Recent Healthcare Update

The American Medical Association Issues Principles for Physician Employment By Hospitals


While the Principles are not binding for disciplinary purposes, in the same manner as the AMA Code of Medical Ethics, the House of Delegates intended to “provide broad guidance for employed physicians and their employers as they collaborate to provide safe, high-quality, and cost-effective patient care.”

The Principles discuss six areas of the employer-employee relationship which raise potential concerns, particularly in the context of physician employment relationships at hospitals. These areas of concern include: conflicts of interest, advocacy, contracting, hospital-medical staff relations, peer review and performance evaluations, and payment agreements. Notably, Section 5 of the Principles discusses the need for a fair peer review process in medical staff privileging matters, and expressly recommends against contracts which require automatic resignation of medical staff privileges, and waiver of internal due process rights, upon termination of employment. Our experience is that such mandatory waivers are a very common provision often inserted by area hospitals in their standard employment contracts throughout the New York Metropolitan area. The Principles view such provisions as creating the potential for abuse: Whereby an employer (hospital) can terminate a physician’s employment, triggering the “automatic” loss of medical staff privileges, thereby avoiding the need to justify the adverse action before an internal peer review
committee as generally required by the medical staff bylaws.

These types of hearing-rights waiver provisions can have potentially wide reaching and adverse collateral consequences on a physician’s reputation and ability to continue in practice. Besides being unable to challenge the underlying reasons for the termination of employment, which results in the automatic loss of medical staff privileges, there are potential reporting implications associated with the resulting termination under this scenario. These reporting obligations include notices to the New York State Department of Health, Office of Professional Medical Conduct, as well as Adverse Action Reports to the National Practitioner Data Bank (NPDB) -- all of which could occur without adequate internal due process hearings where the target physician would otherwise have the ability to challenge the underlying grounds for the termination.

In light of the current economic realities of the healthcare industry, the Principles reflect the AMA’s attempt to grapple with the proper balance to be struck between the often conflicting interests of the parties involved in these hospital based employment transactions – a balancing process that regularly occurs whenever a physician employment agreement is negotiated. Needless to say, the concerns addressed by the Principles are magnified given the increasing numbers of physicians entering into employment agreements with hospitals and large health systems.

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Weiss & Zarett, P.C., is a boutique law firm on Long Island which primarily represents physicians and other healthcare providers in their business, regulatory and professional affairs. In particular, we have represented clients in physician practice employment contracting, development of hospital-physician employment relationships, termination of employment relationships, practice sales and acquisitions, and disputes with hospitals as well as hospital privileging discipline matters.

Please contact Weiss & Zarett, P.C., if you have any questions regarding these recent developments, or require assistance in these developing areas of the law.

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