

## C-3 Physician Whistleblower Protection

Sponsored by: Yakima County Medical Society

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 law<sup>1</sup>, 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 individuals<sup>2</sup>, and

WHEREAS, the financial interests of health care corporations can conflict with patient interests and the duty of their employed physicians, 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). However, “No Cause” employment terminations without fair and due process subvert and make meaningless the HCQIA, and

WHEREAS, in 2015, the WSMA House of Delegates passed Resolution B-1, directing that *“WSMA will advocate for fair process protections for employee physicians, in accordance with WSMA Fair and Professional Peer Review Policy”* and that *“retaliation for reasonable advocacy for patient interests should be expressly forbidden”*<sup>3</sup>, and

WHEREAS, the American Medical Association has established a detailed policy which advocates for the right of employed physicians to fair peer review in evaluation of clinical performance<sup>4</sup> but this policy has no force in law, and

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<sup>1</sup> **RCW 19.68**

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

<sup>2</sup> **Corporate Practice of Medicine**, Health Law Resources

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

<sup>3</sup> **WASHINGTON STATE MEDICAL ASSOCIATION OFFICIAL ACTIONS OF THE 2015 HOUSE OF DELEGATES**

<https://www.wsma.org/house-of-delegates>

<sup>4</sup> **AMA Principles for Physician Employment**, 2012 Interim Meeting of the AMA House of Delegates (Board of Trustees Report 6)

<http://www.ncmedsoc.org/wp-content/uploads/2013/09/ama-principles-for-physician-employment.pdf>

WHEREAS, in California, Health and Safety Code section 1278.5 “*encourage[s]...medical staff...to notify government entities of suspected unsafe patient care...in order to protect patients and...ensur[e] that health care is safe*”. This statute prohibits retaliation against employed physicians for advocating for patient care (whistleblowing)<sup>5</sup>, and

WHEREAS, the 2015, \$2.5 million settlement for *Dr. Ramon Añel of Tacoma vs. Franciscan Medical Group (FMG) and Catholic Health Initiatives (CHI)* documents wrongful termination, defamation, and malicious prosecution of a physician without regard to a long record of patient service<sup>67</sup>, and

WHEREAS, physician whistleblowing and whistleblower protections were central to a state investigation into patient care practices at Swedish Health Services' Cherry Hill hospital<sup>8</sup>, and

WHEREAS, the January/February 2018 issue of *WSMA Reports* included a helpful article titled *Protecting Physician Whistleblowers* and again featured the sentinel case of *Smigaj vs Yakima Valley Memorial Hospital*<sup>9</sup>, and

WHEREAS, in the 2018 WA Legislative session, SB 5998/HB 2258 **Concerning health care provider and health care facility whistleblower protections** was introduced with 11 Senate and 16 House sponsors. The bill passed unanimously on the WA Senate floor, Feb 7th, 2018. The bill was passed unanimously, with a **do pass** recommendation by the House Committee on Judiciary on Jan 24th, 2018. Unfortunately, the bill was not brought to the House floor before the close of the short session<sup>10</sup>, and

WHEREAS, SB 5998/HB 2258 was not mentioned at the Jan. 31st, 2018 Legislative Summit, and was not included in the six WSMA legislative priorities.

Therefore, be it ...

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<sup>5</sup>California Health and Safety Code Section 1275-1289.5

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=hsc&group=01001-02000&file=1275-1289.5>

<sup>6</sup> *Tacoma doctor settles wrongful-firing case for \$2.5 million*, Adam Lynn. *The News Tribune*, Dec 4, 2015.

<http://www.thenewstribune.com/news/local/article48099685.html>

<sup>7</sup> *Washington Physician Represented by The Blankenship Law Firm Receives \$2.5 Million in Case Against Catholic Health Initiatives*, The Blankenship Law Firm

<http://www.blankenshiplawfirm.com/washington-physician-represented-by-the-blankenship-law-firm-receives-2-5-million-in-case-against-catholic-health-initiatives/>

<sup>8</sup> *Top neurosurgeon Johnny Delashaw resigns from Swedish*. *Seattle Times* March 1, 2017.

<https://www.seattletimes.com/seattle-news/top-neurosurgeon-johnny-delashaw-resigns-from-swedish/>

<sup>9</sup> [https://wsma.org/doc\\_library/ForMembers/WSMAReports/WSMA\\_Reports\\_Jan-Feb-2018.pdf](https://wsma.org/doc_library/ForMembers/WSMAReports/WSMA_Reports_Jan-Feb-2018.pdf)

<sup>10</sup> <http://apps2.leg.wa.gov/billsummary?BillNumber=5998&Chamber=Senate&Year=2017>

RESOLVED, the WSMA will find legislative sponsors to introduce into the 2019 Washington Legislature, a Physician Whistleblower Protection bill comparable to SB 5998/HB 2258. [Directive to Take Action], and be it further

RESOLVED, the WSMA will vigorously support the Physician Whistleblower Protection bill, and identify it as a legislative priority [Directive to Take Action],.



