

Health Care Credentialing Update

NOVEMBER 2011

The Katten Muchin Rosenman LLP Health Care Practice is pleased to present this newsletter to keep our clients and friends informed about important topics in credentialing. Please feel free to share this newsletter with others who may be interested.

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Illinois Trial Court Upholds Patient Safety Act Privilege Protection of Walgreens Patient Safety Work Product in Case of First Impression

In a case that has attracted national attention, the Illinois Department of Financial and Professional Regulation (IDFPR) sued Walgreens when it refused to turn over the medication error incident reports for three of its pharmacists. The basis for Walgreens' decision was that these documents were collected as part of the company's patient safety evaluation system and reported to The Patient Safety Research Foundation, its component patient safety organization (PSO), which was certified by the Agency for Healthcare Research and Quality (AHRQ) as permitted under the Patient Safety and Quality Improvement Act of 2005 (PSQIA). The trial court ruled in Walgreens' favor and dismissed the IDFPR's lawsuit holding that the incident reports were protected under the PSQIA and therefore not discoverable. The case is now on appeal to the Illinois Appellate Court, which is likely to be the first appellate court to interpret the provisions of the PSQIA.

The privilege and confidentiality protections afforded under the PSQIA are far broader than most state peer review confidentiality statutes; they apply in both state and, for the first time, federal proceedings. In addition, any licensed provider in the state, such as hospitals, physicians, nursing homes and pharmacies, can take advantage of these protections when establishing a patient safety evaluation system and collecting and reporting documents, data, evaluations and other protected patient safety activities to a PSO through a required contractual arrangement. There currently are 81 certified PSOs in the United States.

Michael Callahan, partner in the Health Care Practice, and Wells Hutchison, partner and co-chair of the Health Care Civil Litigation Practice, assisted Walgreens and its legal counsel in the development of its arguments and also prepared an amicus brief in support of Walgreens that included several PSOs from around the country. For a copy of the pleadings and briefs in this case, click [here](#). For a copy of PSO educational materials, click [here](#). If anyone has questions about participating in PSOs or about the protections afforded under the PSQIA, please contact [Michael Callahan](#).

PRESENTATIONS

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Each year, Katten health care partner Michael Callahan speaks on accreditation matters, medical staff credentialing, hospital/medical staff relations and related topics at conferences and seminars around the country. Following is a sampling of his presentations from the past year.

Ethical Challenges in Healthcare Quality and Risk Management

American Society for Healthcare Risk Management Annual Conference @ Exhibition, October 2011

This presentation discusses the findings and recommendations of the NAHQ Ethical Dilemmas Task Team. Click [here](#) to view.

What the Risk Manager Should Know About Medical Staff Bylaws

Illinois Risk Management Services Annual Risk Managers' Meeting, October 2011

This presentation focuses on bylaw provisions that present high risks and includes sample bylaw provisions. Click [here](#) to view.

PSOs Made Easy!

Clarity Group, Inc. and Clarity PSO, a Division of Clarity Group, Inc. Webinar, October 2011

This recorded webinar offers information on what a PSO is, who can work with a PSO, the advantages of working with a PSO and how provider organizations can be protected under this legislation. To listen to the recording, visit the Clarity PSO [website](#).

Disruptive Physicians: From Credentialing to Disciplinary Action

Stafford Publications CLE Webinar, September 2011

This recorded webinar provides guidance for counsel on the steps health care facilities should take to minimize liability for disruptive physicians in the recruiting and credentialing processes and in the event disciplinary action is required. Click [here](#) to listen.

Ethics and Integrity in Healthcare Quality Practice

36th Annual National Association for Healthcare Quality Educational Conference, September 2011

This presentation describes the challenges to ethics and integrity in health care, what the NAHQ has done to explore this issue and the recommended actions for provider organizations to take. Click [here](#) to view.

Patient Safety Organizations: Overview, Benefits and Practical Applications Under Health Care Reform

Chicago Bar Association Health Law Committee Meeting, September 2011

This presentation gives an overview of PSOs, their benefits and practical applications under health care reform as well as general information on the Patient Safety Act. Click [here](#) to view.

16th National Morrisey User Group Meeting, August 2011

To view the presentation on “Building a Foundation for Accountability and Affordability...Healthcare Reform in 2011 and Beyond,”* click [here](#).

To view the presentation on “Patient Safety Organizations (PSO) – Definition, Overview and Benefits,” click [here](#).

Impact of ACOs on Physician/Provider Membership Decisions

AHLA Annual Meeting and In-House Counsel Program, June 2011

This presentation discusses the peer review, credentialing, antitrust and liability issues faced by hospitals and health systems participating in accountable care organizations relating to provider membership decisions. Click [here](#) to view.

Legal Update: Case Developments in New York That Affect MSPs

NYSAMSS Annual Educational Conference, May 2011

This presentation covers updates to credentialing and privileging standards, as well as relevant court cases, including lessons learned. Click [here](#) to view.

* This presentation, which addresses the impact of health care reform and accountable care organizations on medical staff professionals, also was presented at the NAMSS 35th Annual Conference & Exhibition in September 2011.

30th Annual FAMSS Educational Conference, May 2011

To view the presentation on “Current Issues in Negligent Credentialing Part 1,”† click [here](#).

To view the presentation on “Current Issues in Negligent Credentialing Part 2,” click [here](#).

To view the presentation on “Legal Update: Case Developments that Affect Florida MSPs,” click [here](#).

To view the presentation on “Effective Documentation of Peer Review Under Amendment 7,” click [here](#).

Legal Update

30th Annual IAMSS Education Conference, April 2011

This presentation focuses on the impact of ACOs on medical staff professionals. Click [here](#) to view.‡

University HealthSystem Consortium’s Joint Council Meeting: Maximizing Quality and Safety, Minimizing Risk, April 2011

PSOs: To Participate or Not: Advantages, Disadvantage and Questions Answered

This presentation explains the Patient Safety Act and its requirements, PSO reporting, and confidentiality and privilege protections of Patient Safety Work Product. Click [here](#) to view.

Retaliation Against Whistle Blowers: A Chronic Problem or Isolated Occurrence?

This presentation covers retaliation cases, recurring themes and legal perspectives. Click [here](#) to view.

Emerging Ethical Challenges in Healthcare Quality

NAHQ Invitational National Partnership Meeting, March 2011

Click [here](#) to view.

Credentialing Issues 2011

Morrisey Associates Webinar, February 2011

This recorded webinar discusses the use of electronic signatures in credentialing, the impact of ACOs on credentialing and privileging, and the protection of peer review information. Click [here](#) to view the slides from the presentation.

MAMSS Fall Educational Conference, November 2010

To view the presentation on “Low-Volume/No-Volume Practitioners: What’s the Solution for Your Hospital?” click [here](#).

To view the presentation on “Impaired and Aging Physicians,” click [here](#).

To view the “Legal Update: Case Developments in Maryland that Affect MSPs,” click [here](#).

To view the “MS.01.01.01 Update: The Joint Commission’s Answers to Specific Bylaws Questions,” click [here](#).

Disruptive Physicians: From Credentialing to Disciplinary Action

Strafford Publications CLE Webinar, November 2010

This recorded webinar examines 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](#) to listen.

† This presentation also was presented at the Annual MAMSS Educational Conference in May 2011.

‡ This presentation also was presented at the Annual NYSAMSS Educational Conference, the Annual MAMSS Educational Conference and the Annual FAMSS Educational Conference in May 2011.

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