

UPDATE 2012

Late breaking news on
medical-legal developments
affecting physicians and
health care providers.

A publication of:

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Medical Practice Social Media Guidelines Issued: The Federation of State Medical Boards (FSMB) has released new “Model Policy Guidelines for the Appropriate Use of Social Media and Social Networking in Medical Practice.” The guidelines, available at <http://www.fsmb.org/pdf/pub-social-media-guidelines.pdf>, advise physicians on multiple aspects of social media and internet activity. The FSMB guidelines also encourage state medical boards to use their authority to discipline physicians for inappropriate communication with patients, online use of the internet for unprofessional behavior, online misrepresentation of credentials, online violations of patient confidentiality, failure to reveal conflicts of interest online, online derogatory remarks regarding a patient, online depiction of intoxication, and discriminatory language or practices online. Practices should have policies that guide physicians and staff and protect patients.

CMS Rules Intended to Reduce Regulatory Burden: The Centers for Medicare & Medicaid Services (CMS) has issued two new rules intended to reduce the regulatory burden on health care providers and cut health care costs, but which also affect hospital and medical staff issues. The Medicare Regulatory Reform Rule, http://www.ofr.gov/OFRUpload/OFRData/2012-11543_PL.pdf, among other things, will eliminate the enrollment bar for physicians when based on failure to respond timely to revalidation or other requests for information and remove some obsolete requirements for ASCs. The final rule revising Medicare Conditions of Participation for Hospitals, http://www.ofr.gov/OFRUpload/OFRData/2012-11548_PL.pdf, allows an optional program for patient/caregiver self-administration of certain medications; encourages the use of pre-printed and electronic standing orders and protocols; allows one governing body to oversee multiple hospitals in a single health system with a member(s) of the medical staff serving on the board; requires that the medical staff review all eligible candidates, as defined by the governing body, for eventual medical staff appointment; and allows a podiatrist to serve as head of the medical staff, when permitted by state law.

New Jersey Regulatory Activity:

-The NJ Division of Consumer Affairs (DCA) has adopted a rule authorizing the DCA, its boards and committees (including professional licensing boards and committees) to waive specific regulatory requirements for reasons of undue hardship (economic or otherwise), at the timely request of the regulated person or business, so long as the waiver is consistent with the underlying purpose of the DCA’s laws and rules. It also allows an agency, under certain circumstances, to waive its rules in a particular case on its own initiative. A related rule adoption encourages state agencies, boards and committees to pursue measures to encourage compliance with agency rules rather than seek disciplinary sanctions or penalties. The new rules became effective April 16, 2012, and can be accessed at: http://www.njconsumeraffairs.gov/adoption/dcaado_041612.htm.

-The NJ State Board of Optometrists has readopted its rules with amendments, effective April 16, 2012, addressing the issuance of prescriptions, release of contact lens prescriptions, record retention, and delegation to ancillary personnel. See the rule and commentary at: http://www.njconsumeraffairs.gov/adoption/optado_041612.htm.

-The NJ Department of Banking & Insurance has proposed a rule governing electronic transmission of laboratory test results to providers and carriers and including laboratory claims under the New Jersey prompt payment of claims law. View the proposal at: http://www.state.nj.us/dobi/proposed/prn12_66.pdf. Comments are due by June 15, 2012.

NLRB Poster Delayed Indefinitely: A National Labor Relations Board rule requiring employers to post a notice of employee rights under the National Labor Relations Act is delayed indefinitely, due to conflicting federal district court decisions regarding the rule. The notice requirement would apply to medical offices having a gross annual volume of business of \$250,000 or more. Watch *Statlaw* for further developments.

For more information on any of the above items, contact us at 1-800-445-0954.