

Elder Law and Disability Rights Section Council Meeting

Approved Meeting Minutes

Troy, MI 10 a.m. November 13, 2010

Attending: Art Malislow, Rosie Buhl, Michele Fuller, Audra Woods, Patrick Bond, Sara Schimke, Don Rosenberg, Janet Bruss, John Arenz, Krystal Casey, Caroline Dellenbusch, Dolores Coulter, Paul Sturgul, John Payne, Todd Tennis, and via telephone, Robert Anderson, James Bauer, Jackie Rygel, Judy McFalda, Angela Swanberg, Jill Goodell, Harley Manella, Amy Tripp.

Secretary Report:

Buhl moved and Rosenberg seconded a motion that the minutes from the August meeting be approved. The motion passed.

Treasurer Report:

The monthly financial statements were presented, and the Treasurer noted that most of the fall conference bills had not yet been paid or submitted—but by the same token, most of the section dues were not reported in yet either. The treasurer asked those with fall conference expenses to submit them as soon as they could.

Fall Workshop plans and update:

This fall's conference at Crystal Mountain was well attended with approximately 171 persons in attendance. It was also the general feeling that the combination of “national” speakers combined with local talent added to the value of the conference for the attendees.

Next year's conference will also probably be taking place at Crystal Mountain, though the council is open to other locations for future conferences too. The dates for the conference next year are Sept. 21-23, 2011.

Discussion about possible conference material dissemination took place.

Some suggested printed materials from EVERY session would be welcome; others suggested a flash drive be given to participants holding all materials. The cost and logistics involved in either approach, as well as a possible pricing differential were discussed briefly. An ad hoc committee of Michele Fuller, Harley Manella, Rosemary Buhl and Sarah Schimke will report back to the council regarding their suggestion and advice on this issue.

For “national” speakers next year, a few names and agencies were tossed out including getting someone from the Center for Medicare Advocacy, getting Michael Gilfix (sp?), etc. The chair encouraged those with suggestions to forward same to Brad Geller and others working on the program.

Nursing Home Model Contract and other Nursing Home issues:

There is no news to report on the model nursing home contract, per Roxanne Chang.

Discussion ensued about other nursing home issues, trends and concerns, and some suggested the council keep watch on developments in the nursing home area.

Krystal Casey reported that she initiated a FOIA request to the Michigan State Department of Community Health, aimed at bed classification (I.E. Medicare/Medicaid, etc.) and any mapping or diagrams available. She said the request was granted in part, and that she was also encouraged to approach CMS for actual schematics. When she has time to digest the materials produced, she may be able to share more with us. Initial information comes mainly by facility number, and isn’t cross tabled with a facility name, so that a little work is in order to really benefit from the materials produced.

Don Rosenberg remarked that a facility called Glacier Hills is possibly “decertifying” their Medicaid beds, claiming they have few or none—and it appears that the state regulators are not objecting.

Priscilla Cheever noted that many nursing home facilities have a business play book, wherein they much prefer to be “rehab or out” facilities—taking mainly, or only, those patients who can be treated under a “rehab” status, and thus generate more return for the facility involved.

Spring Conference:

Harley Manella reported the spring conference will be held March 4th at the Inns of St. John, Plymouth MI. He projects or hopes attendance will be about 110-125, and that 5-6 topics including a luncheon speaker, will shape the day. “Save-the-date” e-blasts are planned, and some suggested that perhaps Judge Mack could be a speaker or participate in a panel discussion. Those with ideas about the spring conference are encouraged to talk to Harley Manella.

Uniform Durable Power of Attorney Act:

It appears any legislative movement on this is dead this year. Patrick Bond noted that the act as written might have an unintended drawback and account holders/principles might be hurt—since the act as written creates a sort of presumption that dpoa’s consistent with the act are to

be deemed valid. If financial institutions become wary about challenging or questioning proposed transactions by an agent, because of the built in acceptance under the draft, it is possible that an unintended consequence would be more financial exploitation, not less.

Section Blog:

Brad Vauter had nothing new to report—he had thought that the idea of a blog faded with the positive discussions from earlier council meetings to do an electronic newsletter. If the council wishes though, he will look more deeply into a blog and report back. John Payne mentioned a blog might possibly be a part of the section newsletter, and Dolores Coulter remarked that the list serve, or an edited list serve, serves as a sort of blog already, albeit with long threads at times.

Litigation and Other Possible Advocacy:

A brief discussion regarding DHS standard of promptness issues, and Audra Woods mentioned a claim she was working on in regards to nh Medicaid qualification where the only real issue was the treatment of a life insurance policy. She and others noted that, right now, there is little penalty for the state when the standard of promptness standard is not met.

The delay is not only affecting applicants and patients and their families, but the facilities themselves are reacting in a protective way, and some are asserting they are not a “Medicaid pending” facility—in effect discouraging any admissions from patients who have not already been approved for Medicaid or who have other sources of payment. This happens sometimes too in the Grand Rapids area, said Caroline Dellenbusch, but when she challenges the facilities, they often fold.

It was suggested that a meeting be set up with the state government, including any new appointees, to discuss these and other ongoing dhs/Medicaid eligibility issues, and Don Rosenberg, Harley Manella, Rosie Buhl and Todd Tennis will form an ad hoc team to look into this more and to meet and confer as soon as feasible.

Paul Sturgul invited the section to explore other possible issues too, and more suggestions of problem areas—which may or may not be worth of litigation—emerged. Council members mentioned: IRA’s (though some seem to use probate court protective orders effectively, others cannot, or do not?); pooled trust accounts for those over 65 years of age; spousal refusal. Meetings with newly elected representative Kevin Cotter, who has practiced law with a section member, were suggested along with ongoing work with Senator Young. Michele Fuller and Art Malislow will help provide input.

POLST Committee:

Robert Anderson reported the group met earlier in the week and they noted there seemed to be 3 different forms used commonly—however, with his help, and many drafts, a new form seems to be emerging that may synthesize the forms. He noted too that medical people seem leery of eliminating Michigan’s patient advocate form, with which they are familiar.

He also reported the non-profit group to explore and promote POLST in Michigan is now established and the \$500 check (from the section, per previous meeting vote) has been deposited.

Health Care reform committee:

Per Dolores Coulter, not much is happening with the group at present, though some have thought it prudent to stay involved, to help shape ways in which states respond to federally mandated health insurance reforms as well as to make sure some last minute bill is not snuck through a lame duck session of the Michigan legislature.

Nominations/Resignations of Council members:

Diane Huff has tendered her resignation and will no longer be able to serve on the council. Suggestions about a replacement for the position ensued. One suggestion was Val Lafferty, and another was John Arenz. Rather than vote at this time, it was agreed that the nominating committee should bring a name or names of potential council candidates at the next meeting.

Section Newsletter:

John Payne reported on behalf of the ad hoc section newsletter committee. The group was making strides, and had done some preliminary work on a newsletter, that would be disseminated electronically in some fashion, rather than printed and mailed. Three matters still need to be chewed on by the larger group, Payne reported, and as he sees it, the key matters surround distribution (I.E. how to get it out—web based, email, email attachment, etc?); the authority of the newsletter committee and/or newsletter editor to publish material (must all material be vetted by the council president or others, or should little or no vetting be required since it is only a newsletter and not a journal?); and verification, accuracy or cite checking issues.

Discussion ensued about a possible “seal of approval” effect of a newsletter with the section’s name; others noted that since we are talking a newsletter, and not a law journal, we can be a bit more casual about the enterprise. Additionally, since many articles would have a name attached, the quality of the work—or lack thereof—would reflect more on the author than anything. Even so, some urged we be careful so that the newsletter always reflects well on us

all. Some commentators also noted that, in the past, individuals who had provided material for an issue, if rejected, were unhappy. The flip side is getting enough contributors for content—it can be a challenge.

One solution might be to pay a modest stipend or salary to whomever is in charge, so they feel truly “responsible” for the quality and timeliness of the newsletter. No decision was made, but the group will move forward and try to have a conference call on some of these parameters with the council president.

New Business:

The Social Security Administration has proposed via the rulemaking process, a possible change or two regarding evaluations of mental disorders, and it could affect those applying for disability. David Shaltz was concerned that these proposed changes could limit greatly the number of people who might qualify for disability benefits where mental health issues are concerned, and he drafted a letter to the feds regarding docket no. SSA-2007-0101. The comment date comes up quickly.

John Payne moved, and Art Malislow seconded a motion that the section sends a similar letter, airing our concerns about the proposed changes, and the vote to send the comments in was unanimous.

Legislative Report:

The Michigan legislative report was filed, and the section was asked to consider what areas of concern we’d like to address in the coming legislature. Obviously a large number of new representatives will be taking office, and section members were encouraged to learn more about the representatives from their districts. While the senate looks as it could be fairly moderate, the house looks to be more conservative.

It is not expected that much legislation will move in lame duck session, but we were advised to keep our eyes on house bill 6240 and 6241—they relate to health care, but just as they were being passed, some or most of the provision were stripped out—this could create a bit of a shell bill, which might be troublesome later, if Blue Cross and Blue Shield or others try to make last minute changes in insurance law, that might fly under the radar, and harm consumers.

Next Meeting:

The next meeting will be the first Saturday in December, in East Lansing at the offices of Chalgian and Tripp. Meeting Adjourned. Art Malislow moved to adjourn, and John Payne supported the motion, and by vote of the council, the meeting was adjourned at approximately 12:08 p.m. Submitted by Bradley A. Vauter