Judicial Enforcement – Introduction

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It is regrettable, but true, that compliance, enforcement and potential liability are part of the fabric of the health care industry today. When the cost of care was a much smaller fraction of State and Federal budgets, health care services could be “under the radar.” Quality and professionalism could be policed by the “guild.” Thus, in the past the Medical Society, hospital medical staffs, and (occasionally) law enforcement would intervene in egregious cases, generally involving malpractice. That era has passed. The economics of health care, and the attention of the public and government, has now made health care enforcement a key focus in the national health care delivery system. Physicians are not spared that focus. Malpractice insurance generally protects physicians from all but the psychic and reputational damages of negligence cases. But insurance does not regularly protect against the new regime of health care enforcement under fraud & abuse, overpayments, and other regulatory risks.

This issue contains several key perspectives on the liability and regulatory risks experienced by physicians and other health care providers in this new era. We have solicited contributions from three of the key health care enforcement professionals in the State—from perspectives of the Board of Medicine, the U.S. Department of Justice, and the Rhode Island Attorney General’s Medicaid Fraud and Patient Abuse Unit. These articles begin with an introduction from the perspective of a health care providers’ lawyer trying to put these risks into a broader context. That context is both informative and comforting: most physicians will never encounter the enforcement apparatus of government—if they play by the rules. But the rules are complex and changing. And the stakes continue to increase, not just in terms of the health and safety of patients, but also the fiscal implications of health care.

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