

**PRESENTED AT**

The University of Texas School of Law  
33<sup>rd</sup> Annual Health Law Conference

April 7-8, 2022  
Houston, Texas

**Medical Staff – Its Health and Membership**

**Joanne P. Hopkins, J.D.**

Law Office of Joanne P. Hopkins  
P.O. Box 162834  
Austin, Texas 78716-2834  
[jphopkins41@gmail.com](mailto:jphopkins41@gmail.com)  
[www.hopkinshealthlawyer.com](http://www.hopkinshealthlawyer.com)  
512.327.4647

## 1.0 Introduction and Overview

## 2.0 Medical Staff

### 2.1 Traditional Elements of Impairment/Substance Abuse Policy.

#### 2.1.1 Definitions and scope.

##### 2.1.1.1 Substance Abuse

##### 2.1.1.2 Health generally

##### 2.1.1.3 Health and unprofessional conduct

#### 2.1.2 Reporting – Third party and self-referral.

#### 2.1.3 Investigation – Review of referral and possible testing and evaluation.

#### 2.1.4 Rehabilitation/Treatment Options.

##### 2.1.4.1 Medical leave of absence

##### 2.1.4.2 Referral for corrective action if cannot address voluntarily

#### 2.1.5 Return to Practice/Reinstatement.

##### 2.1.5.1 Require provider opinion on current health status and any after care recommendations

##### 2.1.5.2 Monitoring agreement to include random testing (if appropriate), verification of after care, and periodic reports from provider

##### 2.1.5.3 Texas Physician Health Program <https://www.txphp.state.tx.us/>

##### 2.1.5.4 Notification of any changes

### 2.2 Health Qualification and Verification.

#### 2.2.1 Qualification or Requirement of Health Status.

##### 2.2.1.1 The Joint Commission Hospital Accreditation Standards (2022)

MS.11.01.01 *The medical staff implements a process to identify and manage matters of individual health for licensed independent practitioners which is separate from actions taken for disciplinary purposes.*

*EP 10. The medical staff implements its process to identify and manage matters of individual health for licensed independent practitioners.*

MS.06.01.05 *The decision to grant or deny a privilege(s), and/or to renew an existing privilege(s), is an objective, evidence-based process.*  
*EP 2. The hospital, based on recommendations by the organized medical staff and approval by the governing body, establishes criteria*

*that determine a practitioner's ability to provide patient care, treatment, and services within the scope of the privilege(s) requested. Evaluation of all of the following are included in the criteria: ...*

- *Evidence of physical ability to perform the requested privilege*

...

*EP 6. An applicant submits a statement that no health problems exist that could affect their ability to perform the privileges requested.*

*Notes: The applicant's ability to perform privileges requested must be evaluated. This evaluation is documented in the individual's credentials file. Such documentation may include the applicant's statement that no health problems exist that could affect their practice. Documentation regarding an applicant's health status and their ability to practice should be confirmed. Initial applicants may have their health status confirmed by the director of a training program, the chief of services, or the chief of staff at another hospital at which the applicant holds privileges, or by a currently licensed doctor of medicine or osteopathy approved by the organized medical staff. In instances where there is doubt about an applicant's ability to perform privileges requested, an evaluation by an external and internal source may be required. The request for an evaluation rests with the organized medical staff.*

2.2.1.2 Centers for Medicare and Medicaid Services (CMS) Conditions of Participation for Hospitals, 42 C.F.R Surgical Services §482.51(a)(4) - *Surgical privileges must be delineated for all practitioners performing surgery in accordance with the competencies of each practitioner. The surgical service must maintain a roster of practitioners specifying the surgical privileges of each practitioner.*

*Interpretive Guidelines Survey Procedures: Review the hospital's method for reviewing the surgical privileges of practitioners. This method should require a written assessment of the practitioner's training, experience, health status, and performance.*

2.2.1.3 Texas Department of State Health Services, Hospital Licensing Operational Requirements, 25 Tex. Admin. Code Rule 133.41(k) Medical staff – no specific mention of health status.

2.2.1.4 Texas Standardized Credentialing Application – Section II Disclosure Questions dealing with “Ability to Perform Job”:

- *#20 Are you currently engaged in the illegal use of drugs? ("Currently" means sufficiently recent to justify a reasonable belief that the use of drug may have an ongoing impact on one's ability to practice medicine. It is not limited to the day of, or within a matter of days or weeks before the date of application, rather that it has*

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Medical Staff: Its Health and Membership

Also available as part of the eCourse

[2022 Health Law eConference](#)

First appeared as part of the conference materials for the

33<sup>rd</sup> Annual Health Law Conference session

"Medical Staff: Its Health and Membership"