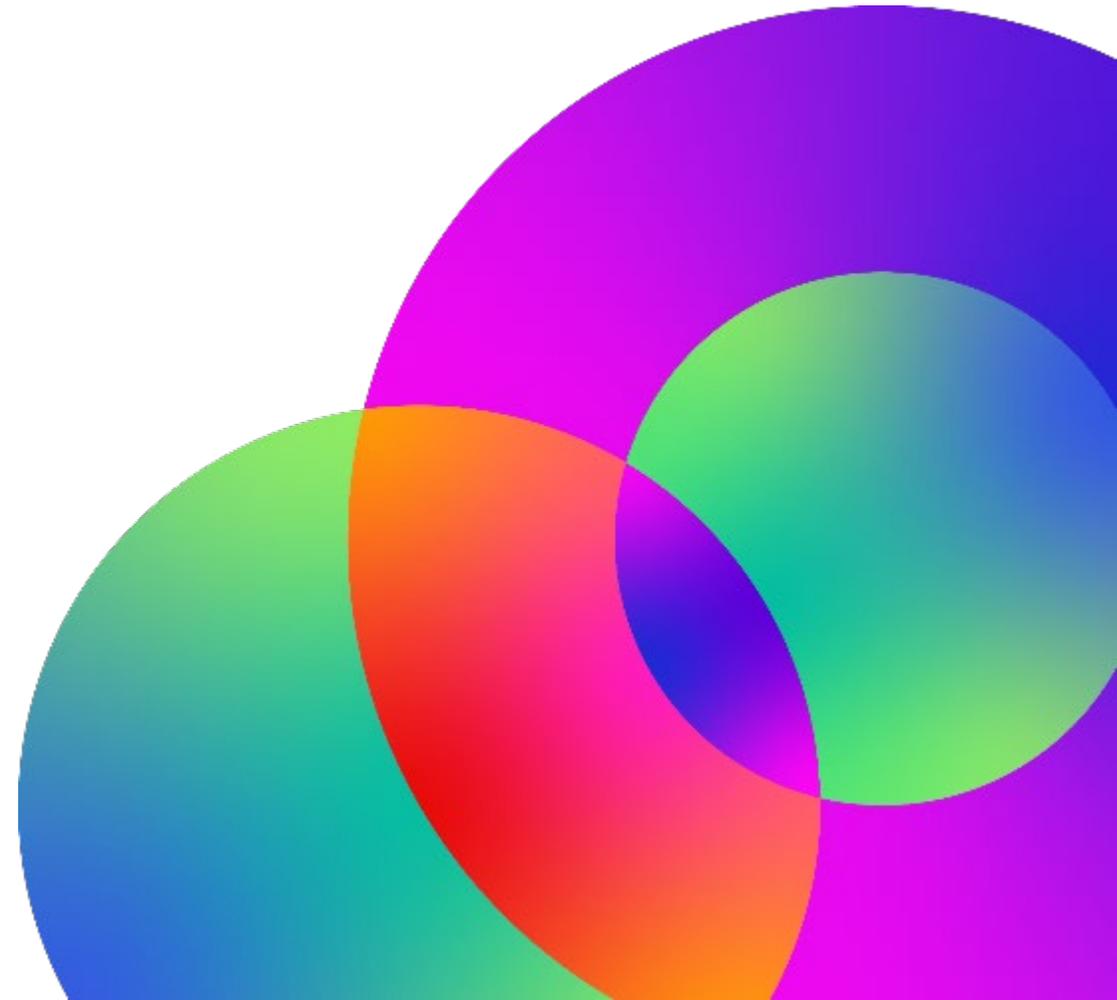


RISKY BUSINESS – Mitigating Legal Hazards

Donna Goestenkors, CPMSM, EMSP

Michael R. Callahan, Esq.



Meet Your Presenters



Donna Goestenkors, CPMSM, EMSP
Team Med Global



Michael R. Callahan, Esq.
Katten Muchin Rosenman

Education Partners



Katten

Agenda

- Describe the role that the MSP plays in risk management.
- Explain 4 primary areas of legal compliance.
- Identify 5 credentialing best practices to mitigate legal risk.



Prepare Yourself



Starts With...



EXECUTIVE MSP Competency Model



Knowledge + Skill + Impact = COMPETENCE

EXECUTIVE MSP Competency Model



Knowledge + Skill + Impact = COMPETENCE

Leads to...

**Getting the
knowledge
you need to
forge ahead!**



ROLE THAT THE MSP PLAYS IN RISK MANAGEMENT



RISK MANAGEMENT IN HEALTHCARE

- Risk management comprises the clinical and administrative systems, processes and reports employed to detect, monitor, assess, mitigate and prevent risks.
- Maintaining high clinical quality will increasingly impact financial performance and reduce the risk of brand impairment.



MINIMIZE RISK – The Role of the MSP in Risk Management

Patient Safety & Operational Activities

- Compliance
 - Laws, Regulations & Standards
- Governance
 - Medical Staff Bylaws
 - Rules & Regulations
 - Policies & Procedures
- Credentialing
 - Community/Employed/Contract
- Recredentialing
 - Community/Employed/Contract
- Expirables



MINIMIZE RISK

- Clinical Privileging
 - Disaster
 - Telemedicine
 - Artificial Intelligence
- Performance Improvement
 - Peer Review – need to collect and protect privileged information and what is considered privileged
 - FPPE/OPPE
 - Behavior – Code of Conduct/Physician Wellness
 - Complaints
- Fair Hearing & Due Process
- Meeting Minutes
- ER Call Schedules



PRIMARY AREAS OF LEGAL COMPLIANCE



HEALTHCARE LEGAL COMPLIANCE – Big Picture

- HIPAA (Health Insurance Portability and Accountability Act)
- The HITECH (Health Information Technology for Economic & Clinical Health)
- EMTALA (Emergency Medical Treatment and Labor Act)
- Anti-Kickback and Stark Laws
- PSQIA (Patient Safety and Quality Improvement Act)
- Fraud and Abuse Laws
- State Peer Review Statutes
- Accreditation Standards
- HCQIA
- Medicare Conditions of Participation – Governing Board and Medical Staff
- State Hospital Licensing Act

HEALTHCARE LEGAL COMPLIANCE – Questions from the Field



1. Can a Department Chair or Medical Staff committee unilaterally decide who does and does not get an initial application?

No – Departments and Committees are seen as “agents” of the hospital and should only make recommendations. Making unilateral decisions exposes them and the hospital to legal liability. If an application is rejected based on a failure to meet some required eligibility standard, i.e., lack of insurance, physician is a direct competitor, or for a quality-of-care issue, i.e., too many med mal judgments, the decision to deny should be made by an administrator such as the VPMA or CMO.

2. Can the MSSD share PI information with HR? Can the MSSD expect the same in return?

It depends. HR and even RM can access privileged PI information if necessary to carry out their responsibilities but should only be able to view what is truly necessary, which might not include a practitioner’s entire file. Privileged information should never be included in an employee’s employment file. Instead, HR and RM should create their own forms and materials which will not be considered privileged and therefore be used if needed in litigation.

HEALTHCARE LEGAL COMPLIANCE – Questions from the Field



3. Can a hospital deny an application to physicians who are employed by direct competitors or otherwise compete against the hospital?

Yes – Physicians do not have legal rights to medical staff membership or clinical privileges. Keeping direct competitors out of the hospital is a legitimate and reasonable decision as a way to maintain financial stability and continuity of care. These decision, however, should be made pursuant to a Board of Director Policy and implemented by non-competitor administrators such as the CMO/VPMA.

4. Should an organization/Medical Staff require that all clinical privilege forms be signed by the applicant and Medical Staff Leader?

Yes – It is important that the applicant sign so as to attest to the accuracy of the information provided. It is not an acceptable excuse to say, “oh my administrator/office manager filled out the application”. Application form should clearly point out this requirement. The same holds true for Department and Committees involved in the credentialing/privileging process. Reviewing an applicant’s file is critical so that an informed recommendation is made which ultimately will be true relied upon by the Board. MSPs must make sure that the application file is complete and that the required reviews and sign offs are obtained.

HEALTHCARE LEGAL COMPLIANCE – Questions from the Field



5. What constitutes an “investigation” for NPDB reporting purposes?

This is a presentation by itself. For detailed discussion go to www.katten.com/Michael-Callahan#Presentations. You can expand the list and find PowerPoint presentation on this and other topics of interest.

6. If a hospital doesn't have secure/encrypted mail service or a required hospital/system email address or a shared file source, can PI minutes or confidential credentialing information be sent through traditional email service?

It is hard to believe that a hospital does not have a method for encrypting medical record, a patient's personal health information, peer review and other privileged information. This is a requirement under HIPAA/HITECH. If not in place, sending internally notifying that the information is Privileged and Confidential is probably fine but would not recommend using emails for external communications if not encrypted.

HEALTHCARE LEGAL COMPLIANCE – Questions from the Field



7. What should an MSP do when he/she determines that the Medical Staff or the hospital are not peer review policies or the Medical Staff bylaws?

Meet with appropriate medical staff/hospital leaders for the purpose of identify what bylaws, policies, etc. are not being followed and that places the hospital in legal jeopardy. I would not put these reasons in writing. If the hospital has in-house counsel, they should be part of the discussion. At the end of the day, the MSP is not the final decision maker but at least you tried.

8. Are confidentiality statements required to be signed by members before each department, Credentials Cmte., Performance Improvement Cmte. or MEC where quality/credentialing information is discussed?

The hospital should have a confidentiality policy in place which already covers this obligation. There should be a reminder stated before the meetings and the materials should have privilege and confidentiality statements included although not legally required.

CREDENTIALING BEST PRACTICES TO MITIGATE LEGAL RISK



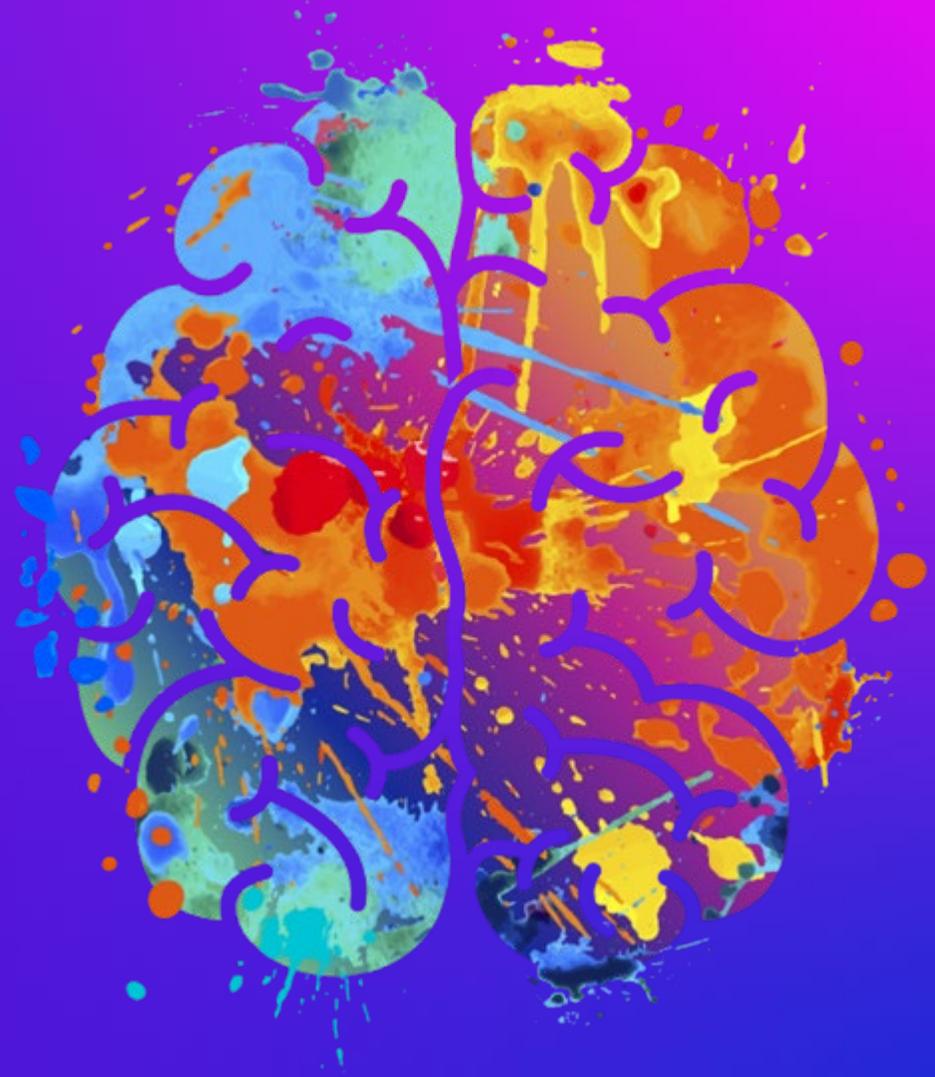
REDUCING THE RISK OF NEGLIGENT CREDENTIALING

- Exceed minimum credentialing verification accreditation requirements.
- Ensure practices follow current bylaws, policies, accreditation, state and federal standards.
- Investigate all red flags through to the satisfaction of the Medical Staff Leader.
- Provide the Medical Staff Leaders with complete documentation and guidance.
- Practice effective communication skills on issues involving physicians and practitioners, even when an incident or behavior has not risen to the level of a claim or lawsuit.
- Make sure that the practitioner's credentials and quality files are separate and up to date and that you don't mix the two.
- Adopt bylaws requiring that practitioners immediately notify the medical staff/hospital when certain events occur such as disciplinary actions, adverse licensing actions, Medicare/Medicaid sanctions, reduction in malpractice insurance, alleged commission of a felony.
- Keep up to date with what is privileged under state and federal laws and take steps to protect this information.

POWER THOUGHT

A manager is responsible for
the application and
performance of knowledge.

- Peter Drucker



Let's Stay Connected

#MerryHappyJoy



**EXPAND YOUR HORIZONS.
ACHIEVE YOUR POTENTIAL.**



**Team Med Global Introduces Educational Opportunities
that Flex with Your Schedule**



CAREER CATALYST

Take Advantage of
ONE-ON-ONE COACHING



QUESTIONS?
CLICK HERE TO CONTACT
MAGGIE



THE ULTIMATE RESOURCE FOR MSPS

The 30 elements in the Accreditation Wizard cover virtually every standard of credentialing developed by eight different regulatory bodies and accreditation agencies:

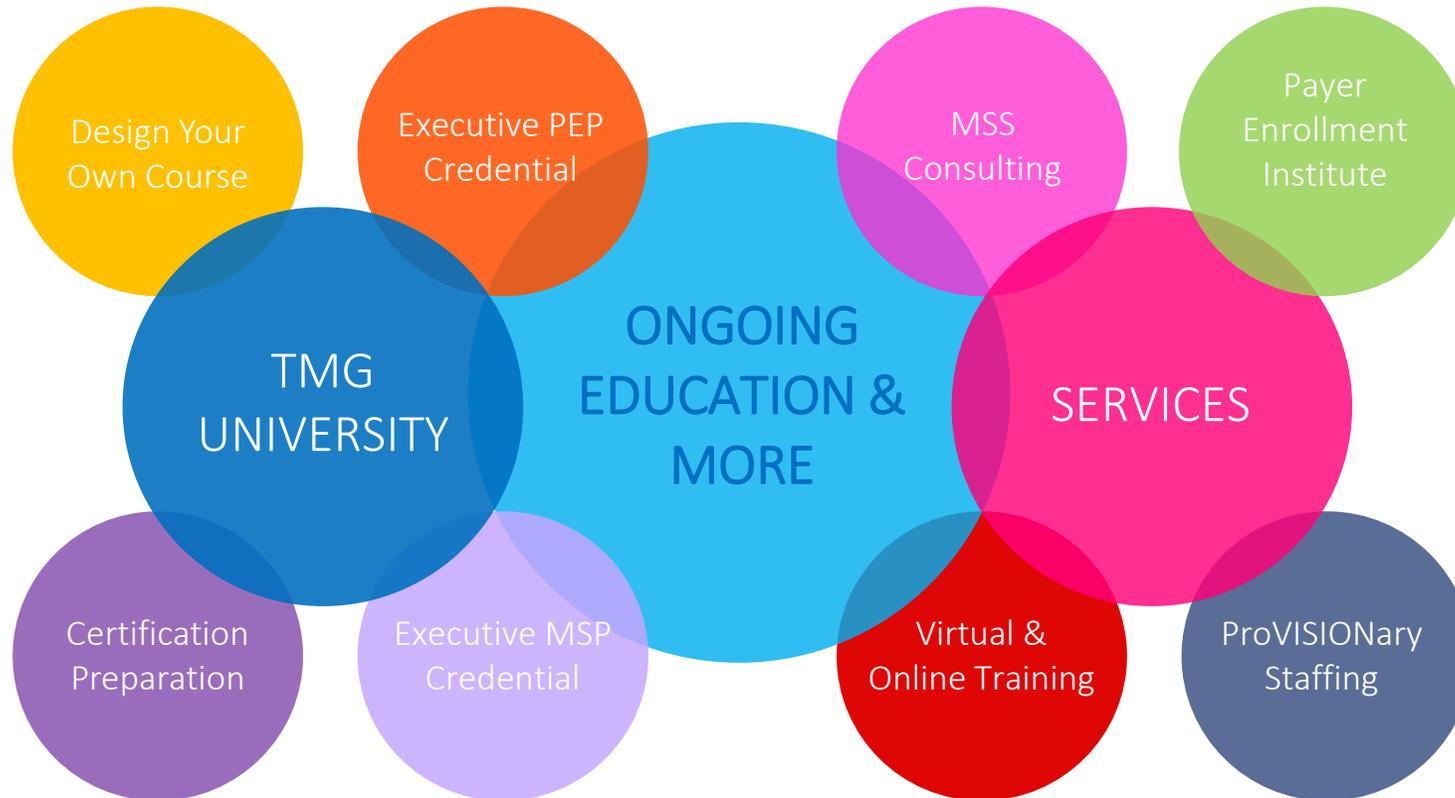
CMS • TJC • HFAP • DNV GL • CMS Managed Care • NCQA • URAC • AAAHC

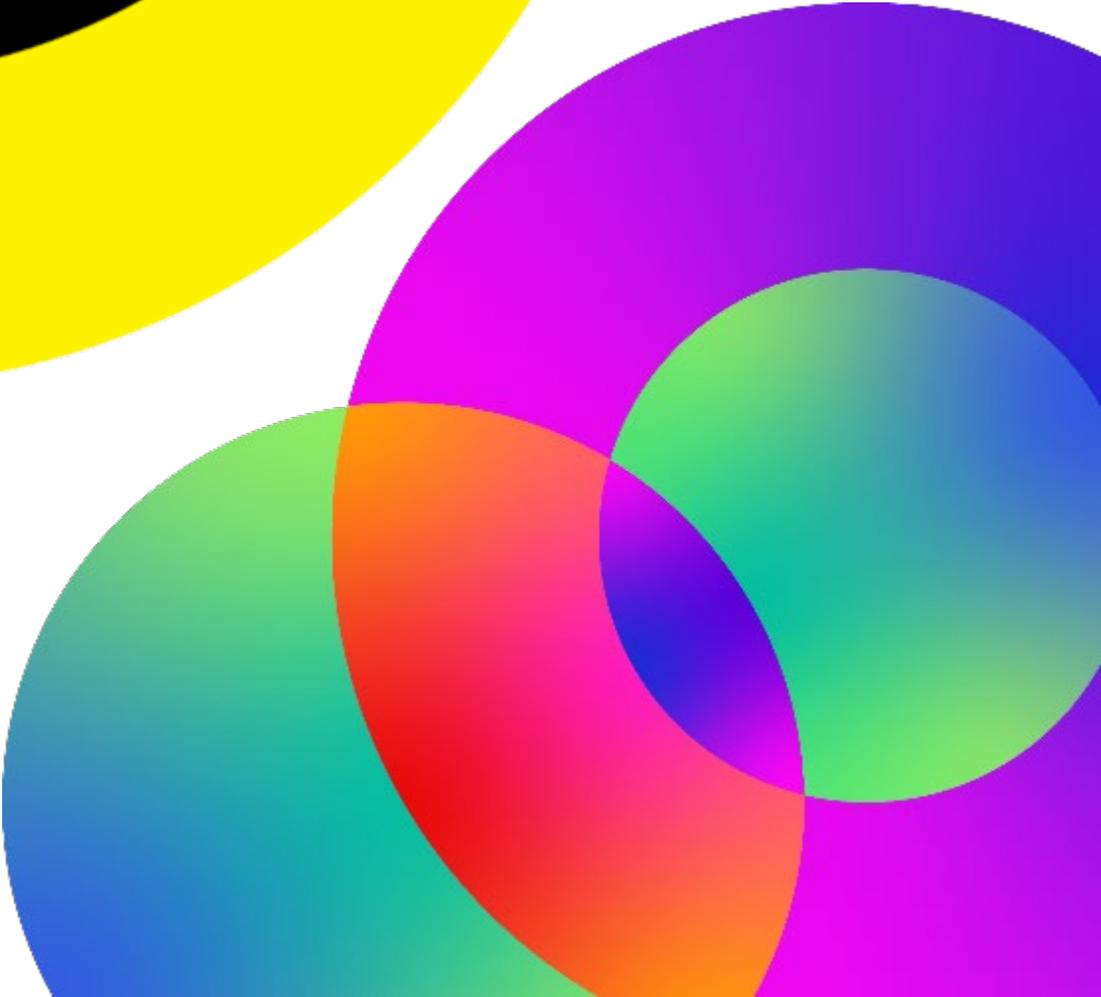
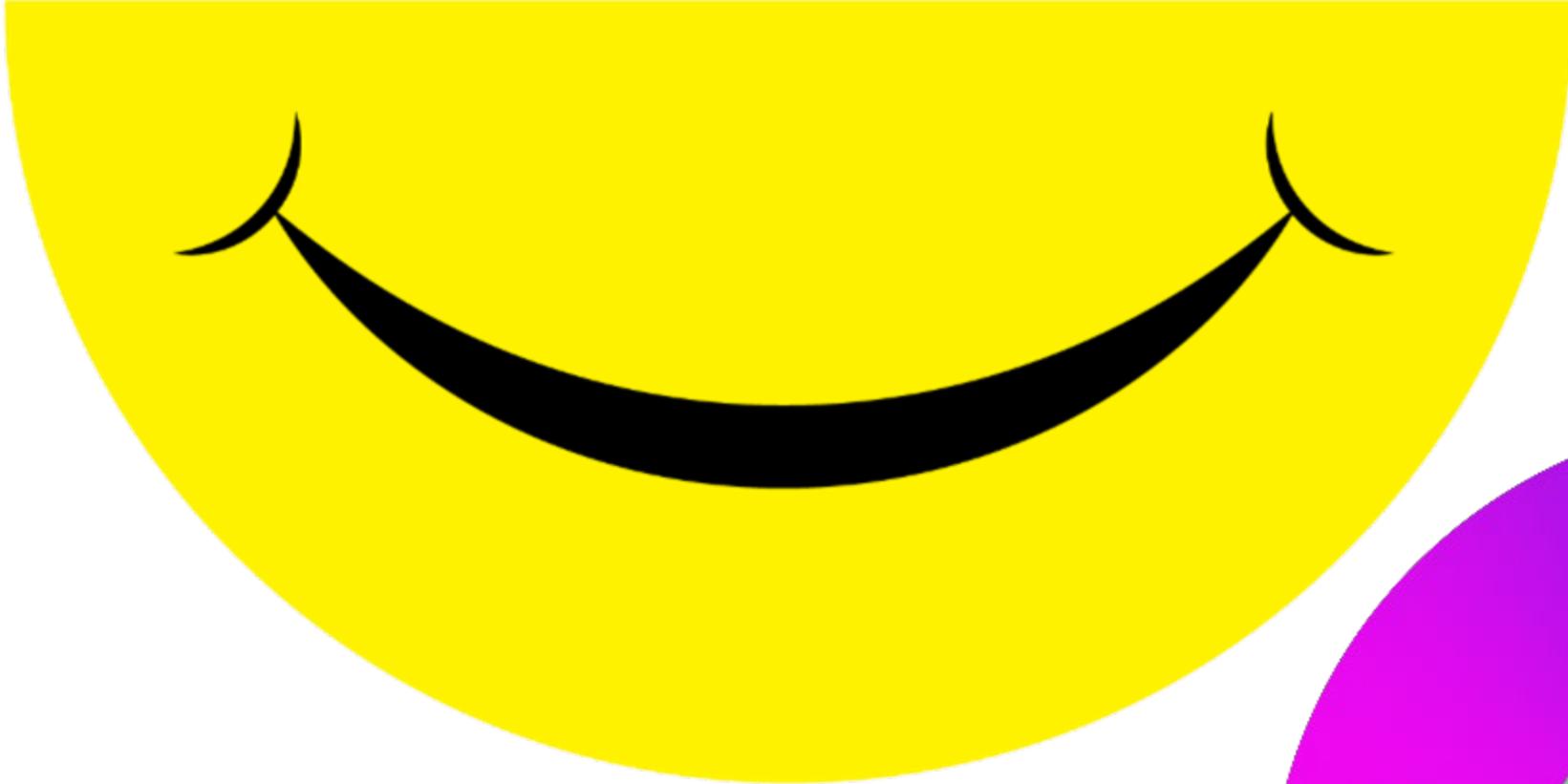


Donna Goestenkers, CPMSM, EMSP
President - Team Med Global
(618) 830-0057 | donna@teammedglobal.com

Michael R. Callahan, Esq.
Senior Counsel - Katten Munchin Rosenman
(312) 902-5634 | michael.callahan@katten.com

More Resources





Thank you