hospital utilizes the professional review process and revokes the physician’s privileges as a result of the review, the professional review action is reportable, even if the action started as an employment termination. Also, as noted above, hospitals are
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also required to make a report to the NPBD if a physician voluntarily surrenders his or her clinical privileges in return for not conducting an investigation or proceeding. This means that if a physician terminates his or her employment during a professional review action and, pursuant to the physician’s contract, his or her clinical privileges terminate, the hospital has a duty to make a report to the NPBD.

In some cases, hospitals still make a report to the NPDB regarding the events surrounding termination of a physician’s employment. In litigation that has spawned from such reports, courts have upheld a hospital’s right to report the circumstances surrounding a physician’s termination to the NPDB even where the physician’s employment agreement afforded the physician no right to any due process.

When planning to exit an employment relationship with a hospital, make sure that you are not the subject of a professional review action at that time. If you terminate your employment agreement pending any professional review action and your clinical privileges are also terminated accordingly, even administratively or by operation of your employment agreement the hospital is required to make a report to the NPDB. When negotiating or renewing your employment agreement, consider requesting procedural rights to challenge an action that may generate an NPDB report. Review your employment agreement and the hospital’s medical staff bylaws to ensure that those rights are available to you if the hospital determines that an NPDB report must be made.