

Legal Nuts & Bolts of Leadership: Navigating Legal Aspects of Hospital Operations

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Overview



- ✓ Legal Fundamentals of Hospital Operations
 - ✓ Compliance
 - ✓ Contracting
 - ✓ Employee Relations
 - ✓ Provider Relations
- ✓ Working Effectively with Legal Counsel
- ✓ Open Microphone – Questions?

“Large healthcare institutions may be the most complex in human history, and even small healthcare organizations are barely manageable.”

Peter Drucker

Unavoidable Trends (just a few)

- Greater emphasis on quality and the patient
- Continuum of care – not just acute care
- Mergers, acquisitions, affiliations – of all types
- Increasing provider employment or contracting
- Employers as payers/plan sponsors
- CINs, ACOs and similar “network” arrangements that seek to manage the health of defined populations
- Payers seeking relationships with coordinated groups of providers and different payment models that use cost control, shared savings, co-management, bundled payments, and patient-centered medical homes as components
- COVID-19 challenged conventional wisdom re operational “floors,” strategic planning, budgets, etc.
- In short – all hospitals are being forced to do more with less

Legal Foundation for Hospital Operations

- Licensing
- Patient rights/Consent/End of Life
- Malpractice/Professional liability
- Medicare/Medicaid participation requirements
- Employment laws
- Medical record laws
- Fraud and Abuse laws
- Peer review laws
- Governing documents
- Corporate laws
- Accreditation standards
- Commercial insurance laws
- HIPAA/HITECH
- EMTALA
- Affordable Care Act
- Tax laws
- OSHA/Workplace safety
- Abuse Reporting laws
- FDA laws
- Human Research laws
- Sunshine/Open Door laws

Rural Health Challenges

- Limited Access to Healthcare Services
- Financial Sustainability
- Workforce Shortages
- Telehealth and Technology
- Aging Population and Chronic Illnesses
- Health Disparities
- Emergency Care and Trauma Services
- Transportation Challenges
- Community Engagement
- Regulatory Compliance
- Resource Allocation
- Recruitment and Retention Strategies
- Community Health Initiatives
- Collaboration and Networking

Regulatory Primer

- **Stark Law**
 - Civil statute = financial relationship with physicians and family members must meet exceptions
- **Anti-Kickback Statute**
 - Criminal statute = no payment in exchange for referrals
- **Civil Monetary Penalties Statute**
 - Civil statute = no payment to physician to reduce services
- **False Claims Act**
 - Civil statute = claims submitted must comply with laws (whistleblowers)

Potential Pitfalls

Signs of Questionable Deals

- Hospitals providing physicians with items or services for free or < fair market value.
- Hospitals relieve physicians of financial obligations they would otherwise incur.
- Hospitals inflate compensation paid to physicians for items and services.

Common Technical Issues

- No written agreement
- Late signatures
- Incomplete or outdated agreement (services do not match what is written in the contract)

Compliance Issues

- 1) Incentives matter: Health Care environments are unlike any other business environment in terms of why we do what we do
- 2) Intent matters: Fraud and abuse issues can boil down to a single email
- 3) Is there a physician in the room: When it comes to physician arrangements, there is little wiggle room
- 4) “Mistakes are always forgivable if one has the courage to admit them.”

Contracts 101 – Key Issues

- 1) Scope of Services – get what you pay for...
- 2) Term and Termination – always have the ability to walk away from a relationship
- 3) Parties – who has to do what?
- 4) Compensation/Fees – the hidden costs are always hiding

Employee Relations

Some employment-related areas to consider contacting legal counsel:

- 1) Handbooks and policy reviews
- 2) Significant employee complaints and grievances that require investigation
- 3) Specific legal questions
- 4) Union relations
- 5) Wage and hour concerns
- 6) Leaves of absence and accommodations
- 7) EEOC responses, ASCHR responses, or other governmental investigations and complaints
- 8) Litigation

Employee Relations Best Practices

- 1) Be consistent:
 - Do you have a policy?
 - Have you followed your policy?
 - Review similar scenarios – are we treating employees consistently?
 - Avoid retaliation or the appearance of retaliation.
- 2) Communicate with your employees appropriately
 - When to communicate
 - When to maintain appropriate confidentiality
- 3) Documentation (and appropriately maintaining documentation)
- 4) Management Training and Human Resources Training
- 5) Public Relations considerations

Provider Relations



Provider Relations

Potential Advantages of Medical Staff Process

- Peer review immunity
 - If you have engaged in legitimate "peer review" activity
 - If done appropriately and pursuant to medical staff bylaws/process
- Peer review confidentiality
 - As determined by applicable state law
 - Understand the nature and obligations associated with this "privilege"
- Limited "judicial review"
- Often better situated to handle complex clinical concerns
- Understands potential mandatory reporting implications

Provider Relations

- 1) Don't confuse laws with policy
- 2) Quality and patient safety (almost) always prevails
- 3) Professional liability is often born from either a) not following a recognized process or standards or b) following a process that doesn't meet recognized standards – know the difference
- 4) Bylaws should provide a clear “road map” that will ensure legal compliance, lead to more consistent results, and give rise to both confidentiality and immunity

Working with Legal Counsel

- Best Practices for:
 - Before you call legal counsel
 - While working with legal counsel
 - Be transparent about concerns and risks
 - Follow-up with legal counsel

If nothing else, remember:

- Words matter
- Assume all written communications will be scrutinized
- Dysfunction or poor function generally does not breed high-performance

Contact Us

For more information on these topics
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