

**MINUTES OF THE COUNCIL MEETING OF
THE HEALTHCARE LAW SECTION OF
THE STATE BAR OF MICHIGAN**

February 6, 2002

The Council meeting was held in Novi, Michigan at the Trinity Offices. The following Council members attended: Joy Berent, Kathy Kudner, Keith Soltis, Jennifer Kildea Dewane, Nancy Lukey, Greg Drutchas, Gerry Griffith, Cindy Wisner, Donna Craig, Carol Isaacs, Colleen McClorey, Maurice McMurray, and Phil Stoffan.

1. Call to Order. The meeting was called to order by Greg Drutchas at approximately 3:15 p.m.
2. Minutes. The minutes of the January 9, 2002 Council meeting were approved, as revised, upon a motion duly made and seconded.
3. Old and Recurrent Business.
 - 3.1 Treasurer's Report. Cindy Wisner reported that the Council was invoiced by the Honigman firm, that there were no seminar or speaker expenses paid yet this year, and that invoices from the Genesys Conference System continued to be a consistent expense for the Council.
 - 3.2 Update on Legislative Briefing. Greg Drutchas, Donna Craig, and Colleen McClorey discussed the fact that on February 13, 2002, the State Bar is holding the Legislative Briefing. Donna Craig and Colleen McClorey reported that no one from the Bar had yet contacted them to set anything up but that they were planning on attending.
 - 3.3 Reports on Special Projects and Work Groups.
 - 3.3.1 HIPAA Work Group. Joy Berent reported that there are new and different faces participating in the HIPAA Work Group. The HIPAA Work Group is currently going through the preemption matrix and has scheduled several extra meetings to finish the preemption matrix analysis. Next items for the HIPAA Work Group to tackle will be forms, disclaimer language, and an education section to describe how the preemption matrix applies. There was discussion on recruiting someone from the HIPAA Work Group who could help put on an educational seminar for the Section. In this discussion, Kathy Kudner brought up the fact about using uniform disclaimers on all of the Council's publications and work products. There was discussion on how much the Council should sell its HIPAA publication for. There was discussion on the fact that the Arizona Hospital Association is selling its publication for \$100 to members and \$200 to non-members. Further discussion centered around the fact that the

Council will give the HIPAA publication to Section members for free. There was discussion on copyright law and warnings regarding unauthorized duplication. There was discussion on whether we should donate some of the proceeds or all of the proceeds from the HIPAA publication to Access for Justice or other charities. Cindy Wisner suggested that we make it clear that the HIPAA preemption matrix is a product of the State Bar. The Council approved an acclamation to send flowers or a plant to Sue Rishard, Joy Berent's previous secretary for all of her help with the HIPAA Work Group. Joy Berent further reported that the HIPAA Work Group will meet three more times, February 19, 2002, March 5, 2002, and March 19, 2002. Carole Heller is the contact for call-in information.

- 3.3.2 Fraud Manual Work Group. Keith Soltis reported that he has not yet received any responses regarding the first draft of the Fraud Manual and continues to wait for responses. Once responses are received, then the Work Group will clean up the Fraud Manual. Keith stated that the deadline for comments is the end of February.
- 3.3.3. Pro Bono Work Group. Nancy Lukey reported that the Pro Bono Work Group had scheduled another meeting for February 15, 2002. A conference call is scheduled with the Consumers Subcommittee and Elder Law Section members to coordinate education efforts since similar projects are being taken on by each committee. The topic is advance directives. At this point Greg Drutchas requested that all work group leaders submit to Greg Drutchas a summary of what the work groups are doing so that that could be included in his ICLE summary.
- 3.4 Report on Joint Program with Michigan Society of Healthcare Attorneys. Phil Stoffan reported that the Section's 50% share in expenses for this program would likely be a maximum of \$500, as the total expenses over revenue were approximately \$600 - \$1,000. Phil suggested that Amy Barkholtz send the invoice directly to Cindy Wisner.
- 3.5 Health Care Records Retention Manual. Jennifer Kildea Dewane reported that the Stacy Sage at the State Bar reported that the Health Care Records Retention Manual would soon be in Members' mailboxes.
- 3.6 Subcommittees. Gerry Griffith reported that the Providers Subcommittee held a Medicaid Access Agreement Program on January 22, 2002. Gerry reported that approximately 22 people attended the program in person and 15 people attended via telephone conference. Gerry then reported that the Legislative Update will be held on February 7, 2002 from 4-6 at the CLE Room at the law offices of Foster, Swift, Collins & Smith, P.C. 75 people have RSVP'd. There was discussion on whether the Section should tape programs such as this and then provide direct access on the website as an innovative idea for future seminars. Gerry then

reported that the Technology Committee is working on doing a program regarding HIPAA's security and privacy regulations. The Providers Subcommittee is planning an April 23, 2002 EMTALA telephone conference regarding the anatomy of an EMTALA investigation. The Payors Subcommittee is going to do a regulatory program regarding OFIS regulations. The Elder Law Section and the Consumers Subcommittee are working on legal aid training for working through red tape in the health care system. Gerry reported that the subcommittees are doing a great job. Greg Drutchas commended Gerry Griffith for his leadership in the subcommittees.

- 3.7 ICLE Health Law Institute. Nancy Lukey reported that the ICLE agenda had been set. There will be an intermediate track on Stark II. There will be a fraud and abuse update by Max Hoffman and Joe Nuyen.
- 3.8 Membership Directory Update. Gerry Griffith reported that his office is currently making manual corrections in the exporting process and expects to send the Membership Directory to the State Bar for publication by mid-February. Gerry commented that updates had trickled in. He reported that the State Bar gave suggestions regarding the publication of the Membership Directory which included incorporated the current Section Bylaws, a current listing of the Council and its officers, co-chairs and past chairs. There is a paragraph regarding the American Health Lawyers Association. Gerry Griffith stated that he will run the language American Health Lawyers Association for approval. It is expected that the Membership Directory will be mailed out in March or April. The State Bar gave Gerry the following quotes: 800 copies published in the Year in Review format will cost approximately \$2,681 which includes postage; 1,000 copies will cost \$3,241 including postage. In the event that we decided to publish the Membership Directory in a format similar to the Health Care Records Retention Manual it would be \$5.12 per booklet and therefore 800 copies would cost \$4,537. Therefore, Gerry Griffith suggested we use the same format as that used in the Year in Review publications. Upon a motion duly made and seconded, the Council approved a budget for the Year in Review type format for the Membership Directory. There was discussion on the fact of whether we should include Bylaws as they may be changed soon. It was decided that Gerry Griffith will include the most current Bylaws in the Membership Directory along with a statement to the effect of "as of the publication date, these are the most current bylaws but that the Section's website should be consulted to obtain the most up-to-date version."
- 3.9. Bylaws Review. Nancy Lukey reported that Maurice McMurray, Kathy Kudner and Nancy Lukey met by telephone conference to discuss bylaw revisions. The committee will make proposed revisions to the bylaws and will bring them to the next Council meeting for the Council's review. It was requested that they bring a redline version to show the applicable revisions.

- 3.10 Website Report. Kathy Kudner reported that work on the website continues to progress. She noted that Robert Iwrey should replace Nancy Lukey on agendas. The committee is looking at sample information for health law related links. A logo is being developed and there was discussion on trademark protection, disclaimer, and copyright issues. There was also discussion on whether to have a members only section, Council contact information, health links, and bylaws and minutes. Once the work group has finalized its proposal, Kathy Kudner will bring that to the Council for approval. The State Bar quoted a \$400 fee for setting the new website up.
- 3.11 Michigan Health Law Report. For the initial year of the publication of the Michigan Health Law Report, Gerry Griffith reported that the Michigan Health Law Report, in the future, will be the responsibility of the Chair-Elect. There is a revised budget of \$5500. It is expected that \$3,000 will go towards publication and that \$1,500 will go towards editorial assistance, leaving \$500 for incidentals. There was discussion on topic selection and authors. Gerry Griffith plans to do a call for authors on the Section's list serve with topic ideas. The target date for the first issue to be published is sometime in May 2002 and Gerry hopes to do another one before the Annual Meeting, which would be sometime in August 2002. There was discussion on whether we should post listings for job opportunities in the Michigan Health Law Report. This discussion referenced the State Bar of Michigan's e-journal's postings and the fact that we could get the rules from the State Bar of Michigan regarding those postings. There was also discussion on putting a spot on the Section's website about job opportunities.
- 3.12 Annual Meeting. There was discussion regarding the Council's diligent effort to find speakers for the Annual Meeting. There was discussion on doing a CEO panel and seminar regarding Medicaid, biotechnology. There was discussion about inviting the Hunter Group to speak. Cindy Wisner reported that she would contact the Hunter Group to see if they would be available to speak at the Annual Meeting. The Hunter Group would talk about financial issues regarding bankruptcy and insolvencies. There was discussion on how we should have success stories also involved to add a positive tone to the meeting. It was decided that the Annual Meeting Subcommittee will meet and bring a detailed plan to the Council.
- 3.13 Date and Nature of Social Function. Nancy Lukey reported that she had investigated several options: a picnic or get-together at Kensington Metro Park combining golf and a picnic. There was discussion on doing an event at the Detroit Zoo. There was also discussion on doing a hospitality tent at the Senior Buick Open or doing an event at Camp Dearborn.
4. Request to Take More Active Role. As discussed earlier, Joy Berent and Cindy Wisner will ask HIPAA Work Group participants to work on a subcommittee.

5. Next Meeting Date. The next meeting of the Council is set for March 7, 2002 at 7:15 p.m. at McCormick and Schmicks Seafood Restaurant at 2850 Coolidge Road, Troy, Michigan.

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