

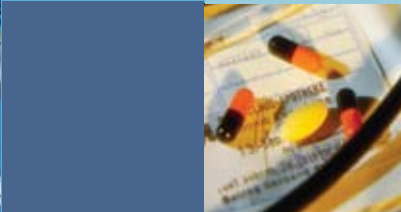
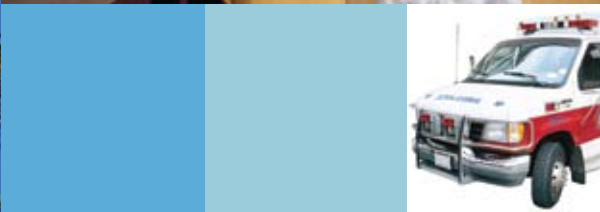
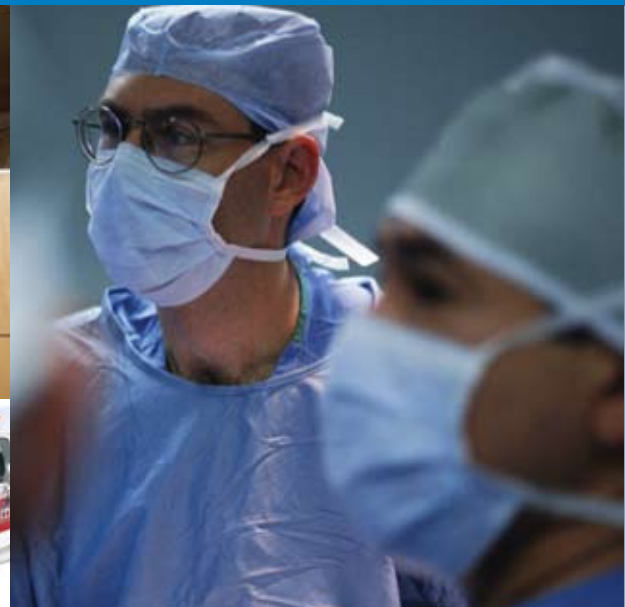
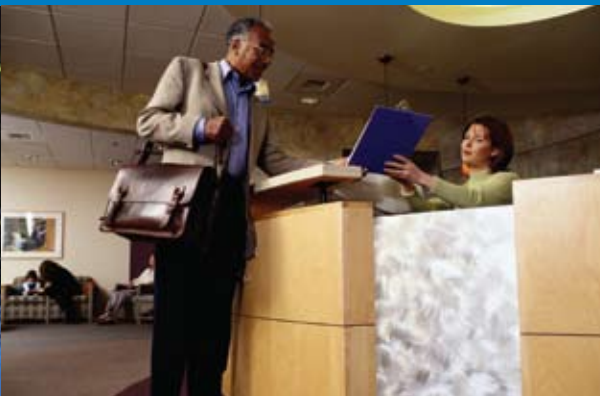
# Physicians and Physician Organizations Law Institute

February 24–25, 2010

# Hospitals and Health Systems Law Institute

February 25–26, 2010

**Doral Golf Resort & Spa  
Miami, FL**



### Physicians Planning Committee:

Charlene L. McGinty, Esq. – Program Chair  
Cynthia Y. Reisz, Esq.  
Michael F. Schaff, Esq.

### Hospitals Planning Committee:

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

*In cooperation with:*



*HORNE CPAs & Business Advisors  
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 Miami!



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 Wednesday and Thursday evenings, and Practice Group luncheons held each day.

This year's programs take place in the Miami, FL at the beautiful Doral Golf Resort & Spa. Before or after the program, you will want to allow for time to enjoy the resort.

*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 Law Institutes and encourages attendees to visit their exhibit booths:

- Carnahan Group, Inc.
- DGA Partners
- HealthCare Appraisers, Inc. – *sponsor of the Healthcare Liability and Litigation Practice Group Luncheon*
- HORNE CPAs & Business Advisors – *sponsor of the Physicians Law Institute and the Hospitals Law Institute*
- Integrated Healthcare Strategies – *sponsor of the online educational sessions*
- MediTract, Inc.
- Pershing Yoakley & Associates PC – *sponsor of the Physician Organizations Practice Group Luncheon*
- Professional Renewal Center – *sponsor of the Medical Staff, Credentialing and Peer Review Practice Group Luncheon*
- Sullivan Cotter and Associates, Inc. – *sponsor of the Hospitals and Health Systems and Health Information and Technology Practice Group Luncheon*
- The Coding Network LLC
- West, a Thomson Reuters Business

## HOTEL RESERVATIONS

Hotel accommodations are not included in the registration fee. AHLA has reserved a block of rooms at Doral Golf Resort & Spa at a discounted rate of \$199 per night. To make reservations, please call the Doral Resort at (800) 713-6725. **The room block expires February 2, 2010.** Please make your reservations early. The room block may sell out prior to the hotel cutoff.

## Program Materials

AHLA is going green for the 2010 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

### Wednesday, February 24, 2010

7:00 am-5:15 pm

#### Registration and Information

#### GENERAL SESSION

8:00-8:15 am

##### Welcome and Introduction

*Richard L. Shackelford, AHLA President-Elect*

*Charlene L. McGinty, Physicians Program Chair*

8:15-9:45 am

##### Law and Economics in the World of Hospital/ Physician Integration

*Robert G. Homchick*

*Albert D. Hutzler*

*Albert W. Shay*

- ❖ The legal issues (i.e., Stark, Kickback) surrounding hospital-physician arrangements in the context of integrated health-care systems
- ❖ Common compensation methodologies for employed physicians and what risks are raised by productivity-based compensation methodologies (how much compensation may be considered too much?)
- ❖ When hospitals operate physician clinics as provider-based departments, can they consider the physicians' lost ancillary revenues is determining compensation?
- ❖ Is it reasonable to compare the compensation of hospital employed to that of private practicing physicians in the hospital's market?
- ❖ Is permissible for hospitals to subsidize the costs of operating an affiliated medical practice and, if so, what are the risks of doing so?

#### CONCURRENT SESSIONS

10:00-11:00 am

##### A. Enterprise Risk Management (ERM) Principles and Provider Liability for Physicians and Physician Organizations

(not repeated)

*Jay A. Martus*

- ❖ ERM for physician groups and their individual providers, including risk domains (categories) and applicable ERM processes
- ❖ Liability arising from human capital, technology, strategic, financial, legal/regulatory and operations categories for physician groups and their individual providers
- ❖ Proactive risk mitigation and minimization strategies, utilizing ERM principles and processes

##### B. Physician On-Call Payments: Compensation in a Transitional Market

*Gregory D. Anderson*

*Dinetia M. Newman*

- ❖ Market forces affecting physician coverage arrangements
- ❖ Healthcare statutes, regulations and agency advice affecting on-call coverage and compensation
- ❖ Fair market value analysis related to on-call pay
- ❖ Effects of healthcare reform on ED call and fair market value of remuneration

##### C. Accountable Care Organizations (ACOs) and Physician Hospital Integration under Healthcare Reform

*Paul R. DeMuro*

*John Wiegand*

- ❖ Healthcare reform and the dynamics of the marketplace moving toward ACOs and clinical integration
- ❖ Antitrust considerations, including avoiding the market power trap and achieving legitimate financial or clinical integration
- ❖ New and evolving models of physician/hospital integration
- ❖ Initiating a clinical integration and/or ACO project

11:15 am-12:15 pm

##### D. Medical Office Building Development and Construction: A Healthcare Lawyer's Roadmap

(not repeated)

*David D. Haynes, Jr.*

- ❖ Financing issues and working with lending institution's legal counsel related to the purchase of the land and funding the construction loan
- ❖ Real property issues
- ❖ Working with the property developer and architect
- ❖ Benefits of using a condominium property regime model to promote individual ownership and transferability
- ❖ Stark Law/Anti-Kickback Statute compliance – including hospital participation in a medical office building project, used as a “centralized building” or “same building” for designated health services

##### E. What's Wrong with this Picture? Negotiating Hospital- Based Physician Group Contracts with Hospitals: The Physician Group Perspective

*Ann M. Bittinger*

*Michael F. Schaff*

- ❖ Defining “services,” future services, evolving technologies and locations on and off-campus at which services will be provided
- ❖ Exclusivity: How to get it and keep it
- ❖ Interplay with medical staff privileges, due process, group employment, medical staff bylaws and call coverage
- ❖ Documenting compensation: Billing, call pay, medical directorships

## Program Agenda

### F. Physician Practices in a Stark World

*David E. Matyas*

- ❖ Advising clients on the in-office ancillary services exception
- ❖ Current status of physicians providing services “under arrangements”
- ❖ Physician recruitment and retention

12:15-1:35 pm

**Lunch on your own or attend the Business Law and Governance Practice Group Luncheon OR the Physician Organizations Practice Group Luncheon**, sponsored by Pershing Yoakley & Associates PC (additional fee; limited attendance; pre-registration required, see page 20 for luncheon presentation descriptions)

### CONCURRENT SESSIONS

1:45-2:45 pm

#### G. What Physicians Should Know about Diagnostic Testing, IDTFs and the Anti-Markup Rule

*Cynthia Y. Reisz*

*Regan E. Tankersley*

- ❖ Medicare coverage of diagnostic tests
- ❖ Supervision requirements
- ❖ IDTF vs. physician practice requirements
- ❖ Impact of the Anti-Markup Rule
- ❖ Expected changes

#### H. Payor Audits: Preparation, Response and Opportunities

*David E. Jose*

- ❖ The landscape for governmental and private payor audits
- ❖ Coordinating with the organization’s compliance program, peer review processes and patient safety organization involvement
- ❖ Anticipating claims by civil plaintiffs, payors seeking recoupment and authorities considering penalties
- ❖ Using audits to assist risk management and corporate compliance efforts

#### J. What Goes into Fair Market Value Determinations for Physician Compensation: How to Explain the Major Compensation Surveys and Methods to Your Hospital and Physician Clients

*Kimberly A. Mobley*

*Claire M. Turcotte*

- ❖ Regulatory issues impacting physician compensation arrangements requiring fair market value
- ❖ What is fair market value
- ❖ Commercially-available physician compensation survey sources
- ❖ Proper use of market survey benchmark norms in determining fair market value
- ❖ Case studies on the use of survey data to determine fair market value

3:00-4:00 pm

#### K. Industry “Gift Bans:” Learning from (and Living with) the Massachusetts Experience (not repeated)

*Sarah E. Curi*

*Lawrence W. Vernaglia*

- ❖ The requirements and reach of the new Massachusetts law and how it differs from the laws in other states
- ❖ The law’s relationship to the Codes on Interactions with Healthcare Professionals issued by the Pharmaceutical Research and Manufacturers of America (the PhRMA Code) and the Advanced Medical Technology Association (the Advamed Code) as well as the Accreditation Council for Continuing Medical Education (ACCME) Standards for Commercial Support
- ❖ The practical impact as well as the intended (and unintended) consequences of this law
- ❖ The Massachusetts law as a model for developing Federal legislation

#### L. Disruptive Physician Behavior: Career Threatening or a Chance for Collegial Intervention?

*David A. DeSimone*

*Anna M. Grizzle*

- ❖ Early peer intervention or corrective action: Can this medical staff relationship be saved?
- ❖ External peer review: Friend or foe?
- ❖ Peer pressure and hearing officer authority: Is the hearing really fair?
- ❖ Practical suggestions for preventing disruptive behaviors

#### E. What’s Wrong with this Picture? Negotiating Hospital-Based Physician Group Contracts with Hospitals: The Physician Group Perspective (repeat)

4:15-5:15 pm

#### M. Neutral Peer Review: Is MS.01.01.01 an Opportunity to Make Peer Review Less Litigious?

(not repeated)

*Micheal A. Cassidy*

- ❖ Contrasting “medical” peer review vs. “legal” peer review
- ❖ Identify triggers that make problem cases even bigger problems, i.e. “investigations”
- ❖ Re-examine the theory of confidentiality, while acknowledging the potential retaliation concerns
- ❖ Suggested steps to develop neutral peer review processes
- ❖ The MS.01.01.01 performance elements that lend themselves to this process

#### C. Accountable Care Organizations (ACOs) and Physician Hospital Integration under Healthcare Reform (repeat)

#### F. Physician Practices in a Stark World (repeat)

## Program Agenda

5:15-6:30 pm

**Reception** sponsored by HORNE CPAs & Business Advisors (attendees, faculty and registered spouses and guest welcome)

### Thursday, February 25, 2010

7:00 am-5:55 pm

#### Registration and Information

7:00-8:00 am

**Continental Breakfast** sponsored by HORNE CPAs & Business Advisors (attendees, faculty and registered spouses and guest welcome)

#### GENERAL SESSION

8:00-8:15 am

##### Welcome and Introduction

*Richard L. Shackelford, AHLA President-Elect*  
*S. Allan Adelman, Hospitals Program Chair*

8:15-9:45 am

##### Top Legal Developments for Hospitals and Physicians

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

#### CONCURRENT SESSIONS

10:15-11:15 am

##### N. "Sources Close to the Investigation Said . . .": Legal Ethics and Public Statements in Government Proceedings (not repeated)

*William W. Horton*  
*Kirk Orgosky*

- ❖ "My client is innocent, but you didn't hear it from me": What can the defense say, and when?
- ❖ "What can I say after I've said you're indicted?": Special constraints on prosecutors and government lawyers
- ❖ "It's a privilege . . . but not here": Parallel civil, criminal and Congressional investigations

##### O. Structuring and Negotiating a Hospital System/Physician Practice Merger: Views from Both Sides of the Table

*George T. Chresand*  
*David R. Melloh*

- ❖ Strategic rationale for the deal
- ❖ The "fit" with existing hospital-employed physicians
- ❖ Physician role in system decision-making
- ❖ The economics of the transaction and beyond
- ❖ "Unwinds," indemnification and other deal points

##### P. What Providers Need to Know about the Revised False Claims Act

*Edgar D. Bueno*  
*Gary W. Eiland*

- ❖ FERA 2009 amendments to the False Claims Act including enhanced availability of investigative resources
- ❖ Key FCA defenses and pending legislative initiatives to modify
- ❖ Recent judicial interpretations of the FCA and FERA
- ❖ Current focus areas of FCA enforcement – when overpayments and failure to repay lead to False Claims Act liability
- ❖ Practical implications for healthcare organizations – how the recent FCA amendments may affect compliance programs

##### J. What Goes into Fair Market Value Determinations for Physician Compensation: How to Explain the Major Compensation Surveys and Methods to Your Hospital and Physician Clients (repeat)

11:30 am-12:30 pm

##### Q. Special Topics in Healthcare Labor and Employment Law (not repeated)

*Bruce I. Petrie, Jr.*

- ❖ Unionization in healthcare workforce
- ❖ Labor and employment issues impacting hospitals, physicians and residents
- ❖ Recent employment law regulatory changes
- ❖ Dealing with the "Facebook culture" in the healthcare workplace: Legal issues relating to email, internet and electronic media

##### R. The New Audit Landscape: MICs, MACs and RACs (Medicaid Integrity Contractors, Medicare Administrative Contractors and Recovery Audit Contractors)

*Andrew B. Wachler*

- ❖ The roles of the various contractors and the types of claims contractors will be focused on initially and in the future
- ❖ Emerging issues and efforts to effectuate changes in Medicare policy
- ❖ Current legal issues, proactive compliance measures and successful appeal strategies for counsel representing physicians, hospitals and health systems
- ❖ Practical experiences and organizational tips from a private practice healthcare attorney representing physicians and hospitals in audit defense

## Program Agenda

### S. **Happy Birthday, HITECH: Recent Developments in HIPAA and EHR**

*Marilyn Lamar*

*Kristen B. Rosati*

- ❖ Recent HITECH regulations and real world compliance issues
- ❖ Dealing with the federal breach reporting regulations
- ❖ The new regulations to implement the HITECH privacy requirements
- ❖ Amending business associate agreements
- ❖ “Meaningful use” requirements for Medicare and Medicaid incentives

### L. **Disruptive Physician Behavior: Career Threatening or a Chance for Collegial Intervention?**

(repeat)

12:30-1:45 pm

**Lunch on your own or attend the Antitrust Practice Group Luncheon OR Hospitals and Health Systems and Health Information and Technology Practice Group Luncheon (Joint)**, sponsored by Sullivan Cotter and Associates, Inc.

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

### CONCURRENT SESSIONS

1:55-2:55 pm

### T. **Payment Issues Involving Non-Participating Providers: How Can We Determine Reasonable and Customary Reimbursement in a Post-Ingenu World?** (not repeated)

*Carol K. Lucas*

*Michelle A. Williams*

- ❖ The surprise out-of-network provider issue and how the states are dealing with it
- ❖ The legality of balance billing as a provider tactic to increase reimbursement
- ❖ Refusal to recognize an assignment of benefits as a payor tactic to bring providers to the table
- ❖ The rise of consumer protection as a consideration in provider/payor payment disputes

### U. **Hospital/ Physician Collaboration – The Antitrust Issues** (not repeated)

*Robert F. Leibenluft*

- ❖ Clinical integration – lessons from Tri-State and other recent FTC Advisory Opinions
- ❖ Market power issues – even if integrated, when does a provider collaboration get too large for antitrust purposes?

- ❖ Exclusivity vs. non-exclusivity – pros and cons
- ❖ When does a collaboration create antitrust tying concerns?

### B. **Physicians On-Call Payments: Compensation in a Transitional Market** (repeat)

### H. **Payor Audits: Preparation, Response and Opportunities** (repeat)

3:10-4:10 pm

### V. **Challenges Associated with Implementing EHR** (not repeated)

*Cynthia F. Wisner*

- ❖ Consents, disclosures and access issues-federal and state
- ❖ Sources of trust and EHR integrity
- ❖ Stimulus funding and government minimums
- ❖ Software licenses, outsourcing/hosting and resale restrictions

### W. **Quality Measures and Patient Safety: Addressing and Resolving Emerging Compliance and Legal Issues**

(not repeated)

*Anne M. Murphy*

*Susan Wood O’Leary*

- ❖ Emerging federal, state and private sector mandates and incentives to address patient safety and quality of care in provider settings, including: Accountable Care Organization and bundling proposals, federal government quality reporting and quality measures pilot programs, mandatory federal and state government adverse events reporting systems, and CMS rule denying payment for certain hospital-acquired conditions
- ❖ New opportunities for sharing patient safety information among provider entities through formation of Patient Safety Organizations
- ❖ Compliance issues and fiduciary duties for hospital and physician organization leadership regarding quality measures, quality assurance and patient safety
- ❖ Practical implementation strategies for quality enhancement and patient safety, such as medical staff criteria and expectations, inclusion of quality criteria in employment agreements and joint venture arrangements, and quality/patient safety considerations in electronic health records system development

### G. **What Physicians Should Know about Diagnostic Testing, IDTFs and the Anti-Markup Rule** (repeat)

### P. **What Providers Need to Know about the Revised False Claims Act** (repeat)

## Program Agenda

4:25-5:25 pm

**O. Structuring and Negotiating a Hospital System/  
Physician Practice Merger: Views from Both Sides of the  
Table** (repeat)

**R. The New Audit Landscape: MICs, MACs and RACs  
(Medicaid Integrity Contractors, Medicare Adminis-  
trative Contractors and Recovery Audit Contractors)**  
(repeat)

**S. Happy Birthday, HITECH: Recent Developments in  
HIPAA and EHR** (repeat)

### ADJOURNMENT

### Online Educational Sessions

Online educational sessions, sponsored by Integrated Healthcare Strategies, are audio/video files that capture the program sessions, synchronize the speaker's presentation with the PowerPoint presentation and include the files for any written materials provided for the session. They will be sold collectively in a single product and separately by individual session, and delivered online. The files have embedded tokens in the content, that allow the user/purchaser to generate a certificate of completion, which can be submitted to select state bar associations for CLE. More information on purchasing the online educational sessions will be available on our website at [www.healthlawyers.org](http://www.healthlawyers.org)



## Program Faculty

### PLANNING COMMITTEE

**Charlene L. McGinty, Esq.**  
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**Michael F. Schaff, Esq.**  
Wilentz Goldman & Spitzer PA  
Woodbridge, NJ

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**George T. Chresand, Esq.**  
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**Carol K. Lucas, Esq.**  
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**Jay A. Martus, Esq.**  
Senior Vice President and General Counsel  
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**David E. Matyas, Esq.**  
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**David R. Melloh, Esq.**  
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**Kimberly A. Mobley**  
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**Anne M. Murphy, Esq.**  
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Chicago, IL

**Dinetia M. Newman, Esq.**  
Balch & Bingham LLP  
Jackson, MS

**Susan Wood O'Leary, Esq.**  
Associate Vice President, Associate General  
Counsel, Risk Management Services  
Rush University Medical Center  
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**Kirk Orgosky, Esq**  
Deputy Chief for Health Care Fraud  
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**Andrew B. Wachler, Esq.**  
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**John Wiegand, Esq.**  
Staff Attorney  
Federal Trade Commission  
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**Michelle A. Williams, Esq.**  
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Atlanta, GA

**Cynthia F. Wisner, Esq.**  
Assistant General Counsel  
Trinity Health  
Farmington Hills, MI

## Program Agenda

### Thursday, February 25, 2010

7:00 am-5:55 pm

#### Registration and Information

7:00-8:00 am

**Continental Breakfast** sponsored by HORNE CPAs & Business Advisors (attendees, faculty and registered spouses and guest welcome)

#### GENERAL SESSION

8:00-8:15 am

##### Welcome and Introduction

*Richard L. Shackelford, AHLA President-Elect*  
*S. Allan Adelman, Hospitals Program Chair*

8:15-9:45 am

##### Top Legal Developments for Hospitals and Physicians

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

#### CONCURRENT SESSIONS

10:15-11:15 am

##### A. Medicare Termination Actions: How to Get Out of the Frying Pan and Avoid the Fire (not repeated)

*Louise M. Joy*  
*Melissa Thompson*

- ❖ Transparency in healthcare increases the likelihood that CMS will receive a complaint that triggers a Medicare survey: Noncompliance with even one Medicare condition of participation can trigger termination from the Medicare program
- ❖ The Medicare survey and termination process for hospitals – the types of surveys, the exit conference, the deficiency statement, the plan of correction, and the notice of termination, including public notice requirements
- ❖ Fast-track “immediate jeopardy” situations
- ❖ Medicare Conditions of Participation and State Operations Manual
- ❖ Options for addressing impending Medicare terminations: Negotiated agreements, litigation pending administrative appeal, and the administrative appeals process, including rights of appeal, levels of appeal and deadlines for appeal

##### B. “Sources Close to the Investigation Said . . .”: Legal Ethics and Public Statements in Government Proceedings

*William W. Horton*  
*Kirk Orgosky*

- ❖ “My client is innocent, but you didn’t hear it from me”: What can the defense say, and when?
- ❖ “What can I say after I’ve said you’re indicted?”: Special constraints on prosecutors and government lawyers
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##### C. Structuring and Negotiating a Hospital System/Physician Practice Merger: Views from Both Sides of the Table

*George T. Chresand*  
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- ❖ Strategic rationale for the deal
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*Gary W. Eiland*

- ❖ FERA 2009 amendments to the False Claims Act, including enhanced availability of investigative resources
- ❖ Key FCA defenses and pending legislative initiatives to modify
- ❖ Recent judicial interpretations of the FCA and FERA
- ❖ Current focus areas of FCA enforcement – when overpayments and failure to repay lead to False Claims Act liability
- ❖ Practical implications for healthcare organizations – how the recent FCA amendments may affect compliance programs

##### E. Structuring Quality and Productivity Incentives for Physicians Today and for the Future

*Mark W. Browne*  
*Kim H. Roeder*

- ❖ The legal framework for analyzing, structuring and documenting incentive payments based on quality and productivity measures (including health reform proposals and legislation)
- ❖ Various techniques for effectively measuring and integrating quality and productivity in physicians’ services (including patient satisfaction, outcomes, Work RVUs, patient encounters, inpatient and outpatient quality metrics and other performance criteria)
- ❖ Practical planning considerations and implications of the use of various quality metrics and productivity benchmarks
- ❖ Future reimbursement models combining productivity, efficiency, and quality measures (bundled payment methodologies, accountable care organizations and the medical home model)

11:30 am-12:30 pm

##### F. Special Topics in Healthcare Labor and Employment Law (not repeated)

*Bruce I. Petrie, Jr.*

- ❖ Unionization in healthcare workforce
- ❖ Labor and employment issues impacting hospitals, physicians and residents
- ❖ Recent employment law regulatory changes

## Program Agenda

- ❖ Dealing with the “Facebook culture” in the healthcare workplace: Legal issues relating to email, internet and electronic media

### **G. The New Audit Landscape: MICs, MACs and RACs (Medicaid Integrity Contractors, Medicare Administrative Contractors and Recovery Audit Contractors)**

*Andrew B. Wachler*

- ❖ The roles of the various contractors and the types of claims contractors will be focused on initially and in the future
- ❖ Emerging issues and efforts to effectuate changes in Medicare policy
- ❖ Current legal issues, proactive compliance measures and successful appeal strategies for counsel representing physicians, hospitals and health systems
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### **H. Happy Birthday, HITECH: Recent Developments in HIPAA and EHR**

*Marilyn Lamar*

*Kristen B. Rosati*

- ❖ Recent HITECH regulations and real world compliance issues
- ❖ Dealing with the federal breach reporting regulations
- ❖ The new regulations to implement the HITECH privacy requirements
- ❖ Amending business associate agreements
- ❖ “Meaningful use” requirements for Medicare and Medicaid incentives

### **J. Here’s Looking at Your Data: Government Data Mining to Identify Hospital Compliance, Audit Subjects and Case Support**

*James G. Sheehan*

- ❖ Governments and contractors using data mining and analysis techniques-sample analytic and recovery approaches from each
- ❖ The law and due process of data mining-how to assess and defend against data mining projects
- ❖ Using data mining for compliance and governance
- ❖ Public sources of data mining information
- ❖ The documents of data mining recovery projects

### **K. Healthcare Reform**

*Lisa J. Gilden*

*Michael F. Rodgers*

12:30-1:45 pm

**Lunch on your own or attend the Antitrust Practice Group Luncheon OR Hospitals and Health Systems and Health Information and Technology (Joint)**, sponsored by Sullivan Cotter and Associates, Inc. (additional fee; limited attendance; pre-registration required, see page 20 for luncheon presentation descriptions)

### **CONCURRENT SESSIONS**

1:55-2:55 pm

### **L. Payment Issues Involving Non-Participating Providers: How Can We Determine Reasonable and Customary Reimbursement in a Post-Ingenu World? (not repeated)**

*Carol K. Lucas*

*Michelle A. Williams*

- ❖ The surprise out-of-network provider issue and how the states are dealing with it
- ❖ The legality of balance billing as a provider tactic to increase reimbursement
- ❖ Refusal to recognize an assignment of benefits as a payor tactic to bring providers to the table
- ❖ The rise of consumer protection as a consideration in provider/payor payment disputes

### **M. Hospital/ Physician Collaboration – The Antitrust Issues**

*Robert F. Leibenluft*

- ❖ Clinical integration – lessons from Tri-State and other recent FTC Advisory Opinions
- ❖ Market power issues – even if integrated, when does a provider collaboration get too large for antitrust purposes?
- ❖ Exclusivity vs. non-exclusivity – pros and cons
- ❖ When does a collaboration create antitrust tying concerns?

### **N. Breaking Murphy’s Law – How Healthcare Boards Can Reduce the Odds of a Material Regulatory Failure**

*Jolee H. Bollinger*

*John Markus*

- ❖ How to mitigate the consequences of Murphy’s Law – “What can go wrong, will go wrong” – in the context of governance of complex healthcare systems
- ❖ Board responsibilities for compliance oversight through case law and regulatory guidance
- ❖ Board obligations to set the tone for adopting and overseeing prudent internal controls designed to reduce the risk of regulatory failures – without compromising a system’s ability to delivery medically needed services or products
- ❖ Case studies illustrating specific compliance-related governance strategies
- ❖ Use of effective governance to limit the impact of inevitable compliance failures on health system operations and board members

## Program Agenda

### O. “Best Practices” to Avoid (or Win) Hospital Practitioner Credentialing/Privileging/Peer Review Liability and Litigation

*S. Allan Adelman*

*Brian M. Peters*

- ❖ Who and what should/should not trigger an “investigation”
- ❖ Defining when an investigation has begun or will begin for reporting purposes
- ❖ Evaluating motive, incentive, presumption and assumption
- ❖ Who takes, and how to take, control of the process
- ❖ Avoiding Department/medical staff committee/Board conflicts
- ❖ Recommended Investigation/enforcement tactics
- ❖ Plaintiff “hot button” investigative/pleading/litigation tactics
- ❖ Medical Staff Bylaw and Fair Hearing Plan provisions that can help avoid and win litigation

3:10-4:10 pm

### P. Challenges Associated with Implementing EHR

(not repeated)

*Cynthia F. Wisner*

- ❖ Consents, disclosures and access issues-federal and state
- ❖ Sources of trust and EHR integrity
- ❖ Stimulus funding and government minimums
- ❖ Software licenses, outsourcing/hosting and resale restrictions

### Q. Do Legal Ethics and Medical Ethics Mix in a Pandemic?

(not repeated)

*Elisabeth Belmont*

*Almeta E. Cooper*

- ❖ What are the obstacles to providing effective legal advice in a public health emergency?
- ❖ How can healthcare counsel comply with the ABA Model Rules of Professional Conduct in uncharted medical ethics territory?
- ❖ How can healthcare counsel work effectively with healthcare providers to identify the key issues and develop a course of action?
- ❖ What are the lessons learned in legal ethics from the H1N1 “Pandemic”?

### R. Quality Measures and Patient Safety: Addressing and Resolving Emerging Compliance and Legal Issues

*Anne M. Murphy*

*Susan Wood O’Leary*

- ❖ Emerging federal, state and private sector mandates and incentives to address patient safety and quality of care in provider settings, including: Accountable Care Organization and bundling proposals, federal government quality reporting and quality measures pilot programs, mandatory federal and state government adverse events reporting systems, and CMS rule denying payment for certain hospital-acquired conditions

- ❖ New opportunities for sharing patient safety information among provider entities through formation of Patient Safety Organizations
- ❖ Compliance issues and fiduciary duties for hospital and physician organization leadership regarding quality measures, quality assurance and patient safety
- ❖ Practical implementation strategies for quality enhancement and patient safety, such as medical staff criteria and expectations, inclusion of quality criteria in employment agreements and joint venture arrangements and quality/patient safety considerations in electronic health records system development

### D. What Providers Need to Know About the Revised False Claims Act (repeat)

### K. Healthcare Reform (repeat)

4:25-5:25 pm

### S. Making Sense of Clinical Research in Hospital Settings

(not repeated)

*David Vulcano*

- ❖ Contracting logistics and trends
- ❖ Institutional Review Boards (IRBs): Outsourcing vs. in-house
- ❖ Current issues in Medicare billing for research related services
- ❖ Increased use of data research in electronic health records

### C. Structuring and Negotiating a Hospital System/Physician Practice Merger: Views from Both Sides of the Table (repeat)

### G. The New Audit Landscape: MICs, MACs and RACs (Medicaid Integrity Contractors, Medicare Administrative Contractors and Recovery Audit Contractors) (repeat)

### H. Happy Birthday, HITECH: Recent Developments in HIPAA and EHR (repeat)

### J. Here’s Looking at Your Data: Government Data Mining to Identify Hospital Compliance, Audit Subjects and Case Support (repeat)

4:25-5:55 pm Note end time

### T. Voluntary Disclosures: Strategic and Practical Considerations

*Joan P. Dailey*

*Lewis Morris*

*Jesse A. Witten*

- ❖ The latest on Stark Law self-disclosure issues
- ❖ Healthcare reform and self-disclosure
- ❖ Developments under the OIG self-disclosure protocol

## Program Agenda

- ❖ Current legal authorities dealing with self-disclosure
- ❖ Tactical considerations and best practices

5:25-6:45 pm

**Reception** sponsored by HORNE CPAs & Business Advisors (attendees, faculty and registered spouses and guests are welcome to attend)

### Friday, February 26, 2010

7:00 am-3:25 pm

#### Registration and Information

7:00-8:30 am

**Continental Breakfast** sponsored HORNE CPAs & Business Advisors (attendees, faculty, and registered spouses and guests welcome)

#### CONCURRENT SESSIONS

**PLEASE NOTE: There are two different start times for the first set of sessions**

8:00-9:30 am Extended Sessions

#### U. Law and Economics in the World of Hospital/Physician Integration (not repeated)

*Robert G. Homchick*

*Albert D. Hutzler*

*Albert W. Shay*

- ❖ The legal issues (i.e., Stark, Kickback) surrounding hospital-physician arrangements in the context of integrated health-care systems
- ❖ Common compensation methodologies for employed physicians and what risks are raised by productivity-based compensation methodologies (how much compensation may be considered too much?)
- ❖ When hospitals operate physician clinics as provider-based departments, can they consider the physicians' lost ancillary revenues is determining compensation?
- ❖ Is it reasonable to compare the compensation of hospital employed to that of private practicing physicians in the hospital's market?
- ❖ Is permissible for hospitals to subsidize the costs of operating an affiliated medical practice and, if so, what are the risks of doing so?

#### T. Voluntary Disclosures: Strategic and Practical Considerations (repeat)

8:30-9:30 am

#### V. When Physicians Are Your Competition

*Deborah A. Datte*

*Robin L. Nagele*

- ❖ The impact of physician ownership of traditionally hospital-based services on the healthcare system
- ❖ How physicians are structuring competing businesses to

comply with current law

- ❖ Strategies for hospital responses to physician competition
- ❖ The legal and business ramifications of those strategies

#### W. Hospital Services: Inpatient, Outpatient, Incident to or Other?

*Timothy P. Blanchard*

*Bernice Hecker*

- ❖ Inpatient vs. outpatient/observation classification
- ❖ Case management protocols vs. physician order requirements
- ❖ Complexities of observation payment
- ❖ Clarified physician supervision requirements

9:40-10:40 am

#### X. Hospital's Friend or Foe: The Age of Social Media and Health 2.0 (not repeated)

*Robert L. Coffield*

*Joanne E. Joiner*

- ❖ Social media technology tools used by healthcare providers and hospitals
- ❖ Pros/cons and legal implications of social media and health 2.0 services such as blogs, wikis, social networking, podcasting, video sharing, etc.
- ❖ Best practices and development of policies and procedures which address staff and employees using social media

#### Y. Collecting from Non-Contract Payors: What Is "R&C" and Whether to Balance Bill (not repeated)

*James L. Poth*

- ❖ The problem of determining plan responsibility for non-contracted emergency services
- ❖ Collection and litigation strategies in dealing with non-contracted plans and determining when to seek payment directly from patient
- ❖ Distinction between "balance billing" and patient responsibility
- ❖ "Reasonable & customary" databases, Ingenix and impact of United's settlement with NY Attorney General

#### Z. Determining Fair Market Value – Do You Really Need an Appraisal?

*Robert A. Wade*

- ❖ FMV and commercial reasonableness defined
- ❖ Financial arrangements where FMV documentation can be developed internally and structure of documentation
- ❖ Common FMV pitfalls to avoid
- ❖ When independent third party appraisals are in your best interest

#### AA. Contemporary Employment and Other Options: What Hospitals Are Now Doing to Closely Align with Physicians

*Peter A. Pavarini*

- ❖ How contemporary employment models differ from traditional hospital employment and why they are attractive to

## Program Agenda

- both primary care and specialty physicians
- ❖ How the Anti-Kickback safe harbors, Stark exceptions, and IRS considerations drive hospitals to the conclusion that it may be better to employ physicians than use independent contractor arrangements and joint ventures to align their incentives with those of the health system
- ❖ The key ingredients of every successful alternative employment model, including a legally sound compensation model
- ❖ Why some communities are attracted to certain models, but not others, and how a legal advisor should lead a client to the right choice
- ❖ How to re-structure existing employment arrangements into more contemporary, sustainable models
- ❖ What happens to the rights and responsibilities of the voluntary medical staff when more and more physicians are employed directly or indirectly by the health system

10:50-11:50 am

### **BB. Creating Leverage and Efficiency in Vendor Negotiations** (not repeated)

*John C. Erickson, III*

- ❖ Create leverage to obtain the lowest total cost of ownership over the term of a procurement relationship
- ❖ Seeking clear, fair, and reasonable terms, rather than one-sided terms
- ❖ Efficient, low-cost negotiation (including a suggestion to lower the cost of outside counsel while increasing their value)
- ❖ Designing RFPs that advance the entire contracting process
- ❖ Why hospitals' "standard terms" may often be counterproductive
- ❖ "Top Ten" provisions to include (or omit) in vendor agreements

### **E. Structuring Quality and Productivity Incentives for Physicians Today and for the Future** (repeat)

### **M. Hospital/Physician Collaboration – The Antitrust Issues** (repeat)

### **O. "Best Practices" to Avoid (or Win) Hospital Practitioner Credentialing/Privileging/Peer Review Liability and Litigation** (repeat)

11:50 am-1:05 pm

**Lunch on your own or attend the Medical Staff, Credentialing, and Peer Review Practice Group Luncheon**, sponsored by Professional Renewal Center  
**OR Healthcare Liability and Litigation Practice Group Luncheon**, sponsored by HealthCare Appraisers, Inc. (additional fee; limited attendance; pre-registration required, see page 20 for luncheon presentation descriptions)

### **CONCURRENT SESSIONS**

1:15-2:15 pm

### **B. "Sources Close to the Investigation Said . . .": Legal Ethics and Public Statements in Government Proceedings** (repeat)

### **W. Hospital Services: Inpatient, Outpatient, Incident to or Other?** (repeat)

### **Z. Determining Fair Market Value – Do You Really Need an Appraisal?** (repeat)

### **AA. Contemporary Employment and Other Options: What Hospitals Are Now Doing to Closely Align with Physicians** (repeat)

2:25-3:25 pm

### **N. Breaking Murphy's Law - How Healthcare Boards Can Reduce the Odds of a Material Regulatory Failure** (repeat)

### **R. Quality Measures and Patient Safety: Addressing and Resolving Emerging Compliance and Legal Issues** (repeat)

### **V. When Physicians Are Your Competition** (repeat)

### **ADJOURNMENT**

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Program at a Glance

Wednesday, February 24, 2010

7:00 am– 5:15 pm	<b>Registration and Information</b>		
8:00– 9:45 am	<p><b>General Session</b> 8:00-8:15 am <b>Welcome and Introduction</b> <i>Shackelford, McGinty</i></p> <p>8:15-9:45 am <b>Law and Economics in the World of Hospital/Physician Integration</b> <i>Homchick, Hutzler, Shay</i></p>		
10:00– 11:00 am	<p><b>Enterprise Risk Management (ERM) Principles and Provider Liability for Physicians and Physician Organizations</b> (not repeated)</p> <p><i>Martus</i></p>	<p><b>Physician On-Call Payments: Compensation in a Transitional Market</b></p> <p><i>Anderson Newman</i></p>	<p><b>Accountable Care Organizations (ACOs) and Physician Hospital Integration under Healthcare Reform</b></p> <p><i>DeMuro Wiegand</i></p>
11:15 am– 12:15 pm	<p><b>Medical Office Building Development and Construction: A Healthcare Lawyer’s Roadmap</b> (not repeated)</p> <p><i>Haynes</i></p>	<p><b>Negotiating Hospital-Based Physician Group Contracts with Hospitals: The Physician Group Perspective</b></p> <p><i>Bittinger Schaff</i></p>	<p><b>Physician Practices in a Stark World</b></p> <p><i>Matyas</i></p>
12:15– 1:35 pm	<p><b>Lunch on your own or attend the Business Law and Governance Practice Group Luncheon OR Physician Organizations Practice Group Luncheon, sponsored by Pershing Yoakley &amp; Associates PC</b> (additional fee; limited attendance; pre-registration required, see page 20 for luncheon presentation descriptions)</p>		
1:45– 2:45 pm	<p><b>What Physicians Should Know about Diagnostic Testing, IDTFs and the Anti-Markup Rule</b></p> <p><i>Reisz Tankersley</i></p>	<p><b>Payor Audits: Preparation, Response and Opportunities</b></p> <p><i>Jose</i></p>	<p><b>What Goes into Fair Market Value Determinations for Physician Compensation: How to Explain the Major Compensation Surveys and Methods to Your Hospital and Physician Clients</b></p> <p><i>Mobley Turcotte</i></p>
3:00– 4:00 pm	<p><b>Industry “Gift Bans:” Learning from (and Living with) the Massachusetts Experience</b> (not repeated)</p> <p><i>Curi Vernaglia</i></p>	<p><b>Disruptive Physician Behavior: Career Threatening or a Chance for Collegial Intervention?</b></p> <p><i>DeSimone Grizzle</i></p>	<p><b>Negotiating Hospital-Based Physician Group Contracts with Hospitals: The Physician Group Perspective</b> (repeat)</p> <p><i>Bittinger Schaff</i></p>
4:15– 5:15 pm	<p><b>Neutral Peer Review: Is MS.01.01.01 an Opportunity to Make Peer Review Less Litigious?</b> (not repeated)</p> <p><i>Cassidy</i></p>	<p><b>Accountable Care Organizations (ACOs) and Physician Hospital Integration under Healthcare Reform</b> (repeat)</p> <p><i>DeMuro Wiegand</i></p>	<p><b>Physician Practices in a Stark World</b> (repeat)</p> <p><i>Matyas</i></p>
5:15– 6:30 pm	<p><b>Reception sponsored by HORNE CPAs &amp; Business Advisors</b> (attendees, faculty and registered spouses and guest welcome)</p>		

**Programs at a Glance**

**Thursday, February 25, 2010**

**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– 5:55 pm	<b>Registration and Information</b>					
7:00– 8:00 am	<b>Continental Breakfast sponsored by HORNE CPAs &amp; Business Advisors</b> (attendees, faculty and registered spouses and guest welcome)					
8:00– 9:45 am	<p style="text-align: center;"><b>GENERAL SESSION</b> 8:00-8:15 am <b>Welcome and Introduction</b> <i>Shackelford, Adelman</i></p> <p style="text-align: center;">8:15-9:45 am <b>Top Legal Developments for Hospitals and Physicians</b> <i>Schermer, Schroder</i></p>					
10:15– 11:15 am	<p>(Hospitals only) <b>Medicare Termination Actions: How to Get Out of the Frying Pan and Avoid the Fire</b> (not repeated)</p> <p style="text-align: center;"><i>Joy Thompson</i></p>	<p>(Hospitals only) <b>Structuring Quality and Productivity Incentives for Physicians Today and for the Future</b></p> <p style="text-align: center;"><i>Browne Roeder</i></p>	<p>(Physicians only) <b>What Goes into Fair Market Value Determinations for Physician Compensation: How to Explain the Major Compensation Surveys and Methods to Your Hospital and Physician Clients</b> (repeat)</p> <p style="text-align: center;"><i>Mobley Turcotte</i></p>	<p><b>“Sources Close to the Investigation Said . . .”: Legal Ethics and Public Statements in Government Proceedings</b></p> <p style="text-align: center;"><i>Horton Orgosky</i></p>	<p><b>Structuring and Negotiating a Hospital System/Physician Practice Merger: Views from Both Sides of the Table</b></p> <p style="text-align: center;"><i>Chresand Melloh</i></p>	<p><b>What Providers Need to Know about the Revised False Claims Act</b></p> <p style="text-align: center;"><i>Bueno Eiland</i></p>
11:30 am– 12:30 pm	<p>(Hospitals only) <b>Here’s Looking at Your Data: Government Data Mining to Identify Hospital Compliance, Audit Subjects and Case Support</b></p> <p style="text-align: center;"><i>Sheehan</i></p>	<p>(Hospitals only) <b>Healthcare Reform</b></p> <p style="text-align: center;"><i>Gilden Rodgers</i></p>	<p>(Physicians only) <b>Disruptive Physician Behavior: Career Threatening or a Chance for Collegial Intervention?</b> (repeat)</p> <p style="text-align: center;"><i>DeSimone Grizzle</i></p>	<p><b>Special Topics in Healthcare Labor and Employment Law</b> (not repeated)</p> <p style="text-align: center;"><i>Petrie</i></p>	<p><b>The New Audit Landscape: MICs, MACs and RACs (Medicaid Integrity Contractors, Medicare Administrative Contractors and Recovery Audit Contractors)</b></p> <p style="text-align: center;"><i>Wachler</i></p>	<p><b>Happy Birthday, HITECH: Recent Developments in HIPAA and EHR</b></p> <p style="text-align: center;"><i>Lamar Rosati</i></p>
12:30– 1:45 pm	<p><b>Lunch on your own or attend the Antitrust Practice Group Luncheon OR the Hospitals and Health Systems and Health Information and Technology Practice Group Luncheon (Joint), sponsored by Sullivan Cotter and Associates, Inc.</b> (additional fee; limited attendance; pre-registration required, see page 20 for luncheon presentation description)</p>					

*(Continued, next page)*

Programs at a Glance

Thursday, February 25, 2010 continued

1:55– 2:55 pm	(Hospitals only) <b>Breaking Murphy’s Law – How Healthcare Boards Can Reduce the Odds of a Material Regulatory Failure</b>  <i>Bollinger Markus</i>	(Hospitals only) <b>“Best Practices” to Avoid (or Win) Hospital Practitioner Credentialing/ Privileging/ Peer Review Liability and Litigation</b>  <i>Adelman Peters</i>	(Physicians only) <b>Physicians On-Call Payments: Compensation in a Transitional Market</b> (repeat)  <i>Anderson Newman</i>	(Physicians only) <b>Payor Audits: Preparation, Response and Opportunities</b> (repeat)  <i>Jose</i>	<b>Payment Issues Involving Non-Participating Providers: How Can We Determine Reasonable and Customary Reimbursement in a Post-Ingenux World?</b> (not repeated)  <i>Lucas Williams</i>	<b>Hospital/ Physician Collaboration - The Antitrust Issues</b>  <i>Leibenluft</i>
3:10– 4:10 pm	(Hospitals only) <b>Do Legal Ethics and Medical Ethics Mix in a Pandemic?</b> (not repeated)  <i>Belmont Cooper</i>	(Hospitals only) <b>Healthcare Reform</b> (repeat)  <i>Gilden Rodgers</i>	(Physicians only) <b>What Physicians Should Know about Diagnostic Testing, IDTFs and the Anti-Markup Rule</b> (repeat)  <i>Reisz Tankersley</i>	<b>Challenges Associated with Implementing EHR</b> (not repeated)  <i>Wisner</i>	<b>Quality Measures and Patient Safety: Addressing and Resolving Emerging Compliance and Legal Issues</b>  <i>Murphy O’Leary</i>	<b>What Providers Need to Know about the Revised False Claims Act</b> (repeat)  <i>Bueno Eiland</i>
4:25– 5:25 pm	(Hospitals only) <b>Making Sense of Clinical Research in Hospital Settings</b> (not repeated)  <i>Vulcano</i>	(Hospitals only) <b>Here’s Looking at Your Data: Government Data Mining to Identify Hospital Compliance, Audit Subjects and Case Support</b> (repeat)  <i>Sheehan</i>	<b>4:25–5:55 pm Note End Time</b> (Hospitals only) <b>Voluntary Disclosures: Strategic and Practical Considerations</b>  <i>Dailey Morris Witten</i>	<b>Structuring and Negotiating a Hospital System/Physician Practice Merger: Views from Both Sides of the Table</b> (repeat)  <i>Chresand Melloh</i>	<b>The New Audit Landscape: MICs, MACs and RACs (Medicaid Integrity Contractors, Medicare Administrative Contractors and Recovery Audit Contractors)</b> (repeat)  <i>Wachler</i>	<b>Happy Birthday, HITECH: Recent Developments in HIPAA and EHR</b> (repeat)  <i>Lamar Rosati</i>
5:25– 6:45 pm	<b>Reception sponsored by HORNE CPAs &amp; Business Advisors</b> (attendees, faculty and registered spouses and guests are welcome to attend)					

## Program at a Glance

Friday, February 26, 2010

7:00 am– 3:25 pm	<b>Registration and Information</b>				
7:00– 8:30 am	<b>Continental Breakfast sponsored HORNE CPAs &amp; Business Advisors</b> (attendees, faculty, and registered spouses and guests welcome)				
<b>PLEASE NOTE two different start times for the first set of sessions</b>					
8:00– 9:30 am  Extended Sessions	<b>Law and Economics in the World of Hospital/Physician Integration</b>  <i>Homchick Hutzler Shay</i>	<b>Voluntary Disclosures: Strategic and Practical Considerations</b> (repeat)  <i>Dailey Morris Witten</i>	8:30– 9:30 am	<b>When Physicians Are Your Competition</b>  <i>Datte Nagele</i>	<b>Hospital Services: Inpatient, Outpatient, Incident to or Other?</b>  <i>Blanchard Hecker</i>
9:40– 10:40 am	<b>Hospital's Friend or Foe: The Age of Social Media and Health 2.0</b> (not repeated)  <i>Coffield Joiner</i>	<b>Collecting from Non-Contract Payors: What Is "R&amp;C" and Whether to Balance Bill</b> (not repeated)  <i>Poth</i>	<b>Determining Fair Market Value – Do You Really Need an Appraisal?</b>  <i>Wade</i>		<b>Contemporary Employment and Other Options: What Hospitals Are Now Doing to Closely Align with Physicians</b>  <i>Pavarini</i>
10:50– 11:50 am	<b>Creating Leverage and Efficiency in Vendor Negotiations</b> (not repeated)  <i>Erickson</i>	<b>Structuring Quality and Productivity Incentives for Physicians Today and for the Future</b> (repeat)  <i>Browne Roeder</i>	<b>Hospital/Physician Collaboration – The Antitrust Issues</b> (repeat)  <i>Leibenluft</i>		<b>"Best Practices" to Avoid (or Win) Hospital Practitioner Credentialing/Privileging/Peer Review Liability and Litigation</b> (repeat)  <i>Adelman Peters</i>
11:50 am– 1:05 pm	<b>Lunch on your own or attend the Medical Staff, Credentialing, and Peer Review Practice Group Luncheon, sponsored by Professional Renewal Center OR Healthcare Liability and Litigation Practice Group Luncheon, sponsored by HealthCare Appraisers, Inc.</b> (additional fee; limited attendance; pre-registration required, see page 20 for luncheon presentation descriptions)				
1:15– 2:15 pm	<b>"Sources Close to the Investigation Said . . .": Legal Ethics and Public Statements in Government Proceedings</b> (repeat)  <i>Horton Orgosky</i>	<b>Hospital Services: Inpatient, Outpatient, Incident to or Other?</b> (repeat)  <i>Blanchard Hecker</i>	<b>Determining Fair Market Value – Do You Really Need an Appraisal?</b> (repeat)  <i>Wade</i>		<b>Contemporary Employment and Other Options: What Hospitals Are Now Doing to Closely Align with Physicians</b> (repeat)  <i>Pavarini</i>
2:25– 3:25 pm	<b>Breaking Murphy's Law – How Healthcare Boards Can Reduce the Odds of a Material Regulatory Failure</b> (repeat)  <i>Bollinger Markus</i>	<b>Quality Measures and Patient Safety: Addressing and Resolving Emerging Compliance and Legal Issues</b> (repeat)  <i>Murphy O'Leary</i>		<b>When Physicians Are Your Competition</b> (repeat)  <i>Datte Nagele</i>	

# Practice Group Luncheon Presentations

**Wednesday, February 24, 2010**

## **BUSINESS LAW AND GOVERNANCE PRACTICE GROUP**

### **The Compensation Challenge in Hospital/Physician Integrations: Structuring Compensation Plans in Harrowing Times**

*Richard M. Cameron*

*EthosPartners, Chesterfield, MO*

*Daniel J. Mohan, Esq.*

*Kilpatrick Stockton LLP, Atlanta, GA*

An increasing number of healthcare systems are embarking on a strategy of putting the “integration” back into the healthcare system. The acquisition and employment of physician groups is a key component of this strategy. This time around, however, systems are acquiring large, single or multi-specialty groups, and rolling the physicians into the system under some form of employment model. The most hotly negotiated aspect of many of these transactions is the structure of the compensation arrangement with the physicians. In structuring a physician compensation model, the system must balance the expectations of the doctors, an uncertain reimbursement environment, state law issues like corporate practice of medicine, federal tax-exempt organization laws and regulations, and federal and state anti-kickback and self-referral laws. And all of this must be done in an environment of close scrutiny of these transactions and an increasing volume of investigations and enforcement actions. We will discuss recurring issues that arise out of the process of structuring physician compensation arrangements, including: (1) final fair market value (FMV) compensation opinions, (2) valuation methodologies, (3) getting to a final FMV opinion, (4) retention bonuses and restrictive covenants, (5) the nebulous concept of “commercial reasonableness,” and (6) lessons learned from recent enforcement actions.

## **PHYSICIAN ORGANIZATIONS PRACTICE GROUP**

### **sponsored by Pershing Yoakley & Associates PC**

#### **Roundtable Discussion of Recent Issues Affecting Physicians**

*Ann M. Bittinger, Esq.*

*Bittinger Law Firm, Jacksonville, FL*

*Julie E. Kass, Esq.*

*OBER | KALER, Baltimore, MD*

*Kim Harvey Looney, Esq.*

*Waller Lansden Dortch & Davis LLP, Nashville, TN*

*Cynthia Y. Reisz, Esq.*

*Bass Berry & Sims PLC, Nashville, TN*

*Sidney S. Welch, Esq.*

*Arnall Golden Gregory LLP, Atlanta, GA*

An interactive discussion of the following topics of interest to physicians and physician entities:

- ❖ Hospital/physician relationships and integration
- ❖ HITECH Act
- ❖ Healthcare reform

**Thursday, February 25, 2010**

## **ANTITRUST PRACTICE GROUP**

### **Healthcare Enforcement Initiatives at the FTC under the New Administration**

*Peter J. Levitas*

*Deputy Director of the Bureau of Competition, Federal Trade Commission, Washington, DC*

*Christine L. White, Esq. (Moderator)*

*Crowell & Moring LLP, New York, NY*

## **HEALTH INFORMATION AND TECHNOLOGY and HOSPITALS AND HEALTH SYSTEMS PRACTICE GROUPS (joint) sponsored by Sullivan Cotter and Associates, Inc.**

### **Practical Implications of Breach Notification: Minimize Your Risks**

*Gerald “Jud” E. DeLoss, Esq.*

*Krieg DeVault LLP, Chicago, IL*

*Patricia A. Markus, Esq.*

*Smith Moore Leatherwood LLP, Raleigh, NC*

A discussion on how covered entities and business associates can minimize the risk of a reportable breach by addressing important policy, auditing and monitoring, training, and documentation best practices.

**Friday, February 26, 2010**

## **HEALTHCARE LIABILITY AND LITIGATION PRACTICE GROUP sponsored by HealthCare Appraisers, Inc.**

### **Tips from the Inside on Handling RACs and Other Medicare Audits**

*Dawn G. Benson, Esq.*

*Associate Counsel, Phoebe Putney Health Systems, Inc., Albany, GA*

*Christine Castelli*

*Principal of Client Relations and Quality Assurance, Connolly*

*Healthcare, Philadelphia, PA*

*Tim M. Renzillian, CPA*

*Senior Managing Director – Forensic Litigation, FTI Consulting,*

*Atlanta, GA*

Combine insights from a RAC auditor, a health system representative, and a national consulting firm on the latest RAC initiatives and other Medicare reimbursement audits conducted by Medicare administrative contractors (MACs). Connolly Healthcare is CMS’ contracted RAC auditor for fifteen states. Our industry and consultant speakers will supplement the direct news from the field from Connolly with insights they have gained from responding to RAC audit requests and litigating Medicare appeals. This program will offer opposing views from the auditor and those receiving audit requests, and talk about how to handle not only audits but appeals from findings based on knowledge of insiders who have hands-on experience from all relevant perspectives.

## **MEDICAL STAFF, CREDENTIALING, AND PEER REVIEW PRACTICE GROUP sponsored by Professional Renewal Center**

### **Gaining Greater Peer Review Protections under Patient Safety Organizations**

*Michael Callahan, Esq.*

*Katten Muchin Rosenman LLP, Chicago, IL*

Almost one year ago, CMS published its final and long awaited rules on Patient Safety Organizations (PSOs) under the Patient Safety Act of 2005. What few attorneys have realized is that the confidentiality and privilege protections available under PSOs are much broader than what can be obtained under most existing state confidentiality statutes. Moreover, for the first time, these protections extend to both state and federal proceedings. There are, however, certain nuances in the new rules which will have a direct impact on how hospitals and medical staffs design and revise their peer review procedures in order to take advantage of the new law in order to maximize the PSO protections while not losing your state confidentiality rights.

- ❖ Key PSO terms including discussion on new confidentiality and privilege provisions
- ❖ Key policies and documents required in order to participate in a PSO
- ❖ The role of legal counsel in PSO development
- ❖ Use of hypothetical peer review scenarios in order to understand application of PSO and state confidentiality protections

# 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) 833-1100, prompt #2. 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 \_\_\_\_\_

### REGISTRATION INFORMATION

If you are registering at the member rate, please indicate to which organization(s) you belong:

- AHLA       FL Bar Health Law Section       FAHA

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

Postmarked and paid by February 2, 2010:

Members:  \$730      Non-Members:  \$955

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

Postmarked and paid between February 3 and February 20, 2010:

Members:  \$855      Non-Members:  \$1080

- \$780 each additional 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 February 2, 2010:

Members:  \$775      Non-Members:  \$1000

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

Postmarked and paid between February 3 and February 20, 2010:

Members:  \$900      Non-Members:  \$1125

- \$825 each additional 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 February 2, 2010:

Members:  \$1130      Non-Members:  \$1350

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

Postmarked and paid between February 3 and February 20, 2010:

Members:  \$1255      Non-Members:  \$1475

- \$1175 each additional 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 \$55
- I am registering for the Hospitals Program and would like to purchase a binder for \$55
- I am registering for the Physicians and Hospitals Program and would like to purchase both binders for \$110

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

**I will require:**  Audio  Visual  Mobility  Other assistance \_\_\_\_\_  
 I have special dietary needs

## REGISTRATION INFORMATION

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

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

\$ \_\_\_\_\_ Printed Course Materials  \$55 Physicians binder  \$55 Hospitals binder

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

\$ \_\_\_\_\_  Business Law and Governance – February 24

– OR –

Physician Organizations – February 24

\$ \_\_\_\_\_  Antitrust – February 25

– OR –

Hospitals and Health Systems and Health Information and Technology (joint) – February 25

\$ \_\_\_\_\_  Medical Staff, Credentialing, and Peer Review – February 26

– OR –

Healthcare Liability and Litigation – February 26

\$ \_\_\_\_\_ 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:          Diners Club

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 February 16, 2010. 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.

## Program Information

**Dates:** February 24-26, 2010  
**Place:** Doral Golf Resort & Spa  
4400 87th Avenue  
Miami, FL 33178  
**Phone:** (305) 592-2000  
**Reservations:** (800) 713-6725

### Physicians Program Only

**All members of FL Bar Health Law Section and FAHA are entitled to AHLA member rates.**

**Postmarked and paid by February 2, 2010**

\$730 For the first Member  
\$655 For each additional Member  
\$955 Non-Members

**Postmarked and paid between February 3 and February 20, 2010\***

\$855 For the first Member  
\$780 For each additional Member  
\$1080 Non-Members

### Hospitals Program Only

**Postmarked and paid by February 2, 2010**

\$775 For the first Member  
\$700 For each additional Member  
\$1000 Non-Members

**Postmarked and paid between February 3 and February 20, 2009\***

\$900 For the first Member  
\$825 For each additional Member  
\$1125 Non-Members

### Physicians and Hospitals Programs Dual Registration

**Postmarked and paid by February 2, 2010**

\$1130 For the first Member  
\$1060 For each additional Member  
\$1350 Non-Members

**Postmarked and paid between February 3 and February 20, 2010\***

\$1255 For the first Member  
\$1175 For each additional Member  
\$1475 Non-Members

\* Registration fees increase \$125 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) 833-1100, prompt #2 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 13.0 continuing education credits (including 1.0 ethics credit) based on a 60-minute hour and 15.6 credits (including 1.2 ethics credits) based on a 50-minute hour. The **Hospitals**

seminar will be worth approximately 12.5 continuing education credits (including 2.0 ethics credits) based on a 60-minute hour and 15.0 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 and Hospitals seminars will each be worth approximately 15.0 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 February 16, 2010*. 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) 833-1100, prompt #5. Please note that registration fees are based on the AHLA membership status of the individual who actually attends the program.

**Special Needs:** If you have needs requiring special assistance or accommodations, including special dietary needs, or have questions about accessibility issues at the program, contact our special needs coordinator, Valerie Eshleman at (202) 833-0784 or [veshleman@healthlawyers.org](mailto:veshleman@healthlawyers.org).

**Travel:** Association Travel Concepts (ATC) has negotiated discounts with United, American, Avis and Hertz Rental Car to bring you special airfares and car rental rates lower than those available to the public. Discounts of 4-15% apply to travel on February 13-27, 2010. 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 24–25, 2010

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Hospitals and Health Systems  
Law Institute  
February 25–26, 2010

Doral Golf Resort & Spa  
Miami, FL

Register by February 2 and save!  
For updates and to register, go to  
[www.healthlawyers.org/programs](http://www.healthlawyers.org/programs)

Presorted  
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Permit No. 4841

