

Stat Law

UPDATE 2010

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

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MSSNY Selects Kern Augustine as General Counsel: In a move aimed at expanding advocacy efforts and legal resources for New York State physicians, the Medical Society of the State of New York (MSSNY) has announced the appointment of Kern Augustine Conroy & Schoppmann, P.C. as its General Counsel. This is the first time MSSNY has appointed outside counsel to fill this important role, and it comes at a time of increasing challenges to the medical profession. Calling KACS "a tremendous ally to the Medical Society and to New York's physician community," MSSNY's Executive Vice-President, Rick Abrams says the change from what has been a traditional in-house function will form the centerpiece of MSSNY's efforts to pursue a more aggressive legal advocacy agenda in this rapidly changing legal-medical environment, while still providing members the legal services they have traditionally enjoyed.

HIV Testing More Routine Part of Health Care in New York: Effective September 1, 2010, under a law signed by Governor David Paterson in July, HIV testing must now be offered to all persons between the ages of 13 and 64 receiving hospital or primary care services, with limited exceptions. This law is in response to recommendations issued by the US Centers for Disease Control and Prevention to remove barriers to HIV testing. New York will join 45 states that have already adopted this program. The new law also simplifies the process involving obtaining informed consent, as now informed consent for HIV testing can be incorporated into a general consent for medical care, consistent with a model provided by the New York Department of Health. For a rapid HIV test (one that produces results within an hour), consent may be obtained after a conversation with the provider which is noted in the medical record. Before this new law, patients needed to first provide specific written consent prior to receiving an HIV test. Practitioners need to be aware that they must provide patients with information about HIV as required by New York's Public Health Law, prior to obtaining consent for HIV testing, as well as arrange for follow-up appointments for persons confirmed positive for HIV.

New Voluntary Self-Referral Disclosure Protocol for Stark Violations: On September 23, 2010, the Centers for Medicare and Medicaid Services (CMS) released the new voluntary Self-Referral Disclosure Protocol (SRDP) for the disclosure of actual or potential violations of the Stark law. The SRDP is the counterpart to the Office of Inspector General (OIG) self-disclosure protocol which governs self-disclosures of violations of the Anti-Kickback Statute. As per the SRDP, providers may self-report Stark violations via an electronic filing process. A disclosing party must provide a detailed description as to why the party believes a Stark violation has occurred, including the circumstances surrounding the identification of the disclosure, a "complete legal analysis" of the application of the Stark law to the matter being disclosed, any corrective action that has been taken, and a financial analysis of the identified actual or potential violation. Although the SRDP provides a mechanism to self-report, self-reporting does not guarantee any specific result for the disclosing party. It is also important to note that CMS reserves the right to refer matters to other law enforcement agencies, including the OIG and Department of Justice, for the resolution of non-Stark related violations. Therefore, a thorough legal analysis must be conducted prior to making a decision regarding self-disclosure through the SRDP.

Nurse Assault Law in Effect: Under a law signed by Governor David Paterson in August, effective November 1, 2010, it is now a felony to assault an RN or LPN while the nurse is on duty. This Act amends New York's penal law in relation to assault on certain emergency medical professionals.

Materials referenced above can be accessed at our website: www.drlaw.com.