# WHEN IT'S NOT BUSINESS AS USUAL:

## MAINTAINING PATIENT CARE DURING BANKRUPTCY

BY KATE BRADLEY

**IN NORTHEAST OHIO** and across the country, independent physician groups are increasingly being acquired by hospital systems. There are many reasons for this trend, among them, that physician groups are weary of the administrative headaches associated with shrinking insurance reimbursements, changing regulations and increased business costs. Physician groups that have either declined to assimilate into a larger hospital group or have not been an attractive target may find themselves struggling financially. In some instances, an insolvency proceeding becomes inevitable. Such proceedings contain complexities that do not occur in other industries.

Whether it is a reorganization, liquidation or sale of the practice, maintaining patient care remains of critical importance. This is dictated somewhat by the nature of the proceedings. For example, under a Chapter 7 liquidation, the practice is no longer operating and, therefore, no longer seeing patients. Even so, physicians have continuing obligations to their patients, including who will be responsible for: reading imaging results or interpreting bloodwork or other offsite test results; consulting with specialists or other referral physicians; returning patient phone calls; or ensuring that patients have access to and are able to transfer their medical records. The list of issues goes on. This can be an incredibly frustrating time for physicians and patients alike:

+ Physicians have to manage their ongoing responsibilities to patients at a time when they may no longer be drawing a salary;

+ Patients experience delayed responses to medical record requests, lack of access to their physician and general uncertainly regarding the future of their care.

Maintaining patient medical records can prove to be an inordinate task during the pendency of a bankruptcy. In an effort to stabilize the financial performance of the practice, staff members are often cut to the bare minimum and are then inundated with the increased administrative burden that a bankruptcy process adds. This often leads to taking shortcuts when it comes to the maintenance and updating of patient medical records. Payments to EMR providers may not be made as cash becomes limited. It is not surprising, therefore, that practitioners are vulnerable to running afoul of their responsibilities under the The Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as well as state regulatory requirements for patient medical records and patient privacy.

Practitioners and their staff may also find it difficult to balance their responsibilities under HIPAA with their obligation to operate in a transparent manner during the course of the bankruptcy. For example, a debtor in bankruptcy must publicly file lists of all creditors and counter-parties to contracts. But HIPAA requires physicians to protect individually identifiable health information. Special attention must be given to ensure that information prohibited by HIPAA (or applicable state law) is not inadvertently publicly filed with the court.

While it is true that an insolvency process is rife with pitfalls for violating patient care standards and increasing administrative burden, it can be an incredibly effective mechanism for restructuring debt, reorganizing the business or consummating a sale of the practice or its assets. Engaging the right professionals — attorneys, accountants and consultants — is critical. Experienced professionals will guide the practice through all stages of the process and keep physicians focused on the issue of patient care.

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