



Health Law Section

The Mississippi Bar

Spring 2018



Jonell Beeler

Message from the Chair

As Chair of the Health Law Section, I am proud to report that we have 200 members, making us the 9th largest section out of 16 sections of The Mississippi Bar. Our members advise clients in all segments of the health care industry and work in federal and state government programs. The Section serves and represents our members through our publications and programs, all made possible by the volunteer efforts of our members. Our goal is to provide our members with information necessary to stay current with trends and new developments in health care law, including

changes in federal and state laws and regulations.

In this newsletter, Conner Reeves, discusses how Mississippi has developed a new system for oversight of our occupational licensing boards. On Friday, April 20, the Health Law Section will present a 6 hour, including 1 hour of ethics, Continuing Legal Education Program on “Legal Implications of the Opioid Crisis.” Finally, we are happy to announce the Section program for the Annual Meeting. Section member Rusty Comley has arranged for an expert panel presentation on

“Good Counsel for Preventing and Responding to Cyberattacks facing Healthcare Providers.”

We hope to see you at this Friday’s CLE program and at the Annual Meeting. If you would like to write an article for our upcoming newsletter or volunteer for future program presentations or serve on the Executive Committee, please let us know.

- Jonell Beeler

Health Law Section Annual CLE Seminar - Friday, April 20, 2018

Legal Implications of the Opioid Crisis

The Health Law Section of The Mississippi Bar will offer a CLE Program on the Legal Implications of the Opioid Crisis on Friday, April 20 in Jackson at the Mississippi Bar Center. This Program will cover the many professional, regulatory, administrative, civil and criminal issues involved in tackling the serious Opioid Epidemic facing our State and its residents and how attorneys can best advise their clients. The cost of this CLE includes a light breakfast and lunch. This seminar will provide timely information to health care lawyers as well as to general practitioners with health care and non-health care clients.

[Click here to download the registration brochure](#) or it is available on the next two pages.



THE MISSISSIPPI BAR



Health Law

The Mississippi Bar's Health Law Section presents:

Legal Implications of the Opioid Crisis

Friday, April 20, 2018

MS Bar Center - 643 North State Street - Jackson

6 Hours CLE Credit, including 1 Ethics Hour

About the Seminar

The Health Law Section of The Mississippi Bar will offer a CLE Program on the Legal Implications of the Opioid Crisis. This Program will cover the many professional, regulatory, administrative, civil and criminal issues involved in tackling the serious Opioid Epidemic facing our State and its residents and how attorneys can best advise their clients. Lieutenant John Harless, Mississippi Bureau of Narcotics, will address pharmaceutical diversion and current trends in controlled substances. Julie B. Mitchell, Mitchell Day Law Firm, PLLC, will provide an overview of the legal and regulatory response to the Opioid Crisis. Richard Roberson, General Counsel, MS Hospital Association, will discuss how hospitals are responding and how attorneys can best represent their hospital clients. Stan T. Ingram, Biggs Ingram & Solop, PLLC, will discuss the Opioid Crisis from the perspective of the Mississippi Board of Medical Licensure. J. Conner Reeves, Mississippi State Medical Association, will address issues affecting physician clients, and Scott Gilbert, Watkins & Eager, will address criminal issues arising from the Opioid Crisis in order to equip attorneys in defending their clients in these actions. Chip Glaze, Director of The MS Bar Lawyers and Judges Assistance Program, will provide one Ethics hour on Ethical Implications for Legal Practitioners. The cost of this CLE includes a light breakfast and lunch. This seminar will provide timely information to health care lawyers as well as to general practitioners with health care and non-health care clients. We hope to see you at the CLE.

Registration Form

Legal Implications of the Opioid Crisis

Friday, April 20, 2018 - MS Bar Center - 643 North State Street - Jackson

\$150 for Health Law Section Members / \$185 Non-Section Members

Full Name: _____ Bar #: _____

Preferred First Name for Badge: _____ City: _____

Email (required to register): _____

Check: Make check payable to **The Mississippi Bar** and return with this registration form to:

The Mississippi Bar, Attn: Rene' Garner, P.O. Box 2168, Jackson, MS 39225-2168

Credit Card: Card #: _____

Expiration Date: _____ Security Code: _____

Return registration form via email at rgarner@msbar.org or fax to (888) 497-8305.

The Mississippi Bar's Health Law Section presents:

Legal Implications of the Opioid Crisis

Friday, April 20, 2018 - MS Bar Center - 643 North State Street - Jackson

Agenda

- | | |
|----------------------|---|
| 8:30 – 8:45 | Registration Check-in and Breakfast |
| 8:45 – 9:45 | Current Trends in Opioid Abuse
Lieutenant John Harless, Pharmaceutical Diversion Investigator, MS Bureau of Narcotics |
| 9:45 – 10:15 | The Opioid Crisis: How We Got Here
Julie B. Mitchell, Mitchell Day Law Firm, PLLC |
| 10:15 – 10:45 | The Opioid Crisis: Insight From The MS Hospital Association
Richard Roberson, General Counsel, MS Hospital Association |
| 10:45 – 11:00 | Break |
| 11:00 – 12:00 | The Opioid Crisis: Insight From The MS Board of Medical Licensure
Stan T. Ingram, Biggs Ingram & Solop, PLLC and Outside Counsel to the MS Board of Medical Licensure |
| 12:00 – 12:45 | Lunch will be provided – 45 minutes |
| 12:45 – 1:45 | Advising the Physician Client
J. Conner Reeves, Mississippi State Medical Association |
| 1:45 – 2:45 | Criminal Implications for Prescribers
J. Scott Gilbert, Watkins & Eager |
| 2:45 – 3:00 | Break |
| 3:00 – 4:00 | Ethical Implications for Legal Practitioners
Chip Glaze, Director of The MS Bar Lawyers and Judges Assistance Program |

Notes

Registration:

The registration fee is \$150 for Section Members and \$185 for Non-Section Members.

Written Materials:

Will be provided to all registrants on the day of the seminar.

Cancellations:

Cancellations made prior to the seminar will receive a refund less a \$25 administrative fee. Cancellations on the day of the seminar and “no shows” will receive no refund.

Questions:

Contact Rene' Garner at The Mississippi Bar at rgarner@msbar.org with any questions you might have.

Healthcare Regulations Under New Scrutiny

By: Conner Reeves, Mississippi State Medical Association

In 2015 the US Supreme Court issued an opinion in *North Carolina Board of Dental Examiners v. Federal Trade Commission* that significantly impacts how state licensing boards comprised of active market participants could regulate their respective licensees.

This decision stemmed from an FTC action against the Dental Board alleging violations of FTC antitrust regulations when the Board tried to stop non-dentists from providing teeth whitening services at mall kiosks. The Board's actions were deemed "unfair methods of competition" because the Board consisted of dentists in active practice that could gain financially from their decision. The Dental Board claimed that the state-action doctrine protected it from anti-trust liability because the Board is a state agency, though the FTC disagreed and upheld its order.



Conner Reeves

The Fourth Circuit upheld the FTC's decision and the US Supreme Court affirmed, stating that a state licensing board comprised of active market participants does not automatically enjoy protection under the state-action doctrine. Such boards are more like private actors and can only invoke antitrust immunity if that board is acting according to clearly-articulated state policy and is subject to active state supervision, though the Court did not specify how states could accomplish this. The sufficiency of a supervisory scheme is "flexible and context-dependent" but the framework must contain at least the following: "the supervisor must review the substance of the anticompetitive decision; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy; the mere potential for state supervision is not an adequate substitute for a decision by the State; and the state supervisor may not itself be an active market participant."

State Responses

Considering that many state licensing boards throughout the country are comprised of active market participants, states could either develop new systems of oversight or reconstitute licensing boards with non-licensees. Maryland requires all health care boards to submit proposed actions to the Office of Administrative Hearings which assesses whether the proposed action furthers state policy and can approve, disapprove or modify the proposed action. Ohio created the Common Sense Initiative Office within the office of the Governor to review non-disciplinary decisions by specific boards. Tennessee amended its Administrative Procedures Act to require the commissioner or CEO of the administrative department under which a regulatory board operates to approve, veto or remand any rule promulgated by that board that may be an unreasonable restraint of trade.

Mississippi was one of the first states to respond by adopting the Occupational Board Compliance Act of 2017 which created the Occupational Licensing Review Commission composed of the Governor, the Secretary of State, and the Attorney General (or his or her designee). One purpose of the Commission is to ensure that 29 of Mississippi's occupational licensing boards and board members avoid liability under

Healthcare Regulations Under New Scrutiny, *continued*

federal antitrust laws. Representative Cory Wilson (District 73- Madison) authored the bill that became the law. “Mississippi licenses more occupations than only four other states. HB1425 sets a clear state policy in favor of economic freedom. We wanted to level the playing field for business and reduce regulatory barriers that keep people from working. The law sets a framework to grow our economy while protecting public safety and consumer protection. Most of all, it sends a message to our young people that Mississippi is a place where entrepreneurs and innovators will be welcomed with open arms,” said Wilson.

How it Works

Meetings are held quarterly unless called more frequently and are subject to the requirements of the Open Meetings Act. The Commission reviews the substance of all proposed regulations that are required to be filed with the Secretary of State’s office including new provisions and changes to existing regulations. This review ensures compliance with state policy, which is to “(1) increase economic opportunities for all of its citizens by promoting competition and thereby encouraging innovation and job growth and (2) use the least restrictive regulation necessary to protect consumers from present, significant and substantiated harms that threaten public health and safety”. The Commission can approve, disapprove, disapprove with suggested amendment, or allow the occupational licensing board to withdraw for revision any regulation submitted. Individual disciplinary actions are not subject to review.

The Commission adopted resolutions at its first meeting which established the procedure for the named boards to submit proposed regulations. Boards are required to submit a proposed rule to the Commission prior to filing the rule with the Secretary of State’s office for public comment and must submit again after adopting a final rule. The commission has approved rules from the Board of Cosmetology, Board of Nursing, and the Board of Examiners for Licensed Professional Counselors.

Attorneys representing healthcare clients should be aware of how this new layer of oversight will prolong the final adoption and enforcement of proposed regulations. Additionally, clients may request to provide a formal presentation on a rule before the Commission, though the Commission is not required to grant requests. More information about the Occupational Licensing Review Commission can be found on the Secretary of State’s website on the Regulation & Enforcement page.

Boards subject to active supervision:

1. Mississippi State Board of Public Accountancy
 2. Mississippi State Board of Architecture
 3. Mississippi Auctioneer Commission
 4. Mississippi State Board of Contractors
 5. Mississippi Board of Licensure for Professional Engineers and Surveyors
-

Healthcare Regulations Under New Scrutiny, *continued*

6. State Board of Registration for Foresters of the State of Mississippi
7. Mississippi Board of Registered Professional Geologists
8. Mississippi Motor Vehicle Commission
9. Mississippi Polygraph Examiners Board
10. Mississippi Real Estate Appraiser Licensing and Certification Board
11. Mississippi Real Estate Commission
12. Mississippi Board of Veterinary Medicine
13. Mississippi State Board of Barber Examiners
14. Mississippi Board of Examiners for Social Workers and Marriage and Family Therapists
15. Mississippi State Board of Chiropractic Examiners
16. Mississippi State Board of Cosmetology
17. Mississippi State Board of Examiners for Licensed Professional Counselors
18. Mississippi State Board of Dental Examiners
19. Mississippi State Board of Funeral Service
20. Mississippi State Board of Massage Therapy
21. Mississippi State Board of Medical Licensure
22. Mississippi Board of Nursing
23. Mississippi State Board of Optometry
24. Mississippi State Board of Pharmacy
25. Mississippi State Board of Physical Therapy
26. Mississippi Board of Psychology Examiners
27. Mississippi Fire Personnel Minimum Standards and Certification Board
28. Mississippi Board on Law Enforcement Officers Standards and Training
29. Mississippi Autism Board

Health Law Section Annual Meeting - Thursday, July 12, 2018

Good Counsel for Preventing and Responding to Cyberattacks facing Healthcare Providers

H. Rusty Comley, Watkins & Eager, LLC, Jackson, Mississippi, Moderator

Jeremy Batterman, Azonic Security Solutions, Chicago, Illinois, Panelist

Mike Skinner, HORNE Cyber, Memphis, Tennessee, Panelist

Healthcare providers are in one of the highest risk industries for cyberattacks. This panel will discuss the nature of cyber threats faced by healthcare providers, including prevention, legal issues related to data breaches, and cyber insurance coverage. The panel will provide information for attorneys to counsel healthcare provider clients on minimizing the risk of cyberattacks and data breaches, as well as responding to them, including regulatory issues.

[Click here for more information](#) on how to attend this event and The Mississippi Bar's Annual Meeting.

Health Law Section

The Mississippi Bar
Health Law Section
P.O. Box 2168
Jackson, MS 39225-2168

Rene' Garner
Section and Division Coordinator
Phone: 601-355-9226
Fax: 601-355-8635
Email: rgarner@msbar.org

We are on the
web!

Click [here](#)

Upcoming Events

Friday, April 20, 2018
Health Law Section Annual CLE Seminar
"Legal Implications of the Opioid Crisis"
Register Now

Thursday, July 12, 2018
Health Law Section Annual Meeting
Sandestin Hilton - Destin, Florida
"Good Counsel for Preventing and Responding to
Cyberattacks facing Healthcare Providers"

Health Law Section 2017-2018 Executive Committee

Write for the Health Law Section Newsletter

The Health Law Section newsletter is now accepting articles on health law topics for publication in the newsletter. If you have an idea for an article, you may submit it to Health Law Section Newsletter Editor Conner Reeves at

CReeves@msmaonline.com

Please include a short description of the article. The Health Law Section Committee will consider your proposal and will notify you of whether your proposal has been accepted. The committee reserves the right to reject proposals. Please note that when you submit your article for publication in the newsletter, you will be granting The Mississippi Bar the nonexclusive right to publish your article.

Chair

Jonell Beeler
Baker Donelson
P O Box 14167
Jackson, MS 39236-4167
Phone: (601) 351-2427
Fax: (601) 592-2427
Email: jbeeler@bakerdonelson.com

Vice Chair

Julie Mitchell
Mitchell Day Law Firm, PLLC
618 Crescent Blvd Ste 203
Ridgeland, MS 39157-8664
Phone: (601) 707-4036
Fax: (601) 213-4116
Email: jbmitchell@mitchellday.com

Secretary

Blake Adams
Phelps Dunbar LLP
PO Box 1220
Tupelo, MS 38802-1220
Phone: (662) 690-8120
Fax: (662) 842-3873
Email: blake.adams@phelps.com

Past Chair

Jenny Tyler Baker
Copeland Cook Taylor & Bush
PO Box 10
Gulfport, MS 39502-0010
Phone: (228) 863-6101
Fax: (228) 868-9077
Email: jtbaker@cctb.com

Member at Large (8/2015-7/2018)

Jeff Cook
Forrest General Hospital
78 Bellegrass Blvd
Hattiesburg, MS 39402-1904
Phone: (601) 288-4453
Fax:
Email: jwcook@forrestgeneral.com

Member at Large (8/2016-7/2019)

Conner Reeves
MS State Medical Assoc
1810 Brecon Dr
Jackson, MS 39211-5714
Phone: (601) 853-6733
Fax: (601) 853-6746
Email: creeves@msmaonline.com

Member at Large (8/2017-7/2020)

Nikki Huffman
Carr Allison
14231 Seaway Rd Ste 2001
Gulfport, MS 39503-4635
Phone: (228) 864-1060
Fax:
Email: nhuffman@carrallison.com



Mitchell, Adams, Beeler and Reeves