Control Over Staff Physicians: What Is The Risk of Employee Status Under Federal Law?

by Thomas J. Flaherty and David C. Main

Hospitals exercising control over medical staff physicians in the supervision and quality of medical care risk being classified as the employer of their staff physicians under employment laws, thus exposing the hospitals to potential liability in the event of a discrimination, retaliation, or other employment-related claim. However, recent cases have lessened that risk somewhat, as courts continue to view medical staff physicians as independent contractors under employment laws while allowing hospitals to monitor the award and continuation of staff privileges as needed to ensure the delivery of high quality medical care.

Competing Considerations: Control Over Delivery of Medical Services vs. Avoiding Employer Responsibilities

Nearly all organizations that run hospitals and other medical centers are intensely focused on the quality and efficiency of medical care provided in their facilities. One key factor in achieving higher quality and efficiency is the selection of physicians who are given staff privileges. Another significant factor is management of the staff physician relationship. As a practical matter, inherent tensions exist in that relationship which limit the amount of control institutions have over staff physicians. However, the drive toward quality and efficiency brings with it a need for greater control. This can be a double-edged sword. Why? Because the greater the control exercised over the staff physician, the more risk that the institution will be deemed the employer or the co-employer of the physician under employment laws. This then creates the potential for claims under the federal equal employment opportunity laws, including Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Pregnancy Discrimination Act, the Americans with Disabilities Act (the “ADA”), the Rehabilitation Act, the Family and Medical Leave Act, as well as other federal and state employ-
ment laws. However, there is good news for hospitals and other health care institutions: as long as the primary indicia of independent contractor status are preserved, the institution can exercise a significant amount of control over staff physicians without becoming potentially liable as their employer.

**Guidance From the Courts: Wojewski v. Rapid City Regional Hospital Inc.**

A recent decision by the United States Court of Appeals for the Eighth Circuit, *Wojewski v. Rapid City Reg’l Hosp. Inc.*, 8th Cir., No. 05-2952, 6/9/06, illustrates the risk and provides guidance on the structural elements of the medical institution-staff physician relationship. Dr. Wojewski was a cardiothoracic surgeon with staff privileges at Rapid City Regional Hospital for several years. He took a leave of absence to treat his bipolar disorder (manic-depressive illness). When Dr. Wojewski was able to return to work, the hospital reinstated him to the active medical staff, subject to extensive restrictions. The hospital presumably established these restrictions in order to ensure that Dr. Wojewski was fit to practice medicine and that his disorder did not jeopardize patient care at the hospital. The restrictions imposed on Dr. Wojewski by the hospital included: meeting regularly with a monitoring physician, participating in therapy, taking only prescribed medications, submitting to competency examinations and "random biological fluid collection", limiting the time he was on call, taking mandatory vacations, and submitting to a review of all of his surgical cases for six months and to a formal proctorship of his practice. Subsequently, Dr. Wojewski had an "acute episode" of his disorder while performing an open-heart surgery, and as a result, the hospital terminated his staff privileges.

Dr. Wojewski filed a lawsuit claiming that the hospital had violated his rights under the ADA and the Rehabilitation Act. There was no dispute that the termination of Dr. Wojewski’s medical staff privileges was due to his disability. Dr. Wojewski’s lawyers argued that the conditions imposed upon his return to practice, along with his dependence upon the hospital for his livelihood and the length of the relationship, which was long-term rather than project-based or temporary, created an employer-employee relationship. The Court rejected these claims, finding that the conditions imposed by the hospital on Dr. Wojewski’s staff privileges did not change his status as an independent contractor. In addition, the Court declined to extend coverage of the Rehabilitation Act to independent contractors.

The Court’s reasoning provides useful guidelines for hospitals and other medical centers on how to avoid a determination of employer status with respect to staff physicians. Specifically, while acknowledging the length of the relationship with the hospital and Dr. Wojewski’s ability to use hospital employees, such as nurses, to assist him in surgery, the Court noted that Dr. Wojewski "performed highly skilled surgical work, leased his own office space, scheduled his operating room time, employed and paid his own staff, billed his patients directly, did not receive any Social Security or other benefits from [the hospital], and did not receive a form W-2 or 1099 from [the hospital]." The Court reasoned that the conditions imposed by the hospital on Dr. Wojewski’s staff privileges were "reasonable steps to ensure patient safety and avoid professional liability" and were consistent with the "normal tensions" in control between hospitals and physicians performing services in the facility. In reaching these conclusions, the Court fell in line with several other federal appellate courts which have arguably loosened the traditional test for independent contractor status as applied to medical staff. However, the Court did not abandon the test. As the Court put it, the hospital "...could take
reasonable steps to ensure patient safety and avoid professional liability while not attempting to control the manner in which Dr. Wojewski performed operations."

**Lessons from Wojewski**

While it is desirable for hospitals and other medical centers to limit the risk of additional legal entanglements associated with being deemed the employer of staff physicians, patient care must always come first. However, hospitals and other medical centers do not need to relinquish all control over the quality of care in order to avoid employer status. The *Wojewski* decision suggests that it is important that staff physicians are responsible both for the manner in which they perform medical services and for their own business and administrative affairs, including: (1) their own professional certifications and requirements; (2) leasing their own office space; (3) hiring and paying their own staff; (4) scheduling operating room time; (5) billing their own patients directly; and (6) providing and paying for their own benefits and taxes, including Social Security taxes and payroll and income taxes. Other helpful indicia of independent contractor status which should be workable in most circumstances include those criteria for medical staff membership and governance common to medical staff bylaws. However, at the same time, the *Wojewski* decision suggests that hospitals and other medical centers can exercise substantial control over staff privileges and can impose conditions where needed to ensure patient safety and to minimize the risk of liability for improper patient care. Indeed, the reputation and financial well-being of the medical institution, as well as the health and welfare of the patient population, hinge to some degree upon control and supervision over the quality of medical care at the facility. In sum, hospitals and other medical centers would be wise to keep business affairs and administrative operations as separate as possible, but may monitor the award and continuation of staff privileges as needed to ensure the delivery of high quality medical care.

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