

**HEALTH CARE COMPLIANCE
ASSOCIATION**

**PHYSICIAN PRACTICE COMPLIANCE
CONFERENCE**

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QUALITY OF CARE AND THE MEDICAL NECESSITY AND REASONABLENESS OF HEALTH CARE SERVICES WHO DECIDES

- Practicing Physicians – *See* 42 U.S.C. § 1395 and Case Law
- Medicare & Medicaid Contractors for Processing Medicare and Medicaid Claims for Reimbursement – *See* 54 Fed. Register at 4305
- Hospitals through Utilization Review and in Conjunction with Quality Improvement Organization (“QIO”) (formerly Peer Review Organizations) – *See* 42 U.S.C. § 1320c-5
- Law Enforcement Agencies –
 - Department of Justice – Criminal & Civil
 - State Attorney General’s/Medicaid Fraud Control Units – Criminal and Civil
 - Office of Inspector General, Health and Human Services – Administrative – criminal, civil and administrative

**FEDERAL HEALTH PROGRAMS DO NOT
COVER ITEMS OR SERVICES WHICH ARE
NOT REASONABLE AND NECESSARY FOR
THE DIAGNOSIS AND TREATMENT OF
ILLNESS OR INJURY**

- *See* 42 U.S.C. § 1395y(a)(1)(A) (Medicare) and 42 U.S.C. § 1396a (Medicaid)

QUALITY OF CARE/MEDICAL NECESSITY AND REASONABLENESS

- Hospital/Physician Services
 - Cardiac Catheterization and Other Physician Services
 - Hospital/Medical Staff Responsibility
 - Medical Necessity and Reasonableness
- Quality of Care in Nursing Homes
 - Services Not Provided
 - “Deficient” Services vs. “Worthless” Services/Failure of Care
- Physician Services and Quality of Care
- Corporate Responsibility and Health Care Quality
- Duty of Care for Board of Directors

HOSPITAL AND PHYSICIANS MEDICAL NECESSITY CONUNDRUM

- Physicians decide what is medically necessary
- Staff physicians not employed by hospital
- Independent Peer Review function by Medical Staff Physicians at hospital
- Overutilization? Patient care/safety
- United Memorial Hospital/physician and corporate liability
- Growing basis for whistleblower claims under False Claims Act

PHYSICIAN/HOSPITAL RELATIONS AND CRIMINAL AND CIVIL LIABILITY FOR MEDICALLY UNNECESSARY AND UNREASONABLE SERVICES

United Memorial Hospital Case

- Criminal prosecution and conviction of Medical Staff Physician, Physician Chief of Medical Staff, Physician Chief of Emergency Medicine and Chief Executive Officer of hospital
- Criminal conviction of hospital
- Collateral civil and administrative liability for physicians and hospital

UNITED MEMORIAL HOSPITAL CASE (cont'd.)

- Multiple patient death's resulted in malpractice actions against physician and hospital
- Resulted in Board of Medicine proceedings against physician resulting in suspension of license
- Resulted in adverse newspaper publicity and opening of Federal and state criminal investigations
 - Federal government indicted Dr. Askanazi for mail fraud for multiple counts for the submission of false claims, including claims for medically unnecessary surgical procedures
 - State Attorney General sought charges for manslaughter based on grossly negligent surgical procedures, but ultimately declined to prosecute

CRIMINAL CONVICTION OF MEDICAL STAFF PHYSICIAN

- Medical Staff Physician convicted by jury of mail fraud for false claims to Medicare, Medicaid and private health insurance companies for:
 - Upcoding of patient office visits; higher E&M level than actually provided to patient (60 minute claim, when only five to ten minute visit with each patient and claims for H&P tests never performed – blood pressure, cardiac examination, range of motion)
 - Claims for directing anesthesiology services when no such direction was provided
 - Claims for medically unnecessary pain management services
- Pain management services placed patients at risk for their health and safety

CRIMINAL CONVICTION OF PHYSICIAN CHIEF OF STAFF AND CHIEF OF EMERGENCY MEDICINE AND OF UNITED MEMORIAL HOSPITAL

- Conspiracy with physician medical staff member to submit false claims to Medicare, Medicaid and private payors for facility fees to hospital related to physician's medically unnecessary surgeries
- Obstruction of internal investigation of complaints about physician medical staff member to allow continued performance of unnecessary surgical procedures to generate additional physician and hospital fees

CASE AGAINST HOSPITAL

- Hospital is informed three months after Dr. Askanazi conviction that it is under investigation
- Hospital is invited by United States Attorney to conduct its own internal investigation of its relationship with Dr. Askanazi
- In a March 22, 1999 letter to the Hospital's attorney, the Assistant United States Attorney suggested that the Hospital conduct an internal investigation of its relationship with Dr. Askanazi, disclose the results to the government and reach a mutually acceptable resolution:

. . . Our willingness to proceed in the manner outlined in our meeting should be seen as a tremendous opportunity to, after full disclosure, shape the outcome of this matter, an opportunity very few subjects of federal investigations receive.

* * *

Nevertheless, we indicated that if United Memorial Hospital agrees to cooperate, we would expect a complete and comprehensive investigation into every aspect of United Memorial Hospital's relationship with Dr. Askanazi, including, but not limited to, whether a medical/billing audit of a statistically valid random sample of UB-92s disclosed any problems, whether anyone at United Memorial Hospital had a financial relationship with Dr. Askanazi and whether and how that relationship affected the institution's [sic] relationship with Dr. Askanazi, and what United Memorial Hospital did or did not do when it learned about certain facts concerning Dr. Askanazi's practice.

* * *

Again, I am sure you appreciate that if United Memorial Hospital, through and in conjunction with counsel, undertakes such an investigation, the entire investigation and all of its results are arguably protected by the attorney-client, work product, and/or peer review privileges. Accordingly, those privileges must all be waived.

- Hospital agrees to conduct internal investigation and cooperate with United States Attorney and disclose results waiving all applicable privileges

EVIDENCE AGAINST HOSPITAL

- Number of procedures performed by Dr. Askanazi rose from 24 in January, 1994 (his first year) to 230 in December, 1994 and Hospital net income grew from \$424K in 1993 to \$2.2M in 1994
- 1994 and 1995 saw numerous complaints by Physician medical staff members, nurses and operating staff regarding Dr. Askanazi
 - Patient volume
 - Number of operating procedures
 - Number of repeat procedures with no apparent patient improvement
 - Numerous violations of hospital procedures related to sterilization
- Complaints described Dr. Askanazi's operating procedures as an "assembly line" or "mill"
- Complaints of operating on "walk in" patients without conducting an examination of patient to determine if procedure was medically necessary
- Nurse complaints were ignored – "you're replaceable"
- Physician complaints were ignored – "you're uncooperative"
- Physician procedures generating significant income for hospital "so keep concerns to yourself or leave hospital."
- Physicians complained that Dr. Askanazi could not know whether pain management services were medically necessary because he prescribed treatments without conducting a sufficiently thorough examination of patient to make an accurate diagnosis
- Physician expressed concerns about Dr. Askanazi's clinical judgment given number and type of procedures; stopped referring patients to Dr. Askanazi because of concerns; recommended Dr. Askanazi not be granted expanded pain management privileges (which Dr. Askanazi granted to himself as head of the hospital's anesthesia department).

EVIDENCE AGAINST HOSPITAL (cont'd.)

- Physicians expressed concerns to Chief of Staff and Chief of Emergency Medicine
- Radiology group refused to read diagnostic tests ordered and performed by Dr. Askanazi because questions about their diagnostic value
- Radiologist concerns about these procedures were rejected by Medical Staff Executive Committee at Hospital
- Hospital Board of Trustees questioned Dr. Askanazi's procedures and was advised it could not initiate a peer review of a physician's quality of care – only the Medical Staff could conduct review.
- A review of patient medical charts by the Medical Staff Professional Activities Committee resulted in a determination that documentation was insufficient to determine how Dr. Askanazi made patient decisions
 - Ordered review for improved documentation

EVIDENCE AGAINST HOSPITAL (cont'd.)

- Dr. Askanazi described himself to the medical staff of hospital as the “Sam Walton” of pain management.
- Dr. Askanazi freely admitted he was at hospital to make money and intended to double stats each month and admitted to patient he was doing procedures simply for reimbursement, which was reported to hospital and ignored.
- Dr. Askanazi rewrote a hospital poster to read “quantity over quality.”
- Board reviewed costs and revenue of pain management practice at Hospital and requested review of the appropriateness of pain management procedures.
- Board was advised that Dr. Askanazi’s practice “had a favorable financial impact on hospital operations when compared to budget.”

EVIDENCE AGAINST HOSPITAL (cont'd.)

- Chairman of Board stated that any reviewer of Dr. Askanazi's practice should not be someone who would antagonize him or cause him to take his practice to a competitor.
- Chief Executive Officer of Hospital advised a Board member that "Dr. Askanazi's practice constituted approximately one-third of the hospital's income" and further stated "we wouldn't want to hurt him, would we."

EVIDENCE AGAINST HOSPITAL (cont'd.)

- Hospital governance and compliance significantly compromised by conflicts of interest
- Dr. Askanazi's business affiliations extended to those fielding complaints about Dr. Askanazi at the Hospital
 - Chief of Medical Staff and Emergency Medicine formed an entity with Dr. Askanazi to build a surgery center
 - Each physician personally guaranteed a loan for the surgery center
 - Each physician served on Board of Directors of company formed by Dr. Askanazi to provide pain management services to the hospital
- CEO of Hospital left to become CEO of bio tech firm owned by Dr. Askanazi
- All three of these Hospital officers took part in the review of Dr. Askanazi's practices at the Hospital while they were contemplating or involved in business ventures with Dr. Askanazi and refused to recuse themselves from deliberations despite these direct and indirect financial relationships with Dr. Askanazi.

EVIDENCE AGAINST HOSPITAL (cont'd.)

- Hospital sought outside review of medical necessity of pain management procedures which resulted in a report of inability to provide an opinion because of paucity of documentation in medical record.
- Hospital medical staff took no action in response to this review for eight months and then merely counseled Dr. Askanazi to improve his paperwork.
- Hospital took no action until patient death and then referred matter to the Medicare Peer Review Organization of Michigan to review numerous pain management patient charts. A subsequent report by the peer review organization stated the following:
 - “There were several themes that recurred in the records examined: Specifically, the evaluative process presented was uniformly inadequate. Results of the testing data, and finding either within history or on physical examination that supported the purported diagnostic impressions were consistently absent. There was an apparent routine overuse of invasive techniques without clear indications. The Pain Management activities seem to have proceeded without evidence of [sic] efficacy, quality assurance or outcome evaluation. . . .Continuing to allow invasive procedures without objective evidence of improvement in pain level, narcotic use, functional improvement or return to work is not warranted.”
- Dr. Askanazi finally voluntarily resigned from Hospital Medical Staff.

EVIDENCE AGAINST HOSPITAL (cont'd.)

- Despite long history of complaints, patient deaths and complications and reports of outside reviewer and Peer Review Organization of Michigan, Hospital continued to bill and collect facility fees generated by unnecessary pain management procedures for several years.

WARNING SIGNALS

- Physician privileges restricted at other hospitals
- Complaints from nursing and medical staff
- Quantity of patients and explosive growth of practice
- Negligent credentialing and peer review
- Cloned medical records – inadequate history and physicals – diagnosis inconsistent with treatment – treatment regardless of medical necessity or reasonableness
- History of malpractice complaints and related complications
- Evidence of financial motivation superceding quality of care and medical necessity considerations
- Conflicts of interest compromising organizational governance and compliance activities.

LESSONS FROM CASE

- Don't be afraid to “know which way the wind is blowing” when you see the Warning Signals;
- Investigate whenever it appears there may have been a pattern of billing for unnecessary medical services. If the medical necessity is unclear, do not bill for the service and make restitution where necessary;
- Do not tolerate conflicts of interest in organizational governance and in addressing compliance matters;
- Given the law on collective corporate responsibility and deliberate ignorance, take little comfort in the fact that specific, high level hospital officials didn't know about the pattern of billing for unnecessary medical services.

THE END