

Volume 3, Issue 2

January 24, 2005

A PUBLICATION OF THE HEALTH LAW
SECTION OF THE NEW MEXICO STATE BAR



Health -E- News

SECTION NEWS

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Board's First Meeting of 2005 Sets the Pace

The Board received a demonstration by Veronica Cordova of the State Bar's website and discussed how this tool can be better utilized for the benefit of the section's members. You can read about ways to use the website by clicking on this website address and reading applicable the Health-E-News article:

http://www.nmbar.org/Content/NavigationMenu/Divisions_Sections_Committees/Sections/Health_Law/Newsletters7/Vol2_No.22_122704.pdf

The Board will be promoting the use of the Discussion Group capabilities of the website, and you will be informed by an E-Blast email. If you click on the address above, you will see that all issues of the Health-E-News have been posted on the State Bar Website.

The Board voted to expand the Board from nine members to ten, and to elect Brenda Maloney as the tenth Board member. The Board then reaffirmed the election of Brenda as Secretary and the Chair-Elect. Brenda, who had been representing the Young Lawyer's Decision, was replaced by Francis Barikor, the new YLD representative.

The Board discussed the use of brown bag luncheons, and decided to hold fewer lunches this coming year. **The next brown bag will be held on Thursday, April 21, 2005 at the State Bar beginning at 11:30** at which time there will be an Update provided on the 2005 NM Legislative Session. Those who want CLE credit may apply for it and get a copy of the materials. Those who want to attend and listen are welcome.

The Board will hold a brown bag on June 17, 2005, at 11:30 at the State Bar offices on the issue of hospital and HMO credentialing of providers, and will present a 1.5 hour CLE at the State Bar Conference in September. The theme of the conference is "getting back to the basics." In addition, the section will sponsor a half day or full day CLE in October. If you have ideas for topics for additional brown bag luncheons, the State Bar convention or the October CLE, please contact board members *Barbara Quissell, Doug Compton or Brenda Maloney*. They have been appointed to the Section's Education Committee. Their email addresses and phone numbers on the banner of this newsletter.

The Board has decided to try and meet every other month. Please *disregard the last newsletter reference to a February meeting. It was been canceled.* **The Board will meet at 7:30 am at the State Bar offices on the following dates:**

March 17th
May 19th
July 21st

The Board discussed the issue of whether or not the section would notify members of Bar-related issues, and the extent to which the section should take a stand on certain health care related issues. A motion was passed that limits communications with members of the section to topics that are "health related." The Chair will use its discretion in determining whether a matter is health related. The Board will not take an official position on an issue unless the issue is presented to the entire section membership, two weeks are allowed for discussion, and 2/3rds of the active membership agrees to a position. In this context the board discussed the Common Cause initiative for election reform and the reciprocity rules, and decided to take no further action on these issues.

The Board discussed briefly and tabled the issue of whether or not the section should recommend to the Specialization Board that a Health Law Specialist position be created. The Section membership is encouraged to discuss this issue with the members of the Board.

The Board approved promoting the Defense Research Institute's Medical Liability Seminar. (See the article herein).

Section Member News: Board member Doug Compton is proud to announce that he has joined the Albuquerque office of Lewis and Rocca.

Member Contribution

From time to time this newsletter has solicited articles, information about interesting health related websites and other contributions from the section members. As proof that section members respond and their contributions are published, here is a contribution from Marianne Woodward, a lawyer with the Medicaid Fraud unit. You have to read it to the end to understand why it was deemed worthy of publication in the Health-E-News. But first a caveat: This is not intended as a promotion of religion or stereotyping, but rather a depiction of the forces of Good and Evil that are common to many cultures around the world.

In The Beginning....

God covered the earth with broccoli, cauliflower and spinach combined with an abundance of green, yellow and red vegetables. He did this so that Man and Woman would live long and healthy lives.

Then, using God's bountiful gifts, Satan created Dairy Queen. And Satan said: "You want hot fudge with that?" And Man said: "Yes!" And Woman said: "I'll have one too...with sprinkles." And lo and behold they gained 10 pounds.

And so God created the healthful yogurt that Woman might keep the figure that Man found so fair. And Satan brought forth white flour from the wheat, and sugar from the cane, and combined them. And Woman went from size 2 to size 14. So God said: "Try my fresh green garden salad." And Satan presented crumbled Bleu Cheese dressing and garlic toast on the side.

And Man and Woman unfastened their belts following the repast. God then said: "I have sent you heart-healthy vegetables and olive oil in which to cook them." And Satan brought forth deep-fried coconut shrimp, butter-dipped lobster chunks, and chicken-fried steak so big it needed its own platter. And Man's

cholesterol went through the roof.

Then God brought forth the potato, naturally low in fat and brimming with potassium and good nutrition. Then Satan peeled off the healthful skin, sliced the starchy center into chips and deep-fried them in animal fats adding copious quantities of salt. And Man packed on more pounds.

God then brought forth running shoes so that his children might lose those extra pounds. And Satan introduced cable TV with remote control so Man would not have to toil changing the channels. And Man and Woman laughed and cried before the flickering light and started wearing stretchy Lycra jogging suits.

God then gave lean beef so that Man might consume fewer calories and still satisfy his appetite. And Satan created McDonald's and the 99-cent double cheeseburger. Then Satan said: "You want fries with that?" And Man replied: "Yes! And super size 'em!" And Satan said: "It is good." And Man and Woman went into cardiac arrest.

God sighed...and created quadruple by-pass surgery. Satan chuckled and created The Health Care System.

NEW DEVELOPMENTS IN HEALTH LAW

DRI MEDICAL LIABILITY SEMINAR.

The annual Defense Research Institute's Medical Liability Committee is presenting its annual seminar and meeting at the fabulous Hotel Del Coronado in San Diego on March 16, 17, and 18, 2005. There will be sessions on the JCAHO's expectations regarding the reporting of medical errors, sessions taught by practitioners on how to identify and defend medical malpractice cases, how to recognize and navigate the unique ethical issues that arise from the tripartite relationship between the physician, attorney and insurer; and many other topics. Information is available on the DRI website www.dri.org or from the editor of this newsletter, who is the New Mexico Liaison for the Committee hosting the seminar jab@NMCounsel.com.

CMS Says Healthcare Spending Slowed In 2003

Healthcare spending grew at its slowest pace in seven years in 2003, the Centers for Medicare and Medicaid Services (CMS) reported in a new study published in Health Affairs. Medicaid spending growth was down from 12.1% in 2002 to 7.1% in 2003-its first decline in growth since 1997. According to CMS, states were able to reduce Medicaid spending by tightening eligibility and restricting benefits. In addition, the report found that Medicare spending reached \$283.1 billion in 2003, an increase of 5.7% over 2002 and 4.3% per enrollee. This compares to rates of 10.8% in 2001 and 7.6% in 2002. The slowdown in 2003 "was due to the expiration of key provisions of a budget law, which enabled hospitals, nursing homes, and home health agencies to temporarily recoup Medicare payments lost via the Balanced Budget Act," said a Health Affairs press release.

To read an abstract of the report, go to
<http://www.healthaffairs.org/press/janfeb0501.htm>

To read CMS' press release, go to
<http://www.cms.hhs.gov/media/press/release.asp?Counter=1314>

Survey Shows Covering Uninsured, Improving Safety Among Policy Experts' Top Priorities

Covering the uninsured should be Congress' top healthcare priority over the next five years, according to 87% of respondents to a survey released by the Commonwealth Fund January 7. Most respondents also agreed on the ways to accomplish expansion of coverage to the uninsured: allowing individuals and small businesses to buy into the Federal Employees Health Benefits Program or similar federal group program; and expanding existing state-based public insurance programs like Medicaid and the State

Children's Health Insurance Program (SCHIP). The Commonwealth Fund Health Care Opinion Leaders survey, a survey of more than 300 widely-recognized experts in healthcare practice and policy, revealed that improving quality and safety of care, including increased use of information technology (69%) and reforms to ensure Medicare's long term solvency (50%), were also important policy objectives.

To read the survey results, go to
http://www.cmwf.org/surveys/surveys_show.htm?doc_id=254281

Survey Finds Most Employers Keeping Retiree Drug Coverage After Medicare Benefit Becomes Available

A new survey about the Medicare Part D prescription drug benefit found that 90% of employers that currently offer their retirees prescription drug coverage intend to continue offering drug coverage after the new Medicare benefit goes into effect in 2006. The survey by Deloitte Consulting's Human Capital practice examines the response of employers to the new Part D benefit. Employers that continue to provide a prescription drug plan to their retirees will receive a 28% subsidy from the government for providing the benefit. The survey revealed that 80% of respondents have begun evaluating the effects of the Part D benefit on their own plans. Of the surveyed employers, 55% said they have either decided on or are leaning toward continuing prescription drug benefits and receiving the subsidy.

To read a press release about the survey, go to
http://www.deloitte.com/dtt/press_release/0,1014,sid%253D2283%2526cid%253D70311,00.html

JCR Releases Toolkit For Improving Health Care Staff Competence

(OAK BROOK, Ill. – January 20, 2005) Joint Commission Resources (JCR) announces the release of a new product to assist health care organizations with one of the top compliance issues identified by the Joint Commission on Accreditation of Healthcare Organizations – **Assessing and Improving Staff Competence**. JCR is an affiliate of the Joint Commission.

View the complete news release online by visiting: http://www.jcaho.org/news+room/jcr+news+releases/jcr_012005.htm

HEALTH LAW CASES

THOMAS v. PRINCIPI, No. 03-5182 (D.C. Cir. January 14, 2005) The Veterans' Judicial Review Act does not deprive a district court of jurisdiction over an action brought pursuant to the Federal Tort Claims Act by a veteran asserting that the VA failed to inform him that a VA doctor had diagnosed him with schizophrenia.

To read the full text of this opinion, go to: <http://caselaw.lp.findlaw.com/data2/circs/dc/035182a.pdf>

This Email Newsletter is a publication for the members of the Health Law Section of the New Mexico State Bar Association. Its contents may be time dated, and references to Internet sites may change. The Content of this Newsletter does not reflect the opinions of the Members of the Board of Directors of the Health Law Section of the State Bar. This Newsletter is informational only, does not constitute legal advice. Members of the Health Law Section may submit topics for the newsletter by emailing them, or the internet site at which they can be located, to JAB@NMCounsel.com