

Hospital Based Physicians' Exclusive Relationships with Hospitals

a presentation for

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Issues Discussed

- Who Are Hospital Based Physicians?
- “Open Staff” Operation
- “Closed Staff” Operation
- Exclusive Contracting Between Hospitals and Individual Physicians or Physician Groups

Who Are Hospital Based Physicians?

Physicians who are primarily based out of Hospitals or Medical Centers

Traditional Examples

- *Anesthesiologists*
- *Radiologists*
- *Emergency Room Physicians*
- *Pathologists*
- *Faculty Practice Plans*

Emerging Trend Examples

- *Neonatalogists*
- *Surgeons*
- *Neuro Surgeons*

“Open Staff” Operation

- On staff (everyone who qualifies can provide those services)
- Department does scheduling
- Physician (or Group) does own billing of professional services

“Closed Staff” Operation

- Similar to Open Staff, but some states permit a maximum number of available positions and staff privileges are awarded until reaching the maximum number.

Exclusive Contracting
Between
Hospitals
and
Individual Physicians or Physician
Groups

Are Exclusive Contracts Permitted?

- Check **state law** to see if exclusive contracts are permitted.
 - Many states **permit** exclusive contracts.
 - For example, New Jersey: See, e.g., *Belmar v. Cipolla*, 475 A.2d 533, 535 (N.J. 1984).
 - Illinois, which permits exclusive contracts, requires that medical staff excluded by the exclusive contract be provided with sixty (60) days prior notice. *Illinois Hospital Licensing Act* §10.4(b)(2)(C)(iii).

Are Exclusive Contracts Permitted?

- Check **state law** to see if exclusive contracts are permitted.
 - State law may **prohibit** exclusive contracts.
 - For example, California prohibits hospitals participating in the Medi-Cal Selective Provider Contracting Program from operating most clinical services under an exclusive contract.

On Granting Exclusive Privileges, What Happens to Physicians Who Are on Staff?

- Check Bylaws
- If there is a provision on point, check state law to see if the Bylaws are enforceable.
 - State law may hold that bylaws are enforceable as a contract. See, e.g., *Lawler v. Eugene Wuesthoff Mem'l Hosp. Ass'n*, 497 So. 2d 1261, 1264 (Fla. Dist. Ct. App. 1986).
 - State law may recognize that bylaws are not enforceable as a contract per se, they are judicially enforceable. See, e.g., *Robles v. Humana Hosp. Cartersville*, 785 F.Supp. 989, 1000 (N.D. Ga. 1992).
- If the Bylaws are silent, also check state law

