

January 29, 2007

## Time to Review Medical Staff Bylaws

Several events have occurred recently, which impact the appropriate content of medical staff bylaws, rules, regulations and policies: (1) the JCAHO released revised medical staff standards for 2007; (2) Medicare issued new hospital Conditions of Participation; and (3) the Michigan Supreme Court rejected the well-established doctrine of judicial non-reviewability in relation to medical staff decisions. The concurrence these changes in the legal and regulatory landscape presents an ideal opportunity for hospitals to review and revise their medical staff bylaws and related documents to bring them into conformity with the law.

### JCAHO 2007 Medical Staff Standards

The Joint Commission on Accreditation of Health Care Organizations (“JCAHO”) has rewritten the medical staff standards for 2007, enhancing and formalizing the steps hospitals and their medical staff leaders must take to ensure that performance improvement and patient safety processes are in place and improving patient care. The revisions address the organization and content of the medical staff bylaws, rules and regulations, with an emphasis on the credentialing and privileging processes.

### Medicare Conditions of Participation

On January 26, 2007, new Medicare Conditions of Participation (“CoPs”), which apply to both inpatient and outpatient hospital settings, went into effect. The new CoPs expand requirements in connection with completion of history and physical examinations, authentication of verbal orders, securing medications, and completion of post-anesthesia evaluations.

### Feyz v. Mercy Memorial Hospital: Limitation on the Peer Review Privilege

For the past 25 years, the doctrine of judicial non-reviewability has protected medical staff decisions of private hospitals from judicial review, allowing governing boards to make medical staff decisions without fear of court interference. In June, 2006, the Michigan Supreme Court rejected this doctrine. While the Court acknowledged that Michigan's statutory Peer Review Privilege provides immunity to those who communicate information to peer review officials and committees, as well as to the officials and committees themselves, the Court, contrary to precedent, found that *no such immunity exists for hospitals*. Accordingly, Courts are now free to get involved in hospitals' staffing decisions, including the review of claims by physicians of unfair peer review processes. In addition, review committees that act with malice, including a

reckless disregard of the truth, will not be protected. The Court also added that, as stated in the statute, immunity does not extend to peer review participants who are not performing evaluations with a focus on improving patient care.

Action Steps:

In light of these various changes, hospitals should review and revise their medical staff bylaws, rules, regulations and policies as appropriate. These changes also present an opportunity to educate all practitioners and staff about the JCAHO Medical Staff Standards, the Medicare Conditions of Participation, and the importance of conducting peer review processes in conformance with the procedures properly set forth in the medical staff bylaws.

We have been assisting several of our clients to take the steps necessary to comply with these various changes in the law, and would be delighted to do the same for your organization. For assistance, please contact any member of the Honigman Health Care Department listed below.

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