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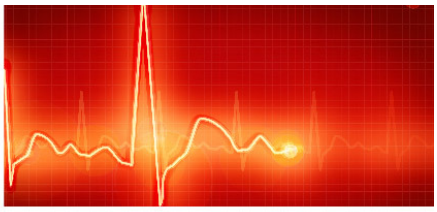
# Healthcare INSIGHTS

*Legal Developments in the Healthcare Industry*



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## In This Fall 2011 Issue:



## New Powers Granted to Health Care Regulators

Effective January 1, 2012, the Department of Consumer Protection may suspend, revoke or refuse to renew a health care provider's controlled substance registration if the practitioner's professional license has been subject to disciplinary action by the relevant agency.

Effective July 1, 2011, the Department of Public Health (DPH) and the Connecticut Medical Examining Board (CMEB) were granted the power by the General Assembly to take disciplinary action against a practitioner's license as a result of out of state action taken by a relevant agency. They may rely upon the findings and conclusions made by that agency.

Pending an investigation of a complaint against a licensed health care professional, the DPH also acquired the power on July 1, 2011 to seek an interim suspension by means of a consent order. This means that, under threat of proceeding before the CMEB for a temporary license suspension, DPH can obtain the same result "voluntarily."

Please contact Elliott B. Pollack, Esq. at (860) 424-4340 or ebpollack@pullcom.com if you have questions about this legislation.

# Lyme Disease Prosecution Fails

In 2005, Dr. Bernard D. Raxlen, a psychiatrist and Lyme and tick borne disease practitioner, was brought before the Connecticut Medical Examining Board on charges filed by the DPH that he had improperly diagnosed and treated Lyme disease in an adolescent. After lengthy hearings, the Board rejected the charges on the basis that DPH, acting as prosecutor in these cases, had failed to establish the standard of care to the Board's satisfaction.

Dr. Raxlen again found himself before the Board on a second set of charges filed in 2007. This time, Dr. Raxlen was charged with failing to properly care for a patient as a psychiatrist because he did not properly evaluate her and fully consider "multiple possible diagnoses." Rejecting the DPH charges, a CMEB hearing panel concluded that Dr. Raxlen did not treat her as a psychiatrist, that the patient did not present with severe depression, that he was not required to perform a comprehensive psychiatric or mental status examination and that he had appropriately evaluated her signs and symptoms and had considered multiple possible diagnoses based on her history and her signs and symptoms.

With respect to the Lyme issue, which has become an ongoing medical controversy in the last number of years, the Board found that this patient had lived in a wooded area in Massachusetts where there were many other confirmed cases of Lyme disease, that laboratory tests were consistent with his Lyme disease diagnosis and that appropriate differential diagnoses had been considered – all after two other physicians had diagnosed him with ALS! The panel's dismissal of the charges against Dr. Raxlen was upheld by the full CMEB, in accordance with its review procedures, on June 23, 2011.

The second failure by DPH to sanction Dr. Raxlen for Lyme disease-related care may signal the end of its efforts against his practice and perhaps benefit other physicians whose Lyme disease care has come under scrutiny by DPH.

Department of Public Health Petition No. 2003-1216-001-286

A member of Pullman & Comley's health care department was Dr. Raxlen's attorney in the first case.

For further information, please contact Tiffany K. Spinella, Esq.at (860) 424-4360 or tspinella@pullcom.com.

# Medicare Alternatives Proposed

The debate swirling around federal entitlements, including Medicare, has been accentuated to some degree by Representative Paul Ryan's proposal to eliminate Medicare as of 2022 and to substitute a voucher to each eligible person to buy private insurance. While presenting an extreme proposal, Mr. Ryan's concept certainly requires us to focus again on the out of control system of federal health care entitlements to individuals age 65 and older.

Some other ideas worthy of consideration:

- The 2003 Medicare prescription drug law prohibits the Secretary of Health and Human Services from negotiating with pharmaceutical companies even though they acquired almost 50 million new clients when this legislation became effective. It does not seem very sensible to prevent the federal government from taking advantage of economies of scale while sharply increasing the market for ethical drugs so dramatically. Some experts believe that taking these handcuffs off the federal government could save it more than $20 billion annually. The same issue applies to the Veterans Administration, which can not negotiate drug prices directly either.
- Private Medicare coverage, known as Medicare Advantage, while interesting in theory, does not seem to have had an impact on Medicare at all except to increase the profits of insurers who offer this coverage. Even the recently enacted Affordable Care Act does not address the issue immediately. We need to understand why private health insurance plans deserve to receive higher premiums than are paid by beneficiaries for traditional Medicare coverage.

If you have any questions, please contact Karen A. Daley, Esq. at (203) 330-2143 or kdaley@pullcom.com.

# Progress Against Metastatic Melanoma

A recombinant human monoclonal antibody developed by Bristol-Myers Squibb has recently been approved by the FDA for the treatment of this dreaded disease.

According to *The Medical Letter*, the not-for-profit newsletter published to guide medical professionals in making pharmaceutical decisions, the drug, called *Yervoy*, appears to improve the survival of patients with unresectable/metastatic melanoma for slightly more than three months, albeit with significant potential side effects.

Taken intravenously, the cost of the four doses required for the *Yervoy* treatment regime is a staggering $120,000.

# Workplace Violence Prevention

Health care institutions with at least 50 full or part-time employees must comply with Connecticut Public Act 11-175 which is designed to prevent workplace violence in health care settings. Among the Act's many requirements is the establishment of the workplace safety committee, development of written workplace violence prevention and response plans and a mandate that patient care assignments be adjusted so that no health care employee who has been physically abused or threatened by a patient is required to provide services to that patient again. The Act was effective October 1, 2011.

Continued

Additional data about this comprehensive legislation, can be obtained from Michael A. Kurs, Esq. at (860) 424-4331 or at mkurs@pullcom.com.