



**YOUR HEALTH LAW  
“TO DO” LIST FOR 2008**

**EVANS & PETREE, PC**



## “To Do” Lists

- 2005: I will try to be a better husband to Marge.
- 2006: I will not leave Marge.
- 2007: I will try for a reconciliation with Marge.
- 2008: I will try to be a better husband to Wanda.

## “To Do” Lists

- 2005: I will get my weight down below 180.
- 2006: I will watch my calories until I get below 190.
- 2007: I will follow my new diet religiously until I get below 200.
- 2008: I will try to develop a realistic attitude about my weight.

## “To Do” Lists

- 2005: I will not spend my money frivolously.
- 2006: I will pay off my bank loan promptly.
- 2007: I will pay off my bank loans promptly.
- 2008: I will begin making a strong effort to be out of debt by 2009.

## **“TO DO” List for Stark Area Items for 2008**

- Stark prohibits referrals and billings for designated health services stemming from direct and indirect relationships between a physician and any entity in which the physician or the physician’s family has a financial interest.

## **“TO DO” List for Stark Area Items for 2008**

- Make sure all billing, referral and provider contracts are in writing.
- Make sure all those provider contracts are for fair market value – look at the nature of the transaction, the location and the related dealings.

## **“TO DO” List for Stark Area Items for 2008**

- Review your “practice to practice” contracts. You may need to include the physician as a contracting party.
- Look ahead to see if any of the anti-markup provisions will affect your practice. Is it structured as a “purchased diagnostic test” and where is it performed?

## **“To Do” List of HIPAA Items for 2008**

- Make sure your group is in compliance with the Security Rules of the Act.
- ✓ Have you looked over the audit questions that HHS asked Piedmont Hospital?
- ✓ Establish policies for employees.
- ✓ Establish security access controls.



## **“To Do” List of HIPAA Items for 2008**

- Review and retrain employees on Privacy Rules.
- ✓ Are you training new employees?
- ✓ Are you reviewing existing employees annually?
- ✓ Do you keep records on disclosures?
- ✓ Do you have policies on how to handle subpoenas?

# HIPAA Compliance and Enforcement

- As of November 30, 2007:
  - 31,956 complaints received by HHS
  - 25,249 (79%) were resolved
  - 6,707 (21%) remain open
  - 418 complaints were referred to DOJ
  - 212 complaints were referred to CMS

## **“To Do” List of Health Quality Matters for 2008**

1. Determine how this movement – paradigm shift – is likely to affect your entity.
2. Do any of your payors have programs that will impact your entity?
3. How do you best get information on this trend to my medical personnel?
4. Rating physicians and hospitals – will it come sooner or later?

## **“To Do”: Enforcement Priorities Involving Healthcare Entities**

- The U.S. Department of Justice has been investigating whether Medtronic Sofamor Danek and Smith & Nephew Orthopaedics have violated federal anti-kickback laws. Memphis Business Journal – January, 2006
- MINNEAPOLIS – A whistleblower lawsuit alleges medical device maker Medtronic, Inc. improperly paid millions of dollars to more than a dozen doctors nationwide, prompting them to perform unnecessary spinal surgeries and otherwise affecting their judgment. The Washington Post – January 24, 2006

## **“To Do”: Enforcement Priorities Involving Healthcare Entities**

- A prominent surgeon in Wisconsin was paid \$400,000 a year by Medtronic for a consulting contract requiring him to work just eight days. Another doctor in Virginia received nearly \$700,000 in consulting fees from Medtronic for the first nine months of 2005. New York Times – January 24, 2006
- Medtronic and Smith & Nephew sign Corporate Integrity Agreements with HHS Office of Inspector General. July, 2007

# “To Do”: Relationships between physicians, clinics and industry

## Physician Payments Sunshine Act of 2007

- On the first day of each fiscal quarter, each manufacturer of a covered drug, device, or medical supply who provides a payment or other transfer of value, directly, indirectly, or through an agent, subsidiary, or other third party, to a physician, or to an entity that a physician is employed by, has tenure with, or has an ownership interest in, shall submit to the Secretary of HHS:

## **“To Do”: Relationships between physicians, clinics and industry**

- ✓ name of the physician, clinic or entity and address of the physician, clinic or entity
- ✓ the amount of the payment or value of what was received
- ✓ the date of the payment
- ✓ a description of what the payment was for

HHS Secretary shall publicly disclose all such reports.

## “To Do”: Relationships between physicians, clinics and industry

- Physician Payments Sunshine Act of 2007:
- Introduced: September 6, 2007.
- Current Status: Before Senate Finance Committee.
- Expected Impact: SEC will require similar disclosures by all publicly held companies in their annual and quarterly reports or on their websites.



# **“To Do”: Relationships between physicians, clinics and industry**

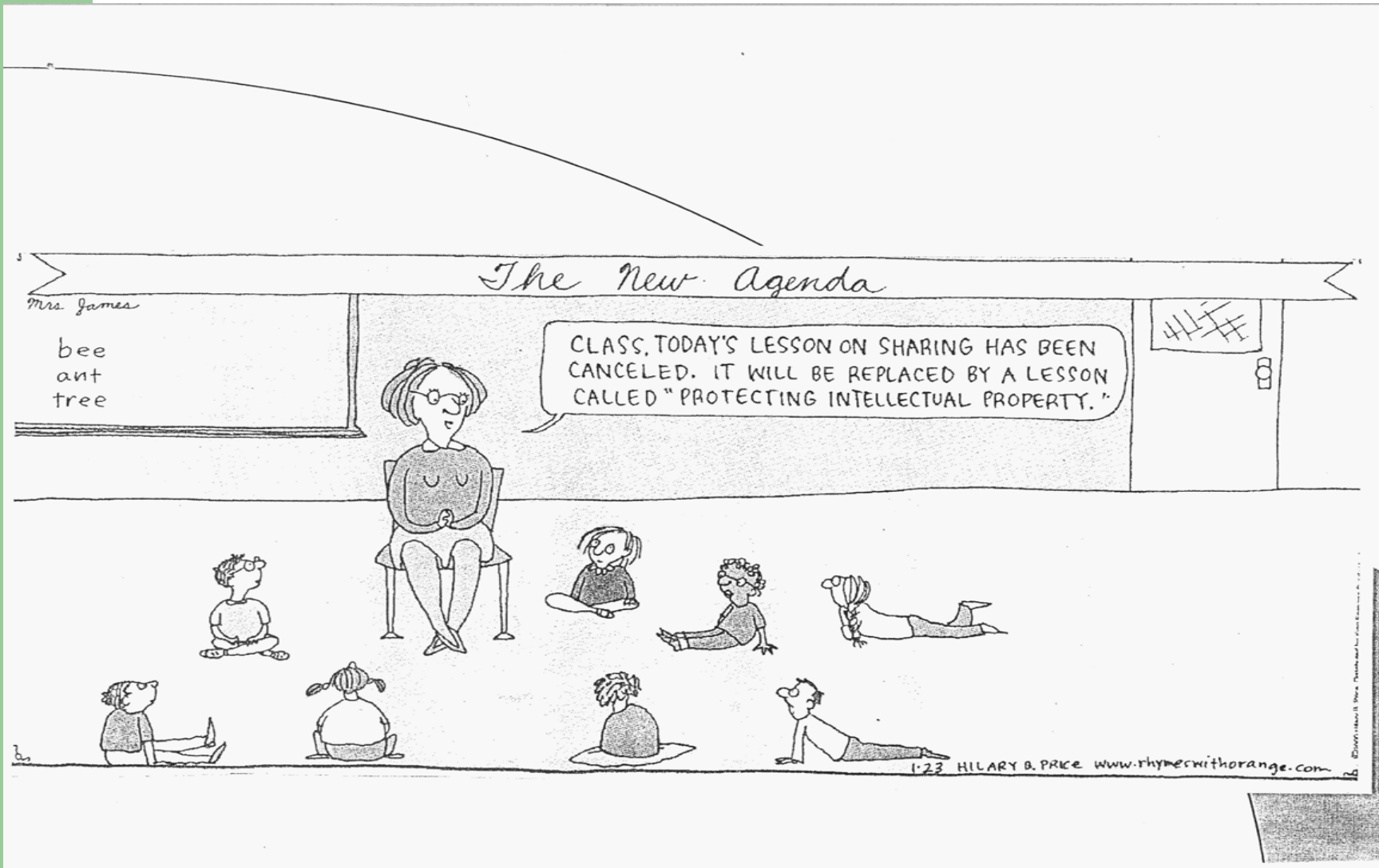
- Similar State Legislation:
  - Maine
  - Minnesota
  - Vermont
  - West Virginia

# **“To Do”: Relationships between physicians, clinics and industry**

## **AAOS Position:**

- Requires disclosure of relationships generally to patients and written acknowledgement by patients.
- No requirement to disclose the details of relationships.

# “To Do”: Intellectual Property



## **“To Do”: Payments to Physicians for On-Call Coverage**

- **OIG Advisory Opinion No. 07-10 was issued September 20, 2007.**
- **In past, OIG position was that since all medical staff bylaws require physicians to take calls, why should they get paid for something they already had to do?**
- **This opinion marked the first time OIG issued a written opinion related to the anti-kickback implications of on-call payments to physicians.**

## “To Do”: Payments to Physicians for On-Call Coverage

- Basic analysis of payments for on-call coverage:
  - ✓ Must show valid need for the program.
  - ✓ Must demonstrate that on-call payment arrangements are legitimate and reasonable.
  - ✓ Payments must be based on fair market value for actual services.
  - ✓ On-call rotation evenly balanced among doctors.
  - ✓ Documentation of all issues of the arrangement.

## “To Do”: Physician Non-Compete Agreements

- June, 2005, Tennessee Supreme Court effectively abolishes most non-compete arrangements (Murfreesboro v. Udom).
- In response, the Tennessee General Assembly amended statutory law to allow an employer the ability to restrict a health care provider from the practice of his or her profession upon termination of employment or contract if certain criteria are met.

# “To Do”: Physician Non-Compete Agreements

- Must meet four criteria:
  - 1) In writing and signed by both parties.
  - 2) Must be for two years or less.
  - 3) Maximum allowable area of restriction is the greater of a 10-mile radius from primary practice site or the county where it is located.
  - 4) If no geographic restriction, may still restrict provider from practicing at any facility where the employer provided services while provider was employed.

# “To Do”: Physician Non-Compete Agreements

- Specific circumstances where non-compete is not enforceable:
  - ✓ A provider who has been employed or under contract for at least 6 years.
  - ✓ Emergency medicine physicians and radiologists.

There are still many unanswered questions.



## **“To Do”: Tennessee Legislation to Watch in 2008**

- Legislative amendment relative to destruction of certain medical records.
- Legislation requiring written notification to patient of the consequences of changing or missing an appointment for medical imaging procedures.
- Legislation related to health care provider's charges to an uninsured patient.

## **“To Do”: Tennessee Legislation to Watch in 2008**

- Legislation requiring that parents or legal guardians be notified before a minor is provided with contraceptive procedures or supplies by medical professionals.
- Legislation related to health insurers rescinding or modifying pre-authorization given to a medical provider for an approved procedure.

## **“To Do”: Final Note on Tennessee Legislation**

- Public Chapter No. 446, effective July 1, 2007. Requires physicians to post information concerning assistance for teenagers involved in relationships that include dating violence – can combine with domestic abuse and elder abuse on one poster.



# **YOUR HEALTH LAW “TO DO” LIST FOR 2008**



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