

All Healthcare Practice Section Members:

I hope everyone is well and want to touch base with the section and update you on some things going on with the FDCC and your section.

(1) The Winter Meeting is in Amelia Island, Florida from March 4-7, 2015. **Registration is now open for the meeting.** I strongly encourage you to sign up today and make your hotel reservations. Please come for all or part of the week if you can. Our section has teamed with the Civil Rights and Public Entity Liability Section and will present a program entitled:

**TRAUMA IN THE ER:
THE INTERSECTION OF LAW ENFORCEMENT AND MEDICAL PROVIDERS AND
THE EXIGENCY OF CIRCUMSTANCES**

The program will discuss the interplay between law enforcement and medical providers, and the obligations and potential liability of medical providers when demands are made by law enforcement for blood draws, bullets, pathology and access to information. The program is sure to be entertaining and will address an area that many of us have not thought about but will likely have to deal with at some juncture in our legal careers. Presenters will be **Roger Hillman** of Garvey, Schubert & Barer in Seattle, WA and **David MacMain** of MacMain Law Group in Malvern, PA.

(2) The Annual Meeting is at the Fairmont Banff Springs in Alberta, Canada July 25 - August 1, 2015. We are working with the Appellate Law Section and the Toxic Tort and Environmental Law Section on a program entitled: "Preserving Error on Appeal." It doesn't sound too sexy now but the program will be filled with information that we can take home and apply on a daily basis.

(3) We are going to have a Section conference call on Friday, February 6, 2015 at 9 am PST, 10 am MST, 11 am CST, 12 noon EST. This is a business meeting to discuss any issues you would like to see addressed, suggestions on the Section and getting ready for Amelia Island. The call should not last long, probably no more than 15-30 minutes. Please block out some time to participate in the call, if you're able. I will get a call-in number circulated by the end of this week.

(4) Please be on the lookout for new members to both the FDCC and our section. If you have recommendations for new FDCC members, please let me know and we will start the ball rolling. We need to nominate qualified people and want our section to get credit if we make the nomination. In looking at new members, we want to focus on states and cities where there are not a large number of FDCC members and law firms in markets with few FDCC members so that we broaden our footprint and exposure. **In making nominations, I would also stress the need for diversity. We also want to stress in-house counsel for nominations.** As it relates to our section, please continue to encourage other FDCC members to join our practice section. We want to continue to increase our numbers.

(5) A reminder that we should also be thinking about the 2016 meetings in San Diego (Winter Meeting) & Quebec (Annual Meeting) and programs for those meetings.

(6) **And finally, a few quick legal hits:**

In Missouri, the Missouri Court of Appeals, Eastern District, left open the door that a hospital can be held liable for the malpractice of a non-employed physician in the case of *Jefferson v. Missouri Baptist Medical Center*. The Court held that common law principles of agency must be applied, focusing on the hospital's ability to control the physician. Even though a rising number of physicians are now employed by hospitals, as practitioners we should anticipate an assault against hospitals regarding non-employed physicians as well. We need to be prepared not only to defend these cases but to proactively counsel health care clients so that such claims can be successfully defended. Factors hospitals should consider are: (1) Is the contract directly with the physician or with a physician group who employs/contracts with the physician; (2) Does the hospital set medical standards or require compliance with hospital policies; (3) Does the hospital set the price for services; (4) Does the hospital bill for services; (5) Who sets the physician's schedule; (6) Can the hospital terminate the physician's services; (7) Is the contract one of exclusivity; and (8) Is the physician directly paid by the hospital.

In Florida, the Fourth District Court of Appeals for the State of Florida, denied a Petition for Cert requesting that the Court quash the trial court's order compelling discovery of photographs from the plaintiff's Facebook page. In *Nucci v. Target Corp.*, No. 4D14-138, the Fourth District Court of Appeals held that the photographs sought were calculated to lead to the discovery of admissible evidence and that the plaintiff's privacy interests, if any, were only minimal. The Court held that as the discovery order did not depart from the essential elements of the law regarding discovery, the petition was denied.

Scott

Scott Salter [SSalter@starneslaw.com]