

# Executive Decisions in DERMATOLOGY

ADAM

Nov/Dec 2012

**T**he holidays mean so many things; time with family, special dinners, travelling, but let's not forget the most important thing, renewing your ADAM dues!

Maybe it's not the most important item on your to do list but it should be on there! When you renew your dues, you secure another year of discounts on educational programs like the Annual Meeting in Miami, monthly webinars and more! Renewing your dues means continued access to the members only LinkedIn group which now has more than 170 members!

Please take five minutes today and renew your dues. You can renew online by logging into My ADAM or you can fax or mail a pdf version of the application. If you haven't logged into the My ADAM section in a while, and you can't remember your password, just type in your email address as your username and click Forgot Password. A new login will be sent to you right away and you can renew for 2013. When you're renewing, be sure to check your contact information is up to date and then check out the new forms section in the My ADAM section of the website! It's a great member benefit.

Your membership dues have not increased this year, they are \$295 and will run from January 1, 2013-December 31, 2013. Renewing your dues is a commitment to your continuing professional development. ADAM offers educational and networking opportunities that will help you excel in your role as a practice manager or administrator.



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## President's Corner

A series about the state of the Association and what's new with

ADAM. Do you have a question for Jayne?

Email us at [ADAMinfo@shcare.net](mailto:ADAMinfo@shcare.net)



Happy Holidays ADAM Members. I hope you are enjoying the cooler weather and looking forward to spending time with your family. The holidays are a great time to take a step back and reflect on the year and think about your goals for next year. 2013 will be here before you know it and with it comes new opportunities. You have already made a commitment to your professional growth by being a member of ADAM; don't lose that in 2013! Be sure to renew your dues today to make sure you don't miss a thing.

In this edition of Executive Decisions in Dermatology, the focus is on human resources. For practices that aren't large enough to have a dedicated HR department, this edition will be a great resource for you on a variety of topics. If you have a topic or question that wasn't covered in this edition, be sure to email Headquarters so they can plan an additional article or a webinar that members would benefit from taking.

I wish you a happy and safe holiday season, and I look forward to seeing you in just a few months in Miami for the 21<sup>st</sup> Annual Meeting!

Sincerely,

### Member Spotlight

Would you like to nominate someone for the Member Spotlight? Email us at [ADAMinfo@shcare.net](mailto:ADAMinfo@shcare.net)



**ADAM: What is your name and where do you work?**

**Angela:** Angela Short, MHA, CPCO, CPCD  
The Dermatology Group, PC in West Orange, New Jersey.

**ADAM: When did you join ADAM?**

**Angela:** I joined ADAM in 2011.

**ADAM: How long have you been a practice manager?**

**Angela:** 22 years.

**ADAM: Tell us a little about your practice.**

**Angela:** The Dermatology Group, PC is a large general, cosmetic, and surgical dermatology located in Northern, NJ, just west of New York City. We have a total of 27 providers operating from seven locations. Our practice additionally has two Mohs surgeons, two dermatopathologist, and a plastic surgeon. Our practice has operated with an electronic health record that has been in place for over eight years that allows our practice to stay connected to our patients and our physicians. Our mission is devoted to using the latest research and technology available while providing our patients with the same level of expediency and customer service as a primary care physician. Each member of the staff is committed to caring for the total well-being and health of our patients.

**ADAM: What has a member benefit done for you lately?**

**Angela:** I had a payer issue a new policy that had a highly

negative impact to my practice. I contacted ADAM for assistance. I was connected with individuals that provided me direction, and is helping to resolve the matter.

**ADAM: What's been your best experience as an ADAM member?**

**Angela:** The interaction with peers is probably my most rewarding experience of being a member of ADAM. Whether it is through committee discussions, or LinkedIn discussions, ADAM members are there to help other ADAM members, and since we are dealing with the same sets of issues, having that interaction is very important.

**ADAM: What do you find to be the most challenging part of your job?**

**Angela:** Staying abreast of all changes in healthcare in the current regulatory environment. While I have experienced a lot of changes over the course of my career, the current environment is much more challenging due to the rate in which change occurs. I only see that increasing with the onset of healthcare reform in the near horizon.

**ADAM: What would you recommend to a member looking to get more involved?**

**Angela:** One of the first places that I would send a member looking to get involved is to the ADAM LinkedIn site. I am a member of several different LinkedIn groups, and I am extremely happy with the communications, and solid advice offered by ADAM members. This is a great forum for members to share their expertise, and the information provided truly helps other members. Also I suggest exploring the My ADAM page to find ways to get involved, either through committees or sharing suggestions on how to make ADAM even better.

# Upcoming Webinars

Don't miss out on these great learning opportunities. Register at [www.ada-m.org](http://www.ada-m.org)

## Wednesday, November 14, 2012 3:00pm ET



### Medical Practice Data Breaches: What You Need to Know

According to an HHS [database](#), more than 40% of medical data breaches in the past two years involved portable media devices such as laptops or hard drives.

In this webinar, Mike Meikle, CEO of the [Hawthorne Group](#), will teach you what to do in the case of a patient data security breach.

He will outline the steps that must be taken both from an operational and legal standpoint, and he will discuss how to prevent a security breach in your practice.

## Wednesday, December 12, 2012 3:00pm ET

### Six Essential Tips to Improve Your Bottom Line

In this session you will learn:

- Which expenses are eroding your bottom line and how to address them
- How to work smarter and not harder
- Why it is important to learn and subsequently implement proven techniques to convert “shoppers” into patients

Join Rick Crici, President of [RJ Crici Consulting, Inc.](#) for this one hour live webinar. Rick spends his time advising Dermatologists and Plastic Surgeons with respect to various business needs. His firm focuses on revenue enhancement strategies, expense reduction methods, human capital development and creating strategic, sound, financially responsible marketing plans.



## Wednesday, January 23, 2013 2:00pm ET

### PQRS & eRx Updates for 2013



The Physician Quality Reporting System (PQRS) and E-Prescribe programs undergo changes every year. This webinar will highlight the 2013 changes that affect Dermatology practices and provide you with the information necessary to be successful reporters and earn incentive payments for both programs. Topics to be discussed include:

- Incentive and Payment Adjustment Schedule for 2013 and Beyond
- New PQRS Measure for Dermatology
- Maintenance of Certification Incentive for Dermatology
- How to Access Feedback Reports
- Tips for Successful Reporting

Join Michelle Trandel, BS, CPC, CFPC, Billing & Coding Consultant from VEI Consulting.

# Tips for Reducing the Risk and Wage of Hour Claims

By: Shane Muñoz, Esq

In this article I want to provide you with suggestions concerning basic steps you can take, some at little or no cost, to reduce the risk of employment litigation. A high percentage of lawsuits by current and former employees are wage claims under the Fair Labor Standards Act (FLSA) or discrimination, retaliation or harassment claims. In this article, I'll provide some suggestions for reducing the risk of FLSA claims.

The FLSA generally requires that employers pay at least minimum wage for the first 40 hours of work in a workweek, plus overtime at one and one-half times the "regular rate." However, certain positions are exempt from the overtime requirement, the minimum wage requirement, or from both requirements. FLSA claims generally fall into one of two categories, claims that a nonexempt employee was not paid for all hours worked, and claims that an employer misclassified a nonexempt employee as exempt and therefore failed to pay overtime pay.

The two most important steps you can take to avoid claims based on failure to pay for all hours worked are to understand what time is compensable work time and to have an effective system for obtaining accurate records of hours worked. The basic rule is that employers must pay an employee for all time the employee is "suffered or permitted" to work. This generally means that if the employee works you have to pay, even if you didn't authorize the work and, in most cases, even if you didn't know the employee was working. Here are some principles to keep in mind:

- ♦ Work time includes time worked at home or other locations outside the office. One emerging issue is pay for time employees spend reading or responding to work-related emails when out of the office. There is a good argument that employees should be paid for all such time.

***Understand what time is compensable work time and to have an effective system for obtaining accurate records***

- ♦ An employee generally is entitled to be paid for all time from the time he or she starts the workday until the end of the workday. This concept can come into play where you ask an employee to pick up supplies on the way into work; the employee would be entitled to be paid from the time he or she arrives where the supplies are located. Another example is where an employee starts work at one office and then travels to a different office to continue working; the employee would be entitled to be paid for the travel time.

- ♦ A related rule is the "donning and doffing" rule. While the rule can be complicated in its application, the general premise is that if an employee is required to do something beyond simply getting dressed to commence work, such as putting on specialized safety clothing or equipment, the time "donning" and "doffing" the gear is compensable time.

- ♦ Depending upon state law, employers may or may not be required to provide breaks. Where an employer provides a break it is required to pay for break time, excepting only a "bona fide" meal period.

A bona fide meal period is an uninterrupted break of 30 minutes or more during which the employee is completely relieved of duties. A word of caution: employers often get into trouble by

having policies that automatically deduct time for meal breaks. A better system is to require employees to clock out and in for meal breaks, even though that may seem burdensome.

- ♦ The FLSA distinguishes between time when an employee is "waiting to be engaged" and time when he or she is "engaged to wait." So, if you ask an employee to arrive at 8:00 a.m. but don't put her to work until 8:30, you are required to pay from 8:00 a.m. In contrast, if you schedule her to arrive at 8:30 and she arrives early, you are not required to pay for time prior to 8:30, as long as the employee performs no work.



## Tips for Reducing the Risk and Wage of Hour Claims

By: Shane Muñoz, Esq

Knowing what time is compensable is only half the battle. You still have to take steps to limit the opportunity for employees to claim that they were not credited with all time worked. The best way to obtain accurate records of hours worked is to require each employee to verify the accuracy of his or her time records each pay period. You should have a form specifically for this purpose. If you don't have one, ADAM has a template that members can download and modify. You can find it [here](#). The form should show the time recorded for the employee for each workday during the pay period, and you should obtain the employee's signature on the form with a statement that the hours are accurate. Of course, you may not withhold a paycheck if an employee hasn't signed the hours report by the regular payday.

You probably noticed that none of these suggestions protect you from having to pay an employee who, perhaps despite repeated requests that he or she not do so, starts work early, stays late, works at home, or fails to record all time worked. The solution to those problems is to adopt and publish appropriate workplace rules, and to discipline employees who violate them. The law allows employers to establish workplace rules prohibiting employees from engaging in unauthorized work, and to discipline employees who violate such prohibitions. **You may not discipline by refusing to pay for unauthorized time that an employee has worked.** But you may use progressive discipline.

Because there is always a risk that discipline may lead to employee complaints or claims, it is prudent to consult with legal counsel before imposing discipline.

A third common issue with pay for nonexempt employees is miscalculation of overtime. As

mentioned, the overtime rate is one and one-half times the "regular rate." The "regular rate" is determined by dividing total compensation for a workweek by the hours worked in that workweek. Where an employee's only compensation is hourly pay, the calculation is simple. But where

bonuses, commissions, incentives or other forms of compensation are also paid, the calculation can be more complex.

Three common mistakes with respect to classification of employees as exempt are;

1. Assuming that if you pay an employee by salary then the employee is exempt
2. Relying on job titles or descriptions as the basis for classification
3. Making impermissible deductions from salaries

There are many FLSA exemptions, and I won't try to describe them all here. Setting aside the exemptions for certain employees engaged in sales, the most common exemptions are the administrative, executive and professional exemptions. For each of those exemptions, three tests must be met: a duties test, the salary basis test, and the salary level test.

The salary basis and salary level tests are the same for these three exemptions. The salary level test requires that the weekly salary equal or exceed \$455. The salary basis test requires that the employee be paid a fixed salary every week, without regard to



## Tips for Reducing the Risk and Wage of Hour Claims

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quality or quantity of work. You may pay supplemental pay without jeopardizing these exemptions, but you generally may not pay less than the fixed salary. So, no matter how bad the employee's performance, and regardless of whether he or she arrives late, leaves early or is absent, the employer generally must pay the full salary.

There are some limited circumstances where an employer may make deductions from salary. It may be helpful to have a published policy describing those circumstances, encouraging employees to report improper deductions, and promising to correct any improper deductions. Such a policy, if well crafted and effectively published to employees, may limit the fallout from improper deductions from salaries.

The duties tests are different for these three exemptions. They sound fairly simple but are often complex in application. Therefore, I would not want you to rely on any description I might provide in this short article as a basis for deciding whether your employees meet these tests. But there are certain principles you should keep in mind. The duties tests are all based on an individual's *actual* job duties – not on job titles, not on job descriptions, and generally not on job duties of others with the same job title. Also, these tests look at the “primary” job duty, so an employee may qualify for an exemption even where he or she has nonexempt duties as well, or may not qualify even though he or she has some exempt duties.

With only very limited exceptions, the employee protections in the FLSA may not be restricted or reduced by state or local law or waived by private agreement. This means, for example, that even where an employee offers to stay late to finish up a task and not record the time, you still have to pay for the time. Similarly, the fact that a nonexempt employee was very happy to work for a salary for years without complaint does not mean the employee can't later sue for overtime pay. Nonetheless, state or local laws, collective bargaining agreement, or other contracts may add to the rights

afforded by the FLSA.

One last note: Doctors licensed to practice medicine and actually engaged in the practice of medicine are exempt from the FLSA's minimum wage and overtime rules.

Please keep in mind that this article is just a brief summary designed to help you identify some important issues and, hopefully, to minimize risk. For specific advice about the best policies for your company and about application of the law or your policies to specific situations, you should consult with an attorney who can evaluate all of the relevant facts and circumstances and provide advice based on your particular business model and circumstances.

*Shane has an active civil trial and client counseling practice in labor and employment law. Throughout his 23-year career, Shane has successfully represented business organizations in a wide range of labor and employment matters, including employment discrimination, whistleblower, harassment, restrictive covenants, wage and hour, and other complex litigation. In addition, he is frequently retained to represent clients in federal, state and local investigations. Shane also has wide-ranging experience in representing clients in internal investigations involving alleged harassment, disparate treatment and other employee misconduct. He has substantial experience in helping clients develop and implement employment policies and procedures designed to foster positive employee relations and to minimize legal risks.*

*Be sure not to miss Shane's presentations at the 2013 Annual Meeting.*

## Annual Meeting Keynote Highlights

Are you feeling stuck? Unexcited? Just getting by at work? Well we have just the thing for you;

1. Come join us in sunny Miami, Florida
2. Attend keynote sessions focused on reenergizing you as a manager or administrator



On Wednesday, February 27, don't miss Dr. Dana Lightman who will discuss reaching your peak potential at your practice. Dr. Lightman focuses on breaking through negative patterns and building up positive practices, putting you on an upward spiral of successful experiences. By applying these strategies, you will boost job satisfaction, expect and deliver outstanding results, tackle challenges with confidence and perform at your best.

And don't miss Thursday, February 28 with Chris Clarke-Epstein who will talk about dealing with change. The future guarantees more, not less change, and success will go to those who know how to manage it. Chris will help you explore your reactions to the changes in your life at both the peaks and the valleys, introduce tools that will make change, if not easier, at least more doable.



## Tell Me About the Tracks

Thanks to your feedback, this year's educational tracks will help you get the most for your level of expertise. Choose from the New Manager Track, Master Track or Spotlight Track.

- New Manager- Just starting out to three years in or not as well versed in a particular topic. Choose this track for topics you need the groundwork information in order to build your knowledge.
- Master- Been around the block and you don't need the 101 sessions anymore. You have real life scenario questions and you want to keep learning.
- Spotlight- Topics that deserve more than just an hour. Go in depth and explore a particular subject that you don't need to be an expert in, but just want to really get immersed.

These tracks are guidelines for levels of expertise. Are you a beginner coder but an expert in social media? Feel free to move across tracks by topics you feel more or less comfortable with.



# HEPATITIS B VACCINATION RECORDS

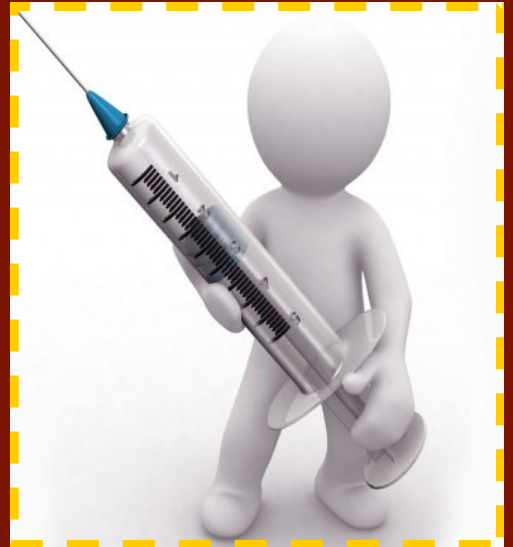
By: Archie Jennings

When you hire an employee that will be or may be coming in contact with blood or other potentially infectious body fluids, then the practice is required to obtain the HBV vaccination status of the employee.

The HBV vaccination record may take one of four forms;

- ⇒ The 3 shot vaccination record of the employee
- ⇒ A copy of a lab test showing a positive titer test
- ⇒ A document signed by the employee stating they have been vaccinated in the past and do not want a titer or the vaccination series
- ⇒ A document signed by the employee declining the vaccination for what ever reason they choose

If there is any hesitation on the employees part as to whether they know they have been vaccinated, then you must offer the employee a titer to check for anti-bodies to HBV or begin the HBV vaccination series at no cost to the employee.



Please do not accept the “Yeah, I think I had it in Atlanta about 1999” from the new employee and then go on about your business. That will not fly with OSHA.

OSHA shows no mercy to practices who fail to obtain the HBV vaccination status of “at risk employees”. The reason is that until 1985 the healthcare industry averaged over 13,000 healthcare employees contracting HBV annually. Over 500 employees died every year from contracting HBV from an incident in the healthcare setting.

In 1985 we began vaccinating healthcare employees and by 2005, the number of healthcare employees contracting HBV on the job was reduced from 13,000 annually to less than 50.

Make sure when you hire an “at risk employee”, you make it part of the orientation program to obtain the HBV vaccination status of the employee. You have only 10 days after you put the employee at risk of coming in contact with blood or other potentially infectious body fluids to obtain their HBV vaccination status or begin the HBV vaccination shots.

The practice is put at risk of non-compliance with OSHA by not having proper documentation for “at risk employee’s” which could lead to a possible fine. Also improper documentation could lead to potential civil litigation from the employee if they did contract HBV from an incident in the practice.

The bottom line is that if a practice puts an employee at risk of coming into contact with blood or other potentially infectious body fluids, then the practice must document HBV vaccination status for each of these employees or offer the vaccination to the employee at no cost to the employee within 10 days of putting them at risk.

*Mr. Jennings is the Owner of Total Healthcare Compliance & Consulting in Palm Harbor, Florida. His company provides compliance services to many organizations, including OSHA, the Florida Department of Health (FDOH), CLIA, and HIPAA, involving over 600 healthcare entities in Florida, Texas, Louisiana, and Georgia. He earned his Bachelor of Science degree in Marketing and has a Bachelor’s degree in Computer Science. He is accredited by the U.S. Department of Labor, is an OSHA Approved Trainer as well as Certified Healthcare Compliance Officer, and has been certified by FDOH. Mr. Jennings has made numerous presentations for OSHA, the Florida Department of Health Regulations, and HIPAA.*



## **Equal Opportunity Employment, Disability, & FMLA FAQ**

*This section will give you a brief overview of some frequently asked questions regarding Equal Opportunity Employment, Disability, and the Family and Medical Leave Act. If you have additional questions or would like to speak to someone more in depth about these topics, please contact Shane Munoz 813.261.7803 or [smunoz@fordharrison.com](mailto:smunoz@fordharrison.com)*

### **FMLA**

#### **What are the changes to the definition of a serious health condition?**

A serious health condition is defined as an illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

#### **What are my requirements as an employer for posting general notices on FMLA?**

Employers must post a general notice explaining FMLA's provisions and providing information regarding procedures for filing a claim under the Act in a conspicuous place where it can be seen by employees and applicants. Failure to do so may result in a penalty of \$110.

#### **Can I require an employee to give me their medical records for a leave due to a serious health condition?**

No; however, the employer does have a statutory right to request that an employee provide medical certification containing sufficient medical facts to establish that a serious health condition exists.

#### **Can FMLA be used against an employee receiving a bonus?**

Under the regulations, an employer may deny a bonus that is based upon achieving a goal, such as hours worked, products sold, to an employee who takes FMLA leave as long as it treats employees taking FMLA leave the same as employees taking non-FMLA leave.

### **Disability**

#### **What 'reasonable accommodations' do I have to provide for an employee with a disability?**

Reasonable accommodation is any change to a job that permits a qualified applicant or an employee with a disability to perform the essential functions of the job, or to enjoy benefits of employment. Reasonable accommodation may include; modified work schedules, adjusting training materials, or providing readers and interpreters.

#### **Can I ask questions about an individual's disability?**

No, but you can ask he/she questions about their ability to perform job-related functions, as long as the questions are not phrased in terms of disability.

### **Equal Opportunity**

#### **What is an example of something not allowed in a job posting?**

Specifying any type of criteria that could deter someone else from applying is illegal; this includes details such as 'seeking recent college graduates'.

#### **If I'm charged, what is the timeline?**

When a charge is filed against you, you will be notified within 10 days. If you choose to resolve the charge through mediation, the average processing time for mediation is 84 days.

# Upcoming Events

Have an idea for the newsletter? Want to write an article? We want to hear from you! [Email us!](#)

## November

WEDNESDAY  
7  
2012

November 7, 2012 3:00pm EDT  
***ADAM Webinar: HIPAA, OSHA, HITECH, Oh My!***

WEDNESDAY  
7  
2012

November 7-11, 2012  
***American Society for Mohs Surgery Fundamentals of Mohs Surgery***  
San Diego, CA

WEDNESDAY  
14  
2012

November 14, 2012 3:00pm ET  
***ADAM Webinar: Medical Practice Security Breaches: What You Need to Know***

SATURDAY  
17  
2012

November 17, 2012  
***CBC University: Cosmetic Bootcamp***  
Washington, DC

THURSDAY  
29  
2012

November 29-December 1, 2012  
***Cosmetic Surgery Forum - Discussions in Dermatology***  
Las Vegas, NV

## December

SATURDAY  
1  
2012

December 1, 2012  
***DNA: Joan Shelk Fundamentals of Phototherapy Workshop***  
Tampa, FL

SUNDAY  
2  
2012

December 2, 2012  
***CBC University: Cosmetic Bootcamp***  
Boston, MA

SATURDAY  
8  
2012

December 2, 2012  
***CBC University: Cosmetic Bootcamp***  
Philadelphia, PA

WEDNESDAY  
12  
2012

December 12, 2012  
***ADAM Webinar: Six Tips for Improving Your Bottom Line***