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## **ACTION ALERT FOR HEALTH CARE CLIENTS AND FRIENDS** *Spring 2007*

### **SOUTH CAROLINA MEDICAL PRACTICE ACT REVISIONS**

On June 9, 2006, major changes to the SC Medical Practice Act were adopted. This law governs the practice of medicine in the state and therefore is of importance to every South Carolina physician.

While a complete review of the law is beyond the scope of this newsletter, a copy of the entire Act is available at [www.scstatehouse.net](http://www.scstatehouse.net). Here are a few of the more important changes:

For the first time, the Board of Medical Examiners is authorized to issue orders requiring evaluations to determine professional competency, not just to evaluate addiction problems or physical or mental disabilities.

Twenty-five grounds for misconduct are stated, as opposed to twelve grounds under the old law. New areas of focus include failure to comply with the Board in disciplinary investigations and proceedings and failure to appear before the Board when required to do so, disruptive behavior by physicians with patients and others that could adversely impact patient care, failure to maintain accurate and complete medical records and failure to provide those records in a timely fashion when lawfully requested to do so, and failure to report to the Board any adverse disciplinary action by another licensing authority, healthcare institution, government agency or other organization. The last item we believe illustrates the trend in "cascading effects" that can occur from an investigation, i.e., one investigation can lead to another and another until the physician is

overwhelmed with defense costs and time commitments in making defenses.

The Act does contain some provisions that physicians should welcome. The Board will have greater flexibility in making certain licensing decisions. Also, the Act provides additional due process protections for physicians in disciplinary proceedings, including the right to have an informal conference with Board representatives prior to the authorization of a Formal Complaint. The informal conference is confidential and a private agreement can be made without admitting misconduct.

The Act also addresses supervision of other practitioners and of unlicensed individuals. As to so-called Unlicensed Assistive Personnel (UAP), the physician may delegate tasks that are of a routine nature not requiring the skill of a licensed person. The physician must delegate the task directly to the UAP and not through another licensed practitioner, such as a nurse, and the physician should be immediately available if needed. This is defined as "being located within the office and ready for immediate utilization when needed."

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### **DHEC RECOMMENDING CHANGES FOR CON REVIEW**

On December 1, 2006, DHEC's official in charge of its CON review program, Joel Grice, spoke to an audience at the SC Medical Association. Mr. Grice stated that DHEC wants to make the following

changes to the CON review process:

- Have review responsibility for all MRI equipment (i.e., not just MRI equipment costing more than \$600,000)
- End DHEC review responsibility for changes of ownership of facilities that have previously been approved for CONs and are now operational
- Provide limitations on the definition of "affected persons" (this would effectively limit who could challenge or appeal DHEC decisions regarding CONs)
- Eliminate the \$600,000 threshold for CON review of purchased medical equipment and in its place identify items requiring review by modality rather than by cost considerations (see MRI equipment discussed above, which would be an example of this change)

Mr. Grice also noted that ASCs will remain controversial. The number of ASCs in South Carolina has doubled in the past 5-6 years and hospitals will continue to fight vigorously to prevent new ASCs from opening up.

The state legislature asked DHEC to hold off on these recommendations for this legislative session. We expect that DHEC will continue to pursue these changes with the legislature in the next year.

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**2007 RETIREMENT PLAN LIMITATIONS**

Annual Compensation Limit	\$250,000
Limit on Elective Deferrals	\$ 15,500
Catch-up Deferral Limit	\$ 5,000
Annual Additions Limit	\$ 45,000
(For Defined Contribution Plans)	

For calendar year 2007, an employer may deduct a contribution to a defined contribution retirement plan in an amount equal to 25% of the considered compensation of all eligible employees. An owner employee aged 50 or over participating in a 401(k) plan could potentially receive a contribution of \$50,000 (\$45,000 annual addition plus \$5,000 catch-up contribution) for plan calendar year 2007. The Pension Protection Act made many changes in the deductible contribution limits for defined benefit plans and combined plan deductible limitations (defined

benefit and defined contribution plan combinations). Please call us to discuss how the more favorable deductible limitations could benefit your company.

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**OIG TARGETED ENFORCEMENT AREAS FOR 2007- 2008**

The Office of Inspector General (OIG) recently announced areas on which it plans to focus its enforcement efforts over the next two years. The OIG stated that it is particularly interested in designated health services (DHS) provided to Medicare beneficiaries by physicians in their offices. OIG focus areas include:

- Physical and occupational therapy to determine whether services were reasonable and medically necessary and adequately documented and certified by the ordering physician
- "Incident to" physician services to determine the extent to which the services met standards for medical necessity, documentation and quality of care
- Proper coding for place of service on surgery claims performed in ASCs and hospital outpatient departments
- Determining whether surgeons are improperly receiving separate payments for E and M services during the global surgery period
- Appropriateness of imaging services in physician offices (OIG noted 20% annual growth for MRI, PET and CT scans over the last 6 years and over \$7 billion Medicare expenditure for these services in 2005)
- Whether durable medical equipment (DME) was reasonable and medically necessary for home health patients
- Relationships between billing companies and physicians and other Medicare providers
- Cardiography and echocardiography to determine whether billing was appropriately done for professional and technical components

We recommend that you carefully review your practices for compliance if you are providing services in any of the noted areas. Let us know if we can help in overseeing an outside audit or if you believe that there are any problems or concerns with current practices and procedures.

legal responsibilities and has a strong background in accounting and finance. In addition to the bar exam, he anticipates sitting for the CPA exam soon.

Allyson Reid joined the firm in November, 2006 as a legal assistant to Dick Jones and Mike Bridges.

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**RECENT STARK LAW CHANGES- ADDITION OF PET SCANS AND NUCLEAR MEDICINE**

**E-MAIL COMMUNICATIONS**

Effective as of January 1, 2007, PET scans and nuclear medicine have been added as Designated Health Services under the Radiology Services category of the Stark law. This change means that PET and nuclear medicine deals previously structured on the basis that these services fell outside of the Stark law must now be re-examined in order to avoid violating this law. If such arrangements cannot be made to fit within another Stark law exemption the arrangement should be unwound as soon as possible. The financial penalties under the Stark law are very harsh and Stark law violations can lead to other legal problems -- see the discussion above about the potential for a "cascading effect." There are many exemptions under the Stark law and it is quite possible that the benefits can be preserved with the appropriate review and any necessary adjustments to the arrangement. We will be happy to help with review and restructuring of any existing arrangements.

If you would like to receive future Action Alerts and other communications from us by e-mail please tell us by e-mailing Teri Carter at [tcarter@dobsonlaw.com](mailto:tcarter@dobsonlaw.com) and typing Action Alert in the subject line.

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**OUR NEWS**

Adam Lee will be joining our practice in August, 2007. Adam obtained his undergraduate degree from Clemson and his law degree from the University of South Carolina and has outstanding academic credentials. Adam will be handling a wide range of

As always, we appreciate the opportunity to be of service to you.

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*David W. Ball, J.D., LL.M., Editor*

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