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Opening Remarks

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Opening Remarks*

BY BEN CHANDLER**

Thank you President Todd for those welcoming remarks. I would also like to commend the University of Kentucky for bringing together such an impressive group of experts to focus on state law and the public health.

As an avid student of history, I think the evolution of public health in our country and in Kentucky stands out as a great success story. A century ago, the notion of public health focused primarily on sanitation, pest control, food safety, and the control of communicable diseases—known in the trade as controlling “vectors” of disease. The concept of public health long ago eclipsed the classic definition. This is particularly true of the government’s role. Fifty years ago, government spending on health was limited primarily to local health departments and mental health hospitals. Today we have Medicare, Medicaid, and a vast array of other important programs designed to provide access and financing for needed health services for all segments of our population. While we once focused only on the spread of diseases, we now focus on helping our people to be healthy through the provision of an entire range of services. Just witness the fact that last week, it was reported by the National Center for Health Statistics that life expectancy in the United States is at an all time high of almost seventy-seven years of age—and infant mortality is at an all time low.

The law with respect to health has undergone a similar transformation. While the area of health law once concerned itself with public nuisance laws and mandatory immunizations, there has evolved an immense body of law on health issues ranging from health care financing to domestic violence. A brief review of your conference agenda confirms this evolution.

As the chief legal officer of Kentucky, the role of my office in this area has also experienced significant change. For the past twenty years or so, the main health-related activity of the Office of Attorney General was a law enforcement function: the investigation and prosecution of Medicaid fraud.


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During this period, Medicaid has grown from around $200 million in expenditures in 1980 to a $3 billion a year program. Our efforts in this area have been quite successful. As of last year, Kentucky has received the fifth largest amount of recoveries of Medicaid money among the forty-eight states with Medicaid Fraud Units. Total recoveries to date exceed $10 million. This amount includes a record settlement of $1.2 million in August of a case of fraud against the former Pavilion Health Care Center in Louisville. This is the largest criminal penalty imposed for neglect and abuse of nursing home patients in American history. Five hundred thousand dollars of the penalty was earmarked for nursing scholarships to help recruit talented people into that profession and address Kentucky’s nursing shortage. The money will go to the Kentucky Nursing Incentive Scholarship Fund administered by the Kentucky Board of Nursing.

In addition to our efforts in Medicaid fraud, our office also expanded its health activities five years ago when we created the Office of Rate Intervention to undertake new consumer duties with respect to health insurance. It was this undertaking that led us to take a strong interest in the protection of charitable assets when a non-profit health facility or insurance company converts to a for-profit entity.

Let me briefly tell you the story. It underscores the importance of a little understood area of health law and I am pleased to see you will be discussing this topic at a session later today. Early in my first term as Attorney General, a number of advocacy groups came to discuss with me their concerns regarding the 1993 acquisition of the non-profit Kentucky Blue Cross Blue Shield by Anthem of Indiana. Questions had been raised as to whether the non-profit assets of Blue Cross were improperly removed from Kentucky by Anthem and taken to Indiana, rather than remaining here to benefit Kentuckians. The argument was that there had been a “conversion” of non-profit assets to private use. Ultimately, the Commissioner of Insurance raised similar questions and asked my office to investigate the 1993 merger.

In October of 1997, after Anthem had sued me to halt our investigation of the merger, we filed suit against Anthem to recover what we believed to be approximately $200 million in non-profit funds that had been accumulated as reserves by Blue Cross Blue Shield of Kentucky prior to the 1993 Anthem merger. Our theory was simple. Under our common law, the Attorney General is required to ensure that when a non-profit or other charitable trust ceases to exist, the remaining assets must be used in a same or similar fashion to ensure the original purpose of the trust is carried out. In legal terms, the attorneys present know this as the cypres doctrine. The original purpose of Blue Cross when it was founded in 1938—as clearly
stated in its organizing documents—was to promote the public health by providing group health insurance. When Blue Cross was formed, a charitable trust was created, and we argued the funds should remain in Kentucky to be held in trust and used for non-profit public health purposes similar to those intended by the original founders of Blue Cross of Kentucky over sixty years ago.

After overcoming a number of legal hurdles, we were able to settle the case in December of 1999, for $45 million. The settlement called for the creation of a non-profit foundation that will use the funds for health-related purposes in Kentucky. Named the Foundation for A Healthy Kentucky, it had its first meeting in the spring of this year. Laurel True, Kentucky’s first Secretary of Human Resources back in the 1970s is serving as president. Based on its assets, the foundation is already the fifth largest foundation in Kentucky. As its first act, the foundation has allocated $1 million each to the University of Kentucky and the University of Louisville to endow a chair in health policy. These funds will be matched by state funds to provide a $2 million endowment at each university. The endowment of chairs at each of our major research universities is intended to help guide the work of the foundation and will bring nationally prominent scholars to Kentucky to conduct much needed research. Indeed, the availability of grants from the foundation will serve to focus and engage Kentucky’s entire university community in the foundation’s mission, which is to meet unmet health needs in Kentucky. One footnote of interest to many of you is that Chris Frost, Associate Dean of the University of Kentucky College of Law, played a significant role in the case. He helped us successfully argue against a motion for summary judgement that ultimately led to the settlement.

While that story had a happy ending, both public health and the law are now faced with much darker prospects. With the events of September 11 and after, public health in America may face its greatest challenge yet: the intentional spread of deadly diseases by those with evil intent. This circumstance is not something that public health or the law has ever had to seriously contemplate. But this possibility is something we all must meet head on. And your conference is very timely for this reason. I am confident that our long cherished values will see us through this difficult time. Our commitment to justice, tolerance, hard work, and our community has served us well in the past and will serve us well in our current battle. There is no bacteria or person with evil in their heart that can overcome our spirit, our faith, or our know-how. Together, we can and will defeat any threat posed to us from around the globe. In particular, I know that the skill and dedication of those in both public health and law enforcement will help to
overcome one of our toughest foes—fear. The calm and professionalism you exhibit will help to soothe a tense nation in troubled times. For this we can all be proud—proud to be Kentuckians, and most of all, proud to be Americans. Thank you and have a good conference.