



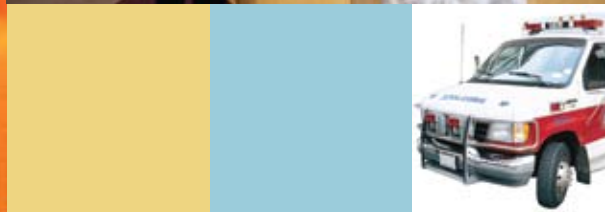
# Physicians and Physician Organizations Law Institute

February 9–10, 2009

# Hospitals and Health Systems Law Institute

February 10–11, 2009

Sheraton Wild Horse Pass Resort and Spa  
Phoenix, AZ



### Physicians Planning Committee:

Charlene L. McGinty, Esq. – *Program Chair*  
Almeta E. Cooper, Esq.  
Michael F. Schaff, Esq.

### Hospitals Planning Committee:

S. Allan Adelman, Esq. – *Program Chair*  
Lisa J. Gilden, Esq.  
Brian D. Gradle, Esq.  
Louise M. Joy, Esq.  
Brian M. Peters, Esq.  
Robert A. Wade, Esq.



*Horne LLP. has provided sponsorship in support of both programs.*

# Physicians and Physician Organizations Law Institute Hospitals and Health Systems Law Institute

**Make plans to join us in Phoenix!**



The American Health Lawyers Association is pleased to once again offer the **Physicians and Physician Organizations Law Institute and the Hospitals and Health Systems Law Institute**. These programs provide in-house and outside counsel with the latest information needed to advise clients in these two segments of the healthcare industry. The programs have been scheduled so that you can attend either the Physicians program or the Hospitals program if your practice focuses on a particular provider or you can register for both programs for a more comprehensive curriculum that will prepare you to address legal issues facing both segments and gain a better understanding of their distinct legal challenges.

This brochure includes the agenda for each program as well as a grid on pages 16-19, which shows the full 3-days of programming with an indication of which sessions are on each program. In addition to the educational sessions, there are a number of networking opportunities including breakfasts held each day, receptions on Monday and Tuesday evenings, and Practice Group lunches held each day.

This year's programs take place in the Phoenix, AZ at the beautiful Sheraton Wild Horse Pass Resort and Spa. Before or after the program, you will want to allow for time to enjoy the resort, which offers golf, tennis, horseback riding, a casino, jogging and hiking trails, and a world class spa.

***We look forward to seeing you in February!***

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## EXHIBITORS/SPONSORS

AHLA would like to thank the following companies for their support of the Physicians and Hospitals programs and encourages attendees to visit their exhibit booths:

- Carnahan Group
- HealthCare Appraisers, Inc. – *sponsor of the Hospitals and Health Systems Practice Group Lunch*
- Horne LLP – *sponsor of the Physicians Law Institute and the Hospitals Law Institute*
- Pershing Yoakley & Associates PC – *sponsor of the Antitrust, Labor and Employment, and Physician Organizations (joint) Practice Group Lunch*

## HOTEL RESERVATIONS

Hotel accommodations are not included in the registration fee. AHLA has reserved a block of rooms at Sheraton Wild Horse Pass Resort and Spa at a discounted rate of \$269 per night. To make reservations, please call the Wild Horse Pass at (888) 218-8989 or use the online form to make your reservations: <http://www.starwoodmeeting.com/Book/ahla2009>. ***The room block expires January 19, 2009.*** Please make your reservations early. The room block may sell out prior to the hotel cutoff.

## Program Materials Go Green ♻

AHLA is going green for the 2009 Physicians and Hospitals Law Institutes! We are trying to reduce the amount of paper we use at our programs. This is both an effort at responsible environmental conservation, and an effort to increase the timeliness of the resources provided to our attendees. We will not automatically be printing binders for everyone. All materials will be available on a website prior to the program so attendees can print what they need for the sessions they plan to attend and handed out on CD at the program. For those who still do want the binder, they will be available for an additional fee; please order on the registration form on pages 21-22.

## Program Agenda

### Monday, February 9, 2009

7:00 am–5:40 pm

#### Registration and Information

7:00–8:00 am

#### Continental Breakfast *sponsored by Horne LLP*

(attendees, faculty and registered spouses and guests welcome)

#### GENERAL SESSION

8:00–8:20 am

#### Welcome and Introduction

*Elizabeth Carder-Thompson, AHLA President-Elect*  
*Charlene L. McGinty, Physicians Program Chair*

8:20–9:20 am

#### Things You Should Know about the OIG

*Lewis Morris*

#### CONCURRENT SESSIONS

9:45–10:45 am

#### A. Planning for Pandemonium: Pandemic Planning for Physicians (not repeated)

*Melissa L. Markey*

- Public health emergencies and extraordinary powers
- Where in the world is H5N1: A look at WHO data on H2H transmission of Avian flu
- Preparing for the pandemonium: Pre-planning to avoid chaos (to the extent possible...)
- Coordinating physician preparedness with other public health and treatment components

#### B. Physician-Patient Relationships: Get It in Writing, Or What Every Physician's Attorney Should Know about the Value of Patient Forms, Consents, Agreements and Documentation

*Harry J. Nelson*

*Michael Sacopulos*

- The essential physician-patient form agreements
- Arbitration, patient conduct agreements and options in patient contracting
- Challenges for attorneys in preparing physician-patient agreements
- Legal issues in execution of patient agreements
- Informed consents and post-intake agreements in the course of medical treatment
- Trends in physician-patient contracting (manifestations of consumer-directed care, the rise of patient Internet ratings and blogs, and developments in professional liability and reimbursement)

#### C. Medicare Physician Reimbursement Issues: Through the Stark Looking Glass and More (Advanced)

*Alice G. Gosfield*

- Specific points of understanding Medicare physician reimbursement issues which are essential to Stark analyses

- Incident to – what's in, what's out, the new CMS positions and productivity
- Contrasting general rules for diagnostic testing with Stark rules for DHS
- How and when does anti-markup trump Stark rules (e.g., shared facilities)
- In office ancillary services supervision – who can supervise and who goes on the claim?
- The reimbursement effects of adding new product lines through shared facilities
- Reassignment – the liberalizations, group practice, teleradiology

11:00 am–12:00 noon

#### D. Courting the Large Primary Care Practice: A Case Study in the Legal and Ethical Aspects of Creating Ties that Bind (not repeated)

*David McMillan*

*Mark R. Thompson*

- Determining strategic fit and goals
- Identifying relationships consistent with mutual strategic goals
- Analyzing the range of options in which the parties are mutually interested
- Communicating results of analyses and choosing transactions/relationships to pursue
- Negotiating specific terms and conditions
- Examples of relationships considered

#### E. You Want To Do What?: The Changing Face of Ambulatory Surgery Centers

*Cynthia Y. Reisz*

- Given the decline in ASC reimbursement, facilities are becoming more creative in utilizing space for other modalities, such as imaging services and virtual colonoscopies
- The option of converting into a limited service hospital, joint venturing with a hospital, or returning to an office-based surgery setting
- Regulatory issues with expanding ASC operations into these areas, including Stark, anti-kickback, certificate of need, licensure, and reimbursement

#### F. Legal Ethics: Preventive Medicine – A Rx for Prudent and Ethical Representation of Physicians and Physician Organizations

*Michael F. Schaff*

*Lisa D. Taylor*

- Client identification and the “corporate Miranda warning”
- The advice of counsel defense and what it really means
- The Department of Justice's 2008 Corporate Charging Guidelines and the impact on physician organizations and their leaders
- Enforcement initiatives and areas of risk for physicians
- Case studies

## Program Agenda

12:00 noon–1:30 pm

**Lunch on your own or attend a Practice Group Luncheon: Antitrust, Labor and Employment, and Physician Organizations** (joint) *sponsored by Pershing Yoakley & Associates PC or Health Information and Technology* (additional fee; limited attendance; pre-registration required; see page 20 for descriptions of luncheon presentations)

### CONCURRENT SESSIONS

1:40–2:40 pm

#### **G. Physician Covenants Not to Compete – Reasonable Limitations or Overreaching?** (not repeated)

*Gordon J. Apple*

- The legal and public policy issues associated with restrictive covenants in physician employment and shareholder agreements
- The evolving case-law and statutory environment
- Model clauses – suggestions for a middle ground to achieve a fair balance of competing interests

#### **H. Structuring Ancillary Revenue Transactions**

*Rick L. Hindmand*

- Stark Law in-office ancillary services exception
- Anti-markup rule
- Medicare billing requirements
- Contractual joint venture, sharing and leasing issues
- Independent diagnostic testing facility (IDTF) requirements

#### **B. Physician-Patient Relationships: Get It in Writing, Or What Every Physician's Attorney Should Know about the Value of Patient Forms, Consents, Agreements and Documentation** (repeat)

2:55–3:55 pm

#### **J. Physicians and Antitrust – The Big Issues** (not repeated)

*John J. Miles*

- Physician-practice mergers: A new area of FTC concern?
- Physician-contracting networks and price fixing: What part of no don't you understand?
- Physician contracting networks and clinical integration: What is it, and is it a panacea?
- Managed care mergers: Are the enforcement agencies asleep at the wheel?
- General hospitals v. physician-owned specialty hospitals: Who has the antitrust trump card?

#### **C. Medicare Physician Reimbursement Issues: Through the Stark Looking Glass and More** (Advanced) (repeat)

#### **H. Structuring Ancillary Revenue Transactions** (repeat)

*PLEASE NOTE THE END TIMES FOR THE LAST SET OF SESSIONS*

4:10–5:10 pm

#### **K. Clinical Management Agreements: Medical Practice and Management Company Perspectives** (not repeated)

*Harold E. Kaplan*

*Julie Watson*

- The parties' obligations and deliverables
- Management company costs, pass through costs, etc.
- How real estate (bricks and mortar) complicates the transaction
- Default provisions and the balance of power
- Buy-out on termination provisions
- Termination issues

4:10–5:40 pm Extended Sessions

#### **L. Non-Physician Practitioners (NPPs): More Care, Less Cost, Different Law?**

*Katherine Benesch*

*David J. Hyman*

- NPPs and their practice settings
- Economics of NPP practices
- Credentialing and privileges
- Turf battles and antitrust issues
- Fraud and abuse: Application of the Stark Law and anti-kickback statute to NPPs
- Interstate practice by NPPs

#### **M. Changes in the Stark Rules Require Major Changes for Physician Joint Ventures**

*Julie E. Kass*

*Lisa M. Ohrin*

- When is an entity considered an "entity" that performs designated health services (DHS)?
- Percentage-based and per-click compensation formulae – a review of the regulations that take effect in 2009
- Putting it all together: What is prohibited and what remains permissible?
- How to structure Stark-compliant arrangements after October 1, 2009

5:10–6:30 pm

#### **Reception sponsored by Horne LLP**

(attendees, speakers and registered spouses and guests are welcome to attend)

## Program Agenda

### Tuesday, February 10, 2009

7:00 am–5:50 pm

#### Registration and Information

7:00–8:00 am

#### Continental Breakfast sponsored by Horne LLP

(attendees, speakers and registered spouses and guests welcome)

#### GENERAL SESSION

8:00–8:10 am

#### Welcome and Introduction

*Elizabeth Carder-Thompson, AHLA President-Elect*  
*S. Allan Adelman, Hospitals Program Chair*

8:10–9:25 am

#### Top Legal Developments for Hospitals and Physicians

*Beth Schermer*  
*Jack S. Schroder, Jr.*

#### CONCURRENT SESSIONS

9:55–11:25 am Extended Sessions

#### N. The Current State of Physician Restrictive Covenants, Economic vs. Lifestyle Motivations, and Creative Ways to Protect Market Share

*Peter A. Pavarini*  
*Jennifer K. Trucano*

- How the Stark Law has changed what hospitals can and cannot expect from physicians and medical groups in the way of loyalty
- Update on the antitrust implications of medical staff economic conflict of interest policies
- Changing notions of what is a reasonable restriction in terms of time and distance
- New ways of fostering loyalty to physician practice groups, hospitals and health systems without restrictive covenants
- How to avoid litigating these cases
- How to win if you do

#### O. Joint Ventures: Practical Advice to Avoid the Antitrust, Tax, and Fraud and Abuse Pitfalls

*Christine L. White (Moderator)*  
*Albert W. Shay*  
*Michael L. Sibarium*  
*LaVerne Woods*

- Hypothetical joint venture examples will be used to explore:
  - Key antitrust concerns and specific questions to ask about the formation and operation of joint ventures
  - OIG guidance, recent changes to the Stark regulations, and Safe Harbors that impact hospital/physician joint ventures
  - The implications of a tax exempt organization joint venturing with a for profit entity

#### L. Non-Physician Practitioners (NPPs): More Care, Less Cost, Different Law? (repeat)

#### M. Changes in the Stark Rules Require Major Changes for Physician Joint Ventures (repeat)

11:40 am–12:40 pm

#### P. Hospital-Physician Employment Arrangements in 2009: Reluctant Partners or Aligned Allies? (not repeated)

*David A. De Simone*  
*Todd A. Rodriguez*

- What is driving the re-emergence of the employment model?
- Why and how has the market changed?
- How are the needs of the parties different and how can success be achieved through aligned incentives?
- When the employment model fails, are there strategies to prepare for life after employment?
- Who are appropriate candidates for traditional employment arrangements and when should alternative arrangements be considered?

#### Q. Recovery Audit Contractors and Medicare Audits

*Marie Casey*  
*Andrew B. Wachler*  
*Kathleen Wallace*

- The RAC demonstration program, including the results of the RAC demonstration program
- The permanent RAC program, including the expansion timeline and an explanation of the differences between the RAC demonstration program and the permanent program
- The administrative systems and proactive compliance strategies Medicare providers and suppliers should implement now to be prepared for RAC audits
- Appeal strategies Medicare providers and suppliers could implement, should they be faced with RAC audits and denials

#### R. The Nuts and Bolts of Self-Disclosure

*Almeta E. Cooper*  
*Matthew G. Weber*

- The benefits of encouraging compliance reports within the organization
- The risks and benefits of self-disclosure to governmental authorities
- How self-assessment investigations are conducted
- How to position a self-disclosure for a favorable outcome

#### S. Supporting High Level Physician Employment Compensation –Surveys and Alternative Approaches

*Rud Blumentritt*  
*John R. Holdenried*

- Special considerations relative to supporting high level compensation
- Alternative approaches to compensation valuation
- Legal barriers and considerations
- Interaction between attorneys and valuation experts
- Case study

## Program Agenda

### T. Dealing with Disruptive and Impaired Physicians

*S. Allan Adelman*

*Brian M. Peters*

- Determining when a physician is disruptive and/or impaired
- Consequences of failing to deal with disruptive or impaired physicians
- Dealing with disruptive conduct as an impairment issue
- Essential elements of policies related to disruptive and impaired physicians
- Use of evaluation and treatment programs for disruptive and impaired physicians
- Practical steps to confront, investigate and address disruptive conduct and impairment
- Legal and regulatory issues relating to impaired and disruptive physicians

12:40–1:50 pm

**Lunch on your own or attend a Practice Group Luncheon: Business Law and Governance and Healthcare Liability and Litigation (joint) or Medical Staff, Credentialing, and Peer Review**

(additional fee; limited attendance; pre-registration required; see page 20 for descriptions of luncheon presentations)

### CONCURRENT SESSIONS

1:50–2:50 pm

#### U. On-Call and Coverage Payments: A Formula for Hospital/Physician Tension (not repeated)

*Gregory D. Anderson*

*Dinetia M. Newman*

- History of coverage/subsidy and on-call arrangements
- Market forces affecting physician availability and uncompensated care
- The regulatory environment
- Structuring of and strategies regarding coverage and related compensation arrangements
- Determining fair market value of physician availability
- Case study on coverage/subsidy and on-call arrangements

#### V. Legal Ethics: Drawing the Line between Counsel and Management (not repeated)

*Jeffrey M. Sconyers*

- Recognizing the line between legal advice and management decisions
- Clarifying for the client when you're giving legal advice and when you're just expressing a view
- Appropriate disclaimers, in writing or verbal, to guide the client's understanding
- Protecting the confidentiality of legal advice when you're also part of management
- Records retention and destruction issues

#### W. Good Physician Gone Bad: What's a Hospital and Practice Group to Do?

*Priya J. Bathija*

*Terri-Lynne B. Smiles*

- Hospital and physician group practices' obligations once a physician displays impaired behavior or has a bad outcome (i.e. termination, peer review, databank entry, etc.)
- Hospital and physician group practices' dissemination obligations when responding to credentialing information requests (i.e. what is safer, an adverse disclosure or to disclose nothing at all), and the legal and ethical policy questions related to these obligations
- Risks associated with truthful disclosures, and steps hospitals and physician groups may take to mitigate those risks
- Specific contract considerations to be addressed related to this issue before hospitals and physicians enter into exclusive contracts for services or joint ventures (including a discussion of "good" language versus "bad" language)
- Impact a physician's impaired behavior may have on reimbursement and billing for that physician's services, in light of Medicare quality rules

#### X. Telemedicine: How to Assess Your Risks and Develop a Program that Works

*Tara Kepler*

*Charlene L. McGinty*

- Telemedicine activities – benefits, burdens, battles
- Considerations in contracting for telemedicine services
- The ins and outs of credentialing and medical staff issues for telemedicine
- Risk areas and solutions for local, national and international telemedicine activities
- Recent federal developments in e-prescribing and Medicare reimbursement
- Recent state regulation and enforcement of telemedicine activities

#### E. You Want To Do What?: The Changing Face of Ambulatory Surgery Centers (repeat)

#### S. Supporting High Level Physician Employment Compensation – Surveys and Alternative Approaches (repeat)

## Program Agenda

3:05–4:05 pm

**Y. Gainsharing and Quality-Focused Programs – Understanding the Regulatory Landscape** (not repeated)

*Catherine A. Martin*

*Lisa M. Ohrin*

- Regulatory landscape with respect to gainsharing and quality-focused incentive payment initiatives – the Federal Antikickback statute, the civil monetary penalty law, and the physician self-referral law
- Historical OIG perspective on gainsharing – OIG issuances, which include a special advisory bulletin, Congressional testimony, and numerous favorable advisory opinions
- The current CMS gainsharing demonstration efforts, the proposed exception to the physician self-referral law for Incentive Payment and Shared Savings Programs, and the recent solicitation by CMS of additional public comment
- Practical tips for minimizing compliance risk in the design and implementation of gainsharing and quality-focused incentive payment programs

**F. Legal Ethics: Preventive Medicine – A Rx for Prudent and Ethical Representation of Physicians and Physician Organizations** (repeat)

**Q. Recovery Audit Contractors and Medicare Audits** (repeat)

**R. The Nuts and Bolts of Self-Disclosure** (repeat)

*PLEASE NOTE THE END TIMES FOR THE LAST SET OF SESSIONS*

4:20–5:20 pm

**T. Dealing with Disruptive and Impaired Physicians** (repeat)

**W. Good Physician Gone Bad: What's a Hospital and Practice Group to Do?** (repeat)

**X. Telemedicine: How to Assess Your Risks and Develop a Program that Works** (repeat)

4:20–5:50 pm Extended Sessions

**N. The Current State of Physician Restrictive Covenants, Economic vs. Lifestyle Motivations, and Creative Ways to Protect Market Share** (repeat)

**O. Joint Ventures: Practical Advice to Avoid the Antitrust, Tax, and Fraud and Abuse Pitfalls** (repeat)

ADJOURNMENT

## Program Faculty

### PLANNING COMMITTEE

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**Lisa M. Ohrin, Esq.**

Director, Division of Technical Payment Policy  
Centers for Medicare and Medicaid Services  
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**Brian M. Peters, Esq.**

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**Cynthia Y. Reisz, Esq.**

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**Todd A. Rodriguez, Esq.**

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Exton, PA

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**Beth Schermer, Esq.**

Coppersmith Gordon Schermer  
& Brockelman PLC  
Phoenix, AZ

**Jack S. Schroder, Jr., Esq.**

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**Albert W. Shay, Esq.**

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**Mark R. Thompson, Esq.**

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**Jennifer K. Trucano, Esq.**

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Wachler & Associates PC  
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**Kathleen Wallace.**

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**Julie Watson, Esq.**

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**Matthew G. Weber, Esq.**

Holland & Hart LLP  
Denver, CO

**Christine L. White, Esq.**

Crowell & Moring LLP  
New York, NY

**LaVerne Woods, Esq.**

Davis Wright Tremaine LLP  
Seattle, WA

## Program Agenda

### Tuesday, February 10, 2009

7:00 am–5:50 pm

#### Registration and Information

7:00–8:00 am

#### Continental Breakfast sponsored by Horne LLP

(attendees, speakers and registered spouses and guests welcome)

#### GENERAL SESSION

8:00–8:10 am

#### Welcome and Introduction

*Elizabeth Carder-Thompson, AHLA President-Elect*  
*S. Allan Adelman, Hospitals Program Chair*

8:10–9:25 am

#### Top Legal Developments for Hospitals and Physicians

*Beth Schermer*  
*Jack S. Schroder, Jr.*

#### CONCURRENT SESSIONS

9:55–11:25 am Extended Sessions

#### A. Non-Physician Practitioners (NPPs): More Care, Less Cost, Different Law? (not repeated)

*Katherine Benesch*  
*David J. Hyman*

- NPPs and their practice settings
- Economics of NPP practices
- Credentialing and privileges
- Turf battles and antitrust issues
- Fraud and abuse: Application of the Stark Law and anti-kickback statute to NPPs
- Interstate practice by NPPs

#### B. Alternatives to The Joint Commission Accreditation – Options for Hospitals

*Barbara Blackmond*  
*Darrel J. Scott*

- The impact of Congressional removal of the statutory deemed status of the Joint Commission effective July 15, 2010
- CMS recognition of accreditation entities which meet CMS standards – What does it mean and how has it changed?
- The legal and practical implications of hospitals not being accredited.
- Health Facilities Accreditation Program – not just for osteopathic hospitals?
- What is a validation survey, who conducts it and what should counsel watch for?
- Competition in healthcare accreditation- then and now
- What is DNV and what is their new accreditation program all about
- The difference between DNV and other current accreditation programs

- ISO 9001 and how it applies to healthcare
- The Integrated Accreditation™ model- ISO and the Medicare CoPs

#### C. Stark Realities: How to Operationalize Stark and Prepare for and Respond to the DFRR

*Michael Paddock*  
*Robert A. Wade*

- Recent stark changes
  - “Stand in the Shoes”
  - “Entity” and under arrangements
  - Signature issues
- Operational issues involving:
  - Rental of office space
  - Rental of equipment
  - Bona fide employment relationships
  - Personal services
  - In-office ancillary exception
  - Physician recruitment
  - Indirect compensation and ownership arrangements
  - Gifts and benefits: Non-monetary compensation up to \$338 and medical staff incidental benefits
  - Fair market value documentation
- Disclosure of financial relationship report
  - How to prepare
  - What hospitals should be doing right now

#### D. The Current State of Physician Restrictive Covenants, Economic vs. Lifestyle Motivations, and Creative Ways to Protect Market Share

*Peter A. Pavarini*  
*Jennifer K. Trucano*

- How the Stark Law has changed what hospitals can and cannot expect from physicians and medical groups in the way of loyalty
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- Hypothetical joint venture examples will be used to explore:
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## Program Agenda

- The implications of a tax exempt organization joint venturing with a for profit entity

11:40 am–12:40 pm

### **F. Managing the Spotlight – A Course in Crisis Communications for Healthcare Attorneys** (not repeated)

*Marc D. Goldstone*  
*Rosemary Plovin*

- Case study
- In-house public relations management issues
- Concerns in engaging outside crisis communications consultants
- “Social media” and the blogisphere: Friend or foe
- Does “sorry” work?
- Questions and answers

### **G. Recovery Audit Contractors and Medicare Audits**

*Marie Casey*  
*Andrew B. Wachler*  
*Kathleen Wallace*

- The RAC demonstration program, including the results of the RAC demonstration program
- The permanent RAC program, including the expansion timeline and an explanation of the differences between the RAC demonstration program and the permanent program
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- The benefits of encouraging compliance reports within the organization
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- Alternative approaches to compensation valuation
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- Determining when a physician is disruptive and/or impaired
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- Dealing with disruptive conduct as an impairment issue
- Essential elements of policies related to disruptive and impaired physicians
- Use of evaluation and treatment programs for disruptive and impaired physicians
- Practical steps to confront, investigate and address disruptive conduct and impairment
- Legal and regulatory issues relating to impaired and disruptive physicians

12:40–1:50 pm

### **Lunch on your own or attend a Practice Group Luncheon: Business Law and Governance and Healthcare Liability and Litigation (joint) or Medical Staff, Credentialing, and Peer Review**

(additional fee; limited attendance; pre-registration required; see page 20 for descriptions of luncheon presentations)

### **CONCURRENT SESSIONS**

1:50–2:50 pm

### **L. Legal Ethics: Drawing the Line Between Counsel and Management** (not repeated)

*Jeffrey M. Sconyers*

- Recognizing the line between legal advice and management decisions
- Clarifying for the client when you’re giving legal advice and when you’re just expressing a view
- Appropriate disclaimers, in writing or verbal, to guide the client’s understanding
- Protecting the confidentiality of legal advice when you’re also part of management
- Records retention and destruction issues

### **M. Good Physician Gone Bad: What’s a Hospital and Practice Group to Do?**

*Priya J. Bathija*  
*Terri-Lynne B. Smiles*

- Hospital and physician group practices’ obligations once a physician displays impaired behavior or has a bad outcome (i.e. termination, peer review, databank entry, etc.)
- Hospital and physician group practices’ dissemination obligations when responding to credentialing information requests (i.e. what is safer, an adverse disclosure or to disclose nothing at all), and the legal and ethical policy questions related to these obligations
- Risks associated with truthful disclosures, and steps hospitals and physician groups may take to mitigate those risks

## Program Agenda

- Specific contract considerations to be addressed related to this issue before hospitals and physicians enter into exclusive contracts for services or joint ventures (including a discussion of “good” language versus “bad” language)
- Impact a physician’s impaired behavior may have on reimbursement and billing for that physician’s services, in light of Medicare quality rules

### **N. On-Call and Coverage Payments: A Formula for Hospital/Physician Tension**

*Gregory D. Anderson*

*Dinetia M. Newman*

- History of coverage/subsidy and on-call arrangements
- Market forces affecting physician availability and uncompensated care
- The regulatory environment
- Structuring of and strategies regarding coverage and related compensation arrangements
- Determining fair market value of physician availability
- Case study on coverage/subsidy and on-call arrangements

### **O. Telemedicine: How to Assess Your Risks and Develop a Program that Works**

*Tara Kepler*

*Charlene L. McGinty*

- Overview of telemedicine activities – benefits, burdens, battles
- Considerations in contracting for telemedicine services
- The ins and outs of credentialing and medical staff issues for telemedicine
- Risk areas and solutions for local, national and international telemedicine activities
- Recent federal developments in e-prescribing and Medicare reimbursement
- Recent state regulation and enforcement of telemedicine activities

### **J. Supporting High Level Physician Employment Compensation – Surveys and Alternative Approaches (repeat)**

3:05–4:05 pm

### **Q. Legal and Ethical Aspects of End-of-Life Decision-Making**

(not repeated)

*Thomas Wm. Mayo*

- Historical, legal and ethical origins of the “right to die”
- Case law on the right to die
- Distinguish between passive euthanasia, physician-assisted suicide, and active euthanasia
- Distinguish between “classic right to die” disputes and medical futility disputes (sometimes referred to as “reverse right to die” disputes)
- Various state responses to medical futility
- Hospital “best practices” with respect to any type of end-of-life dispute

### **R. Legal Ethics: Preventive Medicine – A Rx for Prudent and Ethical Representation of Physicians and Physician Organizations**

*Michael F. Schaff*

*Lisa D. Taylor*

- Client identification and the “corporate Miranda warning”
- The advice of counsel defense and what it really means
- The Department of Justice’s 2008 Corporate Charging Guidelines and the impact on physician organizations and their leaders
- Enforcement initiatives and areas of risk for physicians
- Case studies

### **S. Advanced Issues in EHRs, PHRs and HIEs – Great Expectations Meet Reality**

*Marilyn Lamar*

*Kristen B. Rosati*

- Critical EHR contract issues in a changing environment
- The expanding role of hospitals in health information networks, including HIEs and system-wide EHRs
- Sticky issues in applying the Stark and Anti-kickback regulations for EHR subsidies

### **T. Gainsharing and Quality-Focused Programs – Understanding the Regulatory Landscape**

*Catherine A. Martin*

*Lisa M. Ohrin*

- Regulatory landscape with respect to gainsharing and quality-focused incentive payment initiatives – the Federal anti-kickback statute, the civil monetary penalty law, and the physician self-referral law
- Historical OIG perspective on gainsharing – OIG issuances, which include a special advisory bulletin, Congressional testimony, and numerous favorable advisory opinions
- The current CMS gainsharing demonstration efforts, the proposed exception to the physician self-referral law for Incentive Payment and Shared Savings Programs, and the recent solicitation by CMS of additional public comment
- Practical tips for minimizing compliance risk in the design and implementation of gainsharing and quality-focused incentive payment programs

### **G. Recovery Audit Contractors and Medicare Audits (repeat)**

### **H. The Nuts and Bolts of Self-Disclosure (repeat)**

*PLEASE NOTE THE END TIMES FOR THE LAST SET OF SESSIONS*

4:20–5:20 pm

### **U. The Intersection of Quality and Compliance (not repeated)**

*Barry Bader*

*Kim Harvey Looney*

- Explosion of external quality mandates and measures
  - Determine patient care quality and safety measures
  - Use of measures to improve outcomes

## Program Agenda

- New compliance requirements and enforcement issues related to quality and patient safety
  - Determine role of effective compliance and compliance programs
  - Enforcement issues
- Recommended policies and practices for board oversight of compliance requirements
- The best defense against compliance risk: An informed and engaged board
  - Encouraging the board to think strategically about quality
- Straight talk: Why boards have trouble with quality oversight
  - Problems with purpose, people, physicians and information
- How boards can make a difference: 10 best policies and practices for board leadership and oversight of quality in patient care

### **K. Dealing with Disruptive and Impaired Physicians** (repeat)

### **M. Good Physician Gone Bad: What's a Hospital and Practice Group to Do?** (repeat)

### **O. Telemedicine: How to Assess Your Risks and Develop a Program that Works** (repeat)

4:20–5:50 pm Extended Sessions

### **D. The Current State of Physician Restrictive Covenants, Economic vs. Lifestyle Motivations, and Creative Ways to Protect Market Share** (repeat)

### **E. Joint Ventures: Practical Advice to Avoid the Antitrust, Tax, and Fraud and Abuse Pitfalls** (repeat)

5:20–6:45 pm

**Reception sponsored by Horne LLP**

(attendees, faculty, and registered spouses and guests welcome)

## **Wednesday, February 11, 2009**

7:00 am–3:25 pm

**Registration and Information**

7:00–8:30 am

**Continental Breakfast sponsored by Horne LLP**

(attendees, faculty, and registered spouses and guests welcome)

### **CONCURRENT SESSIONS**

PLEASE NOTE DIFFERENT START TIMES FOR THE FIRST SET OF SESSIONS

8:00–9:30 am Extended Sessions

### **B. Alternatives to The Joint Commission Accreditation – Options for Hospitals** (repeat)

### **C. Stark Realities: How to Operationalize Stark and Prepare for and Respond to the DFRR** (repeat)

8:30–9:30 am

### **V. The New Leadership Skill: Conflict Management** (not repeated)

*Jane Reister Conard*

*Lisa Diehl Vandecaveye*

- The new Joint Commission Leadership Standard
- Tool Kit to assist hospitals in the training of staff
- Essentials for conflict management
- The utilization of conflict management skills in patient care

### **W. Government Investigations and False Claims Act Update**

*Gary W. Eiland*

- Recent government investigations, enforcement actions and FCA settlements
- Other hot compliance issues and regulatory initiatives
- Practical strategies for assessing internal compliance and minimizing FCA risks, including self-disclosure and obtaining OIG or CMS advisory opinions
- Recent judicial interpretations of the False Claims Act

9:40–10:40 am

### **X. What's New, What's Hot and What's on the Labor and Employment Horizon** (not repeated)

*John E. Lyncheski*

- The new labor and employment law and regulation developments from 2008
- What's on the labor and employment horizon due to the changes in DC
- New initiatives from agencies enforcing the laws
- What hospitals and health systems can expect from organized labor
- What's up with the surge in wage and hour lawsuits and other court and agency decisions

### **Y. Executive Compensation: Process and Accountability**

*Thomas K. Hyatt*

- Legislative and regulatory scrutiny of executive compensation
- Intermediate sanctions excess benefit pitfalls to avoid
- Disclosures under the new Form 990
- Board review best practices
- Developing effective compensation and benefit policies

### **Z. Antitrust Challenges to the Creation and Exercise of Market Power**

*Matt Reilly*

*Toby G. Singer*

- Implications of recent FTC and state challenges to hospital mergers
- FTC actions that have contributed to greater success in challenging mergers
- DOJ consent decrees in health plan merger cases
- Challenges to hospitals' exercise of market power: Bundling and economic credentialing

## Program Agenda

### AA. The New Form 990: What You Need to Know Now!

*Lisa J. Gilden*

*Ronald J. Schultz*

- Responding to key areas of the Core Form and Schedule H
- Board and governance issues under the Form 990
- What hospitals should be doing now to get ready
- IRS update on filing season's most frequently asked questions

10:50–11:50 am

### BB. Chart Peekers and Cyber Peepers: EHR Liability Risk

(not repeated)

*Andrew W. Allison*

*Edward J. Zych*

- EHR functionality including the ease of access to EHR, gatekeeper function provided by EHR systems and why the function is not used and EHR audit trails
- The legal framework resulting in liability risks associated with unauthorized access of EHR, and reporting and disclosure obligations arising from unauthorized access of EHR
- The increasing risks of wholesale identity theft from within and from outside, and measures that should be taken to reduce the risk and to mitigate damage when theft occurs
- The development of (1) policies and procedures for permissible and impermissible EHR access; (2) a disciplinary framework to address impermissible EHR access; and, (3) an EHR training program detailing the institution's expectations and the consequences for failing to abide by those expectations

### CC. “Never” Events: Medicare and the Impact of Fiscally-Driven Standards of Care

*R. Jeffrey Layne*

- Quality of care as the emerging priority for the Medicare program
- Other ways quality is emerging as both a regulatory and a liability issue
- “Never events” and Medicare reimbursement
- Compliance and fraud and abuse concerns
- Collateral impact on quality issues
- Managing the impact with patients (and, if need be, their lawyers)
- Private payors and future trends

### DD. The Rights of Nonparticipating Providers in a Managed Care World: Navigating the Minefields of Balance Billing, Reasonable and Customary Payments and the Right to Control Care

*Carol K. Lucas*

*Michelle A. Williams*

- Under what circumstances can nonparticipating providers balance bill the patient?
- How much should the nonparticipating provider be paid, and who gets to decide?

- Are there any authoritative sources for “reasonable and customary” charges?
- Are the rules different for a nonparticipating on-call provider?
- When can a managed care organization assume control over an emergency patient (and what are the EMTALA implications)?

### W. Government Investigations and False Claims Act Update (repeat)

11:50 am–1:05 pm

**Lunch on your own or attend the Hospitals and Health System Practice Group Luncheon sponsored by HealthCare Appraisers, Inc.**

(additional fee; limited attendance; pre-registration required; see page 20 for descriptions of luncheon presentations)

### CONCURRENT SESSIONS

1:15–2:15 pm

### T. Gainsharing and Quality-Focused Programs – Understanding the Regulatory Landscape (repeat)

### Y. Executive Compensation: Process and Accountability (repeat)

### Z. Antitrust Challenges to the Creation and Exercise of Market Power (repeat)

### AA. The New Form 990: What You Need to Know Now! (repeat)

2:25–3:25 pm

### N. On-Call and Coverage Payments: A Formula for Hospital/Physician Tension (repeat)

### S. Advanced Issues in EHRs, PHRs and HIEs – Great Expectations Meet Reality (repeat)

### CC. “Never” Events: Medicare and the Impact of Fiscally-Driven Standards of Care (repeat)

### DD. The Rights of Nonparticipating Providers in a Managed Care World: Navigating the Minefields of Balance Billing, Reasonable and Customary Payments and the Right to Control Care (repeat)

### ADJOURNMENT

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# Physicians and Physician Organizations Law Institute

## Program at a Glance

**Monday, February 9, 2009**

7:00 am– 5:40 pm	<b>Registration and Information</b>			
8:00– 9:20 am	<b>GENERAL SESSION</b> 8:00–8:20 am <b>Welcome and Introduction</b> <i>Carder-Thompson, McGinty</i>  8:20-9:20 am <b>Things You Should Know about the OIG</b> <i>Morris</i>			
9:45– 10:45 am	<b>Planning for Pandemonium: Pandemic Planning for Physicians</b> (not repeated)  <i>Markey</i>	<b>Physician-Patient Relationships: Get It in Writing, Or What Every Physician's Attorney Should Know about the Value of Patient Forms, Consents, Agreements and Documentation</b>  <i>Nelson Sacopulos</i>	<b>Medicare Physician Reimbursement Issues: Through the Stark Looking Glass and More (Advanced)</b>  <i>Gosfield</i>	
11:00 am– 12:00 noon	<b>Courting the Large Primary Care Practice: A Case Study in the Legal and Ethical Aspects of Creating Ties that Bind</b> (not repeated)  <i>McMillan Thompson</i>	<b>You Want To Do What?: The Changing Face of Ambulatory Surgery Centers</b>  <i>Reisz</i>	<b>Legal Ethics: Preventive Medicine – A Rx for Prudent and Ethical Representation of Physicians and Physician Organizations</b>  <i>Schaff Taylor</i>	
12:00 noon– 1:30 pm	<b>Lunch on your own or attend a Practice Group Luncheon: Antitrust, Labor and Employment, and Physician Organizations (joint) sponsored by Pershing Yoakley &amp; Associates PC or Health Information and Technology</b> <i>(additional fee; limited attendance; pre-registration required; see pages 21-22)</i>			
1:40– 2:40 pm	<b>Physician Covenants Not to Compete – Reasonable Limitations or Overreaching?</b> (not repeated)  <i>Apple</i>	<b>Structuring Ancillary Revenue Transactions</b>  <i>Hindmand</i>	<b>Physician-Patient Relationships: Get It in Writing, Or What Every Physician's Attorney Should Know about the Value of Patient Forms, Consents, Agreements and Documentation</b> (repeat)  <i>Nelson Sacopulos</i>	
2:55– 3:55 pm	<b>Physicians and Antitrust – The Big Issues</b> (not repeated)  <i>Miles</i>	<b>Medicare Physician Reimbursement Issues: Through the Stark Looking Glass and More (Advanced)</b> (repeat)  <i>Gosfield</i>	<b>Structuring Ancillary Revenue Transactions</b> (repeat)  <i>Hindmand</i>	
<b>PLEASE NOTE THE END TIMES FOR THE LAST SET OF SESSIONS</b>				
4:10– 5:10 pm	<b>Clinical Management Agreements: Medical Practice and Management Company Perspectives</b> (not repeated)  <i>Kaplan Watson</i>	4:10– 5:40 pm  Extended Sessions  <i>Benesch Hyman</i>	<b>Non-Physician Practitioners (NPPs): More Care, Less Cost, Different Law?</b>  <i>Kass Ohrin</i>	
5:10– 6:30 pm	<b>Reception sponsored by Horne LLP</b> <i>(attendees, speakers and registered spouses and guests are welcome to attend)</i>			

# Physicians and Physician Organizations Law Institute Hospitals and Health Systems Law Institute

## Program at a Glance

**Tuesday, February 10, 2009**

**Please note:** The sessions in the dark shaded boxes are included on the agendas of both the Physicians Law Institute and the Hospitals Law Institute. Other sessions are on the program indicated.

7:00 am– 5:50 pm	<b>Registration and Information</b>					
7:00– 8:00 am	<b>Continental Breakfast sponsored by Horne LLP</b> <i>(attendees, speakers and registered spouses and guests welcome)</i>					
8:00– 9:25 am	<b>GENERAL SESSION</b> 8:00–8:10 am <b>Welcome and Introduction</b> <i>Carder-Thompson, Adelman</i>  8:10-9:25 am <b>Top Legal Developments for Hospitals and Physicians</b> <i>Schermer, Schroder</i>					
9:55– 11:25 am  Extended Sessions	<i>(Physicians Only)</i> <b>Changes in the Stark Rules Require Major Changes for Physician Joint Ventures</b> (repeat)  <i>Kass Ohrin</i>	<i>(Hospitals only)</i> <b>Alternatives to The Joint Commission Accreditation – Options for Hospitals</b>  <i>Blackmond Scott</i>	<i>(Hospitals only)</i> <b>Stark Realities: How to Operationalize Stark and Prepare for and Respond to the DFRR</b>  <i>Paddock Wade</i>	<b>Non-Physician Practitioners (NPPs): More Care, Less Cost, Different Law?</b>  <i>Benesch Hyman</i>	<b>The Current State of Physician Restrictive Covenants, Economic vs. Lifestyle Motivations, and Creative Ways to Protect Market Share</b>  <i>Pavarini Trucano</i>	<b>Joint Ventures: Practical Advice to Avoid the Antitrust, Tax, and Fraud and Abuse Pitfalls</b>  <i>White (Moderator) Shay Sibarium Woods</i>
11:40 am– 12:40 pm	<i>(Physicians Only)</i> <b>Hospital-Physician Employment Arrangements in 2009: Reluctant Partners or Aligned Allies?</b> (not repeated)  <i>De Simone Rodriguez</i>	<i>(Hospitals only)</i> <b>Managing the Spotlight – A Course in Crisis Communications for Healthcare Attorneys</b> (not repeated)  <i>Goldstone Plovin</i>	<b>Recovery Audit Contractors and Medicare Audits</b>  <i>Casey Wachler Wallace</i>	<b>The Nuts and Bolts of Self-Disclosure</b>  <i>Cooper Weber</i>	<b>Supporting High Level Physician Employment Compensation – Surveys and Alternative Approaches</b>  <i>Blumentritt Holdenried</i>	<b>Dealing with Disruptive and Impaired Physicians</b>  <i>Adelman Peters</i>
12:40– 1:50 pm	<b>Lunch on your own or attend a Practice Group Luncheon:</b> <b>Business Law and Governance and Healthcare Liability and Litigation (joint) or Medical Staff, Credentialing, and Peer Review</b> <i>(additional fee; limited attendance; pre-registration required; see pages 21-22)</i>					
1:50– 2:50 pm	<i>(Physicians Only)</i> <b>You Want To Do What?: The Changing Face of Ambulatory Surgery Centers</b> (repeat)  <i>Reisz</i>	<b>Legal Ethics: Drawing the Line Between Counsel and Management</b> (not repeated)  <i>Sconyers</i>	<b>Good Physician Gone Bad: What’s a Hospital and Practice Group to Do?</b>  <i>Bathija Smiles</i>	<b>Telemedicine: How to Assess Your Risks and Develop a Program that Works</b>  <i>Kepler McGinty</i>	<b>On-Call and Coverage Payments: A Formula for Hospital/ Physician Tension</b>  <i>Anderson Newman</i>	<b>Supporting High Level Physician Employment Compensation – Surveys and Alternative Approaches</b> (repeat)  <i>Blumentritt Holdenried</i>

*(Continued, next page)*

**Physicians and Physician Organizations Law Institute  
Hospitals and Health Systems Law Institute**

**Program at a Glance**

**Tuesday, February 10, 2009 (continued)**

3:05– 4:05 pm	<i>(Hospitals only)</i> <b>Legal and Ethical Aspects of End-of-Life Decision-Making</b> (not repeated)  <i>Mayo</i>	<i>(Hospitals only)</i> <b>Advanced Issues in EHRs, PHRs and HIEs – Great Expectations Meet Reality</b>  <i>Lamar Rosati</i>	<b>Legal Ethics: Preventive Medicine – A Rx for Prudent and Ethical Representation of Physicians and Physician Organizations</b> (repeat)  <i>Schaff Taylor</i>	<b>Gainsharing and Quality-Focused Programs – Understanding the Regulatory Landscape</b>  <i>Martin Ohrin</i>	<b>Recovery Audit Contractors and Medicare Audits</b> (repeat)  <i>Casey Wachler Wallace</i>	<b>The Nuts and Bolts of Self-Disclosure</b> (repeat)  <i>Cooper Weber</i>
<b>PLEASE NOTE THE END TIMES FOR THE LAST SET OF SESSIONS</b>						
4:20– 5:20 pm	<i>(Hospitals only)</i> <b>The Intersection of Quality and Compliance</b> (not repeated)  <i>Bader Looney</i>	<b>Dealing with Disruptive and Impaired Physicians</b> (repeat)  <i>Adelman Peters</i>	<b>Good Physician Gone Bad: What’s a Hospital and Practice Group to Do?</b> (repeat)  <i>Bathija Smiles</i>	<b>Telemedicine: How to Assess Your Risks and Develop a Program that Works</b> (repeat)  <i>Kepler McGinty</i>		
4:20– 5:50 pm  Extended Sessions	<b>The Current State of Physician Restrictive Covenants, Economic vs. Lifestyle Motivations, and Creative Ways to Protect Market Share</b> (repeat)  <i>Pavarini Trucano</i>		<b>Joint Ventures: Practical Advice to Avoid the Antitrust, Tax, and Fraud and Abuse Pitfalls</b> (repeat)  <i>White (Moderator) Shay Sibarium Woods</i>			
5:20– 6:45 pm	<b>Reception sponsored by Horne LLP</b> <i>(attendees, faculty, and registered spouses and guests welcome)</i>					

# Hospitals and Health Systems Law Institute

## Program at a Glance

Wednesday, February 11, 2009

7:00 am– 3:25 pm	<b>Registration and Information</b>				
7:00– 8:30 am	<b>Continental Breakfast <i>sponsored by Horne LLP</i></b> <i>(attendees, speakers and registered spouses and guests welcome)</i>				
<b>PLEASE NOTE TWO DIFFERENT START TIMES FOR THE FIRST SET OF SESSIONS</b>					
8:00– 9:30 am  Extended Sessions	<b>Alternatives to The Joint Commission Accreditation – Options for Hospitals</b> (repeat)  <i>Blackmond Scott</i>	<b>Stark Realities: How to Operationalize Stark and Prepare for and Respond to the DFRR</b> (repeat)  <i>Paddock Wade</i>	8:30– 9:30 am	<b>The New Leadership Skill: Conflict Management</b> (not repeated)  <i>Conard Vandecaveye</i>	<b>Government Investigations and False Claims Act Update</b>  <i>Eiland</i>
9:40– 10:40 am	<b>What’s New, What’s Hot and What’s on the Labor and Employment Horizon</b> (not repeated)  <i>Lyncheski</i>	<b>Executive Compensation: Process and Accountability</b>  <i>Hyatt</i>		<b>Antitrust Challenges to the Creation and Exercise of Market Power</b>  <i>Reilly Singer</i>	<b>The New Form 990: What You Need to Know Now!</b>  <i>Gilden Schultz</i>
10:50– 11:50 am	<b>Chart Peekers and Cyber Peepers: EHR Liability Risk</b> (not repeated)  <i>Allison Zych</i>	<b>“Never” Events: Medicare and the Impact of Fiscally-Driven Standards of Care</b>  <i>Layne</i>		<b>The Rights of Nonparticipating Providers in a Managed Care World: Navigating the Minefields of Balance Billing, Reasonable and Customary Payments and the Right to Control Care</b>  <i>Lucas Williams</i>	<b>Government Investigations and False Claims Act Update</b> (repeat)  <i>Eiland</i>
11:50 am– 1:05 pm	<b>Lunch on your own or attend the Hospitals and Health System Practice Group Luncheon <i>sponsored by HealthCare Appraisers, Inc.</i></b> <i>(additional fee; limited attendance; pre-registration required; see pages 21–22)</i>				
1:15– 2:15 pm	<b>Gainsharing and Quality-Focused Programs – Understanding the Regulatory Landscape</b> (repeat)  <i>Martin Ohrin</i>	<b>Executive Compensation: Process and Accountability</b> (repeat)  <i>Hyatt</i>		<b>Antitrust Challenges to the Creation and Exercise of Market Power</b> (repeat)  <i>Reilly Singer</i>	<b>The New Form 990: What You Need to Know Now!</b> (repeat)  <i>Gilden Schultz</i>
2:25– 3:25 pm	<b>On-Call and Coverage Payments: A Formula for Hospital/Physician Tension</b> (repeat)  <i>Anderson Newman</i>	<b>Advanced Issues in EHRs, PHRs and HIEs – Great Expectations Meet Reality</b> (repeat)  <i>Lamar Rosati</i>		<b>“Never” Events: Medicare and the Impact of Fiscally-Driven Standards of Care</b> (repeat)  <i>Layne</i>	<b>The Rights of Nonparticipating Providers in a Managed Care World: Navigating the Minefields of Balance Billing, Reasonable and Customary Payments and the Right to Control Care</b> (repeat)  <i>Lucas Williams</i>

Practice Group Lunch Presentations

Monday, February 9, 2009

**Antitrust, Labor and Employment, and Physician Organizations Practice Groups** (joint), Sponsored by Pershing Yoakley & Associates PC

**Assessing the Viability of Hospital Physician Joint Ventures in the New Regulatory Environment**

**Douglas C. Ross, Esq.**

Davis Wright Tremaine LLP, Seattle, WA

**Sidney Summers Welch, Esq.**

Arnall Golden Gregory LLP, Atlanta, GA

**Paula D. Walker, Esq.**

Waller Lansden Dortch & Davis LLP, Nashville, TN

Hospitals and physicians seeking to joint venture can face important regulatory issues, and those regulatory issues may change as the parties, moving from the initial conceptual stage, establish firm goals and expectations for their venture.

- Defining relevant markets, assessing competitive effects, and limiting antitrust exposure in the formation and operational stages of a joint venture
- Minimizing Stark law, fraud and abuse issues, and other regulatory risk
- Realistic limits on non-competition agreements

**Health Information and Technology Practice Group**

**Top HIT Issues for the Physician Lawyer**

**Edward F. Shay, Esq.**

Post & Schell PC, Philadelphia, PA

**Gerald “Jud” E. DeLoss, Esq.**

Gray Plant Mooty Mooty & Bennett PA, Minneapolis, MN

- The top HIT issues including EHR donation from the physician/perspective
- E-Prescribing incentives for physicians
- Physician profiling

Tuesday, February 10, 2009

**Business Law and Governance and Healthcare Liability and Litigation Practice Groups** (Joint)

**Liability and Governance Issues Arising from Never Events and Other Unanticipated Outcomes**

**Karen C. Owens, Esq.**

Coppersmith Gordon Schermer & Brockelman PLC, Phoenix, AZ

This session will focus on never events, unusual occurrences, and state laws mandating apologies by medical professionals. Specific attention will be given to avoiding the risks, the reimbursement ramifications to a hospital system when these events occur, as well as the fiduciary duties of boards of directors to ensure proper risk assessments, monitoring/reporting, and options for adequate insurance coverage. Additionally,

the speaker will discuss exposure to malpractice actions from reporting obligations, and state laws allowing for exclusion of evidence arising from reporting duties imposed on providers.

**Medical Staff, Credentialing, and Peer Review Practice Group**

**ED On-Call Meets the New EMTALA Guidelines and Related Matters: Real Problems—Practical Solutions**

**Patricia S. Hofstra, Esq.**

Duane Morris LLP, Chicago, IL

- New IPPS EMTALA rules and community call plans
- Anti-kickback concerns regarding on-call compensation and OIG Advisory Opinion 07-10
- Specialty and sub-specialty physician concerns
- How some providers cope

Wednesday, February 11, 2009

**Hospitals and Health Systems Practice Group**, *Sponsored by HealthCare Appraisers, Inc.*

**The Reasons Your Compliance Program Does Not Reduce the Risk of Whistleblower Claims and FCA Enforcement**

**Patrick S. Coffey, Esq.**

Locke Lord Bissell & Liddell LLP, Chicago, IL

**Chris J. Mollet, Esq.**

Associate University Counsel

University of Illinois at Chicago, Chicago, IL

**Linda A. Wawzenski, Esq.**

Assistant U.S. Attorney and Deputy Chief of Civil Division

U.S. Attorney's Office, Chicago, IL

**Marc D. Goldstone, Esq. (Moderator)**

Vice President and Associate General Counsel

Community Health Systems, Inc., Franklin, TN

Against the backdrop of the continuing reports of significant False Claims Act actions and settlements involving whistleblowers, and drawing on their range of experience in addressing enforcement, compliance, and the defense of whistleblower related cases, the panel will discuss common triggers and compliance related deficiencies contributing to whistleblower claims. Drawing on actual case lessons, the speakers will offer their perspectives on better and proactive measures that can help reduce the potential for these difficult controversies.

- Current enforcement trends involving hospitals and systems
- DRA and other drivers of FCA and whistleblower controversy
- Key elements of an effective strategy to reduce the risk of whistleblowers
- The role of governance in reducing the threat of FCA and whistleblower claims
- Factors leading to aggravated settlements with CIAs, appointed monitors, and DPAs
- Predictions for the future of government and relator action under state and federal False Claims Acts

# Physicians and Physician Organizations Law Institute Hospitals and Health Systems Law Institute

## Registration Form

3

**To register:** Remit payment and completed registration form by mail to the American Health Lawyers Association • P.O. Box 79340 • Baltimore, MD 21279-0340 or fax with credit card information to (202) 775-2482. To register by phone call (202) 833-0766. If any program is over-subscribed, only AHLA members will be placed on a waiting list. On-site registrations will be accepted on a space-available basis only.

Name: \_\_\_\_\_ Member ID #: \_\_\_\_\_

First Name for Badge (if different than above): \_\_\_\_\_

Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP+ 4: \_\_\_\_\_

Telephone: (\_\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_\_) \_\_\_\_\_

E-Mail: \_\_\_\_\_

Spouse/Guest \_\_\_\_\_

### PAYMENT INFORMATION

#### Please Register Me for the Physicians Program Only

Postmarked and paid by January 19, 2009:

AHLA Members:  \$730 Non-Members:  \$930

\$655 each additional AHLA member registering from same organization at same time on the same check or credit card payment

Postmarked and paid between January 20 and February 2, 2009:

AHLA Members:  \$830 Non-Members:  \$1030

\$755 each additional AHLA member registering from same organization at same time on the same check or credit card payment

#### Please Register Me for the Hospitals Program Only

Postmarked and paid by January 19, 2009:

AHLA Members:  \$775 Non-Members:  \$975

\$700 each additional AHLA member registering from same organization at same time on the same check or credit card payment

Postmarked and paid between January 20 and February 2, 2009:

AHLA Members:  \$875 Non-Members:  \$1075

\$800 each additional AHLA member registering from same organization at same time on the same check or credit card payment

#### Please Register Me for Both the Physicians and the Hospitals Programs

Postmarked and paid by January 19, 2009:

AHLA Members:  \$1130 Non-Members:  \$1330

\$1060 each additional AHLA member registering from same organization at same time on the same check or credit card payment

Postmarked and paid between January 20 and February 2, 2009:

AHLA Members:  \$1230 Non-Members:  \$1430

\$1160 each additional AHLA member registering from same organization at same time on the same check or credit card payment

### Course Materials AHLA is Going Green!

All attendees will receive an electronic version of the full set of course materials for the program (more information on page 1). If you would like to purchase a binder, please indicate that below:

- I am registering for the Physicians Program and would like to purchase a binder for \$45
- I am registering for the Hospitals Program and would like to purchase a binder for \$45
- I am registering for the Physicians and Hospitals Program and would like to purchase both binders for \$90

# Physicians and Physician Organizations Law Institute Hospitals and Health Systems Law Institute

**Please fill in applicable amount: (Sorry! Registrations cannot be processed unless accompanied by payment.)**

\$ \_\_\_\_\_ Registration Fee

\$ \_\_\_\_\_ Printed Course Materials  \$45 Physicians binder  \$45 Hospitals binder

Practice Group Luncheons (\$35 for sponsoring PG members; \$45 for non-members)

\$ \_\_\_\_\_  Antitrust, Labor and Employment and Physician Organizations (joint) – February 9

– OR –

Health Information and Technology – February 9

\$ \_\_\_\_\_  Business Law and Governance and Healthcare Liability and Litigation (joint) – February 10

– OR –

Medical Staff, Credentialing, and Peer Review – February 10

\$ \_\_\_\_\_  Hospitals and Health Systems – February 11

\$ \_\_\_\_\_ Spouse/Guest Fee (\$30)

\$ \_\_\_\_\_ Membership Dues (Date admitted to the bar/graduated:   /   /  )

\$ \_\_\_\_\_ Total Enclosed

Check enclosed (Make checks payable to American Health Lawyers Association)

Bill my credit card:        

Number: \_\_\_\_\_ Exp. Date:   /

Name of Cardholder: \_\_\_\_\_

Signature of Cardholder: \_\_\_\_\_

ZIP Code of Cardholder's Billing Address \_\_\_\_\_

Please Note: Should your credit card total be miscalculated, AHLA will charge your credit card for the correct amount. To receive a refund of the registration fee paid minus \$125, cancellation notice must be received in writing by January 30, 2009. If you are registered for both programs and cancel your registration for one of the programs, you will not be charged the \$125 administration fee. Please see page 23 of this brochure for AHLA's full refund policy.

Fed ID No. 23-7333380

# Physicians and Physician Organizations Law Institute Hospitals and Health Systems Law Institute

## Program Information

**Dates:** February 9-11, 2009  
**Place:** Sheraton Wild Horse Pass Resort and Spa  
5594 West Wild Horse Pass Boulevard  
Chandler, AZ 85226  
**Phone:** (602) 225-0100  
**Reservations:** (888) 218-8989  
**Fax:** (602) 225-0300

### Physicians Program Only

#### Postmarked and paid by January 19, 2009

\$730 For the first AHLA Member  
\$655 For each additional AHLA Member  
\$930 Non-Members

#### Postmarked and paid between January 20 and February 2, 2009\*

\$830 For the first AHLA Member  
\$755 For each additional Member  
\$1030 Non-Members

### Hospitals Program Only

#### Postmarked and paid by January 19, 2009

\$775 For the first AHLA Member  
\$700 For each additional AHLA Member  
\$975 Non-Members

#### Postmarked and paid between January 20 and February 2, 2009\*

\$875 For the first AHLA Member  
\$800 For each additional Member  
\$1075 Non-Members

### Physicians and Hospitals Programs Dual Registration

#### Postmarked and paid by January 19, 2009

\$1130 For the first AHLA Member  
\$1060 For each additional AHLA Member  
\$1330 Non-Members

#### Postmarked and paid between January 20 and February 2, 2009\*

\$1230 For the first AHLA Member  
\$1160 For each additional AHLA Member  
\$1430 Non-Members

\* Registration fees increase \$100 after this date.

If you have indicated an incorrect amount due to errors in addition or not being eligible for a specific rate, AHLA will charge the correct amount to the credit card you have supplied.

**Discounted Registration Fees:** In-house counsel, government employees, academicians, solo practitioners and students: please call (202) 833-0766 for special discounted registration fees.

**Spouse/Guest Fee:** For an additional \$30 spouses and adult guests can register to attend the reception(s) and the breakfast(s). Please sign up on the registration form on pages 21-22.

**Continuing Education:** Participants will be given continuing education forms at the program. Forms must be completed and returned to AHLA staff to receive credit. AHLA is an approved sponsor of continuing legal education credits in most states. The Physicians seminar will be worth approximately 12.75 continuing education credits (including 2.0 ethics credit) based on a 60-minute hour and 15.3 credits (including 2.4 ethics

credits) based on a 50-minute hour. The Hospitals seminar will be worth approximately 11.75 continuing education credits (including 2.0 ethics credits) based on a 60-minute hour and 14.1 credits (including 2.4 ethics credits) based on a 50-minute hour.

AHLA is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE Sponsors. State boards of accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be addressed to the National Registry of CPE Sponsors, 150 Fourth Avenue North, Suite 700, Nashville, TN 37219-2417. Web site: [www.nasba.org](http://www.nasba.org). The Physicians seminar will be worth approximately 15.0 CPE credits. The Hospitals seminar will be worth approximately 14.0 CPE credits.

There are no prerequisites or advanced preparations required to register for this group live program. Those seeking accounting credits should be familiar with the basic concepts of law and terminology associated with representing physicians and hospitals in order to obtain the full educational benefit of these programs. Sessions are intermediate to advanced unless otherwise noted.

**Membership:** Dues are \$185 for those admitted to the Bar/graduated from college within the last four years; \$300 for those admitted/ graduated more than four but less than eight years ago; and \$345 for those admitted/graduated eight or more years ago. Dues are \$155 (or \$75 for electronic benefits) for government employees and full-time academicians; and \$15 for full-time law school students to receive benefits electronically. Include the applicable membership fee with your registration form and take advantage of the program registration fee for members.

**Cancellations/Substitutions:** Cancellations must be received in writing *no later than January 30, 2009*. Refunds will not be issued for cancellations received after this date. Registration fees, less a \$125 administrative fee, will be refunded approximately 3-4 weeks following the program. If you wish to send a substitute or need more information regarding refund, complaint and program cancellation policies, please call the Member Service Center at (202) 833-0766. Please note that registration fees are based on the AHLA membership status of the individual who actually attends the program.

**Special Needs:** If you need an auxiliary aid or service identified in the Americans with Disabilities Act, please contact Valerie Eshleman, Special Needs/Disability Services Coordinator at [veshleman@healthlawyers.org](mailto:veshleman@healthlawyers.org) or (202) 833-0784.

**Travel:** Association Travel Concepts (ATC) has negotiated discounts with United, American, Enterprise and Hertz Rental Car to bring you special airfares and car rental rates lower than those available to the public. Some restrictions may apply and a service fee may apply. ATC will also search for the lowest available fare on any airline.

### ASSOCIATION TRAVEL CONCEPTS

**1-800-458-9383**

**email: [reservations@atcmeetings.com](mailto:reservations@atcmeetings.com)**

**[www.atcmeetings.com](http://www.atcmeetings.com)**

*(follow the Member Travel links)*

Fax: (858) 362-3153

ATC is available for reservations from 8:30 am until 8:00 pm Eastern, Monday through Friday.



1025 Connecticut Avenue, NW  
Suite 600  
Washington, DC 20036-5405

**Physicians and Physician  
Organizations Law Institute  
February 9–10, 2009**

**Hospitals and Health Systems  
Law Institute  
February 10–11, 2009**

**Phoenix, AZ**

**Sheraton Wild Horse Pass Resort and Spa**

**Register by January 19 and save!  
For updates and to register, go to  
[www.healthlawyers.org/programs](http://www.healthlawyers.org/programs)**

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