

May 30, 2003

VIA FACSIMILE (517-482-6248) AND REGULAR MAIL

Thomas W. Cranmer, Secretary
c/o State Bar of Michigan
306 Townsend Street
Lansing, MI 48933-2083

Re: 2002-2003 Annual Report of the Health Care Law Section

Dear Mr. Cranmer:

I would like to take this opportunity to update you and the Board of Commissioners, on behalf of the Council, on the activities that the Health Care Law Section (HCLS) has undertaken during the current Bar year and what activities are on the horizon. The HCLS has sponsored a variety of programs, publications and outreach activities, all made possible by the dedication and hard work of the Council members and several volunteers serving on committees, subcommittees, task forces and work groups or simply lending a helping hand in Section activities.

VOLUNTEERS

The HCLS continues to enjoy tremendous participation by volunteers in a variety of projects. The HCLS has approximately 800 members, and a high percentage of them participate regularly in HCLS activities.

WORK GROUPS AND TASK FORCES

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) includes far-reaching privacy protections that affect patients, health care providers, vendors and employers. One of the most active HCLS groups has been the HIPAA Work Group, a joint work group of the HCLS and the Michigan Society of Healthcare Attorneys (MSHA). Co-chaired by Joy Berent and Cynthia Wisner, the HIPAA Work Group has updated last year's HIPAA Privacy Rule Preemption Analysis Matrix and developed basic sample forms for use in connection with HIPAA implementation.

The sample HIPAA forms are freely available on the HCLS website as a public service, and the site also has ordering information for the Matrix (a tool for providers to use in working through the complex federal preemption analysis under HIPAA). Although HCLS Members have free access to an electronic copy of the updated Matrix with a special password, it is also available in hard copy for sale to members and nonmembers.

The website itself has been significantly revamped in the past year through the efforts of Eric Wexler and the rest of the HCLS Website Task Force, with the assistance of State Bar of Michigan staff. Improvements include expanded links for practitioners, the new HIPAA materials, electronic editions of our newsletter and information on other HCLS resources. The HCLS website is accessible through www.michbar.org by clicking on the "Sections" button and then clicking on "Health Care Law."

Although it is still at a very preliminary fact-gathering stage, the HCLS Specialty Certification Task Force is exploring the feasibility, advantages and disadvantages of a potential certification program for specialization in health care law. There have been some exploratory discussions with State Bar of Michigan staff. Many tasks remain, however, before the Task Force will be in a position to make any recommendations concerning certification to the HCLS Council and the Board of Commissioners, present any specific proposal to the membership or, through the Bar, initiate a dialogue with the Michigan Supreme Court on the Court's expectations for any certification program. At present, two other states have specialty certification programs in health care (Florida and Texas) and members of the Task Force have been in contact with their counterparts in those states to learn from their experience. Many more states offer specialty certification in non-health care practice areas, though Michigan is not among them at this time, making this a longer-term project which likely would require an overall framework for specialty certification in other areas as well and support from a number of other Sections. 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

In addition to these and other work groups and task forces, the HCLS Substantive Law Subcommittees continue to be an integral part of our activities. We are now up to a total of five subcommittees, with the areas of focus that their names suggest – Consumers, Medical-Legal, Payors, Providers and Technology. Each Subcommittee has three volunteer Co-chairs and their efforts are coordinated by the Section's Substantive Law Committee, chaired by David Rogers, supported by Vice Chair Margaret Marchak. All of these volunteers deserve our thanks, the Council's and the Board of Commissioners', for their efforts.

Those efforts have yielded many useful educational opportunities. During February 2003, in what has become a signature program, we held our Fourth Annual Michigan Legislative Update. The Update is an annual briefing with top health care legislative policy experts in Michigan, and it included state legislators from both major parties interested in health care issues.

In December 2002, four of our subcommittees (Consumers, Payors, Providers and Technology) collaborated to host a three-part teleconference series on HIPAA issues, ranging from an introduction to HIPAA from the consumer's perspective, to Michigan aspects of HIPAA including preemption and consent requirements, to the advantages and disadvantages of web-based compliance training. The HIPAA series was particularly noteworthy due to the efforts of numerous volunteers in addition to the Subcommittee Co-chairs.

On March 24, the Payors Subcommittee held a teleconference entitled "Michigan's Patient's Right to Independent Review Act: How Is It Working?" The panel included speakers from the Office of Financial and Insurance Services (which administers the review process), the Department of the Attorney General and Blue Cross and Blue Shield of Michigan. In this teleconference, the panel reviewed recent experiences in the implementation of the external review process for certain health care claim denials mandated by this legislation. This program was designed for health care attorneys who represent carriers subject to the law and attorneys who assist individuals with appealing adverse claim decisions.

The HCLS has also used subcommittee activities to network with other Sections of the Bar. On May 15, the Consumers Subcommittee co-sponsored a Legal Aid Lawyers program with the Elder Law Section, reprising a theme and cooperative relationship that the two initiated in the Spring of 2002. Held at Cooley Law School in Lansing, this year's program covered topics that included advanced directives in health care (a/k/a living wills), discharge planning and arranging for home health services, Medicaid planning (from a beneficiary's perspective), and dealing with clients facing a loss of health insurance coverage. One of our state legislators delivered the luncheon keynote address for this program.

The Subcommittees are also planning a variety of programs for the fall, following the annual meeting, including programs related to regulation of emergency medical services, claims review processes and regulations and the HIPAA data security rules. To facilitate future program planning, David Rogers and Margaret Marchak are compiling a list of procedures that will serve as guidelines for structuring future programs. Through the subcommittees, the HCLS also expects to be able to continue to increase the opportunities for Section members to volunteer and become active in HCLS activities. Those opportunities may include reinstating general business meetings for the Subcommittees to allow for group development of new service projects.

PROGRAM SPONSORSHIPS

The HCLS once again co-sponsored the Institute of Continuing Legal Education's Michigan Health Law Institute in March 2003. Each Institute has been very well attended, with this year's program drawing approximately 170 people. We at the Council believe that the Institute is truly a national quality program here in our own backyard. Plans are already underway for the 2004 program, which likely will again be co-sponsored by the HCLS.

In addition to our sponsorship of the Institute, the HCLS sponsors or endorses a number of other worthy programs, including the 1st Michigan Conference on Racial and Ethnic Fairness in the

Legal System, which was hosted by the State Bar of Michigan Open Justice Commission on April 9-12, 2003 at the Marriott Renaissance Center in Detroit. The Section also will co-sponsor a program this summer with the Michigan State Medical Society for physicians and attorneys, as we have done in prior years.

As in past years, the Section will cap off the year with its annual meeting. The 2003 annual meeting will be held on Thursday, September 11, 2003, in conjunction with the State Bar of Michigan's annual meeting in Lansing. Our business meeting will begin at 1 p.m. and the educational program will begin at 2 p.m. This year's annual meeting program will feature two panel discussions. The first panel discussion will look at legal fees in health care from both a lawyer and a client perspective – Getting, Keeping and Growing Health Law Clients: Making Money and Containing Costs in Our Business, moderated by Cynthia F. Wisner. The second panel will delve into more substantive legal issues by “Taking Another Look at Antitrust: New Enforcement Emphasis Initiatives in Health Care Make Compliance Worth Your (Clients') While,” moderated by Philip M. Stoffan.

PUBLICATIONS

The HCLS is also a source of what we on the Council believe are useful publications for the membership, such as the HIPAA preemption matrix described above. One other publication on tap for later this year is an update to the 2000 Michigan Hospital Law Index. Lisa Panah is working on a web-based update of that Index to serve as a helpful research tool. We expect the update to be completed by the time of the annual meeting. The HCLS is also in the early stages of a project to publish a stand alone version of the Michigan Public Health Code with explanatory annotations and an index for reference use.

Last year we initiated a Section newsletter, the Michigan Health Law Report, publishing two editions in the 2002-2003 Bar year. The next issue of the newsletter has been completed and should be posted shortly on the HCLS website. Beginning with this issue, the newsletter will be made available in electronic form only (.pdf format), posted on our website with an e-mail notification to members via our distribution listserve. Back issues are also available on our website free of charge to HCLS members and non-members. We will continue to make paper copies available to HCLS members 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 this year, and she is in the process of gathering articles for the next edition of the newsletter.

LISTSERVES

The HCLS continues to maintain two listserves, the interactive listserve and the distribution listserve. The interactive listserve is a means to exchange news and thoughts with colleagues. It is a moderated listserve and all members of the Bar may subscribe. The distribution listserve is limited to members of the HCLS and only HCLS leadership can post to this listserve. The HCLS uses the distribution listserve to notify members of upcoming HCLS programs and other programs of interest sponsored by other nonprofit organizations and involving participation of HCLS members. The HCLS website includes a link for subscribing to these listserves.

SECTION POLICIES

During the past year, the HCLS Council has adopted additional policies to guide the activities of the Council and the HCLS. These policies include a privacy policy that limits the purposes for which communications will be sent to the membership at large, a publications policy related to works appearing in the newsletter and other HCLS publications, and a conflict of interest policy for the Council that memorializes our past practice in addressing potential conflicts. Plans are underway to post these policies in a special section of the website and, in fact, the privacy policy is already available on the website.

OUTREACH

The HCLS is also interested in a variety of outreach activities. In the fall, the HCLS expects to host a series of receptions for law students interested in health care law as well as hold a writing competition for law students interested in health care law. HCLS outreach includes outreach to other sections. As noted above, through the efforts of the Consumers Subcommittee, we worked with the Elder Law Section to hold a second health care law program geared to legal aid and elder law attorneys. One of our Council members, Arthur deVaux, and several other HCLS members are also members of a Business Law Section task force reviewing possible revisions to the Michigan Nonprofit Corporation Act. The HCLS remains interested in opportunities for collaborative projects with other Sections, whether formally (such as the Elder Law program) or informally (such as by participating in the Business Law Section task force). The Council has also established a pro bono task force to explore ways in which Section members may expand their pro bono options into areas more central to their practices. Last but certainly not least, the HCLS was again a proud contributor to the Access to Justice Fund in 2003, providing additional financial support for pro bono legal services in Michigan.

CONCLUSION

In closing, I would like to again extend the Council's thanks to all of our volunteers. Without their effort and dedication, many activities of the HCLS would not be possible. In the HCLS, today's volunteers are tomorrow's leaders. We are all grateful for their willingness to serve.

Sincerely,

Gerald M. Griffith
Chairperson, Health Care Law Section

c: John T. Berry
Karen Williams
Health Care Law Section Council