

THE Journal

OF THE ARKANSAS MEDICAL SOCIETY

Vol.102. No. 7

JANUARY 2006



The
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Over Economic
Credentialing

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Baptist Health recently adopted a policy that is impacting the lives and practices of area doctors who have invested in private hospitals. If you were to guess that Baptist doesn't want them to do that, you'd be right. Mark Lowman, Baptist Health's vice president of strategic development, described and defended the new policy when he stated, "In May 2003, the Baptist Health Board acted within its power and fiduciary responsibility to adopt an Economic Conflict of Interest Policy prohibiting privileges for physicians who have ownership or investment interests in competing hospitals."

The policy was adopted not long before the opening of Arkansas Surgical Hospital (ASH) – just the kind of competition Baptist didn't want.

"The policy – not directed toward any specific hospital or for that matter, for profit hospitals – is intended to protect the mission of our nonprofit community hospital, applies to all of our professional staff at all of our facilities, and is consistent with what is required of our Board and employees," said Lowman. "The policy was adopted to counter the proliferation of limited service hospitals which have the effect of eroding patient access to a full range of health care services including trauma centers, psychiatric units, emergency departments and care for the uninsured. The federal General Accounting Office has concluded that limited service hospitals are 'siphoning

off the most financially rewarding portions of community hospitals business.'"

So, is the new policy about protecting service choices for patients or about protecting profits for Baptist? Is it the result of physicians taking control of their own practices or plotting to take core business from community hospitals? The American Medical Association (AMA) defines economic credentialing (www.ama.org) as "the use of economic criteria unrelated to quality of care or professional competence in determining a physician's qualifications for initial or continuing hospital medical staff membership or privileges." They denounce the practice, stating, "The AMA opposes the use of economic criteria unrelated to patient care to grant privileges."

There is considerable debate on both sides. No matter, Baptist Health's Economic Conflict of Interest Policy is being enforced. Considering the language of the policy, it probably won't surprise you that someone investing in ASH, also called the spine hospital, would be in trouble. Indeed, even Steven Cathey, MD, Baptist Health's own former chief of medical staff and surgery section, had his privileges revoked as a result of his financial interest in ASH.

It's safe to say that Steven Cathey disagrees with the policy and with Baptist's treatment of him, but in lieu of the policy, it's not surprising that he was targeted. What is surprising, at

least to some, is that Baptist not only revoked the privileges of Steven Cathey, but also decided to revoke his wife's privileges. Baptist administration notified gynecologist Janet Cathey three weeks before the opening of ASH that her privileges would be revoked upon ASH's opening. The puzzle is *why*. Janet Cathey has no connections to the spine hospital. "My husband and I have very different practices," said Dr. Cathey. "We have always kept our practices totally separate and have always made our practice decisions independently. We were stunned when I was informed that Baptist would apply the economic credentialing policy against me for his decision to invest in ASH. Privileges are traditionally based on education, competence, quality of care, peer relationships and continued education. The idea that privileges are based upon economic reasons and not quality of care is whole new ground."

Baptist answers the question of *why* in the language of the policy. They prohibit privileges for physicians with ownership or investment interest in a competing hospital. That goes for "those with any interest, directly or indirectly, in real or personal property used by a competing hospital." The policy states that "'Indirect ownership or investment' means a situation where between the practitioner (or the practitioner's immediate family member) and the competing hospital there exists an unbroken chain of any number of per-

sons or entities having ownership or investment interests between them." It goes on to define immediate family member as "husband or wife, birth or adoptive parent, child, sibling, step-parent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, brother-in-law, sister-in-law, grandparent, grandchild, spouse of grandparent and spouse of grandchild." In other words, according to Baptist's policy, Janet Cathey is guilty by association with – of all people – her husband. Lowman noted, "The 'indirect,' or family member provision is consistent with federal anti physician self referral laws as well as a standard provision on virtually all conflict of interest policies."

Steven Cathey's privileges are one thing. At least he has his work at ASH to fall back on. But Janet Cathey? She's in a pickle. Although she has privileges at St. Vincent, many patients can't see her there without paying

increased costs. Dr. Cathey pointed out that even the new Any Willing Provider legislation doesn't help in this situation because it doesn't apply to self-funded insurance, which many of Dr. Cathey's patients have. Patients with self-funded insurance will have to go to another hospital to see Dr. Cathey or find another gynecologist, which defeats the very purpose of Any Willing Provider.

Referring her patients to her husband's investment interest isn't an option, either. "I could not then, nor can I now tell you anything about ASH. I have never considered doing surgery there. It's a specialty hospital, and gynecology is not the specialty," said Dr. Cathey.

Though they've taken action to enforce the policy against Janet Cathey, Baptist Health has yet to successfully revoke her privileges. After Baptist's administration notified Dr. Cathey of their decision to revoke her

privileges, she asked the court to intervene. Dr. Cathey is now the plaintiff in a lawsuit against Baptist Health. She chose Mitchell, Blackstock, Barnes, Wagoner, Ivers & Sneddon, PLLC (MBBWIS) of Little Rock to represent her. Her motion is now before Judge Kilgore, who issued a temporary restraining order to prevent Baptist from revoking her privileges until the issue is decided. "Because of the court injunction, Dr. Cathey still has privileges at Baptist and is still able to use all of Baptist's products at this time," said Emily Sneddon of MBBWIS.

"Baptist is seeking to take away Dr. Cathey's privileges solely because of her husband's investment in the spine hospital. We are asking the court to find the economic credentialing policy illegal and therefore unenforceable and to issue a permanent order preventing Baptist from using the policy to revoke Dr. Cathey's privileges at Baptist Health." The law firm set out in

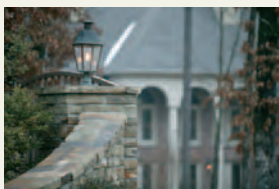
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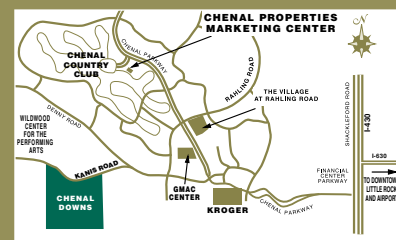


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its briefs some reasons why they feel the policy should be ruled illegal. Among those, they say the policy illegally restrains free trade and impermissibly interferes with the doctor-patient relationship.

Dr. Cathey never thought she'd sue Baptist Health, her main turf for practicing medicine for two decades. "The decision to file suit was made with great anguish, and only after I was sure there was no other option," said Dr. Cathey. "During the 19 years that I have been in private practice in Ob-Gyn, I have built my practice around Baptist Health. Baptist was my personal choice for health care. My children were born at Baptist North Little Rock. That's where I took them when they needed stitches or had croup. Steve and I appeared in promotional ad campaigns and were in television commercials for Baptist. It was only a few years ago we chaired Bolo Bash, the annual Baptist Foundation fundraiser."

Aside from the emotional ramifications of the actions being taken against her, Dr. Cathey could not ignore how losing her Baptist privileges would affect her patients – and her livelihood. "The immediate issue was not simply a matter of hospital admissions. I have privileges at St. Vincent's, too. But as a stipulation to participate in insurance contracts with companies in which Baptist Health is the 'preferred provider,' I must have active privileges at a Baptist Health facility.

"When I filed suit, my primary concern was to protect the relationship I had established with these patients, many of which I'd seen for almost 19 years." Dr. Cathey has experienced a trusting doctor-patient relationship from both sides. Her patients place their trust in her, and she has, in years past, placed her faith in her own doctors. As a young child,

Dr. Cathey suffered from serious heart complications. Even at age five, she can remember looking forward to seeing her heart doctor. Was the importance of the physician-patient relationship imprinted on her mind at age five? "I don't know," she said. "I've never really thought of it in those terms. I can remember how I did love to see Dr. Char as a child and looked at her as a security blanket in what could have been a terrifying situation," she recalled. "If it made a big deal to me to see my doctor as a child of five or six, it humbles me even more to think what my relationship means to a patient after following her for years, delivering her children, going through life's trials. Some confidences are hard for a patient to share with even one person in a lifetime, let alone with someone new every few years when insurance changes. It's an awesome responsibility to think you hold a person's trust."

The Arkansas Medical Society (AMS) disagrees with economic credentialing and the implications it has on the future of health care in Arkansas. "Physicians need to take a stand against economic credentialing before it's too late," said David Wroten, AMS executive vice president. "Unfortunately, some physicians think this is just about ownership in hospitals, so they think it will never impact them. They're wrong. In other states, hospitals have adopted policies prohibiting ownership interest in other ventures such as outpatient surgery centers, imaging centers, diagnostic labs and many other services. Janet Cathey's case has far reaching implications for all physicians."

Wroten went on to question Baptist's reasoning for the policy. He said, "Baptist Health states that this policy is intended to preserve access for patients. Do you believe Janet Cathey's patients feel protected?" **AMS**

Clay W. Ferguson, MD

Clay W. Ferguson, MD, has a passion for many things. He delights in history, family medicine, and the people of Nashville, Arkansas. Although he grew up in Little Rock, Dr. Ferguson has always wanted to practice in the Nashville area. Since 2002, he has accomplished that goal through his private family medicine practice there. "I relocated to Nashville from Springhill, Tennessee. My mother and father are from the Nashville area, and I always hoped to one day come back and practice in Nashville," said Dr. Ferguson.

Dr. Ferguson's interest in medicine dates back to his college days in Arkadelphia. During that time, he worked as an emergency medical tech. "The opportunity to work with emergency room physicians in Arkadelphia led me to pursue a career in medicine," said Dr. Ferguson, who went on to attend medical school at UAMS.

His emergency room experiences served him well when from 1994-1997, he served on active duty in the U.S. Navy. Part of his service was that of battalion medical officer with the U.S. Marine Corps. One day, his emergency skills were duly tested when during a deployment to Albania, a marine was shot. "I was first on the scene to provide care and stayed with the Marine for the next 48 hours. I also worked closely with the Albanian physicians," recalled Dr. Ferguson, whose bravery and service in that instance won him a Commendation from the U.S. Navy.

After his service in the Navy, Dr. Ferguson completed his residency at Texarkana's Area Health Education Center – Southwest. He then entered private practice in Springhill, Tennessee, where he practiced until relocating to Nashville.

Dr. Ferguson is a Board Certified Family Physician through the American Academy of Family Physicians, and is

working on his goals for the Nashville community. As part of his goal to provide quality care to people in his area, Dr. Ferguson is helping with efforts to establish a model community hospital in Nashville. He is part of a Howard Memorial Hospital Foundation Special Events Committee that is working to establish funds that will ultimately pay for a new hospital. "The cornerstone of any community is a strong hospital," said Dr. Ferguson. "We have a 25-bed community hospital that is sufficient for our current needs. However, the building is 65 years old and will not meet the needs in the near future. Right now we are working on constructing a new, critical access hospital.

"I also look forward to establishing an indigent clinic, which will provide charitable care for our citizens in need. There are many people in this area who through their circumstances, have found themselves in need of quality, compassionate medical care. It is my hope that through the indigent clinic these people will be identified." The indigent clinic is still in early planning stages and will be a collaborative community effort.

Dr. Ferguson also enjoys a love of history, which he credits, in part to his father, John L. Ferguson, who recently retired from his post as Arkansas state historian. "My father encouraged the study of history at a young age. However, I grew to appreciate this more through my own research and collections," said Dr. Ferguson, who collects military artifacts. His hobby has led him to study historical architecture, particularly 19th Century and mid-20th Century designs of Frank Lloyd Wright and Fay Jones. "My interests are not so much limited to Frank Lloyd Wright and Fay Jones, but to the sweeping changes that encompass the 20th century – among them, technology, art and architecture." He also studies, and

even participates in historical preservation and restoration. "I took the plunge in restoring a 1910 Colonial Revival house – an unfortunate consequence of watching too much HGTV. I foolishly have opted to live here for the past two years while restoring it [the house]."

Dr. Ferguson learns more about history from his own patients. He is thankful for the opportunity to treat and help all sorts of patients, but he is particularly captivated by the geriatric population. "I enjoy my geriatric patients. They have lived through a period of American history that interests me. They have taught me a lot about life in rural Arkansas," said Dr. Ferguson.

Everyone has something that keeps him going. For Dr. Ferguson, it's his Christian faith. As he works hard at caring for his patients, restoring a piece of history, and building a better health care community in Nashville, Dr. Ferguson relies on his religious beliefs for the inspiration he needs to be his best. "My beliefs inspire me to be a better person. I lead an imperfect life, but my goal is to bring glory to God."

AMS

