

Dear Health Law Section Members:

The Section website has been updated with articles on significant developments in the health law arena that may be of interest to you in your practice. These summaries are presented for general information only as a courtesy to Section members and do not constitute legal advice from The Florida Bar or its Health Law Section. On behalf of the Section, I extend my deepest appreciation to the following volunteers who have generously donated their time to prepare these summaries for your review:

Rodney Johnson, Esq.

Michael L. Smith, Esq.

Maria T. Santi, Law Student

Thank you.

Malinda R. Lugo, Esq.

You can download a copy of this month's update using the links below or read the updates in this article on the Section website.

FACILITY AND PROFESSIONAL LICENSURE

1CNA Granted License Despite Incorrect Answer On Application

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New Telemedicine Rule

On October 27, 2014, the Florida Board of Medicine (“the Board”) published an update regarding telemedicine standards. The update gives notice that Rule 64B8-9.014 (Standards for Telemedicine Prescribing Practice) of the Florida Administrative Code (“F.A.C.”) was repealed effective October 26, 2014. As of this date, the new rule applicable to telemedicine is 64B8-9.0141, F.A.C., Standards for Telemedicine Practice.

The rule defines telemedicine, the standard of care to be used and relevant rules and regulations that apply when the practice of medicine by a licensed physician is done via electronic communications. The final rule can be accessed on this link: <https://www.flrules.org/gateway/ruleNo.asp?id=64B8-9.0141>.

Reported by Maria T. Santi, Law Student

PUBLIC HEALTH

[Menu of Doctor Shopping Laws](#). [The Public Health Law Program (PHLP) has published an inventory of state legal strategies to help assess doctor shopping laws. Doctor shopping is when a patient visits multiple healthcare practitioners to obtain controlled substances without the prescribers' knowledge of the other prescriptions.]

[Legal Mechanisms Supporting Accountable Care Principles](#). Published in the American Journal for Public Health 2014;104(11):2048–51, this article provides the legal context for accountable care, the healthcare delivery mechanism through which providers, facilities, and public health professionals coordinate activities, avoid inefficiencies, and improve public health outcomes.

[CDC National Health Report](#). CDC published a special MMWR supplement that uses data from 19 surveillance sources to provide recent trends in the nation's health. The report reviews population health in the United States and provides an assessment of recent progress in addressing high-priority health issues. It identifies important public health successes and challenges to help guide national policy and programmatic efforts to improve health and quality of life.

Reported by Rodney Johnson, Esq.

TRANSACTIONS

Florida Statutes Chapter 608, the Limited Liability Company Act, was substantially revised through the enactment of Chapter 605, the Florida Revised Limited Liability Company Act (the "New Act"). All LLCs formed or registered to do business after January 1, 2014, must comply with the New Act. LLCs in existence prior to that date have until January 1, 2015, to comply with the New Act. The New Act has no impact on professional limited liability companies formed pursuant to Chapter 621. Thorough analysis of the New Act can be found in a series of four articles in the Florida Bar Journal appearing in September, 2013, through March 2014. A White Paper was also prepared by the Florida Revised LLC Act Drafting Committee of the Executive Committee of the Florida Bar.

There are some notable changes in definitions from the previous Act. "Managing member" has been deleted in an attempt to clarify the distinction between manager-managed and member-managed LLCs. Unless specifically provided to the contrary, LLCs will be deemed to be member-managed, meaning all members retain statutory apparent authority to bind the LLC. The definition of "member" has been revised in that it is no longer required that a member have any economic interest in the company in order to have voting or management rights. The definition of "operating agreement" now permits that it be maintained in any medium that can be "retrieved in a perceivable form". That opens the possibility to establish or amend the terms of an operating agreement via email or any other number of forms of communication. As was pointed out in the Florida Bar article, that possibility speaks to the wisdom of having a strongly crafted integration clause limiting the manner in which the operating agreement may be adopted or amended.

Section 605.0105 establishes six essential functions of the operating agreement, including a list of 17 non-waivable statutory provisions. Included among them are the inability to exonerate or indemnify a member from liability for conduct involving bad faith, willful or intentional misconduct, or a knowing violation of the law. Section 605.0302 permits LLCs to file Statements of Authority with the Department of State to provide record notice of a person's ability or limitations on a person's ability to bind the LLC. The New Act also provides at least 10 new ways that a member can be disassociated from the LLC, including the ability of a member to withdraw at any time.

The changes in the LLC statute are significant. Anyone representing existing LLCs or involved in the formation of New LLCs would be well served by a careful review of the changes.

Reported by Charles Koval, Esq.