Legal Issues Affecting Academic Medical Centers and Other Teaching Institutions

January 24-25, 2013  |  Ritz-Carlton Hotel  |  Washington, DC

Co-sponsored with National Association of College and University Attorneys (NACUA) and Association of American Medical Colleges (AAMC)

Planning Committee:
Ann T. Hollenbeck, Esq., Program Co-Chair
Jeff Sconyers, Esq., Program Co-Chair
Ann N. James, Esq.
Holley Thames Lutz, Esq.
Heather Pierce, Esq.
Stephen D. Sencer, Esq.

Huron Consulting Group has provided sponsorship in support of this program

AMERICAN HEALTH LAWYERS ASSOCIATION
# Program Agenda

## Thursday, January 24, 2013

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<tr>
<th>Time</th>
<th>Session</th>
<th>Speakers</th>
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<tr>
<td>7:00 am-5:15 pm</td>
<td>Registration and Information</td>
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<td>8:00-8:15 am</td>
<td>Welcome and Introduction</td>
<td>Kristin B. Rosati, AHLA President-Elect</td>
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<td>Ann T. Hollenbeck, Program Co-Chair</td>
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<tr>
<td>8:15-9:00 am</td>
<td>Keynote Address: What the Election Means for Academic Medicine and Teaching Hospitals</td>
<td>Atul Grover</td>
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<td>The implications of the Presidential and Congressional elections for academic medicine, in the short term and over the next four years</td>
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<td>9:00-10:00 am</td>
<td>Year in Review</td>
<td>Elizabeth Carder-Thompson</td>
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<td>10:00-10:15 am</td>
<td>Break</td>
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<td>10:15 am-12:00 noon</td>
<td>The Future of Medical Education: Strategic Imperatives for the Next Four Years and the Role of the AMC Lawyer</td>
<td>Jeff Sconyers (Moderator), David J. Bjorkman, Pamela B. Davis, Darrell G. Kirch</td>
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<td>What keeps deans up at night? A distinguished panel of leaders in academic medicine will discuss how they think about and address such challenges as:</td>
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<td>– Participation in accountable care organizations or their equivalents, necessitating economic and clinical integration with non-academic community hospitals and provider groups</td>
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<td>– The emerging emphasis on pay-for-performance, outcomes-based medicine driven by evidence-based care</td>
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<td>– Widely dispersed teaching programs conducted largely in community settings to promote primary care specialties</td>
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<td>– The need to conduct research across large populations, necessitating multi-center trials and research activities at sites without a research infrastructure</td>
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<td>– A demand for more primary care and mid-level providers, and for fewer specialists, creating cultural conflict within traditional academic medicine</td>
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<td>– The aging of faculty and the population</td>
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<td>Response Panel: Ann N. James, Beth Schermer, Stephen Sencer</td>
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<td>Following their presentation, these leaders will be joined by in-house and outside lawyers who work with academic medicine clients, to talk about the expectations of leaders for lawyers and how lawyers can meet the strategic challenges and the expectations of their clients. This session will set the strategic and operational context for the remainder of the program.</td>
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<td>12:00 noon-1:20 pm</td>
<td>Lunch on your own or attend the Teaching Hospitals and Academic Medical Centers Practice Group Luncheon, sponsored by PYA</td>
<td>(limited attendance; additional fee; pre-registration required - see page 11)</td>
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<td>Lessons Learned from the Fungal Infection Outbreak</td>
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<td>Sandy Bledsoe, Assistant Vice Chancellor, Risk and Insurance Management, Vanderbilt University Office of Risk and Insurance Management, Nashville, TN</td>
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<td>Marion A. Kainer MD MPH FRACP, Director, Healthcare Associated Infections and Antimicrobial Resistance Program Tennessee Department of Health, Nashville, TN</td>
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<td>Julia C. Morris, Deputy General Counsel, Vanderbilt Office of General Counsel, Nashville, TN</td>
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Legal Issues Affecting Academic Medical Centers and Other Teaching Institutions
Program Agenda

Concurrent Sessions
Extended Sessions
1:30–2:45 pm

A. Research Misconduct
John E. Dahlberg, Rachel Nosowsky
- The role of legal counsel in institutional misconduct proceedings
- The technical assistance ORI through you and your staff and others may provide to institutions in connection with misconduct proceedings
- Lessons learned from previous cases (focused particularly on legal issues that arise, anticipating and managing interactions with complainants’ and respondents’ counsel, evidentiary concerns, etc.)
- Other laws that may be implicated when misconduct allegations are brought to the attention of an institution

B. Fraud and Abuse for Academic Medical Centers and Teaching Hospitals
Lisa M. Ohrin, Robert A. Wade
- Recent cases and settlements and individual liability
- Recent investigations of academic medical centers, including the RAC Program
- Recent developments regarding the Stark Law and the Anti-Kickback Statute
- Fair market value/commercial reasonableness issues related to academic medical centers

C. Bridging the Divide: Communication and Conflict Navigation Skills to Build AMC and Community Provider Coordinated Care Affiliations
Rosemarie Christofolo, Beth Schermer
This session uses a case study to identify communication and conflict navigation skills that increase counsel’s effectiveness in negotiating AMC and community provider affiliations. Participants will:
- Recognize and respond to key differences and similarities between AMC and community-based health systems
- Establish a strategy to set shared goals, handle conflict and reach consensus of core issues
- Understand and use communication and conflict navigation skills to negotiate and create coordinated care organizations

3:00–4:00 pm

D. Brave New World – Relationships with Industry (not repeated)
Eve M. Brunts
This session will examine current developments and compliance concerns for relationships between academic medical centers and industry and will offer guidance on best practices for managing those relationships.
- Evolution of research collaborations
- Ongoing conflict of interest concerns (including insider trading concerns)
- Contracting practices and interactions with sales representatives
- Impact of federal sunshine law and analogous state laws

E. Integrating Community Physicians into the Academic Medical Center
Donna S. Clark, Margaret M. Peyton
This session will explore the factors driving the addition of community physicians to the AMC, discuss various integration/organizational strategies and address compensation models from both a practical and legal perspective. Covered topics include:
- Why an integration strategy is more important now
- Choosing an integration strategy, including organization structure options, choice of AMC component for employment, governance issues
- Structuring regulatory compliant practice acquisition and compensation models
- Addressing cultural issues, including faculty appointments, payment of Dean’s tax, preserving the real benefits of a community practice
Thursday, January 24, 2013 (continued)

3:00-4:00 pm (continued)

F. Medical School Affiliation Agreements Project
   Richard G. Korman, Henry Sondheimer, Frank Trinity, Daniel J. Wilkerson
   - Providing a medical student with the opportunity to have clinical experiences and to study at institutions other than the student’s home school is essential to a well-rounded medical education. Yet in many cases, it is also an administrative hassle for the schools, hospitals, and even the students involved. The Association of American Medical Colleges is developing standardized language for medical student affiliation agreements to facilitate this process.
   - This session is an opportunity for participants to provide feedback on the legal issues that need to be addressed in affiliation agreements, and on how we can effectively disseminate template language to cut down on unnecessary delay.
   - Template language covers: LCME requirements, HIPAA, limitations on governmental immunity and indemnity, individual information including immunizations, drug screening results, criminal history check, insurance, and supervision.

4:15-5:15 pm

G. Fitness for Duty for Physicians – A Disaster in the Making or an Idea Whose Time Has Come?
   (not repeated)
   Ross E. Campbell, Ann N. James
   - Legal issues with age-related requirements
   - Scientific support
   - Implementation of policy
   - Review of the policy with special emphasis on the toughest issues
   - The intersection of medical practice and tenured faculty

H. Research Collaborations between AMCs and Community Hospitals (and Their Systems): Considerations and Case Studies
   Leah B. Guidry, Ann T. Hollenbeck
   - Research Mission and Objections: How They Differ
     - Research as integral v. ancillary
     - Tolerance for risk in research
     - Faculty v. medical staff (FMV compensation/compliance)
   - Case Studies
     - Tissue repositories—nexus for collaboration
     - Data security breach case study
     - IRB authorization case study

J. Legal Ethics: What Penn State and Lehman Brothers Can Teach Lawyers about Conflicts of Interest
   William W. Horton, Jeff Sconyers
   Lawyers learn conflict of interest rules in law school: It’s not permissible to represent clients with conflicting interests without each client’s advance informed consent, and not permitted at all to represent one client against another. Yet often, lawyers find the line between their representation of the entity as a client, and their advice to the executives who speak for the entity, very hard to draw. The complexity of academic medical centers, with their many schools, deans, departments, teaching hospitals, and other components, make the line-drawing perhaps more difficult even than in the usual corporate context. Drawing on recent cases, including the Penn State-Jerry Sandusky scandal and the Lehman Brothers bankruptcy, this session will outline conflicts rules and explore potential errors that can arise in the AMC and how to avoid them.
   - Conflict Rules under the Model Rules of Professional Conduct
   - Conflicts: Waivable and the other kind
   - Representing an entity vs. advising individual stakeholders
   - Separate representation, indemnification and advancement of expenses
   - Lessons from Penn State, Lehman Brothers and other cases

5:15-6:15 pm

Networking Reception sponsored by Huron Consulting Group
   (attendees, speakers, and registered spouses and guests welcome)
Program Agenda

Friday, January 25, 2013

7:00 am-3:15 pm  Registration and Information

7:00-8:00 am  Continental Breakfast sponsored by Huron Consulting Group

(attendees, speakers and registered spouses and guests welcome)

Concurrent Sessions

8:00-9:15 am  A. Research Misconduct (repeat)

8:30-10:30 am  B. Fraud and Abuse for Academic Medical Centers and Teaching Hospitals (repeat)

9:00-10:00 am  C. Bridging the Divide: Communication and Conflict Navigation Skills to Build AMC and Community Provider Coordinated Care Affiliations (repeat)

9:30-10:30 am  K. Incentivizing Quality Improvement – Better to Appeal to Professional Pride or Pocketbook? (not repeated)

Jolee Hancock Bollinger, Andrew D. Ruskin

• Background on payment for quality mechanisms
• ACO payments and quality data
• Stark and Anti-Kickback Statute implications of paying for quality results
• Assessment of program integrity and business issues with various payment models typical for AMCs making payment to their faculty practice plans
• Various techniques for using data and “peer pressure” to encourage higher quality

L. Managing a Major Data Security Breach – Initial Steps and Subsequent Ramifications

Jane E. Jordan, William H. Jordan

• Case studies will examine the steps taken internally prior to notification to affected patients and personnel and the ramifications of a major breach
• Managing the internal investigation following awareness of problem and notification
  – Initial notification of potential breach/first steps in investigation/use of internal police and risk managers/human resource issues
  – Conclusions of Breach Assessment Team: review to determine whether violation of HITECH has occurred
  – Internal Team Membership: composition/roles and responsibilities
  – Engagement of external experts: forensic accounting firm, public relations firm, external counsel
  – Notification to outside carrier/assessment of coverage
  – Preparing for notification
  – Announcement to patients and public/website notice/considerations
  – Communications to Boards of Trustees
  – Press coverage/social media
  – Institution-wide search and secure initiative/attestations
• What to expect from third parties
  – Initial inquiries from both expected (OCR and the FTC) and unexpected (Department of Education) agencies/State Attorneys General/US Attorneys
  – Reactions from patients/social media/PR management
  – Theories of liability/allegations/defenses
  – Review/summaries of existing cases
Legal Issues Affecting Academic Medical Centers and Other Teaching Institutions

9:30-10:30 am (continued)

M. Hospital Affiliations and the Establishment of "Hospital Networks"
   Deborah R. Farringer, Amy O. Garrigues
   • Models for affiliation between AMCs and community hospitals
     – Continuum of options
     – Opportunities and challenges
     – Key legal considerations (e.g., Antitrust, EHR, fraud and abuse)
   • Case Study of an Emerging Model – Vanderbilt University's CMS Innovation Grant for Care Coordination Across Systems
     – Grant award
     – Technology and infrastructure and involvement of community physicians
     – Opportunities and challenges

10:45-11:45 am

N. Graduate Medical Education: Hospitals and Residents Feel the Pinch with Greater Funding Challenges and Increased Competition for Slots (not repeated)
   Kenneth R. Marcus, Lori K. Mihalich-Levin
   • Applications for resident slots are projected to exceed capacity
   • Limits on Medicare payment
   • Strategies for coping

O. Thinking Outside the Box in a Button-Down World: In-Depth Discussion and Examination of Yale (AMC) and Sarah Cannon Research Institute (non-AMC) Research Collaboration
   David Florin, Holley Thames Lutz, Dee Anna Smith
   • The drivers behind AMC and non-AMC research collaboratives, including discussion of the business, mission, and research goals to be achieved by all stakeholders
   • The legal, political, philosophical challenges (and solutions) of such collaboratives
   • Candid feedback on what worked and what didn’t work
   • The top 10 things AMCs would want to know before embarking on non-AMC research collaboratives

11:45 am-1:00 pm

L. Managing a Major Data Security Breach – Initial Steps and Subsequent Ramifications (repeat)

1:00-2:00 pm

Concurrent Sessions

H. Research Collaborations between AMCs and Community Hospitals (and Their Systems): Compliance and Coordination (repeat)

J. Legal Ethics: What Penn State and Lehman Brothers Can Teach Lawyers about Conflicts of Interest (repeat)

L. Managing a Major Data Security Breach – Initial Steps and Subsequent Ramifications (repeat)

2:15-3:15 pm

F. Medical School Affiliation Agreements Project (repeat)

M. Hospital Affiliations and the Establishment of "Hospital Networks" (repeat)

O. Thinking Outside the Box in a Button-Down World: In-Depth Discussion and Examination of Yale (AMC) and Sarah Cannon Research Institute (non-AMC) Research Collaboration (repeat)

Adjournment
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## Program-At-A-Glance

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<td>11:45 am-1:00 pm</td>
<td>Lunch on your own</td>
</tr>
<tr>
<td>1:00-2:00 pm</td>
<td><strong>H. Research Collaborations between AMCs and Community Hospitals (and Their Systems): Compliance and Coordination</strong> (repeat)</td>
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<td><strong>J. Legal Ethics: What Penn State and Lehman Brothers Can Teach Lawyers about Conflicts of Interest</strong> (repeat)</td>
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<td><strong>L. Managing a Major Data Security Breach – Initial Steps and Subsequent Ramifications</strong> (repeat)</td>
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<td>Guidry Hollenbeck</td>
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<td>Horton Sconyers</td>
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<td>J. Jordan W. Jordan</td>
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<td>2:15-3:15 pm</td>
<td><strong>F. Medical School Affiliation Agreements Project</strong> (repeat)</td>
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<td><strong>M. Hospital Affiliations and the Establishment of &quot;Hospital Networks&quot;</strong> (repeat)</td>
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<td><strong>O. Thinking Outside the Box in a Button-Down World: In-Depth Discussion and Examination of Yale (AMC) and Sarah Cannon Research Institute (non-AMC) Research Collaboration</strong> (repeat)</td>
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<td>Korman Sondheimer Trinity Wilkerson</td>
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<td>Farringer Garrigues</td>
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<td>Florin Lutz Smith</td>
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</table>
This program is designed to be an update on developments in the area of academic medical centers. There are no prerequisites or advanced preparations required to register for this group live program. Those seeking accounting credits should be familiar with the basic concepts of law and terminology associated with the area of AMCs in order to obtain the full educational benefit of this program.

Hotel Reservations: Hotel accommodations are not included in the registration fee. Call The Ritz-Carlton at (202) 835-0500. If calling, please indicate that you are attending the AHLA program. Rooms at the group rate are limited and may sell out.

Membership: Dues are $185 for those admitted to the Bar/graduated from college within the last four years; $305 for those admitted/graduated between four and eight years ago; and $350 for those admitted/graduated eight or more years ago. Dues are $100 for government employees and full-time academicians; $80 for paralegals, $160 for public interest professionals and $25 for full-time law school students. Include the applicable membership fee with your registration form and take advantage of the program registration fee for members.

Cancellations/Substitutions: Cancellations must be received in writing no later than January 18, 2013. Refunds will not be issued for cancellations received after this date. Registration fees, less a $125 administrative fee, will be refunded approximately 3-4 weeks following the program. If you wish to send a substitute or need more information regarding refund, complaint and program cancellation policies, please call (202) 833-1100, prompt #5. Please note that registration fees are based on the AHLA membership status of the individual who actually attends the program.

Special Needs: If you have needs requiring special assistance or accommodations, including special dietary needs, or have questions about accessibility issues at the program, contact our special needs coordinator, Valerie Eshleman at (202) 833-0784 or veshleman@healthlawyers.org.

Learning Objectives:
• Increase knowledge of the legal and regulatory issues unique to AMCs and teaching hospitals
• Gain a greater understanding of the strategic challenges facing AMCs and teaching hospitals
• Learn about recent legal developments, cases, and trends
To register: Remit payment and completed registration form by mail to the American Health Lawyers Association • P.O. Box 79340 • Baltimore, MD 21279-0340 or fax with credit card information to (202) 775-2482. To register by phone call (202) 833-1100, prompt #2. If any program is over-subscribed, only AHLA members will be placed on a waiting list. On-site registrations will be accepted on a space-available basis only.

Name: __________________________________ Member ID #: ________________________________
First Name for Badge (if different than above): ____________________________________________
Title: ______________________________________________________________________________
Organization: ________________________________________________________________________
Address: ___________________________________________________________________________
City: _________________________________  State: _______  ZIP+ 4:__________________________
Telephone: (______) ________________________  Fax: (______) ______________________________
E-Mail: ____________________________________________________________________________
Spouse/Guest Name  __________________________________________________________________

I am a member of:
☐ AHLA  ☐ NACUA  ☐ AAMC

Early Registration Fees (faxed/postmarked and paid on or before January 7, 2013):
☐ $695  Non-Members: ☐ $920
☐ $620 each additional AHLA/NACUA/AAMC member registering from same organization at same time on the same check or credit card payment

Registration Fees (faxed/postmarked and paid between January 8 and January 20, 2013):
☐ $820  Non-Members: ☐ $1045
☐ $745 each additional AHLA/NACUA/AAMC member registering from same organization at same time on the same check or credit card payment

I will require:
☐ audio  ☐ visual  ☐ mobility  ☐ other assistance _____________________________
☐ I have special dietary needs ________________________________________________

PAYMENT INFORMATION
Please fill in applicable amount: (Sorry! Registrations cannot be processed unless accompanied by payment.)

$______________ Registration Fee
$______________ TH/AMC Practice Group Luncheon ($40 for members of the TH/AMC PG/$55 for non-members of the TH/AMC PG; Thursday, January 24, 2013)
$______________ Printed Course Materials ($45)
$______________ Spouse/Guest Fee ($30)
$______________ Membership Dues (Date admitted to the bar/graduated: ☐ ☐/☐ ☐/☐ ☐/☐ ☐)
$______________ Total Enclosed
☐ Check enclosed (Make checks payable to American Health Lawyers Association)

Bill my credit card: ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐
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Please Note: Should your credit card total be miscalculated, AHLA will charge your credit card for the correct amount. To receive a refund of the registration fee paid minus $125, cancellation notice must be received in writing by January 18, 2013.
Fed ID No. 23-7333380
Legal Issues Affecting Academic Medical Centers and Other Teaching Institutions
January 24-25, 2013

Ritz-Carlton Hotel
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For updates and to register, go to
www.healthlawyers.org/programs