

2007-2008 ANNUAL REPORT OF THE HEALTH CARE LAW SECTION

The following provides a summary of the many activities that the Health Care Law Section ("Section") carried out to date and what the plans are for the future.

14th Annual Health Law Institute

On March 6 and 7, 2008, the Section worked with ICLE to co-sponsor and plan the 14th Annual Health Law Institute. Section members Alan Gilchrist, Margaret Marchak, David Rogers, Cynthia Wisner and I helped to plan this comprehensive program on current health law topics. Shel Stark and the people at ICLE were also instrumental in planning the program.

Substantive Law Committee and Subcommittees

A key purpose and goal of the Section is to serve as an educational resource for the Section. The Section accomplishes 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:

- Medical-Legal Subcommittee (chaired by Steve Bender, Tim Harden and Trish Shabath);
- Payors Subcommittee (chaired by Mark Kopson, Laura Napiewocki and Patrick Shannon);
- Providers Subcommittee (chaired by John Anderson, Jennifer Benedict and Tom McGraw);
- Technology Subcommittee (chaired by John Hazewinkel, Monica Navarro and Deborah Williamson); and
- Legislative Update Subcommittee (chaired by Christine Pfeiffer and Joan Lowes).

Recent and Upcoming Programs

- A teleconference program on the "Michigan Health Information Network Exchange," 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, sponsored by the Providers and Medical-Legal Subcommittees, consisting of two Stark law primer courses, followed by three advanced case studies that focused 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) was held at the ICLE program on March 6, 2008 and featured Cynthia Wisner.
 - Case Study No. 3 (physician group practice issues) was held on April 23, 2008 and featured Keith Soltis.
- The Annual Legislative Update program, sponsored by the Legislative Update Subcommittee, was held on April 29, 2008, at the Foster Swift law firm in Lansing.
- A teleconference program on the “Learned Professions Doctrine,” sponsored by the Medical-Legal Subcommittee, was held on April 30, 2008, and featured Amy Barkholz and Michael Philbrick as speakers, and Margaret Marchak as moderator.
- A half-day program on “Health Care and the Antitrust Laws,” jointly sponsored by the Payors Subcommittee and the Antitrust Law Section, was held on May 7, 2008, in Novi.
- A teleconference program on E-Prescribing is being planned by the Technology Subcommittee for September 2008.

Health Law Schmooze Events

The Health Law Schmooze Committee, chaired by Donna O'Connor 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.
- The next schmooze was held on May 13, 2008 at the Miller Canfield law firm in Lansing.
- A schmooze combined with a Detroit Tigers' game will be held on Friday, June 6, 2008. The schmooze will be held at the Bodman law firm in Detroit followed by the game.
- A schmooze will be held at the law firm of Dingeman, Dancer & Christopherson on October 10, 2008 in Traverse City.

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, Marta Hoffman, Ann Hollenbeck and Rob Iwrey, took the lead on planning a series of health law events at Michigan law schools. The law student events occurred at lunchtime and gave 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 were held:

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

Law Student Writing Competition

The Section is sponsoring a writing competition for second and third year law students from all Michigan law schools. The topic will coordinate with the Section Annual Meeting topic, which 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.

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 responsible for exploring what the role of the Legislation Committee should be and how to create a mechanism/process for responding to State Bar requests.

Amicus Brief

The Section was invited to file an amicus curiae brief with the Michigan Supreme Court relative to the *Miller vs. Allstate Insurance Company and PT Works, Inc.* matter. Toward this end, the Council formed an Amicus Brief Work Group led by Margaret Marchak and attorneys from the law firm of Hall Render Heath & Lyman. In order to best represent the broad and diverse interests of the Section, the Council prepared the brief with input from the Council, the Legislation Committee of the Council, the Amicus Brief Work Group, and Section members. While the brief advocated in support of payment to the provider, whether it is the corporation or the licensed provider, for the most part, it served to educate the Court rather than advocate on a particular result. The brief was filed with the Michigan Supreme Court by March 12, 2008.

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, explores ways to update or improve the Section website, looks into ways to use technology to improve access to Section programs and initiatives, and investigated creating a health law Wiki, which the Council decided not to pursue.

Electronic Newsletters

In an effort to better connect with Section members, inform them of upcoming Section events and other items of interest, and solicit ideas and volunteers, we have started an electronic newsletter, which is sent to the Section on a monthly basis.

Michigan "Stark" Law Task Force

Section Council members, led by Margaret Marchak, monitored the Michigan Department of Community Health's ("MDCH") plan to issue regulations to take official notice, as required under MCL 333.16221, of changes to the federal Stark Physician Self-Referral regulations. MDCH took official notice of the Stark regulations on April 24th.

Annual Meeting

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.

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. The proposed amendment to the Bylaws was approved by the Council at the March 19, 2008 Council meeting, and will be submitted to the entire Section for vote and approval at the Annual Meeting in September.

Revised IRS 990 Form Task Force

In July 2007, 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 ("IRS"). 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 Task Force reconvened in April 2008, after the IRS released the draft instructions to the Form 990. The Task Force prepared and submitted comments on the draft instructions by June 1, 2008.

Health Law Index

A few years ago, Maribeth Dickerson and I created a web-based index, which appears on the Section website, and 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 continue to look for a volunteer to take over this responsibility.

Nonprofit Corporation Act

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

Section Listservs

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. Section members are encouraged to sign up for these Listservs if they have not already done so.

Closing Remarks

I would like to thank my fellow Council members and all of the volunteers for their contributions to the Section and for making this a productive, fulfilling year so far. None of the programs and activities of the Section would have been possible without their time, effort, ideas and dedication to the Section.

Lisa Panah
Chairperson, Health Care Law Section