



Michael D. Roth, Esq.

Sample Peer Review Hearings

Including Peer/Judicial Review Committee Hearings described at ¶A, below, and Appellate Review Hearings described at ¶B, below.

A. Peer Review/Judicial Review Committee Hearings

See below brief description of representative peer review/medical staff cases at which Mr. Roth has served as the neutral hearing officer:

- OB/GYN required by the hospital's medical executive committee ("MEC") to comply with a concurrent proctoring requirement, and subsequently the MEC summarily suspended the physician's clinical privileges. Issues included (in part): (i) the physician's care, treatment and management of an unstable newborn, (ii) the physician's response to urgent C-sections in several cases, (iii) whether the proctoring requirement imposed on the physician was reasonable and warranted, and (iv) the physician's working relationship with nurses and hospital administration vis-à-vis patient care.
- A hospital's MEC summarily suspended a surgeon's clinical privileges based (in part) upon the surgeon's alleged failure to demonstrate professional competence and good judgment. Issues included (in part): The medical standard of care in a large number of cases which, for example, included the surgeon's: (i) technical proficiency in placement of central lines, (ii) management of a patient's complications after performance of a left carotid endarterectomy, (iii) time taken to perform a laparoscopic ventral hernia repair before converting to an open procedure, and (iv) judgment in regards to performing a laparoscopic cholecystectomy on a patient.
- A large multi-specialty medical group (the "Group") summarily revoked the clinical privileges of an anesthesiologist based upon his testing positive on a random drug test while participating in a California Medical Board Diversion Program (the "Program"). Issues included (in part): Whether: (i) the positive test result was based upon the physician's accidental exposure to the drug during surgery as opposed to self-medication, and (ii) the physician timely advised the Group of the positive test result.
- A health plan (the "Plan") terminated a participating physician based upon: (i) the physician's practice having failed Plan-conducted referral audits, medical record audits, and facility site audits, and (ii) the physician's failure to maintain adequate medical records. Issues included (in part): (i) the accuracy of the audit results, (ii) the accuracy of the audit result tabulations, (iii) mitigating circumstances related to certain field audits, and (iv) the overall sufficiency of the evidence presented by the Plan in support of the physician's termination.

- A hospital's MEC recommended non-reappointment of a physician to the medical staff on grounds that the physician's primary office and residence were not located within the required geographic area to belong to the medical staff. Issues included determining the location of the physician's primary office and primary residence.

B. Appellate Review Hearings

See below brief description of representative cases at which Mr. Roth has served as the appellate review hearing officer:

- JRC Decision: A Judicial Review Committee ("JRC") upheld the MEC's denial of a surgeon's application for staff membership and clinical privileges at the hospital. The underlying JRC hearing was focused on numerous cases pertaining to the physician's professional conduct and clinical competence

Focus of Appeal: The appellate review panel considered a number of issues which included (in part) whether: (i) the physician was denied fair procedure by the JRC's reliance on uncorroborated hearsay evidence in the form of written incident reports, (ii) there was substantial evidence in support of the JRC's findings that the physician was disruptive and behaved unprofessionally with nurses, patients, and staff on several occasions, and whether there was a nexus between his conduct and patient care, and (iii) there was substantial evidence in support of the JRC's findings that the MEC had abused its discretion in finding that the physician was not clinically competent.

- JRC Decision: JRC: (i) modified a requirement that an OB/GYN's next specified number of vacuum extractor ("VE") procedures be concurrently proctored, and (ii) upheld a requirement that the OB/GYN improve her relationship with the nursing staff. The OB/GYN and the MEC each appealed the JRC decision.

Focus of Appeal: The appeal panel considered whether there was substantial evidence in support of: (i) the JRC's findings concerning the OB-GYN's inappropriate use of VEs, (ii) the JRC's modification of the VE-proctoring requirement, and (iii) JRC's requirement for the OB/GYN to improve her relationship with the nursing staff.