

The Most Common Medical Staff Issues And How To Handle Them

17th Annual Ambulatory Surgery Center Conference October 22, 2010

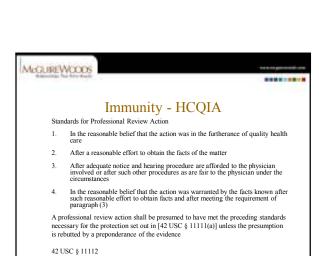
Thomas J. Stallings



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Immunity - HCQIA

- Designed to promote meaningful peer review by eliminating threat of liability
- Immunity provided if peer review conducted in good faith and in accordance with specified procedures
- Established National Practitioner Data Bank and related reporting requirements
- Compliance with HCQIA is optional 42 USC § 11111



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HCQIA Immunity-Who is Immune?

- "Professional Review Body"
- Any person acting as a member or staff to the Professional Review Body
- Any person under contract or other formal agreement with the Professional Review Body
- Any person who participates with or assists the Professional Review Body
- Person (whether as a witness or otherwise) providing information to a Professional Review Body regarding the competence or professional conduct of a physician unless such information is false and the person providing it knew that such information was false

42 USC § 11111

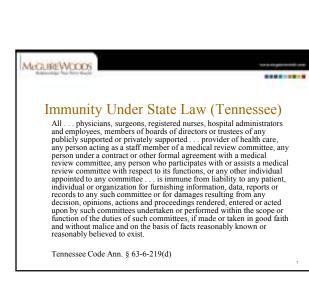
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HCQIA Attorneys' Fees

- When defendant "substantially prevails" and has met the HCQIA procedural standards
- Court "shall" order plaintiff to pay defendant's reasonable costs and fees
- If the claim, or the plaintiff's conduct during litigation, was "frivolous, unreasonable, without foundation, or in bad faith"

42 USC § 11113



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Immunity Under State Law (Tennessee)

"Medical review committee" or "peer review committee" means any committee ... of any licensed health care institution, or the medical staff thereof, ... the function of which, or one (1) of the functions of which, is to evaluate and improve the quality of health care rendered by providers of health care service, to provide intervention, support, or rehabilitative referrals or services, or to determine that health care services rendered were professionally indicated, or were performed in compliance with the applicable standard of care, or that the cost of health care rendered was considered reasonable by the providers of professional health care services in the area.

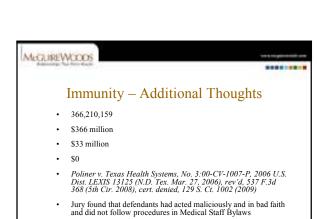
Tenn. Code Ann. § 63-16-219(c)

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Other Sources of Immunity and/or Indemnification

- Medical Staff Bylaws
- Medical Staff Application Forms
- · Center-Physician Contracts
- · Indemnification Insurance



Court of Appeals overturned award

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Privilege and Confidentiality Under Federal Law

There is no privilege under HCQIA

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Privilege and Confidentiality Under State Law (Pennsylvania)

The proceedings and records of a review committee shall be held in confidence and shall not be subject to discovery or introduction into evidence in any civil action against a professional health care provider arising out of the matters which are the subject of evaluation and review by such committee and no person who was in attendance at a meeting of such committee shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of such committee or as to any findings, recommendations, evaluations, opinions or other actions of such committee or any members thereof.

63 P.S. § 425.4



"Review Organization" means any committee engaging in peer review ... to gather and review information relating to the care and treatment of patients for the purposes of (i) evaluating and improving the quality of health care rendered; (ii) reducing morbidity or mortality; or (iii) establishing and enforcing guidelines designed to keep within reasonable bounds the cost of health care. It shall also mean any hospital board, committee or individual reviewing the professional qualifications or activities of its medical staff or applicants for admission thereto.

63 P.S. § 425.2

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Privilege – Additional Thoughts

 HCA Health Services of Virginia, Inc. v. Levin, 260 Va. 215, 530 S.E.2d 417 (2000)

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Reporting Obligations – Federal Law

Required Reporting to the Board of Medical Examiners:

When a health care entity takes a professional review action that adversely affects the clinical privileges of a physician for a period longer than 30 days.

When a health care entity accepts the surrender of clinical privileges of a physician while the physician is under an investigation by the entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding.

42 U.S.C. § 11133



Reporting Requirements – State Law (Michigan)

A health facility or agency that employs, contracts with, or grants privileges to a health professional licensed or registered under Article 15 shall report the following to the department not more than days after it occurs:

- after it occurs:

 Disciplinary action taken by the health facility or agency against a health professional licensed or registered under Article 15 based on the licensee's or registrartly professional competence. Disciplinary action that results in a change of employment status, or disciplinary action based on conduct that adversely affects the licensee's or registrant's clinical privileges for a period of more than 15 days. As used in this subdivision, "adversely affects" means the reduction, restriction, and 15 days. As used in this subdivision, "adversely affects" means the reduction, restriction by a health facility or agency.

 Restriction or acceptance of the surrender of the clinical privileges of a licensee or registrant under either of the following circumstances: the licensee or registrant is under investigation by the health facility or agency agrees not to conduct an investigation into the licensee or registrant's alleged professional incompetence or A case in which a health professional resigns or terminates a contract or whose contract is not renewed instead of the health facility taking disciplinary action against the health professional.

MCL § 333.20175(5)



Reporting Obligations – Additional Thoughts

Kadlec Medical Center v. Lakeview Anesthesia Associates, No. 04-997, 2005 U.S. Dist. LEXIS 9204 (E.D. La. May 19, 2005), rev'd 527 F.3d 412 (5th Cir. 2008), cert. denied, 129 S. Ct. 631 (2008)



March 27, 2001 Letter to Doctor

Please consider this correspondence your written notice of termination "with cause." As we have discussed on several occasions, you have reported to work in an impaired physical, mental, and emotional state. Your impaired condition has prevented you from properly performing your duties and puts our patients at significant risk. As we have previously discussed, please consider your termination effective March 13, 2001.



This is a letter of recommendation for Dr. Lee Berry. I have worked with him here at Lakeview Regional Medical Center for four years. He is an excellent anesthesiologist. He is capable in all fields of anesthesia, including OB, peds, C.V. and all regional blocks. I recommend him highly.

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Disruptive Physicians

 Leal v. Secretary of HHS, No. 09-15727, 2010 U.S. App. LEXIS 19665 (11th Cir. Sept. 22, 2010)

