# Legal Ethics: Working with Hospital Leadership–Who is the Client?


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# Overview

- Overview of Hospital/Medical Governance
- Review of Key Ethics Rules
- Hypotheticals
- Takeaways

# Challenges of Medical Staff Representation

- **Hospital is the client**
  - Governing body is the final decision-maker.
- Dual reporting structure – executive and medical staff
  - Medical staff reporting structure bypasses executive.
  - Medical staff recognized as separate entity in some jurisdictions.
  - Physician leaders have multiple interests.
- Successive layers of internal review
  - Many “interested parties.”

HOSPITAL

**Board**

Board Chair

**CEO**

**MEC**

Medical Staff President

CMO

CFO

COO

CNO

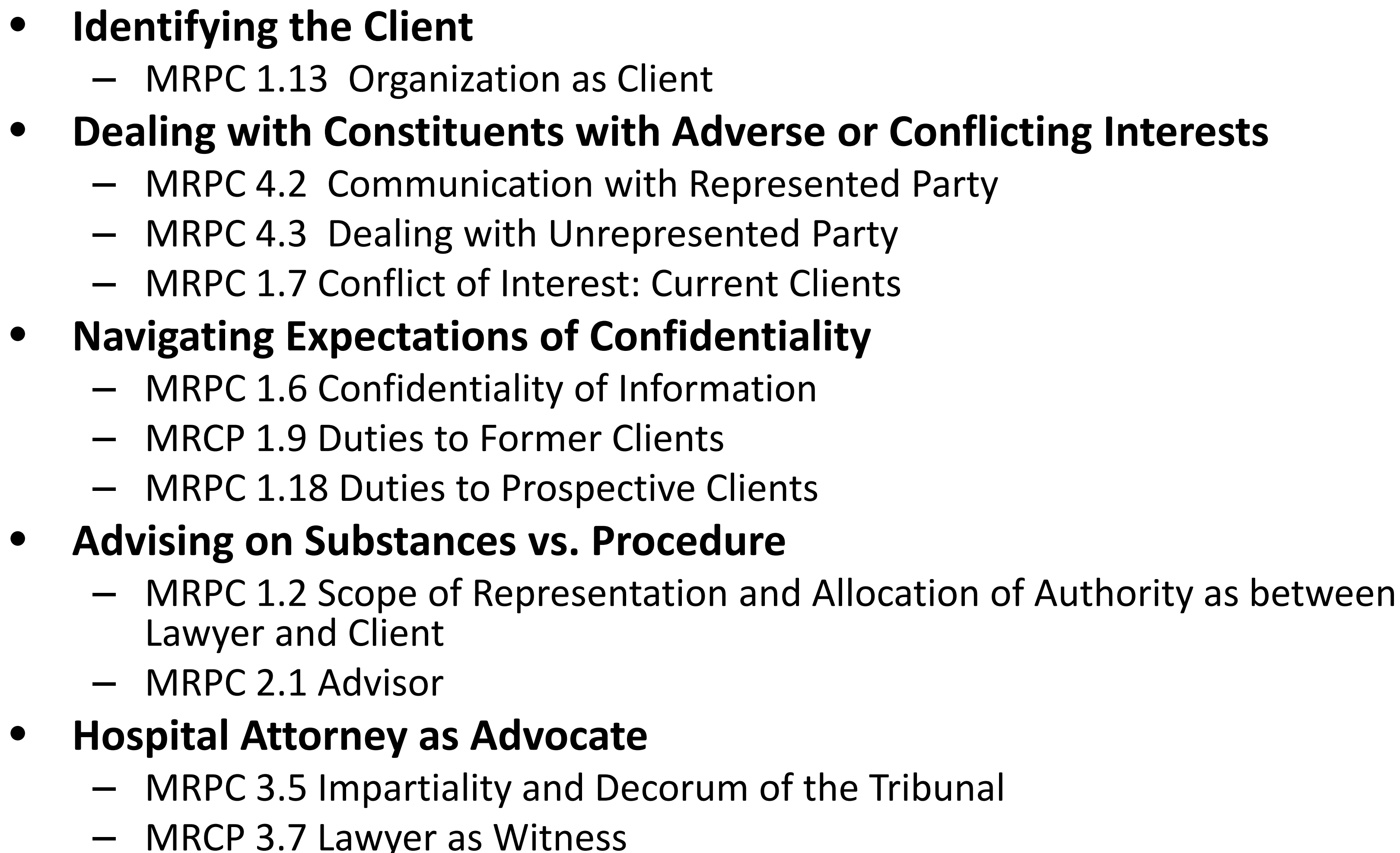
Department Chiefs

Physicians

Hospital Staff

**Who is my client?**

# Key Ethics Rules (AMA Model Code)

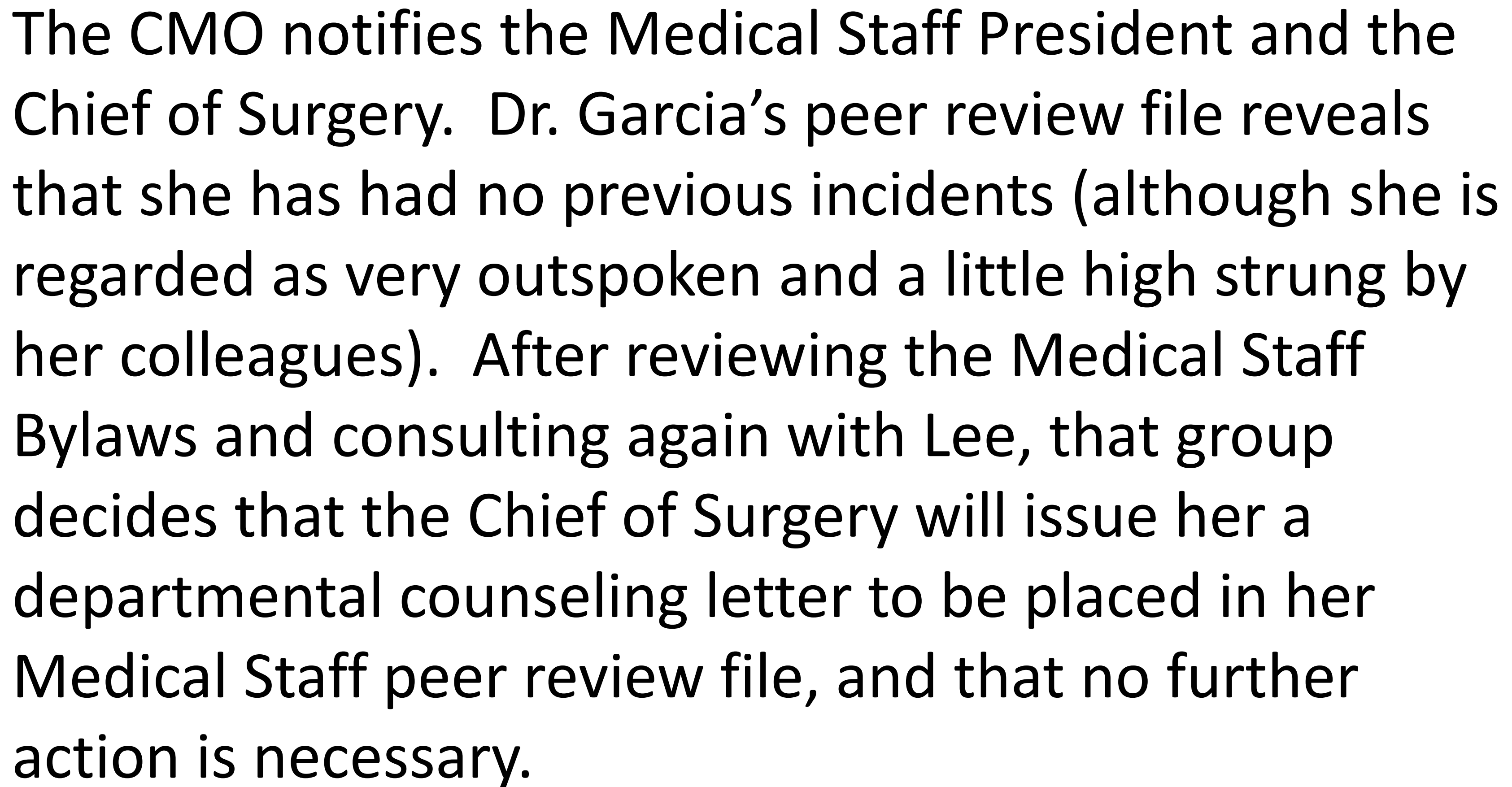


# Fun and games

Dr. Juliette Garcia and Dr. Joe Smith are chatting about baseball in the OR during a procedure. Dr. Garcia tosses a used sponge to Dr. Smith, saying "catch!" Dr. Smith is caught unaware and the sponge hits him in the face and slides down his gown to the floor. Dr. Garcia apologizes and they complete the procedure. After it is over, Dr. Smith picks up the sponge and examines it, then leaves quickly.

One of the circulating nurses calls the CNO and reports the incident, saying that Dr. Smith and the rest of the surgical team were upset. The CNO notifies the CMO and the CMO asks Medical Staff counsel, Jim Lee, for a confidential consult.

# “She’s just quirky.”



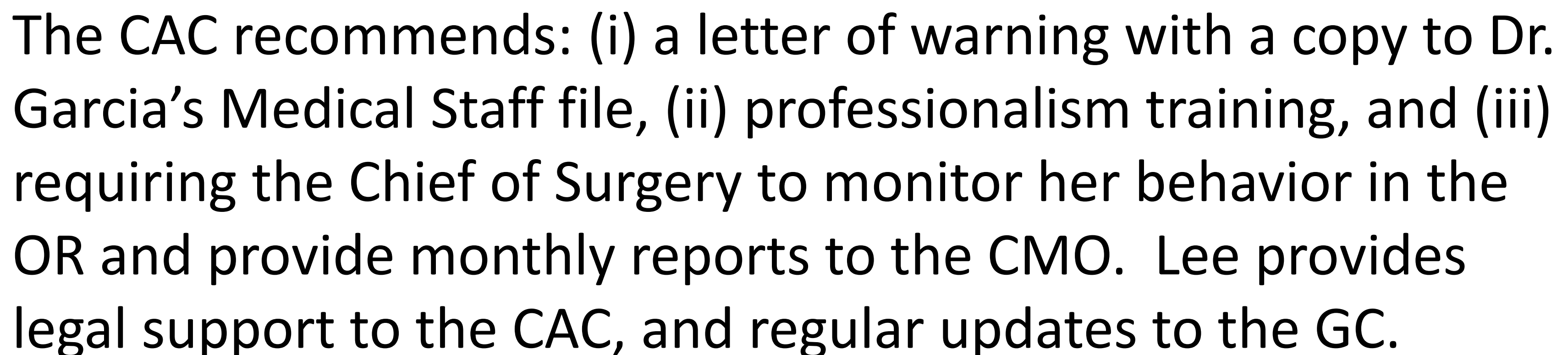
# “Are you kidding?!”

Lee advises the General Counsel of the decision.

The GC, concerned about enterprise risk, determines that the response is not serious enough and that a full corrective action is warranted. The GC directs the CMO not to implement the measures that had previously been decided upon by the CMO, Surgery Chair and MS President, and instead make sure that corrective action is initiated.

# “Its not that big a deal.”

A Corrective Action Committee is convened. The CAC conducts a series of interviews, and learns, *inter alia*, that the sponge did not have blood on it, but did have traces of bodily fluids and Dr. Smith was concerned enough about it that he elected to undergo HIV testing. Dr. Garcia was contrite; she had already apologized to Dr. Smith, who had accepted the apology.

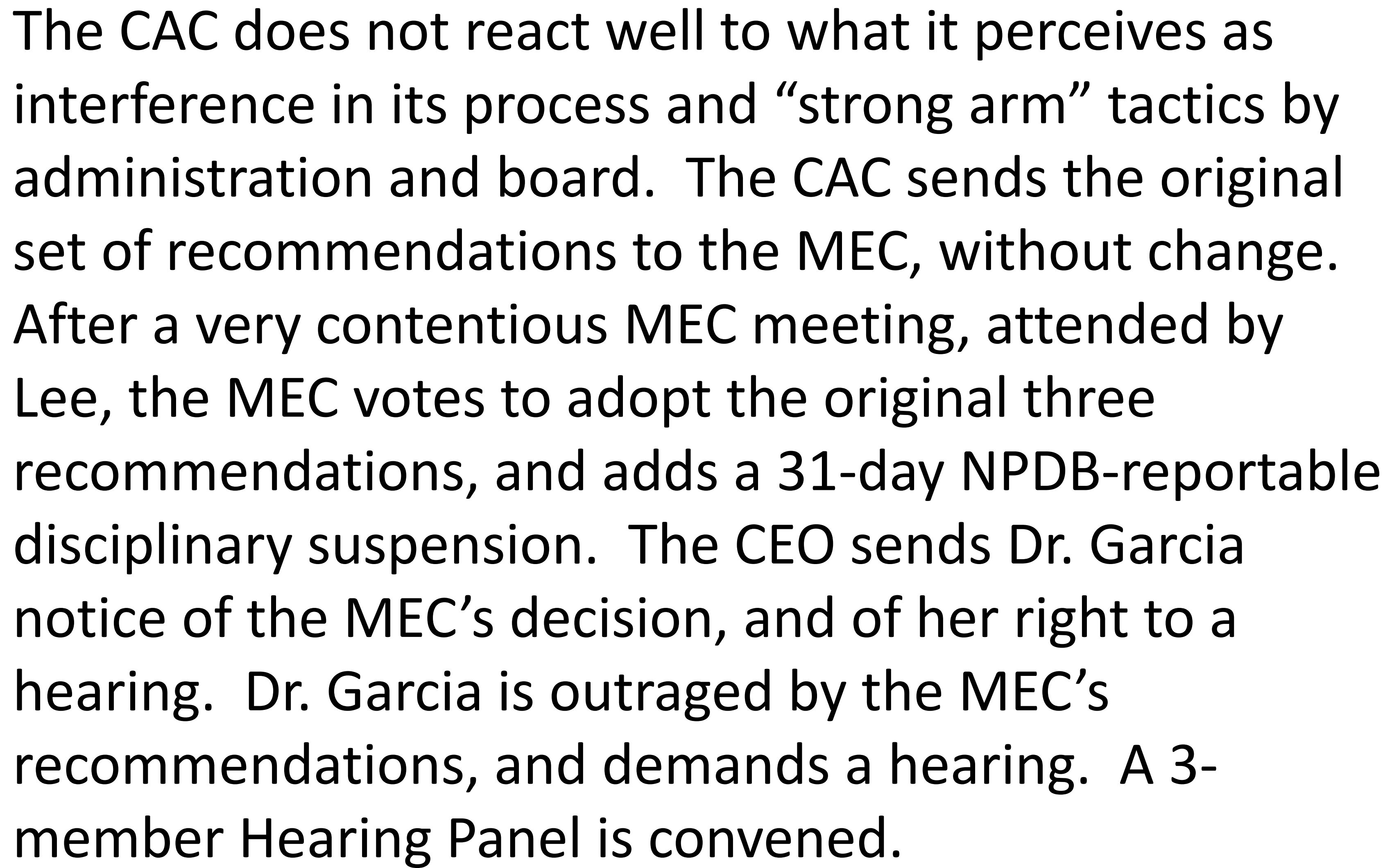


The CAC recommends: (i) a letter of warning with a copy to Dr. Garcia’s Medical Staff file, (ii) professionalism training, and (iii) requiring the Chief of Surgery to monitor her behavior in the OR and provide monthly reports to the CMO. Lee provides legal support to the CAC, and regular updates to the GC.

# "Oh, yes it is!"

Dr. Smith is good friends with the Board Chair (BC). Over lunch, Dr. Smith tells the BC about the OR sponge incident. BC is incensed and concerned about the hospital's liability exposure and potential media frenzy this could cause if word got out. He is also concerned about staff morale. BC calls CEO and insists that this unprofessional assault cannot be tolerated and that the surgeon must go. CEO calls Lee and tells him the CAC needs to recommend revocation of medical staff membership and clinical privileges. Lee calls the GC who tells him to "stay within ethical bounds" but that "we want to try and keep CEO and BC happy if possible."

# “You’re not our boss!”



# Circling the wagons.

At the hearing, Garcia's counsel puts on a compelling case that Garcia is an excellent surgeon, other surgeons have engaged in similar conduct without consequence, and that an NPDB Report would be "career ending."

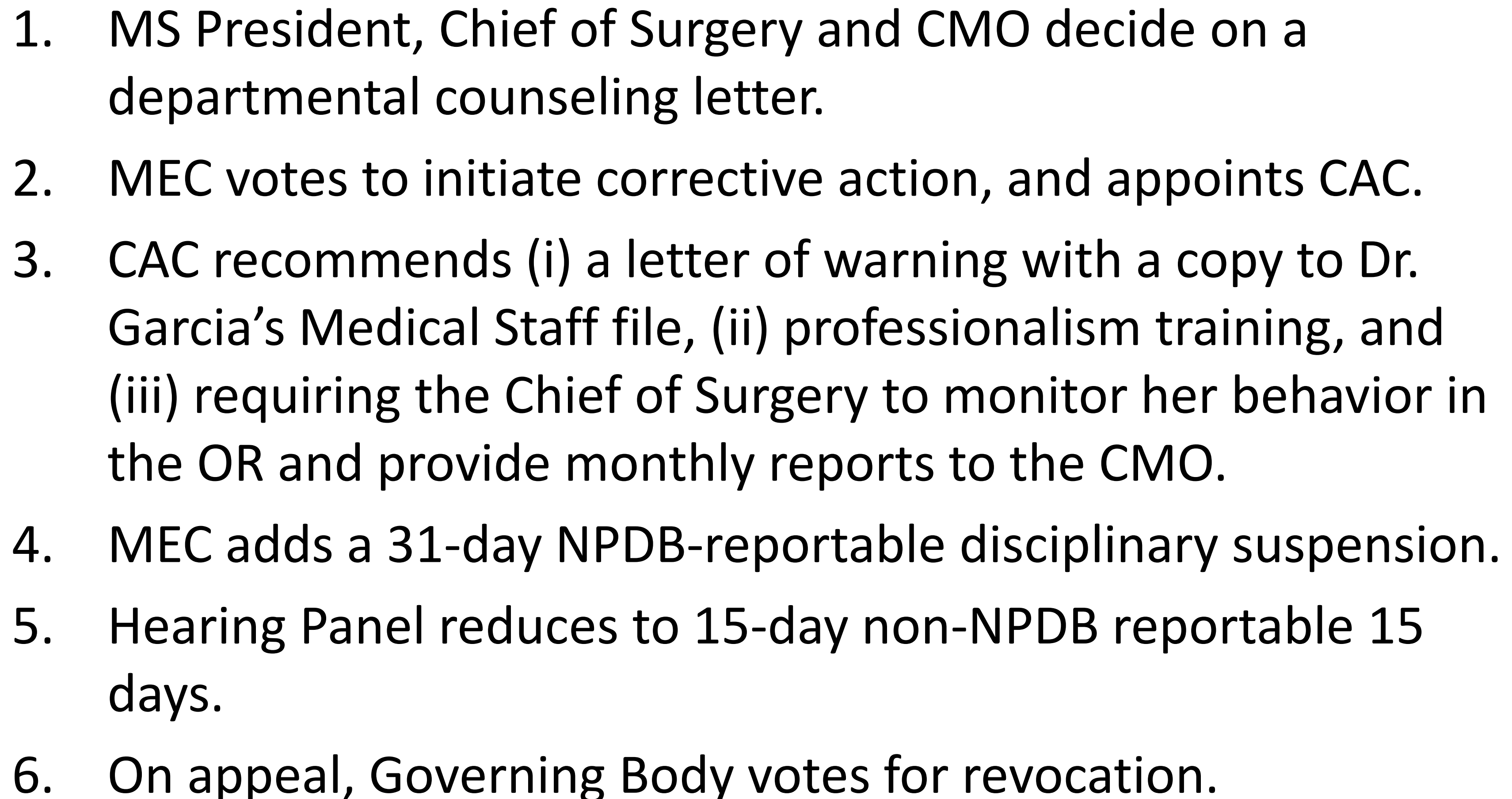
Lee is present throughout the process, and later reports to the GC that the Hearing Panel seems sympathetic to Garcia and unlikely to even support a 31-day suspension. The GC is concerned.

# Just when you think it can't get worse!

The Hearing Panel votes to reduce the 31-day NPDB-reportable suspension to a 15-day suspension and retain the other three recommendations intact. Both parties appeal the Hearing Panel's recommendation. After the MEC's counsel and Garcia's counsel present their arguments on appeal, the Board deliberates. The BC, CEO and GC are all present.

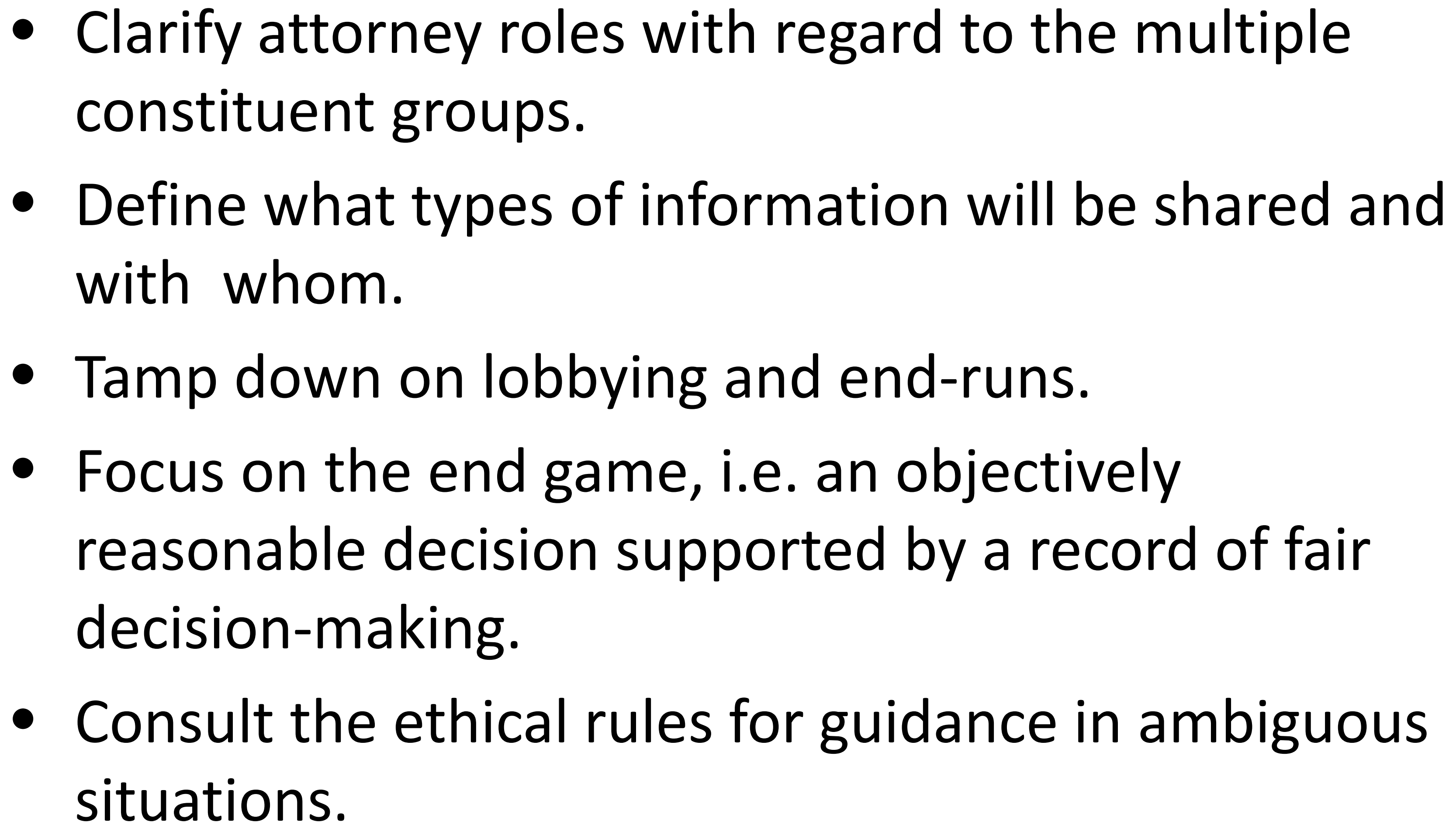
The Board votes to revoke Dr. Garcia's medical staff membership and clinical privileges.

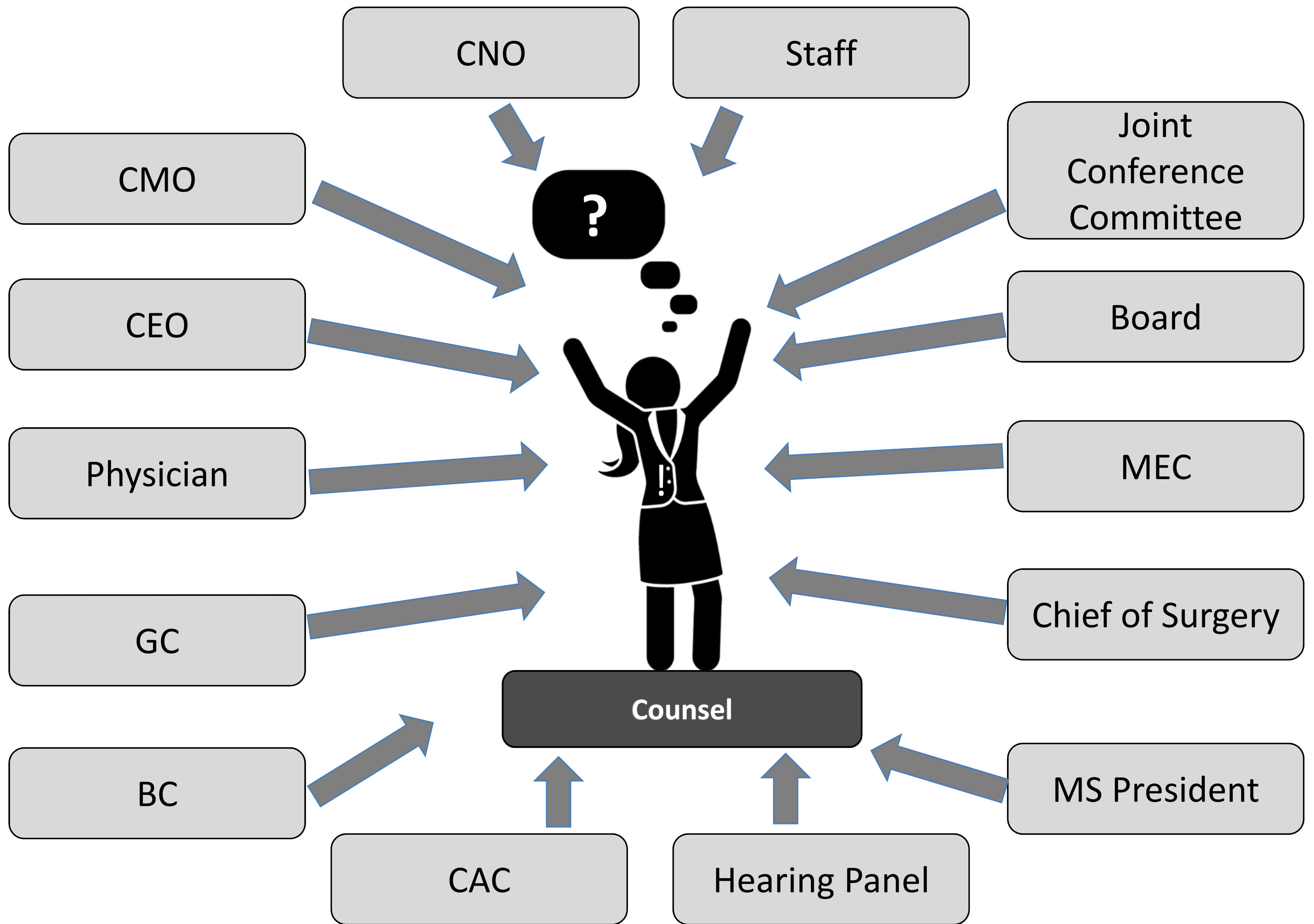
# Recap of Disciplinary Process



1. MS President, Chief of Surgery and CMO decide on a departmental counseling letter.
2. MEC votes to initiate corrective action, and appoints CAC.
3. CAC recommends (i) a letter of warning with a copy to Dr. Garcia's Medical Staff file, (ii) professionalism training, and (iii) requiring the Chief of Surgery to monitor her behavior in the OR and provide monthly reports to the CMO.
4. MEC adds a 31-day NPDB-reportable disciplinary suspension.
5. Hearing Panel reduces to 15-day non-NPDB reportable 15 days.
6. On appeal, Governing Body votes for revocation.

# Takeaways




CNO
Staff
CMO
Joint Conference Committee
?
CEO
Board
Physician
MEC
GC
Chief of Surgery
Counsel
BC
MS President
CAC
Hearing Panel