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Special Clinic for Hospital Counsel: Legal Strategy & Tactics for Hospital Physician Relationships

Dates and Locations • Faculty • Who Should Attend • Registration • Seminar Benefits • Contact Us

Legal Strategy & Tactics for Hospital-Physician Relationships is an intensive day-and-a-half program focusing on legal problems related to medical staff disputes.

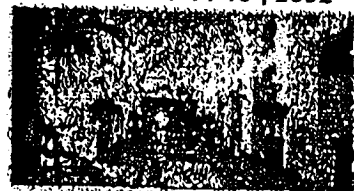
Using a combination of case studies and interactive sessions, senior partners from the health law firm of Harty, Springer & Mattern, P.C. will address both strategy and tactics for dealing with problem physicians through the medical staff corrective action process as well as related issues.

Seminar Topics

- How to spot problems and (hopefully) nip them in the bud
- Types of problem physicians
 - Clinical competence: technique, judgment, practice pattern
 - Professional conduct: disruptive behavior, sexual harassment, unethical/illegal activities
 - Impairment: substance abuse, mental problems, aging practitioners, addictive behaviors, effect of the ADA
- ➔ Dealing with economic competition from medical staff members
 - Peer review/QA process: how it works, internal vs. external peer review, relationship to credentialing and formal corrective action
- Investigations
 - When/how does a formal investigation commence?
 - Who should conduct it? Full MEC? Credentials Committee? Investigating Committee?
 - Witness interviews and summaries
- Credentials/MEC recommendations
 - Meeting with affected practitioner: when? should attorneys be present?
 - Form of recommendation
 - Referrals for reconsideration
 - Notice of adverse action
- Hearings
 - ➔ Selecting the hearing panel
 - Hearing officers
 - Role of counsel: in-house, outside attorneys
 - Notices
 - Prehearing conferences
 - Hearing procedures: supplemental procedures, managing disruption
 - Hearing record: exhibits, transcript, post-hearing statements
 - Hearing panel recommendation
- Board action: format, notice

Dates and Location

November 14-15, 2002



The Renaissance Vinoy
St. Petersburg, Florida

January 6-7, 2003

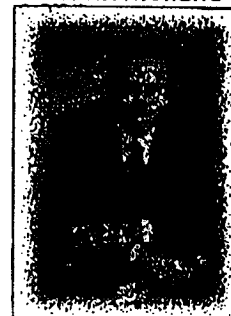
The Ritz-Carlton
Naples, Florida

Faculty

Barbara Blackmond



Dan Mulholland



- ➔ **Data Bank reports:** when they are required and when they are not
- **Negotiated settlements:** key terms, to report or not report?
- **Litigation challenging professional review actions**
 - Preparing for injunction actions
 - Forum for dispute: state/federal courts, administrative agencies
 - Alternative dispute resolution: arbitration, mediation
 - Common legal theories: antitrust, interference with business, defamation, civil rights/antidiscrimination laws, breach of contract
- **Immunities:** HCQIA, state peer review protection laws, volunteer protection act, state action immunity, importance of building a record
- **Preserving the peer review privilege**
- **Sharing peer review information:** the pros and cons of being forthright, releases, memorandums of understanding
- **Building a good foundation for future action**
- **Make your medical staff documents work for you:** bylaws, credentials policies, rules and regulations, allied health practitioners policy, medical staff development plan
- **Related policies:** physician code of conduct, physician health issues
- **Hospital bylaws provisions relating to the medical staff**
- **Medical Staff leadership:** description of duties, "fiduciary" pledge, indemnification
 - Compensation pros and cons
 - Relationship to hospital legal counsel
- **EMTALA**
 - On-call issues
 - Government investigations
- **Patient safety issues**
 - Unanticipated outcomes disclosure
 - Sentinel events investigations/reports
 - Patient safety legislation and reporting
 - Waiver of peer review privilege?

Registration Information

Register online or call HortySpringer Seminars at 1-800-245-1205.

REGISTER NOW

Registration Fee:

\$1,495 for the first person

\$995 for each additional person

Registration for Legal Strategy & Tactics for Medical Staff Disputes Includes extensive materials, including:

- Physician Health Policy
- Medical Staff Code of Conduct
- Sample Bylaws, Letters and Forms Relating to Investigations
- Sample Bylaws, Letters and Policies Relating to Medical Staff Hearings
- Sample On-Call Policy

Seminar Schedule

Day One

7:00 am - 8:00 am

Registration & Continental Breakfast

8:00 am - 12:00 Noon

Seminar Session

12:00 Noon - 1:30 pm

Lunch

1:30 pm - 4:00 pm

Seminar Session

Day Two

7:00 am - 8:00 am

Continental Breakfast

8:00 am - 12:00 Noon

Seminar Session

**There will be one 15 minute break each morning and one in the afternoon.*

Who Should Attend

Legal Strategy & Tactics for Medical Staff Disputes is especially designed for health care lawyers, including in-house counsel and outside attorneys, as well as senior health care executives interested in the legal ramifications of their systems' operations.

We encourage participation by all individuals. If you have a disability, advance notification of any special needs will help us to better serve you. Please notify us of your needs at least two weeks in advance of the program.

Special Clinic *for* Hospital Counsel
Legal Strategy & Tactics
for
Hospital-Physician
Disputes

Barbara Blackmond, Esq.
Dan Mulholland, Esq.



HORTYSPRINGER

SEMINARS AND PUBLICATIONS

SEMINAR SCHEDULE

MONDAY, JANUARY 6

8:00 AM TO NOON

- How to spot problems and (hopefully) nip them in the bud
- Types of problem physicians
 - Clinical competence: technique, judgment, practice pattern
 - Professional conduct: disruptive behavior, sexual harassment, unethical/illegal activities
 - Impairment: substance abuse, physical and mental health issues, aging practitioners, effect of the ADA
- ➔ Economic competitors
- Informal Corrective Action
- Investigations
 - When/how does a formal investigation commence?
 - Who should conduct it?
 - Witness interviews and summaries
- Corrective action recommendations
 - Meeting with affected practitioner: when? should attorneys be present?
 - Form of recommendation
 - Referrals for reconsideration
 - Notice of adverse action

Noon to 1:30 pm LUNCH (on your own)

1:30 pm to 4:00 pm

- Hearings
 - ➔ Selecting the hearing panel
 - Hearing officers
 - Role of counsel: in-house, outside attorneys
 - Notices
 - Prehearing conferences
 - Hearing procedures: supplemental procedures, managing disruption
 - Hearing panel recommendation
- Board action: format, notice
- Data Bank reports: when they are required and when they are not

TUESDAY, JANUARY 7

8:00 AM TO NOON

- Immunities: HCQIA, state peer review protection laws, volunteer protection act, state action immunity
- Preserving the peer review privilege
- Litigation challenging professional review actions
- Negotiated settlements: key terms, to report or not report?
- Medical staff leadership: description of duties, "fiduciary" pledge, indemnification
 - Compensation pros and cons
 - Relationship to hospital legal counsel
- Building a good foundation for future action
 - Make your medical staff documents work for you: bylaws, credentials policies, rules and regulations, allied health practitioners policy, medical staff development plan
 - Related policies: physician code of conduct, physician health issues
 - Hospital bylaws provisions relating to the medical staff

SEMINAR SCHEDULE

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- How to spot problems and (hopefully) nip them in the bud
- ➔ **Types of problem physicians**
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 - Hearing officers
 - Role of counsel: in-house, outside attorneys
 - Notices
 - Prehearing conferences
 - Hearing procedures: supplemental procedures, managing disruption
- ➔ **Hearing panel recommendation**
 - Hearing panel recommendation
- **Board action:** format, notice
- ➔ **Data Bank reports:** when they are required and when they

TUESDAY, JANUARY 7
8:00 AM TO NOON

- **Immunities:** malpractice laws, voluntary immunity
- **Preserving the record**
- **Litigation choices**
- **Negotiated settlements:** when to report?
- **Medical staff duties, "fiduciary" duties**
 - Compensation
 - Relationships
- **Building a good reputation**
 - Make your work fit the hospital's policies, health care development
 - **Related issues:** malpractice, conduct, etc.
 - **Hospital relations:** the medic

The "Problem" M.D.

What is Disruptive Behavior

- Physical Abuse
- Verbal Abuse
- Threats
- Vulgarity
- Political Disruption
- Sexual Harassment

The Complete Course for Medical Staff Leaders

Seminar Material

Barbara Blackmond, Esq.
Paul Verardi, Esq.
Francis R. Reid, M.D.

October 31 - November 2, 2002

San Francisco, California



Jointly sponsored by: The University of Pittsburgh School of Medicine,
Center for Continuing Education in the Health Sciences

SCHEDULE

THURSDAY, OCTOBER 31

6:30 A.M. TO 7:30 A.M.

REGISTRATION & CONTINENTAL BREAKFAST

7:30 A.M. TO 12:00 NOON – SESSION

CHALLENGES OF LEADERSHIP IN AN ERA OF CHANGE

LEGAL PRINCIPLES AND PROTECTIONS FOR

MEDICAL STAFF LEADERS

PERSPECTIVE OF A VOLUNTEER LEADER

CRITERIA FOR PRIVILEGES AND RESOLVING "TURF" BATTLES

- Developing Criteria for New Procedures
- Developing Criteria for Procedures that Cross Specialty Lines

TIPS FOR EFFECTIVE CREDENTIALING

- Threshold Criteria
- Recognizing Red Flags
- Getting the Most from References
- Dealing with Difficult Applications
- Don't Process Incomplete Applications!

TEMPORARY PRIVILEGES?

STREAMLINING THE CREDENTIALING PROCESS

- Same High Standards, More Efficient Process

PROVISIONAL APPOINTMENT AND PRIVILEGES

REAPPOINTMENT

- An Educational Opportunity!
- "Performance-Based" Reappraisal
- When There's Nothing to Evaluate...
- Techniques for "Conditional Reappointment"

6:00 P.M. TO 7:00 P.M. – RECEPTION

FRIDAY, NOVEMBER 1

6:30 a.m. to 7:30 a.m. Continental Breakfast

7:30 A.M. TO 12:00 NOON – SESSION

ADDRESSING QUALITY AND CONDUCT CONCERNS THROUGH

PROGRESSIVE STEPS

- Includes Collegial Intervention Techniques

DOCUMENTATION AND ACCESS TO FILES

DEALING WITH THE "PROBLEM" PHYSICIAN – TOUGH ISSUES

Disruptive Physicians

Sexual Harassment

Impaired Physicians

Americans with Disabilities Act

DEALING WITH CONDUCT OUTSIDE THE HOSPITAL

ER CALL ISSUES AND SOLUTIONS

KEYS TO CONFIDENTIALITY

- Confidentiality Policies and Agreements
- Maintaining Confidentiality in Cyberspace

ALLIED HEALTH PRACTITIONERS

- High Quality Standards
- Minimizing Antitrust Risk

Q & A SESSION

SATURDAY, NOVEMBER 2

6:30 A.M. TO 7:30 A.M. CONTINENTAL BREAKFAST

7:30 A.M. TO 12:00 NOON – SESSION

EFFECTIVE MEDICAL STAFF DOCUMENTS

- Medical Staff Bylaws
- Credentialing Policy
- Organizational Manual
- Allied Health Policy

NATIONAL PRACTITIONER DATA BANK:

WHAT'S REPORTABLE? WHAT'S NOT?

ANATOMY OF AN INVESTIGATION

- Step-by-Step Process
- Effective Use of Outside Consultants
- New JCAHO Peer Review Requirements

GOOD HEARING PROCEDURES

- Restoring Professionalism
- When You're a Witness...

PHYSICIAN LEADERSHIP 2002

REWARDS FOR MEDICAL STAFF LEADERS

- Can We Make Leadership More Desirable?

Educational Intent: Upon completion of this program, participants should be able to identify common credentialing issues relating to initial appointment, reappointment, clinical privileges and allied health professionals. Participants should be able to define the legal responsibilities of medical staff leaders and the legal protections available to them.

Note: There will be two short breaks each day.

The attire for the seminar sessions is casual and comfortable.

NOTES

KEY POINTS TO REMEMBER

- The hospital is at risk for all behavior: legal – and patient care environment
- Try progressive steps, starting with collegial intervention first, if possible! "Discipline" is a last resort. Goal – Improve behavior, not punish!
- Courts uphold professional review actions based on disruptive behavior

WHO IS THE DISRUPTIVE PHYSICIAN?

- Always right
- Others – especially those in authority – are fools, or worse
- Charismatic
- Doesn't understand organization or authority
- No rules apply
- Attacks immediately if criticized or crossed
- Enjoys suing and threatening suit
- Finger-pointing comments in medical record

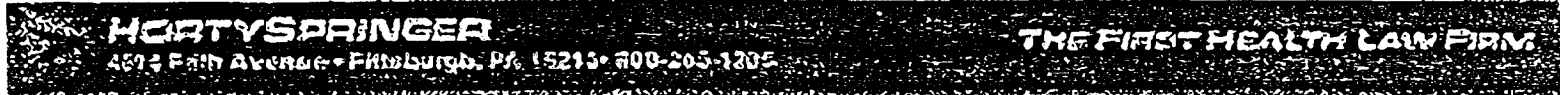
DISRUPTIVE BEHAVIOR CAN BE:

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- Vulgarity
- Political disruption
- Sexual harassment

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Once for Patient Protection

Access Benefit Transactions

Exclusive Contracts

Repetitive Contracts

and HIPAA Privacy Rule

Healthcare Integrity & Protection Data Bank (HIPDB)

Outlets

Integrated Group Physician Contracts

Hospital Competitors on the Medical Staff

Hospital Proposals for Physicians

and New Compliance Issues

Physician Practice Compliance Audiotape

Faculty:

Don Mulholland & Henry Casale

Outline:

- Appropriate documentation
- Contracts with hospitals
- Relationships with billing companies
- Reassignment rules
- ER call
- Services furnished by employees
- Medical necessity
- **Upcoding**
- **Protection from whistleblowers**
- Implementing compliance plans

Very Important

Fee: \$195

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Faculty.

Barbara Blackmond & Linda Haddad

- Do physicians have a right to medical staff appointment even if they own part of a surgicenter, cath lab, or GI or oncology center that diverts patients and staff from the hospital?
- Does a hospital have any recourse if a physician competitor sends all patients whose care is poorly reimbursed to the hospital while sending all well-reimbursed cases to the for-profit surgery center in which he or she invests?
- Can physicians whose interests are not aligned with the hospital be excluded from the medical staff?

Boards must be good stewards of the hospital's and community's resources. A hospital cannot subsidize for-profit care (by taking a disproportionate share of the "expensive" care) at the expense of its community.

In this special audiotape HartySpringer senior partners Barbara Blackmond and Linda Haddad review the legal and practical problems in reconciling conflicting financial interests between physicians and hospitals and suggest an approach to this difficult predicament.

We also discuss how to:

- Reasonably evaluate possible responses to physician competition
- Understand the Legal Authority of Hospital Boards?
- Identify potential legal arguments, and plan carefully and properly, to minimize legal risk
- Build financial conflict of interest criteria into a Medical Staff Strategic Plan
- Develop and implement a financial conflict of interest policy

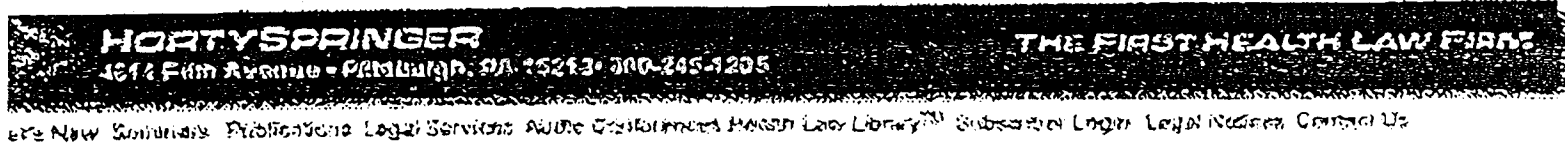
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Protection Data Bank (HIPIDB)
- Healthcare
- Hospital-Based Physician
Contracts
- Hospital Competition on the
Medical Staff
- Hospital Preparedness for
Disasters
- How New Compliance Issues
Affect Physicians
- Insurance

Hospital-Based Physician Contracts Audiotope

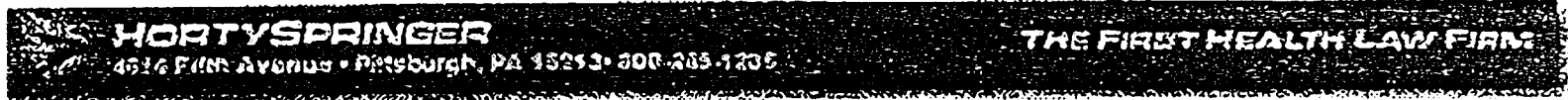
Faculty:
Dan Mulholland & Henry Casale

Outline:

- How does the national shortage of hospital-based physicians -- real or perceived -- affect:
 - a. Your negotiations with the current group?
 - b. The decision to change groups?
 - c. The terms of the Agreement?
 - d. Who employs the non-physician providers, especially CRNAs?
 - e. The process a hospital should follow to change providers or enter into an exclusive agreement for the first time?
- What type of financial demands are being made by hospital-based groups?
- How are hospitals reacting to those demands?
- Contract provisions to help deal with privileges that cross specialty lines

This audiotope is part of a series regarding hospital-physician contracts. The others in the series are:

Providing Financial Incentives to Physicians



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- Healthcare Integrity & Protection Data Bank (HIPDB)
- Meetings
- Hospital-Based Physician Contracts
- Hospital Components on the Medical Staff
- Hospital Preparation for Disasters
- How New Competitors Impact Hospital Physicians

Critical Checkpoints in Bylaws Audiotape

Faculty: Charlotte Jefferies & Lauren Massucci

Outline:

- Last things first - how to prepare so that amendments get passed
- What makes the most sense - one document or two or three?
- Medical staff categories
- Rethinking (and strengthening) criteria for appointment
- Restructuring and streamlining
- Provisions to aid reappointment, address "turf" battles and encourage "collegial intervention"
- M&M exclusions, felony convictions, and other "automatic relinquishment" provisions
- "Precautionary" (not "summary" suspensions)
- How to regain control of the hearing process

Bylaws: Very Important

Fee: \$195

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Issues for Patient Protection

License Denial Transactions

Exclusive Contracts

Executive Contracts

Final HIPAA Privacy Rule

Healthcare Integrity & Protection Data Bank (HIPIDB)

Hearings

Hospital-Based Physician Contracts

Hospital Competitors on the Central Staff

Hearings: What is Required? What Works? Audiotape

Faculty:

Paul Verardi & Susan Lapenta

Outline:

- Grounds for Hearing
- Notice of Recommendation
- Composition of the hearing panel: who should be excluded?
- Should the physician's attorney be present?
- Are other physicians' credentials files discoverable?
- Can hearing rights be waived?

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Impaired Physicians

**Inappropriate
Orders**

**Unavailability or
Inappropriate
Responses to
Phone Calls**

**Odd
Behavior** //

**Personality
Change** //

**Repeated
"Illnesses"**

**Alcohol
on
Breath**



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- Leasing
- Hospital-Based Physician
Contracts
- Hospital Competitors on the
Medical Staff
- Hospital Preparation for
Disasters
- New Compliance Issues

Impaired Physicians: Complying with the New JCAHO Standard Audiotape

Faculty:
 Barbara Blackmond & Paul Verardi

Outline:

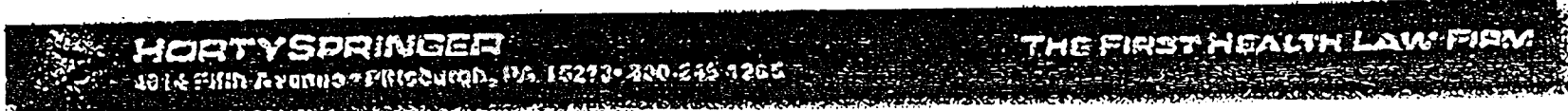
- What does the new Standard require?
- Elements of an effective Impaired Physician Policy
- Leaves of absence
- Safeguards at reinstatement
- What about the Americans with Disabilities Act?
- How to address the aging practitioner
- Who should serve on the Physician Health Committee?
- What's reportable?

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What's New

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Audiotapes

- Disruptive Practitioners
- Conflicts of Interest
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- ERISA and Other Problems and Solutions
- Issues for Hospital Practitioners
- Successor Benefit Transactions
- Exclusive Contracts
- ERISA Agency Rules
- Healthcare Integrity & Protection Data Bank (HIPIDB)
- Marketing
- Hospital-Based Physicians

Disruptive Practitioners Audiotape

Faculty:

Charlotte Jefferies & Susan Lapenta

Outline:

- It's only behavior - what's the big deal?
- Who is the disruptive practitioner?
 - Does "collegial intervention" work?
- Tools for assessing behavior
- Impaired practitioners
 - Build a framework to address future problems

Audiotape: \$195

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