

## Health Care Credentialing Update

OCTOBER 2010

Katten serves as legal counsel to hospitals, health care systems, medical staffs and managed care organizations in a broad range of internal medical staff credentialing and peer review actions involving the denial, reduction, suspension and termination of staff privileges, including medical staff bylaws, accreditation, physician contract, ACO and hospital/medical staff disputes. For more detailed information, go to [Medico-Legal and Hospital/Physician Relations](#). Our health care attorneys regularly speak and write about these topics. Following is a list of presentations and publications, all of which can be downloaded, on credentialing issues that may be of interest to you, as well as upcoming industry events where Katten attorneys will be speaking.

### PRESENTATIONS

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#### Accountable Care Organizations: Implications Under Physician Self-Referral, Anti-Kickback, Civil Monetary Penalty and Antitrust Laws

*Katten webinar* (October 7, 2010)

This presentation covers the implications for ACOs under physician self-referral, anti-kickback, civil monetary penalty and antitrust laws. [Download the presentation.](#)

#### Managing and Moderating the Disruptive Clinician: Legal and Practical Strategies

*Presented at the American Health Lawyers Association's Annual Meeting* (June 29, 2010)

This presentation describes the legal considerations and reporting obligations involved in dealing with disruptive physicians. [Download the presentation.](#)

#### Not Your Average Fraud Seminar: A Strategic Approach to Managing Risk in an Environment of Heightened Scrutiny

*Katten seminar* (June 17, 2010)

This presentation covers proactive strategies and practical tools for minimizing fraud and abuse exposure. [Download the presentation.](#)

To view a bulletin titled "A Strategic Approach to Managing Risk in an Environment of Heightened Scrutiny" that was produced in conjunction with this seminar, [click here.](#)

#### PSOs: A Fundamental Tool in the World of Health Care Reform, Enhanced Reimbursement, Quality Improvement and Confidentiality Protections

*Presented by the Greeley Company* (June 17, 2010)

This presentation covers:

- the cross-functional benefits of patient safety organizations (PSOs);
- how a PSO can be used to obtain federal and state protections;
- moving beyond protection to improving performance through a PSO; and
- risks of ignoring the PSO opportunity.

[Download the presentation.](#)

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## Making Peer Review Fair and Effective

*Presented at the Greeley Medical Executive Committee Institute (June 12, 2010)*

This presentation provides some guidance on designing an effective peer review procedure, from standardizing the process to being mindful of health care law to managing problem physicians. [Download the presentation.](#)

## What Medical Staff Leaders Must Know about Credentialing and Privileging Today

*Presented at the Greeley Medical Executive Committee Institute (June 11, 2010)*

This presentation covers credentialing principles, case studies, Joint Commission standards and health care spending. [Download the presentation.](#)

## Coping with Today's Challenges and Preparing for Tomorrow's: Healthcare Trends Impacting Physicians and Hospitals

*Presented at the Greeley Medical Executive Committee Institute (June 10, 2010)*

This presentation discusses the relationships between the board, administration and medical staffs and offers some guidance for medical staff leadership on topics such as effective models and negotiation. [Download the presentation.](#)

## Lawyer or Psychiatrist? Handling "Disruptive" or "Impaired" Physician Cases

*Presented at the ABA's Physician-Legal Issues Conference (June 10, 2010)*

This presentation discusses how to deal with physicians' disruptive behavior, and addresses the legal issues involved. [Download the presentation.](#)

## Physician Employment Contracts: What Hospitals and Physicians Need to Know

*Presented at the Greeley Medical Staff Institute Symposium (June 9, 2010)*

This presentation covers different forms of hospital/physician agreements and the associated key terms and legal issues. [Download the presentation.](#)

## Navigate MS.01.01.01

*Presented with the National Association Medical Staff Services (June 8, 2010)*

This presentation reviews the Joint Commission Standard MS.01.01.01 and sample bylaws, explaining what meets the Standard and what does not. [Download the presentation.](#)

## Best Practices in Initial Appointment and Reappointment Procedures

*Presented at the Credentialing Resource Center Symposium (May 7, 2010)*

This presentation covers the current health care environment, applicant screening, professional references, information errors and other reappointment considerations. [Download the presentation.](#)

## Current Issues in Negligent Credentialing

*Presented at the Credentialing Resource Center Symposium (May 7, 2010)*

This presentation covers:

- what a plaintiff must establish in order to succeed in a negligent credentialing case;
- recent cases and their impact on a hospital's duty to protect patients;
- how to successfully defend against negligent credentialing actions;

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- the importance of establishing and uniformly applying credentialing criteria;
  - the impact of a state’s peer review confidentiality statute; and
  - how to maximize peer review protections as applied to physician profiling and pay-for-performance information.

[Download the presentation.](#)

## Patient Safety Organizations—To Participate or Not: That is the Question

*Presented at the Chicagoland Healthcare Risk Management Society’s Annual Meeting (April 30, 2010)*

This presentation explains the Patient Safety Act and its provisions, including the patient safety evaluation system, patient safety work product and patient safety organizations (PSOs), and some things to consider when deciding whether to participate in a PSO. [Download the presentation.](#)

## Presentations from the Greeley Medical Staff Institute Symposium

*Solutions to Top Medical Staff Challenges (November 8–9, 2009)*

### **Medical Staff Bylaws: How to Create Documents That Are Clear, Compliant and Fair**

- Describes the necessary components and potential weaknesses of medical staff bylaws, and discusses the appropriate language for membership requirements and investigation procedures. [Download the presentation.](#)

### **Stark, Anti-Kickback and Private Inurement**

- Provides an overview of Stark, anti-kickback and private inurement with a focus on how these principles apply to physician recruitment and ED compensation based on recent amendments and OIG advisory opinions. [Download the presentation.](#)

### **The Impact of PSO Confidentiality and Privilege Protections on the Peer Review Process: What You Need to Know**

- Provides background on the Patient Safety Act; explains patient safety evaluation systems (PSEs), patient safety work product (PSWP) and patient safety organizations (PSOs); a description of the confidentiality and privilege provisions; and an analysis of how these protections interact with existing state confidentiality protections and are applied to a hypothetical peer review scenario. [Download the presentation.](#)

### **Can I Be Sued? Legal Protections for Physician Leaders Who Make the Tough Calls**

- Highlights areas of potential risk and discusses the legal defenses and protections that will limit these risks. [Download the presentation.](#)

### **Significant Cases and Developments: Lessons Learned**

- Reviews Data Bank’s opinion on the standards for reporting termination decisions and explains the lessons hospitals can learn from significant cases. [Download the presentation.](#)

## PUBLICATIONS

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### Arkansas High Court Hands Physicians Win on Claim in Economic Credentialing Lawsuit

*BNA Health Law Reporter*, October 7, 2010

Michael Callahan was quoted in this article on a case in the Arkansas Supreme Court involving tortious interference on the part of Baptist Health, the state’s largest hospital system, because the hospital’s policy to require divestiture in any financial interest held by a new or existing medical staff member would have interfered with an existing physician/patient relationship. Mr. Callahan says the ruling in *Baptist Health v. Murphy* involved “unique circumstances” since Baptist Health is such a major player in managed care contracting arrangements. “This decision gives attorneys additional ammunition concerning an issue that will continue to arise and be litigated, especially given the pressure under health care reform for new types of provider affiliations—such as accountable care organizations—that will necessarily be looking at physicians’ utilization rates, lengths of patient stays, and other economic factors in addition to outcomes” when making appointment and reappointment decisions, he says.

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## “What to Do When Medical Staffs Join Forces After a Merger or Acquisition”

*Medical Staff Briefing*, September 2010

Michael Callahan was quoted in this article on addressing the legal issues created by a merger of medical staffs. Mr. Callahan says that both staffs should use the same set of bylaws. “At some point, you want the same application, the same appointment/reappointment process, and the same standards to apply to everyone,” he says. “Creating different standards can result in legal liability and confusion.” He also notes that existing exclusive contracts will have to be reconsidered as well. “What typically happens is that the doctors at the merged hospital have the opportunity to join the group that is contracted with the system, or the contract with the hospital being acquired is terminated,” he says. [Read the full article.](#)

## “Legal Tips from the Credentialing Resource Center Symposium”

*Credentialing @ Peer Review Legal Insider*, July 2010

Michael Callahan was quoted in this article on the Patient Safety Act and the requirements for reporting to PSOs. [Read the full article.](#)

## “How to Determine Compensation for Medical Staff Leaders”

*HealthLeaders*, April 22, 2010

Michael Callahan was quoted in this article on the growing trend of paying medical staff leaders for what used to be volunteer positions. One reason for this change is the increasing level of responsibility required in these roles. “If you look at all the responsibilities The Joint Commission and other regulatory bodies place on department chairs, it is arguably a full-time job,” Mr. Callahan says. Hospitals should be aware of the Stark Law and Anti-kickback statute when determining the appropriate level of compensation. “If it looks like a payment for referrals—meaning that the real reason they made this person the medical director of a service line is to buy his loyalty and patients,” Mr. Callahan says, “you are arguably violating these federal statutes.”

## “Joint Commission Spotlights Conflict Resolution in Latest Draft of MS.01.01.01”

*Medical Staff Briefing*, March 2010

Michael Callahan was quoted in this article on the Joint Commission’s latest draft of proposed standard MS.01.01.01. “It is not a perfect document, but people are tired of dealing with it and want to move on,” Mr. Callahan says. He adds that there are a number of noteworthy changes in the Standard, including the need to develop a conflicts management process between the organized medical staff and the MEC, as well as the standard for what will require that this process be followed, all of which will require Joint Commission accredited hospitals to amend their bylaws. [Read the full article.](#)

## “Prevent Fair Hearings in Five Law-Abiding Steps”

*Credentialing and Peer Review Legal Insider*, March 2010

Michael Callahan was quoted in this article on steps hospitals can take to avoid costly, time-consuming physician hearings. Mr. Callahan says the first step begins with clear communication in medical staff bylaws. “The easiest thing to do is take remedial measures, such as monitoring or proctoring, that do not usually trigger a fair hearing. That means you have to understand what actions do and do not initiate a hearing under your bylaws,” he says. Another measure hospitals can take is to establish a process for progressive discipline for lesser offenses. “The message from the medical staff is, ‘Everyone makes mistakes, and we need to learn from those mistakes. We want to work with you, and you need to work with us,’” Mr. Callahan says. [Read the full article.](#)

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## “Does Your Governing Board Understand Medical Staff Issues?”

*Medical Staff Briefing*, February 2010

Michael Callahan was quoted in this article on the importance of educating governing boards on medical staff issues and those affecting quality of care. “Those boards that are not going down the path of monitoring quality, adopting evidence-based standards and proper credentialing are being held responsible for bad outcomes,” he says. Although hospitals may worry about conflicts of interest if the president of the medical staff sits on the board, Mr. Callahan explains, “They have to understand that by having the president of the medical staff serve as an ex officio member of the board, they are likely to get a representative whose interests are solely aligned with the medical staff and not the hospital.” He adds that there is also value in inviting board members to attend credentialing committee meetings. “Delegating learning to certain people by having them sit on various medical staff committees gives them a way to gain insight into certain areas, and they can bring what they learned back to the full board,” he says. [Read the full article.](#)

## “New Standards to Uphold”

*Modern Healthcare*, January 11, 2010

Michael Callahan was quoted in this article on a new draft medical staff standard the Joint Commission recently released for review. Mr. Callahan says that the standard will require hospitals to revisit their bylaws and re-evaluate the relationships between the medical executive committee, medical staff and governing body. Hospitals that have separated their fair-hearing or credentialing processes into manuals outside the bylaws will “have to figure out what portion of that will have to migrate back into the bylaws,” he says, adding, “That’s not altogether clear.”

## “Hospitals Can Weigh in on Revised Joint Commission Standard”

*HealthLeaders Media*, January 4, 2010

Michael Callahan was quoted in this article on the Joint Commission’s standard MS.01.01.01. The latest draft of the standard is intended to provide a solution to years of debate between hospital governing boards, medical staffs and medical executive committees regarding a number of controversial issues including what organizational and governance provisions must appear in the formal bylaws as opposed to more informal rules, regulations and policies. One noteworthy addition is the requirement that the organized medical staff and the medical executive committees (MECs) have a conflict-resolution process when an impasse on any issue occurs. The result of this standard is clearly to shift more authority to the medical staff and away from the MEC. Mr. Callahan says, “Everyone is going to have to change their bylaws to accommodate this change.” Despite this, he expects the draft will pass quickly. “It is not a perfect document, but people are tired of dealing with it over the past four or more years and want to move on,” he says. “If they don’t like it, they can vote with their feet and go to a different accrediting body, such as DNV or HFAP, but they need to carefully evaluate those options before they jump.” [Read the full article.](#)

## “Streamline Fair Hearings for APPs, but Don’t Cut Corners”

*Credentialing and Peer Review Legal Insider*, November 2009

Michael Callahan was quoted in this article on fair hearings for advanced practice professionals (APPs). Since APPs are not technically medical staff members, they are not granted the same hearing rights as physicians. In the article, Mr. Callahan explains that there should be certain rights for a fair hearing and appeals process for APPs, including written notice and the opportunity to defend themselves. He also strongly recommends that any final decisions should be made by a non-competing hospital administrator or Board. “If you get the hospital’s blessing, either in the form of an appeal or review, that has the effect of insulating the physicians from legal action [by the APP],” he says. [Read the full article.](#)

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## UPCOMING EVENTS

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### Disruptive Physicians: From Credentialing to Disciplinary Action

*Webinar presented by Strafford Publications*

November 4, 2010

1:00–2:30 p.m. (Eastern)

Partner Michael Callahan will be speaking. The program will examine the impact of disruptive physicians and what health care facilities can do in the recruitment, credentialing and peer review processes to anticipate and minimize liability due to physician lawsuits. Click [here](#) for more information.

### Maryland Association Medical Staff Services Fall Conference

November 5

Annapolis, Maryland

Partner Michael Callahan will be speaking all day on a wide range of medical staff, legal and accreditation subject areas. Click [here](#) for more information.

### Greeley's Advanced Credentialing and Privileging Retreat

November 6–7

Boca Raton, Florida

Partner Michael Callahan will be speaking. Click [here](#) for more information.

### Greeley's Medical Executive Committee Institute

November 6–7

Boca Raton, Florida

Partner Michael Callahan will be speaking. Click [here](#) for more information.

### Greeley's Mastering Medical Leadership

November 6–7

Boca Raton, Florida

Partner Michael Callahan will be speaking. Click [here](#) for more information.

### Greeley's Advanced Credentialing and Privileging Retreat

January 29–30, 2011

Palm Springs, California

Partner Michael Callahan will be speaking. Click [here](#) for more information.

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