

Coalition Building and Protecting Urological Interests in PA from Legislative and Regulatory Attacks

2010 Annual Meeting of the
Urological Association of Pennsylvania

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Lancaster, PA
October 16, 2010

Defending Urology: Katten's Perspective

- Counsel to state/federal coalitions of urologists
 - Over 1,000 urologists in 18 states (groups from 4 to 103)
 - Three state-based urology coalitions (MD, NJ and PA)
 - National coalition (Access to Integrated Cancer Care)
- Litigated highest profile cases attacking ancillary services
 - Maryland: In-office MRI, CT, RT
 - Washington: Physician-owned physical therapy services
- Common theme: protect physicians' ability to furnish and patients' right to receive "in-office ancillary services" (imaging, RT, pathology, etc.)

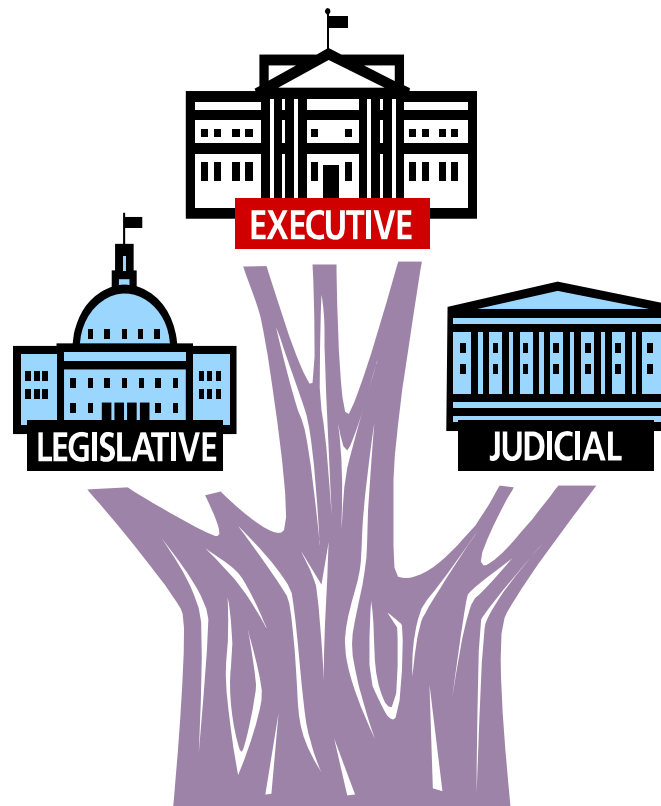
The Need to Go 2-0

- Federal law does NOT preempt state law in health care
- States can eliminate/restrict what otherwise is protected federally
- Easier to change rules of the game at state level
 - Fewer \$\$\$ required to gain access/influence debate
 - Easier for opponents to steal the mark

Urology Under Attack: Starting with a Simple Premise



Urology Under Attack: All 3 Branches of Government Critical



- Executive Branch: State Medical Licensing Boards and Attorneys General Critical to State-Based Attacks on Urology and Other Specialties
- Legislative Branch: Strategies for Offense and Defense
- Judicial Branch: Issues of Statutory Interpretation Impact All, Not Just Parties to Case

Urology Coalition Building

- Critical to adopt an “All for One and One for All” approach
- State specialty societies are one natural vehicle
- Many battles exceed financial resources of state societies
- State-based urology coalitions can fill void/complement efforts of state specialty society
 - Maryland Urologists for Patient Access to Care
 - New Jersey Patient Care and Access Coalition
 - Urologists for Patient Access to Care (PA)
- Multi-specialty coalitions can be of value on certain issues

Urology Coalition Building: The Maryland Example

Maryland Urologists for Patient Access to Care - 2007

- Near-elimination of in-office pathology in State
 - College of American Pathology puts forward bill seeking monopoly over pathology services for independent labs
 - Chesapeake Urology Associates (46 doctors) hires counsel and lobbyists on its own – very limited time frame
 - CUA mobilizes urologists across Maryland to contact legislators on key committees – bill does not even get vote in Committee
 - A key to success was relationship of a 4-physician urology group in western Maryland with bill sponsor
- Success convinced urology groups to unite on legislative advocacy

Urology Coalition Building: The Maryland Example

Maryland Urologists for Patient Access to Care - 2007

- The birth of a statewide urology coalition
- Coalition formed in reaction to threat to urology
- Incorporated under Maryland law
- Elected seven-member board of directors and officers
- 10 practices from across the State
 - Urban, suburban and rural practices
 - Urologists from academia
 - 90+ urologists (groups ranging from 4 to 46)
- Hired lobbyists and legal counsel, created state PAC

Urology Coalition Building: The Maryland Example

Maryland Urologists for Patient Access to Care - 2008

- Pathology bill returns
 - Claim by CAP is that bill reformulated as anti-markup bill
 - Bill still contains provisions that threaten in-office pathology
- MUPAC testifies in opposition to bill (power of unified voice)
 - Senate Health Committee unwilling to kill bill second time
 - Committee Chair presses MUPAC to be problem solver
 - MUPAC crafts amendments that preserve anti-markup concepts while maintaining in-office pathology
 - Tremendous respect earned from House/Senate leadership

Urology Coalition Building: The Maryland Example

Maryland Urologists for Patient Access to Care – 2009-10

- MUPAC builds brand in Annapolis
- Three years of consistent presence
 - Continues use of PAC to support legislators who are committed to protecting physician/patient interests
 - Co-sponsors legislative dinner for members of House and Senate Health Committees
 - Hosts legislators at urology practices
 - Testifies in support of legislation to protect in-office MRI, CT, Radiation Therapy alongside other specialties

Urology Coalition Building: Value in a Multi-Specialty Approach

Urology Teaming with Other Specialties – Maryland Case Study

- Maryland Patient Referral Law
 - Enacted in 1993 (state counterpart to federal Stark)
 - MRI, CT, RT carved out of in-office ancillary exception
 - Distinct Exemptions (direct supervision, group practice)
- 1993-2004: Non-radiology practices furnish in-office MRI, CT, RT
- 2004: Board-certified radiologist serves as Chairman of Board of Physician (no urologist on Board)
- Board relies on Attorney General opinions and takes position that urologists and other non-radiologists prohibited from furnishing in-office MRI, CT

Urology Coalition Building: Value in a Multi-Specialty Approach

- The Issue: Whether the Maryland Patient Referral Law's carve out of in-office MRI, CT and RT for radiology in one exemption trumps ability of treating physicians to offer services under other exemptions.
- Duys v. Orthopaedic Associates P.A.
 - 2005 case filed against 3-physician orthopaedic practice
 - Coalition of urology, orthopaedic, emergency medicine groups came to defense of defendant group practice
 - Court ruled for physician group – carve out of MRI, CT from one exemption does not trump other exemptions

Urology Coalition Building: Value in a Multi-Specialty Approach

- The effect of the Duys case
 - Victory protected against insurer reimbursement claims
 - Urologists and non-radiology practices have continued in-office imaging and radiation therapy on strength of Duys for five years
 - Board of Physicians' adverse ruling in 2006 and circuit court affirmance created split with Duys
 - Issue now before Maryland's highest court (Potomac Valley Orthopaedic Associates v. Board of Physicians)
 - Critical amicus curiae support from AUA, AACU and other national medical associations

Urology Coalition Building: The New Jersey Example

Spring 2008

- Urology not organized at State level
- New Jersey's patient referral law being amended
 - Driver of amendments related to ASC ownership
 - Hospitals sought to use as vehicle for elimination of urology-owned prostate cancer centers
 - Proposed amendments would have shut down development of in-office IMRT
- Coalition formed in reaction to threat to urology

Urology Coalition Building: The New Jersey Example

New Jersey Patient Care and Access Coalition

- Catalyst was need to defend integrated cancer care model
- Started with three urology groups/70 doctors
- NJPCAC today – The Voice of Urology in NJ
 - 200 urologists
 - Six urology groups + The Stone Center of New Jersey
 - PAC, lobbyists, legal counsel
 - Competitors working for common good for patient care

Urology Coalition Building: The New Jersey Example

New Jersey Patient Care and Access Coalition

- Influenced process in Codey Act amendments to preserve in-office IMRT
- Teamed with AUA to preserve reimbursement of ultrasound
- Playing critical role regarding Out-of-Network Legislation
- Hosted Prostate Cancer Awareness Month Event in Trenton
- Legislator tours of every NJPCAC member entity
- Great Prostate Cancer Challenge 5k Event for 2011
- Website (www.njpcac.org)

Urology Coalition Building: The Pennsylvania Example

Urologists for Patient Access to Care

- A proactive approach – built infrastructure **prior** to threat
- Recognized state-level threats to ancillary services in surrounding states
- Incorporated under PA law
- Formed with six urology practices/90 physicians
- Hired lobbyists to monitor issues relevant to urology

Urology Coalition Building: The Pennsylvania Example

Urologists for Patient Access to Care

- The threat materializes ... spring 2010
- Lobbyists learn of physician self-referral legislation
 - Plan was for bill to be heard and voted out of Insurance Committee in late winter
 - Receive draft bill two weeks prior to Committee hearing
 - Bill is identical to Maryland Patient Referral Law
 - Would have posed same threat to MRI, CT, RT as exists in Maryland
 - Same attempt had been made in Washington State in 2008
 - Copycat legislation not uncommon

Urology Coalition Building: The Pennsylvania Example

Urologists for Patient Access to Care

- Immediate mobilization by Coalition
- Legal counsel retained to assist in reshaping legislation
- 90-minute meeting with Chairman of Insurance Committee and Chief Staffer to Committee
- Result is elimination of “Maryland Copycat” Bill
- UPAC was first state medical organization to respond to threat
- UPAC viewed as honest broker – counsel works with Committee Chair to develop alternative proposal (HB 2522 – incorporation of federal Stark as PA self-referral legislation)

Lessons Learned from Urology Battles: The Relevance of State Medical Boards

- Typically has enforcement authority (including interpretive authority) over patient referral laws, medical practice acts
- Pennsylvania State Board of Medicine
 - 12 members appointed by Governor
 - 6 medical doctors, 1 physician assistant, nurse midwife/acupuncturist/perfusionist/respiratory therapist, 2 public members, 1 Secretary of Health Rep, 1 Commissioner
 - Current physician composition (Gastroenterology/internal medicine, nephrology/internal medicine, internal medicine, epidemiologist, ob/gyn, anesthesiologist, psychiatry)
 - No urologist on Board

Lessons Learned from Urology Battles: The Relevance of Attorneys General

The Influence of State Attorneys General

- Lawyers from AG offices typically serve as counsel to state licensing boards
- Licensing boards defer greatly to legal opinions of AGs
- AG Opinions tend to serve as basis for action by licensing boards on patient referral laws, medical practice acts, anti-kickback statutes, etc.

Lessons Learned from Urology Battles: Beware of the “Small Case”

Size Doesn't Matter

- The most significant cases involving attacks on ancillary services have targeted small practices
 - Imaging Issue – Lawsuit in Maryland filed against 3-physician orthopaedic practice
 - Physical Therapy Issue – Lawsuit in Washington State filed against 5-physician orthopaedic practice
- Rulings on statutory interpretation have precedential effect
- State specialty societies can play significant role in cases

Ancillary Services Under Attack: The Impact of the Legislative Branch

- Cultivate legislator relationships before you have an “ask”
- Obtain broadest possible support in urology
 - Geographic diversity is key -- Urban/suburban/rural
 - Small practices critical to long-term advocacy efforts
- Identify opportunities for coalition building across specialties
 - Treating physicians should team together on imaging battles
 - Imaging/radiation therapy battle in Maryland obtained support from AUA/AACU
 - AUA has lent support on state battles in New Jersey

Urology Under Attack: “Be at the table, not on the menu”



Disclosure Statement

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If you have any questions about these materials or about battles over ancillary services being fought on the state or federal levels, generally, please feel free to contact Howard R. Rubin, Esq., Katten Muchin Rosenman LLP, 2900 K Street NW, North Tower - Suite 200, Washington, DC 20007-5118, (202) 625-3534 .