Medical Liability and Health Care Law

Defend technology issues: data breach, audit trails, and more

Tips for dealing with hindsight bias

How to avoid bad faith

Sink your teeth into dental actions

March 10–11, 2016
Marriott New Orleans
New Orleans, Louisiana
DRI’s Medical Liability and Health Care Law Seminar will bring you up to date on emerging topics and trends in medical liability and health care law. An accomplished faculty of attorneys, physicians, and claims professionals presents cutting-edge topics, covering everything from corporate medical liability issues to technology in medicine and law to regulatory audits and licensure actions, while also providing excellent networking opportunities.

Tracy L. Zuckett  
Program Chair

Laura D. Eschleman  
Program Vice Chair

Alex J. Hagan  
Committee Chair

J. Richard Moore  
Committee Vice Chair

Stephen O. Plunkett  
Law Institute

See what others have to say about DRI seminars

PRESENTED BY  DRI’s Medical Liability and Health Care Law Committee
What You Will Learn

- Practical advice for handling audit trails and other electronic medical record (EMR) pitfalls and presenting EMRs in deposition and trial
- An overview of medico-legal issues associated with various cardiac pathologies and interventions
- Tips on defending providers in regulatory proceedings and administrative actions
- How to address common theories in sepsis cases
- Managing risks in primary care preventive medicine—failure to diagnose versus defensive medicine
- Identifying and addressing trends in dental claims for risk management and defense
- Techniques for avoiding the bad faith “set up”
- Strategies for defending against hospital direct liability claims
- Ethical considerations when using social media as a research tool, as well as for firm and attorney marketing
- Tips for young lawyers to assist health care provider clients in dealing with the personal effects of lawsuits

Get Started

1. Review the brochure and identify sessions of interest to you
2. Share this brochure with colleagues
3. Register online or complete the form in the back
4. Add the program to your calendar
5. Download the DRI App and make use of its features to get the most out of this program
6. Share on social media

Maximize Your DRI Seminar Experience

No one gets you connected like DRI.

- Use the DRI App to customize your schedule, view course materials, and communicate with fellow attendees and speakers.
- Access the DRI Medical Liability and Health Care Law Committee Community to network with individual members. Share articles, post blogs, and connect with others on the latest trends in your area of practice.
- Discover the DRI Client Connection—meet in-house registrants and speakers.
PROGRAM SCHEDULE

WEDNESDAY, MARCH 9, 2016

5:30 p.m.  First-Time Attendees Reception  
MEDICAL LIABILITY AND HEALTH CARE LAW  
COMMITTEE CHAIR | Alex J. Hagan

6:00 p.m.  Registration

6:00 p.m.  Networking Reception  
SPONSORED BY Wilson Elser Moskowitz Edelman & Dicker LLP

THURSDAY, MARCH 10, 2016

7:00 a.m.  Registration

7:00 a.m.  Continental Breakfast  
SPONSORED BY Carlock Copeland & Stair LLP  
White and Steele PC

8:00 a.m.  Welcome and Introduction  
Stephen O. Plunkett, Bassford Remele PA,  
Minneapolis, Minnesota  
Tracy L. Zuckett, White and Steele PC,  
Denver, Colorado

8:10 a.m.  Science or Science Fiction  
Bradbury or Asimov might not be surprised, but you may be. Technology, apps, portals, robotics, pneumatics, black boxes, and all that New Orleans Jazz! Google this and Apple that. You will not want to miss this fascinating presentation focused on cutting-edge medical technology and devices and the legal risks inherent with their use.

9:10 a.m.  Electronic Medical Record Audit Trails  
The advent of electronic medical records (EMRs) has created an array of new issues in litigation. This panel discussion, from in-house and defense attorney perspectives, will focus on EMR issues in threatened litigation, actual litigation/discovery, and trial. The panel, utilizing real factual scenarios, will present advice for handling EMR pitfalls presented by document requests, EMR audit trails, forensic evaluation of patient records, pre-
paring witnesses for depositions, evidentiary issues, and effective use of EMRs during trial.
MODERATOR | Tracy L. Zuckett, White and Steele PC, Denver, Colorado

PANEL
Margaret M. Pisacano, University of Kentucky Medical Center, Lexington, Kentucky  
Kathleen M. Reilly, Anspach Meeks Ellenberger LLP, Buffalo, New York

10:10 a.m.  Refreshment Break  
SPONSORED BY Ellis & Winters LLP

10:25 a.m.  Electronic Medical Record Audit Trails (cont.)

11:00 a.m.  The Hearts Have It  
A multidisciplinary discussion by an interventional cardiologist and a defense attorney of the anatomy and function of the heart, diagnostic tools to measure heart function, indications, and timing of surgery versus catheterization and new “hybrid” catheterization labs where surgeon and cardiologist meet. The panel will present illustrative cases from the catheterization lab and operative suite and discuss medico-legal issues associated with various heart pathologies and interventions.

Emily E. Hass, MD, University of Colorado Denver, Denver, Colorado  
Kevin J. Kuhn, Wheeler Trigg O’Donnell LLP, Denver, Colorado

12:00 p.m.  Lunch (on your own)

1:15 a.m.  Negotiating the HIPAA/HITECH Minefield  
Federal laws and regulations have imposed increasingly exacting obligations on the part of health care providers and their business associates, including attorneys, to provide for the security of confidential patient information. At the same time, technological advances have created challenges in protecting the accessibility of electronically stored information. This presentation will address these developments and inform attorneys about how to partner with clients to maximize privacy protections. Our speaker has direct experience developing and overseeing the administration of systems
designed to protect confidential patient information, and interacting with the regulators responsible for policing compliance.

Valita M. Fredland, JD, MA, Indiana University Health Inc., Indianapolis, Indiana

2:15 p.m. Through the RetroSpectoScope: Dealing with Hindsight Bias in Discovery and at Trial
After a bad outcome, one can often look back and recognize subtle symptoms or details suggesting that a health care provider might have exercised judgment differently and improved the patient’s chances. Such “hindsight bias” is a challenge for providers and their attorneys in presenting a standard-of-care defense to a jury of nonscientific laypeople. This presentation will discuss using medical literature and obtaining unbiased expert reviews to counter plaintiff’s biased expert witness testimony. The presentation will further discuss addressing hindsight bias in voir dire, direct and cross-examination, and closing argument.

Thomas A. Wiseman III, Wiseman Ashworth Law Group PLC, Nashville, Tennessee

3:05 p.m. Refreshment Break
SPONSORED BY Burr & Forman LLP

3:20 p.m. Sepsis: The Medicine, Claims, and Defenses
Systemic inflammatory response syndrome (SIRS), sepsis, and septic shock are significant medical conditions that contribute to up to half of all hospital deaths annually. Attendees will learn about causes and presentations of SIRS, sepsis, and septic shock, available treatment modalities, recent literature and guidelines, common theories advanced by plaintiffs in sepsis cases, and methods to defend against the same, including how to deal with “abnormal” physical exam findings, lab results, and vital signs.

Susan Carleo, RN, CAPA, LNCC, Carleo Legal Nurse Consulting, Syracuse, New York

Bernard S. Vallejos, Farrell White & Legg PLCC, Huntington, West Virginia

4:10 p.m. Avoiding Bad Faith in Medical Malpractice: A Primer of Perspectives
During a discussion of the ethical obligations imposed by the tripartite relationship between insured-insurer-counsel and the common bases for extra-contractual claims against the insurer, this session will address the trends in bad faith litigation in the health care and medical malpractice settings, and provide tips from an in house perspective on how to avoid the bad faith “set up.”

Michelle M. Samadany, RN, JD, McGriff Seibels & Williams Inc., Birmingham, Alabama

5:00 p.m. Adjourn
5:05 p.m. Medical Liability and Health Care Law Committee Meeting (open to all)
6:00 p.m. Networking Reception
7:30 p.m. Dine-Arounds | Join colleagues and friends at selected restaurants for dinner (on your own). More details on-site.
7:30 p.m. Private cooking demonstration and food tasting at the New Orleans School of Cooking. See page 4 for details.

FRIDAY, MARCH 11, 2016

Boarding Pass Kiosk
SPONSORED BY Bonne Bridges Mueller O’Keefe & Nichols
Heidell Pittoni Murphy & Bach LLP

7:00 a.m. Registration
7:00 a.m. Continental Breakfast
SPONSORED BY Hospital Experts
Wiggin and Dana LLP

7:00 a.m. Young Lawyers Breakout: Is It Personal to You? If Not, It Should Be
Medical malpractice actions have a personal effect on health care providers far beyond the courtroom and long after the lawsuit is over. This program will examine the wide-ranging effect lawsuits have on health care providers and will offer tools and resources attorneys can use to help the health care provider cope with the stresses commonly experienced during the course of a lawsuit.

Laurie C. Drill-Mellum, MD, MPH, MMIC Group Inc., Minneapolis, Minnesota

Scott M. Salter, Starnes Davis Florie LLP, Birmingham, Alabama

8:00 a.m. Announcements
Laura D. Eschleman, Nall & Miller LLP, Atlanta, Georgia
8:05 a.m. **Defending Health Care Providers in Regulatory Audits and Investigations**
In today’s highly regulated and audited health care world, counsel for health care providers need to be knowledgeable about the various types of audits and investigations, and how to assist providers in evaluating and responding to them. Mr. West will address Medicare audits and investigations, HIPAA audits, Meaningful Use audits, and Medicare revocation and suspension proceedings.

J. Kevin West, Parsons Behle & Latimer PLC, Boise, Idaho

8:55 a.m. **Defensive Medicine in Preventive Care**
Primary care physicians walk a fine line, balancing the risks of misdiagnosis or failure to diagnose with defensive medicine over-ordering of diagnostic testing. Couple that with issues of communication and follow-up with specialty referrals, and preventive medicine becomes laden with potential legal risks. Dr. Ryan will discuss how the primary care practitioner manages these risks while providing quality patient care.

Robert C. Ryan, MD, East Jefferson Family Practice Center, Metairie, Louisiana

9:45 a.m. **Corporate Liability for Hospitals: Recent Trends and Strategies for the Defense**
Plaintiffs looking for deep pockets regularly sue hospitals and other health care institutions under a variety of “direct liability” theories, including negligent credentialing and hiring, non-delegable duty, failure to train and supervise staff, and failure to implement or follow hospital policies. This session will highlight recent legal developments and trends in this area and provide several strategies for consideration in managing and defending direct liability claims.

Erika L. Amarante, Wiggin and Dana LLP, New Haven, Connecticut

10:35 a.m. **Refreshment Break**

10:50 a.m. **Medical Licensure Administrative Actions**
Representing a physician in an administrative licensure action before a state’s Medical Licensure Board involves unique and distinct issues. The session will discuss the three most common administrative licensure actions (substance abuse, boundary violations, and competence issues), provide defense techniques and strategies for each type of case and address how an administrative licensure action can affect a malpractice case.

Albert Barclay Wong, Drewry Simmons Vornehm LLP, Carmel, Indiana

11:40 a.m. **Dental Liability Trends, Issues, and Expanding Services**
This presentation highlights dental claim trends and issues and provides risk management tips to help providers prevent future incidents. Dentists face liability risks that range from improper preventive care, to missed cancer, to death. You will also learn about cosmetic and spa services that many dentists have incorporated into their practices.

Kevin Fisher, Intercare Insurance Services Inc., Bellevue, Washington

12:30 p.m. **Navigating Social Media Is Not the Big Easy: Ethics in the Digital World**
Are you on LinkedIn or Facebook? Do you tweet or blog? Do you have a website? Social media evolves daily. Before jumping in with both feet or even testing the waters, it is imperative that attorneys understand the ethical rules that govern investigations, marketing, and other self-promotion activities involving social media.

Susan Burns, RN, JD, Sedgwick CMS Inc., Chicago, Illinois

1:30 p.m. **Adjourn**

**NETWORKING EVENT**
**“Tantalize Your Taste Buds”**
The New Orleans School of Cooking

Note: Limited to 40 participants, first come, first served basis.

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Denotes **THE DRI CLIENT CONNECTION**: In-house speakers

Denotes medical professional

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**Thursday, March 10, 7:30 p.m.–9:30 p.m.**
Join colleagues and friends for an evening of networking fun, food, and folklore at the New Orleans School of Cooking! You will experience the basics of Louisiana cooking in a way you’ll never forget in a renovated molasses warehouse built in the early 1800s. Fun is the primary ingredient in the kitchen and Creole/Cajun experts will demonstrate New Orleans specialties such as gumbo, jambalaya, shrimp creole, and pralines, and season them with history, tall tales, and trivia. Advance registration and prepayment of $45 is required; no onsite registration, refunds, or substitutions will be available.
General Information

In-House Counsel

In-house counsel are eligible for free registration to DRI seminars. In-house counsel are defined as licensed attorneys, who are employed exclusively by a corporation or other private sector organization for the purpose of providing legal representation and counsel only to that corporation, its affiliates and subsidiaries. In order to qualify for free registration, the individual must also be a DRI member and a member of DRI’s Corporate Counsel Committee. Offer excludes the DRI Annual Meeting.

Claims Executives

Any member of DRI employed as a claims professional by a corporation or insurance company, who spends a substantial portion of his or her professional time hiring or supervising outside counsel in the representation of business, insurance companies or their insureds, associations or governmental entities in civil litigation, will be entitled to free attendance at any DRI program. Limited to one seminar per calendar year. Offer excludes DRI Annual Meeting.

CLE/Claims Adjusters Accreditation

This seminar has been approved for MCLE credit by the State Bar of California for up to 13.25 hours, including 1 hour of ethics credit. Accreditation has been requested from every state with mandatory continuing legal education (CLE) requirements. Certificates of attendance will be provided to each attendee. Attendees are responsible for obtaining CLE credits from their respective states. Application has been made for continuing education for claims adjusters. Credit availability and requirements vary from state to state; please check the DRI website at dri.org for the latest information for your state.

Registration Policy

Save $100 when you register by February 10, 2016. (See the registration form for pricing.) The registration fee includes course materials, continental breakfasts, refreshment breaks, networking receptions, and access to the DRI app. If you wish to have your name appear on the registration list distributed at the conference and receive the course materials in advance, DRI must receive your registration by February 17, 2016 (please allow 10 days for processing). Registrations received after February 17, 2016, will be processed on-site.

Refund Policy

The registration fee is fully refundable for cancellations received on or before February 17, 2016. Cancellations received after February 17 and on or before February 24, 2016, will receive a refund, less a $100 processing fee. Cancellations made after February 24 will not receive a refund, but the course materials on CD-ROM and a $100 certificate good for any DRI seminar within the next 12 months will be issued. All cancellations and requests for refunds must be made in writing. Fax (312.795.0747) or email (seminars@dri.org) to DRI’s Accounting Department. Processing of refunds will occur within four weeks after the date of the seminar. All refunds will be processed in the same method that the payment was received. Substitutions may be made at any time without charge and must be submitted in writing.

Discounts

Group Discount The first and second registrations from the same firm or company are subject to the fees outlined on the registration form. The registration fee for additional registrants from the same firm or company is $695, regardless of membership status. All registrations must be received at the same time to receive the discount.

Travel Discounts DRI offers discounted meeting fares on various major air carriers for DRI Medical Liability and Health Care Law Seminar attendees. To receive these discounts, please contact Hobson Travel Ltd., DRI’s official travel provider, at 800.558.7464. As always, to obtain the lowest available fares, early booking is recommended.

Hotel Accommodations

A limited number of discounted hotel rooms have been made available at The New Orleans Marriott, 555 Canal Street, New Orleans, LA 70115 (click here to view hotel photos).

1) Reserve online: Click here or visit dri.org and go to the DRI Medical Liability and Health Care Law Seminar page and click on the “Book Hotel” tab.

2) Or contact the hotel directly at 504.581.1000 and mention the DRI Medical Liability and Health Care Law Seminar.

The hotel block is limited and rooms and rates are available on a first-come, first-served basis. You must make reservations by February 9, 2016, to be eligible for the group rate. Requests for reservations made after February 9 are subject to room and rate availability.
FACULTY  
Click on any name to view bio.

Erika L. Amarante, Wiggin and Dana LLP, New Haven, Connecticut
Susan Burns, RN, JD, Sedgwick CMS Inc., Chicago, Illinois
Susan Carleo, RN, CAPA, LNCC, Carleo Legal Nurse Consulting, Syracuse, New York
Laurie C. Drill-Mellum, MD, MPH, MMIC Group Inc., Minneapolis, Minnesota
Laura D. Eschleman, Nall & Miller LLP, Atlanta, Georgia

Kevin Fisher, Intercare Insurance Services Inc., Bellevue, Washington
Valita M. Fredland, JD, MA, Indiana University Health Inc., Indianapolis, Indiana
Alex J. Hagan, Ellis and Winter LLP, Raleigh, North Carolina
Emily E. Hass, MD, University of Colorado Denver, Denver, Colorado
Kevin J. Kuhn, Wheeler Trigg O’Donnell LLP, Denver, Colorado
J. Richard Moore, Bleke Dillon Crandall, Indianapolis, Indiana
Margaret M. Pisacano, University of Kentucky Medical Center, Lexington, Kentucky

Stephen O. Plunkett, Bassford Remele PA, Minneapolis, Minnesota
Kathleen M. Reilly, Anspach Meeks Ellenberger LLP, Buffalo, New York
Robert C. Ryan, MD, East Jefferson Family Practice Center, Metairie, Louisiana
Scott M. Salter, Starnes Davis Florie LLP, Birmingham, Alabama
Michelle M. Samadany, RN, JD, McGriff Seibels & Williams Inc., Birmingham, Alabama
Bernard S. Vallejos, Farrell White & Legg PLCC, Huntington, West Virginia
J. Kevin West, Parsons Behle & Latimer PLC, Boise, Idaho
Thomas A. Wiseman III, Wiseman Ashworth Law Group PLC, Nashville, Tennessee
Albert Barclay Wong, Drewry Simmons Vornehm LLP, Carmel, Indiana
Mark D. Wood, LifeScienceRisk, Chicago, Illinois
Tracy L. Zuckett, White and Steele PC, Denver, Colorado

View faculty bios online at http://www.dri.org/Event/20160175 (Medical Liability and Health Care Law Seminar webpage); click on “Speaker List” tab.

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CLE for Your Practice

March 17–18
**Toxic Torts and Environmental Law**
The Roosevelt Hotel, New Orleans, Louisiana

March 31–April 1
**Government Enforcement and Corporate Compliance**
Washington Court Hotel, Washington, DC

April 6–8
**Insurance Coverage and Claims**
Loews Chicago Hotel, Chicago, Illinois

April 13–15
**Life, Health, Disability and ERISA Claims**
Hyatt Regency Chicago, Chicago, Illinois

April 13–15
**Trucking Law**
Hyatt Regency Chicago, Chicago, Illinois

April 27–29
**Employment and Labor Law**
Sheraton Austin Hotel at the Capitol, Austin, Texas

May 5–6
**Business Litigation**
Hilton Nashville Downtown, Nashville, Tennessee

May 5–6
**Intellectual Property Litigation**
Hilton Nashville Downtown, Nashville, Tennessee

Publications for Your Practice

**Newsletter**  *The MedLaw Update* (4 times a year)
Visit the Medical Liability and Health Care Law Committee page on dri.org and scroll down to “Latest Newsletter.”

Medical Liability and Health Care Law focus in *For The Defense*

- August 2016 (upcoming)
- August 2015
- August 2014

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Diversity and Inclusion in DRI: A Statement of Principle

DRI is the largest international membership organization of attorneys defending the interests of business and individuals in civil litigation.

Diversity is a core value at DRI. Indeed, diversity, which includes sexual orientation, is fundamental to the success of the organization, and we seek out and embrace the innumerable benefits and contributions that the perspectives, backgrounds, cultures, and life experiences a diverse membership provides.

Inclusiveness is the chief means to increase the diversity of DRI’s membership and leadership positions. DRI’s members and potential leaders are often also members and leaders of other defense organizations. Accordingly, DRI encourages all national, state, and local defense organizations to promote diversity and inclusion in their membership and leadership.
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Are you a first-time attendee at this DRI seminar?  □ Yes  □ No

How many attorneys are in your firm?  __________  What is your primary area of practice?  ____________________________________________

REGISTRATION FEE

Registration fee includes seminar attendance, networking events, course materials, and access to the DRI app. DRI will email a link to download the course materials to all registrants two weeks in advance of the seminar. You can order additional copies of the course materials on CD-ROM by checking the appropriate box below or going online at dri.org.

On or before  After  

Member  $795  $895  For inclusion on the
Nonmember  $1,025  $1,125  preregistration list and to receive
government Member  $500  course materials in advance,
Law Student Member  FREE  register by February 17, 2016.
In-House Counsel Member*  FREE  *
Claims Executive Member*  FREE  as defined on page 5)
Group Discount*  $695  (first come, first served)
New Orleans School of Cooking Networking Event  $45  (first come, first served)

ADDITIONAL COURSE MATERIALS

Member  $75  Nonmember  $95  (Illinois residents, please add 9.25% sales tax. Shipping charges for U.S. and Canada only: $6.50)

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