

STATE BAR OF MICHIGAN
HEALTH CARE LAW SECTION
COUNCIL MEETING MINUTES

Wednesday, November 28, 2007

The Health Care Law Section Council meeting was held via teleconference. Present were: R. Bauma; B. Derwin; A. Hollenbeck; M. Hoffman; R. Iwery; J. Lax; M. Marchak; D. O'Connor; L. Panah; C. Tarnowsky; T. Trenta; and M. Wilkinson. Excused absence: A. Barkholz; and D. Rogers. Unexcused absence: J. Anderson and E. Wexler.

1. Call to Order. Ms. Panah called the meeting to order at approximately 3:05 P.M.
2. Conflict Disclosures. There were no conflicts disclosed.
3. Review and Approval of Minutes of October 17, 2007 Council Meeting. J. Lax requested corrections to the circulated draft minutes. R. Iwery stated that he is responsible only for the Detroit law student reception; A. Hollenbeck is handling Ann Arbor receptions. R. Iwery also stated that he and M. Marchak only agreed to identify a venue for the Appreciation Dinner, not to handle the entire dinner. Corrections noted. As corrected, the revised minutes were unanimously approved upon motion made and seconded.
4. Treasurer's Report: M. Marchak circulated the FY 2007 financial report and the proposed budget for FY 2008.
 - 4.1 HCLS financial report. M. Marchak indicated that the HCLS has a substantial fund balance, and that the State Bar believes that spending 50% of the fund balance annually is a healthy financial position. The HCLS is currently spending considerably less.
 - 4.2 Proposed budget for 2007-2008. M. Marchak indicated that the FY 2008 budget was prepared with conservative expectations on income and asked for discussion and approval of the budget. R. Iwery reported that the line item for the pro bono project regarding a domestic violence brochure may be insufficient once production is underway, but that efforts are being taken to share the cost of production and distribution with other interested Sections and community groups. M. Marchak noted that the line item for administrative support remained appropriate even with the resignation of K. Adams since the HCLS is planning to replace her. Upon motion made and seconded, the FY 2008 budget was unanimously approved as proposed.
 - 4.3 Section Funds and Use of Same. L. Panah suggested a joint golf outing with other Section(s); increasing the number of lunch round table programs; updating the fraud/abuse manual; donating to the Access to Justice fund; and/or a law student scholarship. No decision was made on the golf outing. The Council decided that additional lunch roundtables would not likely be well attended and would conflict with other planned activities and accordingly would not be pursued. The Council decided that in lieu of updating the fraud/abuse manual, the HCLS would attempt to link on its web site to a manual prepared by T. McGraw for AHLA, since we are an AHLA partner.

C. Tarnowsky will explore with C. Wizner and K. Kudner the potential of awarding a law student scholarship based upon a writing competition. Concern was expressed that law students are too busy to participate in a writing competition and that the time commitment for judges is burdensome. L. Panah noted that the HCLS has previously donated to the Access to Justice fund, but not in recent years. The Council requested that L. Panah provide additional information, with a view to donating approximately \$1,000 - \$2,000.

5. Updates. L. Panah reported that K. Adams resigned as HCLS administrative assistant effective as of 12/1/07. The officers are working on transitioning her duties pending hire of a replacement. R. Bauma will handle the distribution list announcements and will manage the group list serve in conjunction with B. Chard. L. Panah requested all Council members to watch for candidates for the administrative assistant position. The Council expressed its appreciation for K. Adams hard work and dedication during the time that she served as HCLS administrative assistant.

5.1 Substantive Law Committee Report: M. Wilkinson reported that the SLC has a teleconference planned for 11/30 on the topic of health information networks. On 1/9/08, the SLC will present a program on BCBSM appeals. The major SLC project this year is a series of programs on Stark III. Two programs are fundamentals courses scheduled in January 2008, while three (including C. Wizner's program at ICLE in March) will be advanced, using hypothetical case studies and interactive discussion. The three advanced programs will be in-person meetings with teleconference capability, with a simple box lunch provided. These are scheduled for February and April, in addition to the March ICLE program. The advanced programs will be divided between provider and physician focus, and will be held at volunteer geographically diverse law firms. The SLC also plans to have the Legislative Update at the beginning of April and is working to pin down the date and speakers. L. Panah proposed a monthly electronic newsletter to alert the HCLS membership to upcoming SLC events. The Council concurred.

5.1.1 Speaker-Author Agreement and License. M. Wilkinson reported that the SLC intends to audio record its teleconferences and post the audio recordings on the HCLS web site. A draft speaker authorization/license form was circulated for Council review. The Council noted that the document should be sent to the State Bar General Counsel for review/approval prior to its use. M. Wilkinson reported the goal of having the form finalized prior to the initial Stark III program, and will submit it to the State Bar General Counsel promptly.

5.2 Health Law Schmooze Committee. D. O'Connor reported that the Schmooze Committee is meeting 11/29/07 with the goal of setting dates and locations for FY 2008 schmoozes.

5.3 Law Student Events. A. Hollenbeck reported that students at Ave Maria Law School in Ann Arbor are interested in a reception distinct from the University of Michigan Law School reception. M. Hoffman volunteered to plan the Ave Maria reception. R. Iwery reported that the Wayne State University and University of Detroit

receptions are typically combined, with amenities to the U-D students who will be traveling to WSU. Dates and times for all receptions are TBD.

5.4 Joint Commission/COP Project. B. Derwin reported concern that this project is too burdensome, given the need to constantly update the work product, which would be a crosswalk between JCAHO Standards and Medicare Cops. The Task Force will defer further action on this project until after the ICLE program in March, depending upon the interest generated in the topic by M. Lezotte and L. Vandecavey's presentation on the subject. R. Bauma suggested that updating could be done through a WIKI; L. Panah felt that a crosswalk is not amenable to updating through a WIKI.

5.5 Technology and Access Committee. R. Bauma reported that he has received no responses to his recent email soliciting ideas from the membership about how to use technology to improve access to HCLS programs or enable additional member participation in projects and Taskforces. R. Bauma is interested in establishing a public access WIKI; L. Panah instructed him to explore the mechanics of establishing it. L. Panah noted that the HCLS has a Web privacy policy posted on the HCLS Web site. The Council was unsure whether the State Bar has a Privacy Policy that would serve the same interests as the HCLS policy, which was adopted at a time when the HCLS hosted its own web site independent from the State Bar. Accordingly, the Council decided to retain the HCLS Web Privacy Policy until L. Panah determined whether the State Bar has a policy that would substitute.

5.6 Health Law Index. L. Panah reported that she will undertake the updating of the Health Care Law Index in light of K. Adams' resignation, pending identification of a replacement. The Index is current as of 11/25/07, and is updated monthly.

5.7 Legislation Committee. D. O'Connor reported concern amongst Committee members that the HCLS membership is too diverse for the HCLS to advocate for or against proposed legislation. In order to gain experience, the Committee will initially only respond to specific requests from the State Bar and develop working procedures through lessons learned. M. Hoffman noted that legislation is currently pending to establish a Medical Malpractice Court patterned on the Family Court. M. Hoffman recommended that the Legislative Committee review this legislation. R. Iwery suggested that an appropriate role for the Legislative Committee may be developing pros and cons on proposed legislation, rather than advocacy for a specific position. D. O'Connor agreed that the Committee should consider this when developing a proposed policy for Council review.

5.7.1 Amicus Curiae Invite for Mif/er v. Affstate Insurance Company. D. O'Connor reported that the Michigan Supreme Court requested an amicus curiae brief from the HCLS in the case of Miller v. All State – a case in which All State refused to pay for physical therapy services performed by a corporation that was incorporated under the Business Corporation Act rather than the Professional Corporations Act. The issues are whether physical therapy providers must be incorporated under the Professional Corporations Act, and if so whether an insurer may deny payment to an

improperly incorporated entity that provides a lawful health care service through properly licensed individuals. R. Iwery stated that the second issue is too controversial for the HCLS to take a position on given the diverse membership. M. Marchak noted that the resolution of this issue could affect Medicare payments to providers. T. Trenta and M. Hoffman proposed additional study of the issue with a view toward submitting either an issue spotting document or an answer to the incorporation question. T. Trenta and M. Hoffman will conduct substantive analysis of the legal issues; L. Panah will determine the briefing schedule. L. Panah noted that up to \$5,000 could be available for a firm that undertakes to prepare the final brief, although attorney time is typically volunteer. A. Hollenbeck noted that amicus briefs are very time consuming.

5.8 HCLS Appreciation Dinner after ICLE. L. Panah and M. Wilkinson will provide R. Iwery and M. Marchak with names of outgoing Council and SLC members and past HCLS Chairs to invite to the dinner. R. Iwery and M. Marchak will identify a location near the Inn at St. John in Plymouth to hold the Appreciation Dinner For about 30 people.

5.9 2008 Annual Meeting Committee. L. Panah reported that the meeting will be a half day consisting of business meeting, two sets of round table discussions of approximately 45 minutes each with buffet lunch, an educational presentation, and reception. Venues being explored are the DIA, Cranbrook Science Museum, MGM Grand; GEM Theater and the Charles Wright Museum. A possible topic for the educational presentation is a combination of a patient's experience with the health care system and effective risk management techniques in light of the "I'm sorry" initiative for responding to medical errors. L. Panah requested Council suggestions for topics and speakers for the educational presentation.

5.10 Pro Bono Work Group R. Iwery reported that the domestic violence brochure is not yet complete. He expects it to be complete in FY 2008, at which time the Council will need to work on production and distribution of the brochure.

5.11 Michigan Stark Law--Request for MI Legislature to Take Notice of Stark Regulations. M. Marchak reported that the Michigan Health Information Technology Committee may address this at its 12/12/07 meeting. M. Marchak will defer writing any letters to MDCH officials until after the HIT Committee meeting.

5.12 Section Survey Report. T. Trenta reported that this Task Force has not yet commenced work, but expects to do so shortly.

5.13 Revised IRS 990 Form Task Force. A. Hollenbeck reported that there are no updates.

5.14 Revisions to Michigan Nonprofit Corporation Act Update. J. Lax reported that there are no updates at present.

5.15 SBM Section Orientation of 10/18/07. L. Panah reported that the orientation sessions were very instructive. A. Hollenbeck reported that ICLE is interested in

partnering with HCLS for projects in addition to the March Health Law Institute. ICLE has active partnerships with other Sections.

6. New Projects/Initiatives

6.1 Health Care Fraud and Abuse Manual. The Council decided to link to the AHLA Manual that T. McGraw prepared rather than update the HCLS' Manual. L. Panah will ask E. Wexler to investigate.

6.2 Access to Health Care Information in Michigan Manual. This Manual needs updating in light of HIPAA and the Medical Records Access Act. L. Panah will investigate whether any HCLS members have an interest in updating it.

6.3 Section Directory. L. Panah proposed a web-based Section Directory. R. Bauma stated that such directories are vulnerable to commercial exploitation, even if they are password protected. R. Bauma will explore Web-based options.

6.4 Roundtable Luncheons. The Council determined not to expand the luncheons outside of the annual meeting.

6.5 Miscellaneous. L. Panah stated a lack of desire to update the HIPAA privacy matrix even though there are ways to make it more user friendly and move it to an electronic product. The Council concurred.

7. List of Individuals Interested in Participating in Section Activities.

7.1 William Westerbeke, JD, CPA (bwesterbeke@passarokahne.com) (from St. Joseph, Michigan)

7.2 Lindsey Hoffman, law student (lindsevmhoffman@Qmail.com)

7.3 Margaret Chamberlain (m.chamberlain@kitch.com)

7.4 Robert Schwartz (schwartzrh@butzel.com)

7.5 Patrick Haddad (pjh@krwlaw.com)

8. Other Business

8.1 Law Faculty Membership Category. M. Wilkinson proposed a HCLS Bylaw Amendment to enable law school professors, who are not State Bar members, to join the HCLS. Upon motion made and seconded, the Council unanimously adopted this proposal. M. Wilkinson will draft proposed Bylaw Amendment language, which must be submitted to the State Bar for review and approval, and which must be presented to the HCLS membership at the annual meeting for a vote. Law school professor members will be charged the same dues as practicing attorney members.

8.2 Economics of Law Practice Survey Practice Area Specific Questions. L. Panah desires to contribute several health care specific questions to the State Bar survey regarding the economics of law practice. L. Panah proposed a question about billing rates. J. Lax inquired if there was any antitrust risk in soliciting rate information; R. Bauma stated that a safe harbor exists for general anonymous surveys like the one proposed by the Bar, although there is a risk of improper parallel action. R. Iwery proposed a question about total hours worked and job satisfaction.

9. Calendar of Meetings. The next Council meeting is 12/19/07. This is the annual cookie exchange and will be held at the Kitch firm with telephone capability (800/270-11533, pass code 123999#).

10. Adjournment. The meeting was adjourned at 4:48 PM.

BH01\823883.1
ID\JRL