
HEARTACHES INTERVIEW

Confidential Information for General Counsel, Farmington Hospital

You have been General Counsel at Farmington Hospital and a member of its Board of Directors for the past five years. Before coming to Farmington Hospital, you practiced health law at the prestigious Saft, Terrinius, & Wollister law firm, and made partnership on a fast track. After ten years, you tired of firm politics and opted for an in-house position, away from the city. You moved your young family to the smaller town community of Farmington, to take the GC job at Farmington Hospital.

Economic realities have forced Farmington Hospital to embrace an “entrepreneurial spirit”, which did not come naturally. As insurance reimbursements have gone down, particularly for some specialties, and insurers enforce shorter hospital stays, the hospital had to adopt a business mentality to stay afloat. The hospital’s new CEO had been CFO of a large health care organization and was brought in to make Farmington Hospital fiscally sound. The CEO engineered the appointment of a few new board members from the business community. You were hired as part of this effort to “energize” the hospital.

Some of the “old guard” on the hospital board and many on the medical and nursing staff seem to view you as the “city lawyer,” a bit too concerned about details, too critical of the way things are “out here.” You see the medical culture as laid back, and friendly, perhaps too collegial for people to be demanding of one another. When you provide the legal advice, they sometimes ignore the fine points, viewing you as a “stickler.”

Hospital Business Context

A few years ago, the CEO and the CFO, working with an outside consultant, developed a strategic plan to increase ob-gyn and pediatric services, as well as cardiac surgery capacity.

The plan noted that ob-gyn, pediatrics, and complex surgery are reimbursed at relatively high rates by major medical insurers. Ob-gyn often involves in-hospital monitoring or tests (inspired by nervous prospective mothers) and cesarian section operations. Women anticipating labor and delivery often opt to pay for more expensive options, such as private or semi-private rooms. Once a woman has had a baby at a hospital, she is more likely to be comfortable with using that hospital for her children, when necessary. Pediatric hospital care tends to be profitable because insurance companies are less strict about guidelines for hospital stays, medical tests, and other diagnostic and treatment decisions for children than for adults. Either insurers realize that it would be politically unwise to stint on acute pediatric care, or that a mistake on a child leads to enormous damages. Thus, pediatric diagnostic, treatment, surgery, and hospital care can be quite profitable.

The hospital set about implementing the strategic plan. You obtained a Certificate of Need from the State Health Department. The hospital first invested in state-of-the-art equipment



for labor and delivery and pediatric care, upgrading the rooms and amenities available, installing play areas and child-centered decorations and gadgets in children's examination and treatment areas. The hospital advertised heavily. The plan worked. Farmington Hospital's numbers for newborn deliveries and pediatric care began to rise.

In the plan's second phase, the hospital sought to increase adult and pediatric surgical capacity, with a specialization in cardiac surgery. Until then, an infant born with a heart defect had to be transported (sometimes by helicopter) to City Children's hospital 80 miles away for the surgery. Adult cardiac surgery was also performed in the City, generally at University Hospital. An adult requiring emergency cardiac surgery also had to be transported. While bypass or angioplasties tend not to be emergencies, these patients may prefer to be treated close to home, within reach of their general physician who is more familiar with individual medical issues and family history.

As the Farmington and surrounding towns have become more densely populated over the past decade, the number of cardiac patients from those towns has also grown. The Certificate of Need included expansion of the hospital's surgical wing, surgical staff, and cardiac surgery capacity. Farmington hired a new surgical team, including two anesthesiologists (one more senior and one more junior), and three older, experienced surgeons, including one general surgeon and two with cardiac specialties, one of whom had done a fellowship in pediatric cardiology. All the hospital's clinical physicians, as well as all internists, obstetricians, and pediatricians in the area were informed of these new hires and the hospital's expansion and were invited to a reception to "meet the new docs".

That was two years ago. Slowly, the hospital's case load in cardiac surgery has been growing as local physicians have referred area residents to the new surgeons in the hospital. You know from the hospital board meetings that the pediatric cardiac surgery numbers have been disappointing - far lower than projections. By this time, the hospital had hoped to have at least 60 pediatric cardiac surgeries per year (approximately 30 for each of the two surgeons), but the actual numbers have been half of that. At the last board meeting, the board requested a report from the Medical Director and from the marketing department analyzing the reasons for the slow growth.

Today's Task

Yesterday, you received a call from the hospitals' Chief of Staff, Pat Burns, M.D. Pat explained that he anticipates termination of a physician's contract and wants to review any possible legal issues with you. Meet with Dr. Burns.