The Pennsylvania Bar Association Health Care Law Committee and PBA Medical and Health-Related Interdisciplinary Committee held their first joint meeting during PBA Committee/Section Day on Nov. 18, 2010. During the meeting a motion was made and approved by unanimous vote that the committees request that PBA leadership merge the two committees into one, to be called the Health Care Law Committee, with the Medical and Health-Related Interdisciplinary group becoming a subcommittee. The co-chairs of the two committees, Lisa M.B. Woodburn and Clifford A. Rieders, wrote to PBA President Gretchen A. Mundorff, who approved the consolidation.

The Health Care Law Committee currently has 89 members. The committee has a lot of new, as well as experienced members. The energy and enthusiasm of the committee are apparent and can be evidenced by its first publication, in the form of this first e-newsletter. Additionally, the committee is working hard to update its website and form working subcommittees. We have got a strong group of administrative members who will be updating and upgrading the website to include new regulations and policies affecting administrative lawyers in the health field. Additionally, there is a subset of members who have a strong interest in reviewing legislation and providing recommendations to the committee.

In keeping with its mission, this committee has sponsored and planned several continuing legal education programs. Three members from the Health Care Law Committee will be presenting at the Pennsylvania Bar Institute Health Law symposium, scheduled for March 15 and 16 in Philadelphia. This two-day symposium will be topped off with a reception co-sponsored by the PBA Health Care Law Committee.

The next meeting is scheduled for March 31, at 11 a.m., at the Holiday Inn Harrisburg East as part of PBA Committee/Section Day.

The new mission statement for the Health Care Law Committee, which combines the previous two committees’ missions, appears at right.

NEW MISSION STATEMENT:
The PBA Health Care Law Committee shall review, study and make recommendations concerning legislative proposals for reform in the health-care system and address ethical considerations as related to the medical and legal professions. The committee shall propose additional recommendations relating to litigation involving medical and hospital practices.

NEXT MEETING:
The PBA Health Care Law Committee/PBA Medical and Health-Related Interdisciplinary Subcommittee will meet March 31, at 11 a.m., at the Holiday Inn Harrisburg East, as part of PBA Committee/Section Day.

(Please note this is a date change from the previously scheduled Committee/Section Day of April 1.)
Pennsylvania Patient Safety Authority

Learning More About Health Care Costs

By Clifford A. Rieders

The Pennsylvania Patient Safety Authority is an independent state agency established under Act 13 of 2002, the Medical Care and Reduction of Error “Mcare” Act.

In 2007 the Pennsylvania Legislature enacted Chapter 4 of the Mcare Act, giving the Authority additional responsibility in helping to reduce and eliminate infections in Pennsylvania. In 2009 the Authority continued management of the Pennsylvania HAI, Hospital Acquired Infection advisory panel, and continued to analyze reports of infections submitted by hospitals through the Centers for Disease Control and Prevention National Healthcare Safety Network. Nursing homes are now included in that infection prevention program as well.

The Authority’s educational mission continued to grow in 2009 with the appointment of patient safety liaisons throughout the commonwealth and completion of its pilot program to educate boards of trustees and top-level management.

The Pennsylvania Patient Safety Authority issued its annual report to the Legislature, available on the Authority’s website, on April 28, 2010.

The Authority’s website contains a great deal of information, including advisories to educate professionals and patients alike. The website can be found at www.patientsafetyauthority.org.

Diagnostic Errors in Medicine: The Big Problem

By Clifford A. Rieders

The Pennsylvania Patient Safety Authority, an independent agency of the commonwealth, staffed mainly by medical and health care professionals, has circulated to Pennsylvania hospitals an advisory addressing the question of diagnostic errors in acute care facilities.

“Errors related to missed or delayed diagnoses are a frequent cause of patient injury.” The study noted that autopsies evaluated spanning decades reveal error rates of 4.1 percent to 49.8 percent. Error rates in some clinical specialties range from 10 to 15 percent. Not surprisingly, diagnostic errors are frequently the leading or second leading cause of malpractice claims in the United States.

“Studies have shown that cognitive errors and system design flaws — especially communication issues — all contribute to diagnostic error.” An unacceptably large number of cases reveal lethal diagnostic errors “for which a correct diagnosis coupled with treatment could have averted death.”

While the Patient Safety Advisory is very sophisticated in examining “cognitive errors,” the bottom line is that strong strategies are needed to decrease diagnostic errors.

The advisory notes that health care facilities have at their disposal many strategies that could potentially reduce the diagnostic error rate. “In addition to system-level interventions, physicians themselves must actively work toward first recognizing, then analyzing, and finally reducing diagnostic error.”

To view the Patient Safety Advisory, search the Authority website at www.patientsafetyauthority.org.
Below please find legislation signed into law in 2010 by the governor potentially of interest to committee members. To obtain copies of any legislation cited below, please e-mail Steven Loux at steven.loux@pabar.org, call him at 1-800-932-0311, Ext. 2246, or directly access bills and other legislative information online at www.legis.state.pa.us.

Impersonating a Holder of a Professional or Occupational License, Act 12 (HB 416) – This act amends 18 Pa.C.S. § 4913 (relating to impersonating a notary public) adding the offense of impersonating a holder of a professional or occupational license. Falsely pretending to hold a professional or occupational license issued by a licensing board, and performing any action in furtherance of this false pretense is a misdemeanor of the second degree, unless the intent of the actor is to harm, defraud or injure anyone, upon which the offense is a misdemeanor of the first degree. The act adds definitions of “licensing board” and “professional or occupational license.”

Health Insurance Coverage Parity and Nondiscrimination Act, Act 14 (SB 237) – This act amends The Insurance Company Law of 1921, in general provisions relating to insurance companies, further providing for annual and other reports; providing for suitability of annuity transactions and for the regulation of health insurance practices concerning parity and nondiscrimination; further providing for definitions, for acting for or aiding nonadmitted insurers, for requirements for eligible surplus lines insurers, for nonadmitted insurers, for surplus lines licensee’s duty to notify insured, for declarations, for surplus lines advisory organizations, for evidence of insurance, for effect of payment to surplus lines licensee, for licensing of surplus lines licensee, for surplus lines licensee’s acceptance of business from brokers, for records of surplus lines licensees, for monthly reports, for surplus lines tax, for tax on independently procured insurance, for suspension, revocation or nonrenewal of surplus lines licensee’s license and for penalties; providing for compliance; and, in children’s health care, further providing for expiration of certain provisions. In particular, the act adds to The Insurance Company Law an article titled Health Insurance Coverage Parity and Nondiscrimination. The purpose of the article is “to maintain the commonwealth’s sovereignty over the regulation of health insurance … by implementing the requirements of the [federal] Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 … , the Genetic Information Nondiscrimination Act of 2008 … , and Michelle’s Law … , collectively contained in the Public Health Service Act. The provisions of this article are intended to meet these requirements while retaining the commonwealth’s authority to regulate health insurance … , consistent with §§ 2722 and 2761 of the Public Health Service Act.” Insurers must comply with the federal acts, per §§ 2701, 2702, 2705, 2707, 2721, 2753 and 2754 of the Public Health Service Act. The article provides for definitions and penalties, and authorizes the Insurance Department to promulgate regulations.

Amendments to the Model Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance, Acts 17 (HB 526) – This act amends the Model Act further providing for premiums and refunds by requiring notices to be provided for each individual policy or group certificate paid by single premium, including renewals and refinancing, containing certain information related to debtor entitlement.

The Dental Law Amendments, Act 19 (HB 602) – This act amends The Dental Law further defining “expanded function dental assistant”; further providing for the State Board of Dentistry by increasing the composition by two; and providing for scope of practice of expanded function dental assistant.

Pharmacists and Collaborative Drug Therapy Management, Act 29 (HB 1041) – This act amends the Pharmacy Act further providing for definition of “practice of pharmacy” and “management of drug therapy” and identifies further conditions under which a pharmacist’s license may be refused, revoked or suspended by the board; and provides for drug therapy protocols. The act outlines provisions for collaborative drug therapy management and provides that a pharmacist shall enter into a written collaborative agreement with a licensed physician authorizing the management of drug therapy for a disease, or for a condition or symptom of a disease, before practicing the management of drug therapy in a setting other than an institutional setting. A pharmacist who is a party to a collaborative agreement authorizing the management of drug therapy must provide to the board satisfactory evidence of training in the management of drug therapy for a disease, or for a condition or symptom of a disease, which is the subject of the collaborative agreement and must utilize an area for in person or electronic consultations relating to the management of drug therapy that ensures the confidentiality of the patient information being discussed. A pharmacist who is a party to a collaborative agreement authorizing the management of drug therapy shall obtain and maintain a level of professional liability insurance coverage in the minimum amount $1,000,000 per occurrence or claims made. Nothing in this act shall be construed to provide prescriptive authority to a pharmacist.

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Food, Act 31 (SB 828) and Act 106 (HB 174) – SB 828 amends the Public Eating and Drinking Place Law by providing definitions and adding language providing the act shall not apply to food or drink prepared in a private home and used or offered for human consumption by any of the following organizations: a 501(c)(3) tax exempt organization; a volunteer fire company or an ambulance, religious, charitable, fraternal, veterans, civic, sportsmen, agricultural fair or agricultural association or any separately chartered auxiliary of any of these associations, on a not-for-profit basis; or an organization that is established to promote and encourage participation and support for extracurricular recreations activities for youth of primary and secondary public, private and parochial school systems on a non-for-profit basis. HB 174 amends Title 3 (Agriculture) codifying the Public Eating and Drinking Place Law and the Food Act; providing for the protection of public health and for regulations; requiring licensing; further providing for organic foods, for maple products, for food employee certification and for farmers’ market; providing for penalties; and making related repeals. All retail food facilities are required to be licensed except those specifically exempt. Exempt facilities include food banks, soup kitchens, school cafeterias, and certain facilities owned by charitable nonprofits. The act provides for registration of business and products, cleanliness standards, certification programs and certification of employees, inspections and reports. A chapter on food safety is added. The act also repeals chapters 59 and 63 of Title 3.

Circulating Nurses Act, Act 32 (HB 1641) – This act requires a circulating nurse in all operating rooms during any surgical procedure and requires a registered nurse to be the circulating nurse in the operating room. The act provides definitions of health care facility, operating room of the facility, and registered nurse. Providing for administration, no hold harmless, and tax exemption. Also adds an article relating to Pennsylvania Trauma Systems Stabilization allowing the department to approve level three trauma centers in accordance with established standards and additional requirements given in the legislation. Application for approval process and procedure is given, along with funding for the trauma centers. Notification of trauma center closing and reporting is further detailed.

Public Welfare Code Amendments, Act 49 (HB 254) & Act 84 (SB 922) – Act 49 amends the Code, in general powers of the Department of Public Welfare, further providing for determining whether applicants are veterans by requiring the form to be made available online; in public assistance, further providing for Medical Assistance payments for institutional care by outlining how payments under the MA fee-for-service program shall be determined and exceptions to that process; and adding a article providing for statewide quality care assessment in order to generate additional revenues for the purpose of assuring that MA recipients have access to hospital services. For fiscal year 2010-11, each covered hospital shall be assessed an amount equal to 2.69 percent of the net inpatient revenue of the covered hospital; and for FYs 2011-12 and 2012-13, an amount equal to 2.84 percent of the net inpatient revenue of the covered hospital. The assessment shall be deposited into the Quality Care Assessment Account and be used to make MA payments to hospitals and make enhanced capitation payments to MA managed care organizations for supplemental payments for inpatient hospital services. The act outlines limitations on use. The department shall report to the Senate and House Health Committees regarding the assessment, which shall expire June 30, 2013. Act 84 amends the Code providing for reasonable limits (changed from lifetime limit) on allowable income deductions for medical expenses when determining payment toward the cost of long-term care services; further defining “general acute care hospital,” defining “high volume Medicaid hospital,” and further providing for authorization by adding that beginning July 1, 2009, and subject to advance written approval by the secretary, a municipality may impose a monetary assessment on the net operating revenues reduced by all revenues received from Medicare of each high volume Medicaid hospital located in the municipality, ending June 30, 2013; and further providing for administration, no hold harmless, and tax exemption. Also adds an article relating to Pennsylvania Trauma Systems Stabilization allowing the department to approve level three trauma centers in accordance with established standards and additional requirements given in the legislation. Application for approval process and procedure is given, along with funding for the trauma centers. Notification of trauma center closing and reporting is further detailed.

Mini-Cobra Benefit Extension, Act 51 (HB 1251) – This act amends The Insurance Company Law of 1921 extending mini-COBRA benefits for eligible individuals to capture the recently-extended federal premium subsidy from nine to 15 months and addressing compliance with other rules, derivative transactions, and general three percent diversification. The act also provides for appealing an insurer’s determination that the benefit trigger is not met on long term care insurance claims and for prompt payment of clean claims.

Amendments to Liability Immunity in Insurance Law, Act 97 (SB 1181) – This act amends § 349.1 (relating to immunity from liability) of The Insurance Company Law of 1921; in particular, adding that “In the absence of fraud or bad faith, ... immunity ... shall also apply to persons identified as designated employees of insurers, self-insurers or insurance licensees whose responsibilities include the investigation and disposition of claims relating to suspected fraudulent insurance acts when sharing information on such acts or persons suspected of engaging in such acts with other designated employees of the same or other insurers, self-insurers or insurance licensees whose responsibilities include the investigation or disposition of claims relating to suspected fraudulent insurance acts.” Further, the act provides...
Doctrine of Corporate Liability
By John C. Cameron

In Scampone v Grane Healthcare Company, et.al., 2010 PA Super 124, the Pennsylvania Superior Court has held that a nursing home facility could be found liable under a corporate negligence theory for a resident’s death. The court concluded that a nursing home is analogous to a hospital in the level of its involvement in a patient’s overall health care.

The Pennsylvania Superior Court has held that a nursing home facility could be found liable under a corporate negligence theory for a resident’s death.

This decision continues to expand the application of the corporate negligence doctrine to health care entities. Previously, the Pennsylvania Supreme Court held that a hospital could owe a non-delegable duty to uphold a certain standard of care directly to its patients without requiring an injured party to establish the negligence of a third party in Thompson v Nason Hospital, 537 Pa. 330, 59’ A. 2d 703 (1991). In Shannon v McNulty, 718 A. 2d 828 (Pa. Super. 1998), the Superior Court held that the doctrine of corporate liability could be extended to health maintenance organizations. The Superior Court extended a cause of action for corporate liability to a medical professional corporation in Hrycza v West Penn Allegheny Health System, Inc., 978 A.2d 961 (Pa. Super. 2009). In the Scampone decision, Justice Mary Jane Bowes opined that the failure of a health care provider to hire adequate staff to perform the functions necessary to properly administer to a patient’s needs constituted a violation of the nursing home’s duty to formulate, adopt and enforce adequate rules and policies to ensure quality care for its patients.

The court also found sufficient evidence to establish that both the nursing home and the management company that managed all aspects of the operation of the nursing facility acted with reckless disregard to the rights of others and created an unreasonable risk of physical harm to the residents. The record was replete with evidence that the facility was chronically understaffed, records were deliberately altered, medication records were falsified, and that staffing levels were increased during state inspections and reduced after the inspections were concluded. Based on the evidence of misconduct, the Superior Court reversed the nonsuit granted to the management company as well as the trial court’s refusal to submit to the jury the question of whether an award of punitive damages was appropriate.

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that “‘insurer’ means an insurance company, association, exchange, interinsurance exchange, health maintenance organization, preferred provider organization, professional health services plan corporation subject to 40 Pa.C.S. Ch. 63 (relating to professional health services plan corporations), a hospital plan corporation subject to 40 Pa.C.S. Ch. 61 (relating to hospital plan corporations), fraternal benefit society, beneficial association, Lloyd’s insurer or health plan corporation.”

Health Care Employee Photo ID Tags, Act 110 (HB 1482) – This act amends the Health Care Facilities Act providing for photo identification tag regulations by stipulating the department shall promulgate regulations to require each employee to wear a photo identification tag at all times when the employee is working. The act provides for the design of the tag and required information to be on the tag. Interim regulations are provided for as well as exceptions. The act defines employee.

The Anatomic Pathology Service Disclosure Act, Act 121 (HB 2521) – The act outlines disclosure requirements for anatomic pathology services and provides for definitions and penalties.
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Help With Your PBA Health Care Law Committee Listserv

The following instructions should assist in your effective use of your Committee's listserv.

To subscribe, log in on the PBA website with your PBA member username and password, select the “Committees/Commissions” tab, then the “Health Care Law Committee” tab, then the “Listserv Sign-Up” tab. The subscription form can also be accessed directly at www.pabar.org/public/listservform.asp.

Once subscribed to the listserv, you will get the following confirmation message:
“File sent due to actions of administrator traci.raho@pabar.org.”

To send a message to members of the listserv, address your e-mail to health@list.pabar.org.

To reply only to the sender, hit “Reply,” and type your personal reply to the sender. This response will only go to the sender, not to the entire listserv membership. You can manually add other recipients outside of the sender or the membership.

To reply to the entire listserv membership, hit “Reply to All,” and type your response. This response will go to the sender and to the entire listserv membership.

To unsubscribe, send a message to listserv@list.pabar.org with “unsubscribe health” in the body.

To change your e-mail address, you must unsubscribe the old e-mail address using the old e-mail address and subscribe the new e-mail address using your new e-mail address. Sending an e-mail to the list will not change your e-mail address on the listserv.

For customer service, contact Traci Raho, PBA internet coordinator, (800) 932-0311, ext. 2255.