

WASHINGTON STATE MEDICAL ASSOCIATION
HOUSE OF DELEGATES

Subject: Fair Process for Employed Physicians

Introduced by: Yakima County Medical Society

WHEREAS, the physician's primary duty is to apply the scientific knowledge of the profession and to advocate for improved patient outcomes. The physician-patient relationship engenders unique motivation for that advocacy, which cannot be experienced by individuals who are not involved in the patient's clinical care, and

WHEREAS, responsibility and liability for standard of practice ultimately falls to the licensed physician alone. Corporate Practice of Medicine (CPM) is illegal under current Washington law¹, although corporate employment of physicians has not been aggressively contested. CPM statutes were intended to protect the public from interference in the practice of medicine by unlicensed individuals², and

WHEREAS, increasingly, the healthcare industry does not allow patients a meaningful choice of physicians and hospitals who act in their best interests. Consequently, the physician's duty to safeguard patient interests in this healthcare environment is critical³, and

WHEREAS, more physicians are working as employees and do not have even the inadequate protections of Medical Staff Peer Review. Physicians are disadvantaged in negotiation with monopolistic systems and rarely have the expertise to negotiate contracts which protect their income, hours, and reputations, and

WHEREAS, the financial imperatives of health care entities can conflict with patient interests and the duty of their employed physicians, and

¹ **RCW 19.68**

<http://apps.leg.wa.gov/rcw/default.aspx?cite=19.68>

² **Corporate Practice of Medicine**, Health Law Resources

<https://www.healthlawyers.org/hlresources/Health%20Law%20Wiki/Corporate%20Practice%20of%20Medicine.aspx>

³ **Bitter Pill: Why Medical Bills Are Killing Us**, Steven Brill, *TIME Magazine*, April 4, 2013

<http://time.com/198/bitter-pill-why-medical-bills-are-killing-us/>

WHEREAS, unfair termination of physician employees is occurring regularly without due process, and

WHEREAS, retaliation for whistle-blowing has been frequently reported by the press, particularly in the Veteran's Administration^{4, 5, 6} , and

WHEREAS, physicians and their patients need protection from excessive work hours, call hours, and RVU production goals which make patient care less safe⁷, and

WHEREAS, the IRS grants non-profit and tax-free status to health care corporations with the stipulation that non-profit organizations will act according to a public service mission without "insider advantage" (cronyism, animus, discrimination, etc.). Unfortunately, non-profits are not required to comply with the transparency applied to government organizations. The public service mission of non-profits is not adequately safe-guarded, and

WHEREAS, the Health Care Quality Improvement Act of 1986 bars physicians from civil suit to recover damages caused by dishonest hospital peer review. This hospital immunity was created with the assumption that good quality peer review would incisively differentiate safe from sub-standard physician performance, and that unsafe physicians could be permanently tracked by the National Practitioner Data Base, and by state medical boards (MQAC). Employment terminations without fair and due process subvert and make meaningless the HCQIA, and

WHEREAS, the American Academy of Family Physicians has proposed to the Centers for Medicare & Medicaid Services (CMS) a mechanism to address this unsafe system:

"We believe physicians deserve fair hearings when threatened by termination from a hospital and that fear of retribution may limit or prevent physicians from fully advocating for their patients' best interests. Physicians with due process rights are more likely to protest fraudulent practices that threaten the integrity of the Medicare and Medicaid programs.

The AAFP believes physicians should have the right to due process prior to termination from a hospital's medical staff and that right should not be waived by a third party. We urge CMS to address this by revising Medicare's Conditions of Participation for hospitals and forbid hospitals and physician staffing companies from including a clause in employment contracts allowing hospital administrators to directly or

⁴ **VA Whistleblowers Win Settlements in Retaliation Cases**, The Washington Post, Sept. 29, 2014.

<http://www.washingtonpost.com/blogs/federal-eye/wp/2014/09/29/va-whistleblowers-win-settlements-in-retaliation-cases/>

⁵ **Doctor says she was fired for reporting low staffing at Brandon Regional ER**, Rich Shopes. *Tampa Bay Times* Feb. 20, 2015

<http://www.tampabay.com/news/health/doctor-says-she-was-fired-for-reporting-low-staffing-at-brandon-regional/2218497>

⁶ **Can You Speak Out Without Getting Fired or Being Labeled a Troublemaker?** Harris Meyer, *Medscape Business of Medicine*. April 17, 2013

http://www.medscape.com/viewarticle/781964?src=wnl_edit_bom_weekly

⁷ **Accreditation Council for Graduate Medical Education Common Program Requirements**

<https://www.acgme.org/acgmeweb/Portals/0/PFAssets/ProgramRequirements/CPRs2013.pdf>

indirectly terminate a physician with or without cause, unless the termination receives a fair hearing. CMS should promote policies that require physicians are provided fair hearings and appellate reviews before any termination or restriction of their professional activity or medical staff privileges, and that these rights cannot be denied through a third party contract.

Physicians have a duty to advocate for their patients, even when such advocacy requires opposition to a hospital's interests. Due process rights protect physician autonomy, serve as a mechanism to protect patients, and assure physicians that their practice will not be penalized unfairly.”⁸

Therefore, be it ...

RESOLVED WSMA will advocate for fair process protections for employee physicians, in accordance with B-1 Fair and Professional Peer Review Policy. [Reaffirm HOD policy and New HOD policy], and be it further

RESOLVED WSMA will educate members about how employment law protections apply to physicians, and assist physicians to negotiate contracts which protect their livelihood and the safety of their patients. [Reaffirm HOD policy and current program], and be it further

RESOLVED, that the WSMA will further urge that the state attorney general address the lack of an adequate and/or appropriate due process for employed physicians and actively promote policies that require physicians are provided fair hearings and appellate reviews before any termination or restriction of their professional activity or medical staff privileges, and that these rights cannot be denied through a third party contract. Retaliation for reasonable advocacy for patient interests should be expressly forbidden. (Directive to Take Action)

⁸ **Letter from American Academy of Family Physicians to Center for Medicare and Medicaid Services**, May 4, 2015.

<http://www.aafp.org/dam/AAFP/documents/advocacy/legal/administrative/LT-CMS-DUeProcess-050415.pdf>