

Fighting for Hospital Privileges

When faced with a privileging conflict, don't panic. Follow these tips for a well-fought battle.

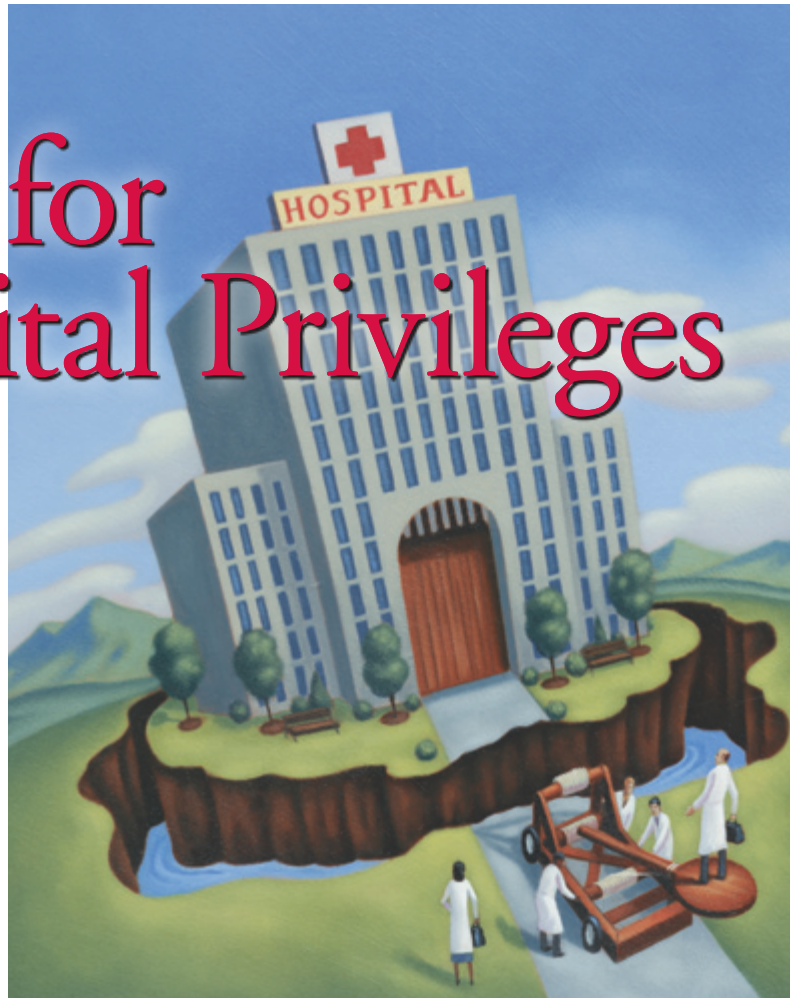
Edward A. Hirsch, MD

Scope-of-practice issues have been and will continue to be a crucial battleground for family physicians. Although turf battles typically originate from political and economic motives rather than true quality-of-care concerns, they are not to be taken lightly. They can ultimately limit a physician's scope of practice. At the heart of this struggle is the process of credentialing and privileging, which, if done correctly, ensures both quality patient care and the ability of qualified, well-trained family physicians to provide that care. If it were easy, you would not be reading this article, which tackles the question "What do I do when faced with a privileging battle?"

Specialty designation in and of itself is not grounds for granting or denying any privilege, period.

Pre-empt the battle

The best way to guarantee you never lose a privileging conflict is to never have one in the first place. Your hospital should have a privileging process that is fair and grants privileges based on documented training, experience and current clinical competence. Privileges based on any other factors is contrary to the written standards of the Joint



Commission on Accreditation of Healthcare Organizations (JCAHO). When privileging battles go to court, they are won principally because the privileging process deviated from this standard. Specialty designation in and of itself is not grounds for granting or denying any privilege, period.

You must be completely familiar with your institution's privileging process and bylaws and, if needed, must work to change them so that they are equitable. The following elements are essential to a fair process:

Full clinical departments. Your hospital should provide a full clinical department of family medicine, not merely an administrative department. The department of family medicine must function in exactly the same manner as any other department in the hospital and must have membership standards

Dr. Hirsch, a family physician, practices with Kishwaukee Medical Associates in Sycamore, Ill., and has served as chief of both the medical staff and family medicine departments and currently serves as chair of the credentialing committee at the Kishwaukee Community Hospital. He is also a former chair of the AAFP Commission on Quality and Scope of Practice. Conflicts of interest: none reported.



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Privileges should be granted to physicians based on their documented training, experience and current clinical competence, not based on their specialty designation.



Every hospital should have a full clinical department of family medicine, not merely an administrative department.



Privileging criteria for most procedures, such as electrocardiogram interpretation or colonoscopy, should apply to all physicians in the hospital.



No department owns any privilege; only the governing board of the hospital has the right to grant privileges.

that keep it from becoming a dumping ground for hard-to-place physicians. Ideally, membership in the department would be limited to family physicians who are residency trained and board certified, those who are board certified although not residency trained and those who have several years of experience and demonstrated competence as family physicians even though they are not residency trained or board certified.

Uniform criteria. The JCAHO recommends that hospitals develop specific privileging criteria for most procedures and apply those criteria hospital-wide. For example, criteria for electrocardiogram interpretation, pneumonia management or colonoscopy must be the same for all physicians in the hospital, regardless of departmental affiliation or specialty. There should not be one set of criteria for family physicians and another for internists. If your hospital does not have hospital-wide criteria for the major procedures, work with your department and credentialing and executive committees to develop them.

Full credentialing authority. The privileging and credentialing processes in the family medicine department must occur exactly as they do in any other department, without exception. For starters, family physicians must be credentialed and considered for privileges by their own departments, just as other specialists are. Privilege recommendations from the department of family medicine should then be forwarded directly to the credentials committee; the assent or approval of other departments is not needed.

When the recommended privileges fall outside the normal scope of practice of the department making the recommendation, the use of hospital-wide criteria can be very helpful. At our hospital we have established

criteria for Cesarean section, which any physician – regardless of specialty – uses when applying for that privilege.¹ As a result, the family medicine department may evaluate applicants and send recommendations directly to the credentials committee without going through the obstetrics/gynecology department. The establishment and use of hospital-wide criteria does not preclude any

KEY POINTS

- Your hospital should provide a full clinical department of family medicine that functions in exactly the same manner as any other department in the hospital and has full credentialing authority.
- Before you fight a privileging battle, be sure you can document your training and experience performing the procedure in question and become familiar with your hospital's hearing rules and procedures.
- Privileging is a local issue solved best through professional and collegial discussions at the hospital level.

department from seeking input and advice from any other department.

Board ownership of privileging. No department owns any privilege. The role of clinical departments and credentials committees must be limited to evaluating physicians' applications for privileges and forwarding recommendations to the next level. Legally, only the governing board of the hospital has the right to grant privileges, taking under advisement the recommendations from both the physician's department and the credentials committee. Governing boards have recently been held accountable in court for the privileges they grant, bringing to an end the days when recommendations from the medical staff were simply "rubber stamped." Hospital boards have a fiduciary responsibility to the institution and the community to take credentialing and privileging very seriously, which brings the process out into

the open. This is as good for patient care as it is for family medicine departments.

Access to consultation. Sometimes physicians in another hospital department will refuse to consult with family physicians, a passive-

aggressive turf war of sorts. To prevent such problems, work on adding a statement such as the following to your hospital bylaws:

"It shall be the policy of the medical staff that all staff physicians have access to consultation when deemed necessary and that such consultation, when requested in a timely and appropriate manner, shall not be unreasonably refused."

Family physicians must be credentialed and privileged by their own departments, just as other specialists are.

Meaningful peer review. Finally, the bylaws must state that all departments, along with having the authority to recommend privileges, have the obligation of conducting meaningful peer review of their members on an ongoing basis. Charts should be peer reviewed in the department that recommended the privilege in question. For example, a case under review due to a complication in diabetes management should be reviewed in the department that originally recommended the physician's privileges. Family medicine departments should not be any different than other departments when it comes to peer review (except, perhaps, in striving to do it better).

Negotiation, not confrontation, usually yields better results.

The battle lines are formed

So you've completed the above steps, or are working on them, and still someone on the Dark Side balks at your providing maternity care, reading echocardiograms or taking care of your patients in the intensive care unit. What now?

Well, first remember that the AAFP stands unequivocally in support of the concept that all physicians obtain privileges consistent with their documented training, experience and current clinical competence. The AAFP Commission on Quality and Scope of Practice is charged, in part, with providing information and assistance to AAFP members in credentialing and privileging matters and has developed an extensive "Protocol for Handling Hospital Privilege Problems."² (This protocol and many other helpful documents can be accessed on the AAFP Web site at <http://www.aafp.org/x14862.xml>.)

The protocol begins with five points:

1. Have adequate training and experience. Be sure you really do qualify for the privilege requested. You must be well trained in the procedure and need to have performed it consistently well.

2. Assemble all pertinent documentation. Gather hospital records, dictation, case reports, proctoring evaluations, personal letters of reference and any other written material that will demonstrate your training and experience. Keep copies of this material.

3. Read *Family Practice in Health Care Organizations*.³ This publication from the AAFP provides a wealth of information concerning the privileging process and related topics. Review and become familiar with its contents. The publication is currently being updated but can be ordered through the AAFP Order Department (visit <https://secure.aafp.org/cgi-bin/catalog.pl> or call 800-944-0000 and request item #701; the cost is \$10 for members).

4. Read the legal opinion obtained by the AAFP.⁴ This document, available online (<http://www.aafp.org/x14927.xml>), details the law regarding privileging. It also cites numerous cases that support the AAFP position on credentialing and privileging.

5. Be informed of all hospital rules and procedures. This includes your hospital bylaws, rules and regulations, credentialing and privileging policies, and pertinent due-process rules, including time restrictions.

While you are pursuing steps one through five, consider three other possible means of conflict resolution. First, be sure you know what the "real" problem is. For example, suppose members of the obstetrics/gynecology department are upset because they perceive consultations from the family medicine department are not being requested appropriately and in a timely fashion. The family medicine department should look at this critically and objectively; improving the consultation process could result in better communication between physicians, better care for patients and fewer objections regarding the granting of specific privileges such as induction or augmentation of labor.

Second, because many privileges cross departmental lines, you should engage medical staff members from involved departments in open, frank and collegial discussions. This will lead to calmer, more dispassionate deliberations and often resolve conflicts. Multidisciplinary or multidepartmental review committees may serve this purpose well, as long as family physicians are represented equitably. These committees examine all cases of all physicians that meet criteria for review within a hospital service,

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The first step in the AAFP's "Protocol for Handling Hospital Privilege Problems" is to be sure you have adequate training and experience in the procedure.



Written documentation (e.g., hospital records, dictation, case reports, proctoring evaluations and personal letters of reference) will help demonstrate your training and experience.



Be informed of all hospital rules and procedures related to the credentialing and privileging process, including due-process rules and any time restrictions.



As you seek to resolve a privileging conflict, engage medical staff members from involved departments in open, frank and collegial discussions.



If you've been denied privileges, insist on a written explanation that states the reasons your privileges were denied and the circumstances under which you may be able to obtain the privileges in question.



Determine whether the denial of privileges was directed specifically at you or whether it was directed at all family physicians.



Getting your state AAFP chapter involved early can have a positive effect on the outcome of your privileging battle.



Know the appeal process within your hospital and follow it exactly as stated.

thereby putting all physicians on an even playing field.

Finally, remember that negotiation, not confrontation, usually yields better results. Despite the high emotions and economic stakes involved, turf battles are more easily resolved through professional and collegial discussion rather than polarizing threats.

Enlisting allies

Do all reasonable attempts to resolve the problem, your privilege request is denied. What are the next steps? Let's return to the AAFP protocol:

6. Insist on a written explanation. This document must explicitly state the reasons your privileges were denied and the circumstances under which you may be able to obtain the privilege in question. Try to determine whether the denial was specific to you or directed at all family physicians. Carefully document any discussions with members of the credentials committee or other people involved.

7. Seek local support. Work with the other family physicians on the medical staff who may be helpful in influencing the process. Be sure your own department of family medicine is involved and supportive, regardless of whether other family physicians in the department have or desire the privileges in question. In addition, seek the support of other physicians on the medical staff from outside your department, especially those to whom you serve as a consultant and those to whom you refer patients. Broad-based alliances can be very helpful.

Notify your AAFP state chapter of your situation as well. Getting the state chapter involved early can have a profoundly positive influence. Just as a single candle can light up the darkness, a little light shining in from the outside can illuminate an entire committee process. Do not neglect or underestimate the importance of this step.

8. Exhaust all avenues of appeal. Know the appeal process within your hospital and take advantage of it. It is of paramount importance that you follow the procedures and time frame exactly as stated in the bylaws.

Local efforts by the physicians involved are the best way to effect change and successfully conclude privilege struggles.

Without question, the hearing process is your best chance to resolve the dispute, so go prepared. Consult with your AAFP state chapter, and present your position as a member of a larger organization. Consider the possibility of having an officer or other representative from the state chapter present with you to illustrate your state organization's support. Many state chapters have "SWAT teams" specifically for this purpose. Additionally, you may wish to be represented by counsel knowledgeable about medical staff affairs. Preparation is the key to presenting a cogent, complete case.

If the hospital renders an adverse decision, be sure to obtain the decision and any supporting reasons for the decision in writing. Be clear that you wish to pursue any and all appeals that are available to you, and keep the AAFP state chapter fully involved and up-to-date with the case at all times.

Ultimately, you may decide to take legal action. This is a difficult decision that involves many factors and has many consequences – some intended, some not. Before making this decision, request an opinion letter from your attorney that addresses the merits of your case and other factors that need to be considered. In the final analysis, however, only you can make the decision whether to proceed with legal action.

9. Seek support from your state chapter. If you decide to seek legal action, the AAFP state chapter will determine whether to support your case. The AAFP state chapter needs to go through the same process you did and decide, based on the merits of the case, whether it can support your legal action.

10. Seek support from the national Academy. If all attempts to resolve your privileging problems have failed at the local and state chapter levels, the state chapter's Board of Directors may formally seek the support of the national AAFP.

11. Meet the AAFP conditions for financial support. The AAFP's decision to support a hospital privileging case financially depends on several criteria:

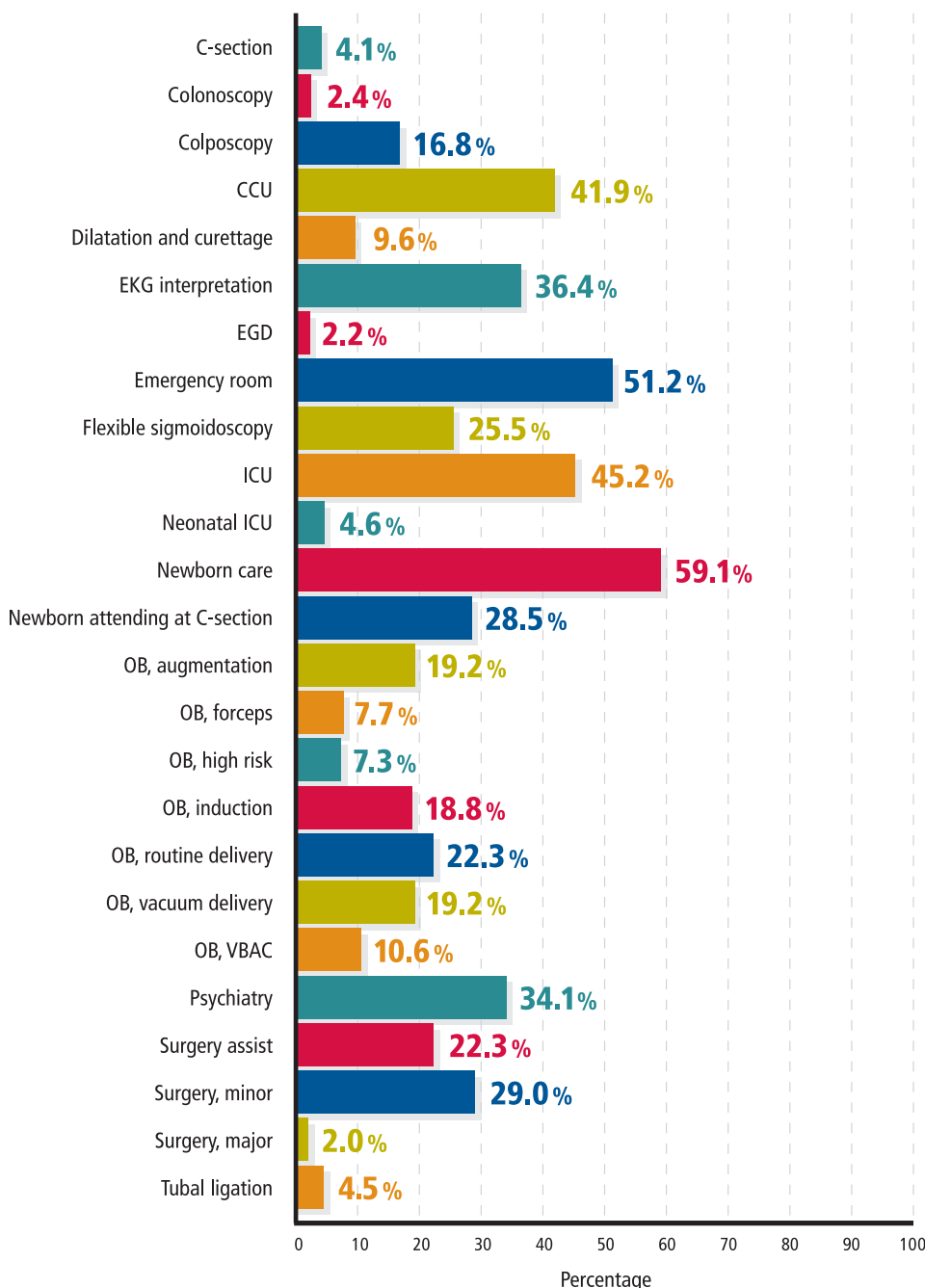
- Strict adherence to the AAFP "Protocol

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FP SERVICES IN THE HOSPITAL

The most common services provided by family physicians (FPs) in hospitals involve newborn care, emergency care, intensive care and critical care. The least common hospital services provided by FPs include major surgery, esophagogastroduodenoscopy and colonoscopy. About 80 percent of FPs say their hospital privileges are "generally about right," according to the AAFP's *Practice Profile I Survey*.

Percentage of family physicians providing hospital services, by type of service



Source: *Practice Profile I Survey*. Leawood, Kan: American Academy of Family Physicians; May 2002.



Go to the hearing prepared, perhaps represented by counsel, as it may be your best chance for resolving privileging conflicts.



Before taking legal action, request an opinion letter from your attorney that addresses the merits of your case and other factors that need to be considered.



If all attempts to resolve your privileging problems have failed at the local level, your state chapter's Board of Directors may formally seek the support of the national AAFP.



The most common hospital services provided by family physicians involve newborn care, emergency care, intensive care and critical care.



The AAFP's decision to support your case will depend on its potential impact on the family medicine movement and evidence of discrimination against family physicians.



The concept of privileging across department lines was unique to family medicine until recently.



The advent of fiberoptic procedures forced specialist colleagues to cross department lines to gain their privileges, which they soon found unappealing.



Privileging is a local issue best resolved within the committee structure of your hospital.

for Handling Hospital Privilege Problems," outlined in this article,

- Potential impact on the family medicine movement,
- Evidence of discrimination based on physician specialty rather than individual qualifications.

In accordance with the legal principle of "inurement," a tax-exempt organization may not expend funds for the benefit of an individual.

12. Seek Board approval. The AAFP Board of Directors will consider your case and determine whether to support it.

Lessons learned

Over the years, the framework for credentialing and privileging has evolved dramatically. The concept of privileging across department lines was unique to family medicine until the advent of fiberoptics. Fiberoptic procedures revolutionized privileging in that, for the first time, our non-family-medicine colleagues had to cross department lines to gain their privileges. They soon realized why family physicians were correct in demanding the right to privilege their own members, and they now insist on this for themselves. The idea of a surgeon going to the obstetrics/gynecology department for laparoscopy privileges or an internist going to the surgery department for colonoscopy privileges was and is unthinkable.

While this new paradigm of privileging brings new opportunities for family physicians, it also comes with some challenges. First, privileging is unquestionably a local issue. This cannot be overstated. If the privileging principles outlined by the JCAHO are followed, conflicts will almost certainly be resolved within the committee structure of your hospital. This reality explains why the AAFP, as a national organization, can be of only limited help, except for the very rare case that meets the criteria listed in point 11 of the protocol. The AAFP can be most useful by providing the knowledge that helps members work effectively in their hospital structure. Local efforts by the physicians involved are the best way to effect change and successfully conclude privilege struggles.

Appropriate and fair privileging, which ensures family medicine's scope of practice, is clearly a battle worth fighting and winning.

The AAFP state chapter is ideally situated to provide help to members facing privilege disputes. In my experience dealing with these issues, physicians seem to underutilize or overlook altogether their state chapters and the significant influence they can bring to bear. Instead, physicians should involve their state chapters at the earliest possible time so that they can intervene on behalf of those

caught up in privileging disputes. A united front presented by a state organization that is part of a national organization has tremendous potential for effecting a positive outcome.

Final thoughts

The credentialing and privileging process can be rough business, but our scope of practice defines who we are and what we do as family physicians. As a specialty we are currently trying to determine what the future of family medicine will be, drawing on the best minds from all aspects of our discipline. Many are convinced that a diminished scope of practice would not bode well for the future of our specialty. Although we all must learn to "pick our battles," appropriate and fair privileging, which ensures family medicine's scope of practice, is clearly a battle worth fighting and winning. **FPM**

Send comments to fpmedit@aafp.org.

1. Hirsch EA. Establishing a fair privileging process in your hospital. *Fam Pract Manage*. 1996;3(4):22-40.
2. AAFP Commission on Quality and Scope of Practice. *Protocol for Handling Hospital Privilege Problems*. Leawood, Kan: American Academy of Family Physicians.
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