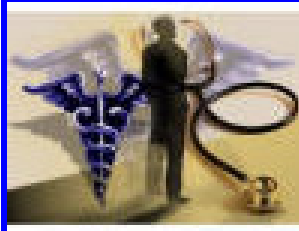


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Health -E- News

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SECTION NEWS

Mark Your Calendars for the Legislative Update

Board members Barbara Quissel, Jeff Gilmore and Gabe Parra continue to monitor the thousands of bills moving their way through the 2007 session of the New Mexico Legislature. While it is uncertain what will make it through the legislative meat grinder and what won't, you can rest assured that on April 19, 2007 you will learn about all the health related bills that passed (and maybe a few important measures that did not).

Recruit Some Members.

If you are getting this newsletter, you have paid the section dues of \$15 and are a current member. If there are other lawyers, in your firm or in your community, that you believe would benefit from membership in the Health Law Section, please encourage them to join.

THE NEXT BOARD MEETING will be March 15, 2007 at 12:00 noon at the State Bar offices. *Section members are always welcome.* It is a Bring-Your-Own-Lunch affair, and there are a number of sandwich shops near the State Bar office.

DEVELOPMENTS IN HEALTH CARE LAW

Bill to Limit Medical Liability Act Gets Past Initial Hurdles.

Senate Bill 944, the "Professional Medical Insurance Liability Act," introduced by James G. Taylor, expands the limitation on damages to a broader spectrum of "health care providers." One interesting component involving "vicarious liability," provides that if the provider was acting within the scope and course of his employment, the claim shall be brought against the employer and not the health care provider. The "Fiscal Impact Report" contains a number of comments regarding this bill.

[Editor's Comment: The impact of this provision may be far reaching. If one sues the doctor's group instead of the doctor, must a settlement be reported to the National Practitioner's Data Bank? This dodge has been used in the past to avoid reporting. What if the provider is a hospital based em-

ployee – do the limitations on liability and punitive damages apply to the hospital?]

Kaiser Permanente seeks DNA from half a million members for long-range genetics study.

Kaiser Permanente's announcement that it will undertake a long-term study of genetics, disease, and environment in half a million of its clients in northern California receives significant coverage, with at least 20 news Web sites running the [AP](#) (2/15, Elias) coverage of the story.

The [Wall Street Journal](#) (2/15, B3, Rundle) reports, "In a first step toward creation of an enormous bank of genetic information, Kaiser Permanente's research division this week began soliciting participation of two million of the health-maintenance organization's adult members in Northern California. ... The data-bank will be available to researchers at Kaiser -- as well as outside collaborators -- to study the links between genes, environmental factors and disease. The research will build on the federally funded Human Genome Project, which provided a map of human genes four years ago. But the blueprint by itself does not help physicians understand the causes of disease. That work is being done now in academic, government and industry laboratories around the world."

More than 300 tribal health organizations sue over shortfall in federal aid.

Alaska's [Anchorage Daily News](#) (2/14, Demarban) reported, "More than 300 tribal health organizations, including 40 in Alaska, are suing the Indian Health Service for nearly \$1 billion," claiming "the agency, responsible for providing healthcare to American Indians and Alaska Natives has knowingly and annually shortchanged them since the early 1990s. They are pursuing class-action status for their lawsuit in a federal court in *New Mexico*." Representatives suggest that "the massive shortfall...has hurt a population facing medical crises on many fronts," but officials with the Indian Health Service say that "they've paid out all that Congress allows." Ron Demaray, who oversees contract support costs at the agency's headquarters, says, "The fight isn't over what the agency pays contractors for doctors, nurses and needles. It's over the administrative costs required to deliver healthcare." He continues, "(The agency believes) we're contracted to provide what Congress provides to us. Others feel it's an entitlement that should be paid regardless." Lloyd Miller, an attorney representing tribal organizations, said, "There's a very good chance the tribal health contractors will win."

Control of stem-cell research money to be decided by California court.

[Market Watch](#) (2/14, Pritchard) reports, "The fight over control of \$3 billion worth of funding for stem-cell research in California goes back to court this week, as one side in the legal battle challenges an earlier court ruling on the constitutionality of the California Stem Cell Research and Cures Act." The act, or Prop. 71, was approved in 2004 and created the state-controlled California Institute for Regenerative Medicine (CIRM) to oversee grants to universities and research institutions. The plaintiffs, People's Advocate, National Tax Limitation Foundation and the California Family Bioethics Council, are arguing that "Prop. 71 was unconstitutional and that the Independent Citizens Oversight Committee which governs CIRM is not under the exclusive management of the state because Prop. 71 didn't contain sufficient controls related to the spending of the bond money." While the "hearing is scheduled for Wednesday in the First District Court of Appeal in San Francisco," both parties believe the case will "end up in California Supreme Court." Meantime, while waiting for a ruling, "Calif. Gov. Arnold Schwarzenegger has directed the state to provide a \$150 million loan" to CIRM, "and various charitable contributions have been made to the agency as well."

[Editor's Comment: Before the 2007 NM Legislative Session started, and before he became an official candidate for President, Governor Richardson proposed that NM spend \$10,000,000.00 on stem cell research to be conducted at the UNM Health Sciences Center. In an editorial, the *Albuquerque Journal* criticized this announcement by pointing out that NM consistently ranks near the bottom of health related

issues, no one at UNM had requested the funding, and \$10,000,000.00 can be better spent on providing direct health care services to New Mexico's population.

Federal or state funding for stem cell research will remain a hot political issue. Hundreds of millions of dollars are being spent in the private sector, where governmental regulation is not as onerous, and "pure stem cell" research is not restricted. Those who contend that federal or state funding will accelerate the discovery of new treatments, need to support through their private contributions those institutions who are conducting research, for, if and when a major breakthrough occurs, the resistance to governmental funding will diminish. The Section's CLE on Legislation in April will explain what happened to this bill – (see the story above).

The Joint Commission's new brand results in changes

In early January, the Joint Commission refreshed its brand 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 Joint Commission on Accreditation of Healthcare Organizations shortened its name to The Joint Commission.

Complete story:

http://www.jointcommission.org/Library/jconline/jo_02_07.htm#1a

Joint Commission Standard NR.1.10, EP 6

Effective immediately for hospitals and critical access hospitals, Element of Performance 6 for Nursing Standard NR.1.10 has been revised.

Complete story:

http://www.jointcommission.org/Library/jconline/jo_02_07.htm#2a

Statement from The Joint Commission regarding GAO Report

The Joint Commission is pleased that the Government Accountability Office report, "Hospital Accreditation: Joint Commission on Accreditation of Healthcare Organizations' Relationship with its Affiliate," affirms the effectiveness of the extensive steps that both The Joint Commission and its affiliate, Joint Commission Resources, have taken to ensure the integrity of the Joint Commission's accreditation process.

News release:

http://www.jointcommission.org/NewsRoom/NewsReleases/gao_1_07.htm

Cardinal Healthcare owner sentenced for Medicare fraud.

The [AP](#) (2/22) reports, "The owner of a Kansas City area medical supply company was sentenced Wednesday to five years and three months in prison without parole for his part in a scheme that bilked Medicare out of "more than \$5 million worth of false and fraudulent claims...on behalf of nearly 1,000 Medicare recipients." Kennedy Lgbokwe, a Nigerian citizen who owned and operated Cardinal Healthcare, was convicted in August of healthcare fraud, illegally structuring currency transactions, and money laundering. A federal indictment states that "two doctors would give Lgbokwe, and two other medical supply company owners, fake certificates to bill the government for...expensive motorized wheelchairs. Once the claims were paid, authorities said the doctors would get cash or kickbacks, and the patients would get either cheaper scooters or no wheelchairs at all."

New federal drug-disposal guidelines released.

The [AP](#) (2/22) reports, "New federal prescription drug-disposal guidelines recommend mixing unused, unneeded or expired drugs with undesirable substances -- like cat litter or coffee grounds -- and tossing them in the trash in nondescript containers." The recommendations are based on recent U.S. Geological Survey studies, which "have shown that a wide range of pharmaceuticals and other compounds survive wastewater treatment and later are discharged into bodies of water. [HealthDay](#) (2/22) also carries the announcement in its health highlights section, noting that Environmental Protection Agency administrator Stephen L. Johnson said, "Following these new guidelines will protect our nation's waterways and keep pharmaceuticals out of the hands of potential abusers." Also, some pharmacies will "collect drugs for safe disposal, the agency added."

[Editor's note. My father was a WW II disabled veteran. His medications were provided by the VA and they flowed into his home from a mail order pharmacy in a never ending stream of bottles, all in large quantities. When his doctors would change his prescription, there always seemed to be a lag in communications between the local VA office and the mail order pharmacy, and he would often receive a full bottle of the old prescription. Like many people who lived through the Depression, he saved everything, and when we went through his apartment after he died we found bottle after bottle of drugs of very kind. After the VA told us they could not take back the drugs - even the bottles that had never been opened - we were faced with the disposal problem. Not wanting the drugs to be found in the dumpster, we flushed them down the toilet. There were so many pills that it took 40 minutes to complete the project! I am still waiting to read in the Westside Edition of the *Albuquerque Journal* about the mutant 130 pound drug-crazed rat that came out of the Rio Rancho sewers on a killing rampage.]

Los Angeles Times offers qualified praise for SCOTUS tobacco ruling.

The [Los Angeles Times](#) (2/22) editorializes, "The U.S. Supreme Court went further this week -- though not far enough -- in reining in juries in civil cases that award outlandish punitive damages. By a disappointingly narrow 5-4 vote, the justices overturned a jury's decision that Philip Morris should pay \$79.5 million to the widow of a smoker who died of lung cancer. The value of her actual damages was only \$821,000. The justices could -- and should -- have ruled clearly that the \$79.5-million award violated previous rulings that punitive damages may not be 'grossly excessive' and should bear a reasonable relation to the harm actually experienced by the plaintiff. But in returning the case to the Oregon courts, the court did impose a sensible rule that should make it harder for juries to sock deep-pocket and easily demonized defendants. ... Without proper guidance, jurors can leap to the conclusion that damages should reflect the harm experienced by everyone who might have tasted tainted water -- or smoked a cigarette. Though it could have gone further, this week's decision should make such leaps less likely."

IBM, Duke University develop patient-information Web site.

The [AP](#) (2/22, Sarkar) reports, "Patients in Duke University's health system can now go to one Web site to pay medical bills, schedule doctor appointments and eventually view their personal medical histories." Known as Healthview Portal, the site will serve Duke University's "400,000 to 500,000 patients who use its three major hospitals and over 100 outpatient clinics each year in the Durham, N.C. region." IBM worked with Duke officials to develop the site in 14 weeks, and they "said there are a few other health-care systems that provide somewhat similar Web sites, but none will have the breadth and scope of Duke's site." However, IBM officials say that "the technology used to build and operate the site could easily be replicated by other health systems, moving the nation toward the White House's goal of computerizing all patient health records by 2014." While, "neither IBM nor Duke would disclose the cost to build the Web site," Marc Holland, a healthcare information technology analyst for IDC market research firm, "estimated the cost of up to \$1 million."

[Editor's Note: There ought to be a law mandating this. Imagine the productive time that can be saved

from waiting on hold with the HMO billing person].

The Usual Disclaimer

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