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Late breaking news on medical-legal developments affecting physicians and health care professionals

US Justice Department Recovers almost $6 Billion in False Claims Act Cases: In fiscal year 2014, ending September 30, 2014, the US Department of Justice ("**DOJ**") recovered nearly $5.69 billion from settlements and judgments in False Claims Act Cases. The DOJ had the assistance of over 700 whistleblowers. In 2009, the Attorney General and the Secretary of Health and Human Services created an interagency task force to combat healthcare fraud. Since its inception, over $14.5 billion in federal health care dollars have been recovered. In 2014, a total of $2.3 billion was recovered for False Claims in federal health care programs alone. The most common type of False Claim involves Medicare and Medicaid claims. For example, one hospital system paid $98.5 million to settle allegations that it improperly billed inpatient services that should have been performed as out-patient services, resulting in higher reimbursement rates. A home health services provider paid $150 million to resolve allegations that it billed for services for homebound patients that were not medically necessary, as the DOJ contended the patients were not actually homebound.

Connecticut Supreme Court Allows Claim for Disclosure of Medical Records: The Connecticut Supreme Court has found that the Health Insurance Portability and Accountability Act ("**HIPAA**") does not preempt causes of action for negligence and intentional infliction of emotion harm under state law. It did not, however, establish a private right of action to sue under HIPAA. In *Byrne v. Avery Center for Obstetrics and Gynecology*, the plaintiff appealed a ruling that her state law claim for the release of her medical records was preempted by HIPAA. The plaintiff alleged she instructed the provider not to release her medical records to a specified person she previously had a relationship with. That person later filed a paternity action against her and subpoenaed the provider for her medical records. The provider did not alert the plaintiff about the subpoena or attempt to quash the subpoena, as is required under HIPAA, and released her medical records in response to the subpoena. The case was remanded for further proceedings. While this decision does not, at present, affect health care providers in other states, providers should be mindful that their failure to comply with HIPAA could result in liability under state law in addition to penalties under HIPAA. The opinion may be found at: http://ow.ly/FKqqZ.

State Senate Committee Considers Right to Die Bill: Last month, the New Jersey State Assembly passed a bill, by a very narrow margin, which would allow terminally ill patients to end their lives with assistance from their physicians. On December 8, 2014, the New Jersey Senate Health, Human Services and Senior Citizens Committee considered testimony from several different advocates and opponents of the bill. Those who support the bill argue, primarily, that physician assisted death is not suicide but is death with dignity. Those who oppose the bill fear that having such a law on the books will result in abuse of the opportunity, needless death after misdiagnosis and further reductions in much needed funding for end-of-life and palliative care programs already in place in New Jersey. The bill would require the patient to make no fewer than two independent requests for fatal drugs and would not require any physician to provide such a prescription. At present, there is no date set for a vote on this bill nor are there any additional dates set to hear testimony.

State Senate Passes Bill Permitting Expansion of Scope of Practice for Physician Assistants: The New Jersey State Senate has passed a bill, in close cooperation with the Medical Society of New Jersey and the New Jersey State Society of Physician Assistants, which, most significantly, will expand the scope of practice of Physician Assistants by permitting them to perform services beyond those specifically enumerated in the law. Once the bill becomes law, a Physician Assistant will be permitted to perform any duties and responsibilities beyond those already statutorily defined if they are doing so pursuant to a written delegation agreement with a physician. There are specific supervision requirements which must be included in the written agreement and additional requirements for specialists as well as multi-specialty practices.

For more information on the above items, contact Kern Augustine Conroy & Schoppmann, P.C. at 1-800-445-0954 or via email at info@DrLaw.com.