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## 16th Annual Conference on

**Emerging Issues in Healthcare Law**

### Planning Committee

**2014–2015 American Bar Association Health Law Section Chair**

<table>
<thead>
<tr>
<th>Name</th>
<th>Affiliation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michael E. Clark</td>
<td>DUANE MORRIS LLP, Houston, TX</td>
</tr>
</tbody>
</table>

**EMI 2015 Planning Co-Chairs**

<table>
<thead>
<tr>
<th>Name</th>
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<tbody>
<tr>
<td>Beth Connor Guest</td>
<td>CIGNA HEALTHSPRING Nashville, TN</td>
</tr>
<tr>
<td>W. Thomas Smith</td>
<td>UNIVERSITY OF FLORIDA/ COLLEGE OF PHARMACY Gainesville, FL</td>
</tr>
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**EMI 2015 Planning Committee Members**

<table>
<thead>
<tr>
<th>Name</th>
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<tbody>
<tr>
<td>Alicia Batts</td>
<td>PROSKAUER LLP Washington, DC</td>
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<tr>
<td>Anthony J. Burba</td>
<td>BARNES &amp; THORNBURG LLP Chicago, IL</td>
</tr>
<tr>
<td>Diane T. Carter</td>
<td>HUSCH BLACKWELL LLP Austin, TX</td>
</tr>
<tr>
<td>Adrienne Dresevic</td>
<td>THE HEALTH LAW PARTNERS Southfield, MI</td>
</tr>
<tr>
<td>Sarah Frazier</td>
<td>BERG &amp; ANDROPHY Houston, TX</td>
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<tr>
<td>Ross Galin</td>
<td>O’MELVEnY &amp; MEYERS LLP New York, NY</td>
</tr>
<tr>
<td>Gabriel Imperato</td>
<td>BROAD AND CASSEL Ft. Lauderdale, FL</td>
</tr>
<tr>
<td>David H. Johnson</td>
<td>MONTGOMERY &amp; ANDREWS PA Albuquerque, NM</td>
</tr>
<tr>
<td>Lisa Atlas Genecov</td>
<td>NORTON ROSE FULBRIGHT Dallas, TX</td>
</tr>
<tr>
<td>Gary Keilty</td>
<td>HURON CONSULTING Washington, DC</td>
</tr>
<tr>
<td>John Kelly</td>
<td>BASS BERRY &amp; SIMS PLC Washington, DC</td>
</tr>
<tr>
<td>Lee Kim</td>
<td>HIMSS Arlington, VA</td>
</tr>
<tr>
<td>Hon. Paul C. Lillios</td>
<td>AKERMAN LLP Chicago, IL</td>
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<tr>
<td>C. Mitchell Goldman</td>
<td>DUANE MORRIS LLP Philadelphia, PA</td>
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<tr>
<td>Kirk Nahra</td>
<td>WILEY REIN LLP Washington, DC</td>
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<tr>
<td>Tracy Powell</td>
<td>SHERRARD &amp; ROES PLC Nashville, TN</td>
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<tr>
<td>Donald H. Romano</td>
<td>FOLEY &amp; LARDNER LLP Washington, DC</td>
</tr>
<tr>
<td>Joel Wakefield</td>
<td>NELSON LAW SOLUTIONS Phoenix, AZ</td>
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## Planning Committee  

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**Register Today**

[http://ambar.org/EMI15](http://ambar.org/EMI15)
The Health Law Section acknowledges the generous support of our sponsors for their involvement in the 16TH Annual Conference on Emerging Issues in Healthcare Law:

**Premier**

- BRG Healthcare
- VMG Health
- Microsoft

**Platinum**

- JAMS

**Gold**

- American Appraisal
- Broad and Cassel
- Husch Blackwell
- Jones Walker
- King & Spalding
- Locke Lord
- Waller

**Silver**

- Akerman
- Barnes & Thornburg LLP
- Bloomberg BNA
- HealthCare Appraisers Incorporated
- Mirick O’Connell
- Proskauer

**Bronze**

- Bass, Berry & Sims
- Brewster Law Firm LLC
- Kilpatrick Townsend
- O’Melveny & Myers LLP
- PricewaterhouseCoopers
- Sherrard & Roe, PLC
- Watkins & Eager
- Wiley Rein
### WEDNESDAY, MARCH 4, 2015

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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</thead>
<tbody>
<tr>
<td>8:30 am–5:00 pm</td>
<td>Registration</td>
</tr>
</tbody>
</table>
| 9:00 am–12:30 pm | Breast Cancer Legal Advocacy Workshop  
**Sponsored by:** Breast Cancer Task Force                   |
| 2:00–5:00 pm | Adventures in Fraud—An Introduction to the Fundamentals of Fraud and Abuse Enforcement. *Fundamentals Session* |
| 2:00–3:30 pm | Leadership Meeting—Interest Groups and Task Force Leaders             |
| 4:00–5:00 pm | Personal Branding and Social Media: Harnessing the Power of LinkedIn to Build Your Personal Brand |
| 5:00–6:00 pm | Cultural Disparities in Healthcare Outcomes and the Role of Big Data |
| 6:30–8:00 pm | Networking Reception  
*Celebrating diversity, young lawyers and law students* |

### THURSDAY, MARCH 5, 2015 CONTINUED

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>1:15–2:15 pm</td>
<td>The Legal Ethics of Seeking Cooperative Resolutions Versus Fighting Till the Bitter End</td>
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<tr>
<td>2:30–3:30 pm</td>
<td>The Indian Healthcare System: New Opportunities for Innovative Partnerships With Tribes and Tribal Organizations</td>
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<tr>
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<td>Mediating Healthcare Disputes: The Complicating Factors of Aggressive Regulatory and Enforcement Environments</td>
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<td>The Benefits and Burdens of Novel Payment Arrangements in a P4P World</td>
</tr>
<tr>
<td>4:45–5:45 pm</td>
<td>Applying Predictive Analytics in Healthcare Claims: The Government and Privacy Perspectives</td>
</tr>
<tr>
<td>4:45–5:45 pm</td>
<td>Alignment and Accountability: Trends and Innovation in Post-Reform Healthcare Delivery</td>
</tr>
<tr>
<td>4:45–5:45 pm</td>
<td>Taught by Experts: What the Expert Testimony in Tuomey and Halifax Tells Us About Physician Transactions Today</td>
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</table>
| 6:30–8:00 pm | Welcome Reception  
*Honoring our faculty and planning committee members* |
## FRIDAY, MARCH 6, 2015

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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</thead>
<tbody>
<tr>
<td>7:30 am–5:00 pm</td>
<td>Registration and Information Desk</td>
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<tr>
<td>7:30–9:00 am</td>
<td>Breakfast Buffet</td>
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<tr>
<td>7:30–8:30 am</td>
<td>Task Force Breakfasts</td>
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<tr>
<td>8:30–9:45 am</td>
<td>Whistleblowers, Compliance and Criminal and Civil Liability for Healthcare Fraud: Emerging Strategies for Organizational Response to Non-Compliant Conduct, Government Enforcement Action and Voluntary Disclosure</td>
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<td>The New Era for Healthcare Privacy and Security</td>
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<td>Off-label Marketing and Free Speech: Caronia and the Future of Speech in Therapeutic Product Promotion</td>
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<tr>
<td>11:00 am–12:00 pm</td>
<td>Healthcare Provider Administrative Appeals of Denials and Underpayments: Taking the Offensive</td>
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<tr>
<td>12:15–1:15 pm</td>
<td>Interest Group Lunches</td>
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<tr>
<td>1:30–2:45 pm</td>
<td>Federal, State, and Private Health Insurance Exchanges: How Are They Developing and Will They Survive?</td>
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<tr>
<td>3:00–4:15 pm</td>
<td>Balancing the Competing Interests of the Patient, Provider and Public in Managing Highly Infectious Diseases in the United States</td>
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<tr>
<td>4:15–5:15 pm</td>
<td>Law Student Meet and Greet</td>
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<tr>
<td>4:15–5:15 pm</td>
<td>The Ethics of Mobile Computing: Protecting Client and Health Data Outside the Office</td>
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<tr>
<td>5:15 pm</td>
<td>CLE Program Adjourns</td>
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## SATURDAY, MARCH 7, 2015

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>8:00–11:30 am</td>
<td>Open Council Meeting</td>
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<td>All are welcome to attend the Section Open Council Meeting.</td>
</tr>
<tr>
<td>12:15–6:00 pm</td>
<td>16&lt;sup&gt;th&lt;/sup&gt; Annual Margarita Cup Golf Shotgun (ticketed)</td>
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<td></td>
<td>Players of ALL levels are encouraged to play!</td>
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<tr>
<td>12:15–4:00 pm</td>
<td>Portobello Cooking Class (ticketed)</td>
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<tr>
<td>6:30–9:00 pm</td>
<td>Saturday Night Mixer Hosted by Section Chair</td>
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<td>All attendees and their guests are welcome!</td>
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## SUNDAY, MARCH 8, 2015

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>8:00–11:00 am</td>
<td>Council Meeting</td>
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**WEDNESDAY, MARCH 4, 2015**

**Registration and Information Desk Open**
8:30 am–5:00 pm

**Cancer Legal Advocacy Workshop**
9:00 am–12:30 pm

Sponsored by: ABA Breast Cancer Task Force

More than one million people in the U.S. are diagnosed with cancer each year. One in eight women will be diagnosed with breast cancer. This means the chances are high that you or someone you know has had or will have direct experience with cancer. Cancer patients face a variety of legal problems related to their illness, such as issues with treatment coverage and payment, employment, family, and end of life arrangements. There are support organizations that use volunteer attorneys to help cancer patients with issues like these. Laws, practices, and procedures will be reviewed to provide attorneys with awareness and understanding of these issues so that you may volunteer to provide legal assistance to cancer patients or members of their support system.

**Speakers:**
- Jason P. Lacey, Foulston Siefkin LLP, Wichita, KS
- Mary A. Edenfield, Mateer Harbert, Orlando, FL
- Nicholas G. Averopoulos, MD, UF Health Cancer Center at Orlando Health, Orlando, FL
- Moderator: Jennifer L. Rangel, Locke Lord LLP, Austin, TX

**Adventures in Fraud—An Introduction to the Fundamentals of Fraud and Abuse Enforcement**
2:00–5:00 pm

A comprehensive introduction will provide a solid foundation in the real world of healthcare fraud enforcement by discussing the statutes central to healthcare enforcement (including the Stark Law, Anti-Kickback Statute, and False Claims Act, as well as criminal healthcare fraud laws) and applying this information to real-world enforcement scenarios. You will hear from all stakeholders in the enforcement process—relator’s (whistleblower’s) counsel, defense counsel, in-house and the government. Whether you are a newer attorney or a more seasoned attorney, your understanding of healthcare fraud enforcement will be enhanced.

**Speakers:**
- Sarah M. Frazier, Berg & Androphy, Houston, TX
- Anthony J. Burba, Barnes & Thornburg LLP, Chicago, IL
- Patricia Powers, Vanderbilt University, Nashville, TN
- Sean McKenna, Haynes and Boone LLP, Dallas, TX

**Leadership Meeting—Interest Group and Task Force Leaders**
2:00–3:30 pm

**Personal Branding and Social Media: Harnessing the Power of LinkedIn to Build Your Personal Brand**
3:30–4:00 pm

Like many lawyers (and over 300 million other LinkedIn users), you may have a profile on LinkedIn, but do you really know what to do with it—beyond putting up an online “resume” and adding connections to your professional network? You will learn the 5 steps for defining a solid, authentic professional brand and how to leverage the world’s largest professional network to boost your brand! Our speakers will explore how to:
- Know the “Three Essential Building Blocks” of LinkedIn and how to use them to get the most value for the time you spend on LinkedIn,
- Design and optimize your LinkedIn profile to create a strong professional social media presence,
- Develop focused, strategic approaches to networking with others on LinkedIn, and more.

**Speakers:**
- Adriana Linares, LawTech Partners, Winter Park, FL
- Anne Collier, Arudia, Washington, DC
- Moderator: David G. Ries, Clark Hill PLC, Pittsburgh, PA

**Networking Reception—Celebrating Diversity, Young Lawyers and Law Students**
6:30–8:00 pm

All registered conference attendees are invited to attend the reception to catch up with old friends and meet new ones! We will offer a meet and greet with our Diversity Committee speakers. Strolling dinner stations and cocktails will be open during the reception.
THURSDAY, MARCH 5, 2015

6:30–8:00 am Annual EMI Breast Cancer Fun Run/Walk  
Sponsored by: Holland & Knight LLP  
(Tickets $25 ea.) Join attendees at the Annual EMI Breast Cancer Fun Run/Walk. Participants run or walk a .8 mile course. Net proceeds will be donated to the Health Law Section Breast Cancer Initiative 501c3 fund. Support a great cause while doing something healthy and fun!

7:30–8:30 am Continental Breakfast

8:00 am–5:00 pm Registration and Information Desk Open

8:30–8:45 am Welcome to the Emerging Issues in Healthcare Law Conference (EMI)

9:00–9:30 am Keynote Speaker: Daniel R. Levinson, Inspector General, U.S. Department of Health and Human Services

8:45–9:00 am State of the Section Address

9:00–9:30 am Keynote Speaker: Daniel R. Levinson, Inspector General, U.S. Department of Health and Human Services

9:30–10:45 am Hot Topics in mHealth, Population, Health & Telemedicine

10:45–11:00 am Break

11:00 am–12:15 pm The 4 C’s of the Changing Provider—Payer Relationship Post-ACA

12:15–1:15 pm Lunch

1:15–2:15 pm Ethics: The Legal Ethics of Seeking Cooperative Resolutions Versus Fighting Till the Bitter End

2:15–3:30 pm Hot Topics in mHealth, Population, Health & Telemedicine

3:45–4:00 pm Break

4:00–5:00 pm Hot Topics in mHealth, Population, Health & Telemedicine

5:00–5:15 pm Awards Banquet

THURSDAY, MARCH 5, 2015 CONTINUED

Annual EMI Breast Cancer Fun Run/Walk  
Sponsored by: Holland & Knight LLP  
(Tickets $25 ea.) Join attendees at the Annual EMI Breast Cancer Fun Run/Walk. Participants run or walk a .8 mile course. Net proceeds will be donated to the Health Law Section Breast Cancer Initiative 501c3 fund. Support a great cause while doing something healthy and fun!

Continental Breakfast

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State of the Section Address

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Hot Topics in mHealth, Population, Health & Telemedicine

Ethics: The Legal Ethics of Seeking Cooperative Resolutions Versus Fighting Till the Bitter End

Awards Banquet
The Indian Healthcare System: New Opportunities for Innovative Partnerships with Tribes and Tribal Organizations

Indian Tribes and Tribal Organizations play a critical role in healthcare delivery within their local communities. Recent changes in the law have increased their flexibility to work together with healthcare providers in the private sector to improve quality and availability of healthcare services for everyone—not just tribal members. The Indian healthcare delivery system will be explained, including how it fits within the overall health system in the United States. Opportunities for innovative partnerships made possible by the Affordable Care Act and the Indian Healthcare Improvement Act to help address health disparities will also be discussed.

Liz Malerba of the United South and Eastern Tribes, Inc. (USET), Washington, DC

Starla K. Roels, Hobbs Straus Dean & Walker LLP, Portland, OR

Moderator: David H. Johnson, Montgomery & Andrews, PA, Albuquerque, NM

“Extra, Extra, Read All About It”: Managing a Public Relations Crisis When Your Facility Is the News

Healthcare providers understand the devastating effects of natural disasters, but many fail to understand the potentially serious consequences that can arise from mishandling a public relations event. The legal and practical issues often faced when dealing with an operational crisis that is played out in the public eye will be discussed, in addition to how to be better prepared for such an event. Regulatory and operational issues will be discussed as well as the role of both counsel and public relations professionals in managing the underlying matter creating the crisis, the public outcry, and/or interest generated in it.

David Ellenbogen, Scott & White Baylor Health, Temple, TX

Harlan Loeb, Global Practice Chair, Crisis & Risk, Edelman, Chicago, IL

Moderator: Catherine Greaves, King & Spalding LLP, Austin, TX

It’s Midnight, Do You Know Where Your Data Are? Trends in Security Risks and How to Implement Protections

Key security breaches and failures from the previous year will be evaluated to highlight issues and provide an initial avenue into discussing how to more effectively implement a security plan. Then, an overview of HIPAA and other applicable laws will be provided, which will be followed by an in-depth, detailed discussion of practical tips from both the legal and IT perspective on implementing and following good security policies and procedures, including effective employee training. As applicable, a brief discussion of breaches will also be included in order to emphasize the technology that is available to not only detect, but prevent breaches. The goal of the program is to perform a comprehensive assessment of the state of security and provide suggestions on improvements.

Matthew Fisher, Mirick O’Connell, Worcester, MA

Art Gross, President and CEO HIPAA Secure Now! Morristown, NJ

Moderator: Amy Fehn, Health Law Offices, Troy, MI

False Claims Act Matters Today: Best Practices for Protecting Providers and Securing Insurance Coverage

The intersection of False Claims Act cases and insurance coverage law will be explored, including recent decisions and best practices for obtaining insurance coverage of defense/resolution for false claims matters. Some of the key issues we will cover include:

• Do False Claims Act allegations necessarily involve fraud?
• Is there coverage for individual employees named as defendants?
• Is an investigation that starts with a HIPAA subpoena covered under a policy’s HIPAA coverage?
• Would defense of a False Claims Act complaint that includes a retaliation claim be covered under employment practices insurance?
• Can a healthcare provider obtain coverage if there is an investigation, but then a suit is never filed?
• If a case is filed under seal, when can/must the provider provide notice of a claim to the insurer?

Marilyn May, Arnold & Porter LLP, Washington, DC

Arden B. Levy, Miller Friel PLLC, Washington, DC

Moderator: John Kelly, Bass Berry & Sims PLC, Washington, DC

Mediating Healthcare Disputes: The Complicating Factors of Aggressive Regulatory and Enforcement Environments

Regulatory and compliance issues can often complicate successful mediation of healthcare disputes. Practical advice and strategy considerations for handling complications in such cases will be provided, including the following: (1) compensation-related disputes with physicians and other referral sources, (2) medical staff disputes, (3) medical malpractice and product liability claims, and (4) others. The discussion will cover: forum selection, choice of mediator, educating opposing counsel and mediators regarding regulatory and enforcement issues, reliance on regulatory experts, presentation formats, and confidentiality and privacy.

Lisa Estrada, Foley & Lardner LLP, Washington, DC

Wendy Millette, Fresenius Medical Care, Waltham, MA

Lorrie Ridder, The Mediation Group, Indianapolis, IN

The Benefits and Burdens of Novel Payment Arrangements in a P4P World

Presentation will assist healthcare attorneys, hospital leadership and compliance teams to understand the regulatory nuances and latest issues associated with p4p arrangements. Presenters will cover:

• The latest p4p structures and arrangements
• Federal regulatory guidance associated with structuring p4p arrangements
• Exploration of Stark and AKS issues in structuring p4p arrangements
• State regulatory considerations related to the acceptance of downside risk in p4p arrangements
• Compliance tips related to entering into arrangements and the commercially reasonableness standard
• Fair market value considerations when allocating p4p payments to physician participants

Jen Johnson, VMG Health, Dallas, TX

Matthew D. Jenkins, Hunton & Williams LLP, Richmond, VA
alignments and collaborations will be addressed, as often employed by physicians and hospitals to address this new environment. The discussion will cover regulatory and legal enforcement implications associated with various models, including gain-sharing, ACOs and clinically integrated networks, while highlighting associated with various models, including gain-sharing, ACOs and clinically integrated networks, while highlighting how the systems are used in the governmental and private sectors will be discussed, as well as opportunities and challenges that healthcare providers and their IT vendors face, including ethical, privacy and legal compliance implications associated with collecting protected health information and other data.}

Raymond L. Wedgeworth, CMS Centers for Program Integrity, Baltimore, MD
Hemant Pathak, Assistant General Counsel, Microsoft Corporation, Reston, VA
Cynthia Roehrenbeck, American Medical Association, Washington, DC
Moderator: Julian Rivera, Husch Blackwell, Austin, TX

Alignment and Accountability: Trends and Innovation in Post-Reform Healthcare Delivery

In a post-reform world, significant changes in delivery and payment (i.e., movement from fee-for-service to value based models) continue to unfold while clinical integration facilitates the coordination of patient care across varied settings. Proper alignment of all these factors is vital in the provision of quality and efficient care, and in ensuring correct payment. Alignment and collaboration strategies will be addressed, as often employed by physicians and hospitals to address this new environment. The discussion will cover regulatory and legal enforcement implications associated with various models, including gain-sharing, ACOs and clinically integrated networks, while highlighting several regulatory compliant options for structuring provider payments in this rapidly changing landscape.

Glenn P. Privats, McCarter & English LLP, Newark, NJ
Steven Slutsky, PricewaterhouseCoopers LLP, Philadelphia, PA
Moderator: Carolyn V. Metnick, Akerman LLP, Chicago, IL

Taught by Experts: What the Expert Testimony in Tuomey and Halifax Tells Us About Physician Transactions Today

The Tuomey and Halifax cases have provided us with a bird’s-eye view of how the government analyzes and tries False Claims Act cases based on physician compensation. However, only limited attention has been paid to the valuation approaches taken by the government’s expert witnesses. This session will provide an in-depth examination of the expert testimony on valuation in these two high-profile cases and a discussion of how the experts’ analysis may influence real-world transactions. Key issues include:

- Is there any there there? Deriving a systematic understanding of FMV and commercial reasonableness from the expert testimony, or not.
- Do great minds think alike? Comparing the experts’ ideas with the conventional wisdom and published literature on FMV.
- Isn’t there a law about that? Measuring the experts’ concepts against specific provisions of the law.
- I was told there’d be no math. The role of lawyers in FMV and commercial reasonableness analyses.

William W. Horton, Jones Walker LLP, Birmingham, AL
Timothy Smith, American Appraisal, Dallas, TX

Welcome Reception
Honor our faculty and planning committee members. All registered conference attendees are invited to attend the best networking reception in the industry! This event receives rave reviews every year, and it’s one you don’t want to miss! Cocktails and strolling dinner stations will be open during the posted reception hours.

FRIDAY, MARCH 6, 2015

7:30 am–5:00 pm
Registration and Information Desk Open

7:30–8:30 am
Task Force Breakfasts:
- Long Term Care
- Nursing and Allied Healthcare Professionals
- Government Attorneys

8:30–9:45 am
Whistleblowers, Compliance and Criminal and Civil Liability for Healthcare Fraud: Emerging Strategies for Organizational Response to Non-Compliant Conduct, Government Enforcement Action and Voluntary Disclosure

The fishbowl existence for all healthcare organizations and the ever present whistleblower threat presents the very real prospect of criminal and civil liability. A whistleblower can alert an organization to a compliance problem before it becomes a basis for government enforcement action. This can allow for an organization’s measured response to minimize liability and the disruption of the primary mission of the business. However, it does not often develop this way and the whistleblower is typically retaliated against and driven to report the non-compliant activity to an external enforcement agency. The ever expanding basis and powerful incentives for whistleblower activity and the various strategies organizations can employ in responding to this phenomena will be discussed in depth.

Richard Westling, First Assistant US Attorney Eastern District Louisiana, New Orleans, LA
Ellyn Sternfield, Mintz, Levin Cohn Ferris Glovsky & Popeo PC, Washington, DC
Lesley Ann Skillen, Getnick & Getnick LLP, Washington, DC
Moderator: Gabriel L. Imperato, Broad and Cassel, Ft. Lauderdale, FL
FRIDAY, MARCH 6, 2015 CONTINUED

9:45–11:00 am
Improving Hospital Costs and Quality: How Does Transaction Structure Matter, and What Does Antitrust Have to Say About It?
Topics for discussion include the following: (1) whether mergers and acquisitions are necessary to improve healthcare costs and quality, (2) what the most recent antitrust decisions, including St. Luke’s and Promedica, have to say on this issue, (3) what alternative transactions (e.g., networks) are available, (4) the respective legal constraints of the foregoing, and (4) why antitrust can matter and serve as a shield and a sword for threatened providers.
MaryEllen Pickrell, Waller Lansden Dortch & Davis LLP, Nashville, TN
David Ettinger, Honigman Miller Schwartz and Cohn LLP, Detroit, MI
Thomas Greene, Special Litigation Counsel, Federal Trade Commission—Bureau of Competition, San Francisco, CA
Stephanie C. Westermeier, Saint Alphonsus Health System, Boise, ID
Moderator: Alicia Batts, Proskauer, Washington, DC

11:00 am–12:00 pm
Concurrent Sessions
The New Era for Healthcare Privacy and Security
The biggest focus of attention on privacy and security for healthcare today involves the massive expansion of “non-HIPAA data,” health information that is outside the scope of the HIPAA Privacy and Security Rules. Through the expansion of healthcare websites, mobile applications and other vehicles for the collection of healthcare information, policymakers and individuals are concerned about the growth of unregulated healthcare information. Gaps in the regulatory structure will be explored and the various options for “solving” the problem of HIPAA’s limited scope and the growth of healthcare information outside of HIPAA’s requirements will be reviewed.
Cora Han, Federal Trade Commission—Division of Privacy and Identity Protection, Washington, DC
Kirk Nahra, Wiley Rein LLP, Washington, DC

11:00 am–12:00 pm
Concurrent Sessions
Off-label Marketing and Free Speech: Caronia and the Future of Speech in Therapeutic Product Promotion
The legal landscape of FDA’s regulation of off-label promotion of drugs and devices vis-à-vis the first amendment will be explored. The following topics will also be explored: the history of regulation and litigation in this area, the most recent FDA guidance documents, enforcement trends, and judicial opinions; and insights as to how pharmaceutical companies are managing in this area of competing issues.
Michael Carvin, Jones Day, Washington, DC
Geoffrey R. Kaiser, Rivkin Radner LLP, Uniondale, NY
Elena Rossano, Purdue Pharma, Stamford, CT
Moderator: Philip Brewster, Brewster Law Firm, Winnetka, IL

12:00–12:15 pm
Break

12:15–1:15 pm
IG Lunches
• Business & Transactions
• Managed Care and Insurance
• Physicians Issues
• In-House Counsel
• eHealth, Privacy & Security

1:15–1:30 pm
Break
### ProgrAm AgendA

**FRIDAY, MARCH 6, 2015 CONTINUED**

<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
</tr>
</thead>
<tbody>
<tr>
<td>1:30–2:45 pm</td>
<td>Federal, State, and Private Health Insurance Exchanges: How Are They Developing—and Will They Survive?</td>
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<td>With the second year of enrollment coming to completion, the future of the Affordable Care Act and its signature business model, health insurance exchanges, will be more clearly determined. Hear from national experts who have lead the development of state, federal and private health insurance exchanges: Are the federal and state exchanges likely to survive? What is happening in the corporate sector with private insurance exchanges? How will the future of both government run and private insurance exchanges impact the delivery and the financing of the healthcare system? How will the recent Supreme Court case, King v. Burwell, concerning federal tax subsidies for consumers who buy health insurance coverage on the federal exchanges impact the future of exchanges if it is decided against the government?</td>
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<tr>
<td></td>
<td>Teresa Miller, Crowell &amp; Moring, Washington, DC</td>
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<td></td>
<td>Gary Cohen, Blue Shield of California, San Francisco, CA</td>
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<td></td>
<td>Kathleen Oestreich, Eastwick Strategy Group, Tucson, AZ</td>
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<tr>
<td>2:45–3:00 pm</td>
<td>Break</td>
</tr>
<tr>
<td>3:00–4:15 pm</td>
<td>Balancing the Competing Interests of the Patient, Provider and Public in Managing Highly Infectious Diseases in the United States</td>
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<td>The challenges of safeguarding and balancing the health and rights of the suspected Ebola patient, the treating healthcare providers, and the public will be addressed from the following perspectives: (1) the public health policy concerns raised and proposed strategies being implemented where there is a suspected Ebola patient situation in the United States, (2) the changes that first response emergency services are implementing in their dispatch software and in their routine procedures to better assess patient histories to determine risk and in handling patients in the face of infection fears and to protect their crew and future patients in the emergency pre-hospital setting, as well as HIPAA confidentiality issues and the potential liability to crew and other patients, and (3) the institutional operational challenges that exist and changes that are being made to protect healthcare employees and other patients when treating suspected Ebola patients in the hospital setting.</td>
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<tr>
<td></td>
<td>Heather F. Delgado, Barnes &amp; Thornburg LLP, Chicago, IL</td>
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<td>Jane E. Jordan, Deputy General Counsel/Chief Counsel for Health Affairs, Office of the General Counsel, Emory University, Atlanta, GA</td>
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<td>Matthew Penn, Director, Public Health Law Program, Office for State, Tribal, Local and Territorial Support, Atlanta, GA</td>
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<td>Moderator: Hon. Paul C. Lillios, Akerman LLP, Chicago, IL</td>
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<tr>
<td>4:15–5:15 pm</td>
<td>Law Student Meet and Greet</td>
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<tr>
<td>4:15–5:15 pm</td>
<td>Concurrent Sessions</td>
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<td>The requirements of population health management and value based payment are leading health systems and payers to consider new relationships. Some health systems are buying or starting new health plans, and others are partnering with existing plans in innovative ways. The following will be explored: the “build, buy, or partner” challenge, alternative market strategies, and the issues raised by new population health models for providers and payers.</td>
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<tr>
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<td>Richard Zall, Proskauer, New York, NY</td>
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<td></td>
<td>James F. Owens, Paul Hastings LLP, Los Angeles, CA</td>
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<td></td>
<td>Moderator: Beth Connor Guest, Cigna HealthSpring, Nashville, TN</td>
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<td>The Ethics of Mobile Computing: Protecting Client and Health Data Outside the Office</td>
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<td>Mobile technology provides great benefits for attorneys and their clients as smartphones, laptops, tablets, and cloud-based services have quickly become basic tools for today’s lawyer. Practicing anywhere, at any time is now a reality. With these benefits, however, come great risks, particularly in the area of confidentiality. Heightened security practices are necessary to meet ethical standards and legal requirements. Join us as we explore these risks and best practices for addressing them.</td>
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<td>Steven J. Fox, Post &amp; Schell PC, Washington, DC</td>
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<td></td>
<td>David G. Ries, Clark Hill PLC, Pittsburgh, PA</td>
</tr>
<tr>
<td>5:15 pm</td>
<td>CLE Program Adjourns</td>
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</tbody>
</table>
# Program Agenda

## Saturday, March 7, 2015

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>8:00–11:30 am</td>
<td>Open Council Meeting&lt;br&gt;All are welcome to attend the Council Meeting.</td>
</tr>
<tr>
<td>12:15–6:00 pm</td>
<td>16th Annual Margarita Cup Golf Shotgun&lt;br&gt;&lt;br&gt;<strong>Ticketed Event:</strong> $215 includes 18 holes, golf cart, transportation and lunch&lt;br&gt;<strong>Disney’s Magnolia Golf Course—Players of ALL levels are encouraged to play!</strong>&lt;br&gt;Designed in classic Tour style, this championship course is the longest of the Walt Disney World Resort golf courses. Named for its majestic magnolia trees, this course features elevated tees, spacious greens and challenging water hazards. Wide fairways invite you to hit the ball and hit it long, but beware 11 of the 18 holes boast water hazards, and 97 bunkers dot the landscape. Certified by Audubon International as a Cooperative Wildlife Sanctuary and rated 4 stars by Golf Digest, Disney’s Magnolia Golf Course represents a paradise for serious golfers, as well as a thrilling challenge for players at all levels. Disney’s Magnolia golf course has played host to the PGA Tour’s elite each year from 1971–2012 when hosting the Walt Disney World® Golf Classic.</td>
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<tr>
<td>12:15–4:00 pm</td>
<td>Portobello’s Cooking Class&lt;br&gt;&lt;br&gt;<strong>Ticketed event:</strong> $185 includes cooking class, lunch, and transportation to and from site.&lt;br&gt;Enjoy a rustic Italian dining experience celebrating the simplest flavors of Italy accentuated by the warmth of sharing around a table of family and friends.&lt;br&gt;Join <strong>Executive Chef Cristobal Lopez</strong> as he takes you through a tantalizing culinary experience that you can bring home.&lt;br&gt;&lt;br&gt;<strong>Included in your cooking class:</strong>&lt;br&gt;- Chef presentation and audience participation&lt;br&gt;- Portobello exclusive recipes for each course&lt;br&gt;- Personalized menu cards at each place setting&lt;br&gt;- Lunch served during the presentation</td>
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<tr>
<td>6:30–9:00 pm</td>
<td>Saturday Night Mixer Hosted by Section Chair&lt;br&gt;&lt;br&gt;<strong>All attendees and their guests are welcome!</strong>&lt;br&gt;Enjoy cocktails and hors d’oeuvres during this final celebration hosted by the ABA Health Law Section Chair, Michael E. Clark. We will recap the highlights of the conference and award the Margarita Cup trophy to this year’s winning golf team.</td>
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## Sunday, March 8, 2015

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<tr>
<th>Time</th>
<th>Event</th>
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<tr>
<td>8:00–11:00 am</td>
<td>Council Meeting</td>
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CONFERENCE INFORMATION

REGISTRATION
Register by FEBRUARY 16, 2015, for early bird registration savings and by FEBRUARY 23, to be included in the advance registration list. Registration will be accepted only when accompanied by payment.
Your payment will cover admission to the program, continental breakfasts, coffee breaks, ticket to an Interest Group Lunch each day, receptions, and the program course materials.

ONLINE: http://ambar.org/EMI15
SECURED FAX: 312-988-5850
U.S. MAIL: American Bar Association
ATTN: Service Center—Meeting/Event Registrations Department
321 N. Clark Street, Floor 16
Chicago, IL 60654

ON SITE REGISTRATION
Please call 312-988-5532 by FEBRUARY 26, 2015 to ensure space availability. On-site registration will only be accepted when accompanied by check, money order, American Express, MasterCard, or Visa information.

CANCELLATION POLICY
Tuition, less a $125 handling charge for each registration, will be refunded upon written cancellation received no later than FEBRUARY 17, 2015. Cancellations received after this date cannot be refunded but substitutions are encouraged. The ABA reserves the right to cancel any program and assumes no responsibility for personal expenses.

INTEREST GROUP LUNCHES
Registrants are encouraged to attend the Interest Group Lunch of their choice on both Thursday and Friday. There is no additional charge for these lunches but registrants must reserve a spot when you register.

TASK FORCE BREAKFASTS
Registrants are encouraged to attend the Task Force Breakfast of their choice on Friday, March 6.

HOTEL INFORMATION
The conference will be held at Disney’s Yacht Club Resort in Lake Buena Vista, FL located at 1700 Epcot Resorts Blvd, Lake Buena Vista, FL 32830
Please call 407-939-4686 or visit http://www.mydisneymeetings.com/aba15 to book hotel accommodations prior to February 10, 2015. The special rate for our conference is $229 for a single or double plus 12.5% tax. When calling, please mention the “16th Annual Conference on Emerging Issues in Healthcare Law.”

You may visit http://www.mydisneymeetings.com/aba15 for additional hotel information and discounted theme park admission.

There are also a limited number of government rate rooms that have been reserved on a first available basis and can be booked by calling 407-939-4686. Please advise agent that you are seeking the government rate.

AIRLINE INFORMATION
Disney’s Yacht Club Resort in Lake Buena Vista is located 25–30 minutes from Orlando International (MCO).

ABA NEGOTIATED AIRFARE DISCOUNTS—AVAILABLE ONLINE!
With ABA Orbitz for Business*, you can automatically obtain ABA negotiated airfare discounts for travel to ABA Meetings. ABA Orbitz for Business enables you to purchase the best airfare at the time of booking by providing you with the ability to search for and compare fares from virtually every airline serving the destination. Reservations with ABA Orbitz for Business can be made online or offline. For offline reservations, call 877-222-4185. ABA Orbitz for Business is available online via ABA Travel Services*. ABA airfare discounts on some carriers may also be obtained by purchasing your tickets under the ABA Discount Codes directly from the airline or through your travel agent.

American Airlines ABA Discount only available at ABA Orbitz for Business

United Airlines
800-426-1122 Agreement Code: 414489 / Z Code: ZSZU
Discount available at www.united.com Online Discount Code: ZSZU414489
Delta Airlines
800-328-1111 ABA File Meeting Code Domestic: NMKEJ
ABA File Meeting Code International: NMJHL
Discount available at www.delta.com Online Meeting Event Code DOM: NMKEJ  INTL: NMJHL
*A Travel Profile is required when booking airline reservations with ABA Orbitz for Business, visit www.americanbar.org/travel for more information.

GROUND TRANSPORTATION
Disney’s Yacht Club Resort in Lake Buena Vista is located 25–30 minutes from Orlando International (MCO). Start and end your stay with complimentary motorcoach transportation for you and your luggage to and from select Disney’s Yacht Club Resort. Taxi/Cabs are approximately $60–$70 one way.

Here’s how Disney’s Magical Express works:
After receiving your guest room confirmation number, you have the option of using Disney’s online form or calling the group reservationists directly at 407-827-6777.

• Prior to arrival, attendees will be mailed an Airport Transportation Booklet containing special luggage tags which they will attach to their luggage before departure. Reservations must be made at least 14 days prior to departure in order to receive the booklet. For reservations made less than 14 days in advance, simply retrieve your luggage at the baggage claim.
• Upon arrival at Orlando International Airport, your guests will proceed directly to the Disney Airport Welcome Center in Terminal B
• Attendees and guests board complimentary deluxe motor coach transportation to their Disney Resort hotel, while their luggage goes straight from the plane to their room

At the end of their stay, you will enjoy the same convenience of Disney’s Magical Express service from their Disney Resort hotel to Orlando International Airport.

CONFERENCE INFORMATION

CLE CREDIT
The ABA directly applies for and ordinarily receives CLE credit for ABA programs in AK, AL, AR, AZ, CA, CO, DE, GA, GU, HI, IA, IL, IN, KS, KY, LA, MN, MS, MO, MT, NM, NV, NY, NC, ND, OH, OK, OR, PA, SC, TN, TX, UT, VT, VA, WI, and WV. These states sometimes do not approve a program for credit before the program occurs. This transitional program is approved for both newly admitted and experienced attorneys in NY.

HEALTH LAW SECTION MEMBERSHIP
As an added bonus to new members, the member’s tuition rate will be available to registrants who become members of the ABA Health Law Section. Membership dues are not deductible as charitable contributions for federal income tax purposes, but such dues may be deductible as a business expense.

TAX DEDUCTION FOR EDUCATIONAL EXPENSES
An income tax deduction may be allowed for educational expenses undertaken to maintain or improve professional skills. This includes registration fees, travel, meals, and lodging expenses. (see Treas. Reg. 1.162–5) (Coughlin vs. Commissioners, 203 F 2d 307)

SERVICES FOR PERSONS WITH DISABILITIES
If special arrangements are required for an individual with a disability to attend this program, please contact the ABA Health Law Section at (312) 988-5146.

DRESS CODE
Resort casual attire is appropriate for all meetings, CLE programs and social events during the program. However, the meeting rooms tend to be cool so be sure to carry a sweater or light jacket.

SPECIAL TUITION ASSISTANCE
A limited number of registration fee reductions are available for government employees, academics, law students, and public interest lawyers employed with nonprofit organizations. No full tuition waivers are available. The fee-reductions will be determined on a one-time only, case-by-case, first-come first-serve basis. To apply, send a letter outlining the basis for your request of a fee reduction to Nancy Voegtle, Senior Meeting Planner, ABA Health Law Section, 321 N. Clark St., Chicago, IL 60654. Deadline for receipt: January 30, 2015. No cases will be considered after the deadline, and all standard registration fee rates will apply after: January 30, 2015.

©Disney
Registration Form

NAME ____________________________________________

FIRST NAME FOR NAME BADGE ____________________________

COMPANY/FIRM NAME _________________________________

ADDRESS ___________________________________________

CITY, STATE, ZIP ______________________________________

PHONE ______________________________________________

FAX ____________________________________________________________________________________________

Email Address ___________________________________________

ABA ID # ____________________________ STATE(S) IN WHICH YOU ARE LICENSED __________________________

☐ Please email me regarding hotel room share

☐ I am a first time attendee

Interest Group Luncheons

Interest Group Luncheons are included in your registration fee. Please indicate your attendance to guarantee a boxed lunch.

☐ I will attend the Thursday Interest Group Lunch

☐ I will attend the Friday Interest Group Lunch

Please share any dietary restrictions:

☐ Vegetarian    ☐ Kosher    ☐ Lactose Intolerant

☐ Food Allergies __________________________________________

Registration Fees

Registration fees are all inclusive and include all 3 days of educational programming, CLE, 2 luncheons, 3 receptions and an electronic written course materials.

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<thead>
<tr>
<th></th>
<th>On or before 2/16/15</th>
<th>After 2/16/15</th>
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<tbody>
<tr>
<td>General Attendees (non-ABA Members)</td>
<td>$1295</td>
<td>$1395</td>
</tr>
<tr>
<td>ABA Member</td>
<td>$1095</td>
<td>$1195</td>
</tr>
<tr>
<td>ABA Health Law Member/Sponsoring Section Member Rate</td>
<td>$995</td>
<td>$1095</td>
</tr>
<tr>
<td>Government/Academic (Must be full time)</td>
<td>$325</td>
<td>$425</td>
</tr>
<tr>
<td>Law Student</td>
<td>$150</td>
<td>$250</td>
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Conference Activities

Thursday, March 5

☐ $25: Breast Cancer Fun Run/Walk (Net proceeds go to the Breast Cancer 501c 3 Fund)

Saturday, March 7

☐ $185: Portobello’s Cooking Class

☐ $215: 16th Annual Margarita Cup Golf Tournament

Health Law Section Membership

☐ YES, please enroll me in the Section of Health Law. I am a member of the ABA. I understand that by joining, I am entitled to the Section Member Registration fee, a $100 savings!

Dues: $50. ID # ____________________________

TOTALS:

REGISTRATION & ACTIVITIES FEES: $________________________

DONATION TO BREAST CANCER INITIATIVES 501C 3 FUND: $________________________

SECTION MEMBERSHIP: $________________________

TOTAL: $________________________

Method of Payment

☐ Check Enclosed (payable to the American Bar Association)

Credit Card: ☐ VISA ☐ MasterCard ☐ American Express

CARD # ____________________________________ EXP. DATE ____________

Cardholder Signature ______________________________________

Follow us on Twitter for additional EMI news and updates #EMI15
ABSTRACTS:

Health Law Section (MS 18.1)
321 N. Clark Street
Chicago, IL 60654

EMERGING ISSUES IN HEALTHCARE LAW

MARCH 4-7, 2015 | LAKE BUENA VISTA, FL

ABA HEALTH LAW SECTION UPCOMING EVENTS

June 10-12, 2015
Physicians—Legal Issues Conference
The Palmer House, Chicago, IL

November 30-December 1, 2015
Washington Health Law Summit
The Ritz-Carlton Washington, Washington, DC

March 2-5, 2016
17th Annual Conference on Emerging Issues in Healthcare Law
Manchester Grand Hyatt San Diego, San Diego, CA

CALL THE HEALTH LAW SECTION AT (312) 988-5146 FOR INFORMATION