



Health Law Section

JANUARY 2018 NEWSLETTER

HEALTHCARE LITIGATION AND RISK MANAGEMENT INTEREST GROUP



HAPPY NEW YEAR FROM YOUR IG LEADERSHIP!

It's a new year and we are looking forward to all the things a new year will bring. We hope it's off to a great start for all of the IG's members!

As a reminder, the IG's webpage, which includes past newsletters and other information, can be found at https://www.americanbar.org/groups/health_law/interest_groups/practice_area/litigation.html

MEMBER SPOTLIGHT

As a great way to ring in the new year, we are pleased to feature our second Member Spotlight in this month's newsletter. This Member Spotlight highlights two of the IG's members that specialize in medical malpractice law – *Mary Ellen Reilly* from Post & Schell, P.C. and *Keith Hebeisen* from Clifford Law Offices.

We published our first Member Spotlight in the July 2017 Newsletter. Our featured topic area was the False Claims Act. We look forward to continuing to highlight our IG's diverse membership and will be announcing the next topic area soon. We are now currently searching for younger members who are interested in serving as interviewers for our third Member Spotlight. This is a great opportunity to

TWITTER CORNER



Anti-trust complaint alleges Duke, UNC agreed to not hire each other's doctors:

<http://bit.ly/2CZxw4V>

Drug distributors respond to Indiana counties' lawsuit: <http://bit.ly/2CXIZCS>

Florida nursing home industry in middle of legal fight: <http://bit.ly/2msAZ2L>

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network and publish. *If you are interested in this opportunity, please contact Michael Morton at michael.morton@lcb.state.nv.us.*

For more information:

https://www.americanbar.org/groups/health_law/events_cle.html

UPCOMING EVENTS



✚ **The 19th Annual Conference on Emerging Issues in Healthcare Law**

(brochure attached)

Annual EMI IG Luncheon

The IG will be hosting a **Luncheon on Friday, February 23, 2018 at 12:45 PM**. The topic of the Luncheon is:

- ✓ A discussion of the latest trends in healthcare fraud litigation focusing on the legal strategies and theories utilized by private payors to combat referral, kickback or other fraud schemes allegedly engaged in by providers and others who do not accept payments from any federal or state programs.

Speakers to be announced soon! We hope to see all of you there!

For more information:

<https://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=287766398>

✚ **Physicians Legal Issues Conference**

When: June 7-8, 2018

Where: Chicago, IL

✚ **28th Annual National Institute on Health Care Fraud**

When: May 2-4, 2018

Where: San Francisco, CA

For more information:

<https://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=281328685>



TIP OF THE MONTH

Case to Watch: *Patient Services, Inc. v. United States of America, et al.* – Civil Action No. 3:18-cv-16

Patient Services, Inc. (“PSI”), a patient assistance charity, filed a complaint on January 8, 2018 in the United States District Court for the Eastern District of Virginia, Richmond Division that presents a First Amendment challenge related to limits placed on PSI’s communication with donors pursuant to a 2017 Modified Advisory Opinion from the Office of Inspector General for the United States Department of Health and Human Services HHS-OIG (“HHS-OIG”).

As alleged in the complaint:

“The 2017 Modified Advisory Opinion impermissibly prohibits protected communications between a charitable organization and its donors in violation of the First Amendment of the United States Constitution. Although the government has an interest in preventing violations of the Anti-Kickback Statute, the restrictions on lawful, truthful and non-misleading speech at issue here sweep significantly more broadly than is necessary to further that interest. Under the First Amendment, restrictions on speech, at minimum, must be properly and narrowly tailored to serve a legitimate and important interest. The restrictions in the 2017 Modified Advisory Opinion prohibit lawful, truthful and non-misleading speech concerning medical treatments for chronic and life-threatening diseases. This speech is at the core of PSI’s charitable mission of ensuring that patients receive such critical treatments when they cannot afford them without PSI’s assistance. If these impermissible restrictions on the free-flow of truthful,

lawful and non-misleading information are allowed to remain in place, PSI's future survival, and with it the critical, and in many cases, life-saving assistance to tens of thousands of needy patients every year, will be placed in jeopardy."

This case will be an interesting case to watch in the months to come as it will test HHS-OIG's oversight of the Anti-Kickback Statute.

- ✓ Our "Tip of the Month" was provided by *Candice M. Deisher*.

Volunteer Writers Needed! We are always searching for members of the IG who are interested in writing for this section. Entries do not have to be long – 50 to 1500 words (not a limit, just a guide). This is a great way to share helpful information with your IG colleagues and publish/network. *If you are interested in writing for this section please contact Ardith Bronson at ardith.bronson@dlapiper.com.*

MEMBER BENEFITS

We are interested in hearing ideas on how the Healthcare Litigation and Risk Management IG can better benefit its members. *If there is a particular member benefit that you can think of that is not currently offered but that you would be interested in seeing in the future, please contact Candice Deisher at cdeisher@oag.state.va.us.*



<u>POSITION</u>	<u>CONTACT INFORMATION</u>
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Vice Chair, Membership	Candice M. Deisher; cdeisher@oag.state.va.us
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Law Student Liaison	Chelsea Punian; cpunian@lclark.edu



MEMBER SPOTLIGHT

MEMBER SPOTLIGHT

The members of the Healthcare Litigation and Risk Management IG collectively have a wealth of experience and knowledge in many different areas of practice. In an effort to highlight our members and to provide an additional opportunity for networking, the “Member Spotlight” section will highlight one or more members in a written interview-style format. Each Member Spotlight will focus on a different practice area within our IG. We are pleased to include our second Member Spotlight in January’s Newsletter. Our featured topic area is Medical Malpractice.



MARY ELLEN REILLY

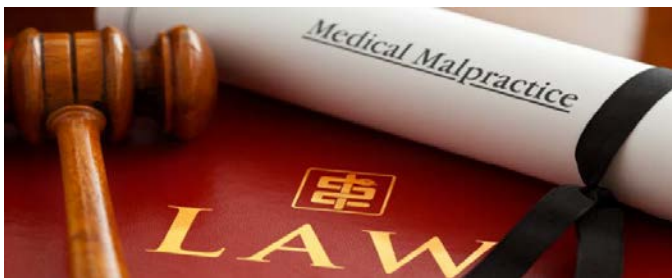
Mary Ellen Reilly is a Principal in the Professional Liability Defense Department in the Philadelphia office of Post & Schell, P.C., and she has more than 30 years of experience representing doctors, nurses, hospitals, and other health care providers. In early December 2017, I had the pleasure of talking with Mrs. Reilly about her perspective on everything from the changing landscape of health care litigation to the challenge of balancing work and family. Here is some of that conversation:

What inspired you to attend law school?

I did some student government in high school and college, and I liked talking on my feet. I also had an uncle who was an attorney, and I used to ask him a lot of questions about his work. But mostly I thought law would be an interesting way to put my ability to speak into action.

How did you land your first job after graduating?

My first job was with the firm I clerked with during law school. I worked with a small medical malpractice defense firm and when I graduated they



TOPIC – MEDICAL MALPRACTICE

Medical malpractice is negligence committed by a professional health care provider—a doctor, nurse, dentist, technician, hospital or hospital worker—whose performance of duties departs from a standard of practice of those with similar training and experience, resulting in harm to a patient or patients.

Featured IG Members: *Mary Ellen Reilly* from Post & Schell, P.C. and *Keith Hebeisen* from Clifford Law Offices.

offered me a full-time position. I only stayed there for a year but it was a foot in the door. A year later I applied for and received a job as an associate at a bigger firm. The person who hired me for that job was Richard “Rick” Galli, who became my mentor and ultimately my law partner.

Did you know when you applied for the clerk position that you wanted to work in health law?

No, I applied because I just wanted some experience as a law clerk somewhere. I wrote to a partner in the firm and they just happened to have a need in the medical malpractice department, so I had the good luck to fall into this area of law.

You mentioned that the person who hired you for that second job, Richard Galli, ended up being your mentor. How did that relationship develop?

That was the most valuable relationship of my entire career. Rick was a friend and colleague and taught me everything I knew. Everything Rick did, I did. When he tried a case, I sat next to him. When there were important depositions, I went with him. I helped him prepare witnesses for trial, helped with cross examinations, and within 2 years he gave me my first case to try on my own. Rick never said “don’t do that” or tried to limit me. He always said “Go for it!” He was very supportive and encouraged clients to let me take part in the case. We became partners in 1990 and worked together until 2014, when he started to transition out of practice. He was always approachable – he still is today.

In light of the significance of that relationship, how important is it for you to serve as a mentor to the young attorneys you work with?

I turned 60 this year and have been practicing since 1983. I really love what I do, but I think it’s really, really important to train the next generation of attorneys. Rick took the time to train me and teach me everything he knew so you better believe I’m going to give that back. I want to pay it forward—that’s what it’s all about. I’m the co-chair of the mentor program at Post & Schell and for the most part my door is open all the time and I’m here to answer questions and provide support.

What advice would you give a young attorney interested in health care law?

In my practice area (medical malpractice defense) it’s harder these days. There aren’t as many jobs and there isn’t as much expansion in this practice area, but health care law isn’t just trying cases. There are many hats you can wear and all of it is interesting and engaging. Very few days are boring. I don’t have a medical background so there are always new things to learn. You have to be creative, and look for jobs in different areas. Don’t just assume your first job is going to be at a law firm, because those areas aren’t necessarily expanding the way institutions are.

How has your practice changed over the years?

In Pennsylvania we haven’t really had tort reform, but we’ve had laws passed to make sure claims are brought in the right places. For years all the cases were brought in the city because the verdicts were higher here. Now you have to file in the county where the medical care occurred. Another change is the requirement that a plaintiff file a certificate of merit supporting the claims, which also has resulted in fewer claims being brought. But the magnitude of the claims is still serious. There may be fewer claims, but the ones being filed are more serious.

Another big difference is that very few cases go to trial anymore. Ten or fifteen years ago there were a lot more jury trials. Now, binding arbitration is a lot more common than it used to be, especially here in the city where I practice. That gives the physician the chance to speak his piece while allowing insurers to cap their exposure. And binding arbitration can often be done on expert reports and in a day or two instead of weeks of trial, which saves everyone involved time and money.

The ABA works hard to promote the growth and involvement of female attorneys. Do you feel like being a female in this profession has offered any unique challenges or unique advantages, and what advice would you give young women just starting out?

I never really felt like it was a challenge. It’s who I am and I just never really looked at it that way. In my department, there are more female principals than male principals. I definitely think that when I’m trying a case I have a different voice and I think that’s often

to my advantage. I look down the line and there are often 4 or 5 defense attorneys and I'm often the only female voice. I think that in that setting the fact that my voice sounds different, that the pitch or tone is different, is helpful.

As far as advice, work-family balance can be a challenge. You have to be organized and it helps to have a spouse who is supportive. I've always been very lucky that my spouse has been supportive. My goal was always to not let my job impact my family. Believe it or not, most nights I still make dinner. I just have to give it more thought and keep things in the freezer. When it comes to family life, you have to think things through more and be really organized, but a good lawyer does that anyway.

What are your interests outside of law?

I like to spend time with my husband and our two children. Our family is very close. I also volunteer, mainly with an organization called Gift of Life, which coordinates organ transplants. When there is an accident, Gift of Life is called and coordinates with the hospital so organs can be harvested and transplanted. Gift of Life House provides lodging for transplant patients and their families.

Their work is personal to me. I've had two corneal transplants—one during college and the second in 2013—with Gift of Life's help. I'm a lawyer who gets to practice because someone gave me the gift of sight twice, so I'm one lucky lady. So I do public speaking for Gift of Life to help raise awareness and volunteer with them in other ways as well.

How have your personal medical issues influenced your approach to your practice?

I think life is a gift and I'm incredibly lucky. So many of the doctors I've met are incredible, humble, and kind people who want to help others. For me to be able to turn around and say "let me help you," I feel very lucky to get to do what I do.

***Interviewer – Eric Faulkner.** Mr. Faulkner is a trial attorney with experience litigating matters involving medical negligence. He currently clerks for a federal judge in the Eastern District of Michigan but is returning

to private practice in March 2018 to resume representing health care providers.



KEITH HEBEISEN

Keith Hebeisen is a partner at Clifford Law Offices in Chicago. Mr. Hebeisen is experienced in many practice areas, including complex areas of medical negligence, medical liability and transportation liability. Mr. Hebeisen has been a trial attorney for over 30 years and is part of the medical malpractice team. In 2010, he was recognized by U.S. News-Best Lawyers as a top tier attorney in the areas of medical malpractice and personal injury law. He is recognized as an Illinois Super Lawyer and an Illinois Leading Lawyer. Mr. Hebeisen was inducted into the International Academy of Trial Lawyers in 2010 and the American College of Trial Lawyers in 2011.

What inspired you to attend law school?

Originally, I had no intention to attend law school after undergraduate school. I was inspired by two different events in my life. The first was that I was involved in a pro se small claims case due to a car accident. The second was that I originally worked in concrete construction and, at the time, the economy of the construction business was taking a downturn.

How did you choose your first job out of law school?

While I was in law school, I was hired as a law clerk by a young lawyer at a law firm. I worked there for about a year before the man who hired me left to start his own firm in 1984. I followed him and have been working with the same firm ever since.

What did you consider when making that choice?

When considering that choice, I looked to my interests. During my first year and a half of law school I became very interested in civil litigation and tort

law. In particular, I became attracted to becoming a plaintiff's lawyer. I knew that working for a firm would be the correct choice for me.

What position do you currently hold and where have you practiced before?

I am currently a partner at the Clifford Law Firm – the same firm that I have worked for since 1984.

Was there a defining moment in your career that made you want to focus on health law?

The first firm that I started out with did all different kinds of civil litigation. I got a variety of different medical malpractice assignments and ended up falling in love with that area of law. I have stuck with it and have been practicing it ever since.

What about health law interests you?

There are many different reasons why I find medical malpractice law interesting. The work itself is intellectually stimulating and challenging. Medical malpractice law deals with different areas of medicine as well as different twists on the same kind of medicine – all of which are incredibly interesting to me. It allows me the opportunity to learn more about various medical issues. With medical malpractice, there is always something new and fresh to be working on.

Who was your first mentor?

My mentor is the man that hired me all the way back as a young law clerk – Bob Clifford. I have worked for him since 1984.

Do you serve as a mentor?

I have served and am continuing to serve as a mentor to law clerks and young lawyers over several decades. I am currently a mentor to about two to three bright young lawyers in the Chicago community.

What do you consider your best mentoring tip?

My best tip/advice for young lawyers – always do your best to learn from people who are knowledgeable and try to learn how to do things the right way. Always strive for being better while knowing that you are never going to be perfect.

Have you had mentors that helped you in your career and, if so, how did you find such mentors?

Bob Clifford is my primary longstanding mentor and I found him because he was responsible for hiring me as a law clerk.

How do you balance work and life demands?

I have found it very difficult to maintain the best balance between work and life demands – especially in the field of medical malpractice law. One important way is to look for opportunities to take a break or “shutdown” from work. Unfortunately, I am usually thinking about work even when I am not at work. It is currently an ongoing struggle and I continue to work on it every chance that I get.

What kind of pro bono work do you do, if any?

In the past, I have been appointed to represent prisoners with inadequate healthcare claims. Unfortunately, due to the nature of my work (it being a contingency fee basis primarily), I don't have an opportunity to do a lot of pro bono. Some of the cases that I do take on, I consider to be pro bono.

What are your interests outside of law?

Some of my interests include (not in this order!) – Family, NFL Football (particularly the Green Bay Packers) and Motorcycles.

How do you deal with stress?

To help manage stress, I work out a few times a week with a trainer and get a deep tissue massage at least once a week – something I highly recommend for all lawyers out there trying to work through stress.

If there is anything you would have done differently as a new attorney, if you could do it over again, what would it be?

I honestly cannot think of anything – no regrets or second thoughts. I would do it all over again.

What do you find most rewarding about your work?

The most rewarding part of my work is being able to see the results of my efforts to make positive changes in people's lives. Whether it is the family of someone who lost a loved one (seeing justice played out and receiving

fair compensation) or if it's someone who has been severely injured who needs additional funds in order to have a better life/life experience, I am happy that my efforts have helped to achieve that goal.

What are the greatest challenges you face with respect to your work?

There are two main challenges that I face with respect to my work. The first is keeping my patience with an opponent who is being difficult or unreasonable. The second is keeping up with all the juggling of numerous tasks/projects. Time management is incredibly important to accomplishing everything I need with all the different and various things going on as a medical malpractice lawyer.

What advice would you give young healthcare attorneys who aim to follow your career path?

The advice that I would give young healthcare lawyers is to be sure that you know what this type of practice entails and that you are really sure that it is what you want to do because it is high stress. You need to be able to balance it well and really love it. Also, don't limit yourself to alternatives to where you might start out getting involved. For example, if you are set on being a plaintiff's lawyer, you might have to do defense work for a little bit before you make the switch. Don't be too picky when it comes to job selection.



***Interviewer – Chelsea**

Punian. Ms. Punian is currently a 3L at Lewis & Clark Law School in Portland, Oregon. She is also the 2017-2018 ABA Healthcare Litigation and Risk Management Interest Group Student Liaison.



A big thank you to the interviewers and interviewees in this second Member Spotlight! It's wonderful to learn more about our diverse and talented membership.



COMING UP!!!

The goal of the Member Spotlight is to highlight the IG's diverse membership and also to provide networking and publication opportunities for the IG's younger members.

We published our first Member Spotlight in the July 2017 Newsletter. Our featured topic area was the False Claims Act. We look forward to continuing to highlight the IG's diverse membership through the Member Spotlight and will be announcing the next topic area soon. As such, we are now currently searching for younger members who are interested in serving as interviewers for our third Member Spotlight. This is a great opportunity to network and publish something.

If you are interested in this opportunity, please contact Michael Morton at michael.morton@lcb.state.nv.us.





19TH ANNUAL CONFERENCE ON EMERGING ISSUES IN HEALTHCARE LAW

February 21-24, 2018

Westin Kierland
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19TH ANNUAL CONFERENCE ON EMERGING ISSUES IN HEALTHCARE LAW

Join your colleagues at the Westin Kierland in Scottsdale, AZ for the 19th Annual Emerging Issues in Healthcare Law Conference, February 21-24, 2018.

The ABA Health Law Section's Conference on Emerging Issues in Healthcare Law covers the most emergent topics facing the healthcare bar. As our industry undergoes changes and continues to develop with healthcare reform and enforcement, this conference presents an incredible opportunity to stay ahead of the trends.

PLANNING COMMITTEE

Co-chairs

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Kathy L Poppitt

King & Spalding LLP, Austin, TX

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DIVERSITY RECEPTION



THURSDAY & FRIDAY BREAKFAST



SOCIAL MEDIA



WEDNESDAY, FEBRUARY 21, 2018

8:30 am – 5:00 pm	Registration and Information Desk Open
9:00 am – 12:00 noon	Cancer Legal Advocacy Workshop
1:00 – 3:00 pm	Health Law Fundamentals from ACA to Valuation
2:00 – 3:00 pm	Leadership Meeting – Interest Group and Task Force Leaders
3:00 – 3:15pm	BREAK
3:15 – 4:15 pm	Healthcare ADR, Trends and Perspectives From All Sides
3:15 – 5:15 pm	Maintaining Professionalism in the Era of Chaos CLE PROFESSIONAL ETHICS CREDIT
5:00 – 6:00 pm	Protecting Immigrant Access to Healthcare
6:00 – 7:00 pm	Networking Reception – Celebrating Diversity, Young Lawyers and Law Students
<i>Sponsored by</i> TRUCKER + HUSS <small>ERISA AND EMPLOYEE BENEFITS ATTORNEYS</small>	

THURSDAY, FEBRUARY 22, 2018

6:30 – 8:00 am	Annual EMI Breast Cancer Fun Run/Walk
<i>Sponsored by</i> JOY & YOUNG, L.L.P. <small>A REGISTERED LIMITED LIABILITY PARTNERSHIP</small>	
7:00 am – 5:30 pm	Registration and Information Desk Open
7:30 – 8:30 am	Continental Breakfast
<i>Sponsored by</i> SheppardMullin	
8:30 – 8:45 am	Welcome to EMI – Opening Remarks
8:45 – 9:00 am	State of the Section Address
9:00 – 10:15 am	Healthcare Politics & Policy 2017-2020: Election, Regulation, Legislation
10:30 – 11:30 am	Crisis in Our Emergency Departments: Providing Better Care to Mental Health Patients
7:30 am – 5:00 pm	Registration Desk Open
11:30 am – 12:30 pm	CONCURRENT SESSIONS
<ul style="list-style-type: none"> • Lessons Learned from Recent Pharma and Device Manufacturer Enforcement • Medicaid: A New Era for the Federal and State Partnership • Antitrust Enforcement in the Healthcare Industry: What to Expect 	
12:30 – 1:30 pm	Interest Group & Task Force Lunches
1:30 – 2:45 pm	Cyberattacks on Healthcare Organizations: Legal Issues and Risk Mitigation
2:45 – 3:00 pm	Break
3:00 – 4:00 pm	Implementing Pay-for-Performance Compensation with Physician Employment Models

4:00 – 5:00 pm	CONCURRENT SESSIONS
<ul style="list-style-type: none"> • Surprise! You've Been Billed: Emerging Trends in Balance Billing Disputes • Emerging Pharmacy Enforcement and Litigation Risks • Opportunities with Series LLCs in Healthcare 	
5:00 – 5:45 pm	In-House Counsel Reception
<i>Sponsored by:</i> HUSCH BLACKWELL	
6:00 – 7:30 pm	Welcome Reception

FRIDAY, FEBRUARY 23, 2018

7:00 am – 3:45 pm	Registration and Information Desk Open
7:30 – 9:00 am	Continental Breakfast
<i>Sponsored by</i> SheppardMullin	
8:30 – 9:45 am	Litigation in Civil vs. Criminal Healthcare Fraud Cases: Is there a Double Standard?
9:45 – 10:00 am	BREAK
10:00 – 11:15 am	Walking the Path of a Healthcare Private Equity Transaction
11:30 am – 12:30 pm	CONCURRENT SESSIONS
<ul style="list-style-type: none"> • Emerging Issues and Trends in Managed Care Litigation • Financial Distress: Practical Strategies for Increasing Cash and Mitigating Risk • A Guide to Interacting with the DOJ and the Settlement Process in Enforcement Matters 	
12:30 – 12:45 pm	BREAK
12:45 – 1:45 pm	Interest Group & Task Force Lunches
1:45 – 2:45 pm	Artificial Intelligence in Healthcare
2:45 – 3:45 pm	Not for Sale: Human Trafficking as an Emerging Issue in Health Care CLE ETHICS CREDIT

SATURDAY, FEBRUARY 24, 2018

8:00 – 10:30 am	Open Council Meeting
10:30 am – 6:00 pm	19th Annual Margarita Cup Golf Tournament: The Westin Kierland Golf Club
11:15 am – 3:30 pm	"Off the Beaten Path" Jeep Desert Tour & Cookout
6:30 – 8:00 pm	Saturday Night Mixer Hosted by Section Chair

SUNDAY, FEBRUARY 25, 2018


8:00 – 11:00 am	Council Meeting
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WEDNESDAY, FEBRUARY 21, 2018

8:30 am – 5:00 pm	Registration and Information Desk Open
9:00 am – 12:00 noon <i>Sponsored by: ABA Breast Cancer Initiatives Interest Group</i>	<p>Cancer Legal Advocacy Workshop</p> <p>Cancer patients face a variety of legal problems related to their illness, such as issues with insurance coverage and payment, treatment, employment, mental health and end-of-life arrangements. Volunteer attorneys can work with support organizations to help address challenges like these. This session will review relevant laws and practices to enable attorneys to volunteer and provide legal assistance to cancer patients and survivors, as well as to provide support to family members or friends going through diagnosis and treatment.</p> <p>SPEAKERS: Laurent Badoux, Buchalter, Scottsdale, AZ Jason P. Lacey, Foulston Siefkin LLP, Wichita, KS Denise M. Millstine, MD, Internist, Mayo Clinic, Scottsdale, AZ Donald W. Northfelt, MD, Medical Oncologist, Mayo Clinic Breast Clinic, Phoenix, AZ</p>
1:00 – 3:00 pm	<p>Health Law Fundamentals from ACA to Valuation</p> <p>In this session, experts with backgrounds in consulting, firm practice, and life science business will cover bedrock principals, practices, and statutes underlying health law. Panelists will focus on physician representation as it relates to:</p> <ul style="list-style-type: none"> • Regulatory and legal considerations in negotiating and valuating physician employment and professional services arrangements • What is “Fair Market Value”? • Basic valuation principles and approaches • Commercial health insurance market – players, products & impact of changing marketplace on physicians • and to avoid compliance issues, even in small physician practices

(CONTINUED)

	<p>SPEAKERS: Curtis Bernstein, Pinnacle Healthcare Consulting, Centennial, CO Thomas M. Donohoe, Hall, Render, Killian, Heath & Lyman, P.C. Denver, CO Juliet McBride, King & Spalding LLP, Houston, TX</p>
2:00 – 3:00 pm	Leadership Meeting – Interest Group & Task Force Leaders
3:00 – 3:15 pm	BREAK
3:15 – 4:15 pm	<p>Healthcare ADR, Trends and Perspectives From All Sides</p> <p>This session will examine emerging ADR trends in healthcare, including the types of disputes being addressed stemming from increased regulation, the impact of health care reform (and its uncertain future), and the enhanced use of technology. Expert panelists will also address the following issues from the perspective of providers, payors, and ADR administrators:</p> <ul style="list-style-type: none"> • The various forms of ADR and their efficacy in addressing healthcare disputes • Issues that have proven to be most amenable to settlement by ADR • Legislative initiatives in Congress to increase use of ADR by government agencies <p>SPEAKERS: Elizabeth Monohan, Esq., Assistant General Counsel, Humana, Louisville, KY Arthur Peabody, Arthur E. Peabody Jr. PLLC, Alexandria, VA Melinda Reid Hatton, General Counsel, American Hospital Association, Washington, DC Michelle Skipper, Vice President, American Arbitration Association, Charlotte, NC</p>

<p>3:15 – 5:15 pm</p> <p>CLE PROFESSIONAL ETHICS CREDIT</p>	<p>Maintaining Professionalism in the Era of Chaos</p> <p>Dramatic changes in the market for delivery of legal services are eroding many traditional notions of professionalism in law practice. “Win at all costs” litigation strategies, blurring lines on conflicts of interest and client loyalty, promotion of “alternative facts” to justify conduct, compromised independent judgment in the interest of protecting client relationships — all these things have damaged the image of lawyers with the public and within the profession.</p> <p>SPEAKERS: Andrew J. Demetriou, Lamb & Kawakami LLP, Los Angeles, CA William W. Horton, Jones Walker LLP, Birmingham, AL Lisa D. Taylor, Inglesino, Webster, Wyciskala & Taylor LLC, Parsippany, NJ</p>
<p>5:00 – 6:00 pm</p>	<p>Protecting Immigrant Access to Healthcare</p> <p>As immigration policy continues to evolve, this session will focus on laws and policies at the federal, state, and local levels related to immigrant access to healthcare and human services and what providers face firsthand as they furnish care. The discussion will include programs available to undocumented immigrants, how they have been enforced, barriers to access, and the issues that providers face when treating immigrants.</p> <p>SPEAKERS: Amy McMullen, Clinic Director, Board Member, Phoenix Allies for Community Health, PACH clinic, Phoenix, AZ Tiffany N. Santos, Director, Trucker Huss APC, San Francisco, CA</p>
<p>6:00 – 7:00 pm</p> <p><i>Sponsored by</i></p> <p> TRUCKER + HUSS <small>ERISA AND EMPLOYEE BENEFITS ATTORNEYS</small></p>	<p>Networking Reception – Celebrating Diversity, Young Lawyers and Law Students</p> <p>All registered conference attendees are invited to attend the reception to catch up with old friends and make new ones! Complimentary cocktail and appetizers will be served.</p>



THURSDAY, FEBRUARY 22, 2018

<p>7:00 am – 5:30 pm</p>	<p>Registration and Information Desk Open</p>
<p>6:30 - 8:00am</p> <p><i>Sponsored by:</i> JOY & YOUNG, L.L.P. <small>A REGISTERED LIMITED LIABILITY PARTNERSHIP</small></p>	<p>Annual EMI Breast Cancer Fun Run/Walk (Ticketed \$25) Join attendees for the Annual EMI Breast Cancer Fun Run/Walk. Participants will run or walk a 1-mile course. Net proceeds will be donated to the Health Law Section Breast Cancer Task Force Initiative 501(c)(3) fund.</p>
<p>7:30 – 8:30 am</p> <p><i>Sponsored by:</i> SheppardMullin</p>	<p>Continental Breakfast</p>
<p>8:30 – 8:45 am</p>	<p>Welcome to EMI – Opening Remarks Conference Co-Chairs: Diane T. Carter, Husch Blackwell LLP, Austin, TX Kathy L. Poppitt, King & Spalding LLP, Austin, TX</p>
<p>8:45 – 9:00 am</p>	<p>State of the Section Address 2017-2018 American Bar Association Health Law Section Chair Hilary H. Young, Joy & Young LLP, Austin, TX</p>
<p>9:00 – 10:15 am</p>	<p>Healthcare Politics & Policy 2017-2020: Election, Regulation, Legislation</p> <p>This session will review and analyze expected healthcare policy developments through the next Congress (2019-2020). Topics will include:</p> <ul style="list-style-type: none"> • A review of policy and political developments in 2017 and also cover the 2018 mid-term Congressional election and its potential outcomes and impacts • Medicare regulations for 2018 • Medicaid policy developments at the state level • Regulatory developments affecting the ACA exchanges • Impact of tax reform on the healthcare sector <p>SPEAKER: John Kelliher, Managing Director, Berkeley Research Group, Washington, DC</p>
<p>10:15 –10:30 am</p>	<p>BREAK</p>

10:30 – 11:30 am	<p>Crisis in Our Emergency Departments: Providing Better Care to Mental Health Patients</p> <p>About one in eight emergency department visits in the US is due to a psychiatric emergency, a substance use disorder, or both. Hospitals and healthcare professionals are often not able to provide adequate care to these patients. This session will outline this crisis and its impact on patient care, patient flow, and costs to the healthcare system, as well as related legal issues facing hospitals, providers, and payers. The panel will outline possible solutions to this crisis, including the use of crisis units and tele-psychiatry consultations.</p> <p>SPEAKERS: Gregory Fliszar, Cozen O'Connor, Philadelphia, PA Lisa Frenkel, Associate General Counsel, Children's Health System of Texas, Dallas, TX Scott Zeller, MD, Vice President of Operations, CEP America, Emeryville, CA</p>	11:30 am – 12:30 pm	<p>Medicaid: A New Era for the Federal and State Partnership</p> <p>Medicaid programs vary widely from state to state. In recent years, states have pursued innovative approaches to their Medicaid programs, such as through ACOs. On March 14, 2017, HHS and CMS issued a joint letter announcing a new era for this federal and state partnership. This session will cover new CMS policies regarding 1115 demonstrations that give states freedom to test and evaluate innovative solutions and examine one state direction – ACOs - in this era of new challenges and new flexibility.</p> <p>SPEAKERS: Caroline Farrell, Office of the General Counsel, US Department of Health and Human Services, Washington, DC Matthew Herndon, Chief Legal Officer, BMC Health Net Plan, Charlestown, MA</p>
11:30 am – 12:30 pm	<p>CONCURRENT SESSIONS</p> <p>Lessons Learned from Recent Pharma and Device Manufacturer Enforcement</p> <p>This session will cover lessons learned, compliance strategies and policy implications of recent drug and device manufacturer enforcement actions. It will also explore current enforcement actions and steps to avoid exposure in the face of government scrutiny of patient support programs, drug pricing, product discounts and rebates, relationships with customers and third parties, and other enforcement trends.</p> <p>SPEAKERS: Donielle McCutcheon, Sidley Austin, Chicago, IL John H. McEniry, IV, Consors Consulting, Fairhope, AL Julie Wagner, PhRMA, Washington, DC</p>	11:30 am – 12:30 pm	<p>Antitrust Enforcement in the Healthcare Industry: What to Expect</p> <p>Antitrust enforcement officials from the DOJ and the FTC will address recent federal government enforcement actions, priorities, and future directions in healthcare antitrust. The panel will discuss investigations and litigation involving health plans, including mergers, hospitals, the pharmaceutical industry, and physicians and other healthcare professionals.</p> <p>SPEAKERS: Ryan Kantor, Assistant Chief of Litigation, Antitrust Division, Department of Justice, Washington, DC Markus H. Meier, Assistant Director, Federal Trade Commission, Washington, DC Barbara Reeves, JAMS, Los Angeles, CA</p>
		12:30 – 1:30 pm	<p>Lunch</p> <p>Interest Group & Task Force Lunches</p>

1:30 – 2:45 pm	<p>Cyberattacks on Healthcare Organizations: Legal Issues and Risk Mitigation</p> <p>The healthcare industry is one of the highest risk sectors for cyberattacks. This panel will discuss the nature of the key cyber threats healthcare organizations face today, legal issues related to data breaches, and the evolving market for cyber insurance coverage. The panel will emphasize steps organizations can take to minimize the risk of a successful cyberattack and to recover from one, including regulatory issues and case law that lawyers must know to manage ever evolving cyber risks.</p> <p>SPEAKERS: Daniel Garrie, CEO, Law & Forensics, Seattle, WA Joey Johnson, CISO, Premise Health, Brentwood, TN Laurie A. Kamaiko, Sedgwick LLP, New York, NY</p>	4:00 – 5:00 pm	<p>CONCURRENT SESSION</p> <p>Surprise! You've Been Billed: Emerging Trends in Balance Billing Disputes</p> <p>This session will include a survey of state consumer protection laws aimed at shielding patients from surprise bills from out-of-network providers, including laws requiring transparency of charges, setting parameters for payment to out-of-network providers or prohibiting balance billing entirely. The panel will discuss innovative strategies that some self-funded plans and third-party administrators are implementing to protect plan members from unexpected charges in states that do not have consumer protection laws that limit balance billing.</p> <p>SPEAKERS: Christian Puff, Chief Operating Officer, CHRISTUS Health Plan, Irving, TX Layna C. Rush, Baker Donelson, Baton Rouge, LA</p>
2:45 – 3:00 pm	BREAK		
3:00 – 4:00 pm	<p>Implementing Pay-for-Performance Compensation with Physician Employment Models</p> <p>As hospitals continue to contract with and employ physicians, many hospitals want to offer a quality or cost-savings incentive payment as part of a physician's compensation package. This session will address valuation considerations and compliance tips related to pay-for-performance or quality incentive compensation and how to assess whether the overall employment arrangement and aggregate compensation are reasonable.</p> <p>SPEAKERS: Violet Anderson, Regional General Counsel, CHRISTUS Health, Irving, TX Ben Ulrich, VMG, Dallas, TX</p>		<p>Emerging Pharmacy Enforcement and Litigation Risks</p> <p>With increased spending on prescription drug benefits in the US, companies throughout the pharmaceutical supply and reimbursement chain face increased litigation and enforcement risks. These risks have played out over the past two years as there has been a significant increase in Medicare Part D enforcement as well as member/patient class actions. This session will provide an overview of risks and recent enforcement action and litigation related to pharmacies and pharmacy benefits.</p> <p>SPEAKERS: Jed Smith, Navigant, Washington, DC Selina Coleman, Norton Rose Fulbright, Washington, DC</p>

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	<p>Opportunities with Series LLCs in Healthcare Introduced in Delaware in 1996 and later adopted in other states, the series LLC created the ability to form flexible organizations with individual cells. At first, series LLCs were not widely used, but they are becoming increasingly popular. However, questions remain regarding their recognition in states that have not passed series LLC legislation. This session will describe the mechanics of a series LLC and analyze new potential applications of the series LLC in a healthcare practice.</p> <p>SPEAKERS: James M. Daniel Jr., Hancock, Daniel, Johnson & Nagle, PC, Richmond, VA Joshua J. Novak, Director, Richards, Layton & Finger PA, Wilmington, DE</p>	<p>8:30 – 9:45 am</p>	<p>Litigation in Civil vs. Criminal Healthcare Fraud Cases: Is there a Double Standard? Healthcare fraud can be prosecuted criminally or civilly. While higher burdens of proof are an obvious challenge for the government in criminal cases, criminal prosecution can also avoid civil evidentiary burdens, such as statistical evidence, materiality and reciprocal discovery obligations, that often burden the government as a civil litigant. This panel will explore how the differences between civil and criminal healthcare fraud cases can make criminal prosecution an attractive alternative to FCA litigation.</p> <p>SPEAKERS: Joel M. Androphy, Berg & Androphy, Houston, TX David Douglass, Sheppard, Mullin, Richter & Hampton LLP, Washington, DC Richard W. Westling, Epstein, Becker & Green PC, Nashville, TN</p>
<p>5:00 – 5:45 pm <i>Sponsored by:</i> </p>	<p>In-House Counsel Reception A wonderful networking opportunity for registered attendees to continue to make connections and strengthen relationships with people of diverse professional backgrounds</p>	<p>9:45 – 10:00 am</p>	<p>BREAK</p>
<p>6:00 – 7:30 pm</p>	<p>Welcome Reception <i>Honoring our faculty and planning committee members</i> All conference attendees are invited to attend the best networking reception in the industry! This event receives rave reviews every year, so it's one you don't want to miss. Cocktails and appetizers will be provided.</p>	<p>10:00 – 11:15 am</p>	<p>Walking the Path of a Healthcare Private Equity Transaction Private equity firms are increasingly targeting healthcare companies for acquisition. This session will outline emerging trends for healthcare organizations in private equity deals, including working with an investment banking firm, planning for due diligence, choosing the right private equity firm, negotiating transaction agreements, and working through unique regulatory issues. The panelists will offer practical perspectives on how private equity deals proceed in real life.</p> <p>SPEAKERS: Matthew Fisher, Mirick, O'Connell, DeMallie & Lougee, LLP Worcester, MA Glenn Prives, McElroy, Deutsch, Mulvaney & Carpenter LLP, Morristown, NJ Stephanie D. Willis, Crowell & Moring LLP, Washington, DC</p>
<p>FRIDAY, FEBRUARY 23, 2018</p>			
<p>7:00 am – 3:45 pm</p>	<p>Registration and Information Desk Open</p>		
<p>7:30 – 9:00 am <i>Sponsored by:</i> </p>	<p>Continental Breakfast</p>		
		<p>11:15 – 11:30 am</p>	<p>BREAK</p>

11:30 am – 12:30 pm

CONCURRENT SESSIONS

Emerging Issues and Trends in Managed Care Litigation

This session will examine trends in managed care litigation based on empirical data and discuss emerging theories relating to benefit disputes involving mental health coverage, emergency care claims under the Affordable Care Act and equivalent state statutes, and overpayment recovery efforts by health plans. The panelists also examine some of the litigation under the ACA since the change in administrations, including cases involving the Risk Corridor Program, Reinsurance and Cost-Sharing under the ACA.

SPEAKERS:

Christopher Flynn, Crowell & Moring, Washington, DC
Jonathan Herman, Herman Law Firm, Dallas, TX

Financial Distress: Practical Strategies for Increasing Cash and Mitigating Risk

This session will use case examples to present measures that healthcare companies facing financial pressures have implemented to increase cash flows from reimbursement sources while considering alternative avenues for restructuring, including mediation, receivership and bankruptcy, or positioning for sale or private equity investment. Examples will touch on technology tools, credit card processing, managed care contracting, underpayments, denial management, and collection agencies.

SPEAKERS:

Mark Herbers, AlixPartners, Chicago, IL
Patricia B. Tomasco, Jackson Walker, Houston, TX

11:30 am – 12:30 pm

A Guide to Interacting with the DOJ and the Settlement Process in Enforcement Matters

This session will provide a perspective on how to interact with the federal government in defending enforcement actions through presentations to the DOJ/OIG/CMS. It will also offer guidance on the settlement process, including developing a reasonable alternative to the government's offer, responding to a demand, and how best to play hardball. Panelists will cover how data analytics can help inform these processes and build a robust case for the provider to develop its defense and build a case for reasonable settlement.

SPEAKERS:

Jeff H. Gibson, Counsel, Bass Berry & Sims, Nashville, TN
Greg Russo, Managing Director, Berkeley Research Group, Washington, DC

12:30 – 12:45 pm

BREAK

12:45 – 1:45 pm

Interest Group & Task Force Lunches

1:45 – 2:45 pm

Artificial Intelligence in Healthcare

Artificial Intelligence, cognitive learning and machine learning have the potential to revolutionize the healthcare industry and radically change treatment delivery. This session will explore legal issues involved with the dawn of Big Data in healthcare, including scope-of-practice issues and medical device classification. It will also cover privacy and security laws, some of the challenges of working with personal data in the current regulatory landscape, and comparison with other countries' approaches.

SPEAKERS:

Nicholas Accomando, IBM Watson Health, Cambridge, MA
Brigham Hyde, PhD, CEO, Founder, Precision Health AI, New York, NY
Elaine Zacharakis, Zacharakis Loumbas Law, White Plains, NY

2:45 – 3:45 pm CLE ETHICS CREDIT	<p>Not for Sale: Human Trafficking as an Emerging Issue in Health Care</p> <p>Human trafficking is a heinous crime that has continued to grow. Healthcare providers are in a unique position to respond to this crime, as more victims are likely to interact with a healthcare provider before they ever interact with law enforcement. The panel will discuss the important role healthcare providers can play to combat this crime and the tools they need in order to assist these victims. The panel will identify best practices in the healthcare setting for providers and their attorneys.</p> <p>SPEAKERS: Kelly Herron, Director Mission Services and Catholic Identity, Trinity Health, Livonia, MI Daniel Gomez, MD, FACOG, Holy Cross Hospital, Ft. Lauderdale, Florida Regina M. Paulose, Attorney, International Criminal Law and Human Rights, A Contrario ICL, Miami, FL</p>
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SATURDAY, FEBRUARY 24, 2018

8:00 – 10:30 am	<p>Open Council Meeting</p> <p>All are welcome to attend the Council Meeting in Rainmakers Ballroom.</p>
10:30 am – 6:00 pm	<p>19th Annual Margarita Cup Golf Tournament The Westin Kierland Golf Club</p> <p>TICKETED EVENT—\$195 INCLUDES 18 HOLES, LUNCH AND GOLF CART</p> <p>The Kierland Golf Club will host the 19th Annual Margarita Cup conveniently located central to the Westin Kierland Resort and Spa. With its spacious 27-hole layout, Kierland Golf Club is a dramatic course set apart from any other desert golf experience. Beginners and more seasoned golfers alike are welcome to participate in this spirited tournament!</p>

11:15 am – 3:30 pm	<p>“Off the Beaten Path” Jeep Desert Tour & Cookout</p> <p>TICKETED EVENT —\$270 INCLUDES “OFF THE BEATEN PATH” JEEP DESERT TOUR & COOKOUT LUNCH AND ROUND-TRIP TRANSPORTATION <i>Departs from the Hotel Lobby</i></p> <p>Guests will be immersed in the unspoiled splendors of the Sonoran Desert as a professional guide shifts into 4-wheel drive and brings to life the lore of this ancient land. Guests will be driven, via 4x4 Jeeps, by the most “ornery” guides, authentically outfitted in Native American or Cowboy attire. At one of the stops, guests will get out of the Jeeps and be led through the beautiful desert, on a botanical walk that allows guests to experience the desert up-close. Along the way, guides will identify the native desert flora and fauna that the great state of Arizona is recognized for. And to end this exciting 4x4 adventure... a desert cookout!</p>
6:30 – 8:00 pm	<p>Saturday Night Mixer Hosted by Section Chair ALL ATTENDEES AND THEIR GUESTS ARE WELCOME!</p> <p>Enjoy cocktails and hors d’oeuvres during this final celebration hosted by the ABA Health Law Section Chair, Hilary H. Young. We will recap the highlights of the conference and award the Margarita Cup trophy to this year’s winning golf team.</p>

SUNDAY, FEBRUARY 25, 2018

8:00 – 11:00 am	Open Council Meeting
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