

# Ethical Considerations For New and Emerging Affiliation Structures

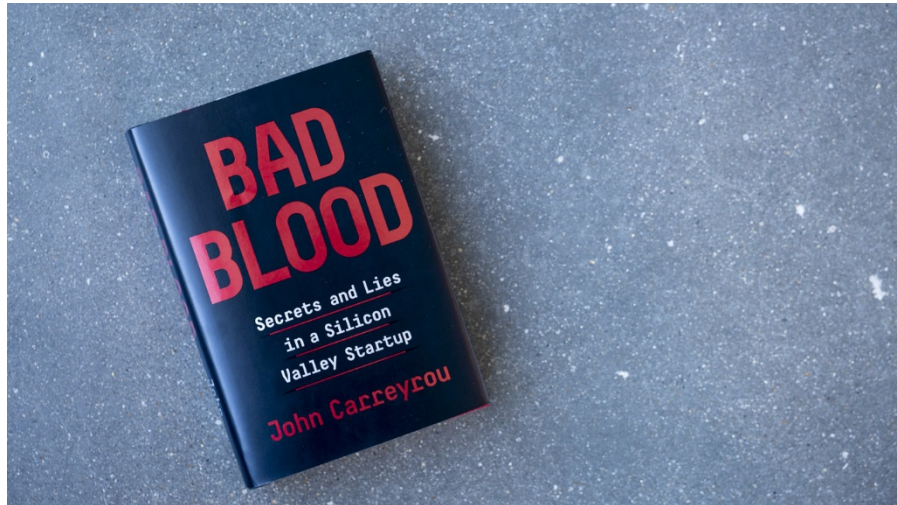
---

ROY BREITENBACH, ESQUIRE  
GARFUNKEL WILD, PC

ALEXANDRA E. TRINKOFF, ESQUIRE  
NORTHWELL HEALTH, INC.

# New Businesses: Potential and Actual Ethical Conflicts and Liability for Attorneys

---



# New Structures

---

DSRIP Partnerships

Joint Ventures

# Ethical Considerations

---

## Conflict of Interest (N.Y. R.P.C. 1.6, 1.7 (9-10), 1.8, 1.9, 1.13, 6.4)

- Representation of new client with adverse interests to former client Personal interest (financial or position) in deal
- Sharing of confidential information Transfer of representation
- Whose your client?

## Trying to Influence Law Makers – Lobbying

- Representation of Clients – Lobbyist or Lawyer
- Whose your client?
- Within the realm of the law

# Case Study: DSRIP

---

Three hospitals hire one attorney to create a new PPS structure.

- Who does the lawyer represent?
- What must the lawyer do?

Once the PPS is created, the attorney continues to advise the PPS.

- What obligations does the attorney have to the original three hospitals?

As attorney for the PPS, attorney learns that one of the providers contracting with the PPS has poor quality scores including poor outcomes. The PPS attorney knows that this provider is also on the medical staff of one of the founding hospitals.

- Can this information be shared with client hospital?

What if attorney is requested to serve on the Board of the PPS?

# Joint Venture: Establishment of Ambulatory Surgery Center

---

Hospital and provider group establish an ambulatory surgery center. After the deal is signed, hospital in-house counsel provides legal advice to hospital and ASC but not the individual provider investors.

- Hospital owns 50%
- Provider group owns 30%
- Individual provider investors own 20%

ASC needs to credential all providers many of whom are members of the hospital's medical staff. Through its confidential quality review process, Hospital determines that one of the surgeons has poor outcomes including many cases that require return to the OR. Hospital restricts privileges and requires monitoring.

- Can Hospital inform ASC of information learned during a quality investigation? Can lawyer?
- How about the restriction of privileges? Provider believes that lawyer also represents them? What's a lawyer to do?

# ASC continued

---

New York State Senate introduces a bill that prohibits patients with commercial insurance and all minors from receiving surgery at an ASC. ASC collaborates with the National Association of ASCs to protest the new proposed legislation.

The bill, if passes, benefits the hospital and hurts the ASC. Hospital attorney is asked to go to Albany to lobby against the bill.

- What are the attorney's obligations?
- If attorney represents both hospital and ASC, what should the lawyer do?

Provider Group and individual investors sue the hospital.

- What role should the attorney play?