

# SHARING INFORMATION ABOUT PROBLEM PROVIDERS: Knowing When and How to Share

*Presented by:*

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# Where we are going.....

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- Why Share
- Barriers to Sharing
- Case Study
- Legal Basis for Sharing
- Responsive Sharing
- Employed/Contracted Providers
- Immunities & Protections
- Case Studies



# Lawyers and Doctors

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# Why Share

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- Patient Safety!
- Avoid Harm
- Allow for guardrails
- Improve practice
- Prevent transient practitioners

***Because it is the Right Thing to do!***

# Barriers we face...

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- Fear of litigation from provider
- Lack of understanding of roles and responsibilities –
  - Quality/Patient Safety
    - Duty to the other hospital's patients
- Lack of understanding of what information is protected and how to keep it protected
- Cloak of Silence

# Breaking Down the Barriers

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- Education
- Structure
- Process
- Ethics
- ***COMMUNICATION***



# Case Study

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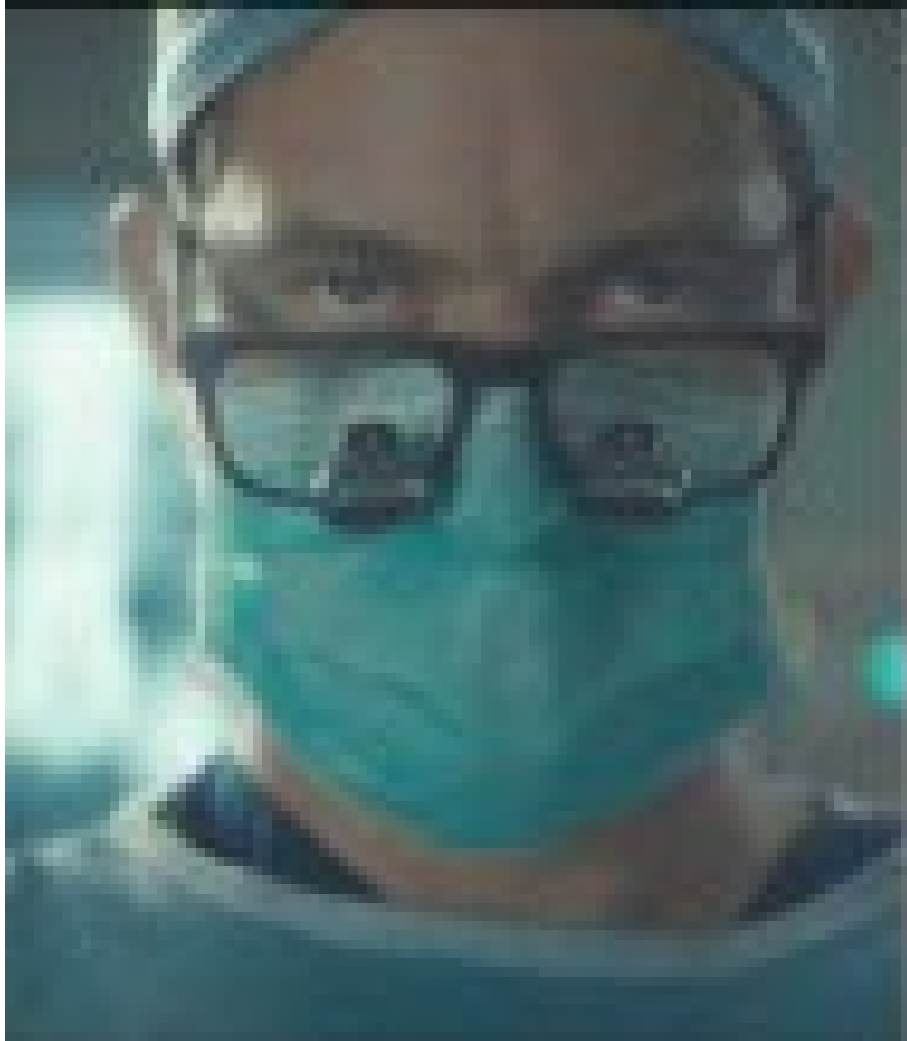
# The Affiliation Letter

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*On behalf of the Medical Executive Committee. . . I am authorized to notify you of the following:*

*All investigations with respect to any areas of concern regarding Christopher D. Duntsch, M.D. have been closed.*

*As of this date, there have been no summary or administrative restrictions or suspensions of Dr. Duntsch's Medical Staff membership or clinical privileges . . .*



# Christopher Duntsch

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- MD & PhD – Univ. of Tenn. Health Science Center
- Neurosurgery residency – 2004-2010
  - Program Director
  - Sent to impaired MD program
  - Not allowed to operate independently
- Post residency stayed in research and ran Discgenics
- July 1, 2011, recruited by hospital

# Christopher Duntsch

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- Residency letter
  - ***“His work ethic, character, and ability to get along with others were beyond reproach.”***
- Fired from group after first surgery
- November 2011 Kenneth Fennel – wrong site surgery
- December 11, 2011 - Email
- December 30, 2011 – Robert Passmore - Asst. surgeon grabs Duntsch and begs him to stop. Nurses fail to report incident

# Christopher Duntsch

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- January 11, 2012 - Barry Morguloff – Dr. Randall Kirby was the assistant surgeon – Surgery was a “horror”
- February 12, 2012 – Jerry Summers – Woke up a paraplegic
- Summary suspension – not reported – Privileges reinstated
- March 12, 2012 – Kelly Martin – Dead – Post operative hemorrhage following laminectomy
- April 2012 – Suspended & Resigned stating relocating practice

# Christopher Duntsch

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- July 2012 – Granted temporary privileges
- July 2012 – Feolla Brown dies from post operative hemorrhage
- July 2013 – Texas Medical Board suspends license
- July 2015 – Indicted
- 2017 – Sentenced to life imprisonment

# Dr. Death

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## 1. "Building an empire"

"Unfortunately, you cannot understand that I really am building an empire, and I am so far outside the box that the earth is small and the sun is bright"

## 2. "Between god, Einstein and the antichrist"

"Anyone close to me thinks that I likely am something between god, Einstein and the antichrist."

**3. "Become a cold blooded killer"**

## 4. "A manner that borders on abuse"

"The sad fact is I would go faster do better and gain respect and honor by f\*\*\*ing every one in the room and mentally controlling"

## 5. "My vodka bottle and neurostimulants"

"1 week and then everything unraveled. At first"

## 6. "Stone cold killer"

"What I am being is what I am, one of kind, a mother f\*\*\*\*\* stone cold killer that can buy or own or steal or ruin or build whatever he wants."

7. "Never... argue with me"



**Ezra\_Kadezra**

Feb 21, 2017

This is beyond medical negligence. All these signs lead me to believe that the doctor is a sadistic psychopath. I am surprised that it took his staff that long to stop the botched surgeries and misdiagnoses.

[Like](#) [Reply](#)



**Kishmir\_Intuches**

Feb 21, 2017

I've seen incompetency in the OR. How come no assistant or nurse or technician didn't march into the chief of surgery or hospital administrator and rat this miscreant out?

# Lessons Learned (Again)

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- Credentialing –
  - Watch for red flags & follow up
- Impairment –
  - Identify and manage
- Action –
  - Take when necessary
- Reporting –
  - Follow the law
- Reference letters
  - Factual – notice to others
- **Information Sharing**
  - **Proactive**



# Who granted him privileges?

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*"Nurse, get on the internet, go to SURGERY.COM, scroll down and click on the 'Are you totally lost?' icon."*

# Legal Basis for Sharing

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- Health Care Quality Improvement Act
- State Peer Review Statutes
- Negligent Credentialing Liability
- Authorizations with Liability Release
- Confidentiality Agreements



# Credentialing Purpose

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- **Patient Safety!**
- *MSP's are the gatekeepers of patient safety*



# Credentialing

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- Assesses an applicant's professional abilities
- Detects professional incompetence, malevolence, behavioral problems or other red flags



# Credentialing Frustrations

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- 1. Failure to Share**
- 2. Failure to Report**
- 3. Failure to Disclose**

# Credentialing Frustrations

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1. Google is more reliable than the responding institution
2. Yelp provides better reviews than the responding institution
3. The only thing you learn is dates of appointment

# Conditions of Participation

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- Conditions of Participation
  - The governing body must “ensure the criteria for selection [of the medical staff] are *individual character, competence, training, experience, and judgment.*” 42 CFR 482.12
  - ***The medical staff must examine credentials*** of candidates for medical staff membership and make recommendations to the governing body on the appointment of the candidates.

# The Joint Commission

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- MS. 06.01.03
- The hospital collects information regarding:
  - Current license
  - Training
  - **Experience**
  - **Competence, and**
  - **Ability to perform the requested privileges**



# Credential and Privilege to include the Six Core Competencies

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- Patient care
- Medical/clinical knowledge
- Practice-based learning and improvement
- Interpersonal and communication skills
- Professionalism
- System based practice



# Privileges must be

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## **Individualized**

- Practitioner
- Facility/Service

## **Relevant**

- Current
- Realistic

## **Supported by Objective Evidence**

- Training
- Experience

## **Continuously Monitored**

- OPPE



# Legal Corner



# Cases of Negligent Credentialing

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## 1. *Johnson v. Misericordia*

- False information & omitted information on the application
- Hospital did not verify the information

## 2. *Frigo v. Silver Cross Hospital (2007) (\$7,775,688)*

- Physician did not initially meet eligibility requirements
- Reappointed without meeting eligibility requirements

## 3. *Kadlec v. Lakeview Anesthesia Assoc. and Lakeview Medical Center*

- Peer references provided misleading information

# Negligent Credentialing

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## 4. *Darling v. Charleston Community Memorial Hospital (1965)*

- Hospitals have an independent duty to patients
- Reasonable care in selection of physician and granting of privileges

## 5. *Elam v. College Park Hospital (1992)*

- Hospitals owe a duty to insure the competency of its medical staff

## 6. *Larson v. Wasemiller (2007)*

- Hospital liable when granting privileges when they knew or should have known of the lack of qualifications



# Credentialing

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- Negligent Credentialing
  - Avoid negligent credentialing lawsuits
    - Must be in compliance with CMS/TJC and/or facility regulatory compliance
    - DOPs must be current
    - Match your Medical Staff bylaws/rules & regulations
    - Credentialing & privileging policies/procedures
    - Reflect what your physicians/practitioners are able to do within your facility
    - Assure physicians/practitioners are appropriately privileged to ensure patient safety



# Credentialing Red Flags

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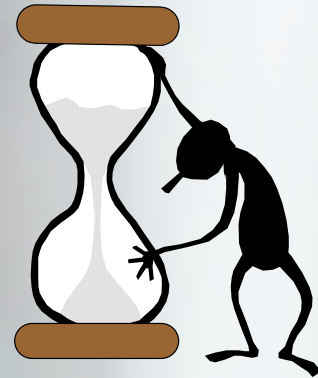


"I'm disappointed. If anyone should have seen the red flags, it's you."

# Red Flags – MSP Take Time

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- Bylaws – Specify a certain timeframe within which to act on a completed application
- Take time to review – evaluate, request additional document
- Burden is on the applicant – not the MSP



# Red Flags

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- Reports of problems in an applicant's professional practice
- Any prior investigation or action
- Unexplained or unaccounted time gaps
- Lack of response
- Multiple malpractice claims
- Frequent change of practice locations

# Red Flags

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- Multiple changes in professional liability carriers
- Neutral letter with no substance from prior affiliations
- Application and CV don't match
- No meaningful comments from references
- Failure to inform of WBC participation

# Red Flags

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- Time off during training
- Solo out-patient practice (no oversight)
- References not from same specialty
- Rumors, discussion, or documentation from peers, staff, patients or others related to professional conduct or possible impairment
- Change in appearance, behavior, aging

# Red Flags

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- Reference suggests call for more information or affiliation requires special release



# Red Flags

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- ***Trust your gut!***

ALWAYS TRUST  
YOUR GUT,  
IT KNOWS WHAT  
YOUR HEAD  
HASN'T  
FIGURED  
OUT YET.



# Medical Staff

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- Separate process
- Due process
- Notice opportunity to be heard
- Provides immunities and protections



# Contract

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- Easily managed
- No cause termination
- No hearing
- Problem goes away.....(maybe)



# Ani Chopourian v. Mercy Hospital

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- **\$168 Million Awarded in California Sex Harassment Suit**



# Ani Chopourian v. Mercy Hospital

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- Prior to trial Plaintiff moved to exclude evidence of
  - Prior wrongful termination and sexual harassment lawsuit against Kaiser
  - Plaintiff sharing details of her sex life with her co-workers
  - Plaintiff's credential file (defendant had previously refused to produce)

# Choices

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- **Employment Termination**

Benefits

- Fast
- Inexpensive (maybe)

Risks

- No immunities

- **Medical Staff or AHP Fair Hearing**

Benefits

- Immunity from Damages
- Fair

Risks

- Lengthy process (fix the process)
- High legal fees



# Protections and Immunities

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# Peer Review Privileges/Protections

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- Shields from discovery in professional liability cases
- State privileges/protections in place to promote candor in peer review



# Health Care Quality Improvement Act

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- Encourages peer review
- Provides immunity from damages for those who engage in peer review
- Applies to peer review actions in any state



# Health Care Quality Improvement Act

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- A professional review action must be taken
- (1) in the **reasonable belief that the action was in the furtherance of quality health care**
- (2) after a **reasonable effort to obtain the facts in the matter**

# Health Care Quality Improvement Act

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- (3) after adequate **notice and hearing procedures** are afforded to the physician involved or after such other procedures as are fair to the physician under the circumstances, and
- (4) in the reasonable belief that the **action was warranted by the facts known after such reasonable effort to obtain facts** and after meeting the requirement of paragraph (3)

# Immunities and Protections

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- State - Protected from damages in a civil action
- Health Care Quality Improvement Act

Patient  
Safety



Practitioner  
Rights

# Information Sharing

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# Sharing Information Internally

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## ▪ Information Recipients

- Risk Management
- Compliance/HR
- Administration
- System Facilities
- Medical Group

## Information Shared

- Investigations
- Recommended disciplinary action
- FPPE
- Behavior Contracts
- Requirements to avoid action (e.g., Remediation programs)
- Monitoring

# Sharing Information Externally

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- Other Hospitals
- Medical Groups
- Payers
- State Medical Boards
- Medical Associations, Societies

# What Information Should be Shared?

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- Anything reported to State Medical Board of NPDB
- Formal corrective action investigation
- Suspension for competence or conduct
- Behavior agreement
- FPPE for cause
- Any request for Fitness for Duty Evaluation

# What information should not be shared?

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- Well-Being Committee
- Settlement agreements
- Unsubstantiated complaints
- Rumors/unsubstantiated opinions
- Defamatory information



# Proactive Sharing

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- System Hospitals
- System Affiliates
- Investigation
- Corrective Action
  - Recommended action
  - Voluntary action
- Factual Notification
- Application/Reapplication Language
- Bylaws language
- Policy

# Responsive Sharing

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- Verify signed authorization
- Provide full and factual information
- Information must be based on supporting documentation
- Template responsive language for challenging practitioners

# Sharing Policy: Facility will consistently disclose

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- Clinical privileges summarily restricted or suspended
- MEC formally recommended termination, denial, or restrictions of clinical privileges or staff membership; and
- When MEC determines Release of information related to clinical quality or professional conduct is warranted.

# Sharing Policy

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- Internal
  - Human Resources
  - Quality
  - Risk Management
- External
  - Other facilities
  - Medical Group

# Sharing Policy

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- Verbal sharing
- Temporary Privileges
- No waiver of peer review privilege
- Peer Review Privilege/Protection
  - Applies to information shared and received

# What may be shared to expedite the Credentialing process?

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- Verifications (Medical School, Residency, Fellowship data)
- Education and training
- Faculty status
- Quality/OPPE
- Claims history
- Criminal background information
- Clinical privileges, etc.



# Sharing NPDB Reports within System

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## Yes, if....

- Centralized credentialing
- Centralized peer review process
- One decision making body
- One unified medical staff



## No, if ....

- Each hospital makes own credentialing decisions
- Grants privileges only at their facilities
- Has an independent medical staff and decision making body

# Sharing Credentialing Information

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- Between Medicare-certified hospitals (TJC)
  - General information that does not require PSV
  - Training verification w/evidence of PSV or credentials verification
  - Physical ability to perform requested privileges
  - Peer recommendations
  - OPPE/FPPE

*Include in policy*

# Sharing Agreement

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- Specific to single practitioner
- Includes specifics of what is to be released
  - Any and all documents related to any investigation or corrective action
- Special release and authorization

# Confidentiality

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- Both parties must maintain as confidential
- No discovery without written agreement of other party



# Authorization

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- Application
- Bylaws
- Policies
  - When is authorization required
- Special Authorizations

# Independent Duty to Evaluate

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- Nothing shared relieves entity of independent duty to evaluate practitioner
- Nothing shared relieves entity of duty to grant privileges
- Nothing shared prevents independent verification

# Protection/Confidentiality

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- Practitioner information is considered confidential peer review information and will be treated as such by all parties.
- This information has special protection under state and federal law.

# Steps to get started

- Define the need for your organization
  - Internal system sharing
  - External peer review body sharing
- Get buy-in from key stakeholders
  - Medical Staff, CMO, Risk Mgmt, Legal
- Develop a policy/sharing agreements
- Review bylaws language
- Acknowledgement at appointment



# Case Studies

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# Dr. Jones

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- Dr. Jones is a long-standing member of the medical staff who in recent years has had increased complications and recently a wrong side surgery. The MEC has asked him to completed a Fitness for Duty Exam and to voluntarily work with another surgeon. There has been no formal action.

# The Benign Affiliation Letter

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- ***Dr. Jones has been a member of the medical staff since May 4, 2016, until he resigned on March 15, 2019. He was a member of the Associate Staff.***

# The semi-Benign Affiliation Letter

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- *Dr. Jones has been a member of the medical staff since May 4, 2016 until he resigned on March 15, 2019. He was a member of the Associate Staff.*
- *Dr. Jones was not the subject of disciplinary action while a member of the Medical Staff.*

# The Mild Warning Letter

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- ***Dr. Jones has been a member of the medical staff since May 4, 2016 until he resigned on March 15, 2019. He was a member of the Associate Staff.***
- ***Dr. Jones was not the subject of disciplinary action while a member of the Medical Staff.***
- ***Any additional information will require a special release from Dr. Jones.***

# Dr. Rightwrong

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- Dr. Rightwrong has been on your staff for two years. During that time he has gained a reputation for being rude, hostile, and making weird remarks about other's appearance. He has been the subject of three collegial interventions. You recently received a report that he showed up in the cath lab slurring some words and smelling of alcohol. Before anyone could ask him about it, he left. He resigned two days later.

# Dr. Rightwrong

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- After receiving the request, you
  - a) Do nothing and don't respond;
  - b) Respond with the dates of affiliation;
  - c) Respond with the dates of affiliation and request for special authorization and sharing agreement
  - d) Respond with information regarding behavior and collegial interventions
  - e) Respond that he showed up drunk on the job

# Dr. Challenge

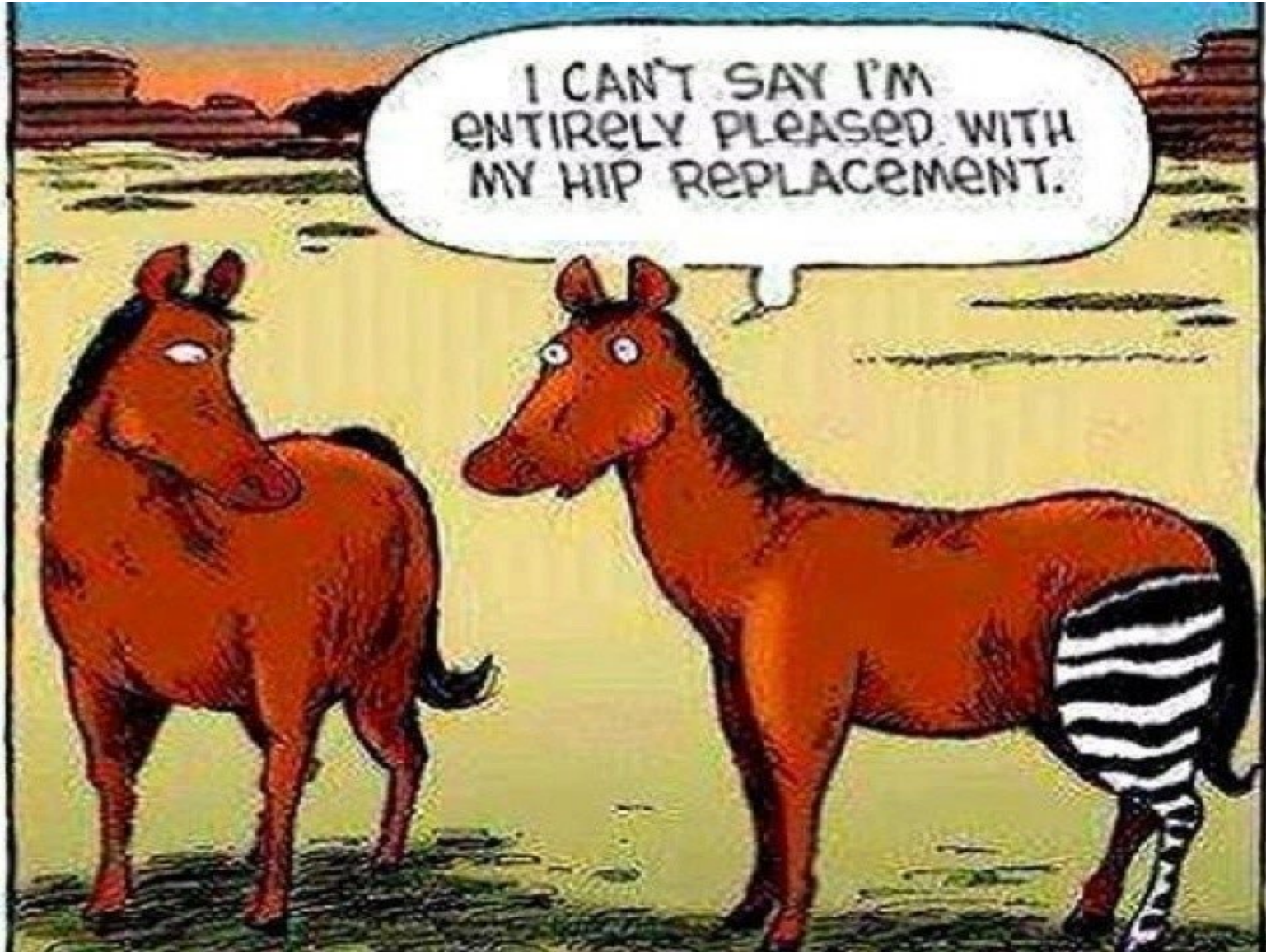
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- Dr. Challenge is a recent recruit and from day 1 he has been challenging. He refuses to follow policy and submit documentation of vaccines, he insists on having special equipment in the OR, and he is constantly demanding that only trained staff work in his room. He claims the existing work-flow process needs to be changed for patient safety and is frustrated when told no. He now is applying at a sister facility.

# Dr. Challenge

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- After receiving the request for information you,
  - a) Call the Director and ask her to share the vaccine information if she receives it,
  - b) Send a letter with appointment dates and good status
  - c) Send a letter stating that Dr. Challenge has been very demanding and difficult
  - d) Fail to respond









## Speaker

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