

Guest Author Jennifer Searfoss, Esq.: What Can an Attorney Do For a Medical Practice?

There are moments when the physician-centric world needs to engage an attorney. Please don't hesitate to pick up the phone when the FBI shows up with a search warrant!

There are other moments when you and the physicians you work with do not need an attorney for boiler-plate contracts. How do you tell the difference?

What an attorney can do for you

Areas that an attorney can help your office include (but by no means are limited to):

- Audit requests from RACs and insurers
- Contractual and corporate organization documents
- Human resource issues
- Credentialing and privileging disputes
- Ethical and disciplinary reviews
- Quality, peer-review and risk management

Just this month, questions have been raised on what policies medical offices should have around **social media** and whether there is a need to monitor employee communication. What policies do you have about employee use of social media during non-working hours about their experience at the office? What can you legally restrict? What obligations do you have to monitor employee social media to ensure compliance with your policy and federal privacy regulations to protect your patients? It's the complexity of these questions, the moving

nature of case law on employment law and social media, as well as the individual nature of your office that may necessitate the engagement of an attorney.

Legislative and regulatory issues

Keeping abreast of the moving parts that regulate how your medical office does business is a full time job. Having a relationship with a qualified health care attorney can help you weed through the changes at the local, state and federal level.

For example, a recent federal proposed rule would require certain medical facilities to offer all patients an annual influenza vaccination. Writing a response to this proposal may not be something that you need to keep at the front of your daily to do list. But your voice is very important to the development of the regulation. While medical societies and other industry groups may comment, they are more academic about the approach and cannot cater their response to the direct impact the policy proposal would have on your practice. Imagine if you worked at a hospital. How would you give flu vaccines to all of your patients? How much staff time would it take? Where would you store the vaccines? It is this story that will most effectively shape how a policy is finalized. Lawyers are able to help you navigate the tricky waters on how to draft comments, get them submitted on deadline and even help on getting recognition by lawmakers for novel feedback.

The same can be said of state and local initiatives. A qualified attorney can keep you up-to-date on legislative activities that could or will directly impact you, your physicians and your staff. When needed, they can get you prepared to testify before committees and help with talking points before the lawmakers that are specific to the needs and concerns of your medical practice.

How to identify an attorney right for your group

Health care is often cited as being one of, if not THE, most regulated industry in the United States. Thus, it is imperative for you to find legal counsel that understands the unique nature of health law. Simply, it is my opinion that health law has such a learning curve that **a lawyer cannot just dabble in health care issues**. When I receive a question about how to find the right attorney, I usually respond with: “If you ask them what Stark is, and they respond – You mean stark naked? – you should keep looking.”

Also, like medical professionals, the legal scope of practice is regulated by the state and likely a code of ethics. However, unlike physicians, licensing is not as easily transferred between states. And as noted above, each state has its own set of laws that dictate how medicine is administered. This means that you need to **find a local attorney**.

There are two national associations that address health law. They include the American Health Lawyers Association and the Health Law Section of the American Bar Association. Likewise, most state and local bar associations also have sections focused on health law. You may be able to get referrals to local attorneys that are members of these associations. More simply, ask the candidate attorney if they are a member of these groups.

And maybe if they know what Stark is.



Jennifer was formerly the Vice President of External Provider Relations for UnitedHealthcare, a Minnesota-based health insurance company. Between 2001 and 2007, Jennifer worked for the Washington, DC-based Government Affairs Department of the Medical Group Management Association (MGMA), a national trade association based out of Englewood, Colorado. Jennifer received her undergraduate degree in health science and policy from the University of Maryland, Baltimore County and law degree from the University of Maryland. After a brief departure, Jennifer has returned home and lives in Annapolis, Maryland with her Rottweiler, Argus, and her first client of every day – her beloved Quarter Horse – Pressed for Time. Jennifer is Principal, **Searfoss & Associates, LLC**. She can be contacted **here** or at 443-837-5548.