

Health Care Insights

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New Medical Waste Requirements

On January 1, 2009, Connecticut's Environmental Justice Act went into effect.

The Act applies to areas of the state where statistics from the last census indicate a certain percentage of residents are low-income. These include 25 cities such as Hartford, Bridgeport, Meriden and Waterbury and parts of 34 other municipalities, some of them surprising, such as Greenwich, Fairfield, Groton and West Hartford.

In general, permits involving air pollution, including biomedical waste incinerators, trigger the Act. Both general and individual permits are included.

The Act requires the preparation of a complicated environmental justice plan which must be approved by DEP. DEP will not accept a permit application until the environmental justice plan is approved and it will not act on the application until 60 days after the required public meeting is held.

The requirements of the Act, how they must be met and what happens if they are not met are not well developed. Consultation with legal counsel is advised to construct and carry out a plan for a biomedical waste incinerator that will be acceptable both to DEP and to the municipality.

Please contact Diane W. Whitney at 860-424-4330 or by email at dwhitney@pullcom.com if you have any questions about this article.

The "Art" of Radiology

A special note by Dr. Harold Moskowitz and Stephen Kornhauser in the March 2009 issue of *Connecticut Medicine*, the publication of the Connecticut State Medical Society, points to the use of medical technology to further our understanding of art, artists and artists' techniques.

Mr. Kornhauser is the chief conservator at the Wadsworth Atheneum Museum of Art in Hartford; Dr. Moskowitz is clinical professor of radiology and director of the radiology residency program at the University of Connecticut Health Center.

In their paper, "Radiographic Analysis of Paintings at the Wadsworth Atheneum," the authors note the ability of diagnostic imaging techniques to analyze a number of important paintings in the Wadsworth Atheneum's collection. Included in their analysis were a self-portrait by van Gogh and a Renoir landscape showing the famous artist Claude Monet painting in his garden at Argenteuil, once a country outpost outside of Paris and now part of the urban extension of the French capital.

Employing radiographic techniques, the authors discovered that van Gogh's self-portrait, whose authenticity had been questioned, was very likely the work of the famous artist. The radiologist and the conservator reached this conclusion because they discovered a painting underneath the self-portrait. "Van Gogh," the authors note, "being poor, often reused canvasses and the finding of the painting of a woman at a spinning wheel, a common subject for the artist, was significant. It was a major and exciting discovery."

The Renoir work yielded a hitherto unknown portrait of a woman underneath the landscape which shows Monet at his easel, probably (Mrs.) Camille Monet.

An exhibition at the Hartford museum showing how diagnostic medical imaging techniques can lead to greater understanding of works of art entitled "What Lies Beneath: Revealing Painter's Secrets" closed at the end of March.

University of Connecticut Expansion Rejected

After much spillage of newspaper ink and great controversy in the Connecticut health care community, particularly in greater Hartford, Governor M. Jodi Rell announced that she was unwilling to endorse the University of Connecticut's plan for a new hospital in Farmington which would also have involved a precedent shattering joint venture with Hartford Hospital.

Terming the proposal "promising but unaffordable," according to the article by Arielle Levin Becker in the March 17, 2009, *Hartford Courant*, the Governor cited poor economic conditions, the lack of state control and the \$63 million annual cost in addition to \$475 million in bonding.

University of Connecticut president Michael Hogan suggested that the current John Dempsey Hospital, named after a beloved Connecticut governor who served approximately 40 years ago, might have to close or substantially contract. The proposal had received a lot of static from two Hartford area hospitals left out of the joint venture, Saint Francis Hospital and Medical Center and Bristol Hospital.

Another reason the University's proposal was rejected, in all likelihood, was \$2.3 billion in bonding authorized by the state for capital investments at the University of Connecticut,

\$827 million of which has not been spent. Many observers found the University's effort to add to the \$2.3 billion total a bit too rich for the Nutmeg State under any circumstances.

For further data, please contact Elliott B. Pollack at 860-424-4340 or at ebpollack@pullcom.com.

The Federal Trade Commission Speaks!

In the Winter issue of *Health Care Insights*, we directed readers to the intention of the Federal Trade Commission to adopt identity theft "Red Flags" rules. The purpose of the proposed rules is to require commercial enterprises which regularly extend credit to consumers to reduce the rate of identity theft.

The American Medical Association opposed application of the rules to its members, claiming that physicians were not traditional creditors, that application of the rules to physicians would have an unfair impact on the practice of medicine and be burdensome to health care providers.

In a letter to the AMA dated February 4, 2009, Eileen Harrington, acting director of the Bureau of Consumer Protection of the FTC, politely rejected these contentions. She asserted that Red Flag rules would not have an impact on most physicians and that simple and streamlined programs could be adopted which would substantially reduce the likelihood of medical identity theft in most physicians' offices.

"For example," Ms. Harrington stated, "for most physicians in a low risk environment, an appropriate program might consist of checking a photo identification at the time services are sought and having appropriate procedures in place in the event the office is notified – say by a consumer or law enforcement, that the consumer's identity has been misused."

Physicians have been granted an extension until

July 1, 2009, to comply with the new rules.

Please contact Michael A. Kurs at 860-424-4331 or mkurs@pullcom.com for additional FTC guidance.

The Conflict Between Medicine and Religion

Stephen J. Kern, a New Jersey attorney, reviews the recent death of John Travolta's teenage son due to the possibility, although denied by the family, that the Travoltas refused to address a diagnosis of autism "because their religion, Scientology, does not recognize autism as a medical condition." What does a physician do, Mr. Kern asks, when confronted with this problem?

Parents' decision to withhold care in life threatening circumstances probably requires a report to appropriate state authorities if the family can not be convinced to relent.

When the problem is less serious, or "when death or serious injury can not be predicted," the solution is far murkier. Parents' judgments usually trump a physician's recommendation if more than one therapy is possible.

The option of directing the parents to obtain a second opinion is suggested by the author as well. For a hospitalized patient, the hospital's ethics committee might be asked to offer its thoughts.

Needless to say, the complicated and potentially life threatening and liability-incurring issues implicated by this situation should not be grappled with by a physician without appropriate legal input.

For further information, please contact Jennifer A. Willcox at 203-330-2122 or jwillcox@pullcom.com.

Health Care Costs and Technology

The Medical Letter (TML) is a monthly newsletter published by the nonprofit organization of the same name which seeks to provide health care professionals with unbiased drug prescribing recommendations. An article in *TML's* February 23, 2009, issue notes that oral cancer seems to be increasing, "especially in younger patients."

Zila Pharmaceuticals has developed a device it calls ViziLite Plus which is designed to "help dentists identify abnormal changes in the mucus membranes of the oral cavity."

Without going into the intricacies of the technology, the interesting aspect of ViziLite Plus is its relatively low cost (under \$25 or less - depending on purchase volume) coupled with the manufacturer's "certification" of dentists who purchase a large volume of the devices, have performed at least 40 tests and have reviewed the manufacturer's training video, in addition to other minor requirements.

Available studies do not support the general use of ViziLite Plus and there is some question as to whether or not the chemicals employed as part of the test might be harmful, observes *TML*.

TML concludes that there is no evidence that routine screening programs using ViziLite Plus "can detect oral cancer early and reduce the number of deaths from the disease." There certainly is "no acceptable evidence that it should be used to screen the general population," the article advises.

It will be interesting to determine whether dental insurance plans agree to reimburse dentists for ViziLite Plus screenings.

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