

ADVANCED LEGAL RESEARCH – FALL 2006

PROFESSOR WRIGHT

ASSIGNMENT #1

FEDERAL RESEARCH

Research Assignment

You've just finished your first year in practice at a small Silicon Valley law firm. You're working mainly with the firm's three construction litigation specialists, but you're called upon to help out the firm's transactional team when they're short-handed. One of the firm's health care partners, Susan Andover, has just landed a new client, Calvinist Health Care. Calvinist owns and operates 10 hospitals near Eureka, California.

Susan informs you that she has just received a request from Calvinist to assist in structuring a physician recruitment deal for one of its hospitals, and she asks for your assistance in determining the legality of the proposal. The deal details are as follows:

Calvinist's Merit Hospital is located in Auburn, California. The hospital has begun recruitment talks with a physician, Dr. Alexa Sullivan. Dr. Sullivan moved to Auburn from Chicago six months ago, but she has yet to practice medicine in Auburn. She just completed her internal medicine residency at a Chicago hospital when her husband, a chemistry professor, received an offer to teach at a prestigious liberal arts college near Auburn. Dr. Sullivan followed her spouse to Auburn, but doesn't have sufficient funds to set up a medical practice on her own. She did not contact Merit Hospital to discuss a recruitment deal until after she arrived in Auburn. Dr. Sullivan is not interested in joining the existing internal medicine practices in town because she feels that they are too stodgy and traditional. She's intrigued by alternative medicine and wants to eventually enhance her practice with some alternative techniques.

Merit Hospital would like to enter into a recruitment agreement with Dr. Sullivan with the following terms:

1. Dr. Sullivan will set up her solo internal medicine practice in an office building located approximately 6 blocks from Merit Hospital. The office building is not owned by Merit Hospital, and Dr. Sullivan will rent an office there;
2. If Dr. Sullivan's monthly income from her practice falls below \$12,000 a month, Merit will make up the shortfall during the first 18 months of her practice, but it will not be obligated to pay more than \$100,000 to cover any shortfalls during this period. Merit also has no obligation to pay anything to Dr. Sullivan if her monthly gross receipts equal or exceed \$12,000 in any month during the first 18 months of the agreement;
3. Dr. Sullivan will receive start-up expenses of \$50,000, which will help to cover the purchase of office equipment, office rent, and the hiring of clerical personnel;
4. She will receive a one-time signing bonus of \$6,000;

5. Dr. Sullivan will join the Merit Hospital’s medical staff and agrees that she won’t join any other area hospital’s medical staff for the first 18 months of her practice;
6. Merit will cover all of Dr. Sullivan’s moving expenses for her move from Chicago to Auburn;
7. Merit will allow Dr. Sullivan to use the hospital’s medical transcription service at a 50% discount as long as Dr. Sullivan is practicing in the community; and
8. All of the amounts paid to Dr. Sullivan under the agreement will be characterized in the agreement as a forgivable loan from Merit to Dr. Sullivan. Repayment on the loan will begin after the 18-month income support period, and the agreement will specify a “reasonable but not onerous” interest rate. If Dr. Sullivan maintains her practice in Auburn for four years following the end of the 18-month income support period, Merit will forgive all monthly installments of principal and interest. However, if Dr. Sullivan moves her practice to another community within four years after the support period ends, she must repay the loaned amounts to Merit in accordance with the agreement’s terms.

Susan also tells you that Merit has forwarded documentation demonstrating that the guaranteed income and start-up cost loans discussed in Items 1 and 2 above are both well within the “fair market value” range for physician recruitment packages.

Susan Andover asks you to analyze whether the proposed recruiting deal complies with the federal statute popularly known as “Stark II.” “Don’t worry – it’s easy to find,” Susan said, “I’m sure that the law has been heavily debated and discussed during the last couple of years, so finding the actual citation to the statute should be easy. Oh, and don’t forget to look at the accompanying regulations. I hear that most of the important details on recruitment agreements are found there.”

You wisely ask if you need to examine any other state or federal laws when you research this issue, and Susan tells you that she would just like you to review Stark II. She confirms that “there are lots of other state and federal statutes that we need to examine in order to proceed with this deal, but you just need to worry about this one.”

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Assignment Instructions

Your job is to answer the questions below by consulting both primary and secondary sources, including relevant federal statutes, regulations, and cases. Of course, you may use any available print resource to answer this question.

Timesheet: Keep track of the amount of time that you spend researching by completing a timesheet. For each timesheet entry, list the date, the amount of time that you spent on the task, and a detailed description of the research task. If you used Lexis or Westlaw, note the cost of your electronic research transaction. I’ve created an entirely fictional Lexis and Westlaw fee schedule below. It’s not meant to approximate the actual search costs for either database. I would like you to

have a sense of what it's like to track electronic research costs when you're working on legal research in a practice setting.

You should track your time in 6-minute increments. You can structure your timesheet entries like this example:

Date: September 20, 2006

Task Description: Reviewed Stark II statutory and regulatory provisions RE: hospital-physician recruitment agreements.

Time: 1.4 hours (this means that you spent 1 hour and 24 minutes on this task.)

Remember our discussion on timesheet entries from two weeks ago, and be sure that your timesheet entries contain sufficient detail to give your client a good sense of your progress on the research over time. Please be sure to submit your timesheet as part of this assignment.

Research Budget Limit: Like many tax-exempt health care providers, your client is cost-conscious. Calvinist wants the firm to spend no more than \$3,500 on researching this question. Your current billing rate is \$200 per hour. You may use electronic resources for this assignment (and in some cases, you're required to use them!), but these search costs will be billed directly to your client. For purposes of this assignment, assume the following costs apply to electronic research:

Westlaw & Lexis Research Costs:

Primary Sources:

Federal Case Law Research:

All Federal Cases:	\$150 per search
Federal Cases from California Jurisdictions:	\$75 per search
All Federal Courts of Appeals Cases:	\$100 per search
All Federal District Court Cases:	\$100 per search

Annotated Federal Statute Search (USCA or USCS): \$20 per search

Code of Federal Regulations Database: \$20 per search

Federal Register Database: \$20 per search

KeyCite & Shepard's: \$30 per search

Secondary Sources:

All U.S. Law Reviews Combined: \$150 per search

Legal Resource Index database: \$40 per search

Individual Law Review Database: \$20 per search

Individual Practice Guide or Treatise Database: \$40 per search

Combined Practice Guide or Treatise Database: \$65 per search

You can use any of Heafey's other subscription electronic resources without worrying about charging such costs to your client. For example, you may access BNA Newsletters, HeinOnline, LegalTrac (same as Legal Resource Index on Lexis and Westlaw), or Index to Legal Periodicals, and you will not need to note any costs for searching these materials other than your time.

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1. Secondary Sources

Consult **at least three** secondary sources (can include, but doesn't need to be limited to, treatises, practice guides, law review articles, newsletter articles from reputable sources such as BNA or ABA, or ALR articles) in order to obtain a basic understanding of the federal physician self-referral law. The sources that you choose **must** provide you with both an overview of the law and citations to primary sources, such as the applicable federal statute, federal regulations, and/or case law. The sources should also lead you to other relevant secondary sources. If the sources that you choose initially don't furnish this information, you need to go back and find different sources.

- a) How did you find your secondary sources? Describe your search strategy.
- b) What are the citations for the secondary sources that you selected?
- c) Explain why you chose these secondary sources.
- d) For each source, describe in a single-spaced page or less the information that you were able to obtain about this subject from your source. Your discussion should address whether your sources gave you citations for cases and statutes, whether they cited to other helpful secondary sources and whether your sources gave you any insights into your client's legal matter.

2. Research Guide

Using any search engine, find a law library research guide on health law and/or health care fraud and abuse laws, which has been updated within the last year.

- a) What was your search query? Which search engine did you use? Did your search work? If not, describe how you modified your search query to obtain more useful results.
- b) List the URL for the research guide that you found, then answer the following questions:
 - 1) Was this research guide helpful? For example, did it give you leads to primary or secondary sources?
 - 2) Why do you believe that this research guide is a reliable source of information?

3. Internet Sources

Using any search engine, find **three** reliable Web resources about the federal physician self-referral law and provide the following information about each resource:

a) What search engine and search query did you use? Did it work? If not, describe how you modified your search to obtain more useful results.

b) List the URL for each resource that you found, then answer the following questions:

1) Was this resource helpful?

2) Why do you believe that this resource is a reliable source of information?

4. Federal Statute

At this point, the secondary sources that you've chosen should have supplied you with a citation to the relevant federal statute. Look up the statute on Lexis or Westlaw or in print.

a) Cite the federal statute that you believe is relevant to the Merit Hospital-Sullivan recruitment deal.

b) Examine the annotations at the end of the relevant statute and list any cases that you believe are relevant to this matter.

c) Use either Lexis or Westlaw to shepardize the statute. Did you find any additional cases when you shepardized the statute? If so, list them here.

d) Did shepardizing lead you to any other helpful legal materials? Describe any additional materials that you were able to find by shepardizing.

e) Is your statute still good law?

f) Is there any legislation pending that would modify **relevant** portions of the statute?

5. Federal Regulations

At this point, the secondary sources that you've chosen should have supplied you with citations to the relevant federal regulations on this issue. Look up the regulations on Lexis or Westlaw or in print.

- a) Cite the federal regulations that you believe are relevant to your client's problem.

- b) The administrative agency responsible for these regulations submitted extensive comments about its interpretation of the final regulations in the Federal Register. Find the Federal Register documents that include this commentary and list the citations below.

HINT: This rule went through several changes before it was finalized. Focus on the two regulatory packages issued after 2000 that contain extensive comments on recruiting agreements.

- c) Briefly summarize (one page or less) any agency commentary relevant to analyzing the Sullivan-Merit deal below.

- d) Use either Lexis or Westlaw to shepardize relevant sections of the regulations. Did shepardizing lead you to any other helpful legal materials? Describe any additional materials that you were able to find.

- e) Are your regulations still in effect?

6. Cases

Read any cases that you have found using annotations to the statute, secondary sources, and Shepard's or KeyCite.

- a) List any cases that you believe are relevant to this research assignment.

- b) Use either Lexis or Westlaw to shepardize your cases. Did you find any additional cases when you shepardized your cases?

- c) Did shepardizing lead you to any other helpful legal materials? Describe any additional materials that you were able to find by shepardizing your cases.

- d) Are your cases still good law?

7. Substantive Legal Conclusions

Answer the questions below, devoting no more than 3 pages of single-spaced text to your answer. Please cite to the legal authorities that you are relying upon to form your conclusions.

a) Can Merit Hospital proceed with its proposed recruitment agreement with Dr. Sullivan? Why or why not? If you conclude that the deal cannot proceed as structured, identify which proposed terms need to change to bring the deal into compliance with Stark II and describe how those terms should be modified.

8. Legal Costs

a) Calculate the cost of your time spent researching this problem, then add in the cost of any Lexis or Westlaw searches that you used. Do not count the number of hours that you spent answering the above questions in your totals!

b) What was the total cost of this research project to your client?

c) How difficult was it to stay within your client's budget?

d) What could you have done to minimize the cost?