

HEALTH CARE LAW SECTION

CHAIR

Lisa Panah
One Woodward Ave. Ste. 2400
Detroit 48226-5485
E-Mail: lisa.panah@kitch.com

CHAIR-ELECT

Ann T. Hollenbeck
660 Woodward Ave. Ste 2290
Detroit 48226-3506
Email: ahollenbeck@honigman.com

SECRETARY

Joanne R. Lax
39577 Woodward Ave Ste 300
Bloomfield Hills 48304-5086
Email: jlax@dykema.com

TREASURER

Margaret Marchak
201 W. Big Beaver Rd. Ste 315
Troy 48084-4158
Email: mmarchak@hallrender.com

COUNCIL

Janice A. Anderson, Chicago, IL
Amy Barkholz, Lansing
Richard L. Bouma, Grand Rapids
Mary E. (Beth) Derwin, Royal Oak
Marta J. Hoffman, Bloomfield Hills
Ann T. Hollenbeck, Detroit
Robert S. Iwrey, Royal Oak
Joanne R. Lax, Bloomfield Hills
Margaret Marchak, Troy
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Carol Tarnowsky, Novi
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(1994-1995)
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(2005-2006)
Gregory G. Drutchas, Detroit
(2001-2002)
James B. Falahee, Jr., Kalamazoo
(1995-1996)
Gerald M. Griffith, Chicago, IL
(2002-2003)
Kathrin E. Kudner, Detroit
(2003-2004)
Nancy L. Lukey, Okemos
(2000-2001)
Susan H. Patton, Royal Oak
(1996-1997)
David L. Rogers, Royal Oak
(2006-2007)
Linda S. Ross, Detroit
(1997-1998)
Cynthia F. Wisner, Novi
(2004-2005)

COMMISSIONER LIAISON

Richard L. Cunningham, Detroit

March 6, 2008

CHAIRPERSON'S REPORT--WINTER 2008

Dear Section Members:

At the mid-point of the 2007-2008 Health Care Law Section ("Section") year, I would like to update you on the many activities that the Section has carried out to date and what the plans are for the future.

14th Annual Health Law Institute - March 6 & 7, 2008

Once again, the Section will work with ICLE to co-sponsor and plan the Annual Health Law Institute. This is one of the largest and most comprehensive health law programs in Michigan. Alan Gilchrist, Margaret Marchak, David Rogers, Cynthia Wisner and I helped to plan this year's program on current health law topics. Alan, Marge and I will also serve as moderators for this program. I would like to thank, on behalf of the Section, Shel Stark and the people at ICLE for their considerable help in planning this program. Without their support, this program would not be as successful or run as smoothly as it does each year.

Substantive Law Committee and Subcommittees

A key purpose and goal of the Section is to serve as an educational resource for the Section. We accomplish this primarily through educational programs produced by the Substantive Law Committee and its subcommittees. The Substantive Law Committee (Chair, Monica Wilkinson; Vice-Chair, Joan Lowes) oversee the following subcommittees: the Medical-Legal Subcommittee (chaired by Steve Bender, Tim Harden and Trish Shabath); the Payors Subcommittee (chaired by Mark Kopson, Laura Napiewocki and Patrick Shannon); the Providers Subcommittee (chaired by John Anderson, Jennifer Benedict and Tom McGraw); the Technology Subcommittee (chaired by John Hazewinkel, Monica Navarro and Deborah Williamson); and the newly formed Legislative Update Subcommittee (chaired by Christine Pfeiffer and Joan Lowes).

Recent and upcoming programs include the following:

- A teleconference program on the Michigan Health Information Network Exchange Program, sponsored by the Technology Subcommittee, was held on November 30, 2007 and featured Greg Forsley, M.D. and Margaret Marchak.
- A teleconference program on "Navigating the Blues," sponsored by the Payors Subcommittee, was held on January 9, 2008 and featured Leo Nouhan and Sue Jenkins from BCBSM.

- A five-part Stark Law Series - With all of the regulatory changes being made, there was a lot of interest expressed in Stark educational programs. The Providers and Medical-Legal Subcommittees worked jointly to produce a five-part Stark Law Series. The Stark Law Series consists of two Stark law primer courses, followed by three advanced case studies that focus on specific Stark law exceptions and issues.
 - Stark Primer Part 1 was held on January 24, 2008 and featured Linda Ross (hospital focus).
 - Stark Primer Part 2 was held on January 31, 2008 and featured Andrew Wachler (physician focus).
 - Case Study No. 1 (physician recruitment) was held on February 14, 2008 and featured Maria Abrahamsen.
 - Case Study No. 2 (hospital-physician joint ventures) will occur at ICLE on March 6, 2008 and feature Cynthia Wisner.
 - Case Study No. 3 (physician group practice issues) will occur on April 3, 2008 and feature Keith Soltis.
- The Annual Legislative Update program, sponsored by the Legislative Update Subcommittee, will be held on April 29, 2008 at the Foster Swift law firm in Lansing.
- A program on E-Prescribing is being planned by the Technology Subcommittee for early Fall 2008-TBD.

Our programs are successful because of the help of Section members so we welcome and encourage your input. If you have any ideas for program topics or would like to volunteer to help organize a program, please contact the SLC Chair, Monica Wilkinson (mwilkins@dmc.org), or the SLC Vice Chair, Joan Lowes (jlowes@hallrender.com) or any of the Subcommittee chairs.

Health Law Schmooze Events

The Health Law Schmooze Committee, chaired by Donna O'Connor and David Rogers and including John Anderson, Cara Nieboer, Paul Shirilla and Billie Ward, was formed to plan health law schmooze events throughout Michigan.

- The first health law schmooze was held on February 7, 2008 at the law offices of David Rogers in Royal Oak, Michigan.
- The next schmooze will be held on March 13, 2008 at the Smith Haughey law firm in Grand Rapids.

- A schmooze combined with a Detroit Tigers' game will be held on Friday, June 6, 2008. A block of 50 tickets has been purchased for the game against the Cleveland Indians.

The committee also plans to hold schmooze events in Lansing and Traverse City later this year--TBD. Announcements on the upcoming schmooze events will be sent out before each scheduled event.

Joint Educational Programs with other Sections

Council members are exploring collaborating on joint educational programs with the Antitrust Law Section and the Alternative Dispute Resolution Section of the State Bar of Michigan. Nothing concrete has been planned for the ADR joint program yet. However, the Antitrust Law Section is planning a health care antitrust program in Novi in May. If the joint antitrust program moves forward, we will certainly alert you on the details.

Law Student Outreach

In an effort to reach out to law students and promote awareness of the Section and health law as a career, Council members, Amy Barkholz, Marta Hoffman, Ann Hollenbeck and Rob Iwrey, have taken the lead on planning a series of health law events at Michigan law schools. The law student events will occur at lunchtime and will give students the opportunity to discuss health law careers with attorneys from different sectors of the health law industry (private practice, government and in-house counsel). The following law student events are currently scheduled:

- The law student event in Detroit will be held at Wayne State University Law School (Rob Iwrey) on March 20, 2008
- The law student event at the University of Michigan Law School (Ann Hollenbeck) will be held on March 26, 2008;
- The law student event at Ave Maria Law School (Marta Hoffman) will be held on March 27, 2008.

Law Student Writing Competition

The Section will sponsor a writing competition for all second and third year law students from all Michigan law schools. The topic will coordinate with the Section Annual Meeting topic, which, as noted below, is the legal, ethical and business implications of voluntarily disclosing medical errors to patients. The plan is to award a first prize of \$1,500, and a second prize of \$1,000, to the winners at the Annual Meeting on September 23, 2008. Joanne Lax and Carol Tarnowsky are leading this initiative, and the information on the competition is posted on the Section website. If you are interested in volunteering to read and grade the writing submissions, please let us know.

MSU Journal of Medicine and Law Legal/Medical Symposium

Council member, Eric Wexler, is taking the lead on exploring ways to support and collaborate with members of the MSU Journal of Medicine and Law on a symposium being held on March 21, 2008. One option will be to sponsor a health law schmooze after the event.

Legislation Committee

The Section Council is often called upon by the State Bar to comment on legislation relevant to health law. However, since the Section has a very diverse membership with different interests, the concern is that advocacy may not work for the Section in most cases. The Legislation Committee, comprised of Jan Anderson, Amy Barkholz, Donna O'Connor, Eric Wexler, Marta Hoffman and Tom Trenta, is exploring what the role of the Legislation Committee should be and how to create a mechanism/process for responding to State Bar requests, even if it just involves declining to comment. We welcome your ideas and input on this.

Amicus Brief

As many of you are aware, the Section was invited to file an amicus curiae brief with respect to the *Miller vs. Allstate Insurance Company and PT Works, Inc.* matter. Although concerns were raised about how we could best represent the broad and diverse interests of the Section, the Council ultimately determined it was important to respond.

The Council, Legislation Committee of the Council and the amicus brief work group, with input from the Section, determined that the brief would advocate in support of payment to the provider, whether it is the corporation or the licensed provider, but for the most part, the brief would serve to educate the Court rather than advocate on a particular result. Toward this end, an outline of the issues to address in the brief was developed; a summary of the issues were presented to the entire Section for review and input on February 5, 2008; and an amicus brief is in the process of being prepared, which will be filed with the Michigan Supreme Court by March 12, 2008.

Marge Marchak and the law firm of Hall Render are leading this effort on behalf of the Council and Section, and I would like to thank them for taking on this challenge.

Pro Bono Efforts

The Pro Bono Work Group, chaired by Rob Iwrey and which includes Amy Richards, is in the process of developing a domestic violence brochure. The goal of the brochure is to serve as a resource for health care providers throughout Michigan seeking guidance on how to report, or where to obtain help for, victims of domestic violence. The plan is to process this brochure in collaboration with the Elder Law Section.

Technology and Access Committee

The Council expanded the focus of the website committee to technology issues and changed the name of the committee to the Technology and Access Committee. The committee, chaired by

Richard Bouma, is working to revitalize the HCLS Discussion Listserv, explore ways to update or improve the Section website, investigate creating a health law Wiki, and look into ways to use technology to improve access to Section programs and initiatives.

Michigan "Stark" Law Task Force

Section Council members, led by Margaret Marchak, are monitoring the Michigan Department of Community Health's plan to issue regulations to take official notice, as required under MCL 333.16221, of changes to the federal Stark Physician Self-Referral regulations.

Annual Meeting--Hold the Date!

The Annual Meeting Planning Committee, chaired by me and consisting of Joy Berent, Beth Derwin, Ann Hollenbeck, Joanne Lax and Tom Trenta, is busy planning the Annual Meeting of the Section. The Annual Meeting will be held at the **Detroit Institute of Arts on Tuesday, September 23, 2008**. The business meeting, which is open to all Section members at no charge, will be held from 12:30 pm to 1 pm. Following the business meeting will be two sets of lunch roundtable discussions. There will then be an educational session on the legal, ethical and business aspects of disclosing medical errors to patients. The discussion will include the new CMS reimbursement policy denying payment for so-called "never events," and how these financial pressures may affect decision-making. To conclude, we will hold a reception in the Diego Rivera courtyard at the DIA. We are also arranging for selected art galleries to be held open with docents present to answer questions about the works of art so it should be fun. Please make certain to hold the date.

Section Bylaws

The Section Council has received requests from law professors who are not members of the State Bar to join the Section. The Council supports creating a new category of non-voting Section membership, which would be open to any attorney who is a full or part time faculty member in a health law related position at any college or university in Michigan. This will require an amendment to the Section Bylaws. Monica Wilkins and I have developed the proposed amendment to the Bylaws, which will be presented to the Council for vote and approval at a future Council meeting, followed by submission of the proposed Bylaws amendment to the entire Section for vote and approval at the Annual Meeting in September.

Revised IRS 990 Form Task Force

In July 2007 during David Roger's term as Section Chair, the Council formed a Redesigned Draft Form 990 Task Force, led by Ann Hollenbeck and Cynthia Wisner, for the purpose of submitting comments on the Redesigned Draft Form 990 to the Internal Revenue Service. The comments of the Task Force were submitted to the IRS in September 2007, and the IRS released the final 2008 Form 990 for tax-exempt organizations in December 2007. The IRS has announced that it plans to release the related instructions sometime this year. When they are released, the Task Force plans to reconvene to prepare comments on the instructions. Ann or Cindy will send out a call for volunteers to new and existing Task Force members.

Health Law Index

A few years ago, Maribeth Dickerson and I created a web-based index, which appears on the Section website, which includes links to selected regulations from the Michigan Administrative Code, Michigan attorney general opinions, and Michigan certificate of need standards relevant to health care. The index is designed to expedite research and serve as a convenient aid to persons interested in Michigan health law issues. Maribeth Dickerson updates the index regularly to keep it up-to-date. We are looking for a volunteer to take over this responsibility. If you are interested in participating in Section activities, this is a great opportunity, and I welcome you to contact me.

Nonprofit Corporation Act

Council member, Joanne Lax, continues to monitor legislation regarding potential changes to the Michigan Nonprofit Corporation Act.

Section Listservs

Remember that the Section has two Listservs, the Discussion Listserv and the Announcement listserv. The Discussion Listserv is a means for members to exchange news and thoughts with colleagues. Many notices and almost every reminder for Section initiatives are communicated by the Council and Subcommittee Chairs through the Announcement Listserv. If you have not signed up for these Listservs and would like to do so, please visit our website at -- www.michbar.org/health/hclistserv.cfm. If you have any trouble signing up, please send an email to Rich Bouma at rbouma@wnj.com.

Closing Remarks

As you can see, the Section has been very busy working on a variety of activities for the Section. None of these activities would have been possible without the many volunteers who have devoted their time, effort and ideas to the Section. So I would like to thank the Council and all of the volunteers for their contributions to the Section and for making this a productive, fulfilling year so far. It has been a pleasure getting to know and work with you.

The Council welcomes and values the input from the Section's members for new Section-sponsored programs, publications and initiatives. Feel free to contact me or any member of the Council with your ideas. I can be reached by telephone at (313) 965-7527 or email at lisa.panah@kitch.com.

Sincerely,



Lisa Panah
Chairperson, Health Care Law Section