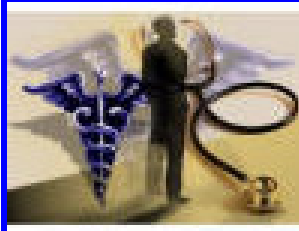


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Health -E- News

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SECTION NEWS

NEW SECTION OFFICERS AND LIAISONS ELECTED

At its January 18, 2007 meeting, the board elected new officers for 2007. Caralyn Banks was re-elected to serve as the budget officer, and Sandra Beerle, the Young Lawyer Division representative, was elected to serve as secretary. Caralyn is with the Sandenaw Firm in Las Cruces and Sandra is with the Rodey Law Firm. The board deferred making a decision on the chair elect.

John Bannerman will continue as the editor of the Health-E-News. Charles Gurd will act as the moderator of the list serve and Jeff Gilmore will work with the State Bar staff on the section Website pages. George Koinis will be the CLE liaison.

The board discussed adding a law student member of the board, as opposed to a "visiting member," and George Koinis will contact the law school regarding the selection of a representative. The section's bylaws will have to be amended by the Bar commissioners to allow student membership.

THE NEXT BOARD MEETING will be March 15, 2007 at 12:00 PM at the State Bar offices.

DEFICIT REDUCTION ACT CLE AND LEGISLATIVE UPDATE

Mark your calendars. On April 19, 2007, the section will sponsor a two part all day CLE. The morning session will discuss the impact of the Deficit Reduction Act of 2005 on Medicaid and indirectly on other aspects of health care in New Mexico. A national speaker is being recruited, and personnel from NM HSD will participate. The afternoon session will be the 2007 Legislative Update. On the first day of the 2007 Legislature, over 400 Bills were introduced. There may be much to talk about in April! Details are still being worked out, so watch future issues of the Health-E-News and watch for e-blasts from the State Bar office.

THE FALL HEALTH SYMPOSIUM

The Fall Health Law Symposium will be held at the State Bar offices on October 18, 2007. If you have suggestions for topics or would like to partici-

pate in that symposium, please contact George Koinis or any other member of the board.

BOARD LOOKING AT WEB CASTING

Robert Koonce, the director of CLE spoke to the board about Web casting some of the section's CLEs. Rather than having to meet at joint site to watch a satellite telecast of a seminar, State Bar members will soon be able to watch the seminar in their office or in the privacy of their home via the Internet. The board will be considering the cost of Web casting and looks forward to providing it as a service to the section.

THE LIST SERVE IS UP AND RUNNING

You have received an e-mail on how to join the section's list serve, which is run through Yahoo List Serves. As of January 22, 2007, 14 of the 125 section members had signed on. We anticipate a lot of information flow on the list serve during the New Mexico Legislature and you are encouraged to join now.

1. Go to the following Yahoo address: <http://groups.yahoo.com/group/SBNM-HealthLawSection/>
2. On this page you will see a description of the purpose of the Website, and a button that says "Join this Group." Click on the button and fill in the boxes and assign yourself a name and a password. The name you select will be the name that appears on your postings. You may want to consider using your real name as all or part of the name to select; otherwise members may not know who "Mad Dog Lawyer" really is.
3. While you are in the "Join the Group," you must select the e-mail address at which you want to receive list serve e-mails. After you have completed registration you can go back and assign a second e-mail address, if you prefer (like your home e-mail). You can do this by going to <http://groups.yahoo.com/group/SBNM-HealthLawSection/>, clicking on the "Already Receiving Group E-mail" area at the bottom of the panel on the left side of the screen, and filling in the dialogue box with the second e-mail address.
4. When you are finished joining the group, you will be sent an e-mail to the e-mail address you provide. You MUST OPEN THE E-MAIL AND ACCEPT.
5. The moderator, Charles Gurd will have to approve your membership. ONLY members of the section will be allowed to join. Charles' e-mail is Charles@Gurdlaw.com and his telephone is 505-856-1468.
6. Once you are registered, go back to the main screen at <http://groups.yahoo.com/group/SBNM-HealthLawSection/> and sign in at the top.
7. Click again on the Join Group Bottom: There are three steps listed.
 - a. The name you are using for the group will be listed and beside it you can click on "Add New Profile." You DO NOT need to add a profile. However, you must fill in the comment box with something. You can make it short, like "I am a member of the Health Law Section" or you can say more about yourself.
 - b. Step two allows you to select how you want to keep in touch. You can get every message when it is posted (select "Individual E-mail"), or a daily digest, or not receive e-mails when posted but log on and read what has been posted (much like the old SBNM Discussion Forum).
 - c. Select the Message preference. You may want to click on the blue "See Samples" area before you decide.
 - d. Fill in the security box with the letters and numbers that you see to prevent automated registrations.

e. You will see a message saying that your membership must be approved.

8. Once you are approved you send an e-mail to the list serve group by using this e-mail address: SBNM-HealthLawSection@yahoo.com

There are some advertisements on the Yahoo screens, but do not be put off by them. Once you are registered, the list serve operates like regular e-mail.

BOARD SPONSORED TELECONFERENCE CLE WAS WELL RECEIVED

A call-in teleconference on the new Wellness Regulations sponsored by section board member, John Bannerman, had a high response but medium turnout due to winter weather. The conference was announced by an e-blast sent to the section. These will continue, and hopefully section members in different parts of the state will invite other health law members in their communities to attend. The materials, provided by the CLE sponsor and made available to the participants by Bannerman & Williams, P.A. were very informative and the speaker was very knowledgeable. Those in attendance were able to ask live questions of the speaker. Keep your eye open and look for those e-blasts.

NEW DEVELOPMENTS IN HEALTH LAW

The Joint Commission's New Brand

The Joint Commission is refreshing its brand and visual identity (name and logo) in support of its continuing efforts to improve the value of accreditation and its utility as a mechanism for improving the quality and safety of patient care. The name *Joint Commission on Accreditation of Healthcare Organizations* is being shortened to *The Joint Commission*. The move to a shorter name is intended to both make the name more memorable and reflect current common practice.

For more information on the new name and a monthly update go to and book mark http://www.jointcommission.org/Library/jconline/jo_01_07.htm

Georgia Allows Only SLAPP On The Nose

In an earlier edition of the Health-E-News we reported on a California case that broadly construed the California Anti-SLAPP statute to allow a doctor to bring a SLAPP claim. While California has a full-face SLAPP statute, the Georgia Supreme Court recently ruled that its statute allows only a SLAPP on the nose – so to speak. Narrowly construing its statute, the Georgia court said it applies only to statements regarding the governmental proceedings listed in the statute. See *Berryhill v. Georgia Community Support and Solutions, Inc.*, 638 S.E.2d 278 (Ga, 2006).

Shortly after the Georgia ruling, the California Appeals Court ruled that the trial court had acted properly in denying a motion to dismiss the SLAPP lawsuit filed in *Kurwa v. Harrington, Foxx, Dubrow & Canter, LLP*, No. B187363 (Cal. Ct. App. Jan 11, 2007).

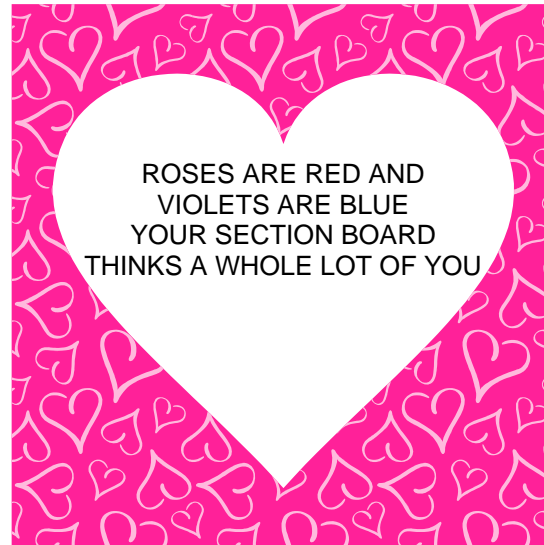
New Mexico has a SLAPP statute. See NMSA 1978 Section 38-2-9.1.

GAO Looks at DHHS Strategy To Protect Privacy of Electric Health Information

In a somewhat critical report, the GAO noted that DHHS needed to develop a national strategy to address patient privacy of electronic personnel health information. If you represent clients who are involved with or concerned with privacy, you need to read GAO Report GAO- 07-238.

Seventh Circuit Rejects Breach of Fiduciary Claims Against PBM

A pharmacy benefit manager (PBM) was not acting as a fiduciary under ERISA with respect to drug price negotiations and formulary management it provided to a fund. It was not required to share with plan members the savings it achieved in negotiating rates, and was viewed as a claims administrator. See *Chicago Dist. Council of Carpenters Welfare Fund v. Caremark, Inc.*, No. 05-3476 (7th Cir. Jan 19, 2006). [Recently, PBMs have been the target of both lawsuits and legislation].



HAPPY VALENTINES DAY

First 2007 OIG Advisory Opinions Issued

In OIG Advisory Opinion No. 07-01 issued January 18, 2007, and posted January 25, 2007, the OIG considered whether a hospital's proposal to provide free acute dialysis treatment for services to chronic dialysis patients unable to obtain dialysis treatment in their community fell within a Safe Harbor, or would be grounds for exclusion. Based on the structure proposed by the hospital OIG said it would not impose administrative sanctions, although the potential for violations of the Anti-Kickback law existed.

HIPAA Does Not Bar Ex Parte Interviews with Employees at a Group Home.

Expert witnesses retained by a defendant may interview defendant's employees regarding patient care without violating HIPAA, according to the US District Court for the District of Connecticut. See *Santaniello v. Sweet*, No. 3:04-cv-00806-RNC (D. Conn. January 25, 2007).

This e-mail newsletter is a publication for the members of the Health Law Section of the State Bar of New Mexico. 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 SBNM. This newsletter is informational only, and does not constitute legal advice. Members of the Health Law Section may submit topics for the newsletter by e-mailing them, or the Internet site at which they can be located, to JAB@NMCounsel.com