



HEALTH LAW *EXPRESS*

This week's update from HortySpringer

Sample Copy

You may have noticed a peculiar new addition to your favorite college football team's uniforms this season — a patch on the front of their jersey signifying the 150th year of college football.

That's right, your favorite Saturday pastime began all the way back in 1869 when the College of New Jersey (now known as Princeton) faced off against Rutgers College (now known as the punching bag of the Big Ten). According to historical accounts, modern day viewers would likely confuse the game that was played on that day with soccer, but because the game also borrowed from the rules of rugby, it is regarded as the beginning of college football.



So, strap on your leather helmet as we jump into this weekend's Health Law Express!

And for you Scarlet Knights fans out there, take heart in the fact that, at least for one day, your team dominated the college football landscape after beating Princeton 6-4!!!



Forward to a Friend

New Cases

No Chance of Review for Hospital in South Dakota

An appellate court denied a hospital a new trial after a jury awarded a surgeon over \$900K for a breach of contract claim. The case came about after the surgeon resigned her surgical privileges, which resulted in the hospital filing a report with the National Practitioner Data Bank for a resignation while under investigation. The physician was able to show that she was not under "investigation" as defined in the Medical Staff Bylaws at the time she resigned; nor was she given a hearing as required under the Bylaws. While the hospital argued that any breach of contract damages should be denied because it paid the surgeon her salary under her contract after she had been given 180 days' notice of her no cause termination, the court found the surgeon's breach of contract claim under the Bylaws was independently enforceable.

Miller v. Huron Reg'l Med. Ctr.

Case Heads to Overtime

A district court denied a hospital's motion to dismiss a physician Title I ADA claim. The district court found that the physician adequately pled his claim that he was denied reasonable accommodation prior to the termination of his employment in July 2016. Furthermore, the court

found the physician adequately pled his claim that he was later discriminated against when his privileges were terminated in February 2018. While the hospital argued that termination of medical privileges held by a non-employee could fall only under Title III of the ADA as a public accommodation, and that the physician's claim should therefore be dismissed, the court ruled this "novel argument" should be argued on the merits.
Cruz v. Lovelace Health Sys., Inc.

Check out this case and more on our [What's New page](#) at HorthySpringer.com.

Your Government at Work

CMS Finalizes Rule to Combat Fraud

The Centers for Medicare & Medicaid Services ("CMS") finalized a **rule** that provides the agency with more authority to prevent fraud by rejecting or revoking a provider's or supplier's enrollment in the Children's Health Insurance Program ("CHIP"), Medicare, and Medicaid if affiliated with organizations that have had their enrollment revoked because of fraud, waste, or abuse. The final rule will expand CMS's efforts to recoup fraudulent payments already issued. Under the final rule, CHIP, Medicare and Medicaid providers and suppliers must disclose any of their current and former and direct or indirect affiliations with any providers or suppliers that (1) have been or currently are subject to payment suspension under a federal health care program, (2) have been or currently are excluded from CHIP, Medicare, or Medicaid, (3) have had CHIP, Medicare, or Medicaid billing privileges denied or revoked, or (4) have uncollected debt. The final rule is scheduled to take effect on November 4, 2019.

CMS Delays Activating OPPS Claims Edits

The Centers for Medicare & Medicaid Services ("CMS") has **delayed** system edits that would require hospitals and health systems with multiple locations to include on outpatient prospective payment system claims for services provided in off-campus provider-based department the same provider address entered in the Medicare Provider, Enrollment, Chain and Ownership System for that location. These edits, originally scheduled to take effect in July 2019, are now to take effect in April 2020.

CMS Updates RHC Guidance

The Centers for Medicare & Medicaid Services ("CMS") **issued** a comprehensive revision to the State Operations Manual ("SOM"), Appendix G for Rural Health Clinics ("RHC"s). The revision pertains to the availability of drugs and biologicals commonly used in life-saving procedures. Current guidance states that an RHC must maintain a supply of drugs and biologicals adequate to handle the volume and type of emergencies it typically encounters for each of the listed categories. However, recognizing the financial burden which RHCs may face as a result of the current guidance, it now provides that when determining which drugs and biologicals to have available in order to provide medical emergency procedures as a first response to common life-threatening injuries and acute illnesses, an RHC must consider each of the categories listed in the regulation, but all are not required to be stored. This updated guidance will take effect immediately.



Spotlight on our Affiliates



The Horthy Springer LegalSifter Essentials Edition is now available as an online subscription!

HorthySpringer and LegalSifter have developed a product that can be used directly by clients to review and edit common types of contracts frequently used by hospitals and health systems. For one low price per user/per month, you can access Horthy Springer's legal best

practices and sample contract language, alongside LegalSifter's artificial intelligence algorithms, to accelerate your contract review activities and minimize risk for your business.

You can sign up for a **free 14-day trial** of the HartySpringer LegalSifter Essentials Edition by clicking [here](#). Don't delay, try it today!

Or, contact [Dan Mulholland](#) for more information.

Question of the Week

Our Bylaws state that all of the members of the Active Staff are required to provide call coverage for our ED. Assuming that we only have two neurosurgeons who are able to cover the ED each month, does this mean they must take 15 days of call each? Our physician leaders are telling us that this is a tremendous burden, but we do not want to violate EMTALA.

[Read the answer now.](#)

Check out our Featured Podcast



[The Who, What, When and Why of Information Sharing](#)

by [Barbara Blackmond](#) and [Ian Donaldson](#)

Upcoming Audio Conference



Practitioner Health Policy – Key Elements

November 5, 2019

1:00 p.m. – 2:00 p.m. ET

We know that physicians suffer from impairment as much as — if not more than — the general population. The question is not "if" you will have to address issues of practitioner impairment but "when."

Join [Susan Lapenta](#) and [Phil Zarone](#) for a discussion of the key elements of a practitioner health policy and make sure you have the tools to address this difficult situation.

REGISTER NOW

Upcoming Seminars

You've Already Attended The Complete Course, So What's Next?

Medical staff leadership is more than running meetings and following policies. Devoted leaders often serve multi-year terms and rotate through multiple leadership positions.

Leaders don't just *follow* policies. They *transform* the medical staff. And basic leadership training is essential, but it's only the beginning. This year, help your leaders advance to next-level leadership at one of HartySpringer's **advanced seminars**:

STRATEGIES

for Managing Physician Health
and Disruptive Conduct

Strategies is designed specifically to help seasoned leaders develop the advanced skills that are necessary to effectively manage issues of physician health and conduct. Leaders shouldn't get thrown off track by the complex and unexpected curve-balls thrown at them by physician health and conduct issues. We've got strategies that can help!

November 21-23, 2019 | Bellagio | [Las Vegas, NV](#)

January 30-February 1, 2020 | The Ritz-Carlton | [Naples, FL](#)

March 5-7, 2020 | The Westin Savannah Harbor | [Savannah, GA](#)

CREDENTIALING FOR EXCELLENCE

While most hospitals ensure that physicians are "qualified" before granting them privileges, few perform credentialing activities with excellence in mind. Excellence requires looking at whether practitioners continue to satisfy criteria throughout appointment, privileges and reappointment time. *Credentialing for Excellence* provides a detailed look at the policies, procedures, and practices that leaders can adopt to ensure that their organizations welcome only those who have a similar commitment to quality and patient safety.

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April 23-25, 2020 | Chicago Marriott Magnificent Mile | [Chicago, IL](#)

THE PEER REVIEW CLINIC

Peer review can be not only efficient and effective, but Medical Staff leaders who implement an approach based on collegial efforts, transparency, and consistency can successfully gain the entire Medical Staff's confidence. *The Peer Review Clinic* goes beyond basic training to provide leaders with detailed, step-by-step instructions for implementing a peer review process that can and will help leaders help their colleagues to succeed. This is your chance to transform the way peer review is viewed and performed in your organization.

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PHYSICIAN-HOSPITAL CONTRACTS CLINIC

Hospital-physician contracting never was easy, and it's getting more complicated every day. Join faculty **Henry Casale** and **Dan Mulholland** for a special clinic in Chicago where they will discuss the latest legal developments affecting physician-hospital financial arrangements.

April 23-25, 2020 | Chicago Marriott Magnificent Mile | [Chicago, IL](#)



This Week's HLE Crew

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