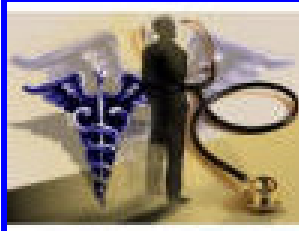


Volume 5, Issue 13

July 18, 2007

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



Health -E- News

Section Board

George Koinis
Chair
505-244-4110
Gfkoinis@swcp.com

John Bannerman
Editor
505-837-1900
Jab@NMCounsel.com

Caralyn Banks
Budget Officer
505-522-7500
Lgclcb@zianet.com

Sandra Lee Beerle
Secretary—YLD Rep.
(505)768-7378
SBeerle@Rodey.com

Douglas J. Compton
Past Chair
505-331-8426
Jdouglascompton@msn.com

Jeffrey Gilmore
505-272-9792
Jgilmore@salud.unm.edu

David Kaufman
505-216-0400
Dkaufman@nmlegal.com

Kay C. Jenkins
505-622-6221
Kjenkins@atwoodmalone.com

Gabe Parra
505-923-6505
Gparra@phs.org

Jennifer Stone
(505) 827-2962
Jennifer.Stone@doh.state.nm.us

Caroline Wade Blankenship
(505) 243-1950
cblankenship@mstlaw.com

Don L. Daniel, III
(505) 982-5556
Don_daniel@pmsnet.org

Robert L. Schwartz
(Ex Officio Member)
505-277-3119
Schwartz@law.unm.edu

SECTION NEWS

State Bar Annual Meeting Was A Resounding Success.

The Section was actively present at the annual meeting at the Inn of the Mountain Gods in Ruidoso. In addition to a Board meeting, the Section sponsored two CLE breakout sessions. David Kaufman, a Board member, repeated the Legislative Update on Healthcare issues that the Section presented following the close of the 2007 Legislature. George Koinis, the current Chair, assisted Jeff. John Bannerman, Past Chair and a Board member, presented an ADR-track session on the use of ADR in Health care contracts. These presentations are available from the State Bar CLE office. The Board held its July meeting on Friday, and there was excellent attendance both in person and by phone.

There were over 600 attendees at this year's meeting, well in excess of the hoped-for target of 500. Associate Supreme Court Justice Sandra Day O'Conner was a big draw and she participated in many of the receptions. Many of the speakers stressed the importance of an "independent" judiciary and decried the assault on judges who have made "difficult decisions." Justice Day-O'Conner very eloquently made the point that in **any form** of government in which the majority controls the legislative branch it is the judicial branch that must be free to enforce the rights of the individual. She also perceptively pointed out that part of the problem is that we don't teach civics in school anymore. Reciting a number of real life events regarding judges be threatened (the cat that was killed by a government agent) she had the audience on the edge of their seats and then explained, with a twinkle in her eye, that all of these examples had occurred recently in other countries.

As health lawyers, most of us believe that the healthcare delivery systems is becoming dysfunctional and is in need of reform. The other theme of the annual meeting was that the same thing is happening to the judicial system. One of the "Hot Topic" discus-

sions, and the main message of one of the keynote speakers, was a proposed "simplified civil procedure rule" and the need to "remodel," not "amend," the civil justice system. A plethora of speakers described the need to make access to the civil courts more affordable. Chief Justice Ed Chavez introduced a DVD video that makes a compelling case for all lawyers, in all sectors of the bar, to become more involved in pro bono work for the poor.

The July Board Meeting

On Friday, July 13, 2007, the Board met at the State Bar of New Mexico's annual meeting. Present at the meeting were George Koinis (Chair), Sandra Beerle (Secretary), Kay Jenkins, Doug Compton, and John Bannerman. Attending by phone were Jeff Gilmore, Carolyn Banks, Jennifer Stone and Caroline Blankenship.

The final preparations for the *Health Law Symposium on October 18th* were discussed. **(Mark your calendars now)**. More information regarding the symposium will follow, but a very distinguished set of speakers will discuss various aspects of dealing with catastrophic illnesses. Lunch will be provided, and participants will earn 6.75 CLE credits, 1.25 of which will qualify for ethics. The *Annual Meeting and Reception* for the Health Law Section will follow the symposium.

The next Board meeting will be at the State Bar offices at noon on September 20, 2007.

Thank You Barbara Quissell!

After many years of loyal service to the Section, Barbara Quissell has retired from Blue Cross Blue Shield and the practice of law. Barbara was a very active Board member, and she was always willing to participate as speaker on behalf of the Section. Her service, insight, and support will be missed.

Board Revising The Section Bylaws – Law Student Members

The Board has revised the Section Bylaws to permit law student members of the Health Law Section to participate on the Board. Students will not be eligible to serve as officers of the Board, to vote, or serve on the Nominating Committee. These revisions, with only minor changes were approved by the Board of Bar Commissioners on July 12, 2007, and will soon be posted on State Bar's website.

Don Daniel and **Carolyn Blankenship** were elected by the Board to fill vacancies created by Barbara Quissell's retirement from the practice of law, and Francis Barikor's move to Maryland. Additional information regarding these new members will appear in future editions of the Health-E-News.

Bannerman & Williams Honored

The American Health Lawyer's Association (AHLA) listed Bannerman & Williams, P.A in its "Honor Roll By State" in the June Edition of the *Health Lawyers News*. The Honor Roll recognized firms with at least four AHLA members and Bannerman & Williams was the only firm listed for New Mexico.

Past Chair, David Johnson, Visits Germany with ABA Health Law Section

David Johnson, a past Chair and member of the New Mexico State Bar Health Law Section,

is currently a member of the eighteen-member Council of the ABA Health Law Section. In May members of the Council traveled to Germany to meet with their German counterparts. David is still working off the residual benefits of partaking in the consumption of Bavarian beverages and fine food. Here is a brief report from David regarding the trip and the meeting:

Over the Memorial Day weekend a group of eight members of the ABA Health Law Section Council traveled to Berlin for meetings with our German colleagues and a bit of sightseeing. The official highlights were the presentations by German health lawyers on the current state of privatization of health care facilities in Germany. To my surprise, Germany is currently moving toward greater private ownership of hospitals and nursing homes, most of which have historically been owned and operated by public entities ranging from the federal government to local municipalities. What is even more remarkable was the fact that this is proceeding despite German labor laws which prevent the termination of workers for five years after a new owner assumes control of the facility!

On a purely tourist note, Berlin has undergone a remarkable and inspiring transformation since reunification in 1989. Billions of dollars of investment, much from the EU, have made Berlin into the most modern city in Europe, with an architecture that is both dazzling in its modernity and inspiring in its design (curves and glass everywhere). The city abounds in parks and public spaces. Another highlight was a trip to the home of the Kaiser's son in Potsdam, where the Potsdam declaration was signed (Churchill got the best rooms), which ushered in 45 years of cold war between East and West.

On our last day, Sheila and I hiked through a beautiful old residential neighborhood that escaped the bombing and ended up in a hunting lodge by a lake (all within the city limits). We also have much to learn from their transportation system, which was convenient, rapid and cheap. Finally, while I did consume the Bavarian products that John mentioned, the great find was the Rieslings, which I have always thought to be too sweet in this country, but which were crisp and dry in their homeland. A real testimony to eating and drinking locally.

NATIONAL NEWS

CMS Accused of Turning back the Clock.

On July 2, CMS issued the Medicare Physician Fee Schedule (MPFS) Proposed Rule, published at 72 Fed. Reg. 38122 (July 12, 2007). The MPFS addresses selected issues of concern related to the Stark statute, the reassignment rules, and the proposed diagnostic test rule. In several areas the proposed changes reflect a reversal of the position adopted in the Stark II rules published in 2001 and 2004. The bad boys who have "gamed the system" make us all pay. These proposed changes could disrupt a number of existing arrangements structured to comply with the existing rules. Comments on the Proposed Rule must be submitted by August 31, 2007. Members of the AHLA can access a member briefing on the AHLA's website.

IRS Tries Again: More Guidance Regarding Health Information Technology Cost-Sharing Arrangements

In an effort to allay concerns regarding its position on health information technology (HIT) cost-sharing arrangements between tax-exempt hospitals and medical staff physicians, the Internal Revenue Service (IRS) has released a series of six questions and answers (Q&As). The Q&As are available on the [IRS website](#).

U.S. Supreme Court upholds exemption of home healthcare workers from provisions of Fair Labor Standards Act

The United States Supreme Court last month decided that home healthcare workers who provide "companionship" services for the elderly and infirm are exempt from the provisions of the Fair Labor Standards Act of 1938 (FLSA) that impose mandatory requirements for minimum wage and maximum work hours. In *Long Island Care at Home Ltd. v. Coke*, 127 S.Ct. 2339, 2007 U.S. LEXIS 7717 (June 11, 2007), a home healthcare provider, formerly employed by Long Island Care at Home Ltd., sued the company for minimum and overtime wages under the FLSA. Her former employer successfully argued that these wages were not owed to workers such as the plaintiff because these workers were exempted from the FLSA by the express terms of the statute itself and the federal regulations interpreting it.

Joint Commission On Line – Quick Insight and information

The June/July issue of "Joint Commission Online" is now available on The Joint Commission website. Click on the link below or copy and paste it into the address bar of your browser to view this issue. http://www.jointcommission.org/Library/jconline/jo_06_07.htm

You can subscribe to the Online service and keep abreast of Joint Commission activities like its new National Patient Safety Goals. Here is an example:

"The Joint Commission has announced the 2008 National Patient Safety Goals and related Requirements for each of its accreditation programs and its Disease-Specific Care Certification Program. The Goals and Requirements, recently approved by the Joint Commission's Board of Commissioners, apply to the nearly 15,000 Joint Commission-accredited and certified health care organizations. Major changes in this sixth annual issuance of NPSGs include:

- A new Requirement to take specific actions to reduce the risks of patient harm associated with the use of anticoagulant therapy. This Requirement addresses a widely acknowledged patient safety problem and becomes a key element of the Goal: Improve the safety of using medications. It is applicable to hospitals, critical access hospitals, ambulatory care and office-based surgery settings, and home care and long term care organizations.
- A new Goal and Requirement that address the recognition of and response to unexpected deteriorating in a patient's condition. This new Goal and Requirement will ask hospitals and critical access hospitals to select a suitable method for enabling care-givers to directly request and obtain assistance from a specially-trained individual(s) if and when a patient's condition worsens. Each of the foregoing new Requirements has a one-year phase-in period that includes defined milestones. Full implementation is targeted for January 2009."

The usual Disclaimer

This e-mail newsletter is a publication for the members of the Health Law Section of the State Bar of New Mexico. The content of this newsletter does not reflect the opinions of the members of the board of directors of the Health Law Section or the Board of Bar Commissioners of the State Bar of New Mexico. The source of content obtained from the Internet is, when possible, attributed to the original source. The content may be time dated, and references to Internet sites may change. This newsletter is informational only, 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 John Bannerman, whose e-mail address is JAB@NMCounsel.com.