

Physician Reference Letters: Honest Appraisal Is the Safest Policy

Physicians often are called upon to write letters of reference for colleagues who seek appointments at other hospitals, pursuant to the Joint Commission's medical staff credentialing standards.* There is generally no duty to write a letter of reference, unless the writer has a fiduciary or confidential relationship with the other party to the communication. However, when such letters are undertaken, they are expected to be honest, fair and substantive, serving to protect patients from injury due to substandard medical care, and the requesting hospital from resulting claims of negligence.

Certain issues may arise in writing letters of reference for fellow physicians. For example, the reference request may concern an individual with whom one worked years earlier, making it a challenge to recall specific examples and details. In addition, providing a reference for a practitioner perceived as "difficult" presents inherent risks, as illustrated by the following liability scenario:

A physician wrote an uncritical appraisal of a friend and colleague for a prospective hospital employer, neglecting to mention that the applicant – an anesthesiologist – had been terminated from employment after it was discovered that he had diverted narcotics for personal use. The hospital's credentialing committee relied on the letter when deciding to appoint the candidate to its medical staff. Later, while under the influence of drugs, the anesthesiologist committed a serious medical error, which left a patient in a permanent vegetative state. The victim's family filed a professional liability lawsuit against the negligent physician and the hospital, with both parties arriving at an out-of-court settlement.

Shortly thereafter, the hospital filed a lawsuit against the physician for failing to disclose the candidate's employment history and on-duty use of narcotics. The court ruled the physician had engaged in negligent misrepresentation when he described the candidate as "excellent," "capable in all anesthesia fields" and "highly recommended." He was ordered to pay \$8.2 million in damages, which represented the settlement paid to the plaintiff by the employing hospital, as well as related legal fees.

The professional liability insurer of the physician who wrote the reference refused to indemnify him, noting that the policy guaranteed payment only for "covered bodily injury." Since the physician was not personally responsible for the patient's injury, coverage did not apply. [Kadlec Medical v. Lakeview Anesthesia Associates, 527 F. 3d 412–Court of Appeals, 5th Circuit 2008.]

* According to the Joint Commission Medical Staff Elements of Performance, included in the 2011 Comprehensive Accreditation Manual for Hospitals, hospitals must secure and evaluate peer recommendations upon initial appointment and again at reappointment, if practitioner-specific data are insufficient. Generally, three references – a number based on custom, history and habit – are sought during the application process.

Composing anything more than a perfunctory reference letter requires time, concentration and an understanding of the potential liability pitfalls, as exemplified by the case history. This issue of *AlertBulletin®* offers practical advice to guide physicians through the peer reference process. The goal is to reduce exposure to allegations of intentional or negligent misrepresentation, as well as to claims alleging defamation.

Before writing a letter of reference, remember to ...

- clarify whether the letter is one of reference or professional recommendation – i.e., whether it involves a full evaluation of the applicant or only a description of his/her strengths
- assess the risks of writing a less than positive referral, and consider the possibility of discussing one's concerns with the applicant
- reserve sufficient time to perform the task in a conscientious manner, declining the request if adequate time is not available
- meet with the individual, if necessary, to refresh one's memory about specific experiences, training, character and professional performance
- commit oneself to an honest and forthright appraisal, reflecting fundamental professional and ethical obligations
- comply with federal and state privacy and confidentiality laws and regulations regarding the disclosure of personal and/or medical information, consulting with legal counsel for clarification and guidance

When composing the letter of reference, it is advisable to ...

- follow an established format, addressing only the person specified by the applicant (See "Sample Reference Letter Format," on the reverse side.)
- select one's words with care, ensuring that all statements are factual and fair
- discuss the applicant's most germane characteristics, including, but not limited to, observations regarding
 - medical knowledge
 - technical proficiencies
 - clinical competence
 - integrity
 - motivation
 - communication/interpersonal skills
 - administrative capabilities

- *communicate straightforwardly about concerns and weaknesses, as well as abilities and strengths*
- *ensure that all statements comply with legal protections regarding quality-related data, and refrain from disclosing facts discovered through the peer review process, which is subject to a high level of confidentiality*
- *comply with ethical obligations, sharing information that may affect patient safety, if it is not otherwise protected from disclosure*
- *exercise caution with “difficult” physicians, confirming that every potentially adverse statement is supported by documentation in hospital and/or patient files*
- *offer to further explicate the letter’s content, if the recipient requires clarification*

Before sending the letter, verify that ...

- *it contains no false and derogatory statements, which may potentially serve as grounds for a defamation suit by the applicant*
- *comments are accurate, grounded in firsthand knowledge and supported by factual detail*
- *it is reviewed by a human resources professional and/or legal counsel, and approved for mailing*

Medical staff reference letters are a vital quality control measure for hospitals, helping maintain appropriate standards of competence, character and conduct. Writing such a letter is a serious responsibility, which should be undertaken in good faith and with a full awareness of professional expectations and possible risks.

RESOURCE

Marcoux, M. “How to Respond to Reference Requests Regarding Difficult Physicians.” *Birmingham Medical News*, December 2009. Available at <http://birminghammedicalnews.com/news.php?viewStory=1334>.

SAMPLE REFERENCE LETTER FORMAT

Dr. S. Smith
Medical Staff President
ABC Medical Center
Anytown, USA

Date

Dear Dr. Smith:

Paragraph 1

Clearly state the purpose of the letter – e.g., *“I am writing on behalf of Dr._____, in reference to his/her prospective medical staff appointment at ABC Medical Center in Anytown, USA.”*

Paragraph 2

Indicate how long one has known the individual under consideration, and in what capacity.

Paragraph 3

Delineate the candidate’s experience, capabilities and commitment to patient safety, focusing on such areas as medical knowledge, technical skill and clinical competence.

Paragraph 4

Discuss the candidate’s level of professionalism and moral character, including, but not limited to, his/her integrity, motivation, communication skills, and relationships with colleagues, staff and patients.

Paragraph 5

Note areas of possible concern, if applicable, in a brief and straightforward manner, supported by verifiable facts.

Paragraph 6

Conclude on a general evaluative note – e.g., *“For reasons discussed in this letter, I support the appointment of Dr._____ to the medical staff of ABC Medical Center”* – or, conversely, *“For the foregoing reasons, I must register my reservations regarding the appointment of Dr._____ to the medical staff of ABC Medical Center.”*

Yours sincerely,

J. Jones, M.D./D.O.



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