**MINUTES**

**HEALTH LAW SECTION EXECUTIVE COUNCIL MEETING**

**THURSDAY, JANUARY 17, 2013, 3:30 P.M.**

**FORT LAUDERDALE, FLORIDA**

**SHERATON FORT LAUDERDALE AIRPORT**

**MEMBERS PRESENT:** Bernabe A. Icaza (Chair), Monica L. Rodriguez (Chair Elect), William P. Dillon (Treasurer), Charmaine T. M. Chiu (Secretary), Cynthia A. Mikos (Immediate Past Chair), Ann M. Bittinger, Gregory A. Chaires, Lewis W. Fishman, Sandra P. Greenblatt, Steven A. Grigas, Rodger L. Hochman, Harold E. Kaplan, Jodi L. Laurence, Robert N. Nicolson, Lester J. Perling, Myla R. Reizen

**OTHERS IN ATTENDANCE:** Diana Polston-Burnett (Florida Bar, Program Administrator), Lynn M. Barrett, Christine C. Whitney, Douglas A. Wolfe

**EXCUSED ABSENCES:** None

**I. CALL TO ORDER**

The meeting was called to order by Bernabe Icaza, Chair, at 3:33 p.m. in the Citrus Conference Room, Second Floor, Sheraton Fort Lauderdale Airport.

**II. OPENING REMARKS**

Bernabe A. Icaza, Chair of the Health Law Section Executive Council, welcomed all attendees to the meeting. It was noted that there was a proper quorum for the meeting. As there were a few newer Executive Council members and Florida Bar representatives present, Mr. Icaza asked that all attendees introduce themselves; the group engaged in introductions around the conference table. Mr. Icaza then introduced Diana Polston-Burnett, Program Administrator, who has recently been appointed by the Florida Bar to support the Health Law Section, and attendees welcomed Ms. Polston-Burnett to the section.

**III. APPROVAL OF PREVIOUS MEETING MINUTES**

The minutes of the September 13, 2012 meeting of the Health Law Section Executive Council, which were attached to the meeting agenda as Exhibit A, were approved. Steven A. Grigas made the initial motion for approval of the minutes, with Harold E. Kaplan issuing a second. The Executive Council APPROVED the minutes via unanimous voice vote.

**IV. FINANCIAL REPORT**

William P. Dillon gave the financial report for the section, and drew all attendees’ attention to Exhibit B, Page B.3; the bottom line is that the section has approximately $171,000.00 in bank, almost $40,000.00 above what has been budgeted for the section. There are not yet many numbers with regards to expenses on the attached report, as the section has just started the fiscal year, but the section should have every expectation of being on budget this year. Mr. Kaplan made the initial motion for approval of the financial report, with Gregory A. Chaires issuing a second. The Executive Council APPROVED the financial report via unanimous voice vote.

**V. COMMITTEE REPORTS**

A. Public Health Committee

Mr. Icaza noted that there would be no public health committee report, since Rodney Johnson and Walter Cafora were both not in attendance. The section will hear from the Public Health Committee at the next meeting.

B. Legislative Committee

Mr. Grigas gave the Legislative Committee report. Mr. Grigas noted that the Florida Legislative Session starts on March 5, 2013, and that right now legislators and their staff were geared up for filing of bills.

The major issue to be considered by the Florida Legislature will be in connection with Florida Medicaid and its expansion. The Florida Legislature appears to be generally in favor of Medicaid expansion, whereas the Office of the Governor would appear generally to be against it, citing the expense. There has been some discussion in Tallahassee regarding quantification on total Medicaid expansion cost. Medicaid currently costs the state approximately $21,000,000, and an estimated 1,000,000 beneficiaries will be added if the Medicaid program is expanded. According to the Agency for Health Care Administration (“AHCA”), total cost to taxpayers in the state over the next ten (10) years for Medicaid expansion will be $26 billion; this cost has been cited by Governor Rick Scott in defending his position on the issue. The Legislature and the Kaiser Commission on Medicaid and the Uninsured, utilizing different assumptions, estimated the cost to taxpayers over the next ten (10) years at $3 billion.

Additionally, Mr. Grigas commented upon a few bills that may be of interest to the section:

* HB 9 (Baker Act examinations by physician assistants and ARNPs)
* HB 81 (Newborn screening for critical congenital heart disease)
* SB 128 (Required childhood screenings for autism)
* SB 142 (Changing term in statutes from ‘mental retardation’ to ‘intellectual disability’)
* SB 144 (Protecting psychologists from stale claims by HMOs)
* HB 173 (Service charge for recording of death certificates)
* HB 187 (New and revised licensure requirements for assisted living facilities)
* SB 196 (Increasing fees for divorce and domestic partnership cases)
* SB 228 (Medical malpractice pre-suit discovery and authorization forms)
* SB 314 (Privacy of firearm owners, protection of gun owners from physician inquiries)

Mr. Grigas reported that he attended a recent health care industry conference, where the recurring themes were that (i) fraud is bad for health care costs, (ii) the Florida Legislature is doing a good job in managing delivery of health care to the consumer in the state; and (iii) technology will be necessary as innovations such as telemedicine are coming. Mr. Chaires mentioned that there have been three (3) recent declaratory statements by the Board of Medicine on telemedicine, relating to expansion of medical treatment through Skype and other videoconferencing technology, online cameras, etc. The Board of Medicine opined negatively on each of these three (3) cases. Mr. Chaires noted that when the Board of Medicine first tackled telemedicine rules, they were concerned about physicians prescribing for drugs and treatments such as Viagra and Propecia, without actual physical examinations. Now, given that there can be remote readings for diagnostic imaging results, and advances in technology, the Board of Medicine may need to revisit the telemedicine rules soon and bring them up to date.

C. Education Committee

Myla Reizen gave the Education Committee report, and conveyed Grant Dearborn’s regrets for not being able to attend the meeting in person. Generally, the section’s *Eat and Educate* CLE sessions have been doing very well, averaging twenty-three (23) attendees per session, between August 2012 to January 2013. Materials for the *Eat and Educate* programs are not distributed or resold on CDs, but they are available on LegalSpan; the cost of accessing these programs is $50.00 for non-members and $20.00 for members of the section, and CLE credit is available to the extent the programs have not expired.

Ms. Reizen raised the possibility of having a new section sponsored CLE program that focuses upon compliance. She raised the possibility of holding this CLE program on May 3, 2013 in Orlando. The topics would include anything that Florida health care lawyers and compliance officers would need to know about regulatory issues such as Stark Law, federal and state antikickback prohibitions, recent compliance related actions and settlements, compliance plans, quality of care issues, etc. Speakers would range from representatives of government agencies, to those in legal private practice, to health system in-house counsel. The group discussed several key concerns about this new CLE program, including: (i) with regards to the proposed May 3, 2013 date, that may coincide with certificate review and other section activities; (ii) whether compliance is already sufficiently covered in the section’s Certification Review CLE program (with the group agreeing that although there is one lecture devoted to compliance at the Certification Review CLE program, this would be a more comprehensive and in depth course); (iii) whether the program could be effectively marketed to compliance officers (and if the section should, as a corollary, expand its membership by recruiting compliance officers as Affiliate Members); (iv) whether programs sponsored by the American Bar Association (“ABA”), Florida Hospital Association (“FHA”), American Health Lawyers Association (“AHLA”) (i.e., annual meeting), and Health Care Compliance Association (“HCCA”) in April, May and June would draw attendees away from the proposed program; (v) if the program could be structured as a telephonic series, much like the section’s *Eat and Educate*  programs (although the group generally agreed that in person programs have better attendance and would result in better optics for the section); and (vi) how the proposed CLE program would fit in the overall budget of the section (i.e., recommendation not to hold the program during the Florida Bar’s Annual Meeting because the section cannot charge fees for programs held during that time, although if the meeting were held on the Saturday after all Bar activities were concluded, the section might be able to take advantage of reduced hotel pricing for conference rooms and accommodations and could then charge for the CLE program). Mr. Icaza, Mr. Chaires, and Cynthia Mikos all noted that to the extent one is certified as a compliance officer, it is expensive to keep up such certification. They all supported additional programs that could be attended by compliance officers, who have to document thirty (30) to sixty (60) hours of education every two years. They noted that the proposed CLE program will fill in the niche of giving attendees ‘operational and logistical’ advice as opposed to ‘legal’ advice that is currently unfilled. They noted that if HCCA could give credit for the proposed program, it would increase attendance. Monica Rodriguez suggested selecting a different date for the program, given the conflicts raised by the proposed May 3, 2013 date with other programs. Jodi Laurence suggested pursuing HCCA co-sponsorship, and noted that Gabe Imperato, a section member, is on the HCCA Board of Directors; a copy of the HCAA mailing list would also be helpful. Ms. Rodriguez also suggested that there are different needs amongst physician practice managers (who also typically manage compliance issues), ambulatory surgical center compliance managers, and hospital compliance managers, and that the proposed CLE program must take these differences into consideration. There was general discussion regarding devoting some financial resources to marketing the proposed CLE program. Ms. Mikos made a motion that the section approve the creation of a new, annual, single day CLE program with a focus upon compliance and risk management issues, date for the proposed CLE program to be decided by the Education Committee, with final approval by the section’s Executive Council, once all factors raised at this meeting have been considered (with a stated preference for the program to be scheduled between July and October annually). Robert Nicolson, Rodger Hochman, and Ms. Rodriguez seconded this motion. The motion was APPROVED via unanimous voice vote

Mr. Icaza then directed the group’s attention to a request by the ABA for the section to serve as a co-sponsor of a Health Care Fraud CLE program in Law Vegas, Nevada; information about the program and ABA request was in Exhibit G attached to the meeting agenda. The co-sponsorship is in name only, and there is no financial commitment. Members of the section would receive a discount for program registration. Lester Perling observed that the section co-sponsored this program in previous years, and suggested doing so again. General discussion was had about how the ABA program would affect the section’s newly planned compliance and risk management CLE program. Mr. Dillon moved that the section sponsor the ABA program, and Ms. Greenblatt issued a second. The motion was APPROVED via unanimous voice vote.

D. Communications and Technology

Mr. Dillon gave the Communications and Technology Committee report. He noted that the section had previously approved an additional $5,000.00 in the budget to conduct work on the section’s website. Mr. Dillon had meeting with web company, and most of the items that Executive Council members wanted to see with regards to the website were already, or have since been built in (e.g., search function). Ms. Greenblatt made a comment about formatting of website headings, subheadings, and navigability (e.g., drop down menus, clearer site map), and Mr. Dillon replied that the web company would be able to accommodate changes to heading and subheadings relatively easily. All sections of the Florida Bar have websites now, and Diana Polston-Burnett suggested examining the Workers Compensation Section and Real Property Section as examples of good navigability. The group decided to leave it up to Mr. Dillon to explore the navigability issue and give suggestions to the webmaster.

E. Social Media

There was no report from the Social Media Committee, as Erin Aebel was not in attendance at the meeting. The section will hear form the Social Media Committee at the next meeting.

F. Newsletter

Ann Bittinger gave the report for the Newsletter Committee. There are seven (7) articles in line for the next publication of the newsletter, including a Chairperson’s column. Authors have been making submissions to Ms. Bittinger for inclusion in the newsletter before she even asks. There is a January 15, 2013 deadline for newsletter submissions.

**VI. NEW BUSINESS**

A. Young Lawyers Section

Mr. Icaza reminded the group that at its last meeting, there was a proposal for form a Young Lawyers Section (“YLS”) within the Health Law Section, to encourage section participation, identify younger attorneys that could support Executive Council members in section activities, and grow future members of the Executive Council. Bruce Lamb has taken charge of this effort. Thirty five (35) young lawyers have expressed interest in participating in the YLS, and Mr. Lamb led a telephone conference a few days ago in which the group addressed items such as how the YLS would be structured, its relationship and responsibilities to the Executive Council, etc. Mr. Lamb reported that the YLS will have a Chair, Vice Chair, and Secretary; those leaders will work with all thirty-five (35) interested attorneys to assign tasks that will support the Executive Council’s responsibilities (e.g., law school outreach, editing of newsletter articles, preparation of website submissions, etc.). Mr. Lamb is seeking resumes for people that are interested in serving as Chair, Vice Chair and Secretary of the YLS. The group recognized that one of the participants in the YLS telephone conference was present, Doug Wolfe from Kozac & Troppan. Mr. Lamb made a motion to create a Nominating Committee for the YLS immediately, with two (2) members on such committee to be appointed by the current Chair of the Executive Council, and three members on such committee to be appointed by the Chair Elect; the members on the YLS Nominating Committee would serve for two years. There were multiple seconds for this motion, and the group APPROVED the motion via a unanimous voice vote. Mr. Icaza and Ms. Rodriguez selected the following persons, in addition to Mr. Lamb, who has led the effort to create the YLS, to serve on the YLS Nominating Committee, and instructed such persons to get a full slate of YLS officers to the Executive Council at least sixty (60) days prior to the Florida Bar’s Annual Meeting: Sandra Greenblatt, Greg Chaires, Lew Fishman, Jodie Laurence, Steve Grigas, and Lynn Barrett.

B. Editorial Board

Mr. Icaza then brought up the proposed concept of having an Editorial Board, details for which were contained at Exhibit C attached to the meeting agenda. This would have the effect of increasing participation, standardizing the newsletter and other publication processes, and spreading work on writing articles, editing, and publishing amongst section members. It would also be a good opportunity for YLS members. The concept of the Editorial Board was raised during an Executive Council strategic planning retreat. Many in the group commented positively on the concept, including Ms. Mikos, Ms. Greenblatt, and Ms. Bittinger. A few positions on the Editorial Board were assigned at the meeting: Compliance, Ms. Barrett; Dispute Resolution, Mr. Kaplan; Third Party Payors, Mr. Wolfe. The Editorial Board leadership will ask for volunteers and fill in the remainder of the positions on the Editorial Board in time.

C. Health Law Handbook

Mr. Perling and Mr. Nicolson gave an update on the Health Law Handbook. Currently, there are fifteen (15) chapters planned for the Health Law Handbook. Many authors have completed their submissions, and a few are past deadline. The next step is editing and review of Health Law Handbook articles. At one time, the section had the benefit of working with law students from the St. Thomas University School of Law, but the section lost Professor Van Tassel as a member last year when she accepted a position outside of Florida to teach; Mr. Perling expressed the desire to start up a similar relationship with another law school, to support the Health Law Handbook editing efforts. Ms. Chiu indicated that she would check with Florida Coastal School of Law. Mr. Perling noted that law students would be excellent at ensuring that citations are accurate, and for general editorial work; but there needs to be substantive review by seasoned practitioners of these articles as well. Members suggested relying upon YLS members for now, instead of law students, to edit the Health Law Handbook articles. Mr. Nicolson passed a list around for Executive Council members to sign, if they could assist in substantive review of articles.

D. Elder Law Section Legislative Position on Guardian’s Power to Deny Firearms

The group next discussed that a Legislative Position that has been proposed by the Elder Law Section, which seeks the support of other sections of the Florida Bar. The Legislative Position relates to the enumerated list of powers a guardian has with respect to an incapacitated person; a new right of the guardian has been added to take away a firearm. A few members noted that a court can order the stripping of a firearm from an incapacitated person without it being in the statute. The group agreed that the Elder Law Section’s Legislative Position was vague and somewhat confusing. Mr. Perling moved that the section take no official stance on the Elder Law Section’s Legislative Position, due to lack of clarity; Mr. Kaplan and Mr. Fishman seconded the motion. The motion was APPROVED via a unanimous voice vote.

E. Orange County Legal Aid Donation Request

The group considered a request from Orange County Legal Aid for financial support. The Executive Council made a small contribution to Orange County Legal Aid last year, since the Florida Bar’s Annual Meeting was in Orlando. This appears to be a request to renew such financial commitment. Ms. Greenblatt warned that if the Executive Council makes a donation to Orange County Legal Aid each year, even for years in which the Florida Bar’s Annual Meeting is not in Orlando, other legal aid organizations in the state would be in the same position, and it would be hard to favor one over another. Others in the group pointed out that this is a one time contribution only, and that the group could vote not to make the contribution next year. Ms. Mikos moved to make a contribution to Orange County Legal Aid, and there were multiple seconds. The motion was APPROVED via a voice vote, with Ms. Greenblatt dissenting.

F. Florida Bar President’s Leadership Initiative

Next, Mr. Icaza introduced a new program of the Florida Bar called the President’s Leadership Initiative. There was a meeting recently of the Florida Bar at which this was introduced, and details were included at Exhibit F of the meeting agenda. The goal of the initiative is to train future leaders of the Florida Bar, including section leaders. There will be twenty (20) participants selected from the northern areas of Florida, and twenty (20) from southern areas of Florida. There will be meetings with Florida Bar leadership, Supreme Court Justices, and other opportunities available to participants. Mr. Icaza asked the section to approve sending one of our Executive Council members to the President’s Leadership Initiative. There is no cost to enroll in the program, but there are costs to attend (e.g., travel, hotel accommodations, per diem for meals). The President of the Florida Bar has asked that sections subsidize their selected attendees and give them a scholarship to cover those costs. Ms. Rodriguez noted that this is an excellent new program, in that it encourages leadership in the Florida Bar. Mr. Kaplan commented that the initiative may reflect the Florida Bar’s concern that there is a diminution of people seeking higher level positions within the Bar. Mr. Icaza noted that participating in the President’s Leadership Initiative as an attendee does not mean that you actually have to be an Executive Council member or officer; it could be anybody that the section selects to attend the program. Ms. Mikos stated that the Florida Bar is also trying to promote diversity in leadership, not just in terms of recruiting more women or minorities, but also to open up Bar leadership positions for those who may not be litigators in the Trial Lawyers Section (which has traditionally been the most prolific section in terms of producing Bar Presidents). Ms. Laurence remarked that she has seen similar efforts taken in other contexts, and it has been very successful in terms of recruiting new leaders. Mr. Fishman asked about approximate cost to the section to support an attendee’s travel and other expenses, and Mr. Icaza responded that it would be an estimated $750.00 to $1,000.00. Ms. Greenblatt moved to support the nomination of one person from the Executive Council to attend the President’s Leadership Initiative, and that the section pay for such attendee’s travel, accommodations, and other costs by granting a scholarship capped at $1,000.00 annually; Mr. Fishman seconded the motion, and suggested that the section make this a one year commitment only for the time being; Ms. Bittinger issued a third. The motion was APPROVED via unanimous voice vote.

G. Health Law Fundamentals

Mr. Icaza noted that the group needs to consider what it would like to do with respect tot he Fundamentals of Health Law CLE program that has been so well received and managed by Chet Barclay for the past few years. At the Executive Council’s last meeting, there was discussion about the Florida Bar’s Young Lawyers Section starting a *Bridging the Gap* CLE program on Basic Health Law; the group should recall that although the section offered to assist in planning and teaching this course, the Florida Bar’s Young Lawyers Section (which oversees all of the *Bridging the Gap* courses that are required for newly licensed attorneys in the state) went ahead and designed this course on their own, with no health law certified attorneys or other health law practitioners teaching the course. There is now a proposal for the section to become involved in organizing the *Bridging the Gap* Basic Health Law CLE program, and that the YLS should be involved in planning the same. The section should financially benefit from organizing or co-sponsoring the program. But it may not be wise to do both the Health Law Fundamentals course and the *Bridging the Gap* series; the group should commit to one or the other. Ms. Mikos remarked that it may be premature to eliminate the Health Law Fundamentals course. In light of time, this discussion was tabled for the next meeting of the Executive Council, and the group agreed that it would be better to have YLS leadership appointed before this was further considered.

H. Annual Meeting

The Executive Council’s next meeting is during the Florida Bar’s Annual Meeting in Boca Raton, Thursday June 27, 2013.

The meeting was ADJOURNED at 5:45 p.m.

Respectfully submitted,

/s/Charmaine T. M. Chiu

Charmaine T. M. Chiu

Secretary