



MILLER THOMSON
AVOCATS | LAWYERS

FORWARD TOGETHER

Coffee Talk - Directors Series A Health Industry Seminar Series

What Directors Need to Know: Physicians and Other Professional Staff Issues



Lisa Spiegel

lspiegel@millerthomson.com

416.596.2122

Agenda

1. The Legislative and Common Law Environment
2. Policies
3. Appointment Disputes
4. A Remedial Approach

Public Hospitals Act

- Board powers under *Public Hospitals Act* (s. 36)
 - Appointment (and re-appointment)
 - Determine privileges
 - Revoke, Suspend, Deny
- Board to pass by-laws (Reg. s. 4)
 - Criteria for appointment & reappointment of physicians
 - Procedures for appointing Chief of Staff & Dept. Chiefs
 - Establishment & duties of medical staff committees
 - Criteria for appointment and duties of dentists, midwives and extended class nurses

...Public Hospitals Act

- Medical Advisory Committee (s. 35)
 - Consider and review
 - Recommendations re: appointment and reappointment
 - Other duties as assigned by Act or Board

Regulation 965 of the *Public Hospital Act* sets out that the MAC shall; in accordance to the above supervise the practice of medicine, dentistry, midwifery, and extended class nursing in the hospital.

...Public Hospitals Act

- Appointment/Reappointment Process (s. 37)
 - Physician entitled to apply or reapply; MAC to consider recommendation 60 days
 - MAC may delay recommendation
 - Notice to applicant and board
 - Physician has a right to reasons for recommendation of MAC and has a right to a hearing before the Board
 - Board decisions reconsidered through Health Professions Appeal Review Board (HPARB)
 - HPARB decisions are subject to review by new hearing at the Divisional Court

Common Law Obligations of the Board

- Board has duty to appoint physicians (professional staff) who:
 - Meet the needs of the community
 - Effectively utilize the resources of the hospital
 - Are skilled & experienced
 - Will work as an effective member of the healthcare team (collaborative, respectful, follow rules, ensure patient and staff safety)

Comprehensive Credentialing Policy

- Board policy
- Must address duties and responsibilities related to:
 - New applications – form and content
 - Criteria for Appointment, Re-appointment
 - Expansion or alteration of privileges
 - Ongoing review of quality of care by privileged physicians

...Comprehensive Credentialing Policy

- Ensure and monitor quality of care, minimize risks to patients
- Responsive to organizational structure
- Include procedure for ongoing review during each privilege year

A View from the Bench

The **Board of Governors** of a public hospital is entrusted by its community with the responsibility of providing a program of health care tailored to the particular needs of that community. The **Board must** establish objectives that are within the capacity of its plan and resources. It must create a balance within its medical staff to ensure a broad base of expertise, and select the staff capable of developing excellence in health care while obtaining the most efficient utilization of the facilities and resources of the hospital... It is the task of a **Board of Governors** to balance the operation of its hospital and tune it to that level of optimum performance permitted by its inherent limitations. The **Board of Governors** has a responsibility to determine the pace at which the facilities of its hospital will be operated and to establish those staffing policies which satisfy the requirements of that operation.

Appointment Disputes

Foundation for Review (Appointment/Re-appointment)

- Competency and quality of care
- Human resource needs and resource availability
- Collegiality/Disruptive Behaviour
 - Disruptive behaviour can be defined as any action, verbal or physical, which is disrespectful of others and adversely affects staff morale or service provision. It can include behaviours inconsistent with rules and policies as well as behaviours that put patients or staff at risk.

...Appointment Disputes

Foundation for Action (mid-term)

- An issue of patient safety
- Immediate risk supporting extreme action
- Urgent need to accommodated risk
- Authority of Chief of Staff, Administrator and Board

...Appointment Disputes

Section 39 *Public Hospitals Act*

- Parties: MAC; physician; others
- Directors as tribunal members, cannot have prejudged or received information
- Adversarial
- Burden rests with the MAC

Remediation

Remediation vs Discipline:

- Zero Tolerance
- Repeat Behaviour
- Insight
- Practical Opportunity for Remediation
 - supervision
 - mentors
 - level of retraining

Remediation

- Effective procedures will allow issues to be handled in a non-adversarial environment
- Opportunity for an informal resolution may be possible
- Engagement of counsel
- Engagement of PHP

Questions?

Lisa Spiegel

lspiegel@millerthomson.com

416.596.2122

FORWARD TOGETHER



MILLER THOMSON
AVOCATS | LAWYERS

MILLERTHOMSON.COM



© 2017 Miller Thomson LLP. All Rights Reserved. All Intellectual Property Rights including copyright in this presentation are owned by Miller Thomson LLP. This presentation may be reproduced and distributed in its entirety provided no alterations are made to the form or content. Any other form of reproduction or distribution requires the prior written consent of Miller Thomson LLP which may be requested from the presenter(s).

This presentation is provided as an information service and is a summary of current legal issues. This information is not meant as legal opinion and viewers are cautioned not to act on information provided in this publication without seeking specific legal advice with respect to their unique circumstances.