ABA Health Law Section
9th Annual Conference on

Emerging Issues in Healthcare Law

February 20-22, 2008

Omni San Diego Hotel • San Diego, California

HEALTH LAW SECTION
American Bar Association

Defending Liberty
Pursuing Justice

9th Annual Conference on Emerging Issues in Healthcare Law

SCHEDULE AT A GLANCE

Wednesday, February 20, 2008

12:00 pm – 5:00 pm
Early Registration

1:00 pm – 4:00 pm
Breast Cancer Legal Advocacy Workshop

1:00 pm – 4:00 pm
The Fundamentals of a Healthcare Transaction: An Interactive Look at the Anatomy of a Deal

6:00 pm – 7:00 pm
Reception Honoring Young Lawyers
(All registrants are welcome to attend.)

Thursday, February 21, 2008

7:30 am – 5:00 pm
Registration & Information Desk Open

7:30 am – 10:00 am
Continental Breakfast

8:00 am – 9:30 am
PLENARY SESSION
Hospital Syndications: Opportunities and Options, or a Thing of the Past?

9:30 am – 9:45 am
Break

9:45 am – 11:00 am
CONCURRENT CLE SESSIONS
- The Latest in Clinical Research: New Medicare Policy on Clinical Trials and the Trials of Expanding Litigation
- Developments in Medical Staff Credentialing: A Review of Recent Developments and Reactions from Hospital and Physician Perspectives
- Reading the HIPAA Tea Leaves—The Future of Security Rule Enforcement in the Post-Piedmont Era

11:00 am – 11:15 am
Break

11:15 am – 12:45 pm
PLENARY SESSION
Platforms for Expanding Health Insurance Coverage: Perils and Prospects on the Path to Universal Healthcare

12:45 pm – 1:00 pm
Break

1:00 pm – 2:30 pm
INTEREST GROUP LUNCHES
- eHealth, Privacy & Security
- Employee Benefits & Executive Compensation
- Healthcare Litigation & Risk Management
- Medical Research, Biotechnology & Clinical Ethical Issues
- Physician Issues
- Tax & Accounting

2:30 pm – 2:45 pm
Break

2:45 pm – 4:15 pm
PLENARY SESSION
The New Form 990—Major New Information Disclosure Requirements for Hospitals

4:15 pm – 4:30 pm
Break

4:30 pm – 5:45 pm
CONCURRENT CLE SESSIONS
- Lessons for Transactional Lawyers: Reducing the Risks of Post-Transaction Enforcement Activity Before the Transaction Closes
- Tax-Exemption in the Spotlight—Current IRS and Legislative Initiatives Affecting Hospitals
- Doing Good and Doing Well: Improving the Community's Health and the Hospital's Bottom Line through Medical-Legal Partnerships

6:00 pm – 7:30 pm
Welcome Reception

Friday, February 22, 2008

7:30 am – 4:00 pm
Registration & Information Desk Open

7:30 am – 10:00 am
Continental Breakfast

8:00 am – 9:00 am
ETHICS SESSION
Conflicts of Law(yers): Legal Ethics When the Lawyer Becomes the Target

9:00 am – 9:15 am
Break

9:15 am – 9:30 am
State of the Section Address

9:30 am – 11:00 am
PLENARY SESSION
Stark Reality: Analysis Evolves into Implementation

11:00 am – 11:15 am
Break

11:15 am – 12:30 pm
CONCURRENT CLE SESSIONS
- Responding to Childhood Obesity: The Role of Law and Public Policy
- Overview of the Final 403(b) Regulations—What You Need to Know and Do Before the End of 2008
- Providers and Vendors: Managing Tricky Relationships

12:30 pm – 1:45 pm
INTEREST GROUP LUNCHES
- Business & Transactions
- Healthcare Facility Operations
- Healthcare Fraud & Compliance
- Managed Care & Insurance
- Payment & Reimbursement
- Public Health & Policy

1:45 pm – 2:00 pm
Break

2:00 pm – 3:30 pm
PLENARY SESSION
Fraud and Abuse Enforcement Update

3:30 pm – 3:45 pm
Break

3:45 pm – 5:00 pm
CONCURRENT CLE SESSIONS
- Emergency Room Call Coverage: Crises, Controversies, and Solutions
- Payment (or Not) for Never Events
- The New Interactions Between Payors and Providers: The Emerging Battlefield & Cost Efficiency Tactics

Saturday, February 23, 2008

8:00 am – 11:00 am
Open Council Meeting

12:30 pm – 6:00 pm
9th Annual Margarita Cup Golf Scramble

7:00 pm – 9:00 pm
Margarita Cup Reception

The Health Law Section Acknowledges the Generous Support of our Sponsors for their Involvement in the 9th Annual Conference on Emerging Issues In Healthcare Law.

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Reed Smith LLP

2007-2008 American Bar Association Health Law Section Chair

Andrew J. Demetriou, Fulbright & Jaworski, LLP, Los Angeles, CA

Planning Committee

Hilary H. Young, Co-Chair, Joy & Young, LLP, Austin, TX

David M. Flynn, Co-Chair, Duane Morris LLP, Philadelphia, PA

Joel Wakefield, Co-Chair, Coppersmith Gordon Schermer & Brockelman PLC, Phoenix, AZ

Daniel A. Cody, Reed Smith LLP, San Francisco, CA

Thomas Crane, Mintz Levin Cohn Ferris Glovsky & Popeo PC, Boston, MA

Gregory E. Demske, U.S. Department of Health & Human Services, Washington, DC

Shannon B. Hartsfield, Holland & Knight LLP, Tallahassee, FL

Willam W. Horton, (ex-officio) Haskell Slaughter Young & Rediker, LLC, Birmingham, AL

Katherine A. Lauer, Latham & Watkins LLP, San Diego, CA

Alexandria Hien McCombs, Pinnacle Partners in Medicine, Dallas, TX

Gabriel Parra, Presbyterian Healthcare Services, Albuquerque, NM

Charity Scott, Georgia State University College of Law, Atlanta, GA

Steven R. Smith, Ober Kaler Grimes & Schriver, PC, Washington, DC

Leigh Walton, Bass Berry, & Sims, PLC Nashville, TN

Program Agenda

9TH ANNUAL CONFERENCE ON
EMERGING ISSUES IN HEALTHCARE LAW

PROGRAM FACULTY

Marice Ashe, JD, MPH, Program Director, Public Health Institute, Oakland, CA

Linda A. Baumann, Arent Fox LLP, Washington, DC

Kenneth D. Bell, Hunton & Williams LLP, Charlotte, NC

Phyllis C. Borzi, O'Donoghue & O'Donoghue LLP and Research Professor, Department of Health Policy, School of Public Health & Health Services, George Washington University Medical Center, Washington, DC

Joyce Branda, Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, Washington, DC

John T. Brennan, Jr., Crowell & Moring LLP, Washington, DC

Judith P. Broach, Broach & Stulberg, LLP, New York, NY

Hector G. Calzada, Jr., Senior Vice President, Houlihan, Lokey, Howard & Zukin, Inc., Atlanta, GA

Daniel A. Cody, Reed Smith LLP, San Francisco, CA

Almeta Cooper, General Counsel, Ohio State Medical Association, Hilliard, OH

Thomas S. Crane, Mintz Levin Cohn Ferris Glovsky and Popeo PC, Boston, MA

Ralph DeJong, McDermott Will & Emery LLP, Chicago, IL

Gregory E. Demske, Assistant Inspector General for Legal Affairs, U.S. Department of Health & Human Services, Washington, DC

Kirk L. Dobbins, King & Spalding LLP, Washington, DC

Robert W. Friz, PricewaterhouseCoopers LLP, Philadelphia, PA

Denise Glass, Fulbright & Jaworski, LLP, Dallas, TX

C. Mitchell Goldman, Duane Morris LLP, Philadelphia, PA

Marc D. Goldstone, Vice President and Associate General Counsel (Division II), Community Health Systems, Franklin, TN

Shannon B. Hartsfield, Holland & Knight LLP, Tallahassee, FL

John D. Harwell, Attorney at Law, Manhattan Beach, CA

Faculty continued on next page . . .

Wednesday, February 20, 2008

12:00 pm – 5:00 pm

Registration and Information Desk Open

1:00 pm – 4:00 pm

CONCURRENT PRE-CONFERENCE SESSIONS

Breast Cancer Legal Advocacy Workshop

One in eight women will be diagnosed with breast cancer. Chances are you or someone you know has had some experience with this disease. Cancer patients face a variety of legal problems related to their illness, including issues related to coverage and payment for treatment and employment related issues. This seminar will provide information to assist attorneys who do not ordinarily handle cases of this type become aware of laws, practices and procedures to help them assist breast cancer patients with legal problems resulting from their illness.

Moderator: Linda A. Baumann
Arent Fox LLP
Washington, DC

Speakers: **Phyllis C. Borzi**
O'Donoghue & O'Donoghue LLP and School of Public Health & Health Services
George Washington University Medical Center
Washington, DC

Judith P. Broach
Broach & Stulberg, LLP
New York, NY

Christopher S. Sears
Ice Miller LLP
Indianapolis, IN

1:00 pm – 4:00 pm

The Fundamentals of a Healthcare Transaction: An Interactive Look at the Anatomy of a Deal

This year's Fundamentals session will focus on the twists and turns of a collaborative venture between a hospital and members of its medical staff. Our panel of attorneys experienced with transactional, regulatory, and reimbursement issues (plus an essential valuation consultant) will walk through a hypothetical transaction and examine the considerations that face lawyers and their clients when negotiating, structuring, and closing a transaction. True to its title, this session will not assume extensive prior knowledge or experience in healthcare transactions; however, practitioners at every level should benefit from this in-depth discussion of challenging issues and the unique opportunity for extensive audience interaction the session has to offer.

Moderator: Joel Wakefield
Coppersmith Gordon Schermer & Brockelman PLC
Phoenix, AZ

Speakers: **Daniel A. Cody**
Reed Smith LLP
San Francisco, CA

G. Scott Rayson
Waller Lansden Dortch & Davis, PLLC
Nashville, TN

Patrick Simers
American Appraisal
Atlanta, GA

6:00pm – 7:00pm

Reception Honoring Young Lawyers

All registrants are welcome to attend.

ABA Books Available on This Topic

While at the conference, please visit the Section publications table and take advantage of special meeting discounts on HLS publications. Additional health law books and all HLS publications can be purchased online at the ABA Bookstore at www.ababooks.org.

Thursday, February 21, 2008

7:30 am – 5:00 pm
Registration & Information Desk Open

7:30 am – 10:00 am
Continental Breakfast

8:00 am – 9:30 am
Plenary Session

Hospital Syndications: Opportunities and Options, or a Thing of the Past?

In recent years, the government has become increasingly concerned about physician ownership of hospitals. There have even been Congressional proposals to eliminate the Stark exception for physician ownership in a whole hospital. This panel will discuss the latest developments in hospital companies sharing ownership of community hospitals with local physicians, including why hospital systems have been willing to share ownership with physicians, how these deals are being structured, the legal problems raised by these arrangements, which physicians are interested in hospital ownership and why, and the likely future (or not) of these transactions.

Speakers: **Hector G. Calzada, Jr.**
Houlihan, Lokey, Howard & Zukin, Inc.
Atlanta, GA

C. Mitchell Goldman
Duane Morris LLP
Philadelphia, PA

Leigh Walton
Bass, Berry & Sims PLC
Nashville, TN

9:30 am – 9:45 am
Break

9:45 am – 11:00 am
Concurrent Interest Group CLE Sessions

The Latest in Clinical Research: New Medicare Policy on Clinical Trials and the Trials of Expanding Litigation

Medical Research, Biotechnology & Clinical Ethical Issues Interest Group and Healthcare Litigation & Risk Management Interest Group

Medicare's Clinical Trial Policy has been in effect since September 19, 2000. However, CMS and Medicare contractor implementation of the policy has been inconsistent. CMS recently reconsidered the policy, making minor but important changes. On October 17, 2007, CMS issued a "Decision Memorandum for Clinical Trial Policy" after evaluation of public comments on three previously proposed decisions. This session will highlight important aspects and implications of the newly revised policy, including: routine costs in clinical trials, coverage with evidence development, qualification process for clinical trials, and potential implications of CMS review of clinical trial-related provisions of the Food and Drug Administration Amendments of 2007. Contemporaneously, litigation is growing in the clinical research arena. This session will also analyze claims that have been made in recent cases, claims that have been successful versus those that have not, trends and predictions, and practical approaches for managing risk.

Moderator: **Bruce F. Howell**
Hughes & Luce LLP
Dallas, TX

Speaker: **Kirk L. Dobbins**
King & Spalding PC
Washington, DC

Robyn Shapiro
Drinker Biddle & Reath LLP and Center for the Study of Bioethics, Medical College of Wisconsin
Milwaukee, WI

Developments in Medical Staff and Credentialing: A Review of Recent Developments and Reactions from Hospital and Physician Perspectives

Healthcare Facility Operations Interest Group

Recent accreditation and legal developments affect the already complex interplay between the governing body, administration, medical staff leadership and practitioners. The revised MS.1.20 adopted by the Joint Commission distinguishes between substantive and procedural requirements in structure and governance. Critical issues such as corrective action with disruptive practitioners, collaboration of peer review efforts, and HCQIA and state immunity continue to

PROGRAM FACULTY *continued . . .*

Jonathan K. Henderson, Hughes & Luce LLP, Fort Worth, TX

William E. Hopkins, Brown McCarroll LLP, Austin, TX

William W. Horton, Haskell Slaughter Young & Rediker, LLC, Birmingham, AL

Bruce F. Howell, Hughes & Luce LLP, Dallas, TX

Shelley K. Hubner, Sedgwick, Detert, Moran & Arnold LLP, San Francisco, CA

Julie E. Kass, Ober Kaler Grimes & Shriver, PC, Baltimore, MD

Judith Kindell (Invited), Tax Law Specialist, Internal Revenue Service, Washington, DC

R. Jeffrey Layne, Fulbright & Jaworski LLP, Austin, TX

Karen Ann P. Lloyd, Vice President and General Counsel, Community Health Network, Indianapolis, IN

Lauren K. Mack, Sonnenschein Nath & Rosenthal LLP, San Francisco, CA

Melissa L. Markey, Hall, Render, Killian, Heath & Lyman, PC, Troy, MI

R. Harold McCard, Jr., Chaffe McCall LLP, New Orleans, LA

Alexandria Hien McCombs, General Counsel, Pinnacle Partners in Medicine, Dallas, TX

Gregory L. Needles, Morgan, Lewis & Bockius LLP, Washington, DC

Julie M. Nelson, Coppersmith Gordon Schermer & Brockelman PLC, Phoenix, AZ

Theresa Pattara, JD, CPA (Invited), Project Manager, Form 990 Redesign, Tax-Exempt and Governmental Entities Division, Office of Exempt Organizations, Internal Revenue Service, Washington, DC

Carol A. Poindexter, Shook Hardy & Bacon LLP, Kansas City, MO

Cheryl Press (Invited), Senior Attorney, Adviser, Office of Chief Counsel, Internal Revenue Service, Washington, DC

Montrece McNeil Ransom, Senior Public Health Analyst, Centers for Disease Control and Prevention, Atlanta, GA

G. Scott Rayson, Waller Lansden Dortch & Davis LLP, Nashville, TN

Faculty continued on next page . . .

PROGRAM FACULTY *continued . . .*

Randye Retkin, Director, LegalHealth, New York Legal Assistance Group, New York, NY

Don Romano, Director, Division of Technical Payment Policy, Center for Medicare Management, Centers for Medicare & Medicaid Services, Baltimore, MD

Sara Rosenbaum, George Washington University Medical Center School of Public Health and Health Services, Washington, DC

Charity Scott, Professor of Law and Director, Center for Law, Health & Society, Georgia State University College of Law, Atlanta, GA

Christopher S. Sears, Ice Miller LLP, Indianapolis, IN

Robyn Shapiro, Partner, Drinker Biddle & Reath LLP and Professor and Director of the Center for the Study of Bioethics at the Medical College of Wisconsin, Milwaukee, WI

Patrick Simers, National Director, Healthcare Services, American Appraisal, Atlanta, GA

Fred A. Smith, III, Sedgwick, Detert, Moran & Arnold LLP, Chicago, IL

Richard C. Smith, Fulbright & Jaworski LLP, Washington, DC

Steven R. Smith, Ober Kaler Grimes & Shriver, PC, Washington, DC

Jennifer Stam, Staff Attorney, Medical-Legal Partnership for Children, Boston Medical Center and Staff Attorney, Volunteer Lawyers Project, Boston, MA

Cynthia Marcotte Stamer, PC, Glast, Phillips & Murray, PC, Dallas, TX

James M. "Mac" Stewart, Stewart Stimmell LLP, Dallas, TX

Roger D. Strode, Jr., McDermott Will & Emery LLP, Chicago, IL

Bret Tate, Associate General Counsel, Cook Children's Health Care System, Fort Worth, TX

Lisa D. Taylor, Stern & Kilcullen, LLC, Roseland, NJ

Joel Wakefield, Coppersmith Gordon Schermer & Brockelman PLC, Phoenix, AZ

Leigh Walton, Bass, Berry & Sims PLC, Nashville, TN

Phil Zarone, Horty, Springer & Mattern, PC, Pittsburgh, PA

unfold in recent cases such as *Adkins v. Christie*. This session offers tools in navigating through this challenging landscape.

Moderator: **Alexandria Hien McCombs**
Pinnacle Partners in Medicine
Dallas, TX

Speakers: **James M. "Mac" Stewart**
Stewart Stimmell LLP
Dallas, TX

Phil Zarone
Horty, Springer & Mattern, PC
Pittsburgh, PA

Reading the HIPAA Tea Leaves—The Future of Security Rule Enforcement in the Post-Piedmont Era

eHealth, Privacy & Security Interest Group

This session will analyze reported progress to date (including enforcement actions, if any) taken as a result of the government's surprise HIPAA security audit of the Piedmont Health System. In addition, this session will provide "take away" strategies to help covered entities be prepared for the government's new HIPAA e-health security enforcement strategy, and tips on how to respond to a surprise audit if one should occur. The panelists will comment on the challenges associated with preparing for an unannounced government audit from the viewpoints of community hospitals/single hospital health systems, investor owned hospitals/multi-facility health systems, and medical staff physicians.

Moderator: **Marc D. Goldstone**
Community Health Systems
Franklin, TN

Speakers: **Melissa L. Markey**
Hall, Render, Killian, Heath & Lyman, PC
Troy, MI

R. Harold McCard, Jr.
Chaffe McCall LLP,
New Orleans, LA

11:00 am – 11:15 am

Break

11:15 am – 12:45 pm

PLENARY SESSION

Platforms for Expanding Health Insurance Coverage: Perils and Prospects on the Path to Universal Healthcare

The number of uninsured and underinsured Americans continues to escalate at an alarming rate, with lack of affordable and accessible healthcare viewed as principal culprits. This session will examine the effect of the uninsured on payors, providers, and others involved in healthcare delivery and will explore one frequently proposed public policy solution, universal healthcare. The panel will provide an overview of the effects of federal and state responses, including various universal healthcare models; present several case studies; assess the impact of this national problem on healthcare business trends; and offer a practical roadmap for the healthcare bar to navigate future challenges effectively.

Speakers: **Jonathan K. Henderson**
Hughes & Luce LLP
Fort Worth, TX

Shelley K. Hubner
Sedgwick, Detert, Moran & Arnold LLP
San Francisco, CA

Bret Tate
Cook Children's Health Care System
Fort Worth, TX

12:45 pm – 1:00 pm

Break

1:00 pm – 2:30 pm

INTEREST GROUP LUNCHES

- eHealth, Privacy & Security
- Employee Benefits & Executive Compensation
- Healthcare Litigation & Risk Management
- Medical Research, Biotechnology & Clinical Ethical Issues
- Physician Issues
- Tax & Accounting

2:30 pm – 2:45 pm

Break

2:45 pm – 4:15 pm

PLENARY SESSION

The New Form 990—Major New Information Disclosure Requirements for Hospitals

The redesigned Form 990 represents the first complete overhaul of the Form 990 since 1979, and creates unprecedented increases in the disclosure requirements imposed upon tax-exempt hospitals. For example, the new Form 990 would require, for the first time, the reporting of charity care and community

benefit in a specified format. There are also increased disclosure requirements regarding compensation, tax-exempt bonds, joint ventures, and corporate governance. This session will focus on these key changes, as well as procedures and policies that hospitals will need to implement to address these changes effectively.

Speakers: **Ralph DeJong**
McDermott Will & Emery LLP
Chicago, IL

Theresa Pattara JD, CPA (Invited)
Internal Revenue Service
Washington, DC

4:15 pm – 4:30 pm
Break

4:30 pm – 5:45 pm

Concurrent Interest Group CLE Sessions

Lessons for Transactional Lawyers: Reducing the Risks of Post-Transaction Enforcement Activity Before the Transaction Closes

Business & Transactions Interest Group

Compliance with the myriad regulations governing healthcare providers begins at the beginning. The structure and documentation of a transaction play a crucial role in a provider or venture's ongoing compliance. This panel will discuss how transactional lawyers can address important areas of risk while negotiating and documenting a transaction in order to lessen the likelihood of enforcement activity, which can arise long after the transaction has closed.

Moderator: **Roger D. Strode, Jr.**
McDermott Will & Emery LLP
Chicago, IL

Speakers: **Kenneth D. Bell**
Hunton & Williams LLP
Charlotte, NC

Richard C. Smith
Fulbright & Jaworski, LLP
Washington, DC

Tax-Exemption in the Spotlight—Current IRS and Legislative Initiatives Affecting Hospitals

Tax & Accounting Interest Group

Tax-exempt hospitals continue to be scrutinized for their continued qualification for tax-exempt status. Ongoing IRS compliance/enforcement efforts have specifically targeted tax-exempt bonds (including a Tax-Exempt Bond Financings Compliance Check Questionnaire sent to approximately 200 organizations), executive compensation, and political campaign activities. In addition, the IRS has released its interim report regarding its Tax-Exempt Hospital and Community Benefit Project. Congress has also continued to focus on the merits of hospital tax exemption. A Senate Finance Committee staff discussion draft of possible legislative changes released recently set forth a series of proposed reforms, including a 5% charity care requirement to maintain tax-exempt status. This session will address these key initiatives and their potential impact on hospitals.

Moderator: **Robert W. Friz**
PricewaterhouseCoopers LLP
Philadelphia, PA

Speakers: **Judith Kindell (Invited)**
Internal Revenue Service
Washington, DC

Lauren K. Mack
Sonnenschein Nath & Rosenthal LLP
San Francisco, CA

Doing Good and Doing Well: Improving the Community's Health and the Hospital's Bottom Line through Medical-Legal Partnerships

The ABA House of Delegates recently adopted a resolution that encourages lawyers, law firms, legal services agencies, law schools, and bar associations to develop medical-legal partnerships with hospitals, community-based health care providers, and social service organizations to help identify and resolve diverse legal issues that affect patients' health and well-being. This panel discusses the growing national trend to establish medical-legal partnerships that can address the social and economic factors adversely impacting people's health, especially for people who live in low-income and historically under-served communities. Having lawyers and doctors work together to improve the community's health can also save hospitals money and increase their reimbursement.

Speakers: **Randye Retkin**
LegalHealth, New York Legal Assistance Group
New York, NY

CONFERENCE INFORMATION

REGISTRATION

Register by **FEBRUARY 4, 2008** online, by fax, or U.S. Mail. Registration will be accepted only when accompanied by payment.

Online:
http://www.abanet.org/health

Fax: 312/988-5814

U.S. Mail
American Bar Association
Health Law Section
321 North Clark Street
Chicago, IL 60610

Three Ways to Register

ON SITE REGISTRATION

Please call 312/988-5532 by **FEBRUARY 13, 2008** to ensure space availability. On site registration will only be accepted when accompanied by check, money order, Visa, American Express, or MasterCard information.

CANCELLATION POLICY

Tuition, less a $50 handling charge for each registration, will be refunded upon written cancellation received no later than **FEBRUARY 6, 2008**. Cancellations received after this date cannot be refunded but substitutions are encouraged. The ABA reserves the right to cancel any program and assumes no responsibility for personal expenses.

Conference information continued on next page

Charity Scott
Georgia State University College of Law
Atlanta, GA

Jennifer Stam
Medical-Legal Partnership for Children, Boston Medical Center and Volunteer Lawyers Project
Boston, MA

6:00 pm – 7:30 pm
Welcome Reception

Friday, February 22, 2008

7:30 am – 4:00 pm
Registration & Information Desk Open

7:30 am – 10:00 am
Continental Breakfast

8:00 am – 9:00 am
Ethics Session
Conflicts of Law(yers): Legal Ethics When the Lawyer Becomes the Target

Lawyers representing organizational clients are increasingly embroiled in civil and criminal investigations and enforcement actions – but now as subjects and targets, not as counsel. In a number of these cases, claims against lawyers have been based, in part, on decisions they have made and actions they have taken in the face of conflicting opinions from other lawyers, conflicting judgments from compliance personnel, or conflicting directions from client management. This session will explore ethical issues and practical challenges facing healthcare lawyers as they wrestle with such conflicts in an environment where the "wrong" decision may paint a bullseye on their backs.

Speakers: **William W. Horton**
Haskell Slaughter Young & Rediker, LLC
Birmingham, AL

Lisa D. Taylor
Stern & Kilcullen, LLC
Roseland, NJ

9:00 am – 9:15 am
Break

9:15 am – 9:30 am
State of the Section Address

Section Chair Andrew J. Demetriou will discuss the activities, achievements and aspirations of the ABA Health Law Section.

9:30 am – 11:00 am
Plenary Session
Stark Reality: Analysis Evolves into Implementation

At the time of this session nearly six months will have passed since the release of the final Stark III rules in September of 2007, and the Stark-related provisions in the proposed PPS rules will likely have been issued in final form. This session will review the changes introduced by these separate but related rulemakings, with the perspective of both the regulators and the regulated. The presenters will address issues that have arisen since the publication of the rules, and provider representatives will discuss current thoughts and approaches to implementation of the rules' new requirements.

Moderator: **Shannon B. Hartsfield**
Holland & Knight LLP
Tallahassee, FL

Speakers: **John T. Brennan, Jr.**
Crowell & Moring LLP
Washington, DC

Julie E. Kass
Ober Kaler Grimes & Shriver, PC
Baltimore, MD

Don Romano
Centers for Medicare & Medicaid Services
Baltimore, MD

11:00 am – 11:15 am
Break

11:15 am – 12:30 pm
Concurrent Interest Group CLE Sessions
Responding to Childhood Obesity: The Role of Law and Public Policy

Public Health & Policy Interest Group

Rising rates of childhood obesity in the U.S. and globally have been well-documented. The panel will discuss obesity as a public health problem and briefly summarize risk factors for obesity; identify and explain lessons learned from state legislatures' efforts to prevent and control obesity, especially in school-aged children; describe major legal issues and emerging trends related to obesity prevention and control; discuss recent policy and legal measures related to obesity in children and adults; and identify any commonalities in the use of legal tools for prevention vis-à-vis obesity and other chronic diseases (e.g. tobacco litigation).

Moderator: **Montrece McNeil Ransom**
Centers for Disease Control and Prevention
Atlanta, GA

Speakers: **Marice Ashe, JD, MPH**
Public Health Institute
Oakland, CA

Sara Rosenbaum, JD
George Washington University Medical Center School of Public Health and Health Services
Washington, DC

Overview of Final 403(b) Regulations—What You Need to Know and Do Before the End of 2008

Employee Benefits & Executive Compensation Interest Group

The IRS's most frequent speaker on retirement benefits and deferred compensation for tax-exempt organizations will discuss the final 403(b) regulations and how they affect tax-exempt health care employers. In particular, she will focus on the IRS's push, through the regulations, to hold employers more accountable for their 403(b) programs, and in turn describe the new obligations that employers will face as a result of the regulations. This will be an important session for all practitioners who advise tax-exempt entities because of the new obligations and burdens that their clients will be taking on by the end of 2008.

Speakers: **Gregory L. Needles**
Morgan, Lewis & Bockius LLP
Washington, DC

Cheryl Press (Invited)
Internal Revenue Service
Washington, DC

Providers and Vendors: Managing Tricky Relationships

Healthcare Fraud & Compliance Interest Group and Healthcare Litigation & Risk Management Interest Group

Recent enforcement actions and regulatory pronouncements graphically illustrate that vendor-provider relationships are under intense governmental scrutiny. Suspect vendor relationships with health care providers include such activities as the provision of free samples, gifts, entertainment, "sham" consulting agreements, and off-label marketing practices. Additionally, a growing number of healthcare providers have become increasingly concerned about the potentially inherent conflict of interest and fraud and abuse risks that can emanate from vendor relationships. This session will discuss relevant risk areas, cover how to structure an internal investigation if the government comes knocking, and offer tips on structuring sales and marketing activities, consultant agreements, and other vendor-provider relationships to minimize potential conflict of interest and fraud and abuse risks.

Speakers: **R. Jeffrey Layne**
Fulbright & Jaworski, LLP
Austin, TX

Carol A. Poindexter
Shook Hardy & Bacon LLP
Kansas City, MO

12:30 pm – 1:45 pm

Interest Group Lunches

- Business & Transactions
- Healthcare Facility Operations
- Healthcare Fraud & Compliance
- Managed Care & Insurance
- Payment & Reimbursement
- Public Health & Policy

1:45 pm – 2:00 pm

Break

2:00 pm – 3:30 pm

Plenary Session

Fraud and Abuse Enforcement Update

This session will provide a review of fraud and abuse enforcement over the past year, including important court decisions, enforcement actions, settlements, and OIG initiatives. This discussion will include coverage of significant government actions related to pharmaceutical companies, medical device manufacturers, and individuals.

Speakers: **Joyce Branda**
U.S. Department of Justice
Washington, DC

Thomas S. Crane
Mintz Levin Cohn Ferris Glovsky and Popeo PC
Boston, MA

Gregory E. Demske,
U.S. Department of Health & Human Services
Washington, DC

3:30 pm – 3:45 pm

Break

3:45 pm – 5:00 pm

Concurrent Interest Group CLE Sessions

Emergency Room Call Coverage: Crises, Controversies and Solutions

Physician Issues Interest Group

Hospitals have reported a significant decline in physicians available to provide on-call coverage for their emergency departments. Physicians' reasons for their lack of availability or unwillingness to provide on-call coverage include insufficient reimbursement, liability, and quality of life concerns. But the lack of on-call specialists has serious implications for the delivery of emergency health care services. This session will explore the primary reasons for the current crisis; the adverse impact the crisis has on hospitals, physicians, and patients; and actions that governments, hospitals, physicians, and communities are taking in an effort to find workable solutions to this national problem.

Moderator: **William E. Hopkins**
Brown McCarroll LLP
Austin, TX

Speakers: **John D. Harwell**
Attorney at Law
Manhattan Beach, CA

Julie M. Nelson
Coppersmith Gordon Schermer & Brockelman PLC
Phoenix, AZ

Payment (or Not) for Never Events

Healthcare Litigation & Risk Management Interest Group and Payment & Reimbursement Interest Group

Medical errors impose big costs for patients and health plan payers. Now public and private payers increasingly are looking to manage

Conference Information

Registration Fee

Your payment will cover admission to the program, continental breakfasts, coffee breaks, tickets to the IG Luncheons on each day, receptions, and the program course materials in the format of your choice.

Interest Group Lunches

Registrants are encouraged to attend the Interest Group lunch of their choice on both Thursday and Friday. There is no additional charge for these lunches; however, registrants must pre-register for the lunch meeting to guarantee a reserved boxed lunch.

Hotel Information

The conference will be held at the Omni San Diego Hotel, located at 675 L Street, San Diego, CA 92101. Call 619/231-6664 or 1-800-THE-OMNI no later than **TUESDAY, JANUARY 22, 2008.** Please mention the American Bar Association Health Law Section 9th Annual Conference on Emerging Issues to receive the special rate of $209 for a single or double room. A limited number of government rate rooms have been reserved on a first available basis at $99 for a single or double.

Airline Information

The Omni San Diego Hotel is located four miles from San Diego International Airport (SAN). Airfare discounts are available through ABA Online Travel, Travelocity Business or directly from the airline. To access ABA Online Travel, go to www.abanet.org/travel and click on the Online Travel link at the top of the page. The 24/7 toll-free number for Travelocity Business is 1-866-321-8403. Discounted rates are available on American Airlines. Please call 1-800-433-1790 and reference discount code: 19838.

Conference information continued on next page

CONFERENCE INFORMATION

CLE CREDIT

CLE has been requested from every state with general mandatory continuing education requirements for lawyers. For information on the approved number of credit hours to be awarded by each state, please contact the Health Law Section directly at 312/988-5532 after **FEBRUARY 1, 2008**.

HEALTH LAW SECTION MEMBERSHIP

As an added bonus to new members, the member's tuition rate will be available to registrants who become members of the ABA Health Law Section. Membership dues are not deductible as charitable contributions for federal income tax purposes, but such dues may be deductible as a business expense.

TAX DEDUCTION FOR EDUCATIONAL EXPENSES

An income tax deduction may be allowed for educational expenses undertaken to maintain or improve professional skills. This includes registration fees, travel, meals, and lodging expenses. (see Treas. Reg. 1.162-5) (Coughlin vs. Commissioners, 203 F 2d 307)

SERVICES FOR PERSONS WITH DISABILITIES

If special arrangements are required for an individual with a disability to attend this program, please submit your request in writing to Abigail Palagi, American Bar Association Health Law Section, 321 N. Clark St., Chicago, IL 60610, or fax to 312/988-5814.

DRESS CODE

Resort casual attire is appropriate for all meetings, CLE programs and social events during the program—no business suits, ties or stockings! However, the meeting rooms tend to be cool, so be sure to carry a sweater or light jacket.

medical errors and their costs. This session will explore various emerging approaches from patient and provider education to limitations on payment for "never events" and other medical errors.

Moderator: **Karen Ann P. Lloyd**
Community Health Network
Indianapolis, IN

Speakers: **Steven R. Smith**
Ober Kaler Grimes & Schriver, PC
Washington, DC

Cynthia Marcotte Stamer, PC
Glast, Phillips & Murray, PC
Dallas, TX

The New Interactions Between Payors & Providers: The Emerging Battlefield & Cost Efficiency Tactics

Healthcare Litigation & Risk Management Interest Group and Managed Care & Insurance Interest Group

The relationships between providers and health plans often take on the characteristics of Dr. Jeckyl and Mr. Hyde as the parties look for ways to improve quality cost efficiently while continuing to be confronted with managed care disputes. On the litigation front, the traditional focus of managed care disputes has shifted from bodily injury claims to business practice litigation. At the same time, payors and providers are working together to explore new types of programs and plan arrangements. This panel will discuss the litigation trends and factors leading to this shift in litigation, and provide consideration as to whether the competing interests of the parties preclude them from reaching common goals of delivering quality, cost-efficient care.

Moderator: **Denise Glass**
Fulbright & Jaworski, LLP
Dallas, TX

Speakers: **Almeta Cooper**
Ohio State Medical Association
Hilliard, OH

Fred A. Smith, III
Sedgwick, Detert, Moran & Arnold LLP
Chicago, IL

5:00 pm
CLE Program Adjourns

Saturday, February 23, 2008

8:00 am – 11:00 am
Open Council Meeting
All members are welcome to attend the Section Open Council Meeting

12:30 pm – 6:00 pm
9th Annual Margarita Cup Golf Scramble
Riverwalk Golf Course

7:00 pm – 9:00 pm
Margarita Cup Reception
All meeting attendees are welcome!

Program Registration

PROGRAM REGISTRATION FORM

Name

First Name for Name Badge

Company/Firm Name

Address

City, State, Zip

Phone Fax

E-mail Address

☐ YES, I am bringing a spouse/guest (name)

ABA ID #

States in which you are licensed (please list all)

Three Ways to Register

Online:
www.abanet.org/health

Fax: 312/988.5814

U.S. Mail:
American Bar Association
Health Law Section
321 North Clark Street
Chicago, IL 60610

PART A REGISTRATION FEES:

- ☐ $1095 General Attendees (non-ABA Members)
- ☐ $895 ABA Member Non-Health Law Member
- ☐ $745 **ABA Health Law Member** or California Society for Healthcare Attorneys Member**
- ☐ $250 Government/Academic
- ☐ $75 Student

***Take advantage of this rate today when you sign up for ABA Health Law Section membership! See Part B below.*

PART B HEALTH LAW SECTION MEMBERSHIP

☐ **$50** Please sign me up for ABA Health Law Section membership (you must be a member of the American Bar Association to join the Health Law Section)

PART C WEDNESDAY, FEBRUARY 20TH PRE-CONFERENCE SESSIONS:

Please Select One Session or indicate "No"

☐ **NO**
I will not attend the Wednesday Pre-Conference Sessions

☐ **Free!**
Yes, I will attend one of the **Wednesday Pre-Conference Sessions**.

☐ **Breast Cancer Legal Advocacy**

☐ I will only attend the Breast Cancer Legal Advocacy Workshop and **will not** attend the Emerging Issues Conference.

☐ **Fundamentals of a Transaction**

PART D INTEREST GROUP LUNCHES

There is no additional charge to attend either or both days of Interest Group Lunch Meetings. However, lunches will be ticketed, therefore registrants must indicate which lunch(es) they plan to attend.

THURSDAY LUNCH MEETINGS:
Please choose to attend one of the following:

- ☐ eHealth, Privacy & Security
- ☐ Employee Benefits & Executive Compensation
- ☐ Healthcare Litigation & Risk Management
- ☐ Medical Research, Biotechnology & Clinical Ethical Issues
- ☐ Physician Issues
- ☐ Tax & Accounting

FRIDAY LUNCH MEETINGS:
Please choose to attend one of the following:

- ☐ Business & Transactions
- ☐ Healthcare Facility Operations
- ☐ Healthcare Fraud & Compliance
- ☐ Managed Care & Insurance
- ☐ Payment and Reimbursement
- ☐ Public Health & Policy

Please share any dietary restrictions:

- ☐ Kosher
- ☐ Lactose Intolerant
- ☐ Vegetarian
- ☐ (other)_____

PART E 9TH ANNUAL MARGARITA CUP GOLF SCRAMBLE

Tee times begin at 12:30 pm Saturday. Please arrive at the golf course NO LATER than 12:15 pm, depending on your assigned tee time. Don't forget to join us at the reception immediately following the golf event! All are welcome.

☐ **$130** 9th Annual Margarita Cup Golf Scramble

PART F COURSE MATERIALS

One set of course materials (either Paperback Book or CD ROM) is included in the registration fees. Please indicate your preference below. For an additional charge of $25, attendees can receive both versions of the materials. *Please note that those registrants not indicating a preference will receive materials in the CD ROM version only.*

- ☐ **No Additional Charge**
  9th Annual Conference on Emerging Issues in Healthcare Law Paperback Book
- ☐ **No Additional Charge**
  9th Annual Conference on Emerging Issues in Healthcare Law CD ROM
- ☐ **$25**
  9th Annual Conference on Emerging Issues in Healthcare Law CD ROM **and** Paperback Book
- ☐ **Unable to Attend and Wish to Purchase the Materials?**
  Conference materials will be available after March 19th, 2008 at the ABA online Bookstore; please visit www.ababooks.org to purchase your conference materials. Upon request, Section staff will gladly send you a reminder e-mail when materials are available at the bookstore.

CATEGORY	COST
A: Registration _____	$ ____
B: Health Law Section Membership Dues __	$ ____
C: Pre-Conference Programming (Please Select in Section C) _____	$ FREE
D: IG Lunches (Please Select in Section D) ____	$ FREE
E: Margarita Cup _____	$ ____
F: Optional Extra Course Materials _____	$ ____
TOTAL FEES: _____	$ ____

METHOD OF PAYMENT

☐ CHECK enclosed
(payable to the American Bar Association)
☐ VISA ☐ Mastercard ☐ American Express

Card#

Exp. Date

Cardholder Signature

9th Annual Conference on
Emerging Issues in Healthcare Law
Omni San Diego Hotel
San Diego, California
Program Date: Feb. 20-22, 2008
Registration Deadline: Feb. 4, 2008
Hotel Room Block Deadline: January 22, 2008

American Bar Association
Health Law Section
321 N. Clark Street
Chicago, IL 60610-4714

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Pursuing Justice

UPCOMING EVENTS

ABA Health Law Section

June 13, 2008
Physician-Legal Issues Conference
American Bar Association Conference Center, Chicago, IL

February 18-20, 2009
10th Annual Conference on Emerging Issues in Healthcare Law
Disney Yacht Club Resort, Orlando, FL

Call Abigail Palagi at 312/988-5532 for information

SPECTACULAR SAN DIEGO

With miles of sandy beaches and an average 70-degree year-round temperature, it's no wonder San Diego is a premier travel destination. From museums and galleries to theaters and symphonies, San Diego embraces the fine arts. For a walk on the wild side, visit Sea World San Diego, Wild Animal Park or the famed San Diego Zoo. Looking for fabulous dining and shopping? Check out the trendy restaurants and nightclubs in the historic Gaslamp Quarter or outdoor shopping at Seaport Village.

OMNI SAN DIEGO HOTEL

The four-star Omni San Diego Hotel is one more reason to visit this fabulous seaside city and attend the 9th Annual Emerging Issues in Healthcare Law Conference. Nestled in the heart of the historic Gaslamp Quarter, the Omni San Diego Hotel puts you close to the city's top sites and attractions, shopping and fine dining. Explore Balboa Park, take a harbor cruise or polish your clubs for play on one of San Diego's top golf courses. Travel to the Emerging Issues Conference is a breeze with the Omni conveniently located just 10 minutes from San Diego International Airport.

CONFERENCE SOCIAL EVENTS

Reception Honoring Young Lawyers— *Co-sponsored with the ABA Young Lawyers Division*

Join us Wednesday evening for an entertaining time as we invite local young lawyers to meet colleagues and leaders in the Health Law Section. Everyone is welcome!

Welcome Reception

We invite you to attend the Welcome Reception Thursday evening that will be held at the resort immediately following the afternoon's last session.

The 9th Annual Margarita Cup Scramble

Join others in the Section for a fun afternoon of golf and play on San Diego's Riverwalk Golf Course. Players at ***ALL*** levels are welcome and fun prizes will be awarded at a reception following the event which is open to all registrants and their guests.