



Cincinnati Law Library News

A Monthly Newsletter from the Cincinnati Law Library Association

May 2008

Inside This Issue

- 1 **What is a 'Physician Office' for Purposes of the Kentucky CON Exemption?**
- 3 **Tech Tip: Lexis tutorials**
- 5 **HeinOnline Demos**
- 7 **Adult Swim**

What is a 'Physician Office' for Purposes of the Kentucky CON Exemption?

Reprinted with permission, by John R. Cummins and Peter L. Thurman, Greenebaum, Doll & McDonald Health Care, Health Insurance and Life Sciences Team

In the recent case of *Gilbert v. Kentucky Cabinet for Health and Family Services*, the Kentucky Court of Appeals ruled that a Kentucky physician and his group practice violated state law by operating three offices providing magnetic resonance imaging (MRI) services without first obtaining a Certificate of Need (CON) from the Cabinet for Health and Family Services (Cabinet). The Court's ruling helped delineate the boundaries of the Physician Office Exemption under CON law and provides two important lessons for physicians wishing to establish satellite offices where diagnostic procedures may be performed.

First, to qualify as a physician office or clinic under the Physician Office Exemption, the "active participation" of the physician-owner at each satellite office is not required.

As stated by the court, "requiring the physician owner's personal active participation in the medical practice at each satellite office and, conversely, requiring the treating physician to be an owner of the practice would make the exemption practically unavailable in such circumstances." Such a requirement would be impractical and mean that a CON would be necessary to permit treatment of patients at satellite offices simply because the

treating physician is an employee rather than an owner. Thus, according to the court's decision, a physician-owner does not need to actively practice at each office location in order for that office to qualify for the Physician Office Exemption.

Second, the availability of the Physician Office Exemption, in any case, depends on the kind of activity that actually takes place at the office for which the exemption is sought.

For purposes of this analysis, courts will elevate substance over form, *i.e.*, just because a person owns a satellite office and that person happens to be a physician, the office will not automatically be considered the private office of a physician. Acceptance of such an argument would allow every physician in Kentucky to ignore CON and licensure altogether so long as he or she owned the building containing the health facility or where the health services are provided.

To qualify for the exemption, the majority of activities taking place at the office must relate to the rendering of regular physician services to patients who appear at the office. If diagnostic procedures are performed at that office as well, the majority of the procedures performed for

Continued on page 4

The Cincinnati Law Library Association

Hamilton County Courthouse
1000 Main Street, Room 601
Cincinnati, OH 45202

513.946.5300

Fax: 513.946.5252

Circulation: 513.946.5302

Reference: 513.946.5303

Open Monday-Friday 8 - 4

www.cincinnatiilaw.org



Westlaw® Legal Calendaring automatically calculates your litigation deadlines based on the applicable federal, state and local court rules – then adds the information directly to your Microsoft® Outlook® calendar. As dates change, you can recalculate accordingly – and repopulate your calendar with the updates. Know with confidence you'll never miss key dates again – no matter how often they change.

Even link directly to the relevant court rule governing any of the events on your calendar. Westlaw Legal Calendaring: a powerful tool for managing your cases, your time and your priorities. For more information, call our Reference Attorneys at **1-800-733-2889 (REF-ATTY)**.

© 2008 West, a Thomson business L-3372172-08

Better results faster.

Westlaw.

THOMSON
WEST

Tech Tip: Lexis tutorials

Julie Koehne, Assistant Law Librarian

Lexis offers helpful tutorials on how to accomplish various tasks.

There are several different ways to view the tutorials. Here is one quick way to find the View Tutorials link.

Within the law library, Lexis opens to the Search tab.

Once you select a source to search, then the View Tutorials link will display in the lower right hand corner.

Click on the link to view the different tours available.

When in Lexis and searching, there are several opportunities to view tutorials specific to the page you are viewing by clicking on the Show me link.

diagnosis of patients must be for those patients who are regularly treated by physicians of that practice, not from outside referrals. Thus, the activities taking place at the office cannot bear "all the hallmarks of a diagnostic testing facility" whereby "the only reason these patients presented themselves at the testing facility was that, unlike a patient whose blood or urine or biopsy is tested, these patients could not separate themselves from the biological subject matter of the test - their bodies."

In conclusion, the issue of "whether a facility owned by a physician is a physician office and is therefore exempt from regulation by the Cabinet . . . depends on the nature of the activity conducted there." Resolution of this issue will vary from case to case. Availability of the exemption will depend on whether the physician-owner or physician-employee provides regular medical care to patients of the practice at that office location.

Curiously, the Court of Appeals' ruling failed to apply, or even discuss, the test for the Physician Office Exemption as set forth in the administrative regulations at 900 KAR 6:050 Section 18(9). Under those regulations, the Physician Office Exemption is met if:

(1) each owner of the practice is a physician;

(2) the practice primarily (*i.e.*, at least 51% of the time) provides physician services (*e.g.* , evaluation and management codes) rather than services covered by the State Health Plan;

(3) services or equipment covered by the State Health Plan which are offered by the practice at the office are primarily provided to patients whose medical conditions are being treated or managed by the practice;

(4) a physician or physicians licensed to practice in Kentucky are responsible for all decisions regarding the care and treatment provided to patients;

(5) patients are treated on an outpatient basis and are not maintained overnight;

(6) services or equipment covered by the State Health Plan which are offered by the practice at the office are related to the professional services offered to patients of the practice; and

(7) major medical equipment in excess of the regulatory limit is not being utilized without a CON or other statutory or regulatory exemption. There are additional requirements that apply specifically to a practice owned by a radiologist or group of radiologists.

The physician and his group practice have requested a rehearing.

In part, the physician and his group practice are contending that most of the diagnostics were provided to patients of the practice and that interpreting MRI scans, and providing diagnosis, from a remote location via teleradiology constitutes the practice of medicine under Kentucky law, thereby entitling the satellite offices to the benefits of the Physician Office Exemption. Thus, we may hear further on this critical CON issue.

Written by John R. Cummins, Member of Greenebaum, Doll & McDonald, jrc@gdm.com (502) 587-3602

John is Chair of the firm's Estate Planning, Health and Insurance Practice Group;

And

Peter L. Thurman, an associate of the firm, plt@gdm.com (502) 587-3582

Peter is a member of the firm's Health Care, Insurance and Life Sciences Team & Employee Benefits Team.

Demos Available: Hein Online

By Mary Jenkins

Hein Online offers demos on YouTube. If you'd like to know a bit more about searching Hein Online effectively, you might want to give this a try at

<http://www.youtube.com/heinonline08>

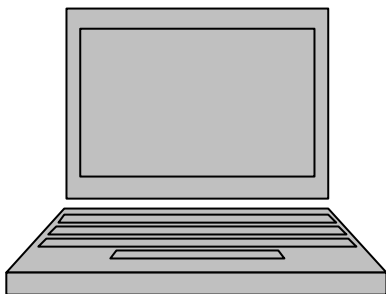
(Who has time to waste with faulty searching techniques? We all just want to find what we're looking for.) Hein describes its YouTube Channel as "how-to videos for the various HeinOnline collections, general searching and navigating videos, as well as other useful tips and tricks for using the HeinOnline interface".

You may be especially interested in a recent post called "How to Find an Article in the Law Journal Library". The Law Journal Library includes more than 1,100 law and law-related periodicals, from the first issue published to the most recent issue allowed by each publisher.

Cincinnati Law Library Association members may use Hein Online at the Law Library, while solo practitioners and attorneys at full member firms (with up to 50 attorneys) may also access those 1,100+ journals 24/7 offsite.

From the homepage, just click on HeinOnline law journals and Federal documents

(<http://www.hamilton-co.org/cinlawlib/intra/login.asp>)



Member Benefits

All members have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for **up to 6 weeks** at a time

Access to extensive electronic databases from the Law Library, including **LexisNexis**, **Shepards'**, **CCH Omnitax**, **CCH Human Resources Group**, and **CCH Business Group** resources, **Hein Online** Law Journals and Federal Register, and over 70 **Aspen / LOISLaw** treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom **videoconferencing**

5 **meeting rooms** with speaker phones

Professional **reference service** by our law librarians, available via e-mail, telephone, and in person;

Free **document delivery** by fax or e-mail of print and electronic materials

Inexpensive **CLE seminars** throughout the year, on legal research and substantive topics

In addition, solos and members whose firm has a membership have **24 hour remote access** to Fastcase.com case law and Aspen/LOISLaw treatises

FinPlan Divorce Ohio

By Mary Jenkins

FinPlan Divorce Ohio from Thomson West is now available for use in the computer lab. We will evaluate its utility following this initial year. Bring in your client's financial information and you will be able to:

- Look at both parties simultaneously, so you can accurately evaluate divorce settlements in minutes
- Automatically calculate Ohio child support
- View multiple "what if" scenarios to provide the most logical distribution of alimony and child support regarding tax solutions
- Use additional commonly used calculations provided with Divorce Planner
- Export reports to Word® and Excel®
- Export data to Assets+ (financial affidavit)
- Online Help is one click away

This software helps you evaluate spousal and child support with after-tax consequences in mind and prepares client-oriented reports for Ohio clients. It assists you in refining settlements to minimize taxes and maximize after-tax cash. It translates results into understandable after-tax cash reports and shows when your proposed support settlement does not make tax sense.

It also includes Divorce Math (basic), which performs 16 different calculations commonly required by family law practitioners, such as pension valuation, sale of marital home, retirement income projections, lump sum property payment versus periodic alimony, alimony recapture, loan amortization, and net present value.

Product description provided by Thomson West



Trivia: Which Undergraduate Majors Do Best on the LSAT?

As reported on Brian Leiter's Law School Reports blog on April 22, the students who perform best on the LSAT are from these disciplines, in this order: Physics/Math (topping the list with an average score of 157.6), Philosophy/Religion, Economics, International Relations, and Chemistry. Government and History make the top 10 list as well. For more information, see <http://leiterlawschool.typepad.com/leiter/2008/04/which-undergrad.html>

Adult Swim or Do You Web 2.0?

By Glenna Herald

What *exactly* is Web 2.0 ? A software package ? A state of mind? A communicable disease? The second coming?

All of the above?

None of the above?

Some say Web 2.0 brings to fruition everything the internet promised at its inception. Another good definition for Web 2.0, however, comes from Stephen Abram. He writes, "Web 2.0 is just the title of a conversation. There is no standard (at least not just a single one). We can all participate." Maybe the most important thing about Web 2.0 is not how it is defined, but how it is used.

So, which tools, offered by Web 2.0, could be useful in helping you build your practice?

Blogs

A blog, short for web log, allows you to post information and solicit feedback from readers. To be useful, blogs should be updated regularly and frequently. Many attorneys are beginning to use blogs to market their skills and build their knowledge base.

The following examples epitomize excellent blogging.

Cincinnati Law Library Association's Blog

<http://www.hamilton-co.org/cinlawlib/blog/default.asp>

The Legal Theory Blog

<http://lsolum.typepad.com/legaltheory/>

To construct your own blog, check out the following two sites. They promise to help you create your blog with ease and affordability.

<https://www.blogger.com/start>

<http://www.typepad.com/>

Networking

Your children may have introduced you to the social networking aspect of Web 2.0 by creating pages on Facebook or Myspace. But, not unlike swimming pools in the summertime, Web 2.0 offers "adult swim," or networking opportunities for professionals.

The following sites afford you the opportunity to market your skills by creating professional profiles. From there, you can join networks and invite others to join networks of interest. The idea is to build connections which may help you build your business.

Linkedin

With Linkedin you can connect to and share information with other professionals.

<http://www.linkedin.com/>

JD Supra

This service allows you to search for and share legal information.

<http://www.jdsupra.com/>

These sites should take the mystery out of Web 2.0. So, go ahead, take the plunge!

Cincinnati Law Library Association offers free CLE!!!!

Shepard's BriefCheck - This class covers how to use the Shepard's BriefCheck feature, which provides automated cite-checking for your briefs, motions or other pleading documents. BriefCheck will pull the cites from your electronic document, Shepardize them, check them for accuracy and check any quotes in the document for accuracy... all in a matter of minutes!

Total Litigator - Total Litigator is a brand new access interface for searching the Lexis materials. It is set up to mirror the litigation process and therefore, some say, is a little more intuitive when it comes to locating all of

the sources you need. During this introduction, you will see a demonstration of how to access the Lexis materials via Total Litigator.

Who: Wendy Gramza from Lexis
What: Lexis training for free CLE
When: Friday, May 30 @ 9:00
Where: CLLA's Conference Room

Please let us know is you plan to attend as seating is limited, call us @ 513-946-5300.



May 2008 Law Library Newsletter

INSIDE THIS MONTH
• What is a "Physician Office" for a CON?
• Tech Tip: Lexis Tutorials
• Adult Swim
• HeinOnline

Cincinnati Law Library Association
Hamilton County Courthouse
1000 Main Street, Room 601
Cincinnati, OH 45202
ADDRESS CORRECTION REQUESTED