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Are voluntary proctors a thing of the past?

Whether or not your physicians are paid to proctor most likely depends on the general culture of your medical staff organization.

"Anyone looking for a simple answer to this question will be severely disappointed," answered **William K. Cors, MD, MMM, FACPE,** chief medical officer at Pocono Health System in East Stroudsburg, Pennsylvania, when asked if physicians should be paid to proctor. "Whether to pay or not pay for proctoring goes to the heart of a medical staff's culture."

The culture could be one of the following extremes or fall somewhere in the middle:

- Physicians are focused on relative value units (RVU) and their salary, will not volunteer their time, and are not trusting of their peers, who are viewed as competitors
- Physicians are collegial and believe in helping each other excel, such as through volunteer proctoring activities

Regardless of where your organization lies on the medical staff culture spectrum, the key to developing an effective proctoring plan is honesty (even if that means admitting that your medical staff is on the less desirable end). Creating a proctoring plan that does not fit the culture of your medical staff is a waste of time because, as Cors says, "if you discount your culture, it will gobble up your strategy and spit it out in pieces."

Getting physicians to proctor might also depend on your facility type, says **Michael Callahan, Esq.,** partner at Katten Muchin Rosenman, LLP, in Chicago. For example, a large academic medical center may require employed physicians to proctor as part of their core job duties, thereby eliminating the expectation for additional payment. In contrast, a small community hospital with independent physicians might have a hard time finding physicians who will volunteer their time for additional medical staff duties and have to work out some sort of payment. (See "Establish who pays" for payment options.)

Why is something that used to be considered a routine job function of physicians now viewed as an add-on for which physicians must be compensated? The two

biggest factors are decreasing revenues and increasing legal actions. If a physician is volunteering his or her time to proctor another physician, that is time that the proctor is not generating revenue. Also, what is the legal liability when a physician serves as a proctor? In an era when more physicians are sued by patients, proctors worry their name will be added to a lawsuit for an adverse outcome.

If your organization struggles to find proctors, you must consider why physicians are hesitant to proctor and how to overcome these barriers. **Medical Staff Briefing** reached out to medical staff leaders and MSPs from different organizations to see if they have begun to pay proctors and other tips they have for getting physicians to serve in this role.

Make proctoring a medical staff expectation

One way to encourage physician proctoring is to make it a medical staff expectation—either informally through your culture or formally through your medical staff governance documents. At St. Jude Medical Center in Fullerton, California, the medical staff rules and regulations and bylaws make this responsibility clear. The following is an excerpt from the proctoring/focused professional practice evaluation (FPPE) rules and regulations. To see the full document, turn to page 5.

"A proctor shall always be a non-provisional staff member of the medicine department, in good standing, and authorized by the medical staff bylaws to fulfill the responsibility for proctoring as one of the department's peer review responsibilities."

According to **Cindy Radcliffe, CPMSM,** director of medical staff services at St. Jude Medical Center, physicians at the hospital are motivated to proctor for reasons beyond the written expectation. "There is also that mentality that you had someone proctor you when you started, so guess what, you need to proctor the new doctor."

Radcliffe admits that St. Jude may be at an advantage because it is located in California, where proctoring has been a state requirement for 40-plus years. The California Medical Association was an early proponent of proctoring and, in the 1970s, incorporated proctoring

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requirements in its model medical staff bylaws. The bylaws called for new physicians to be given provisional status until their competency could be determined. During the provisional period, the California Medical Association expected new physicians to be directly observed in practice (i.e., proctored).

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>
> —Cindy Radcliffe, CPMSM

Although most hospitals no longer use a formal provisional status, those that are Joint Commission– or HFAP–accredited must subject all physicians who are new and/or requesting new privileges to an initial FPPE period. Proctoring is one such way to meet these requirements. In fact, a variety of hospitals require their medical staff to proctor as a means of determining physician competence, regardless of whether they are bound by specific FPPE accreditation requirements or located in California.

Union Hospital in Dover, Ohio, which is accredited by DNV GL, has also had success with its proctoring program. Like other hospitals, there is the expectation that physicians will volunteer to serve as proctors as part of their medical staff duties. "We haven't had to pay proctors—yet," says **Todd A. Meyerhoefer, MD, MBA, CPE, FACS,** vice president medical affairs and chief medical officer at Union Hospital.

It is also important to lay out proctoring expectations for the department chair, says **Michael N. Brant-Zawadzki, MD, FACR,** senior physician executive at Hoag Memorial Hospital Presbyterian in Newport Beach, California. The institute's medical staff rules and regulations dictate that a new physician must be proctored by someone in the same department. Because proctoring happens at a department level, department chairs must be aware that in the event a physician cannot find a proctor, they may be called on to serve in that capacity, says Brant-Zawadzki.

"The proctoring requirements should be clearly spelled out in the medical staff rules and regulations and/or bylaws. Those rules reside at the department level. It is a cascading set of rules that everyone who joins the medical staff has to be a member of a department. The department rules and regulations require proctoring of colleagues. If that is difficult or impossible, then the department chair takes it on. If that is still impossible, the medical executive committee comes into play," says Brant-Zawadzki. "So you have a layered set of responsibilities spelled out in your medical staff structure."

Establish who pays

Options for who will pay the proctor include:

- The physician in need of proctoring
- The vendor of a new device/procedure
- The hospital/medical staff

At Hoag, the physician slated to undergo proctoring for initial appointment is supposed to seek out his or her own proctor. Brant-Zawadzki says the physician usually finds a proctor fairly easily because he or she is joining a group practice as well, so a fellow physician from the practice often serves as the proctor. If the physician is a solo practitioner and struggles to find a proctor, it may be necessary that the physician pay for the proctor's time.

Sometimes, a medical device vendor pays for and supplies proctors because no one on the medical staff has privileges for the given procedure. This was the case when Hoag started performing transcatheter aortic valve replacements. The vendor arranged for a national expert to proctor a limited number of physicians.

Tip Box

Hospitals that opt to pay for proctoring must ensure that the amount does not exceed fair market value for the service and that it is paid in accordance with a written agreement. To do otherwise can run afoul of anti-kickback laws. When a hospital pays members of its own medical staff to proctor or participate in peer review, unless the compensation is de minimis, enlist legal counsel or a compensation consultant to vet the appropriate payment amount and the terms of any compensation agreement.

Source: Proctoring, FPPE, and Practitioner Competency Assessment: A Clinical Leader's Guide, © HCPro 2015.

A third option is for the hospital/medical staff to pay for the proctor. This may happen if the hospital is trying to bring in a new specialty/expertise. It may also make sense for a hospital/medical staff to pay for a proctor when a concern arises, and a physician must be proctored for cause. In such cases, paying for proctoring could help fulfill the hospital's duty to ensure the competence of physicians practicing at its facility.

Hospitals can pay employed physicians for proctoring by making it a part of their general compensation, and by providing a certain number of RVUs for the given activity. Determine these terms up front when you are hiring the physician. For example, specify that you expect him or her to dedicate a certain number of RVUs per month/year to proctoring.

Who pays for proctoring is not as important as choosing a proctor, says Callahan.

"First you need to find out, can someone volunteer who we feel comfortable with? As opposed to paying someone who I don't have much of an opinion of, who I don't think will do the job, but now is incentivized by pay and is willing to proctor. Am I going to trust in anything he does?" Callahan explains. "If you know someone would be a good volunteer, you could go to them and ask them to do it, and if they ask for something in return, that is okay."

Callahan adds that it is a bad idea to force a physician to serve as a proctor—because what level of service will they provide? Even if the bylaws state that physicians will participate in the peer review process, it is best to find someone who is willing to do it.

"Proctoring, call, involvement as medical staff members and leadership, it is all related. It is tough to get doctors to volunteer their time. More and more, they just don't want to be involved because it is taking them away from productive hours or family."

—Todd A. Meyerhoefer, MD, MBA, CPE, FACS

Tip Box

If your organization is part of a health system, try splitting proctoring requirements with other organizations in the system. For St. Jude, this initiative, which the medical staff calls reciprocal proctoring, began a few years ago. If a physician is required to have five proctored cases when he or she joins the medical staff, some of the cases can be proctored at another organization in the system where the physician has privileges.

"We have language in our rules that says we will allow reciprocal proctoring if it is at one of our related organizations in the health system," **Cindy Radcliffe CPMSM,** director of medical staff services, explains. "That way, we know it is probably done appropriately."

In order for reciprocal proctoring to work, you may have to revise language in your medical staff documents. St. Jude had language in the rules that said the proctor had to be on the same medical staff as the physician being proctored, thus making reciprocal proctoring impossible. The medical staff revised this language in order to use reciprocal proctoring throughout its health system.

Consider legal implications

Several definitions of proctoring use the word "supervise." This broad term might leave physicians wondering what their proctoring duties and responsibilities entail. Given this need for clarity, many of the experts interviewed for this article agree that defining the proctor's role is the most important element in this process.

"What is my role?" says Callahan. "Do I sit back and bite my tongue and make notes after the case, or am I expected to be proactive?"

Callahan suggests the department chair sit down with the proctor and explain the situation: why the physician is under review, how many cases the proctor will observe, and what the proctor should do if the physician under review is putting a patient in danger.

"There has to be some clear understanding about it so the proctor can make a decision whether he wants to do it or not," says Callahan. "Some people won't take it on even if they get paid."

Refusals can often be linked to the legal issues associated with proctoring. Will the proctor be named in a lawsuit if he or she steps in to help the physician under review, there is an adverse outcome, and the patient sues the hospital? Or, on the flip side, if the proctor is

paid by the hospital, and does not intervene when the physician under review is providing substandard care, can the hospital take legal action against the proctor?

"In the discussion about paying proctors, what could be a tipping factor is whether or not it is a good argument to say, 'I wasn't paid for doing this, I was just an observer.' If you are getting paid, the argument can be made that you had some sort of duty to intervene in the care and that is where you get some liability concerns," says Meyerhoefer.

For instances where the proctor might have to intervene in care, it is important to make sure the proctor is indemnified by the hospital.

This indemnification covers the legal expenses of the proctor should he or she be named in a lawsuit, and it typically covers any judgment against the proctor as long as he or she conducted peer review actions in good faith. Medical staff bylaws often contain language about indemnifying medical staff members for their peer review work. If such a statement is not found in the bylaws, a medical executive committee may want a letter from the hospital board that confirms indemnification of medical staff members as institutional policy.

"I wouldn't be a proctor unless the hospital indemnifies me," says Callahan. "The hospital has to be willing to defend me. To me, that is more important than getting paid."

Future of proctoring

Is proctoring heading in the direction of emergency department call—where physicians expect payment for participation?

"There is grumbling about it as the economics of healthcare [changes], as reimbursement is ratcheted down; taking the time from practice to do uncompensated proctoring is obviously more onerous as scarcity in reimbursement rears its ugly head," says Brant-Zawadzki.

Meyerhoefer says finding and serving as a proctor wasn't an issue when he came out of training in the early 90s. He even had physicians who were not his formal proctors check in on him and offer him advice. Now, proctoring, along with other uncompensated medical staff duties, is becoming less and less appealing to physicians.

"Proctoring, call, involvement as medical staff members and leadership, it is all related. It is tough to get doctors to volunteer their time. More and more, they just don't want to be involved because it is taking them away from productive hours or family.

"If I had a magic wand to say what is the best way, it is that people volunteer for it, and are not paid, but I fully admit it is not realistic. Eventually you are going to have to pay with all of the downside to it," says Meyerhoefer.

Sample rules and regulations regarding proctoring

5.4 Proctoring/Focused Professional Practice Evaluation (FPPE) Requirements

The Proctoring/FPPE requirements are outlined in the Medical Staff Bylaws, Artlcle 4.6-3.

Proctoring/FPPE is necessary to determine eligibllity for regular staff membership and competency to exercise the clinical privileges provisionally granted to all new members of the Medicine Department.

Proctoring wlll apply to all new staff members and existing members requesting addltional privlleges, regardless of specialty or category of membership so long as direct patient care is involved.

5.4.1. Methods of Proctoring

The following guidelines will be used for Medicine Department proctoring:

- Direct observation is required for all invasive procedures. Retrospective evaluation of performance will be accepted for all non-invasive procedures.
- There shall be a sufficient variety of cases observed depending upon the scope of clinicai privileges requested as defined on the clinical privilege form.
- The proctor shail complete a proctoring form and submit it to the Medlcal Staff Office. These forms are available at each nursing station and in the Medical Staff Office.

Source. St. Jude Medical Center, Fullerton, California. Reprinted with permission.

Sample rules and regulations regarding proctoring (cont.)

- The proctor's reports shall be maintained in the physician's credential file and should be taken into consideration at the time the new staff member is considered for promotion from the provisional medical staff category.
- Proctoring shall involve evaluation of all aspects of the management of any case.
- Observation will include concurrent chart review, direct observation in the case of invasive procedures, and monitoring of diagnostic and treatment techniques.
- A list of all qualified proctors will be provided to each applicant by the Medical Staff Office.
- The name and telephone number of the assigned proctor(s) shall be given to the physician who is being proctored, and the name and telephone number of the physician who is being proctored shall be given to the proctor(s). The proctored physician is responsible for calling his proctor each time a patient is admitted. For invasive medical procedures that will be observed, the proctored physician shall be responsible for arranging the time of the procedure with the proctor. The proctored physician shall also provide the proctor with any information regarding the patient requested by the proctor.
- The proctor's primary responsibility is to evaluate the proctored physician's performance. However, if the proctor believes that intervention is warranted in order to avert harm to the patient, he may take such action as he believes is reasonably necessary to protect the patient.
- If the proctor and a proctored physician disagree on a patient's treatment, the dispute shall be referred to the Department Chairman for resolution.
- In accordance with the Medical Staff Bylaws, at the end of the first Provisional/Observation year the physician's proctoring will be assessed to determine if 100% of the requirement has been met.

5.5 Proctor Qualifications

- A proctor shall have sufficient expertise to judge the quality of work being performed.
- A proctor shall always be a non-Provisional Staff member of the Medicine Department, in good standing, and authorized by the Medical Staff Bylaws to fulfill the responsibility for proctoring as one of the Department's peer review responsibilities.
- A proctor shall not expect to receive a fee for time of proctoring services.
- Where no Department member is deemed qualified to observe the work of an applicant, the Department Chairman may use an outside expert who has been granted temporary privileges to be the proctor or determine if retrospective proctoring is to be completed vs. concurrent observation.

5.5.1 Reciprocal Proctoring

The Medicine Department may accept evidence of proctoring from a nearby institution to supplement actual observation on the hospital premises.

The arrangement is acceptable only if the following conditions are present:

- Evaluations of cases proctored at other hospitals may be used to meet the case requirements stated above, only if the following conditions are met. Evaluations must be completed by a qualified observer.
- The hospital is affiliated with the St. Joseph Health System or Hoag Hospital or has been approved by the Department of Medicine or QRC to accept reciprocal proctoring.
- Only 50% of the reciprocal proctoring will be accepted, unless otherwise determined by the Department of Medicine or QRC for good cause.
- Exception to the above can be made by the Department of Medicine Chair or the Department/QRC for good cause.

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