

March 13, 2003

CHAIRPERSON'S REPORT #2

Dear Fellow Section Members:

At the mid-point of the Bar year, I would like to update you, on behalf of the Council, on the activities the Section has undertaken and what activities are on the horizon. We have been fortunate to have even greater participation by volunteers than we could have expected, and we continue to search for new opportunities to put their energy and experience to use.

Joint HIPAA Work Group

The joint HIPAA Work Group (co-chaired by Joy Berent and Cynthia Wisner) of the Section and the Michigan Society of Healthcare Attorneys has updated last year's HIPAA Privacy Rule Preemption Analysis Matrix. The updated Matrix is available on the Section website for our members. To reach the website, go to www.michbar.org and click on "Sections" then click on "Health Care Law" from the list. Because the electronic copy is for Section members only, it requires a special password. Non-members may purchase print copies, and the order information is posted on our website. Members may also purchase print copies at a discount.

Your Section has expended considerable resources in updating the Matrix, and it could be very valuable to commercial interests. It was intended primarily for the benefit of our members. Accordingly, the Section relies on the integrity of its members in not distributing these passwords or materials to non-Section members. For your reference, should you need to access the Matrix online click on either "HIPAA" or "Publications" on the Section's webpage and follow the link on either page to a log-in screen and then enter the password _____ (the apparent typo is intentional and the password is case sensitive). Please save this letter for the Directory access information, as it will not be included in the electronic version of this letter posted on our website.

In addition, the Work Group has been meeting diligently to develop a series of basic sample forms for use in connection with HIPAA implementation. Seven of those forms are already available and they have been posted on our website, accessible through www.michbar.org. Availability of these forms as a guide, not as legal advice, is free to members and non-members. In a Section blessed with very active members who give generously of their time, the joint

March 13, 2003

Page 2

HIPAA Work Group is consistently among the most active, with an average of 15-20 people attending regular monthly meetings to produce these valuable resources for the Section.

Open Justice Commission

The Health Care Law Section is proud to endorse the 1st Michigan Conference on Racial and Ethnic Fairness in the Legal System. This conference will be hosted by the State Bar of Michigan Open Justice Commission on April 9-12, 2003 at the Marriott Renaissance Center in Detroit. Program and registration information for the conference is available online (www.michbar.org/oj/home.html) or by e-mailing or calling the National Center for State Courts Conference Planning Office (Linda Perkins (lperkins@ncsc.dni.us) or Stacey Smith (ssmith@ncsc.dni.us), phone 800-616-6165). A registration form is also enclosed with this letter.

Specialty Certification in Health Law

Although it is still at a very preliminary fact-gathering stage, a task force of the Council is exploring the feasibility, advantages and disadvantages of a potential certification program for specialization in health care law (much like many of our physician clients are board certified in certain specialties or like our colleagues in the tax bar in particular obtain L.L.M. degrees). There have been some exploratory discussions with State Bar of Michigan officials; however, the Council has decided to proceed cautiously in exploring the possibility of certification. We will provide additional detail to the membership in the future if we believe we can develop a worthwhile proposal for specialty certification in health law in Michigan. In addition to seeking member input, any such proposal would need to be presented to and approved by the State Bar's Board of Commissioners and the Michigan Supreme Court. At present, two other states have specialty certification programs in health care (Florida and Texas) and many more states offer specialty certification in non-health care practice areas. Inasmuch as there is no current specialty certification program in Michigan, any attempt to establish a certification program would be a long-term project and require the development of overall standards for the bar as well. The Council also expects that if a specific proposal is developed, there may be a variety of questions and potential concerns on the part of Section members. Accordingly, if the preliminary discussions lead to the development of a specific proposal, the Council intends to solicit membership input on that proposal before presenting it to the Board of Commissioners or the Supreme Court. Members of the task force exploring certification are Joy Berent, Nancy Lukey, Keith Soltis, Philip Stoffan and me. Although we are optimistic about the opportunities that certification may offer, we are also mindful of a variety of potential concerns and are proceeding at a deliberate pace. If a proposal is ultimately developed, we expect that it could take one to two years or more to implement.

Substantive Law Subcommittees

The Substantive Law Committee of the Section (Chair, David Rogers; Vice-Chairs, Margaret Marchak and Deborah Withrow) oversees five subcommittees: Consumers; Medical Legal; Payors; Providers; and Technology. We on the Council believe that the range of interests reflected in the subcommittees allows us to provide activities and volunteer opportunities for Section members in a wide variety of practice niches that comprise health care law.

All of those subcommittees have been very active in holding or planning programs, through the efforts of the Co-chairs and additional volunteers. Last month, in what has become the subcommittees' signature program, we held our Fourth Annual Michigan Legislative Update, a briefing with top health care legislative policy experts. This year's Update was coordinated by Ann Hollenbeck and moderated by Janice Anderson, two of the Co-chairs of our Providers Subcommittee. In December 2002, four of our subcommittees (Consumers, Payors, Providers and Technology) collaborated to host a three-part series on HIPAA issues. The HIPAA trilogy focused on HIPAA from the consumer's perspective, Michigan aspects of HIPAA, such as state law preemption and consent requirements, and the advantages and disadvantages of web-based compliance training. Several of the Co-chairs and other Section members took an active role in planning, participating in or moderating the HIPAA trilogy, including Janice Anderson, Joe Aoun, Elizabeth Derwin, Jeanne Dunk, Michael Fraleigh, David Haron, Michael Holper, Joan Lowes, Monica Navarro, Robert Schwartz, Carol Tarnowsky, Monica Wilkinson, Cynthia Wisner and Eric Wexler. Audiotapes of most teleconference programs are available at a modest cost; contact David Rogers (drogers@healthlex.com) to inquire about a particular program, or check the Section's web site (www.michbar.org/sections/health/newhcls/healthcarelaw.html).

The subcommittees also are planning a variety of programs for the balance of the year. On March 24, the Payors Subcommittee will hold a teleconference entitled "Michigan's Patient's Right to Independent Review Act: How Is It Working?" An announcement describing that teleconference and a registration form were distributed to the Section via the distribution listserve earlier this month. Hard copies of the announcement and the registration form are also enclosed with this letter.

Even more programs are on tap in the months ahead. The Consumers Subcommittee is making plans for a May 2003 program geared toward health care topics of interest to Legal Aid and Elder Law attorneys, following up on its successful program on this subject last year. The Payors Subcommittee is working on an additional program for 2003, a roundtable on ERISA developments (including Department of Labor claims processing issues and Michigan preemption issues). The Medical-Legal Subcommittee is planning a program for May 2003 on emergency medical services. This program will include a discussion of issues surrounding JCAHO disclosure rules and their impact on hospitals, as well as various legal and reimbursement issues related to emergency room visits. The Provider Subcommittee is also exploring the level of interest among the membership in programs focusing on long term care and other non-hospital and non-physician providers. The Technology subcommittee is working on plans for a program later this year on patent infringement litigation related to certain typical managed care processes.

The Substantive Law Committee is also beginning its planning for next year's programs (September 2003 – June 2004). The Committee's goal is to serve the educational interests of Section members, focusing on Michigan health law issues and Michigan aspects of national issues. Our programs are successful only with the help of Section members. If you have any ideas for program topics, or if you would like to volunteer to help with a program, please contact the Committee Chair, David Rogers (drogers@healthlex.com), or any Committee Vice Chair or Subcommittee Co-Chair. Don't be hesitant if you haven't participated in Section activities before now – your help will be welcomed and encouraged.

Joint Program with MSMS

The Section anticipates co-sponsoring a program this summer with the Michigan State Medical Society for physicians and attorneys. The program likely will be held in the Lansing area, but the final details and agenda are still under development. Nancy Lukey and Philip Stoffan are coordinating the Section's participation in this year's MSMS program.

Health Law Institute – March 6 & 7, 2003

The Section co-sponsored ICLE's Ninth Annual Health Law Institute in Troy on March 6-7. The day and a half program featured a variety of cutting edge and timely topics, including extended HIPAA sessions and a lively luncheon panel discussion of the United Memorial Hospital peer review fraud prosecution. Registration for this year's program was 180, and ICLE has continued its fine tradition of bringing the health care bar a top flight CLE opportunity without anyone having to travel out of state.

Annual Meeting 2003

The Section's annual meeting will be held on Thursday, September 11, 2003, in conjunction with the State Bar of Michigan's annual meeting in Lansing. The exact location will be announced via the Section's distribution listserve and published in the Michigan Bar Journal. Our business meeting will begin at 1 p.m. and the Section's program will begin at 2 p.m. We expect to adjourn at 5 p.m. Plans for the program are currently in progress, thanks to the efforts of our Annual Meeting Planning Committee (Jennifer Kildea Dewane, Philip Stoffan and Cynthia Wisner).

Health Care Law Section Website

The Section's revamped website includes information on upcoming programs as well as selected materials from prior programs, past editions of Michigan Health Law Report (our Section newsletter), the Section Directory, Council and Subcommittee leadership rosters, Section governance materials (including bylaws, Council minutes and various Section policies), and a variety of helpful links. The Website Taskforce, however, continues to meet to discuss ways to improve the website and its content for our members. Any suggestions regarding additional material or features for the website should be directed to the members of the Website Task Force (Robert Iwrey, Kathrin Kudner, Margaret Marchak and Eric Wexler). To reach the Section's

March 13, 2003

Page 5

website, go to www.michbar.org and click on "Sections" then click on "Health Care Law" from the list.

Although most website content is open to non-members, to protect member privacy, the Directory is for Section members only and accessing it requires a special user ID and password. The Directory could be very valuable to commercial interests, and we are depending on our Section members to keep it confidential. For your reference, should you need to access the Section Directory online, click on the "Membership" link on our website then enter the user name _____ and the password _____ (remember the user name and password are case sensitive). Please save this letter for the Directory access information, as it will not be included in the electronic version of this letter posted on our website.

Listserve

Remember the Section has two listserve, the interactive listserve and the distribution listserve. More and more, the Section and its members are relying upon communications through the internet listserve. The interactive listserve is a means to exchange news and thoughts with colleagues. Many notices and almost every reminder, and even notices for smaller functions, are being communicated exclusively through the distribution listserve. If you have not signed up for these listserve, please visit our website to do so. To reach the website, go to www.michbar.org and click on "Sections" then click on "Health Care Law" from the list. First follow the link to the listserve on the home page or click on the "Membership" link on the left, either one takes you to the Membership page. From that page, just click on "HCLS Section Member Listserv" and follow the directions from there.

Please note that listserve access is not sold and you will not be inundated with messages which are of little interest to you. You will, however, get the notices you need in order to be fully informed as a Section member and receive the reminders for scheduled events that are either sponsored by the Section or sponsored by other nonprofit organizations with participation by Section members or otherwise of significant interest to the membership.

If you have a problem getting on the interactive list, send an e-mail to Rich Bouma at rbouma@wnj.com, with a copy to me at ggriffith@honigman.com. If you have a problem getting on the distribution list, please send an e-mail to Greg Drutchas at drutgl@kitch.com with your correct e-mail address identified. Please note that the distribution listserve is intended to be limited to Section members.

MICHIGAN HEALTH LAW REPORT

The first issue of the Michigan Health Law Report for 2003 is nearing completion. To control costs, the newsletter will be made available in electronic form only (.pdf format), posted on our website. It will be printable from the website should anyone desire a hard copy. A paper copy also will be available on request to the editor for an additional charge to cover costs of production and mailing. As Chair-elect, Kathrin Kudner serves as Editor of the Report. She is currently in the process of finalizing topics and authors for the second issue of 2003, to be published around the time of the annual meeting. Anyone with topic suggestions or who would

March 13, 2003

Page 6

like to volunteer to write an article for the Michigan Health Law Report may e-mail Ms. Kudner at kkudner@dykema.com. Section members will be advised of the availability of the newsletter via the distribution listserve after the newsletter is posted on the Section's website.

Other Publications

In 2000, the Section and the Michigan Society of Healthcare Attorneys published the Michigan Hospital Law Index, a preliminary research tool identifying selected Michigan statutes, administrative rules and reported judicial decisions relevant to hospital legal issues. Lisa Panah is working on a web-based update of that Index, which the Council expects will be completed by the time of the annual meeting.

Prior years' publications that are still available for order include the Health Care Fraud and Abuse Manual (\$25/member and \$35/non-member per copy plus tax), and the Health Care Record Retention Manual (\$40/member and \$50/non-member per copy plus tax). Both are available by order from the State Bar or from my office. An order forms for State Bar publications is enclosed with this letter and additional forms can be printed online at http://www.michbar.org/products/pub_order.pdf.

Section Directory Update

Philip Stoffan is leading an effort to examine the feasibility of a web-based update of the Section Directory that was published last year. The version that is available online is the same as what was published in hard copy and is not configured yet to be regularly updated. Phil will be working with the Website Taskforce on this project (Robert Iwrey, Kathrin Kudner, Margaret Marchak and Eric Wexler). Anyone with suggestions as to how we can improve the utility of the Section Directory in any future issue or enhance the web-based version should feel free to contact Philip Stoffan or one of the members of the Website Taskforce. Contact information is included on the enclosed Section leadership roster.

Other Special Projects – Law Students

In an attempt to educate potential future members on the benefits of belonging to the Section, the Council is pursuing two special projects geared specifically to law students. On a networking level, David Rogers and Jennifer Kildea Dewane are making plans for law student receptions that will give students the opportunity to learn about opportunities and challenges in health care law from experienced practitioners in a relaxed setting. We are also interested in the scholarship of health law students. With that in mind, Cynthia Wisner and Kathrin Kudner are developing a writing competition on Michigan health law topics for 2003. Although the details are still being finalized, it is likely that the first prize paper will be published in the Michigan Health Law Report and receive one complimentary registration at the Tenth Annual ICLE Michigan Health Law Institute in 2004. We expect to announce this competition to Michigan law schools no later than May 2003.

March 13, 2003

Page 7

Section Policies and Procedures

The Council has adopted policies on Section publications, conflicts of interest, member privacy and a volunteer code of ethics. These policies will be made publicly available on our website. The Substantive Law Committee is also developing program guidelines for use by the subcommittees in future years to improve the efficiency of scheduling programs and to build on the successes of the subcommittee Co-chairs in recent years.

Section Leadership Rosters and Call for Volunteers

For your reference, I am enclosing lists of the current Council members and the leaders of the various subcommittees, work groups, task forces and special projects. If any other members are interested in participating in specific activities or developing new special projects in the Section, please feel free to contact any Council member and volunteer.

The Section's Nominating Committee will begin meeting shortly to develop a slate of nominees for the Council for 2003-2004 for the Council's consideration. I will also be asking the Council for suggestions for next year's Subcommittee Co-chairs. Council nominees and Subcommittee Co-chairs are typically drawn from members who have participated in some significant way in one or more Section-sponsored activities. This year that list is long, and the Nominating Committee's job will be very difficult. It does, however, make for a vital Section and one that I hope you will agree is indeed beneficial to the membership. I look forward to seeing many of you at our annual meeting later this year.

Sincerely,

Gerald M. Griffith
Chairperson

Enclosures:

Registration Form – 1st Michigan Conference on Racial and Ethnic Fairness in the Legal System
Announcement/Registration Form – Patient's Right to Independent Review Act Teleconference
Publication Order Form
Section Leadership Rosters (2)

DET_B\370558.1