



SMITH HAUGHEY

RICE & ROEGGE

ATTORNEYS AT LAW

MEDICAL MALPRACTICE DEFENSE

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UPCOMING CHANGES TO LAWS REGARDING PHYSICIAN'S ASSISTANTS AND NURSE PRACTITIONERS

BY HOLLIANN M. WILLEKES, ATTORNEY

Recent legislation, Public Acts 379 and 499 of 2016, make significant changes to the practice and prescribing authority of both physician's assistants and nurse practitioners in 2017.

Public Act 379 of 2016, effective March 22, 2017, amends the Michigan Public Health Code and changes the relationship between physicians and physician's assistants (PAs) as they engage in the practice of medicine. As of March 22, 2017, Michigan will no longer impose strict physician supervision requirements on PAs in order for them to practice, but will instead require PAs to enter into a practice agreement with a "participating physician" in order to practice medicine as a physician's assistant in the state of Michigan.

Sections 17047 (Medicine), 17547 (Osteopathic Medicine & Surgery), and 18047 (Podiatric Medicine & Surgery) of the Public Health Code all set forth the same required content of the practice agreements in their respective

disciplines. Among other things, the new practice agreements must include a process for communication, availability, and decision making between the PA and participating physician. Practice agreements must also include the duties and responsibilities of both the PA and the participating physician, with the condition that all duties and responsibilities must be within their respective scopes of practice. In addition, practice agreements must specify a protocol for designating an alternative physician to be available for consultation in the event the participating physician is unavailable, contain a 30 day termination provision, and require the participating physician to verify the PA's credentials. The practice agreements must be in writing and signed by both the PA and the participating physician.

The new law will also require PAs who will be prescribing controlled substances within a practice agreement to obtain a controlled substance license once the

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SMITH HAUGHEY SUCCESSES

Jason Sebolt and Rose Kleff obtained summary disposition on behalf of a drug rehabilitation clinic client. Plaintiff alleged that improper treatment by the clinic resulted in a failed narcotic recovery, which then resulted in the patient suffering an overdose and dying from the same. Jason was able to obtain concessions from various witnesses at the time of depositions to support a motion for summary disposition on causation grounds. The trial court agreed with Jason and Rose's position on causation and dismissed plaintiff's claim in its entirety.

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SMITH HAUGHEY OPENS HOLLAND OFFICE, ADDING FIFTH LOCATION IN MICHIGAN

In March of 2016, Smith Haughey was thrilled to open its fifth location in the state of Michigan – in the lakeshore community of Holland. With offices in Ann Arbor, Grand Rapids, Muskegon and Traverse City, an additional office along Michigan’s lakeshore was both long-awaited and highly anticipated.

The firm had considered the possibility of adding a Holland office for some time, as its client base along the lakeshore has continued to grow. The added lakeshore presence emanated from the addition of attorneys Jaron Nyhof and Jack Marquis - two well-established and highly-regarded business attorneys who have practiced in Holland for decades. This opportunity is allowing the firm to have a permanent presence in the community and to grow its business practice. Attorneys Nyhof and Marquis bring to the firm a wealth of experience in business, securities, real estate, and health law; and in return, Smith Haughey offers valuable propositions for emerging businesses and individuals.

Since opening the Holland office, two additional attorneys have joined the firm. Attorney Scott Brookens has recently transitioned from the firm’s Grand Rapids office, while attorney Kim Mitchell joined Smith Haughey in January of this year. Both are members of the firm’s business and real estate practice group and offer comprehensive services to meet the needs of both our current and prospective clients. In addition to the four attorneys, the Holland office includes Paralegal Terra Oegema and Office Coordinator Heather Berens.

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new legislation takes effect on March 22, 2017. Statutory language requiring a physician to delegate authority to PAs in order for PAs to prescribe controlled substances included in schedules 2 through 5 of Part 72 of Article 7 of the Public Health Code has been removed. The statutory language continues to indicate that PAs may only prescribe in accordance with the procedures and protocol established by the Department of Licensing and Regulatory Affairs. The Administrative Rules regarding PA prescribing have not yet been published, however, the Department of Licensing and Regulatory Affairs has indicated that it is working on revisions.

Significant changes were also made with respect to nurse practitioners and their scope of practice in Michigan.

Public Act 499, effective April 9, 2017, created a new category of specialty nurses, Advanced Practice Registered Nurses (APRNs), which includes Nurse Practitioners, Nurse Midwives, and Clinical Nurse Specialists, but not Certified Nurse Anesthetists. Pursuant to the changes made by Public Act 499, as of April 9, 2017, APRNs will have the authority to prescribe nonscheduled prescription drugs as well as the authority to order, receive and dispense complimentary starter dose drugs, other than the controlled substances included in schedules 2 through 5 of Part 72 of Article 7 of the Public Health Code. The prescribing of controlled substances and the dispensing of complimentary starter doses of controlled substances by APRNs are still only permitted as a delegated act of a physician.

In light of these changes in the near future, agreements currently in place with PAs and APRNs should be evaluated and restructured as necessary in order to comply with the new laws soon to be in effect.

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NEW TO THE MEDICAL MALPRACTICE DEFENSE TEAM



Jacqueline E. Clarke joins Smith Haughey from the east side of the state. She brings with her considerable experience as a medical malpractice defense attorney, having worked side-by-side with the legal departments at several major Michigan hospitals. Jacqueline received her Bachelor of Arts, magna cum laude, from Kalamazoo College and went on to earn her J.D. from Michigan State University School of Law.

In her spare time, Jacqueline enjoys embarking on culinary tours of different countries to appreciate and learn how to cook different regional cuisines, which is influenced by her fanatical devotion to the Food Network. She is also a yoga enthusiast and loves to write and play music.



Tiffany R. VanderKolk joins Smith Haughey from West Virginia. Previously working to defend clients in civil litigation matters, her work experience has provided her with a strong background in the area of litigation. Following her graduation from West Virginia Wesleyan College, Tiffany earned her J.D. from West Virginia University College of Law. She is licensed to practice law in the states of Michigan and West Virginia.

Tiffany lives in Spring Lake with her husband, Vance, and two young sons. In her spare time, she enjoys spending time with family and boating.



Nicole L. Hills joined Smith Haughey's medical malpractice defense department as a paralegal this past August. She works with the firm's attorneys reviewing and compiling medical records and summaries through detailed research and preparing content-specific files. In addition, she uses her experience to review deposition transcripts and report preparations of litigation.

Nicole lives in Lowell with her husband, Tom. In her spare time, she enjoys reading, gardening and hanging out at Lake Michigan with family and friends.

NEW TO THE HEALTH LAW PRACTICE TEAM



Holliann M. Willekes Holliann earned her J.D. from Western Michigan University (WMU) Cooley Law School, magna cum laude. During her time at WMU she was assistant editor for the Western Michigan University Cooley Law Review, a State Bar of Michigan Law Student Section council member, and a recipient of the Leadership Achievement Award. Holliann began working with our firm as an extern during her last semester of law school and joined our firm this past fall after passing the bar.

Holliann lives in Cascade with her husband Nate. In her spare time she enjoys running, playing the piano and spending time with family.

UPDATE: NEW LAW IN RESPONSE TO *GREER V* *ADVANTAGE* *HEALTH SYSTEMS*

BY ROSE P. KLEFF, ATTORNEY

As previously reported, plaintiffs in medical malpractice actions were permitted to potentially recover damages for medical expenses in the amounts billed by health care providers or facilities - but not actually paid by insurance companies, resulting in unfair windfalls to plaintiffs. However, on January 10, 2017, a new law was enacted in Michigan that prevents plaintiffs from receiving this windfall. Under MCL 600.1482, damages recoverable for past medical expenses cannot exceed the "actual damages for medical care" which

result from the alleged malpractice. The law defines actual damages for medical care as "the dollar amount actually paid for medical expenses," which includes "payments made by insurers, but excluding any contractual discounts, price reductions, or write-offs." It also includes "any remaining dollar amount that the plaintiff is liable to pay for the medical care."

What this means is that a plaintiff may no longer potentially collect monetary damages for medical care that was

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billed, but never actually paid by the plaintiff or his or her insurance company. The new law also prevents a plaintiff from introducing, at trial, evidence of medical expenses that exceed the actual damages for medical care. Although the effective date of this law is listed as April 10, 2017, Michigan's legislators voted and agreed to have this law take immediate effect. Therefore, in medical malpractice actions filed on or after January 10, 2017, plaintiffs can no longer potentially recover monetary damages for the amount of medical expenses billed - but not actually paid - that stem from alleged malpractice.



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CELEBRATING 75 YEARS



2016 marked the 75th anniversary of Smith Haughey Rice & Roegge, which was founded in Grand Rapids in 1941. Today, Smith Haughey has nearly 80 attorneys serving in five locations throughout the state. While the firm takes pride in what it has been able to accomplish in the past 75 years, we also recognize and look forward to its future and the next generation. Smith Haughey is constantly seeking new, creative, and more efficient ways to deliver legal services, and is dedicated to helping clients meet their needs and achieve success.

Jason Sebolt recently obtained summary disposition on behalf of his chiropractic client due to procedural deficiencies in plaintiff's initial pleadings. Plaintiff filed his claim as one for ordinary negligence, but Jason was able to demonstrate that the claim was actually one for medical malpractice. Plaintiff failed to follow any of the procedural prerequisites to filing a malpractice case – and with the statute of limitations having expired – the case was dismissed with prejudice.

Jason Sebolt and Chris Spain obtained summary disposition for a neurosurgery client where plaintiff's counsel failed to cooperate in the discovery process. Instead of "sitting back" and letting plaintiff counsel obstruct the discovery process, Jason and Chris aggressively pushed the case forward and obtained discovery sanctions against plaintiff's counsel that resulted in dismissal of plaintiff's claim.

Jack O'Loughlin obtained a rare dismissal of a licensing complaint filed

against our client physician. It was strongly felt that the expert retained by the Department of Licensing had based his opinions on an incorrect interpretation of the standard of care. With tremendous assistance from the client, a detailed presentation of the case with clear support from peer reviewed published guidelines was presented at the compliance conference. As is most often the case, the Assistant Attorney General and Disciplinary Subcommittee Board member would not abandon the administrative complaint, but they did agree to share the response with the State's expert. After reviewing the response, which included support from the leading specialists in the nation (including the Chief of the expert's own department), the Attorney General's office advised that their expert had withdrawn his opinion that the client was negligent and the licensing complaint was dismissed.

Cheryl Chandler and Michael Miller of the Ann Arbor office obtained a no cause

verdict in Washtenaw County following a four day jury trial in November 2016. The case involved the stillbirth of a 33 week old fetus whose mother had presented to the OB triage at the University of Michigan two days prior. The only defendant in the case was the obstetrician who saw the patient in triage. Ultimately the jury agreed with the defense that the obstetrician had appropriately evaluated the patient and the baby based on her presenting complaint of decreased fetal movement, and that in light of her reactive and reassuring fetal heart monitoring strips, it was appropriate to discharge the patient home with appropriate counseling.

Carol Carlson obtained dismissal of a high damages suit against a regional hospital system and its employed physician following plaintiff attorney's chronic abuse of discovery. The Circuit Court Judge's decision granting Smith Haughey's Motion to Dismiss was upheld at the Court of Appeals level.

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