



PROFESSIONAL LIABILITY UNDERWRITING SOCIETY

Hot Topics in Healthcare Management Liability

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Your source for professional liability education and networking.

- Set the Stage
- Management Liability Claims Trends
- New Areas of Exposure
- Underwriting Reactions
- Insurance Market Adjustments
- Q&A

- Healthcare Reform (ACA)
- Mergers & Acquisitions
 - Horizontal
 - Vertical
- Physician alignment
- Shift in Payment Models



- Business Model Changes
- Lack of due diligence
- Financial pressures
- Employed physicians
- Government scrutiny
- Technology challenges

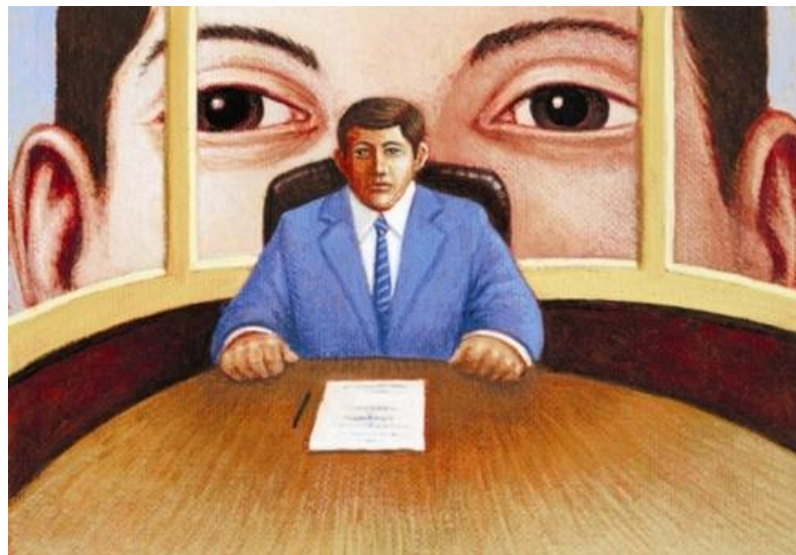
- Increased 3% in 2013, 51% increase since 2010
- 98 announced last year, 87 of which were Non-profit
- The 11 For-profit mergers generated \$13 billion, but \$12.7 billion was attributed to two big deals:
 - Community Health Systems acquisition of Health Management Associates (HMA)
 - Tenet Healthcare Corp's merger with Vanguard Health System
- One of the largest Non-profit mergers: Baylor Health System and Scott & White
- Others:
 - Highmark and West Penn Allegheny Health System (PA)
 - Trinity Health and Catholic Health East (MI/PA)
 - Mount Sinai and Continuum Health Partners (NY)
 - Northwestern memorial HealthCare and Cadence Health (Ill)

- Severity
 - Antitrust
 - Regulatory
 - Class action
- Frequency
 - Employment Practices
 - Breach of Contract

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- Where are the challenges coming from?
 - Competitors
 - Providers
 - Government
 - What are the damages?
 - Defense expenses
 - Injunctive relief
 - Publicly traded—no Entity coverage
 - What's Next?
 - Consumer

- “Good news, healthcare sector: You're not paranoid. The Federal Trade Commission really is after you.” (Modern Healthcare—Nov, 2013)
- Years without a successful challenge
- FTC revamps their approach – new focus on affect on pricing and quality
- Increased investigation, challenges and winning enforcements providing momentum
- Where does Healthcare Reform fit in?
- What's next from FTC
 - Vertical M&A scrutiny
 - Post merger reviews

“Healthcare sector major focus of FTC”, chairwoman says.



“Federal District Court Certifies Hospital Patient Class In Post merger Antitrust Lawsuit (Source: Mondaq Business Briefing –Jones Day 1/1/2014)

“On December 10, 2013, the U.S. District Court for the Northern District of Illinois granted class certification to customers claiming that the merger of two Chicago-area hospital groups, Evanston Northwestern Healthcare Corp. (ENH) and Highland Park Hospital, resulted in higher prices for patients. Class action litigation in merger cases is not common, because the remedy for a prospective merger challenge is an injunction, not damages. Because this case is a challenge to a completed transaction, where plaintiffs can allege actual injury not just prospective harm, it could result in a significant monetary recovery for plaintiffs. This is the first private antitrust class action in a hospital merger case.”

Evanston Northwestern /Highland Park

- 1st Private antitrust class action resulting from a hospital merger
- The hospital merger took place in 2000 (13 years ago)
- FTC's finding lead to a substantial monetary recovery
- New trend? Private actions to follow enforcement agencies?
- Case consistent with a growing number of private antitrust cases brought against hospitals.
- Private action likely to attract more attention from plaintiffs' attorneys in the future.

- The **\$2.6 billion** in health care fraud recoveries in fiscal year 2013 marks four straight years the department has recovered more than \$2 billion in cases involving health care fraud. (Advisen, 12/24/13)
- The number of qui tam suits filed in fiscal year 2013 soared to **752** --100 more than the record set the previous fiscal year with whistleblowers recovering **\$345** million.
- Some examples:
 - ***“LA doctor charged with \$33 million Medicare fraud”***
 - LOS ANGELES (AP) - A Hollywood doctor was charged Tuesday with conspiring to bilk Medicare out of more than \$33 million by charging for unnecessary services and medical equipment. (Associated Press, 6/3/2014)
 - ***“Medical code workers testify against Texas doctor”***
 - TYLER, Texas (AP) - Some medical workers responsible for treatment billing codes say they felt pressured by a Dallas-area doctor to allegedly falsify data to get more money from Medicare ((Associated Press, 7/22/14)
 - ***“Community Health paying \$98M to settle US claims”***
 - FRANKLIN, Tenn. (AP) - Community Health Systems Inc. has agreed to pay \$98 million to settle federal claims of improper billing by the hospital company. (Associated Press, 8/4/14)
 - ***“Georgia hospitals now facing criminal investigation”***
 - ATLANTA, Georgia --A whistle-blower's allegations that four Georgia hospitals -- including Atlanta Medical Center -- paid kickbacks to attract pregnant Medicaid patients have developed into a criminal case. (The Atlanta Journal-Constitution, 8/5/2014)

- EPL
 - Not slowing
 - Increasing damages
 - Employed Physicians
 - Other Medical Professionals
- Other
 - Breach of Contract
 - Business disputes

- New Organizations
 - ACO
 - Affiliations
 - JV's
- Business Model Changes
- Blending of Coverage
 - Medical Malpractice, MC E&O, D&O, Privacy/Tech, EPL, Regulatory
- Medical Necessity

| | D&O | EPL | MCE&O | Medical | Privacy |
|-------------------------------|-----|-----|-------|---------|---------|
| Peer review | X | | X | X | |
| Credentialing | X | | X | X | |
| Risk sharing & allocation | | | X | | |
| Claims services | | | | | |
| Access and sharing of records | | | | | X |
| Market share concentration | X | | X | | |
| Provider contracting | X | | X | | |
| HIPPA | X | | X | | X |
| Case Management | | | X | | |
| Data sharing | X | | | | X |
| Employing staff / physicians | | X | | | |
| Utilization review | | | X | | |

| | D&O | EPL | MCE&O | Medical | Privacy |
|----------------------------|-----|-----|-------|---------|---------|
| Antitrust | X | | X | | |
| Claims from the government | X | | X | X | X |
| Bodily injury | | | X | X | |
| Vicarious liability | | | X | X | |
| Discrimination | X | X | X | | |
| Failure to treat | | | X | X | |
| Privacy breach | X | | X | | X |
| Breach of contract | X | X | X | | |
| Shareholder | X | | | | |

- Changing the process
- Restriction of coverage
 - Potential sublimits
 - Co-insurance
- Rate increases
- Ask more questions
- Coordinate Coverage
- Caution on extensions
- Education



- Marketing of accounts
- Coordinate coverage
- Loyalty?
- Education

- Q&A