

Conflict of Interest Disclosure

Government Issues Legal Update

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Jose' Brown, Terry Durkin, Carole Empey and Megan VerMerris do not have any real or apparent conflicts of interest or vested interests that may have a direct bearing on the subject matter of the continuing education activity.

2

Learning Objective

This presentation will enable participants to identify recent changes in the law that will affect their practice and their organizations.

Maternal Death Reporting

- Public Act 479 (2016) – effective April 6, 2017
- Women who have died either while pregnant *or within 1 year of being pregnant.*
 - Endless scenarios

3

4

Maternal Death Reporting

- Form + medical information on record (i.e. discharge summaries, autopsy reports, and emergency medical services reports).
- HIPAA

PA/APRN

- Public Act 379 (2016): **Physician's Assistant** – effective March 22, 2017



5

6

PA/APRN

- Written practice agreement
- Must obtain a Michigan controlled substances license
- Practical Implications: Bylaws, privileges, policies, EMR rights, billing

7

PA/APRN

- Public Act 499 (2016): APRN – effective April 9, 2017
 - Able to prescribe non-controlled substances to patients with a license
 - Able to prescribe physical therapy and speech-language pathology
 - Practical Implications: Bylaws, privileges, policies, EMR rights, billing

8

Challenges to Economic Damage Experts

Wrongful Death

- Speculation– What “loss of income” ?
 - Plaintiff economic experts
- Key -Plaintiff must prove loss of financial support
 - Dependents, family members, support orders



9

Challenges to Economic Damage Experts

- Plaintiff’s Economic Expert Precluded as misleading and irrelevant
 - Reasonable expectation of family support
 - MRE 702 & 703
 - Speculative whether minor will graduate from high school, trade school, college grad

10

Challenges to Economic Damage Experts

Lower Cap (\$445,500) vs. Upper Cap (\$795,500)

- File before case evaluation & facilitation
- *MCLA 600.1483* - Higher cap applies:
 - Hemi, para, quad-injury to brain or spinal cord
 - Permanently incapable of independently perform ADL
 - Loss or damage to reproductive organ –inability to procreate
- Lower cap saves \$350,000

11

Challenges to Economic Damage Experts

Daubert & Reliance on Peer Review

- MRE 702 gatekeeper role
- Same specialty and CAQ (super specialty)
- *Misra*: Not what expert believes is SOC, but what does peer reviewed articles and scientific based evidence tell us?
- Expert must produce logs, case studies, schedules to show qualifications

12

Opioid MAPS



- Electronic monitoring system for outpatient dispensing of controlled substances
- All controlled substances must be reported

13

Opioid MAPS

- Apriss Health's PMP AWARe system – implemented April 4, 2017
 - Replaces old system in place since 2003
 - New user-friendly interface and overall data capacity



14

Opioid MAPS

- MAPS tracks Schedule II-V controlled substances dispensing
- Goal: Fight opioid abuse and controlled substance diversion
- Faster, real-time access to controlled substance history

15

Opioid MAPS

- Allows for data sharing between states
- View alerts on patients
 - Help determine if substance abuse problem;
 - Treatment not therapeutic;
 - Seen by > 6 doctors in 60-day period

16

Opioid MAPS

- SBs 166 and 167 – currently under committee deliberation.
 - Requires doctors to use MAPS when prescribing controlled substances.
- SBs 236 and 237 – currently under committee deliberation.
 - Facilitates the development of a lesson plan to be used in schools outlining the dangers of prescription drugs.

17

NPDB Changes

- Changes in place since NPDB handbook update in April, 2015.
- Investigation Defined:
 - “NPDB interprets the word ‘investigation’ expansively”...“an investigation is not limited to a health care entity’s gathering of facts. An investigation begins as soon as the health care entity begins an inquiry and does not end until the health care entity’s decision making authority takes a final action or makes a decision to not further pursue the matter.”

18

NPDB Changes

- Proctoring changes:
 - Routine 60 day oversight for increased clinical privileges – not reportable.
 - Greater than 30 day oversight (being present or granting approval) – reportable.
 - No defined period (i.e. next 10 surgeries must be observed) and can be completed in less than 30 days – reportable?
 - Bylaws, State reporting implications

19

Telemedicine

- The remote diagnosis and treatment of patients by means of telecommunications technology
- “Telehealth”
- Legal and regulatory issues abound



20

Telemedicine

- Public Act 359 (2016) – effective March 29, 2017
 - Health professionals to prescribe medications to their patients as long as it is *not a controlled substance*
 - Health professionals must obtain consent for treatment before engaging in telehealth services

21

Telemedicine

- Following passage of PA 359, outcry developed due to controlled substances provisions
- Public Act 22 (2017) – effective March 31, 2017
 - Clarifies that medical professionals can prescribe controlled substances through telehealth services

22

Designated Caregivers

- Public Act 85 (2016) – Designated Caregiver Act - effective July 12, 2016
- Requires hospitals to ask patient if they want to designate a volunteer lay caregiver to provide post-discharge services to patient

23

Designated Caregivers

- Caregiver must be given training and discharge plan that describes daily responsibilities and required actions
 - Document! Adequate prompts in EMR?
- *Hospitals and staff shall not be held liable for the services rendered or not rendered by the caregiver*

24

Future Damages /ACHA

- This is a rapidly changing area of law (AHCA)
- Courts are slowly adjusting to the idea of future coverage under the ACA

25

Future Damages /ACHA

- *Aidan Leung v. Verdugo Hills Hospital*, 2008 Cal.
 - Link the coverage to items of care that are required in the life care plan.
 - Demonstrate with reasonable certainty that plaintiff will have the coverage.
 - Show that the coverage can be demonstrated to be in existence for a reasonably certain time period into the future.

26

Future Damages /ACHA

- *Cuevas v. Contra Costa County*, 2017 Cal. App.
- Some detractors:
 - *Deeds v. Univ. of Pa. Med. Ctr.*, 2015 PA Super 21
 - *Vasquez-Sierra v. Hennepin Faculty Assocs.*, 2012 Minn. Dist.

27

Medical Marijuana

- Public Acts 281, 282, 283 (2016) – effective December 20, 2016
 - Legalizes medical marijuana usage, processing and distribution, and establishes a statewide monitoring system



28

Medical Marijuana

- Medical Marijuana Facilities Licensing Act creates regulatory framework for distribution of medical marijuana in effect December 2016
 - Licensing and processing requirements for growing, transporting or dispensing medical marijuana and establishes a statewide monitoring system

29

Medical Marijuana

- Bureau of Medical Marijuana Regulation – April 13, 2017
 - Oversight of patient and caregiver registry and regulatory administration
 - Franwell, Inc. will be managing “Seed to sale” tracking system

30

Damages in Medical Malpractice Cases

- *Greer v. Advantage Health*, 499 Mich. 975 (2016)
 - Windfall for the plaintiffs
- Public Act 556 (2016) – effective April 10, 2017
- Medical damages “shall not exceed the actual damages for medical care that arise out of the alleged malpractice”.

31

D.O. vs. M.D.

- MCLA 600.2169
 - Licensed under separate statutes
 - Qualifications mandated under MCLA 600.2169 (1) (b)

32



Questions?



Thank you!

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34