



Credentialing Organizations: Creating a Legally Defensible Disciplinary Review Process

By: Katharine Meyer, Esquire

August 2011

One of the main purposes of credentialing organizations is to ensure that their certificants meet certain criteria or a level of competence. Credentialing provides benefits to those individuals and entities that receive credentials. Not only does a credential provide prestige, it also can increase the earning power of an individual or enrollment in an institution. Unfortunately, sometimes a credentialed person or entity fails to meet the standards set by the credentialing organization. Certificants can breach ethical standards or fail to provide a basic level of care or service. When this occurs, a credentialing organization must have the ability to conduct a review of the matter, and, if necessary, properly sanction the certificant. If this review process is not properly conducted, though, the organization is at risk.

There are several steps that an organization can take to help prevent a legal challenge to its disciplinary process. These include:

1. Have written Standards of Conduct and Rules and Procedures regarding Disciplinary Complaints.

Having written policies helps ensure that rules and standards are consistently applied to all certificants. Additionally, it puts certificants on notice that they are required to adhere to certain standards. Frequently, a certificant will respond to a disciplinary complaint by stating that she was unaware such standards existed. This is not an excuse. If the credentialing body has alerted the certificant that such policies exist, the certificant has a duty to adhere to these policies. Frequently, a certificant will be required to sign a declaration in the certification application stating that she agrees to adhere to the policies and standards of the organization. Such policies and standards are then conspicuously set forth in the organization's candidate handbook. This is sufficient notice to the candidate. Additionally, all disciplinary committee members and staff should have a complete understanding of the organization's standards and its disciplinary policies. If needed, the organization should consider providing committee members with disciplinary review training, so that all members and staff understand how the disciplinary process works.

2. Ensure disciplinary Rules and Procedures meet basic due process requirements. While a full scale trial is unnecessary, any disciplinary process should provide a certificant with basic due process protections. The organization should provide proper and prompt notice of the complaint to the certificant. The certificant should then have a reasonable opportunity to respond to the complaint. The case should be reviewed by a competent and impartial committee or group. Additionally, upon an adverse finding, the certificant should be permitted to appeal the decision to the Board of the organization or other decision-making body. The amount of due process provided by the organization is usually determined by the effect an adverse judgment will have on the certificant. If the credential will affect the certificant's license to practice or ability to make a living, more due process should be afforded in the disciplinary review process.
3. Avoid "Gut" decisions and inconsistent decision-making. All decisions should be based on facts and past precedent. Impartiality is crucial in any disciplinary decision. Occasionally, a committee member might make a statement like "I just don't like this guy", or "My 'gut' is telling me he is guilty." Such emotional decisions should be avoided at all costs. Ultimately, decisions based on feelings and not facts are extremely difficult to defend. Additionally, make sure all decisions are consistent with prior disciplinary sanctions. If one certificant is suspended for a Medicare fraud conviction and another certificant is reprimanded for the same offense, the committee must have sound reasons for this discrepancy in sanctions. All decisions should be supported by the evidence presented to the committee.
4. Avoid Conflicts of Interests. Any person on the disciplinary review committee that has a business or personal relationship with the complainant and/or certificant should be recused from the review and decision-making of any complaint. Any actual or perceived bias can irrevocably taint the proceedings. Committee members should err on the side of caution and alert the committee to any possible conflicts.
5. Maintain strict confidentiality in all ethics matters. The facts of any ethics matter should remain strictly confidential. Only committee members, legal counsel and staff, on a need to know basis, should be privy to the facts of any case. Consider having all committee members sign confidentiality agreements yearly, not only to protect the organization, but to remind them of their duty not to disclose disciplinary information. The repercussions of a breach of confidentiality can be severe. A certificant's business and reputation can be significantly damaged if the public learns that the certificant is under investigation. If there is a breach in confidentiality, the certificant may feel that she has no other remedy than to sue the organization.

Ultimately, a fair and reasonable disciplinary review process can save an organization from defending an expensive and damaging lawsuit.