Health Care Insights

PULLMAN & COMLEY

A publication of Pullman & Comley, LLC

Attorneys:

- **Randall C. Mathieson**
  rmathieson@pullcom.com
  203.330.2037
- **Elliott B. Pollack**
  ebpollack@pullcom.com
  860.424.4340

In this Summer 2013 Issue:

Saint Francis/Ascension Deal is Off

In the Spring issue of *Health Care Insights*, we reported that Saint Francis Hospital and Medical Center, through its parent, Saint Francis Care, was planning to be acquired by Ascension Health Care Network and that a letter of intent had been signed by the parties as a preliminary matter. On May 23, 2013, Saint Francis Care CEO Christopher M. Dadlez advised all stakeholders in the Saint Francis community that his system would "no longer pursue a relationship with Ascension Health Care Network . . . and that the parties' letter of intent had expired." The decision to conclude discussions with Ascension, said Mr. Dadlez, "was made following a thorough analysis and careful consideration of all aspects of the proposed agreement."

PULLMAN & COMLEY

In this Summer 2013 Issue:

Student Challenges His Medical School's Decisions

A recent Connecticut Appellate Court decision highlights how difficult it is for medical students to challenge the academic decisions of their medical schools.

Darrell Morris was a student at the Yale School of Medicine and knew, from the requirements of the student handbook he was furnished, that all students were expected to pass “Step One” of the United States Medical Licensing Examination within six years of admission to the medical school. The handbook indicated that students had three opportunities to pass the exam.

Three years after his admission, Mr. Morris took and failed the exam twice. He was dismissed from the medical school without the opportunity to make a third attempt. After filing an internal appeal of his dismissal, he was readmitted but again dismissed when he failed to take the exam again. Mr. Morris passed the exam on his third attempt in March 2005 but was denied readmission.

The school’s position was that after it sustained its appeal, it had agreed to readmit him only on the express condition that he pass the exam prior to June 30, 2004; essentially he was readmitted on probation.

The medical school’s motion to dismiss the case prior to trial was granted by the trial court and was sustained by the Appellate Court.

Morris v. Yale University, Docket No. AC34671, April 21, 2013.

Elliott B. Pollack, Esq. at (860) 424-4340 or ebpollack@pullcom.com can answer questions about this case.

Physician Payment Sunshine Law

How will the Patient Protection and Affordable Care Act (ACA) affect the business of health care? The physician payment sunshine provisions of the ACA provide for the creation of a public website that will contain information about payments made to physicians and teaching hospitals by manufacturers of drugs, medical devices, preparations and supplies covered by Medicare, Medicaid and the Children’s Health Insurance Program (CHIP).

The federal Department of Health and Human Services (HHS) maintains that making this information public will deter inappropriate financial relationships that sometimes lead to increased health care costs.

The current timetable calls for reports of data to HHS by March 31, 2014 and the availability of the data on the public website by September 30, 2014.

Connecticut has its own statute that requires that pharmaceutical and medical device manufacturers adopt a code of conduct consistent with a version of the Pharmaceutical Research and Manufacturers of America's (PhRMA) "Code on Interaction with Healthcare Professionals" or AdvaMed's "Code of Ethics on Interactions with Health Care Professionals."

The law does not ban any behavior not already prohibited by prior law.

Michael A. Kurs, Esq. at (860) 424-4331 or mkurs@pullcom.com can respond to questions about Sunshine Laws.

Connecticut Nursing Homes Face Uncertain Future Under State's Strategic Rebalancing Plan

From 2015 to 2025, the number of Connecticut residents aged 65 and older is expected to increase from 582,245 to 782,848 – more than 34 percent. Given this projected "boom," one might expect that the owners and operators of the state's 219 Medicaid-supported skilled nursing facilities would be looking forward to the future with great confidence. Yet the reality is far different. Many operators anticipate difficult days ahead, including a significant thinning of their ranks. While a number of factors are behind this apparent contradiction, at the core it is all about money, and, in particular, the financial stresses faced by the nursing homes' reluctant financial partner, the State of Connecticut.

On average, nursing homes receive almost 70 percent of their revenues from Medicaid. The Medicaid program, which is funded roughly 50-50 by the federal government and the state, is administered by the Connecticut Department of Social Services ("DSS"). At least in theory, each licensed facility is reimbursed by Medicaid at its own individual rate determined by DSS after a periodic review, generally every four years, of cost reports submitted annually.

For the past decade or so, even though the proforma Medicaid reimbursement rates have risen to keep pace with documented increases in nursing home costs, the actual rates paid by the state have increased only modestly – for the simple reason that the state has not had the money to pay the increases. Thus, for many nursing homes, the actual Medicaid reimbursement they now receive is estimated to be $20 or more per day below actual costs. Unless a nursing home has a significant number of Medicare and private pay residents to make up the gap, it ends up with an operating deficit. Yet, as challenging as this situation has become, things could become even more difficult as budgetary woes push the state to actively look for ways to reduce the number of nursing home residents it must support. This effort, under way for a number of years, is embodied in a Strategic Rebalancing Plan ("SRP") unveiled by DSS earlier this year.

The SRP details the state's latest thinking on how to reduce its Medicaid burden while maintaining the quality of long-term services and supports ("LTSS") provided to its citizens. The goal of the SRP is to remove barriers and to improve the means by which LTSS can be provided locally.

Exactly where would attainment of the DSS goal leave Connecticut's nursing homes? According to the SRP, over the next twelve years the number of state residents utilizing Medicaid-funded LTSS is expected to increase from 38,800 to 48,600. If, during that same period, the proportion of LTSS users receiving their care in a nursing home setting were to decline from 50 percent to 25 percent, which is the objective of the SRP, the number of nursing home beds needed would decline from approximately 19,400 to 12,150 -- a reduction of 7,250 occupied beds. Assuming an average nursing home occupancy rate of 90 percent, the projected "surplus" of licensed beds would come to slightly more than 8,000.

It remains to be seen whether DSS will be able to follow through as planned with its proposed innovations and what will be the actual impact on nursing homes. What is clear, though, is that even without the SRP initiatives, the financial outlook for nursing homes is likely to grow ever-more challenging. In the state's 2014/2015 budget, Governor Malloy has targeted reductions in nursing home reimbursements averaging slightly more than 1 percent -- at a time when most facilities were hoping to see increases. On the federal side, the $716 billion taken from Medicare to help fund the Patient Protection and Affordable Care Act will certainly have an impact, as will the 2 percent across-the-board reductions in Medicare reimbursements resulting from "sequestration." To meet these challenges, nursing home owners and operators will have to adapt by implementing new strategies most relevant to their individual facilities. Despite these efforts, there appears to be little doubt that a number of facilities will be forced to close.

Rand Mathieson, Esq. at (203) 330-2037 or rmathieson@pullcom.com can answer questions about this case.

Obligation to Report Wife?

A former husband of a physician recounts that they divorced when he found out that she was "having an affair with one of her HIV-positive patients." The husband wrote to Chuck Klosterman, the *New York Times's* Ethicist, for advice as to whether he should convey this information to state regulatory authorities and professional societies. While aware that he has a legal obligation to file these reports, he asked Mr. Klosterman whether the report should be made based on his revenge motivation as opposed to his obligation to comply with his legal and ethical mandates.

PULLMAN & COMLEY

In this Summer 2013 Issue:

On April 28, 2013, Mr. Klosterman noted that doctor/patient sexual relationships are unethical and that there should be a “zero-tolerance” stance towards such transgressions. Klosterman was less concerned about the ex-wife’s patient being HIV-positive because she should have known what she was getting into and “fully understands the risks.”

The editors of *Health Care Insights* question Mr. Klosterman’s lack of emphasis on the need to submit these reports in order to protect other patients.

The Ethicist concludes this way: “If you simply (seek revenge) to hurt (your former wife), your position is weak and immoral, but the action of reporting her itself remains defensible.”

If you have questions, please contact Michael A. Kurs, Esq. at (860) 424-4331 or mkurs@pullcom.com.

Chambers USA 2013 Ranks Pullman & Comley Among Top Health Care Practices in Connecticut

Chambers USA, a leading guide to the legal profession, recognized Pullman & Comley’s Health Care practice as a “market-leading team” in its 2013 edition, listing the practice in the highest level (Band One) in Connecticut. Chambers USA bases its selections on interviews with a range of lawyers and their clients around the country, looking at qualities including technical legal ability, professional conduct, client service, commercial astuteness, diligence, commitment and other categories most valued by clients. According to the Chambers guide, clients say that Pullman & Comley’s health care attorneys “really understand the business of healthcare and the realities we face – they offer very practical advice." Health Care attorneys Collin Baron and Elliott Pollack were also recognized in the ranking. To read more about Chambers, the firm and individual rankings, please access the Chambers site by visiting www.chambersandpartners.com