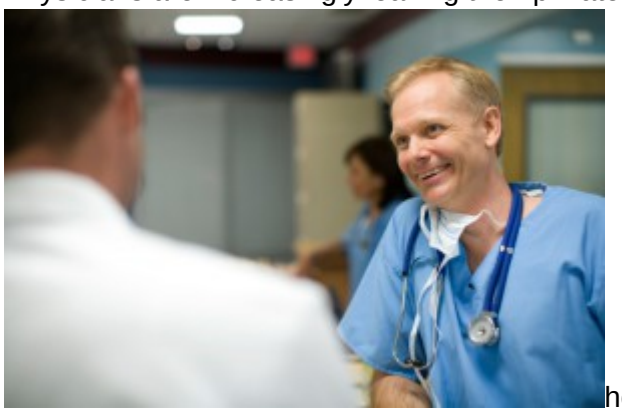
Health Law Reporter Names Hospital/Physician Alignment #1 Issue for 2015

Physicians are increasingly leaving their private practices to become employees at



hospitals or to affiliate with provider groups. BNA's Health Law Reporter recently wrote that hospital/physician alignment would be the top issue in healthcare law in 2015. The Reporter's advisory board predicted that the increase in physician alignment would have a "ripple effect" on many legal aspects of medical practice, including quality of care, antitrust, fraud and abuse, and payment. **The Role of the Accountable Care Act** The Accountable Care Act's requirements for improving the quality of medical care and for lowering costs are playing a pivotal role in increasing hospital/physician alignment. There is an especially strong trend towards increased provider consolidation and the formation of accountable care organizations (ACOs). **Why Physicians Are Leaving Private Practice** Operating a private practice is becoming more expensive and more complicated. Rising prices for supplies, the uncertainty of reimbursement under new incentive models, the need to implement and maintain expensive electronic health record and other technology systems, and the burdens of government regulations are all taking their toll. Younger physicians are also increasingly looking for a better work-life balance than previous generations of doctors. For all these reasons, physicians are turning towards affiliations that enable them to spend more time focusing on patient care and that promise greater security. **Potential Advantages for Patients** These affiliations offer opportunities to physicians to improve patient care by –

- Bringing teams of experts together;
- Improving communication among a patient's providers;
- Providing access to high quality equipment;
- Increasing efficiency that enables physicians to spend more time on patient care; and
- Focusing on patient wellness.

Achieving these advantages will require substantial collaboration and effective systems and procedures. **Potential Legal Issues** As the alignment trend continues, there continues to be limited regulatory guidance on the ACO structures and physician compensation methodologies that comply with many laws governing formation and operation of an ACO. Accordingly, the good judgment of experienced legal counsel will be needed to minimize the various risks of non-compliance with the anti-kickback laws, anti-trust laws, tax rules, etc. Additionally, these relationships and affiliations among ACO's, hospitals, physicians and others likely will raise novel issues for the judicial systems as disputes arise. For example, employee physicians are bound both by their employment agreements and by the medical staff bylaws and they may also be bound by provider agreements with ACOs. Given the overlapping

contractual terms and governance structures, the path for resolving issues may be more complex raising issues such as whether the matter should be handled by a hospital employer's human resources department, the governing board of the medical staff board or some other body or process. These legal issues arise in the practical context of how to best structure and implement the affiliations so as to encourage the physicians' acceptance of the goals of the employer hospital/provider and related ACO as the physicians' own goals while maintaining a culture of financial productivity consistent with private practice. It also raises practical issues of how physicians who buck the trend and do not align with hospitals or other organizations can retain meaningful roles in the new provider landscape. **Learning from the Past** The Reporter suggests that healthcare lawyers and their clients learn from the physician alignment growing pains and experiences of the recent past. Understanding past alignment structures and their impact (both positive and negative) should inform the development of new and modified alignment structures for the future. **Need Help in 2015?** As we move into 2015, be sure to contact our Health Care Attorneys if you have any questions about changes in your hospital or private medical career. Image: Thinkstock/Thomas Northcut *This article is very general in nature and does not constitute legal advice. Readers with legal questions should consult with an attorney prior to making any legal decisions.