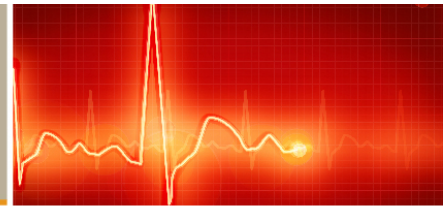


## Health Care INSIGHTS

*Legal Developments in the Health Care Industry*



*A publication of Pullman & Comley, LLC*

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### Surgical Resident's Suit Fails

When Saint Mary's Hospital declined to promote Dr. Zygmunt Golek from senior resident to chief resident, Dr. Golek sued. Although he was offered the opportunity to remain at Saint Mary's Department of Surgery as a fourth year clinical resident, he instead sought damages against the hospital, the chief of surgery and the Accreditation Council for Graduate Medical Education (ACGME).

Dr. Golek was unable to establish that the hospital had acted inappropriately or that ACGME owed him any obligation to advance his cause in Waterbury. Reflecting the difficulty of turning disappointing PGY medical education decisions into money damage claims, a unanimous three judge panel of the Connecticut Appellate Court rejected all of his claims.

The conclusion of the Court, while somewhat lengthy, is set forth below:

The record in this case documents an unfortunate disagreement between a senior resident in surgery and a training hospital. Despite the fact that the plaintiff had, in many ways, performed well in the hospital's surgical residency program, the hospital relied on significant documented deficits in his more recent tests to deny the plaintiff the contract for chief resident that he had expected to receive. The plaintiff's unwillingness to accept a different contract led him to sever his relationship with the hospital and, inferentially, deprived him of future professional opportunities that he might otherwise have expected to enjoy. On the record before us, none of the defendants cited by the plaintiff bears legal responsibility for this outcome, regardless of how disappointing it

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may be for the plaintiff.

*Golek v. Saint Mary's Hospital, Inc., et al.*, Appellate Court of Connecticut, Docket No. AC-32325, January 24, 2012.

Elliott B. Pollack, Esq., at (860) 424-4340 or [ebpollack@pullcom.com](mailto:ebpollack@pullcom.com) can reply to questions about the issues in this case.

## Healthcare Reform Impact Noted

On January 12, 2012, U.S. Secretary of Health and Human Services, Kathleen Sebelius ordered Trustmark Life Insurance Company to roll back healthcare insurance rate increases of 13 percent affecting policyholders in Alabama, Arizona, Pennsylvania, Virginia and Wyoming. The order was issued under the 2010 Affordable Care Act which grants to the Secretary the ability to order carriers to rescind excessive rate increases or to justify them.

The Affordable Care Act requires carriers to spend a minimum of 80 percent of premiums on medical care and improvements, a statistic referred to in the new law as the medical loss ratio.

For further information, please contact Michael A. Kurs, Esq. at (860) 424-4331 or [mkurs@pullcom.com](mailto:mkurs@pullcom.com).

## New Hospital Affiliation Announced

Saint Francis Hospital and Medical Center (Hartford) and Johnson Memorial Hospital (Stafford Springs) recently announced their intention to affiliate assuming the issuance of regulatory approvals from the Connecticut Office of Healthcare Access and the Attorney General. While the hospitals will maintain separate licenses and boards of directors, they contemplate integration of the medical staffs and financial support from St. Francis' parent company to Johnson for a maximum of five years.

In the last few years, St. Mary's Hospital and Waterbury Hospital announced their intention to combine with a for profit company; Yale New Haven Hospital and The Hospital of St. Raphael have also announced plans to merge.

## Impact of Financial Incentives

The November 9, 2011 issue of the *Journal of American Medical Association* addresses the linkage between physician billing and cardiac stress testing after coronary revascularization (angioplasty). The researchers examined records of almost 18,000 adults "who made cardiac-related outpatient visits within 90 days after coronary revascularization." Eighty-six percent of these patients had no reported symptoms.

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Of the patients who underwent stress testing within 30 days after that visit, physicians who could bill for the stress test were more likely to order it.

While the American College of Cardiology does not recommend routine stress testing after revascularization, the fact that 12 percent of patients in this category did receive such testing "raises the disturbing possibility that, in some cases, financial incentives could be influencing in quality of care," reports Dr. Harlan M. Krumholz in *JournalWatch.org*.

The editors of Health Care Insights trust that Dr. Krumholz is not overly surprised by these data in view of the scores of published studies which confirm a linkage between financial incentives and physician-ordered procedures resulting from self referrals.

## "Why Hospital-Owned Medical Groups Lose Money"

A brief but insightful article by David N. Gans in the April 2012 issue of *MGMA Connexion* offers some interesting and provocative answers to the question its title poses.

Mr. Gans notes that "just like the fashion industry, healthcare goes through repeating cycles. [O]nce again, many hospital systems are pursuing strategies to purchase physician practices and expand the size of their medical groups."

He observes 20 years ago many hospitals hired physicians or to acquired medical groups and subsequently experienced losses, and this trend is repeating itself again. While physician-owned multispecialty practices report profits per physician, hospital system-owned multispecialty practices report yawning losses – almost \$190,000 on average in 2010.

Mr. Gans offers some potential explanations: lower productivity, less advantageous payor mixes, heavier focus on under - and uninsured patient populations and the shifting of revenue from physician practices to the hospital setting in order to recover facility fees.

It remains to be seen whether this "new" trend will again go out of fashion in a year or two.

Karen A. Daley, Esq. at (203) 330-2143 or [kdaley@pullcom.com](mailto:kdaley@pullcom.com) can reply to questions about the concerns presented by Mr. Gans.

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