Hospitals Not Responsible for Costs of Physician Retraining or Clinical Supervision

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The Health Professions Appeal and Review Board (HPARB) has just released a significant decision in a hospital privileges case. The appellant physician challenged a decision of the respondent hospital's Board of Directors (Board) imposing conditions and restrictions on her hospital privileges, including her privileges to practice interventional neuro-radiology (INR). One of the conditions was that she could not practice INR at the hospital until she had completed 6-12 months of supervised practice in a program under the supervision of a clinical supervisor to be pre-approved by the Chief of Staff. The Board directed that the physician be responsible for arranging the clinical supervision and for any associated costs.

Facts and HPARB Decision

The primary issue for the HPARB was whether the hospital had met the onus of showing it was reasonable for the physician to be solely responsible for the costs associated with her retraining.

At the HPARB hearing, the physician acknowledged that a period of retraining and clinical supervision was appropriate, as she had had a lengthy absence from INR practice. She had not practiced in INR since November 2014, when at the hospital's request, she gave a voluntary undertaking not to practice in INR while the hospital investigated competency concerns, however, her position was that the Board's decision was unreasonable, as the hospital should be responsible for arranging and bearing the costs of the conditions. She sought an order that the hospital fund and facilitate an INR physician outside the hospital to retrain her. Alternatively, she asked the HPARB for an order that the hospital hire an INR physician who could provide clinical supervision at the hospital.

The hospital's position was that it is a physician's responsibility to meet the criteria in the hospital's bylaws for maintaining hospital privileges. If retraining or clinical supervision is required, the physician should bear the costs. The hospital also submitted that the HPARB had no authority to order a hospital to pay for retraining or to "hire" an INR physician.

The hospital's evidence was that none of the members of medical staff qualified to be clinical supervisors were willing to serve in that role. Even though it had no obligation to do so, it had taken steps to identify another centre where she could do her retraining, however, the physician had declined that option because she would have to forego income while retraining. The hospital's position was that it had acted fairly and in good faith towards her as its actions were in addition to its obligations under the *Public Hospitals Act* to ensure quality of care and patient safety.

The HPARB confirmed the decision of the Board. It found that for the purposes of the hearing, it was not necessary to make a finding regarding her competency. It found that in light of the hospital's statutory duties to ensure patient safety, it was reasonable for the hospital to have investigated the concerns. The hospital's process was fair and the conditions and restrictions were "…reasonable, designed to remediate by updating her skills and allow her to return to her INR practice with TOH".

Takeaway

This decision shows that the HPARB will uphold reasonable and fair administrative action taken for a patient safety and quality of care purpose. Significantly, it also confirms that it is reasonable for physicians to bear the costs of retraining and clinical supervision.

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