Legal Update: 50 State Review of New and Significant Cases

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Legal Update: 50 State Review of New and Significant Cases

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Do we know this doctor?

"Nurse, get on the internet, go to SURGERY.COM, scroll down and click on the 'Are you totally lost?' icon."

Where are we going today?

• Overview of National Issues
  • 2014 OIG Work Plan
  • Saving Lives, Saving Costs Act
  • NPDB Update
• U.S. Supreme Court Cases
• State & Federal Cases
• Common Challenges
  • Whistleblowers
  • Employment vs. Medical Staff Hearings
  • Medical Necessity Audits
  • Criminal Charges
Safe Harbor from Medical Malpractice Litigation

- Independent Review Panels
  - Goals
  - Findings admissible in court
- Evidence Based Clinical Practice Guidelines (ACOG)
- Removal to Federal District Court if Federal Payor
- Recovery of defense costs and attorney fees

Saving Lives, Saving Costs Act

Supported by ACOG
Referred to Committee on Energy and Commerce; and
Committee on the Judiciary

OIG Work Plan 2014

"This most terrifying words in the English language are, 'I'm from the government and I'm here to help.'"
OIG Work Plan 2014

Report to issue in 2015
• Cardiac Catheterization and Heart Biopsies
• Emergency Preparedness and Response
• Hospital Privileging
• Adverse Events
• Pharmaceutical Compounding

What We Struggle With

“Im right there in the room, and no one even acknowledges me.”

United States Supreme Court Cases
Univ. of Texas Sw. Med. Ctr. v. Nassar
2013 WL 3156234 (U.S. June 24, 2013)

“But For” the Supreme Court
Retaliation Claims
Would Be Even
More Difficult to Defend

Dr. Nassar, internal medicine, hired as faculty and
staff physician in 1995
Left both positions in 1998 for more training
(infectious disease)
Returned in 2001 to both positions
Dr. Beth Levine hired in 2004 as Chief of ID
Dr. Nassar alleged that Dr. Levine was biased
against him on basis of ethnic origin and religion

Univ. of Texas Sw. Med. Ctr. v. Nassar

Scrutiny of billing practices
Scrutiny of productivity
“Middle Easterners are lazy”
Dr. Nassar resigns faculty position in 2006
Retains staff privileges and notifies University that
left for harassment from “religious, racial and
cultural bias against Arabs and Muslims”
Hospital notifies Nassar that can’t retain privileges
without faculty position
Univ. of Texas Sw. Med. Ctr. v. Nassar

- Nassar exhausts administrative remedies
- Files discrimination claim alleging racial and religious harassment resulted in constructive termination
- Claimed Univ. interfered with hospital privileges in retaliation for filing harassment complaint
- Jury awards $400,000 back pay and $3 million in future

Univ. of Texas Sw. Med. Ctr. v. Nassar

- Fifth Circuit Court of Appeals affirmed retaliation claim for status based discrimination
- University was motivated to retaliate for complaints against Dr. Levine
- Supreme Court accepted case

Univ. of Texas Sw. Med. Ctr. v. Nassar

- Supreme Court of the United States decided 5:4
- Plaintiff must show “but for” retaliatory act would not have been denied privileges. Showing contributing cause is not enough.
Lessons from Nassar

- Employment Actions with High Exposure
- Avoid Conflicting Actions
- Discrimination and Civil Rights Claims
- Retaliation
- Whistleblower
- But For requirement

State Cases

Alabama
**Teplick v. Moulton**  
116 So.3d 1119, Jan. 25, 2013

- Employed Chief of Staff brought wrongful termination action
- Position was eliminated
- Faculty vs. employee at will
- Court found:
  - Not entitled to due process rights
  - Employee at will

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**Arkansas**

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**Paulino v. QHG of Springdale, Inc.**  
2012 Ark.55, 386 S.W.3d 462 (Feb. 9, 2012)

- Medical Malpractice Action
- No Claim Recognized for Negligent Credentialing
Keyser v. U.C. Davis  
August 13, 2014  
-Keyser claimed retaliation following firing of her husband and offering her a part time job after she blew the whistle on a research project for pain management of chronic pain prisoner patients whose information was used without their knowledge. She reported to her manager and the IRB. Research project was dissolved and she was offered part time job. 
-Jury awarded $750,000 based on WB statute.

Michalski v. Scripps Mercy Hospital  
221 Cal.App.4th 1033  November 27, 2013  
Disruptive physician engaging in sexual harassment  
Court relied on MBC findings  
- Treated a lab tech in a “self-centered, insensitive, and exploitative manner”  
- Numerous “inappropriate and provocative sexual comments”  
- Entered the woman’s locker room uninvited  
- Initiated uninvited physical contact  
- Interfered with Nurses providing patient care
• Suspension & recommendation for revocation
• Hearing
• JRC upheld revocation
• Appeal - 2006
• Board agreed and found harassing conduct had a sufficient nexus to the quality of care in the hospital to warrant termination of his privileges on that basis alone
• MBC Opens investigation July 2007

• Michalski reapplies to three Scripps Hospitals Nov. 2007
• Sharp had terminated in 2005
• MBC investigation ongoing
• Credentials Committees at all hospitals request additional information
• Questionnaires sent to hospitals
• Information not provided and questionnaires not answered
• Reapplication denied
• JRC Hearing begins August 2010

• JRC found behavior included
  • “Egregious acts of sexual harassment”
  • “Aggressive, predatory, and reprehensible”

• JRC rejected MEC recommendation to deny application
• MEC appealed to Board
“The Board of Trustees shall render a final decision and shall affirm the decision of the Judicial Review Committee if, in the independent judgment of the Board of Trustees, the Judicial Review Committee’s decision is supported by the evidence.”

Board overturned JRC and denied application
Board applied independent judgment
Writ filed
Trial court upholds Board as having “properly exercised its independent judgment as was required under the Bylaws in reviewing the JRC decision”

Court of Appeal UPHELD Board’s Action!
“The Board properly exercised its independent judgment, as it was required to do under the bylaws and California law.”
Lessons from Michalski

- Check Bylaws language for independent judgment standard
- Review Code of Conduct
- Harmonize Employment and Medical Staff Conduct Policies
- Consider employment actions held by employed staff
- Consider Compliance involvement

Lessons from Michalski

- Nephrologist on staff since 2004
- Complained in 2004, 2006, 2007 and 2008 that Nurses would not follow orders
- Reported to Nursing Supervisor and Administration verbally and in writing
- In 2008 COO meets with Nephrology Medical Director and tells about disruptive interactions with nurses
- COO hoped to avoid peer review proceedings

Fahlen v. Sutter Central Valley Hospitals
58 Cal.4th 655, February 20, 2014

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Fahlen v. Sutter Central Valley Hospitals
58 Cal.4th 655, February 20, 2014

- Disruptive physician reapplication denied
  - MEC alleged quality of care problems
  - Doctor had long history of complaining about nurses not following his orders and claimed retaliation
- JRC reversed the MEC and upheld physician
- Board overturned and reinstated denial of reapplication
- Physician did not file writ but immediately filed suit and alleged retaliation in violation of Health & Safety Code §1278.5

Fahlen v. Sutter Central Valley Hospitals
58 Cal.4th 655, February 20, 2014

1278.5 – Public policy to encourage patients, nurses, members of the medical staff, and other health care workers to notify government entities of suspected unsafe patient care and conditions.

No discrimination or retaliation, in any manner for
- presenting a complaint to any regulatory or government agency
- cooperating in investigation

Fahlen v. Sutter Central Valley Hospitals
58 Cal.4th 655, February 20, 2014

- Court of Appeal upheld physician and denied anti-SLAPP motion on basis that Physician was not required to exhaust all administrative remedies
- Supreme Court accepted for review
- Can a physician invoke the whistleblower statute as a basis for a damages action prior to completing all administrative procedures?
We conclude that a hospital staff physician who claims a hospital decision to restrict or terminate his staff privileges was an act in retaliation for his or her whistleblowing in furtherance of patient care and safety need not seek and obtain a mandamus petition to overturn the decision before filing a civil action under Section 1278.5.

Lessons from Fahlen

- Investigate promptly and vigorously any complaints regarding quality of care from a physician
- Evaluate at the outset of any peer review proceeding the factors for HCQIA and State Immunity
- Be sure MEC and Board decision address any quality of care complaints
- Involve Risk Management and Compliance

Bastidas v. Good Samaritan Hosp.

- Surgeon was summarily suspended after performing a Whipple procedure and removing a kidney by mistake and injuring an artery
- Patient died three days later
- The MEC upheld the suspension and surgeon requested a hearing
- The JRC and Board upheld the suspension
- Surgeon sued alleging discrimination and lack of due process.
Bastidas v. Good Samaritan Hosp.

- Court dismissed lawsuit stating that surgeon failed to establish facts to show discrimination
- Due process claim dismissed as peer review process was followed

UC OKs paying surgeon $10 million in whistleblower-retaliation case
April 22, 2014 Los Angeles Times

- Orthopedic surgeon recruited to be chair of UCLA’s orthopedic surgery department in 2009
- Stepped down as Chair in 2010
- Filed lawsuit in 2011
- Alleged failure to act on complaints of conflict of interest & retaliation
  - Ties to medical device makers and other companies that influenced care
  - UCLA claimed ties were for research and teaching

UC Whistleblower
Colorado

Crow v. Penrose-St. Francis
Healthcare, 292 P.3d 1018 (March 15, 2012)

- Surgeon terminated and brought civil action prior to completing peer review proceeding
- Required to exhaust administrative remedies
- Surgeon entitled to records of professional review committee for his use in defense
Connecticut


• Newspaper sought all records reviewed by consultant for Public Health Department that were related to a case where a physician allegedly inseminated a patient with his own sperm instead of her husband’s sperm. Part of the records included the NPDB report which was not provided.

• Freedom of Information Commission concluded there was no bar to disclosure of report. The high court looked at HCQIA and ACA and said not discoverable.

Delaware
Jane Doe v. Bradley  
64 A.3d 379 (Nov. 19, 2012)

- Parents and guardians of pediatric patients sexually abused filed against hospital on basis of negligent credentialing and supervision.
- Class Action status granted
- Settlement fund of $122,150,000.00 approved
- Attorney fees $27,708,750.00 approved

Sternberg v. Nanticoke Memorial Hospital  
62 A.3d 1212 (Feb. 28, 2013)

- Physician brought action for breach of medical staff bylaws, tortious interference with business relationships and defamation following a precautionary suspension
- Decision for Hospital
- Hospital awarded attorney fees based on credentialing agreement between Hospital and Doctor

Georgia
**Dekalb Medical Center v. Obekpa**
*315 Ga.App.739 (May 2, 2012)*

- Physician filed action after final decision of Board denying reappointment
- Superior Court issued injunction barring Hospital from reporting to NPDB
- Court of Appeals reversed
- No evidence that peer review process was motivated by malice
- Hospital was immune from suit

**Hawaii**

**Pacific Radiation Oncology v. The Queen’s Med. Ctr.**
*No. 12-15624 (9th Cir. Feb. 24, 2014)*

- Hospital terminated radiation oncologists after it decided to go to an employment model where only employees would be allowed to use equipment. Radiation oncology group filed for injunctive relief which was granted. Hospital appealed.
- Injunction upheld. Court found that plaintiffs were likely to succeed on their due process claim. Hospital was considered a public hospital since Hawaii had appropriated $1.5 million for organ transplant center and required to provide due process.
Pacific Radiation Oncology v. The Queen’s Med. Ctr.
No. 12-15624 (9th Cir. Feb. 24, 2014)
• Court found Hospital based its decision in part “on concerns about the PRO physicians’ competence or qualifications.”
• Revocation of privileges on basis of professional competence or conduct invoked due process rights under bylaws.
• Public interest favored injunction as otherwise patients would be denied access to the physicians’ expertise.

Woodruff v. Hawaii Pacific Health
2014 WL 128007, Jan. 14, 2014
• Wrongful termination of Dr. Kelley Woodruff
• Nurse practitioner provided chemotherapy
• Billing for RNP was done
• Complaint filed by Dr. Woodruff partner with Compliance
• Failure to bill for RNP services was improper discount
• Per prior Corporate Integrity Agreement report was made through self disclosure that billing for procedures done by RNP was improper

Woodruff v. Hawaii Pacific Health
• Medicare and Medicaid Reimbursed
• Dr. Woodruff terminated
• MEC reviewed termination and found it was unwarranted and should be lifted
• Dr. Woodruff filed for defamation
• MSJ for defendants granted on basis of qualified immunity
• At will employment of physician upheld
Woodruff v. Hawaii Pacific Health

- Not entitled to hearing before termination because she was not employee in good standing
- Bylaws applied to clinical or membership privileges and not to employment

Levitin v. Northwest Comm. Hospital


- Surgeon filed antitrust action following termination of medical staff privileges
- Discrimination
- Miss-use of peer review process
- Hostile work environment
- Retaliation
- Motion to dismiss antitrust claims granted
- Discrimination and Hostile Work Environment survived
Ramos v. Kewanee Hospital  
*2013 Ill. App.(3d) 120001 (May 31, 2013)*
- Doctor filed action for damages after summary suspension
- Jury found in favor of hospital
- Court found –
  - No breach of bylaws
  - Doctor should have been allowed to depose peer review participants
  - Jury decision whether MEC findings were favorable to Doctor

Davis v. Kewanee  
*2014 Ill. App.(2d) 130304 (Feb. 25, 2014)*
- Physician filed action after hospital withdrew employment offer and alleged violated Medical Studies Act and Health Care Professional Credentials Data Collection Act when refused to turn over information
- Court found for hospital and that physician did not have private right to action

Iowa
Hall v. Jennie Edmundson
Memorial Hospital
812 N.W. 2d 681 (April 13, 2012)

- Patient filed suit against Hospital and Doctor claiming negligent credentialing.
- Hospital exercised reasonable care in credentialing surgeon to perform surgery
- No liability

Kentucky

Powell v. Ashland Hospital Corp.

- Nurse filed lawsuit after she was kicked by doctor
- Alleged negligent hiring and supervision
- Summary judgment granted on behalf of Hospital
- Jury verdict affirmed against physician - $5,000 compensatory damages and $35,000 punitive damages
- Discovery had included review of credentials file in camera and admission of physician’s prior bad conduct
- Hospital dismissed as no evidence that physician was agent of hospital or of negligence in credentialing
Trover v. Burton
423 S.W.3d 165 (Feb. 20, 2014)
- Medical malpractice action
- Supreme Court held that peer review information of misreadings of other CT scans and restriction of license could not be admitted into evidence

Louisiana

Granger v. Christus Health
2013 WL 3287128 (La.), 2012-1892 (June 28, 2013)
- Cardiovascular surgeon brought damages action alleging negligent misrepresentation, fraud, and tortious interference with contract in connection with peer review action
- Summary suspension lifted after 21 days but required to self-refer to anger management program or would be automatically revoked
- Following failure to self refer, privileges were revoked
Granger v. Christus Health
2013 WL 3287128 (La.), 2012-1892 (June 28, 2013)

- Jury awarded $2,900,000 in past lost income and $1,000,000 in general damages
- Supreme Court
  - Jury verdict affirmed
  - HCQIA immunity denied
- Hospital’s failure to abide by its bylaws permitted the breach of contract claim
- Physician was not provided a post suspension hearing

Invoking Anti-Fraud Law, Louisiana Doctor Gets Rich
Serial Whistleblower William LeCorre Wins $8 Million; Losing a ‘Threshold’ Law
By PETER LOFTUS
Updated Jul 28, 2011 11:10 PM ET

Massachusetts
**Brown v. Cooley Dickensen Hosp.**  

- Nurse filed action against hospital for sexual harassment by physician  
- Nurse had complained about inappropriate touching  
- Nurse was terminated after filing complaint with Mass. Commission Against Discrimination  
- Alleged that good reviews were removed from file  
- Jury verdict for nurse including punitive damages  
- Court found that since nurse was required to work with harasser for months and fired after complaints, jury was permitted to find sufficient evidence to award punitive damages

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**Copeland v. MidMichigan Reg. Med. Ctr.**  

- Neurosurgeon placed on precautionary suspension after anonymous informant alleged he had slurred speech during surgery.  
- Filed action for breach of contract, defamation and tortious interference claims.  
- Court dismissed  
  - Signed release on application at time of appointment providing immunity to hospital staff and medical staff members
Medical Staff of Avera Marshall Regional Medical Center v. Avera Marshall
836 N.W.2d 549 (July 22, 2013) (Review Granted Oct. 15, 2013)

- Medical Staff and MEC brought declaratory judgment action seeking judgment that Medical Staff had standing and capacity to sue and that bylaws were an enforceable contract
- Medical Staff lacked capacity to sue
  - Bylaws were not contractual
**Som v. Natchez Regional Medical Center**  
98 So.3d 500 (Sept. 4, 2012)  
- Surgeon appealed from decision to suspend surgical privileges  
- MEC did not violate bylaws by denying surgeon’s request to personally cross examine a witness  
- Bylaws complied with HCQIA  
- Fact member of MEC and of ad hoc investigative committee did not violate surgeon’s fair hearing rights

**Missouri**

**Nigro v. St. Joseph Medical Center**  
371 S.W.3d 808 (May 1, 2012)  
- Surgeon settled a peer review action and later sued hospital for its response to a letter of reference.  
- Request for reference letter was accompanied by signed release  
- Court held:  
  - Medical Director’s letter, if true, would be a defense to the claim of defamation  
  - Letter was responsive to request for information and written in good faith, without malice, in the reasonable belief it was true
Nebraska

Steinberg v. Good Samaritan Hosp.

- Physician was at hospital as locum tenens with temporary privileges
- Involved in altercation with psychiatric patient and summarily suspended
- Report made to NPDB
- Later removed as less than 30 day suspension since he was locums
- Physician sued for violation of HCQIA and Defamation
- Court refused to dismiss
- Issue of truth and actual malice to be submitted to the jury

Nevada
No. 61375 (Nev. July 29, 2014)
• Anesthesiologist’s privileges were revoked
• During subsequent hearing Anesthesiologist did not object to process
• Filed suit after completion of hearing
• Court dismissed on basis of immunity under HCQIA and waiver of any claim of violation of HCQIA requirements since not raised during hearing

Chudacoff v. University Med. Ctr
• Physician Members of Public Hospital’s MEC Entitled to Absolute Immunity
• Physician was summarily suspended shortly after being appointed
• Following hearing suspension was lifted
• Physician sued individuals on Credentials Committee & MEC

Chudacoff v. University Med. Ctr
Absolute immunity granted based on following factors:
1. Strong need to take disciplinary measures against physicians who present a potential threat to patient safety;
2. Procedural safeguards included in the bylaws;
3. Bylaws had adversarial process
4. Correctability of errors on appeal
Yedidag v. Roswell Clinic Corp. 314 P.3d 243 (July 3, 2013)

- Surgeon terminated within 5 days of peer review meeting.
- Participants in meeting disclosed to administrators that Surgeon engaged in unprofessional and aggressive behavior during meeting.
- Alleged breached implied promise in employment agreement that would face adverse employment actions as result of involvement in peer review.

Yedidag v. Roswell Clinic Corp. 314 P.3d 243 (July 3, 2013)

- Jury verdict $997,814 in compensatory damages and $3 million in punitive damages.
- Court of Appeal upheld on the basis that Surgeon had standing to bring private cause of action under New Mexico Review Organization Immunity Act.
- Sufficient evidence for jury to find that Roswell acted maliciously, willfully, recklessly, wantonly, fraudulently or in bad faith.
Physicians v. Pitt County Memorial Hosp. 731 S.E.2d 462 (Aug. 21, 2012)

- Physician terminated for failing to examine patients and making false entries into records
- Physician sued for tortious interference of contract, breach of contract, defamation, injunctive relief and punitive damages.
- Court dismissed tortious interference of contract claim and upheld summary judgment on behalf of hospital for balance of claims.

North Dakota
Schmitt v. Meritcare Health System
834 N.W.2d 627 (July 22, 2013)

- Court held
  - Responses to credentialing questionnaire were not defamatory
  - No antitrust violation

Ohio

Bower v. Henry County Hospital
2013 WL 3379358 (July 1, 2013)

- Physician terminated and brought action for gender discrimination against Hospital
- Hospital alleged not in employment agreement with physician
- Court agreed with Hospital and granted summary judgment
Cohlmia v. Cardiovascular Surgical Specialists Corp.
No. 12-5188 (10th Cir. Apr. 21, 2014)

- Surgeon was suspended following two surgeries in which one patient died and the second was permanently disfigured.
- Surgeon sued for antitrust and interference with contract.
- Lower court dismissed lawsuit and awarded $732,668 in attorney fees and costs to Surgical Group on basis surgeons claims and conduct during litigation were frivolous and in bad faith.

Cohlmia v. Cardiovascular Surgical Specialists Corp.
No. 12-5188 (10th Cir. Apr. 21, 2014)

- The Tenth Circuit affirmed on basis that HCQIA shielded from claims and permitted recovery of attorney fees.
Surgeon whose privileges had been restricted sued in federal court alleging racial animosity and sought peer review materials.

Court allowed discovery because there is no federal peer review privilege.

The hospital moved for a protective order arguing that even if there was not a federal privilege the surgeon had agreed to be bound to the bylaws.

The court held he was entitled to the discovery and to discovery of other neurosurgeons' data at the hospital based upon an Oregon statute permitting an exception to discovery and the need to show whether he was treated differently from other surgeons.
Klutschkowski v. Peacehealth
354 Or. 150, Sept. 26, 2013

- Oregon Supreme Court
- Brachial plexis birth injury
  - $557,881.11 economic damages
  - $1,375,000 non-economic damages
- Defendants motion to apply non-economic damages cap of $500,000 denied

- Plaintiffs argued cap would violate their right to damages under the Oregon Constitution
- Supreme Court found common law negligence applied as to infant (injury occurred during delivery)
- Infant head was delivered and therefore was not part of mother at time of delivery
- NO CAP ON ECONOMIC DAMAGES

South Carolina
No. 12-2439 (4th Cir. July 5, 2013)

Physician sued following termination and hearing
Court found Board and MEC immune based on
HCQIA
1. Furthering the quality of healthcare
2. Reasonable effort to obtain pertinent facts
3. Physician provided with ample opportunity to explain
   misrepresentations
4. Board acted in reasonable belief that facts warranted the
   action

South Dakota

Miller v. Huron Reg’l Med. Ctr
No. 4:12-cv-04138-KES (D.S.D. Apr. 22, 2014)

• Investigation of physician with 100% retrospective
  review and referral for external review resulted in
  physician being asked to voluntarily reduce privileges
• After voluntary reduction physician was told would
  be reported to NPDB
• Physician was then told to resign or be terminated
Miller v. Huron Reg’l Med. Ctr
No. 4:12-cv-04138-KES (D.S.D. Apr. 22, 2014)

- Physician resigned and NPDB report filed and physician sued
- Physician sued external review agency claiming took too long for review
- Court disagreed and dismissed claims

Vermont

Long v. Quorum Health Res., LLC

- Surgeon alleged someone was deliberately contaminating his surgeries with bacteria
- Hospital initiated peer review process to investigate and prohibited surgeon from further surgeries until he was evaluated by a psychiatrist
- He immediately resigned and hospital filed NPDB report
- He sued for libel and tortious interference
- Hospital moved to dismiss claims
- Court dismissed on basis that claims were precluded as arising out of peer review process.
Virginia

Cashion v. Smith
No. 121797 (Va. Oct. 31, 2013)

- Trauma surgeon criticized failure to adequately resuscitate patient and stated that anesthesiologist effectively euthanized patient
- Anesthesiologist filed defamation action
- Qualified privilege found to apply to the statement but that statement was issue of fact for jury to determine if made out of personal spite or ill-will
- Case remanded to lower court for trial
King v. Garfield County Public Hospital
2014 WL 1744179, May 1, 2014
• Wrongful termination of Nurse King
• King taking Tylenol with codeine while on shift following tooth extraction
• Missing morphine resulted in drug test of King
• Test positive
• King put on leave and terminated
• King alleged test was negligently interpreted
• MSJ against doctor interpreting test denied

King v. Garfield County
• Expert testimony not required to establish duty
• Reporting doctor owed duty to report correctly
• Drug testing is legitimate public health interest
• Hospital not liable because hired company and doctor to do test and doctor not hospital’s agent
• Nurse King was entitled to hearing on termination
Youngs v. Peacehealth
179 Wash.2nd 645, January 23, 2014

- Medical malpractice action
- Can defense counsel or risk managers have ex parte communications with the plaintiff’s non-party treating doctors who are PeaceHealth employees?
  - No restriction on communication with hospital quality improvement committee

Youngs v. Peacehealth

...an attorney hired by a corporate defendant to investigate or litigate an alleged negligent event may engage in privileged (ex parte) communications with the corporation’s physician-employee where the physician-employee has firsthand knowledge of the alleged negligent event...

- Communications are limited to the facts of the event and cannot include pre and post care

Grove v. Peacehealth

- Medical Malpractice Action for failure to timely diagnose compartment syndrome
- Alleged vicarious liability against hospital for negligence committed on part of medical team or alternatively against doctor as leader of team
- Jury found for patient
- JNOV as to hospital granted
- Evidence insufficient to hold hospital vicariously liable
Wrongful termination of Nurse Practitioner after taking confidential patient information offsite
- Signed confidentiality agreement at time of employment
- Code of Conduct specifically prohibited removal of patient information
- RNP complained that she was seeing patients who were too complex

Worley v. Providence Physician Services
175 Wash.App.566, July 23, 2013
- Supervising doctor met with her to discuss performance concerns
- Second and final warnings issued in ensuing months
- After final warning Worley removed patient face sheets to give to Compliance and was then terminated

“Whistleblower” is an employee or health care professional who in good faith reports alleged quality of care concerns to the Department of Health
- Plaintiff did not file complaint with Department of Health
- Internal reporting insufficient
- Redaction of PHI no relevant as information was still removed and a violation
Termination Upheld
Patient underwent voluntary admission to psychiatric ward of hospital and then was discharged on her request. Following discharge she was killed in a single car crash.

Estate contested that she required an in person evaluation by a psychiatrist prior to discharge.

Hospital granted summary judgment.

Court upheld summary judgment. Plaintiff failed to prove gross negligence.

Poletti v. Overlake Hospital
175 Wash.App. 828, April 1, 2013

Common Challenges

- Whistleblowers
- Employment vs. Medical Staff Hearings
- Medical Necessity Audits
- Criminal Charges
- Immunities
The Life of MSP’s