

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

January 9, 2002

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

1. Call to Order. The meeting was called to order by Greg Drutchas at approximately 3:10 p.m.
2. Minutes. The Minutes of the December 12, 2001 Council meeting were approved upon a motion duly made and seconded.
3. Old and Recurrent Business.
 - 3.1 Treasurer's Report. Cindy Wisner reported that the State Bar had not yet generated a report. Apparently, Council meetings occur before monthly reports are completed by the State Bar. Cindy Wisner reported a net income of \$4,991, dues of \$5,670 and only \$678 in expenses. Cindy Wisner continues to get things paid through the Bar.
 - 3.2 Final Budget. Cindy Wisner presented the Final Budget. She reported that we are budgeting funds available of approximately \$80,000 and \$71,500 in expenses, and approximately \$26,000 in expenses have been committed. She reported that we are incurring approximately \$400 per meeting for telephone conference calls which is our biggest expense to date. There was discussion on how the Section does not have reserves and that there is a need for a conservative budget. Upon a motion duly made and seconded, the Final Budget was approved.
 - 3.3 Reports and Special Projects and Work Groups.
 - 3.3.1 HIPAA Work Group. Joy Berent reported that the HIPAA Work Group continues to meet on a monthly basis and is still productive. She reported that Cindy Wisner met with Alliance. She reported that Mike from Alliance was disappointed that Alliance will not be receiving the analysis earlier. Joy reported that she put a call into the Michigan Health and Hospital Association. Joy Berent further reported that the HIPAA Work Group is conducting its analysis by dividing up into six different subgroups to review Honigman's preemption analysis work product. The Work Group plans to meet on February 5, 2002, to begin going over the subgroup's review and has scheduled a second meeting for February 19, 2002. The HIPAA Work Group is sending guidelines to the chairs of the

sub-work groups. There was discussion on whether we are getting different people involved in this project than the usual - - to which the answer was yes.

- 3.3.2. Fraud Manual. Keith Soltis reported that he had e-mailed the draft of the Fraud Manual to Council members. He stated that there were revisions needed to the Stark analysis regarding the “set in advance” language due to regulatory updates. Keith requested that comments on the draft Fraud Manual be sent to him directly. There was discussion on disclaimer language and that perhaps the disclaimer language used for the HIPAA Work Group’s product could be used for the Fraud Manual. There was also discussion on the timing of the publication in connection with all of the other publications being sent out by the Section.

The Council decided on the following tentative publication dates so that Members are not bombarded by our mailings. The Health Care Records Retention Manual will be sent to Members sometime in January 2002. The Membership Directory will be sent sometime in February 2002. The Fraud Manual is set to be published in March or April of 2002. This was approved by the consensus of the Council.

- 3.3.3. Pro Bono Work Group. John Blanchard and Nancy Lukey reported that the Work Group is putting together a program on Advance Directives. The Work Group is accumulating different forms and materials on Advance Directives. The Work Group’s next meeting is set for January 16, 2002.

- 3.4 Report on Joint Program with Michigan Society of Healthcare Attorneys, November 8, 2001 Conference. Phil Stoffan deferred his report to the February 6, 2002 meeting.

- 3.5 Subcommittees. Gerry Griffith gave the report regarding the subcommittees. First, the Payors and Providers Subcommittees are joining forces to plan the January 22, 2002 Medicaid Access Agreement Program. Gerry reported that 14 people had responded for in-person attendance. The program will take place at Honigman Miller Schwartz & Cohn’s Bingham offices on Telegraph Road. Chris Rossman, Bob Smedes and Carol Isaacs will present at this program.

Secondly, Gerry reported that the 4th Annual Legislative Update is set for 4:00 p.m. - 6:00 p.m. on February 7, 2002 at the law offices of Foster, Swift, Collins & Smith in Lansing in the CLE room. Senator Shugars, Representative Neumann, Gene Farnum and Amy Barkholz will speak at the Legislative Update. The Providers Subcommittee is planning for an EMTALA session in April or May. The Consumers Subcommittee is planning a legal aid clinic dealing with health care system issues in May. The Payors Subcommittee is looking at doing a Medicaid contracting session. There was discussion on doing a HIPAA seminar

and Joy Berent and Cindy Wisner suggested that the Technology Committee could contact Joy and Cindy.

- 3.6 ICLE Health Law Institute 2002. No report was given.
- 3.7 Membership Directory. Gerry Griffith reported that 240 membership questionnaires were received. There was discussion on whether the Membership Directory Committee would clean up addresses or default to the State Bar's listed address for Members. Gerry Griffith further explained that the Committee defaults to the questionnaire that the Member filled out. It was decided to default to the information that the State Bar has on file unless a Member submitted an updated sheet. Gerry Griffith and Phil Stoffan will send out one more reminder to Members to solicit completed questionnaires.
- 3.8 Section Bylaws Review. Nancy Lukey deferred her report to the February 6, 2002 meeting.
- 3.9 Website Report. Greg Drutchas first reported that he had received a questionnaire from the State Bar regarding the State Bar's service to sections. Greg wanted to make the Council aware that he explained that we were having website problems and the State Bar called Greg Drutchas back to follow-up on his concerns. Kathy Kudner then reported that the Website Committee has developed a draft home page. The Website Committee's next meeting is set for January 18, 2002 with the State Bar. There was discussion on how to set up the website - - that some things may be for Members only. There was discussion on some things being made only available for Members. Kathy asked for any comments regarding suggestions for the website to be sent to her by the January 18, 2002 meeting.
- 3.10 2002 Year in Review Alternative. Gerry Griffith reported the idea of the Section doing a quarterly newsletter. He explained that at least 20 sections of the State Bar do a section newsletter. Gerry Griffith is seeking quotes from the State Bar on producing a newsletter of 8-12 pages. Articles would be written by Section Members and free to Members by mail or by website. It was recommended that we do not advertise in the newsletter. The budget for the newsletter is \$10,000. It was proposed that the Chair-Elect would be the ex officio editor. There was discussion on how to assign articles. There was discussion on producing this semi-annually. The editor will be the Chair-Elect but the Council must be flexible to account for in-house counsel positions, etc. and therefore the editor could also be such other person so authorized by counsel. Upon a motion duly made and seconded, the Council approved a \$10,000 budget for the 2002 Michigan Law Report.
- 3.11 Proposed Criteria for Membership. Greg Drutchas submitted the final draft of the proposed criteria for Council membership. He clarified that these are only items to be considered in selecting Council members. There was discussion on the fact that different departments of the state equal different employers for purposes of

Council memberships. It was further discussed that there were some typos and deletions needed to be made to the document before finalizing the draft. Upon a motion duly made and seconded, the Council approved the criteria for membership, as amended to correct the typos and edits made during the January 9, 2002 meeting (a copy of which is attached hereto to these minutes).

4. New Business.

- 4.1 Annual Meeting. Donna Craig reported that Attorney General Granholm cannot yet make a definite commitment to speak at the Section's Annual Meeting. John Blanchard reported that Attorney General Granholm is definitely interested but the date of the Annual Meeting is too far in advance for her to commit to. There was discussion on extending another invitation to the Attorney General in writing within a few weeks. There was discussion on other possible speakers, including Professor Nimmer who was set to speak at the September 2001 Annual Meeting, but was canceled due to September 11, 2001's events. Other discussion also centered on other possible people to speak, such as Debbie Stabenow, the OIG, and/or Tommy Thompson, Tom Scully and Dennis Smith from the Department of Health and Human Services. There was also discussion on getting someone from the EMTALA department from the OIG. John Blanchard indicated he would follow up with the Attorney General. Greg Drutchas and Donna Craig will send another invite to the Attorney General out by the end of January. There was also discussion on asking a CEO level from hospitals and health systems or a panel of hospital leaders. Carol Isaacs stated that she would get Tom Scully's and Dennis Smith's address and a list of possible topics for them to address at the meeting. Carol suggested going after Tom Scully first and then Dennis Smith. There was further discussion on a backup agenda.
- 4.2 Location for March Council Meeting and Dinner. Colleen McClorey reported that she has tentatively reserved a private room at McCormach and Shicks on Coolidge Road in Troy for a 7:15 p.m. Council meeting on March 7, 2002.
- 4.3 Date and Nature of Social Function. Nancy Lukey reported that it would be good to have a Council social function in the Lansing area. It should be something casual. There was discussion on having the function in June - - a Lugnuts game, get a suite at Oldsmobile Park. There was further discussion on the Detroit Historical Museum and also some discussion on using a Grand Rapids location. Ann Arbor was also suggested. Nancy Lukey reported that she would come up with some locations/ideas in the Mid-Michigan and Detroit area.
- 4.4 Request to Take a More Active Role. Greg Drutchas reported that this would be a new agenda item at which Council members could mention names of people that would like to take a more active role. Greg Drutchas reported that Joanne Lax is willing to participate in more ways.
- 4.5 Evaluate New Projects for 2001 - 2002. There was no report on this matter.

- 4.6 Legislative Briefing. Greg Drutchas reported that the State Bar is holding a legislative briefing at the State Bar building in Lansing on February 13 at 3:00 p.m. This is an opportunity for the Council to express to the State Bar what policy issues are important and Greg invited Council members to attend. Donna Craig and Colleen McClorey volunteered to attend this meeting on behalf of the Council.
5. Next Meeting Date. The next meeting of the Council is set for February 6, 2002 at 3:00 p.m. at the Trinity Offices in Novi. There being no further business the meeting was adjourned at approximately 5:30 p.m.

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