



# Don't Put Off That Checkup!

By David J. Castleton

It is common knowledge that a regular medical checkup is important for many reasons. A checkup can:

- Prevent illness or disease
- Identify risk factors for common diseases
- Detect disease that has no apparent symptoms
- Provide an opportunity for medical professional to counsel patients and to promote healthy behavior
- Update clinical data

Just as medical checkups are important to monitor a patient's health, legal checkups for medical practices are important to:

- Identify areas of risk in your operations
- Ensure compliance with federal and state regulatory, licensing and operational requirements
- Identify areas of the practice that expose you to loss, penalties, violations, overpayments or exclusion from certain payors
- Coordinate counsel of advisors and consultants
- Prevent liability

Practice checkups are key to insuring your practice does not get blindsided with problems that are avoidable and preventable. It also can help you identify a treatment for those issues that have a cure early on. A checkup can be simple or detailed, depending on the scope of protection you want.

## Some of the areas of review or questions to be asked include the following:

### 1. **Organizational Documents (e.g., Articles of Incorporation, Bylaws, Certificate of Organization, Operating Agreement)**

- a. Are the organizational documents up to date?
- b. Are the organizational documents being followed?
- c. Do the organizational documents need to be amended to reflect current or anticipated courses of action?

### 2. **Books and Records**

- a. Is the minute book up to date?
- b. Are the stock certificates properly issued and accounted for?

- c. Is the stock/membership ledger up to date?
- d. Do you have a record retention policy and is it being followed?

### 3. Filings

- a. Has the annual report been filed with the Division of Corporations and Commercial Code?
- b. Have DBAs been registered and renewed?
- c. Have proper business licenses been obtained and renewed?

### 4. Real Property

- a. Are all leases properly documented?
- b. Are the premises in compliance with city and county ordinances?
- c. Have taxes been paid?
- d. Is insurance up to date?
- e. Have any actions been taken that require lender or landlord approval?

### 5. Employee and Labor Relations

- a. Are your employment contracts adequate and up to date?
- b. Have appropriate background checks been made?
- c. Are employee handbooks up to date and complete?
- d. Have you properly characterized the employees (exempt, nonexempt, independent contractor, etc.)?
- e. Are all necessary written employee policies drafted and in place?

### 6. Benefit and Retirement Plans

- a. Are all plans properly documented and managed?
- b. Are existing plans adequate or do they need to be modified or replaced?
- c. Have summary plan descriptions and annual reports been prepared and distributed to participants?
- d. Have new employees been properly enrolled?
- e. Have all reports and returns been filed?

### 7. Stark/Anti-kickback

- a. Is there proper documentation for all related party transactions, including office leases, employment relationships, equipment rentals, independent contractor agreements?
- b. Is the allocation of ancillary service income in accordance with current regulations?
- c. Have you tested related party transactions to insure they meet safe harbors or exclusions?
- d. Have you identified and analyzed all referral patterns and financial relationships to identify possible issues?

### 8. HIPAA

- a. Have you established written HIPAA policies and procedures?
- b. Have you given employees adequate initial and continuing training about HIPAA?
- c. Have you done a risk analysis recently to identify areas of concern?
- d. Do you have written business associate agreements with all parties having access to PHI?
- e. Do you have a Notice of Privacy Policy, and is it up to date?
- f. Have you complied with all notification requirements

**“ This checklist is by no means comprehensive. It does give you an idea of the numerous areas that need to be addressed. ”**

- when there has been a breach?
- g. Do you ensure subpoenas served on you are HIPAA compliant before disclosing patient records?
- h. Do you insure that only those with a need to know have access to patient records?
- i. Are your security systems in place and adequate?
- j. Do you have a security officer and privacy officer who are trained, active in their duties and who have the necessary authority to perform their duties?

### 9. Medicare/Medicaid Compliance

- a. Is all billing and coding properly documented?
- b. Have you complied with all supervision requirements?
- c. Do you have a written compliance plan, and is it up to date?
- d. Have you done an internal or external audit recently to analyze and determine compliance?
- e. Have you trained and educated all employees regarding compliance issues?
- f. Have you developed effective lines of communication for employees to identify problem areas?
- g. Do you have well-publicized disciplinary guidelines for enforcement?

### 10. Medicolegal Forms

Do you have adequate and up to date forms for:

- i. Termination of physician/patient relationship?
- ii. Authorization to transfer records?
- iii. Consent to disclosure?
- iv. Consent to treatment?
- v. Debt collection notice?

This checklist is by no means comprehensive. It does give you an idea of the numerous areas that need to be addressed. Running a medical practice is full of traps. Notwithstanding your excellence as a practitioner, regular checkups can help to make sure that you are in compliance with the many requirements placed on your practice that go beyond patient care. By addressing them early and regularly, you avoid the liabilities, penalties, damage to reputation and financial devastation that can result from inattention. 



*David J. Castleton. Mr. Castleton is a shareholder at Ray Quinney & Nebeker. He is the chair of the Firm's Healthcare Law Practice Group and a member of the Corporate and Real Estate Sections. Mr. Castleton has extensive experience representing healthcare providers in all aspects of their practice, including joint ventures, regulatory compliance, licensing, contracts and employment matters. He represents clients in a wide variety of business and real estate transactions, including business formations, purchases and sales, joint ventures, mergers and acquisitions, leasing, and development. Mr. Castleton also advises clients in tax and estate planning matters and is a Fellow of the American College of Trust and Estate Counsel.*