

## Hospital CEO Must Report Plea Bargains

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Federal and state laws, and hundreds of court cases, address the seemingly simple decision of a hospital and medical staff member to part ways. The end game of all this legislation and litigation is ensuring disclosure if the parting is due to physician competence or conduct that could adversely affect patients. Everyone knows that restriction of privileges for competency or conduct reasons may be reportable, as may be resignation during an investigation. But what about even before any investigation has begun? This is the realm of the reportable plea bargain.

### **Agreeing to part ways**

You are a hospital CEO or chief

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administrator. You start hearing consistent rumors that a physician on your medical staff has substance-abuse issues that manifest themselves through erratic, and sometimes reportedly frightening, operating-room behavior. You have known this physician to be a good doctor so you invite him to your office for a talk.

You tell him what you have heard and the concern that he may have substance-abuse problems. He denies having such problems and characterizes the comments as retaliation for his complaints about staff incompetence, which he believes endangers patients. He suggests that rather than investigating

the staff's concerns and the unsafe conditions the staff has created, he will simply resign his privileges and find a hospital where his talents are better supported.

You agree that it would be best for the hospital and this physician to part ways and that his suggestion seems appropriate. As the doctor leaves your office, he comments that this conversation is just between you and him. You do not respond. Before you leave the hospital that day, you learn that the doctor has resigned.

Resignation of privileges under these circumstances may be a reportable event under both state and federal law. If your conversation with the doctor and his subsequent resignation is viewed as a bargain in which the doctor promises to voluntarily resign his privileges in exchange for the hospital's promise not to investigate or take other action in connection with unprofessional conduct, it may be considered a reportable "plea bargain."

Current misuse of controlled substances is unprofessional conduct under Washington law. A physician's voluntary restriction of his practice in exchange for the hospital's agreement not to investigate or take other action in connection with unprofessional conduct must

be reported to the Department of Health by the hospital CEO or chief administrator within 15 days of the voluntary limitation.

Federal law has a parallel reporting requirement. It applies when the agreement relates to professional conduct that does or could adversely affect a patient's welfare. Courts have taken a broad view of these types of professional conduct.

The state penalty for failure to report is a civil fine not to exceed \$500. Failure to report under federal law could jeopardize your ability to claim federal peer-review immunity for three years.

### Calling the lawyer

Six weeks later, a credentialing inquiry about the doctor is received from a rural hospital across the state. Since this situation was out of the ordinary, you call the hospital's lawyer, explain the situation, and ask her advice.

She tells you that Washington law imposes an affirmative obligation to disclose the reasons for any discontinuance of privileges in response to the credentialing inquiry. The lawyer says that honoring the doctor's "just between us" comment might expose the hospital to liability.

Then she explains the state and federal reporting requirements, noting that under the circumstances you described, the doctor's resignation might be considered a reportable event. In response to your question about reporting now, she advises that without giving the doctor the opportunity to respond to the alleged misconduct before reporting, you might jeopardize your federal immunity from damage claims if the doctor sues in re-

sponse to the reporting.

Under your medical staff bylaws, a physician voluntarily resigning privileges waives any right to a hearing or other opportunity to respond. Unfortunately, your lawyer advises that physicians' process protections under medical staff bylaws are separate from the federal immunity process requirements. A waiver of process under the bylaws might not waive these

federal requirements.

### Moral of the story

Federal and state laws governing the restriction or termination of physician privileges for reasons related to competence or conduct that could adversely affect patients, whether "voluntary" or otherwise, are intended to protect the public through required reporting and disclosures, to protect the physician through required oppor-



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tunities to respond to any proposed restriction, and to protect those involved in imposing the restriction through federal and state immunities. Shortcutting the process, no matter how well intentioned, may forfeit these protections—to the disadvantage of all involved.

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