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Communiqué

*for Health Industry Clients
on the Legal Retainer Program*

Non-privileged physicians making orders for diagnostic procedures

We have been made aware that some hospitals are receiving requests from physicians who do not have privileges to make orders for diagnostic procedures.

It is our opinion that this should not be permitted as it breaches the regulatory obligations under the *Public Hospitals Act*.

Subsection 24(1) of Regulation 965 of the *Public Hospitals Act* requires that every order for treatment for a diagnostic procedure of a patient be in writing and be dated and authenticated by the physician giving the order. The order may be given by telephone, however, telephone orders must be authenticated on the first visit to the hospital of the ordering physician.

In order to receive hospital services, an individual must be either a patient or an out-patient of the facility. Section 1 of the *Public Hospitals Act* defines an out-patient as "a person who is received in a hospital for examination or treatment or both, but is not admitted as a patient". A person who is sent to hospital for the purposes of having a test or procedure carried out by hospital staff will be considered an out-patient for the purposes of the Act.

Subsection 11(3) of Regulation 965 provides that no person shall be registered in a hospital as an out-patient, except on the order or under the authority of a physician or midwife who is a member of the medical staff; a member of the dental staff; or a member of the extended class nursing staff.

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Note: This communiqué is provided as an information service to our clients and is a summary of current legal issues of concern to Health Industry Clients. Communiqués are not meant as legal opinions and readers are cautioned not to act on information provided in this communiqué without seeking specific legal advice with respect to their unique circumstances. Your comments and suggestions are most welcome and should be directed to Kathryn Frelick, Coordinator, Legal Retainer Program.

Subsection 1(1) of Regulation 965 defines "medical staff" as those physicians to whom the board has granted privileges for the purpose of diagnosing, prescribing for or treating patients in the hospital. ADental staff® is defined as the dentist or dentists to whom the board has granted the privilege of attending patients in the hospital in co-operation with a member of the medical staff. AExtended class nursing staff® is defined as those registered nurses in the extended class to whom the board has granted privileges with respect to the ordering of diagnostic procedures for out-patients in the hospital.

In light of the above, it is our view that not only is a physician order required, but that the physician must have privileges at the hospital before the hospital may accept an order for a drug screen or other laboratory investigation to be performed at the hospital. If the Hospital wishes, a designated privileged physician could be responsible to authorize diagnostic testing. The non-privileged physicians would be under the authority of the privileged physician. If you wish to pursue this avenue please contact us to discuss the various implications.

About the Author:

Rebecca Durcan is a lawyer practicing in our Health Industry Practice Group and, along with Kathryn Frelick, is primarily responsible for the Legal Retainer Program. Rebecca's focus is on advocacy, regulatory and health policy issues.

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