

# Board Oversight of Credentialing: More Challenging than Ever!



A Governance Institute Webinar

Presented by

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HEALTH

## Today's Presenter



**Todd Sagin, M.D., J.D.**

President & National Medical Director, Sagin Healthcare Consulting, LLC

Dr. Sagin is a Physician Executive recognized across the nation for his work with hospital boards, medical staffs, and physician organizations. He is a popular lecturer, consultant, mediator, and advisor to healthcare organizations, and is frequently asked to assist hospitals and physicians develop strong working relationships as healthcare becomes a more integrated enterprise. Over the past decade, he has been engaged in working with boards, medical staffs, and management teams to improve the quality of the care they deliver. This work ranges from leadership education to strategic planning, from strengthening medical staff affairs to creating new integration frameworks to bring hospitals and physicians together, and from the development or redesign of physician leadership structures to the mediation of healthcare disputes.

Dr. Sagin is board certified in family medicine and geriatrics and has taught and practiced in community hospital and university settings. In 2012, he was appointed to the Baldrige Board of Examiners.

# Learning Objectives & Continuing Education Information

After viewing this Webinar, participants will be able to:

- Describe the roles and responsibilities of the healthcare board for the credentialing and privileging of practitioners.
- Articulate how the board, management, and medical staff collaborate in the credentialing process so that board oversight is not merely “rubber-stamping” medical staff recommendations.
- Enumerate best practices regarding challenging credentialing situations (e.g., late-career practitioners, physicians with problematic backgrounds, telemedicine and distance practitioners, non-physician providers, and others).
- Explain the potential for negligent credentialing liability and how the board can minimize risks of corporate negligence lawsuits.
- Describe some of the unique credentialing challenges posed in multi-hospital health systems.

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Program level: Overview

No advanced preparation required

Field of Study: Business Management and Organization

Delivery method: Live Internet

Maximum potential CPE credits: 1.0

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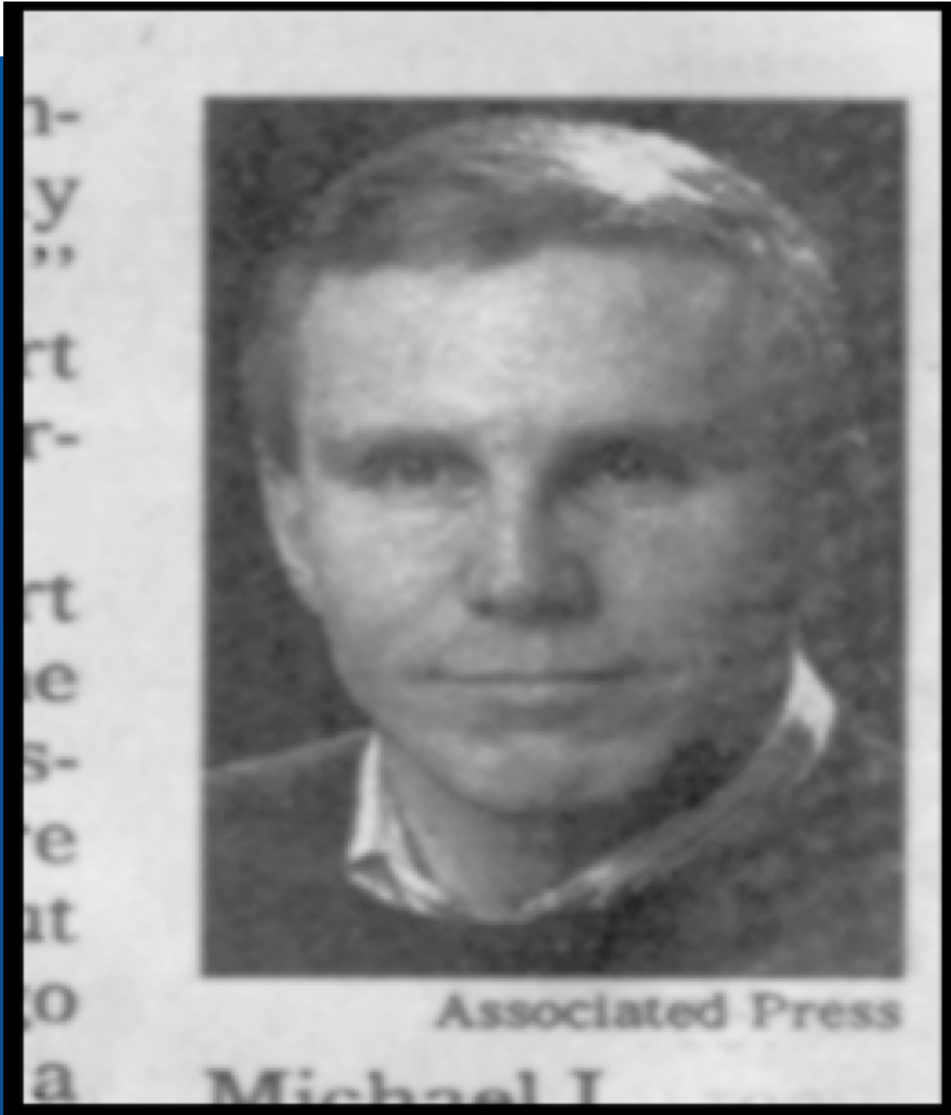
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**Credentialing is arguably the most important tool for promoting quality and safety in hospitals.**

**A challenge 20 years ago...  
still a challenge today.**





THE NEW YORK TIMES BESTSELLER

# Blind Eye

THE TERRIFYING  
STORY OF A  
DOCTOR WHO  
GOT AWAY  
WITH MURDER

UPDATED BY  
THE AUTHOR

James  
B. Stewart

"Chillingly thorough. . . . Wonderfully done.  
An elaborate forensic reconstruction that  
has the fascination of an acutely observed  
and troubling mind." —Lance Morrow,  
*The New York Times Book Review*

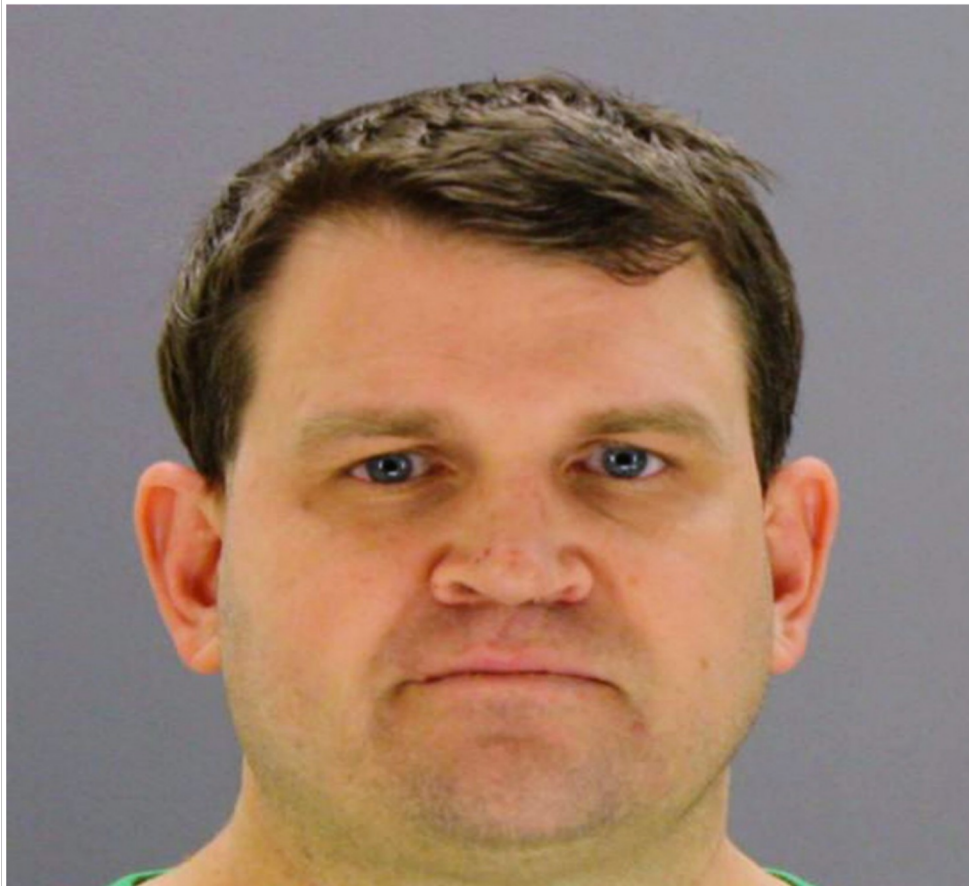
AUTHOR OF DEN OF THIEVES AND WINNER OF THE PULITZER PRIZE

A hospital's reputation is one of its most important assets.






morning mix

## Texas neurosurgeon nicknamed 'Dr. Death' found guilty of maiming woman during surgery

By Travis M. Andrews February 16



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Duntsch grew accustomed to having his mug shot taken, whether for assault, DWI, or shoplifting.



# Hospital Safeguards: Careful Credentialing Processes

- Compliance with accreditation credentialing standards
- Competent medical staff office/professionals
- CVOs
- Medical staff credentials committee/MEC review
- *Board review*
- *Best practice: periodic credentials audit authorized by the board*

## Growth in Demand for Rigorous Credentialing & Peer Review

- Rising expectations of the public
- Rising expectations of the regulators
- Rising expectations of the accreditors
- Rising expectations of the payers

## A Rising Flood of Lawsuits from Patients

- Negligent credentialing
- Corporate negligence
- Negligent oversight

# Between Scylla & Charybdis

## **Corporate negligence lawsuits:**

- Negligent credentialing
- Negligent peer review

## **Suits from the federal government:**

- False Claims Act
- Fraud and abuse/Stark

## **Legal action by staff: hostile workplace/sexual harassment**

## **Lawsuits from physicians:**

- Breach of contract
- Restraint of trade
- Interference with business opportunity
- Discrimination
- Defamation
- Injunctions and restraining orders



*"And, if you don't have an attorney, we have millions of them."*



## Who Is Responsible for Credentialing?

- Setting policies & procedures
- Gathering critical information
- Evaluating the information on applicants
- Appointing membership & privileges

## Some Credentialing Principles

- **Verify qualifications and competence.** Require complete and verified data. *Never attempt to review an application of any type without assuring that all necessary information is in the file.*
- **The applicant's problems are not your problems.** *Consistently place the responsibility on the practitioner for producing any information needed to resolve doubts or concerns.*
- **Never deny unnecessarily.**
- **Rules should rule.** *If we have a policy we follow the policy. If we have no policy we develop a policy.*
- **Think strategically.** *Gone should be the days when appointment of a physician is unrelated to the hospital's mission.*

## Board Considerations at Initial Appointment

- Do we need this practitioner?
- Were there any red flags and if so, how were they addressed?
- Were there any dissenting opinions on the credentials committee or MEC?

## Options at Reappointment

- Change in requested privileges
- Limited reappointments
- Conditional reappointments
- Restrictions on privileges

What if the board and MEC disagree?

Case scenario:

The questionable oromaxillary surgeon

## Privileges Must Be Criteria Based

- Criteria are developed for both initial appointment and reappointment.
- Criteria can include:
  - Licensure
  - Training
  - Experience
  - Quality results
- Criteria establish the organizational definition of current competence.
- Generally, there should be uniform criteria for privileges across a multi-hospital system.

## Current Focus of Clinical Privileging Systems: Current Competence

- What does “current competence” mean?
- The two dimensions of current competence are:
  - Recent activity
  - Quality performance information



*"No, I haven't performed the procedure myself, but I've seen it done successfully on 'E.R.' and 'Chicago Hope.'"*



## An “Elephant in the Room” Problem

**Increasing challenge of physician  
recruitment & retention**  
*versus*  
**Maintenance of demanding standards for  
competency & quality**



## Case Scenario

Mountain Hills Hospital has been trying for three years to recruit a general surgeon. It had three general surgeons until last year when one retired at age 72. Its remaining general surgeons provide continuous community coverage: one is 56 and the other, 62, and has several significant health problems. The medical staff development plan commissioned by the board calls for three general surgeons.

A recruitment firm has recently identified a possible candidate. The credentials chair has reviewed the recruiter's file on the doctor and has summarized several salient features of this candidate:

## Case Scenario (cont.)

- Dr. Habboushe is an international medical graduate who did surgical residency training in NYC in the early 1990s. He is now 47 years of age and has practiced in five different communities since his residency.
- His file shows he has had seven malpractices suits with settlements or judgments ranging from \$50,000 to \$700,000.
- He has an NPDB report showing he had his license suspended for one year in Pennsylvania for improper prescribing of narcotic medications.
- He is currently doing locums work for a small hospital in New Mexico. He has been accused of having an inappropriate sexual liaison with a hospital employee and it has made it difficult for him to continue work in this small community.

# When can a board make exceptions to credentialing criteria?

Most common area for consideration of “exceptions”:

- Board certification or maintenance of certification

# What should a board do when corrective action is proposed?

## What is corrective action?

### Critical questions:

- Have all due process steps been properly taken?
- Were there any deviations from established policies and bylaws? (Question all short cuts!)
- Is there documentation to support the action?
- Were all alternative courses of action explored?
- Were there any conflicts of interest?
- Was third-party external peer review performed?
- Has or should legal counsel be consulted?

Understand when matters fall under medical staff measures...

...and when under human resources.

- The unfortunate case of *Miller v. Huron Regional Medical Center*

## Newer Challenges Facing Hospital Credentialing Bodies

An aging physician workforce poses credentialing problems:

- 95,000 practicing physicians are older than age 70.
- 40 percent are older than 55.

How are hospital credentialing bodies addressing this issue?





## Newer Challenges Facing Hospital Credentialing Bodies

- Exponential increase in new technologies with consequent “turf battles.”
- A growing numbers of “re-entering” doctors after practice hiatus.

## Accountable Care & the Medical Staff

- Greater demands for collaboration: non-team players may no longer fit.
- Behavior outliers no longer tolerated because they jeopardize effective team functioning.

## More Incentive to Address Disruptive Physician Behavior

(unprofessional conduct)





“True, he can be annoying, but let’s keep in mind that he’s our only source of income.”

## Hospital Systems Have Unique Challenges & Opportunities

- Policies should be in place to facilitate sharing of credentialing and peer review information across institutions.
- Policies and DOPs should be standardized across medical staffs.
- Only one fair hearing in a system.
- Consideration of a centralized credentials committee.
- Avoid disparate decisions across multiple boards.

## Board Best Practices

- Consider having a board member attend medical staff credentials committee meetings.
- Authorize periodic audits.
- Consider requesting an annual report.
- Establish criteria for focused review/discussion by the board of selected credentials requests.

## Suggested Criteria for Board Focused Review of Credentials Applications

1. The MEC or the credentials committee has recommended that the application not be approved as originally submitted by the applicant.
2. The MEC is recommending a non-routine conditional appointment (e.g., requirement for continuing enrollment in impaired physician program, concurring consultation requirement, appointment contingent upon a fitness to practice exam, appointment is time limited for period less than 24 months).
3. Applicant is returning from a leave of absence (from practice or the hospital) of greater than two years.
4. The applicant failed to complete two or more residency programs.
5. There is evidence that the applicant failed to pass medical boards on more than two occasions.

## Suggested Criteria for Board Focused Review of Credentials Applications

6. More than two members of the MEC dissented from the executive committee recommendation to the board.
7. The applicant has a history of more than five malpractice judgments or settlements.
8. The MEC is recommending an exemption from any established criteria for membership or privileges.
9. The applicant has a history of any of the following:
  - Termination or a restriction of privileges at any healthcare organization
  - An action by a state medical board affecting his or her license
  - Has been the subject of a fair hearing
  - Has been found guilty of a felony or any type of fraud against an insurance company or the government or ever been on the OIG list of sanctioned providers



## Suggested Criteria for Board Focused Review of Credentials Applications

10. There is a request by a board member, a medical staff officer, the hospital CEO, or VPMA for board discussion of an applicant.
11. The applicant is requesting the grant of a privilege which has not previously been approved by the board.
12. The applicant is an employee of a direct competitor or has a substantial investment in a competing facility (criteria defining competing entity to be established by the board).

# Questions & Discussion



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