GETTING PRACTICAL WITH MEDICAL STAFF
GOVERNANCE, CREDENTIALING & PEER REVIEW

Year in Review
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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

  - 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.** (Ill. 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)

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

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