

Medical Staff Bylaws Review of Relevant Georgia Law

What are the hospital's legal requirements under Georgia law?

Every hospital must have a working governing body that is responsible for the conduct of the hospital as an institution and that provides for effective hospital governance, management, and budget planning. [GA Comp. R. & Regs. 111-8-40-.09.](#)

The governing body includes the hospital authority, board of trustees or directors, partnership, corporation, entity, person or group of persons who maintain and control the hospital. [GA Comp. R. & Regs. 111-8-40-.02.](#)

What are the duties of the hospital relating to the medical staff?

The governing body must appoint members of the medical staff within a reasonable period of time after considering the recommendations of any medical staff, and will ensure the following:

1. That every inpatient is under the care of a qualified member of the medical staff;
2. That the medical staff is organized and operates under medical staff bylaws and medical staff rules and regulations, which will become effective when approved by the governing body; and
3. That the medical staff answers to the governing body for the quality of all medical care provided to patients in the hospital and for the ethical and professional practices of its members while exercising their hospital privileges. [GA Comp. R. & Regs. 111-8-40-09\(b\).](#)

In addition, [GA Comp. R. & Regs. 111-8-40-.11](#) also states that each hospital must have an organized medical staff that operates under bylaws adopted by the medical staff and approved by the governing body. The bylaws may provide for the exercise of the medical staff's authority through committees. This means that individuals who are granted clinical privileges at the hospital, as well as individuals who perform physician-delegated tasks, are usually governed by the medical staff bylaws of the hospital. Other practitioners who do not report directly to the medical staff may function as hospital employees and be governed by the policies and procedures of the hospital.

The governing body will ensure that the hospital is staffed and equipped adequately to provide the services it offers to patients, whether the services are provided within the facility or under contract. All organized services providing patient care must be under the supervision of qualified practitioners. [GA Comp. R. & Regs. 111-8-40-.09\(f\).](#) Services offered should not exceed the space, equipment, and staff training that the service will require.

Part of the hospital's responsibilities are to ensure that an adequate, competent medical staff serves the patients within the hospital. *Whitaker v. Houston County Hospital Authority*, 272 Ga.App. 870 (2005). The hospital has the power to revoke staff privileges of a physician whom the hospital finds to be incompetent or who fails to comply with the reasonable rules and regulations as promulgated by the hospital. *Whitaker v. Houston County Hospital Authority*; *Yeargin v. Hamilton Mem. Hosp.*, 229 Ga. 870 (1972).

Additionally, the hospital has broad authority to control the administrative, operational, and managerial functions of the facility and its staff. The courts will defer to policies adopted by the hospital's governing body in furtherance of the administration, operation and control of the hospital. *Cobb County Kennestone Hosp. Auth. v. Prince*, 242 Ga. 139 (1978); *Satilla Health Services v. Bell*, 280 Ga.App. 123 (2006).

Who is the medical staff?

The medical staff is defined as the body of licensed physicians, dentists, and/or podiatrists, appointed or approved by the governing body, to which the governing body has assigned responsibility and accountability for the patient care provided at the hospital. [GA Comp. R. & Regs. 111-8-40-.02\(j\)](#).

Any physician, podiatrist, or dentist providing patient care, whether directly or by contract with the hospital, will obtain clinical privileges through the hospital's medical staff credentialing process. [GA Comp. R. & Regs. 111-8-40-.11\(a\)](#).

All patient care services provided by the hospital will be under the direction of a member of the medical staff or a licensed physician, dentist, osteopath, or podiatrist who has been granted hospital privileges. [GA Comp. R. & Regs. 111-8-40-.19](#).

What are the medical staff responsibilities?

1. Examination of credentials of any candidate for medical staff membership;
2. Examination of credentials for any other individuals seeking clinical privileges;
3. Recommendations to the governing body concerning appointment of such candidates. [GA Comp. R. & Regs. 111-8-40-.11\(a\)\(2\)](#).

Does the medical staff have other responsibilities mandated by law?

1. The medical staff must evaluate at least biennially the credentials and professional performance of any individual granted clinical privileges for consideration for reappointment;

2. Establish a system for the approval of temporary or emergency staff privileges when needed;
3. Require that all individuals granted clinical privileges comply with generally accepted standards of practice;
4. Implement measures, including peer review, to monitor the ongoing performance of the delivery of patient care by those granted clinical privileges, including monitoring of compliance with the medical staff bylaws, rules and regulations, and hospital policies and procedures;
5. Establish effective systems of accountability for any hospital services ordered by physicians and other practitioners;
6. Review and, when appropriate, recommend to the governing body denial, limitation, suspension, or revocation of the privileges of any practitioner who does not practice in compliance with the scope of privileges, the medical staff bylaws, rules and regulations, generally accepted standards of practice, or hospital policies and procedures. [GA Comp. R. & Regs. 111-8-40-.11.](#)

To whom is the medical staff accountable?

They will be accountable to the governing body for the quality of medical care provided to all patients. [GA Comp. R. & Regs. 111-8-40-.11\(b\).](#)

Is the medical staff a self-governing body?

Yes, the medical staff of the hospital must adopt and enforce bylaws and rules and regulations which provide for the self governance of medical staff activities and accountability to the governing body for the quality of care provided to all patients. [GA Comp. R. & Regs. 111-8-40-.11\(c\).](#)

When do the medical staff bylaws become effective?

They will become effective when approved by the governing body. [GA Comp. R. & Regs. 111-8-40-.11\(c\).](#)

What are the minimum requirements that must be included in the medical staff bylaws?

The following must be addressed in either the facility's medical staff bylaws or rules and regulations:

1. A mechanism for participation of medical staff in policy decisions related to patient care in all areas of the hospital;

2. A plan for administrative organization of the medical staff and committees thereof, which clearly delineates lines of authority, delegation, and responsibility for various tasks and functions;
3. Description of the qualifications and performance to be met by a candidate in order for the medical staff to recommend appointment or reappointment by the governing body;
4. Criteria and procedures for recommending the privileges to be granted to individual physicians, dentists, or podiatrists;
5. A requirement that members of the medical staff comply with ethical and professional standards;
6. Requirements for regular health screenings for all active members of the medical staff that are developed in consultation with hospital administration, occupational health, and infection control/safety staff. The health screenings must be sufficient to identify conditions which may place patients or other personnel at risk for infection, injury, or improper care. There must also be a mechanism for the reporting of the screening results to the hospital, either through the medical staff or otherwise;
7. A mechanism for ensuring physician response to inpatient emergencies twenty-four (24) hours per day;
8. A mechanism for physician coverage of the emergency department and designation of who is qualified to conduct an emergency medical screening examination where emergency services are provided;
9. A requirement that referral for consultations will be provided to patients when a patient's physical or mental condition exceeds the clinical expertise of the attending member of the medical staff;
10. The requirements for the patient's history and physical examination, which must be performed either within twenty-four (24) hours after admission or within the thirty (30) days prior to admission and updated upon admission. See Rule 290-9-7-.28(a)(2) for history and physical requirements when surgery is being performed;
11. Establishment of procedures for the choice and control of all drugs in the hospital;
12. The requirements for the completion of medical records;
13. The requirements for verbal/telephone orders, to include which Georgia-licensed or Georgia-certified personnel or other qualified individuals may

receive verbal/telephone orders, and the acceptable timeline for authentication of the orders, not to exceed the timeline requirements of these rules;

14. A mechanism for peer review of the quality of patient care, which includes, but is not limited to, the investigation of reportable patient incidents involving patient care as described in Rule 290-9-7-.07(2)(a); and
15. A procedure for review and/or update of the bylaws and rules and regulations as necessary, but at least once every three (3) years. [GA Comp. R. & Regs. 111-8-40-.11\(c\)](#).

What other medical staff policies need to be addressed if not stated in the medical staff bylaws?

1. Criteria for when an autopsy will be sought and a requirement that the attending physician be notified when an autopsy is performed; and
2. A requirement that every member of the medical staff provide appropriate medical care for each of their patients until the patient is stable for discharge or until care of the patient has been transferred to another member of the medical staff or to another facility. [GA Comp. R. & Regs. 111-8-40-.11\(d\)](#).

Is the medical staff a separate entity from the hospital governing board for purposes of being sued?

No. The medical staff is not a separate entity capable of being sued independent of the hospital authority. *Ramey v. Hospital Auth. of Habersham County, et al*, 218 Ga.App. 618 (1995).

What if the hospital does not provide emergency services as an organized service?

If the hospital does not provide emergency services as an organized service, the governing body must ensure that the hospital has written policies and procedures approved by the medical staff for the appraisal of emergencies, the initial treatment of emergencies, and the referral for emergency patients as appropriate. [GA Comp. R. & Regs. 111-8-40-.09\(c\)](#).

Protocols for handling emergencies at the hospital should designate which staff are responsible for appraisal of the patient's condition, what initial treatment the hospital is equipped and staffed to provide, and a procedure and system for contacting a physician for consultation.

What are the time limits for a public hospital to make a determination on a physician’s staff privileges?

Generally, Georgia law requires a final determination within 90 days following the receipt of the application.

Whenever any licensed doctor of medicine, doctor of podiatric medicine, doctor of osteopathic medicine, or doctor of dentistry applies for permission to treat patients in any hospital owned or operated by the state, any political subdivision thereof, or any municipality, the hospital must act promptly and in a nondiscriminatory manner and consider the applicant on the basis of the applicant's demonstrated training, experience, competence, and availability and reasonable objectives, including, but not limited to, the appropriate utilization of hospital facilities. Final action must be taken within 90 days following receipt of the application. [O.C.G.A. 31-7-7\(a\)](#).

What are the time limits for a public hospital to notify a physician of a refusal or revocation of staff privileges?

The hospital must submit written notification to a physician within **10 days** of refusing or revoking their privilege.

Whenever any public hospital, any political subdivision thereof, or any municipality refuses to grant a licensed doctor of medicine, doctor of podiatric medicine, doctor of osteopathic medicine, or doctor of dentistry the privilege of treating patients in the hospital in any way, or revokes the privilege of such licensed medical practitioner for treating patients in such hospital in any way, the hospital must furnish the licensed medical practitioner whose privilege has been refused or revoked with a written statement of the reasons for the refusal or revocation within 10 days. [O.C.G.A. 31-7-7\(b\)](#).

Can a hospital automatically terminate a physician’s privileges when a hospital signs an exclusive provider contract?

Not unless this is allowed in the bylaws. If the hospital's medical staff bylaws do not authorize a hospital to automatically terminate a physician’s privileges when the hospital signed an exclusive provider contract with another physician’s practice, then the bylaws do not authorize a hospital’s board of directors to automatically terminate a physician’s clinical privileges in favor of the exclusive contract. *Satilla Health Services v. Bell*.

In addition, for a hospital to ensure its right to terminate staff privileges to maintain exclusive relationships, the hospital must so provide in the medical staff bylaws or in a contract with the individual physicians, and not in the contracts with

the physician's professional corporation. *Satilla Health Services v. Bell; St. Mary's Hosp. of Athens v. Radiology Professional Corp.*, 205 Ga.App. 121 (1992).

Does a physician have an absolute right to practice in a hospital?

No. The Georgia Supreme Court has recognized that a physician does not have an absolute right to practice in a given public hospital. However, the physician does have a privilege to practice in a public hospital as long as he complies with the applicable laws, rules, and regulations and such privileges may not be deprived by rules, or acts that are unreasonable, arbitrary, capricious or discriminatory. *Whitaker v. Houston County Hospital Authority; Dunbar v. Hosp. Auth. of Gwinnett County*, 227 Ga. 534 (1971).

This duty extends to private hospitals through *St. Mary's Hosp. Of Athens, Inc. v. Radiology Prof'l Corp.*.

Can a hospital exclude a privileged physician from access to a hospital's facilities?

A hospital cannot automatically exclude a physician from having access to the hospital's facilities and resources, when it signed exclusive provider contract with another practice, unless it reserved the right to do so in its bylaws, or in individual contracts with the physicians, or the physician would have to acquiesce or waive their right to challenge an automatic termination of their privileges. *Satilla Health Services v. Bell*.

The hospitals could not terminate the clinical privileges of physicians without complying with their bylaws, and practical effect of denying the physician's access would be the same as terminating clinical privileges. *Satilla Health Services v. Bell*.

Can a physician maintain an action against a hospital when the hospital fails to comply with its bylaws and arbitrarily revokes staff privileges?

Yes. A physician can bring a cause of action pursuant to [O.C.G.A. 51-1-6](#), which states:

When the law requires a person to perform an act for the benefit of another or to refrain from doing an act which may injure another, although no cause of action is given in express terms, the injured party may recover for the breach of such legal duty if he suffers damage thereby.

Under Georgia law, hospitals must comply with their bylaws when making determinations regarding staff privileges. This ensures hospitals do not arbitrarily and capriciously deprive physicians of the right to practice at the hospital. *Lee v.*

Hospital Authority, 397 F.3d 1327 (11th Cir. 2005); *St. Mary's Hosp. Of Athens, Inc. v. Radiology Prof'l Corp.*.

Georgia law does not demand absolute adherence to the bylaws, only substantial compliance to ensure that physicians are not arbitrarily deprived of their staff privileges. *Lee v. Hospital Authority; Widen v. Atlanta Hosp. Sub. Issue B, Inc.*, 194 Ga.App. 890 (1990).

Do the medical staff bylaws create a contractual right to a continuation of staff privileges?

No. Hospitals have the authority to establish and revise rules and regulations governing the appointment of physicians to the hospital staff which precludes the medical staff bylaws, by themselves, creating a contractual right to a continuation of staff privileges. *Whitaker v. Houston County Hospital Authority; Stein v. Tri-City Hosp. Auth.*, 192 Ga.App. 289 (1989).

Hospitals are entitled to change the staff bylaws or the terms of the appointment even if the act results in the termination of a physician's staff privileges. *Whitaker v. Houston County Hospital Authority; Stein v. Tri-City Hosp. Auth.; Alonso v. Hosp. Auth. of Henry County*, 175 Ga.App. 198 (1985).

However, the hospital cannot abridge or refuse to follow existing bylaws concerning staff privileges. *Whitaker v. Houston County Hospital Authority; Stein v. Tri-City Hosp. Auth.*

This creates the legal duty that is actionable against public hospitals pursuant to [O.C.G.A. 51-1-6](#); *Whitaker v. Houston County Hospital Authority*.

Does a hospital have an unlimited right to enter into exclusive contracts with physicians?

No. The hospital can enter into exclusive contracts with physicians, but it must do so in a manner that recognizes the rights and responsibilities of existing hospital medical staff bylaws in providing care to the patients. *St. Mary's Hosp. Of Athens, Inc. v. Radiology Prof'l Corp.; Satilla Health Services v. Bell*.

Does Georgia law allow the hospitals to use economic credentialing when determining medical staff privileges?

Georgia law authorizes hospitals to take into consideration the utilization of hospital resources. [O.C.G.A. 31-7-7](#). Although the hospital could argue the language authorizes economic credentialing, the statute is only intended to limit excessive demand for hospital resources.

Helpful Links:

- MAG's Model Medical Staff Bylaws, <http://www.mag.org/resources/legal-resources/model-medical-staff-bylaws>
- Georgia Rules and Regulations, <http://rules.sos.state.ga.us/cgi-bin/page.cgi?d=1>
- Georgia Code, <http://ga.elaws.us/>