

HEALTH CARE LAW SECTION

STATE BAR OF MICHIGAN



CHAIRPERSON

GERALD M. GRIFFITH (2004)
2290 FIRST NATIONAL BUILDING
660 WOODWARD AVENUE
DETROIT 48226-3583
e-mail: ggriffith@honigman.com

CHAIRPERSON-ELECT

KATHRIN E. KUDNER (2005)
400 RENAISSANCE CTR.
DETROIT 48243-1668
e-mail: kkudner@dykema.com

SECRETARY

JENNIFER KILDEA DEWANE (2003)
313 SOUTH WASHINGTON SQUARE
LANSING 48933-2193
e-mail: jkildea@fosterswift.com

November 25, 2002

TREASURER

DONNA CRAIG (2004)
1145 W. LONG LAKE ROAD, #120
BLOOMFIELD HILLS 48302-1361
e-mail: craigassoc@earthlink.net

CHAIRPERSON'S REPORT #1

COUNCIL

JOY BERENT (2004)
DETROIT

ARTHUR F. DEVAUX (2003)
WARREN

CAROL L. ISAACS (2005)
LANSING

NANCY L. LUKEY (2003)
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DETROIT

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MUSKEGON

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PLYMOUTH

PAST CHAIRPERSONS

GREGORY G. DRUTCHAS
(2001-2002)

NANCY L. LUKEY
(2000-2001)

GARY J. McRAY
(1999-2000)

MARIA B. ABRAHAMSEN
(1998-1999)

LINDA S. ROSS
(1997-1998)

SUSAN H. PATTON
(1996-1997)

JAMES B. FALAHEE, JR.
(1995-1996)

STEPHEN P. CLIFTON
(1994-1995)

COMMISSIONER LIAISON

DANIEL M. LEVY
DETROIT

Dear Fellow Council Members:

I am extremely honored to have been selected as the Chairperson of the Section for 2002-2003. I am very excited about the accomplishments we have achieved together as a Section with the assistance of many of our members beyond the Council, and I am even more excited by our prospects for the future. I am fortunate to follow in the footsteps of our Past Chairperson, Greg Drutchas, who enthusiastically managed and expertly organized a wide variety of activities for the Section in the past year. I hope and expect that we can all continue with that same level of energy and dedication, and I believe that the experience and enthusiasm of the Council members, the various subcommittee and task force leaders and our volunteer members make that goal readily achievable.

My personal goal as Chairperson for the 2002-2003 year is to assure that the Section provides a range of programs, special projects and publications that are responsive to the needs of our membership, efficiently produced and of high quality, and consistent with our financial resources. We will continue to rely heavily on the efforts of volunteers to accomplish this objective. Through the development of our Section newsletter (Michigan Health Law Report) last year, we created opportunities for several additional volunteers to become active in the Section. As a Council, we should all take steps to encourage our more active members to continue to volunteer as well as encouraging other members to become involved in Section activities. Inasmuch as we are an "active" Section, I would like to use this Chairperson's Report to update you on projects that are already underway or are well along in the planning process. As always, I welcome ideas from you and the membership at large as to additional projects that may be of interest and value to our members.

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Section Bylaws

We owe a debt of gratitude to Nancy Lukey and Maurice McMurray for their extensive work in preparing the Section's Amended and Restated Bylaws. The Bylaws were approved by the members of the Section at the annual meeting in Grand Rapids in September and, during that same annual meeting, the Bylaws were approved by the Board of Commissioners. The new Bylaws are available on our website.

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 is in the process of preparing an update to last year's HIPAA Privacy Rule Preemption Analysis Matrix. In addition, the Work Group has been meeting diligently to develop a series of ten basic sample forms for use in connection with HIPAA implementation. When available in early December, those forms will be posted on our website, accessible through www.michbar.org. In a Section blessed with very active members who give generously of their time, the joint 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.

Specialty Certification in Health Law

After preliminary discussions with State Bar of Michigan officials, the Council has decided to develop a proposal for specialty certification in health law in Michigan for presentation to the State Bar's Board of Commissioners and the Michigan Supreme Court. At present, specialty certification through the Bar does not exist in Michigan and we would be breaking new ground here. The Council has established a task force to develop a proposal on specialization in health care. Members of the task force (Joy Berent, Nancy Lukey, Keith Soltis, Philip Stoffan and me) will in part look to the experience of other states such as Florida that have adopted specialty certification programs. Although we are optimistic that these efforts will be successful, it likely will take several months before we could have an approved plan to implement.

Substantive Law Subcommittees

The Substantive Law Committee of the Section (Chair, David Rogers; Vice-Chairs, Margaret Marchak and Deborah Withrow) oversees what are now five subcommittees. The Providers, Payors, Consumers and Technology subcommittees are continuing from last year. Effective at the 2002 annual meeting, the Council established a new Medical-Legal subcommittee. Our hope, in part, is that this new subcommittee will provide an additional avenue for participation for our members who have been active in the Medicolegal Problems Committee (which was recently dissolved as a permanent standing committee of the Bar).

One area of health care law that affects a large percentage of our members in many practice settings is HIPAA. With that in mind, in addition to the HIPAA Work Group activities, the subcommittees will shortly launch a three-part series of HIPAA programs for our membership

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and other Michigan attorneys also affected by this legislation. The first program in the HIPAA trilogy will be held on Tuesday, December 3, 2002 from 12 noon until 1:30 p.m., sponsored by the Consumers subcommittee. The focus of the first program will be on HIPAA from the consumer's perspective. In order to allow maximum flexibility and participation by the membership, this first program offers a teleconference option, with no registration fee. Program materials will be posted on our website prior to the program. For additional details and a full program agenda, please see the enclosed brochure. Unfortunately, space is limited to 80 people for this teleconference and the lines were fully subscribed shortly after the program was announced on the Section's listserves. In order to allow for greater participation, the Consumers subcommittee has added an in-person option and is working on plans to allow people to purchase an audio tape of the program for a modest fee. The in-person portion of the program will take place at the downtown Detroit Offices of Honigman Miller Schwartz and Cohn on the 19th floor of the First National Building at 660 Woodward Avenue. Additional teleconference lines may become available if registrants cancel. Contact David Haron for more information at dharon@fsh-law.com.

The second program in the HIPAA trilogy will be sponsored by the Payors and Providers subcommittees, tentatively scheduled for December 10, 2002. The focus of this program will include unique Michigan aspects of HIPAA, such as state law preemption and consent requirements. Depending on the costs of program arrangements, there may be a modest charge to participate in this program via teleconference.

The third HIPAA program, tentatively scheduled for December 17, 2002, will be sponsored by the Technology subcommittee. The focus of this third program will be HIPAA compliance initiatives, including the advantages and disadvantages of web-based compliance training. Additional details on these programs will be distributed via the Section listserve when available. We anticipate that there will be a modest charge to participate in this program due primarily to the added costs of the hands-on "webcasting" portion of the program.

All of the subcommittees will be jointly sponsoring our fourth annual Legislative Update in February 2003 in Lansing. The Legislative Update will feature key state legislators and trade association representatives who will be invited to update the membership on the health care legislative agenda in Michigan. With the impending change in administrations, and with substantial turnover in the state legislature due to term limits, it could be a very active legislative year for health care in Michigan. We anticipate another large and enthusiastic crowd for the 2003 Update.

In addition to the HIPAA series and the Legislative Update, our subcommittees are planning a variety of programs for the coming year. 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. The Payors Subcommittee is working on two additional programs for 2003, one focusing on the Patient Right to Independent Review Act for January 2003 and a roundtable on ERISA developments (including Department of Labor claims processing issues and Michigan preemption issues). The Providers Subcommittee is planning a program for May 2003 on emergency medical services, to be co-sponsored by the Medical-Legal subcommittee. This

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program would 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 on patent infringement litigation related to certain typical managed care processes. A date has not yet been set for this program.

Joint Program with MSMS – October 29, 2002

On October 29, 2002, the Section co-sponsored a program with the Michigan State Medical Society for physicians and attorneys to discuss proposed changes to the structure and function of Blue Cross and Blue Shield of Michigan, and how those changes might impact health care delivery in Michigan. The program, "Blue Cross at a Crossroads: Reexamining BCBSM Enabling Legislation," was held at the Kellogg Center, at Michigan State University in East Lansing. The panel for the program included: Richard Cole, Senior Vice President of Strategic Planning and Corporate Communication for BCBSM; Frances Wallace, Chief Deputy Commissioner of the Office of Financial and Insurance Services; Barry Cargill, Vice President of Government Communications for the Small Business Association of Michigan; Dorothy Kahkonen, M.D., President of MSMS; Pamela Beemer, Director of Benefits for MSU (representing the Capital Area Health Alliance); and Ron Cook, Director of Legislative Affairs for Health Alliance Plan and the Chair of the Legislative Committee of the Michigan Association of Health Plans. The session was well organized and well attended.

Health Law Institute – March 6 & 7, 2003

Once again, the Section will be co-sponsoring ICLE's Health Law Institute. Development of the program is nearly complete and Section members will be receiving a brochure from ICLE in the near future. The Health Law Institute is scheduled for March 6 and 7, 2003 (Thursday afternoon and all day Friday) at the MSU Management Education Center in Troy.

Health Care Law Section Website

The Section's revamped website went "live" prior to the 2002 annual meeting. 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). Features already available on the website include the Section Directory, the Michigan Health Law Report and the HIPAA Privacy Rule Preemption Analysis Matrix.

Both the Directory and the Matrix are for Section members only and require special passwords. Your Section has expended considerable resources in assembling these copyrighted materials, and these materials could be very valuable to commercial interests. However, they were intended

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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 these materials, (a) for the Section Directory click on the "Membership" link on our website then enter the user name [REDACTED] and the password [REDACTED] and (b) for the HIPAA Privacy Rule Preemption Analysis Matrix, click on either "HIPAA" or "Publications" and follow the link on either page to a log-in screen and then enter the password [REDACTED] (remember the user name and the passwords are case sensitive – there is no user name required for the Matrix). The Section Directory is posted in .html; however, the Matrix requires the Adobe Acrobat reader to view the .pdf files. As of the date this letter was completed, an update of the Matrix was nearing completion. Members will be notified via one of the Section's listserves when the updated version is available.

Listserve

Remember the Section has two listserves, the interactive listserve and the distribution listserve. More and more, the Section and its members are relying upon communications through the internet listserves. 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. Although we have over 800 registered members of the Section, currently we have approximately 600 people who have signed up for the distribution listserve. **We would strongly recommend, if you have not already done so, that you join the distribution listserve.** Joining either listserve is relatively easy. All you need to do is:

1. Go to the web site: healthcarelaw-dist@lists.michbar.org (it looks like an e-mail address but it gets you to the State Bar's listserve page);
2. Click on Section & Committee Lists;
3. For the distribution list, click on [healthcarelaw-dist](#); for the interactive list, click on [healthcarelaw](#);
4. Complete the form and sign up to be on the list(s) of your choosing.

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 assistance of reminders for scheduled events. 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 need to make an official distribution to Section members via our distribution listserve, please notify any officer of the Section. We maintain a distribution listserve separate from the interactive listserve for purposes of communicating with Section members on Section business. If you have a problem getting on the distribution list, please send an e-mail to Greg Drutchas at drutg1@kitch.com with your correct e-mail address identified. Please note that the distribution listserve is intended to be limited to Section members.

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I am pleased to report that both issues of the first volume of the newsletter have been well received by the membership and our colleagues in the Bar. As mentioned above, both of those issues of the newsletter are available on our website, including both articles on the Blue Cross conversion issue, one written by now Governor-elect Granholm and one by Commissioner Fitzgerald (OFIS). As Chair-elect, Kathrin Kudner has assumed the role of Editor of the Michigan Health Law Report. She is currently in the process of finalizing topics and authors for the first issue of the new year, to be published in the first quarter of 2003. Anyone with topic suggestions or who would like to volunteer to write an article for the Michigan Health Law Report may e-mail Ms. Kudner at kkudner@dykema.com. Also, please note that in order to update the manner in which we deliver publications to our members, and to control costs and maximize the resources available for Section programs, beginning with our third edition of the newsletter (volume 2, number 1), Michigan Health Law Report will be provided electronically only. A paper copy will be available on request to the editor for an additional charge to cover costs of production and mailing. Additional information on this change will be posted on the Section's distribution listserve.

Other Publications

In 2000, the Section released the Health Care Regulations Manual, a compilation of Michigan health care laws and regulations. That same year, 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. The Council is exploring the alternatives for updating one or both of these publications during the coming year.

Section Directory Update

Phil Stoffan will be leading an effort to examine the feasibility of a web-based update of the Section Directory that was published last year. 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 Phil Stoffan or one of the members of the Website Taskforce. Phil's e-mail address is pms@Parmenterlaw.com.

Other Special Projects – Law Students

For several years, the Council has been active in a variety of special projects for the benefit of the membership. This year appears to be no exception. Through this year's special projects, the Council will be reaching out to the Section's future members as well as its current members. For the future members, 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.

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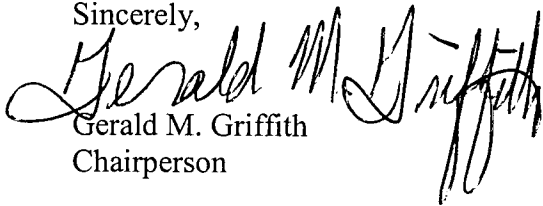
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We are also interested in the scholarship of health law students. Cynthia Wisner and Kathrin Kudner are developing a writing competition on Michigan health law topics for 2003. Although the details are still being finalized, it is likely that the first prize paper will be published in the Michigan Health Law Report and that the winner will receive one complimentary registration at the following ICLE Michigan Health Law Institute.

Section Leadership Roster

For your reference, I am enclosing lists of the current Council members and the leaders of the various subcommittees, work groups and special projects. I am looking forward to working with all of you this year and continuing the high level of activity within our Section.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald M. Griffith". The signature is written in a cursive style with a large initial "G".

Gerald M. Griffith
Chairperson

Enclosures

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