Year in Review

GETTING PRACTICAL WITH

MEDICAL STAFF

GOVERNANCE, CREDENTIALING & PEER REVIEW

Year in Review

Developments Affecting Medical Staffs, Credentialing and Peer Review Activities

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Overview

- In the News
- Your Government Speaks
- Peer Review Immunity
- Peer Review Confidentiality
- Challenges Ahead

In the News…

- "Systemness" continues, e.g., CVOs, centralization
- All things disruptive innovation:
  - Acquisition of physician practices by private equity and non-hospital entities
  - Keeping up with advances or new approaches, e.g., precision medicine, social determinants impact, integrative medicine, etc.
  - Retail medicine
- Quality program effectiveness: e.g., medical necessity risk
- Provider wellness

Your Government Speaks

- No changes to federal law (CoPs) regarding medical staff requirements
- MACRA/MIPS steams along
- Future reimbursement landscape is unclear, e.g., bundled payments, CMMI activities, etc.
- Continued expansion regarding scope of practice or autonomy for physician assistants, advanced practice nurses and midwives

Peer Review Immunity

- **Nahas v. Shore Medical Center** (D.N.J.)
  - Allegation of malicious peer review
  - MECs are voluntary unincorporated associations that can sue and be sued!
- **Powell v. Bear Valley Community Hospital** (App. Ct. 4th District)
  - Physician challenge to "denial" of membership
  - Board decision to deny despite Medical Staff support was warranted
  - Applicant has clear burden to support application

Peer Review Immunity

- **Hakki v. Galencare, Inc.** (Fla. Dist. Ct. App.)
  - Defamation case
  - Chief of Surgery alleged the Hospital was underreporting complications to enhance reimbursement
  - Only actions occurring within peer review process carry immunity
- **El-Khalil v. Oakwood Healthcare, Inc.** (Mich. App. Ct)
  - Allegation of breach of contract and retaliation
  - Despite potential to demonstrate civil rights violation
  - Ability to demonstrate past conduct was true basis for termination was key

Peer Review Immunity

- **Murphy v. Advocate Health & Hospitals Corp.** (Il. Ct. App.)
  - Allegation that summary suspension was without basis and physician was not provided appropriate access to information
  - Court required hearing and full, non-redacted access to all "pertinent information"
- **Dhillon v. John Muir Health** (Cal. Ct. App.)
  - Physician sued for due process
  - How an action taken by medical staff is represented can affect whether it is considered a restriction that warrants hearing rights

Peer Review Immunity

- **Emlich v. OhioHealth Corp.** (S.D. Ohio)
  - Allegation by physician of retaliation
  - Case further supports that HCQIA immunity is available if all elements are satisfied
- **Kolb v. North Side Hospital** (Ga. App. Ct.)
  - Physician challenged suspension based on impairment
  - Court held that Physician was unable to show that suspension was not based on reasonable belief of furtherance of quality of care

Peer Review Immunity

- **Chundu v. Cork** (Cal. Dist. Ct. App.)
  - Immunity for statements made within peer review process
  - Court finds that no evidence that Department Chair's statements to CEO were part of peer review process
- **Sharda v. Sunrise Hospital and Medical Center** (Fed. Dist. Ct. D. Nev.)
  - Physician challenged denial of membership and privileges
  - HCQIA immunity not granted because Hospital did not satisfy all elements of notice and hearing process

Peer Review Immunity

- **Camden Clark Memorial Hospital v. Nguyen** (Sup. Ct. W. Va.)
  - Allegation by physician of retaliation for reporting quality concerns
  - Court made limited exception to doctrine of non-review because physician argued violation of law not bylaws
- **McGary v. Williamsport Regional Medical Center** (Pa. Fed. Dist. Ct.)
  - Physician sued for privileges denial alleging antitrust violation
  - Legitimate and uniformly applied credentialing standards are appropriate defense

Peer Review Immunity

- **Johnson v. Memorial Hermann**
  - Whistleblower action
  - Hospital employer restructured organization
  - Former peer review coordinator alleges she was terminated for refusing to share confidential, peer review information with internal, non-peer review resources (pending)
- **Rasak v. Botsford General Hosp.** (Mich. Ct. App.)
  - Cardiologist must show not just allege that Hospital acted with malice to overcome summary judgment

Peer Review Confidentiality

- **Brugaletta v. Garcia** (N.J. Sup. Ct.)
  - Allegation of medical malpractice
  - Peer review privilege does not usurp mandated adverse event reporting
  - Self-critical information located in medical records is discoverable
- **Reginelli v. Boggs** (Pa. Sup. Ct.)
  - Allegation of medical malpractice
  - "Performance files" of contracted emergency medical services provider are not privileged

Peer Review Confidentiality

- **Cousino v. Mercy St. Vincent Medical Center** (Ohio Ct. App.)
  - Allegation of negligent credentialing
  - Commingled credentialing and quality information may lead waiver of confidentiality

Challenges Ahead

Top 10 challenges for health care in 2019*:

1. Data & analytics
2. Total consumer health
3. Population health services
4. Value-based payments
5. The digital health care organization
6. Rising pharmacy costs
7. External marketing disruption
8. Operational effectiveness
9. Opioid management
10. Cybersecurity
11. Provider engagement, adaptability, etc.

*HealthCare Executive Group

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Please visit the Hall Render Blog at http://blogs.hallrender.com for more information on topics related to health care law.

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