

## Suspension or Revocation of Hospital Privileges - Knowing Your Rights and What to Expect

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As a doctor, one of the worst things that could happen in your career is a hospital's decision to suspend or revoke your privileges. This can be particularly tragic to your career if your entire practice stems from your ability to maintain those privileges. While there are many circumstances where a suspension or revocation is warranted, often a suspension or revocation can also be seen as a harsh and unfair administrative remedy. It is important that you, as the doctor, know what you can expect should you chose to fight the hospital's decision to suspend or revoke your privileges.



Notably, the suspension or revocation of privileges has ramifications beyond the simple ability to practice at the hospital. The Health Care Quality Improvement Act set up the National Practitioners Data Bank, which is a confidential information clearinghouse created to improve health care quality, protect the public, and reduce health care fraud and abuse in the U.S. The data bank is utilized by many health care employers to determine if they should hire a prospective physician. When a hospital begins the process of suspending a physician's privileges, the hospital is obligated to report the suspension to the National Practitioner's Data Bank. Unfortunately, this reporting essentially creates a permanent red flag on the reported physician, regardless of whether the physician wishes to voluntarily suspend their privileges instead of beginning a potentially lengthy administrative process at the hospital. For more information regarding the National Practitioner's Data Bank, please see "Understanding the National Practitioners Data Bank."

The process of suspension or revocation differs from hospital to hospital, but every institution sets out their process within the hospital bylaws, and the hospital bylaws are the first place a physician should look when starting this process. However, the Health Care Quality Improvement Act (HCQIA) has somewhat streamlined the process through enacting statutes which specifically set forth the parameters for a professional review action. Under the HCQIA, a professional review action must be taken (1) if the hospital has reasonable belief that the action was in furtherance of quality health care; (2) after a reasonable effort is made by the hospital to obtain the facts of the matter; (3) after adequate notice and hearing procedures are afforded to the physician involved; and (4) in the reasonable belief that the action was warranted by the facts that are known to the hospital as a result of reasonable effort to obtain the facts.<sup>1</sup>

Once the professional review action has begun, the hospital is required to provide notice of the proposed suspension or revocation of privileges to the doctor. Additionally, at the time that this notice is provided, the doctor must also be informed that she has the right to request a hearing regarding the proposed suspension or revocation. This physician's right to a hearing after their privileges are suspended or revoked is mandatory throughout the United States under the Health Care Quality Improvement Act. If the physician has any desire to fight the suspension or revocation, it is at this time that the physician should first consider obtaining legal counsel to help guide the physician through the hospital's suspension or revocation process.

<sup>1</sup> The Health Care Quality Improvement Act is codified at 42 U.S.C. 11112.

If the physician wishes to contest the suspension or revocation, she must request the hearing. Prior to the hearing, the hospital is required to give the physician the time, date, and place of the hearing, as well as a list of witnesses (if any) the hospital expects will testify at the hearing on behalf of the professional review body. The individuals who conduct the hearing vary depending on the hospital, but can include members of the hospital board or retired judges. However, under HCQIA, the individuals who will conduct and determine the outcome of the hearing must either be (1) individuals mutually acceptable to both the physician and the hospital, or (2) an individual or panel of individuals appointed by the entity that are not in direct economic competition with the physician involved. The hearing stage is where legal counsel becomes crucial. The hearing acts as an administrative trial: the physician has the right to an attorney; may call, examine, or cross examine the hospital's witnesses; present evidence; and submit a written statement at the closing of the hearing.

After a hearing is conducted, the hospital may still find that the suspension or revocation of the physician's privileges is proper, and carry out the suspension or revocation, but, if so, this is not the physician's final remedy. New York State Department of Health maintains the Public Health and Health Planning Council (PHHPC). The PHHPC is an administrative board authorized to hear disputes that may arise over the suspension of a physician's privileges. The physician, or the physician's attorney, may file a complaint with the PHHPC to alert the PHHPC of the improper suspension or revocation of privileges. The PHHPC will then conduct an investigation into the hospital's decision to suspend or revoke the physician's privileges. If the council finds that the hospital should not have suspended or revoked the physician's privileges, the council will inform the hospital of their recommendation that the physician's privileges be reinstated, and the hospital must comply.

The last available remedy, if the PHHPC's investigation finds that the suspension or revocation of privileges was proper, is for the physician to start an Article 78 proceeding. An Article 78 proceeding is a lawsuit filed in court against the PHHPC, asserting that the council came to an improper decision, and asking the court to overturn that decision. At the Article 78 level of appeal, the standard of review is to determine whether there was a rational basis for the PHHPC's determination, or the determination was arbitrary or capricious. This is an extremely high burden to overcome, and a physician's case must be supported by strong factual evidence. Although many physicians may lack the stamina (or the facts and support) to succeed at the Article 78 level, success at the Article 78 level may result in reinstatement of privileges and/or an award of monetary damages. Notwithstanding the foregoing, if the initial determination was improper, the Article 78 proceeding may prove the fairest and most unbiased level of review.

Despite the fact that successfully challenging a hospital's decision to suspend or revoke a physician's privileges is an uphill battle, for some physicians, given the potential ramifications of suspension or revocation, including isolated potential employment opportunities and the impact of a negative Data Bank report, not to mention those physicians who are simply in the right, contesting such a determination is necessary. With the right representation, strategy and support the David vs. Goliath, physician vs. hospital may be the best alternative.

Our office is available to discuss and assist should you find yourself in a position where your privileges are being threatened. Contact us to discuss your circumstances and to decide whether now is the time to retain counsel to assist you. For more information on this topic, visit our website or contact Jennifer Kirschenbaum at [Jennifer@kirschenbaumesq.com](mailto:Jennifer@kirschenbaumesq.com) or (516) 747-6700 ext 302 or Kate Maguire at [kmaguire@kirschenbaumesq.com](mailto:kmaguire@kirschenbaumesq.com) or (516) 747-6700 ext 305.

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