

Health Care Credentialing Update

OCTOBER 2009

Katten serves as legal counsel to hospitals, medical staffs and managed care organizations during internal medical staff credentialing and peer review actions involving the denial, reduction, suspension and termination of staff privileges. Our health care attorneys regularly speak and write about credentialing and related topics. Following is a list of presentations and publications on credentialing issues that may be of interest to you, as well as upcoming industry events where Katten attorneys will be speaking.

PRESENTATIONS

New Federal Patient Safety Act: How to Expand Existing Peer Review Protections, Obtain Active Physician Participation and Comply with Joint Commission Standards

Presented by Clarity Group, Inc. and Clarity PSO (October 1, 2009)

This presentation reviews the confidentiality and privilege protections of the Patient Safety Act, offers advice on designing a patient safety evaluation system, discusses medical staff participation in relation to the Act, and explains Joint Commission Medical Staff Requirements for OPPE and FPPE. [Download the presentation.](#)

Achieving Medical Staff Greatness: The Role of Trustees and Management

Presented at the IHA Leadership Summit (September 24, 2009)

This presentation provides some best practices for managing medical staff, including screening applicants for medical staff membership; maintaining a quality medical staff; establishing peer review standards and procedures; understanding Data Bank reports; and establishing good relations among medical staff. [Download the presentation.](#)

Economic Credentialing—The Changing Landscape

Presented at the Morrissey Associates 14th National User Group Meeting (August 20, 2009)

This presentation examines the implications of a court ruling which struck down a hospital's policy that attempted to restrict medical staff members and their families from having any ownership or economic interest in a competing facility, and also presents two more typical hospital/physician economic scenarios from a hospital and medical staff perspective in terms of identifying areas of legal and political difficulties as well as proposed win-win solutions. [Download the presentation.](#)

IHA Dialogue on Discipline: Two Perspectives on Physician Discipline & Implementing New Peer Review Legislation

Presented by the Illinois Hospital Association (July 14, 2009)

This presentation addresses the different perspectives of two attorneys, one who principally represents hospitals and another who represents medical staffs, on the topics of best practices for imposing remedial measures and disciplinary action, what decisions are and are not reportable to the Data Bank, the Golden Rules of Peer Review and some recommended do's and don'ts relating to peer review activity. The materials also summarize new Illinois legislation which mandates new requirements before imposing a summary suspension and utilizing outside reviews as part of a peer review investigation. [Download the presentation.](#)

New Federal Legislation and its Impact on Medical Malpractice Litigation: The Impact of the Federal Patient Safety Act for Your Healthcare Clients

Presentation sponsored by Clarity Group, Inc. and Clarity PSO (June 10, 2009)

This presentation provides an overview of the basic tenets and confidentiality and privilege protections afforded under the Patient Safety Act and provides real-life hypothetical scenarios to better enable health care attorneys, and particularly malpractice defense counsel, to understand how the Act may positively and negatively affect future defense strategies. [Download the presentation.](#)

Presentations from the Greeley Company's 12th Annual Credentialing Resource Center Symposium

A New Day for Credentialing: Moving from Verification to Competency (May 14–15, 2009)

These presentations address a wide range of topics in credentialing.

“Primary source verification and references: Import and value” reviews a hospital’s duties and basic steps for credentialing and offers some advice on avoiding legal pitfalls and dealing with evolving standards. [Download the presentation.](#)

“Analyzing credentialing files: Best practices” analyzes credentialing files and discusses PSO protections and physician access. [Download the presentation.](#)

“Top 5 current credentialing cases: What everyone should know” details the lessons to be learned from the most influential current credentialing cases, which cover the areas of economic credentialing, best practices for appointment/reappointment, credentialing liability and Data Bank reporting obligation. [Download the presentation.](#)

“Never Events,” Payors’ Refusal to Pay and Industry Demand for Improved Quality

Presented at the Healthcare Financial Management Association’s 15th Annual Education Session (May 7, 2009)

This presentation covers topics including “never” or “adverse” events, the Patient Safety Act’s long-term goals, the Inspector General’s report on adverse events at hospitals, and corporate responsibility. [Download the presentation.](#)

Legal Update

Presented at the Illinois Association Medical Staff Services 2009 Annual Conference (April 23–24, 2009)

This presentation reviews recent credentialing cases, including *Murphy v. Baptist Hospital* (economic credentialing) and *Doe v. Leavitt* (Data Bank reporting decision), and offers suggestions for hospitals on improving the credentialing process. [Download the presentation.](#)

Patient Safety Organizations: A Practical Guide to Understanding and Implementing a PSO Program and Managing Confidentiality and Privilege Protections

Presented by Illinois Association Medical Staff Services and Katten Muchin Rosenman LLP (February 2009)

This presentation reviews the background, purpose and benefits of Patient Safety Organizations (PSOs) as well as the steps necessary to establish an internal Patient Safety Evaluation System in order to contract and participate in a PSO. In addition, the presentation will describe how the PSO confidentiality and privilege provisions are to be applied, as well as their application to peer review activities, so that hospitals, medical staffs and other providers can make truly informed decisions on whether or not to seek these protections and on how to organize their internal collection and reporting policies in a way which will not interfere with their accreditation and patient care obligations.

To view the podcast, click [here](#).

PUBLICATIONS

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“What docs need to know about restrictive clauses”

Medical Staff Briefing (October 2009)

Partner Michael Callahan was quoted in this article on understanding doctors' employment contracts. In the Q&A, he discusses noncompete, restrictive covenant and nonsolicitation clauses, as well as the consequences of breaking a contract. [Read the full article.](#)

HHS Issues Security Breach Notice Rule

Katten Client Advisory (August 31, 2009)

On August 24, the Department of Health and Human Services published its rule implementing the provisions of the HITECH Act that require covered entities and their business associates to provide notice of breaches of unsecured protected health information. The Rule contains key information about what constitutes a “breach,” how to determine if breach notification is required (or not), and how to create a compliant breach notification process. It also updates the earlier HHS guidance document specifying encryption and destruction as the two technologies and methodologies for rendering PHI “secure”—such that breach notification requirements can be avoided altogether. The Rule applies to breaches occurring on or after September 23, 2009. [Read more.](#)

NPDB Renders Opinion on Standard for Required Data Bank Reports

Katten Client Advisory (August 12, 2009)

This advisory discusses a letter explaining the National Practitioner Data Bank's official position on whether termination of a physician for making misstatements and failing to make required disclosures about an insurance gap are reportable. [Read more.](#)

Illinois Adopts New Medical Staff Summary Suspension Standard

Katten Client Advisory (July 23, 2009)

Effective June 1, 2009, the Hospital Licensing Act was amended in order to impose new standards and requirements before a hospital and medical staff can summarily suspend a physician's medical staff and clinical privileges. In addition, the amendment under House Bill 0546 requires that certain steps be followed and rights be provided to a physician when a decision is made to seek an outside review of a physician's practices. This advisory provides a more detailed discussion of each of these new provisions. [Read more.](#)

“Are apparent agency disclaimers fair?”

Credentialing @ Peer Review Legal Insider (July 2009)

Partner Michael Callahan was quoted in this article on the theory of apparent agency, which asserts that hospitals can be held liable for negligence in malpractice claims in which the physician is a contracted provider and not an employee of the hospital. Mr. Callahan explains that although the apparent agency theory is prevalent in Illinois, “[contracted physicians] are not employees. They operate in their own departments using their own protocols and procedures, and [the contract group has] their own insurance.” As long as these providers adequately disclose the nature of their independent relationship and separate responsibility to patients, the hospital should not be held liable under this apparent agency theory. [Read the full article.](#)

“Organized medicine-backed lawsuit knocks down hospital’s attempt at economic credentialing”

American Medical News (March 16, 2009)

Partner Michael Callahan was quoted in this article on a case in which a county court in Arkansas ruled that a hospital system’s economic conflict-of-interest policy intruded on the patient-physician relationship and violated public policy. Commenting on the results of the case, Mr. Callahan says, “Clearly, there are a lot of lessons learned from this decision, and hospitals need to be mindful and do their homework when pursuing such a policy. But it will play differently in different circumstances,” depending on the size of the region and the state’s credentialing laws.

Eliminating Negligence in Physician Credentialing

Illinois Hospital Association White Paper (February 2009)

This paper discusses the Kadlec and Frigo cases and, more importantly, addresses in layperson’s terms the issues and problems which hospitals and medical staffs need to resolve when trying to meet their corporate negligence burden, particularly in this current health care environment. It also identifies a number of practical recommendations that hospitals should consider when attempting to both improve patient care services and ensure that all physicians on their medical staff are currently competent to exercise each of the clinical privileges given to them. [Read the full white paper.](#)

“Physicians think twice over ‘loser pays’ rule”

Medical Staff Briefing (February 2009)

In this article, partner Michael Callahan discusses the provisions designed to protect hospitals and medical staffs from lawsuits brought by physicians in response to negative credentialing or peer review decisions. In the article, Mr. Callahan says that physicians may find these provisions unfair. “If you are the one who is being kicked off [the medical staff] or getting your privileges restricted, you may think it is going overboard,” he says. The Health Care Quality Improvement Act of 1986 states that defendants may recover attorneys’ fees from a physician who files a frivolous or bad-faith claim, and some medical staff bylaws include no-sue provisions. Furthermore, some states consider medical staff bylaws a contract between the physician and the medical staff. Mr. Callahan says that courts will most likely see the contract as binding, adding, “It is a factor that any physician must take into consideration and talk to his or her counsel about when they decide to pursue any type of litigation.” [Read the full article.](#)

“Ask the expert: What would you consider or define as a privilege restriction and who can or should be able to impose such a restriction?”

MS Leader Connection (January 29, 2009)

This article authored by partner Michael Callahan explains that the key aspect of physician privilege restrictions is how they are defined in the medical staff bylaws and whether any form of restriction will entitle a physician to a fair hearing and appeal. Medical staff bylaws can make this clear by defining what is and is not a restriction as well as specifying who has the authority to impose them. [Read the full article.](#)

“Address telemedicine, contracted physicians, and advanced practice professionals in medical staff bylaws”

Credentialing @ Peer Review Legal Insider (November 2008)

Partner Michael Callahan identifies in this article the key areas for medical facilities to address in medical staff bylaws. One of these key areas is the credentialing of telemedicine providers. The Joint Commission permits facilities to accept the credentialing and privileges of telemedicine providers if the contracting entity is accredited by the Commission. However, Mr. Callahan says, “Many of my clients who have [considered] relying on the telemedicine company’s credentialing and privileging processes are not entirely comfortable with this.” He says the degree of scrutiny depends on the facility’s own standards and on what duties will fall to telemedicine physicians. [Read the full article.](#)

UPCOMING EVENTS

Medical Executive Committee Institute

*Presented by the Greeley Medical
Staff Institute*

November 5–7
Naples, Florida

Partner Michael Callahan will deliver two presentations on November 7: “Health Care Law: What Medical Staff Leaders Must Know to Play by the Rules and Stay Out of Trouble” and “How to Manage a Fair Hearing and Investigation.”

For more information, click [here](#).

Greeley Medical Staff Institute Symposium Pre- Conference Workshops

*Presented by the Greeley Medical
Staff Institute*

November 7
Naples, Florida

Partner Michael Callahan will speak on “Medical Staff Bylaws: How to Create Documents That Are Clear, Compliant, and Fair.”

For more information, click [here](#).

Greeley Medical Staff Institute Symposium

*Presented by the Greeley Medical
Staff Institute*

November 8–9
Naples, Florida

Partner Michael Callahan will speak on “Stark, Anti-kickback, and Private Inurement: Finding Flexibility in What Hospitals Are Allowed to Do and How They Can Do It” on November 8.

For more information, click [here](#).

Advanced Credentialing and Privileging Retreat

*Presented by the Greeley Medical
Staff Institute*

November 8–10
Naples, Florida

Partner Michael Callahan will speak on “Recent Credentialing Legal Cases: Lessons Learned” and “Can I Be Sued? Legal Protection for Medical Staff Leaders Who Make the Tough Calls” on November 8.

For more information, click [here](#).

MAMSS 2009 Fall Educational Conference

*Presented by the Maryland Association
of Medical Staff Services*

November 13
Laurel, Maryland

Partner Michael Callahan will present “How Your Bylaws Will Be Affected by MS.01.01.01” and “How a Balanced Peer Review Process Can Improve Medical Staff Relations.”

For more information, click [here](#).

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