ISSUES COMMONLY FACED BY EMERGENCY PHYSICIANS

The American Academy of Emergency Medicine (AAEM) is the specialty society of emergency medicine and is proud to help and support its members and our specialty. There are several issues emergency physicians most commonly contact AAEM about, including the following:

1. Threats to the employment of individual emergency physicians or emergency medical groups, such as the issuance of requests for proposals (RFPs) for an existing emergency professional services contract or the attempted hostile takeover of an existing contract by a contract management group.

2. Contractual termination without due process or peer review.

3. Assistance with a malpractice suit.

4. Post-contractual employment restrictions (restrictive covenants or non-compete clauses).

AAEM ASSISTANCE

AAEM has seasoned emergency physicians within its leadership, who collectively have many years of experience troubleshooting and resolving the problems that many emergency physicians experience. AAEM believes it is essential to stand behind emergency physicians and its principles, and offers its assistance with professional challenges. AAEM cannot provide legal advice or make referrals to a specific attorney.

Assistance offered in the past includes:

1. Education and advice on these issues. Position statements and articles on the AAEM website may serve as valuable resources.

2. Phone calls, letters of support, or site visits on behalf of a physician or group.

3. Support of legal actions, usually based on laws prohibiting the corporate practice of medicine or fee-splitting. The AAEM Foundation has provided financial assistance in such matters.

4. Referral to experienced emergency medicine expert witnesses.

5. Evaluation of potentially remarkable testimony by the AAEM Legal Committee, once the case is closed. If deemed remarkable, the expert’s testimony is published on the Academy’s website for all members to see.

6. AAEM liability insurance from Hays Affinity.

In specific situations, AAEM commonly recommends that emergency physicians consider some of the actions below, in addition to calling the Academy for help.

CORPORATE PRACTICE OF MEDICINE

It is best to avoid contract instability by being proactive long before a physician group faces a threat. Once a threat is present, the group often faces an uphill battle.

1. Be acutely aware that your contract is under continuous external threat. Corporate groups inundate hospital administrators with direct solicitations, advertisements in their literature, and booths at their meetings.

2. Review your hospital contract with an attorney. Try to get contract language that requires notice if your performance is falling below expectations or if another bid for the contract is being formally considered. If another group threatens your hospital contract, ask your attorney to determine whether the competing group operates in compliance with state corporate practice of medicine laws.

3. Make sure your group is performing as well as possible and providing high quality patient care. If your group is well run, a competitor will not be able to improve your emergency department. That is, however, not what they will tell the hospital administration. They will claim that they can and will improve the ED. You need to refute that argument with solid performance data.

4. If you have a hospital subsidy, the corporate groups will say they can cover the ED without one or for less. You need to develop a written analysis of why you have a subsidy and how it contributes to the quality of care by allowing appropriate staffing of the ED. This should be periodically reviewed with the CEO.
CORPORATE PRACTICE OF MEDICINE (continued)

5. Establish personal and professional relationships with members of the medical staff, hospital administration, and local community. Build alliances, particularly with other hospital based departments. Try to get a position on the hospital board of directors or get to know those who sit on it.

6. Meet with the CEO on a regular basis. Garner support from influential members of the medical staff, administration, and community. Have them advocate on the group’s behalf with the hospital CEO and administration.

7. Publicize the good work your group is doing in the hospital and community.

8. Make sure your group has a significant presence in the hospital medical staff leadership and committees.

9. Inspire your group to be a cohesive unit. Seek agreement from all members that they will leave if a competitor takes over, and publicize this unified stance. Set up a meeting with hospital administration that everyone will attend.

10. Check with friendly secretarial staff to see what information you can gather.

CONTRACTUAL TERMINATION WITHOUT DUE PROCESS OR PEER REVIEW

1. Review your contract with an attorney immediately, as you may have a very limited time to request or demand a fair hearing. Your attorney may recommend that you demand a hearing regardless of any waivers you agreed to in your contract.

2. If possible, do not sign away your right to due process. Review the AAEM white paper on due process when negotiating a contract.

3. Hold on to all communications related to your job performance, both positive and negative. Keep a personal record of your successes and patient compliments. Review any complaints and take them seriously, writing and filing a response as necessary.

4. Publicize the issue in the AAEM newsletter, Common Sense.

5. The AAEM Foundation may consider extraordinary cases for funding.

6. Contact AAEM for advice if confronted with what you believe is an unjust termination.

MALPRACTICE ASSISTANCE

1. Call your malpractice insurance company to be assigned an attorney, who will guide you through the process and be your advocate. AAEM cannot provide legal advice or referral to a specific attorney.

2. Do not talk to anyone else - including family, friends, or colleagues - about the case without the permission of your attorney. You can speak to your spouse, as that is legally protected.

3. Contact AAEM if you feel you have been victimized by unfair or inaccurate expert testimony.

4. AAEM may provide an amicus brief in extraordinary cases involving issues of general importance to our members.

5. Do not underestimate the emotional impact of being sued; you should consider taking advantage of local or state medical society resources for litigation stress.

POST-CONTRACTUAL RESTRICTIONS (RESTRICTIVE COVENANTS)

1. Review your contract with an attorney. If possible, do not sign a non-compete clause. If you must sign one, try to restrict the scope.

2. Review the AAEM white paper on restrictive covenants when negotiating a contract.