

OUR PRACTICE

Medical Staff, Peer Review and Credentialing

The relationship between hospitals and physicians is at once complex, difficult to manage, and vitally important to both a hospital's mission and its financial success.

State governments are responsible for licensing and disciplining physicians – but it is the federal government, through ACA, Medicare, the Joint Commission and private insurers, which holds hospitals accountable for the continuum of quality care they provide.

Hospitals use a variety of tools to address the relationship between the health delivery system and physicians who direct and oversee patient care to assure that patients receive high-quality care. Physician employment contracts, hospital bylaws, peer review and credentialing, codes of conduct, the granting of treatment privileges, utilization reviews and coding – all are ways for hospitals to reduce the risk of and address poor quality care.

The legal and regulatory stakes are enormously high. Medicare audits, repayment demands, malpractice suits, antitrust violations, claims of discrimination, and even criminal charges under the False Claims Act are among possible costly legal actions.

Prevention

The attorneys in Baker Donelson's Health Law Department have extensive experience helping nonprofit and for-profit hospitals, hospital systems, hospital management companies, nursing facilities, government entities and clinics handle the complicated issues of credentialing, privilege and quality peer review evaluations that are critical to and required by the hospital-physician relationship. Ideally, we work with hospitals and in-house counsel to prevent and address problems by modifying and adapting bylaws to reflect the realities of modern hospital medical staff leadership efforts. Our team members have worked on every element of the review, revision and adoption process, which can help avert and defend costly litigation.

The hospital-physician relationship continues to evolve rapidly, in large part because of health care reform, as hospitals explore contract alternatives, such as co-management and pay-for-performance agreements, that are designed to align physicians' and hospitals' quality interests. Current, up-to-date bylaws and oversight processes are vital to a hospital's success.

Crisis Management

Even the best-run hospitals occasionally encounter a crisis and litigation related to physician performance and oversight. Baker Donelson's Health Law Department has a crisis management team ready to act quickly on short notice. We understand what's at stake, and the tensions involved, because we've been there with many other clients. For example:

- We helped a hospital when an ostensibly routine review of a cardiac surgeon's performance mushroomed into a grand jury investigation.
- We successfully represented a public university medical center in federal and state court lawsuits stemming from the termination of a tenured medical professor's staff privileges due to quality of care and improper consultation problems.

- We handled grand jury subpoenas and federal investigations in the midst of a peer review investigation for alleged overutilization and medically unnecessary procedures performed by a member of the medical staff.
- We served as counsel for a hospital service district that had suspended a surgeon's privileges due to subsequent claims of discrimination. Again, our client won.
- We represented a hospital that had suspended an ER physician due to alleged substance abuse.

For Baker Donelson's hospital clients, how we work can be as important as what we do. We don't practice in silos, with audit specialists isolated from malpractice attorneys who don't know white-collar defense lawyers and don't speak to the public policy experts. When a crisis hits, our team has an unparalleled ability to respond quickly with lawyers who know and trust one another – much as our clients trust us.



Representative Matters

- Advised on medical staff matters, including, analyzing and proposing revisions to medical staff bylaws, counseling on peer review matters, and counseling and advising on the National Practitioner Data Bank and the Health Care Integrity and Protection Data Bank and state reporting requirements.