

Duquesne Law Review

Volume 24
Number 2 *Symposium: Current Developments
in Health Law*

Article 2

1985

Table of Contents, Volume 24, Number 2, Winter 1985

Follow this and additional works at: <https://dsc.duq.edu/dlr>



Part of the [Law Commons](#)

Recommended Citation

Table of Contents, Volume 24, Number 2, Winter 1985, 24 Duq. L. Rev. [v] (1985).
Available at: <https://dsc.duq.edu/dlr/vol24/iss2/2>

This Front Matter is brought to you for free and open access by Duquesne Scholarship Collection. It has been accepted for inclusion in Duquesne Law Review by an authorized editor of Duquesne Scholarship Collection.

Duquesne Law Review

Volume 24, Number 2, Winter 1985

© COPYRIGHT DUQUESNE UNIVERSITY, 1985

SYMPOSIUM: CURRENT DEVELOPMENTS IN HEALTH LAW

THE CHANGING PERCEPTION OF THE HOSPITAL: A PRESCRIPTION FOR SURVIVAL

John Harty 367

The modern hospital has grown from a simple setting for the practice of medicine to a large, complex corporate entity. In the author's view, the hospital is no longer just a "place" where doctors ply their trade, but rather, is more correctly perceived as a "thing," with an institutional dynamic of its own. After reviewing a number of legal developments during the past several decades that have contributed to this metamorphosis, the writer concludes by warning that failure on the part of hospital boards, management and medical staffs to fully appreciate and effectively respond to the implications of this change may spell disaster for the private voluntary health system in this country.

HOSPITALS AND THE DISRUPTIVE HEALTH CARE PRACTITIONER: IS THE INABILITY TO WORK WITH OTHERS ENOUGH TO WARRANT EXCLUSION?

Eric W. Springer 377
Henry M. Casale

The disruptive physician is, by definition, contentious, threatening, insulting and frequently litigious. Nonetheless, he or she may also be a clinically competent medical practitioner. In an earlier time, hospitals accepted or at least tolerated such disruptive behavior for a variety of reasons. Today, accepting or tolerating such behavior is increasingly difficult in view of the continuing expansion of the hospital's corporate liability to answer for nearly all activity occurring within its walls. This article outlines the types of disruptive physician behavior that courts have found to provide a reasonable basis for responsive institutional action. In this regard, the authors stress the importance of artfully drafted medical staff bylaws and the recognition of disruptive behavior as a serious violation of those bylaws. While recognizing that the physician's due process rights must be respected, the writers suggest that hospital management must be able to take appropriate and swift administrative action when confronted with disruptive behavior. They conclude that a harmonious environment with strong, intelligent and effective leadership, operated under sound and flexible bylaws is necessary to enable a hospital to comply with its legal mandate to provide consistent, high quality care.

**BARRIERS TO HOSPITAL DIVERSIFICATION:
THE REGULATORY ENVIRONMENT**

Reed Hamilton 425

In 1983, the nature of health care delivery in this country was fundamentally altered with the enactment of the Medicare Prospective Payment System (PPS). This revolutionary change in reimbursement policy has altered the entire system of financial incentives through which hospitals have provided services to Medicare recipients. In order to effectively respond to PPS, hospitals have been forced to diversify their product lines and to develop new relationships with physicians. Often, however, as the author points out, these countermeasures have been frustrated by the formidable barriers of the Certificate of Need program and the Medicare and Medicaid fraud and abuse restrictions. After examining each of these barriers and offering practical guidance, the author concludes that ultimate relief must take the form of legislative action.

THE LEGAL ASPECTS OF HEALTH CARE JOINT VENTURES

Daniel T. Roble 455

John H. Mason

Increasingly, health care providers have entered into joint ventures in an attempt to maximize revenues and effectively respond to the cost containment incentives established under the Medicare and Medicaid programs. This article describes the various organizational formats that have been adopted by health care joint ventures, and explores the legal issues created by federal and state regulation of this area.

HOSPITALS CAUGHT IN THE ANTITRUST NET: AN OVERVIEW

John J. Miles 489

Mary Susan Philp

Over the past eight to ten years, many activities of hospitals have been subjected to increased scrutiny under the antitrust laws. The new competitive environment in which hospitals find themselves, as well as changing antitrust legal principles, suggest that this greater scrutiny will even increase in the future. A hospital's administration and its legal counsel, therefore, must be able to recognize and analyze activities engaged in by hospitals that can raise serious antitrust concerns. This article briefly addresses the developments that have led to greater antitrust litigation involving hospitals. It then identifies several activities by hospitals that can prove troublesome. After presenting an overview of each activity, the authors discuss and analyze the most important cases and legal principles, and, where appropriate, offer analytical frameworks to aid those advising hospitals in assessing the degree of any antitrust risk.

**THE FEDERAL TAX LAW OF HOSPITALS: BASIC PRINCIPLES
AND CURRENT DEVELOPMENTS**

Bruce R. Hopkins 691

Edward Jay Beckwith

Federal tax laws with respect to nonprofit organizations are evolving rapidly; indeed daily, and no set of institutions are being more dramatically affected by this ongoing surge of developing law than the nation's hospitals and other health care organizations. This article provides a summary of the general tax law framework as it relates to tax-exempt health care entities. Following that analysis, the authors provide an issue-by-issue explanation of the current developments in this field of tax law. The tax issues discussed in both the general

summary and the current developments portions of the article include those involving application of unrelated income, private foundations and reorganizations, as well as those pertaining to the participation of hospitals in general partnerships and joint ventures.

The Duquesne Law Review is published quarterly at Pittsburgh, Pennsylvania. Editorial Offices: 132 The Edward J. Hanley Hall, 900 Locust Street, Pittsburgh, Pennsylvania 15282. Subscriptions: \$15.00 per year. Subscriptions are automatically renewed unless otherwise stipulated.

Single issues of the current volume are available from Duquesne Law Review at \$5.00 per copy. Other back issues are available through William S. Hein Co., Inc., 251 Main Street, Buffalo, N.Y. 14203.

Citations conform to *A Uniform System of Citation* (13th ed. 1981).

Readers are invited to submit manuscripts for possible publication. Manuscripts should be addressed to the Executive Article Editor at the above address. Views expressed in articles published in this law review are to be attributed solely to the authors thereof and not to the law review, its editors, or Duquesne University.

When authors of articles published herein are known to have other than a scholarly interest in their writings, that fact will be discussed in the note preceding the first numbered footnote to the article.

DUQUESNE UNIVERSITY
SCHOOL OF LAW
1985-1986

Administration

REV. DONALD S. NESTI, C.S.Sp., S.T.D.
President of the University
REV. HENRY J. McANULTY, C.S.Sp.,
D.Ed.
Chancellor of the University
A. WILLIAM CAPONE, B.S.B.A.
Chairman of the Board of Directors
JOHN J. SCIULLO, B.A., J.D.
Dean of the School of Law and
Professor of Law
PATRICK J. BASIAL, B.A., J.D.
Associate Dean and
Professor of Law
RAYMOND F. SEKULA, B.S., J.D., LL.M.
Director of Admissions and
Professor of Law
FRANK YINING LIU, LL.B., M.C.J., M.L.S.
Head Law Librarian and
Associate Professor of Law
AGNES F. ROBINSON, B.S., M.L.S.
Assistant Law Librarian
DORIS CORSELLO, B.A., M.L.S.
Catalog Librarian
VIRGINIA ESKRIDGE, B.A., M.A., M.L.S.
Reference Librarian
AMY R. SWANSON, B.A.
Director of Placement and
Law Alumni Coordinator
MOLLY ANN SACKS, B.A.
Registrar

Faculty

THOMAS ARBOGAST, B.S., J.D.
Adjunct Professor of Law
SAMUEL J. ASTORINO, B.A., M.A., Ph.D.,
J.D.
Professor of Law
CYNTHIA A. BALDWIN, B.A., M.A., J.D.
Adjunct Professor of Law
ROBERT S. BARKER, B.A., M.A., J.D.
Associate Professor of Law
KENNETH J. BENSON, B.A., J.D.
Adjunct Professor of Law
JAMES T. CARNEY, B.A., LL.B.
Adjunct Professor of Law
HENRY C. COHEN, B.S., J.D.
Adjunct Professor of Law
BARTON Z. COWAN, B.A., J.D.
Adjunct Professor of Law
DARA A. DeCOURCY, B.A., J.D.
Adjunct Professor of Law
WILLIAM A. DONAHER, A.B., LL.B.
Professor of Law

ROBERT L. EBERHARDT, A.B., J.D.
Adjunct Professor of Law
NICK S. FISFIS, A.B., J.D.
Professor of Law
JOHN L. GEDID, B.A., J.D., LL.M.
Professor of Law
KENNETH E. GRAY, B.A., J.D., M.P.A.
Professor of Law
STANLEY W. GREENFIELD, B.A., J.D.
Adjunct Professor of Law
KENNETH L. HIRSCH, B.A., J.D., LL.M.
Professor of Law
JOEL KAUFMAN, A.B., J.D.
Adjunct Professor of Law
THOMAS M. KERR, A.B., LL.B.
Adjunct Professor of Law
GERARD J. KOECHEL, B.A., J.D.
Adjunct Professor of Law
MARGARET K. KRASIK, A.B., M.L.S., J.D.
Associate Professor of Law
MAUREEN LALLY-GREEN, B.S., J.D.
Adjunct Professor of Law
BRUCE S. LEDEWITZ, B.S.F.S., J.D.
Professor of Law
JOHN WILLIAM LYTTLE, JR., B.S., LL.B.,
LL.M.
Professor of Law
JOSEPH S. MISTICK, B.A., J.D.
Adjunct Professor of Law
CORNELIUS F. MURPHY, JR., B.S., J.D.,
LL.M.
Professor of Law
THEODORE R. PALADINO, D.D.S., J.D.
Adjunct Professor of Law
ALFRED S. PELAEZ, B.A., J.D., LL.M.
Professor of Law
JACK W. PLOWMAN, A.B., LL.B.
Adjunct Professor of Law
E. KEARS POLLOCK, B.S., M.S., J.D.
Adjunct Professor of Law
IRVING M. PORTNOY, B.A., J.D.
Adjunct Professor of Law
ROBERT V. RACUNAS, B.S., J.D.
Adjunct Professor of Law
SAMUEL J. REICH, B.A., LL.B.
Adjunct Professor of Law
RONALD J. RICCI, B.S., J.D.
Associate Professor of Law
WILLIAM C. RIES, A.B., J.D.
Adjunct Professor of Law
WILLIAM S. SCHWEERS, SR., B.A., LL.B.
Adjunct Professor of Law
ILA JEANNE SENSENICH, B.A., J.D.
Adjunct Professor of Law