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Patient Safety and Medical Liability

Physicians, health care leaders, lobbyists, attorneys and patients attended the March 4th seminar entitled "Developing New Directives to Address Medical Liability and Patient Safety Issues in Northern Ohio." The seminar was open to everyone interested in health care with the main theme to concern the multifaceted issues surrounding patient safety and medical liability. Co-sponsors of the event included the Academy of Medicine Education Foundation (AMEF), the Cleveland Academy of Osteopathic Medicine and St. Vincent Charity Hospital.

Dr. William H. Seitz, Jr., the President of the Academy of Medicine of Cleveland/Northern Ohio Medical Association (AMC/NOMA) and a member of the Academy of Medicine Education Foundation board of directors moderated the entire session. Dr. Seitz introduced Dr. Jeffrey Stanley, the president of the Ohio Osteopathic Association (OOA) and a member of the Cleveland Academy of Osteopathic Medicine (CAOM), one of the co-sponsors of the seminar. Both physicians provided the opening comments for the seminar.

Dr. Stanley touched on the importance of continued physician advocacy and the need for physicians to write their legislators in order to affect change. Physicians are still cutting back on their practice, leaving the state or retiring early, indicating there is still a need for legislative change. Dr. Seitz recalled that in March 2004, the AMC/NOMA sponsored a similar seminar based on indications that physician overhead costs were going up, physician satisfaction was going down and physician services were being scaled back — all resulting in an angry cycle of decreased access to patient care and dwindling patient satisfaction. A resolution is what we seek today. Dr. Seitz noted there has been a distinct change in the relationship between physicians and the community. In some cases, physicians have gone from being a caretaker to being an adversary. An adversary between themselves and insurance companies, their malpractice carriers, attorneys and ultimately their patients. Anger has replaced trust in many of these relationships and is affecting the next generation of physicians who have great concerns about staying in Ohio to practice.

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AMC/NOMA physician representatives provide
proponent testimony on SB 88

In April, Drs. **John Bastulli**, **Jon Myles** and **Michael Delahanty** presented proponent testimony on SB 88 — the mandatory arbitration legislation — to the members of the Senate Insurance, Commerce and Labor Committee in

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Following their testimony before the Senate Insurance, Commerce and Labor Committee (left to right), **Drs. Delahanty, Bastulli and Myles** spend a moment with Mr. Gary Fetgatter, the Executive Director of the Ohio Podiatric Medical Association, a supporter of SB 88.

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Medical Liability Insurance Update Ms. Ann Womer Benjamin, J.D., Director of the Ohio Department of Insurance

Ms. Womer Benjamin stated The Ohio Department of Insurance views this situation as a state crisis, despite some major Ohio newspapers who still publish articles claiming there is no medical liability crisis. There remains a need to promote the realization that this is indeed a statewide issue. The ODI only regulates the insurance industry and is not a spokesperson for the industry. ODI reviews rates, recently under increased scrutiny, and found rates over the past two to three years have been actuarially and legally justified as being appropriate under the circumstances in Ohio. The

costs associated with paying claims and defending lawsuits have been rising astronomically, and it's those costs that form the largest percentage of the premium, about 80%.

Ms. Womer Benjamin mentioned that medical malpractice rates appear to be slowly stabilizing, with lower rates of increase in 2004 than in each of the prior two years. New rules relative to insurance companies' data reporting, as well as recently amended legislation will be useful over time. In review of the physician survey sent out last summer by the ODI, she stated that Ohio is fortunate among crisis states to have five major carriers still offering coverage. Furthermore, for the first time since the early 1990s, the Department has licensed new medical malpractice carriers to provide coverage in the state. Additional players offer not only increased competition, but are a positive sign of interest in the Ohio market. Companies have indicated to ODI that among other factors, Ohio's enactment of medical malpractice tort reform legislation has made them more confident in the marketplace. She also pointed out that physicians should be very grateful to the professional associations, including the AMC/NOMA, for their hard work in getting tort reform legislation enacted. Despite some stabilization, premiums are still high and further survey results are sobering.

The survey generally confirmed the anecdotal evidence that physicians are leaving the practice and patient care is being impacted because of high premiums. Of 8,000 surveys mailed randomly to Ohio physicians, 17% of those physicians responded (approximately 1400). Nearly 4 out of 10 have retired or plan to retire in the next three years due to rising insurance expenses. This finding was all the more sobering since just 9% of the respondents were over the age of 64.

The rising premiums and the exodus of doctors have already negatively affected Ohio's patient population. The survey further shows that 66% of physicians have turned down or referred high-risk procedure patients elsewhere, and 48% of OB/GYN and family practice physicians in Northeastern Ohio have stopped delivering babies. Nearly three quarters order more tests to better defend their decisions and need to see more patients to remain financially viable. The survey's final conclusion dealt with curative measures to remedy the problem — one of which included a high amount of support for alternative dispute resolution such as medical review panels prior to a



ODI Director Ann Womer Benjamin discusses the physician survey information collected by ODI.

court filing. This information has been presented to the legislature and to the Ohio Medical Malpractice Commission. (Survey results are available at www.ohioinsurance.gov.) Also mentioned was the commission report due out in April 2005 and once that report is released an overview will be provided in the *Cleveland Physician*.

Ms. Womer Benjamin talked briefly about captive insurance legislation currently under review, initiated by the Governor's office as a solution to the medical malpractice crisis in Ohio. It was not Ohio's intention to become a haven for captive insurance companies, but to provide a captive insurance option for Ohio businesses. The draft Ohio statute is based on a review and conglomeration of a number of other state captive insurance statutes including those of Vermont and South Carolina. As drafted, the statute would allow captive insurers to write only commercial property and liability insurance and would allow only for the licensing and regulation of those companies formed under the Ohio statute. It does not purport to regulate captive insurance companies formed under the laws of another jurisdiction. There will be more information on this legislation provided in the future as it moves forward.

Legislative Advocacy Initiatives – State Legislative Update – Mr. Michael Wise, J.D., McDonald, Hopkins Burke and Haber; Mr. Michael Caputo, AMC/NOMA lobbyist; and Dr. John A. Bastulli, Vice President of Legislative Affairs, AMC/NOMA

Mr. Caputo provided a brief overview of the bills that are currently being
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CLEVELAND PHYSICIAN

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AMC/NOMA Hosts Informative Seminar on Patient Safety and Medical Liability

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tracked by the AMC/NOMA and our lobbyists. At the height of the debate right now in Columbus, is the Governor's budget bill as well as the suggested cuts to the Medicaid program. Another bill that has resurfaced in this general assembly is the universal health care legislation. While the concept may sound appealing — full coverage, no limitations, no prerequisites — it would be incredibly expensive to administer through the creation of a new tax on all Ohio employers. Mr. Caputo also touched briefly on Senate Joint Resolution 3 which would create a Supreme Court nominating task force to interview individuals interested in appointments to the state Supreme Court. The Governor

Other organizations currently supporting the legislation are the Ohio Osteopathic Association, the Ohio Podiatric Medical Association and the Summit County Medical Society. (For more information on SB 88 and the testimony provided on the bill by the AMC/NOMA see page 1.)

The AMC/NOMA will pursue passage of SB 88 or some form of alternative dispute resolution mechanism in Ohio. Dr. Bastulli said ODI's survey showed the number one priority for 88% of responding physicians was a legislative pursuit of an alternative dispute resolution process such as medical screening panels, medical courts, or arbitration. A recent study commissioned by the Center for Health Affairs, our regional hospital association, estimated that the economic impact of the health care industry in Northeast Ohio (the delivery of clinical care, education, and research) amounted to \$11.5 billion dollars per year. As our number

Reimbursement Fund (RRG), California Pacific Medical Center, San Francisco, CA

Dr. Lee is part of the Physician Reimbursement Fund — a captive medical liability insurance company formed following the passage of MICRA in California. He reviewed the company's history over the last 30 years, noting they've not had a losing year. Dr. Lee shared how the MICRA legislation stabilized the medical liability market by capping noneconomic damages and attorney contingency fees and implementing an alternative dispute resolution mechanism (ADR).

Dr. Lee's company frequently utilizes arbitration as a very viable form of ADR to solve medical negligence cases. Arbitration can be mandatory or voluntary, and is a contract between the doctor and patient. Another aspect of arbitration is it can be binding or non-binding. Dr. Lee's company utilizes voluntary and binding arbitration for its many advantages. It's a lower cost product to utilize; cheaper than going to court. It results in more predictable awards since arbitrators tend to be far more rational about awards than the courts. Arbitration is an informal setting that's less intimidating without all the rules and regulations or a jury scrutinizing you. Disadvantages of arbitration are more frequent awards and loss of an



From left to right, Mr. Mike Caputo and Dr. John Bastulli provide answers to questions from the audience along with Mr. Mike Wise — far right at podium.

would make the initial appointment, based on referrals from the task force, and after serving a ten-year term, the regular voting process would determine further service.

Dr. Bastulli and Mr. Wise gave a brief overview of SB 88 — the mandatory arbitration legislation that was initiated by the AMC/NOMA and has been sponsored in the Senate by Senator Kevin Coughlin (R-57.) The proposed legislation was drafted in an effort to create a fair and reasonable forum for resolving medical malpractice claims, while quickly and efficiently disposing of frivolous claims. Senator Coughlin agreed to sponsor this legislation in the Ohio Senate. A press conference was held on March 2, 2004 in Columbus to introduce this important legislation. On hand to present at the press conference were Senator Coughlin, Dr. John A. Bastulli and Dr. John Clough.

one industry, its protection is vitally important.

As a former legislator, Mr. Wise encouraged those physicians who knew a legislator personally or as a patient, to take the time to talk to them about issues of importance to medicine and health care. Mr. Wise recalled he was more inclined to read a letter from a constituent that he knew personally. He encouraged writing letters because many letters garner greater attention and response to an issue. Ohio's term limits also bring new legislators every few years who may not be familiar with all the issues. It's up to the physicians to provide an ongoing education to newcomers on critical health care issues.

Advantages of Alternative Methods to Litigation – George F. Lee, M.D., CEO and President, Physicians



Dr. George Lee makes a key point during his presentation.

appeal on the decision. Regarding the arbitration agreement itself, there has been some debate that if a plaintiff decides to file suit they will challenge whether it was a contract of adhesion. Dr. Lee's company has faced this type of challenge and won every time.

Mediation is another informal way to
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solve disputes. While it's less costly and provides a quick response, it's usually voluntary and nonbinding. You don't usually get a win or lose with mediation, just a compromise. Because it is non-binding, it adds another layer of expense to the whole settlement process. If the result of mediation is unacceptable, the whole defense strategy has already been revealed.

The discussion then turned to apology and disclosure. Apology and disclosure is a process of accepting responsibility, not an implication of wrongdoing. Disclose the facts by explaining exactly what happened, then offer restitution for economic losses. Risk managers are very strongly supporting this policy because they've seen the economic outcome. Each physician must assess his own practice environment. Hospitals that never embraced such policy are going to be resistant, but those who have are beginning to see positive results.

California's MICRA legislation makes many of these alternatives possible. Passage of MICRA type legislation at the federal level would change the face of tort reform across the country, enabling every state to get things done more easily.

MICRA provides an environment in California which allows doctors to form a new captive insurance company as well as utilize alternative dispute resolutions. MICRA provides stability and confidence to take risk. Not that the same risk can't be taken in another state, but Dr. Lee did not feel the same level of success could be achieved in New York or Illinois, for

example. That is why tort reform is still so important.

Bridging Medical Liability and Patient Safety – William Sage, M.D., J.D., Professor of Law, Columbia University, New York, NY

Dr. Sage began by mentioning two studies of interest. One is the Joint Commission (JCAHO) white paper which contains good information on error disclosure and mediation (available online at www.jcaho.org). The second is a medical liability study project Dr. Sage is involved with personally in Pennsylvania, funded by the Pew Trusts (available at www.medliabilitypa.org on how to disclose medical errors and conduct early mediation of disputes.

Dr. Sage believes that tinkering with the legal system is not the only solution to the problem. There is a tendency to make this a discussion about trial lawyers, but he believes the discussion should be about health care or health policy. The health care system is not uniform. Every provider is not in a similar organization. How is medical liability a health policy problem? It affects cost, access and quality of care in some very significant ways. There is a two-sided mismatch between negligence and litigation. Dr. Sage noted that it is true that there are plenty of unjustified lawsuits that are brought or settled where there really was not negligence as the underlying factor. However, there are also a lot of uncompensated avoidable injuries and high rates of avoidable errors. Moreover, Dr. Sage noted that there is a poor process associated with resolving malpractice disputes or even bad outcomes of medical care. There are limited non-monetary remedies and a lack of quality

feedback to providers.

There is also a misdirected focus on individual physicians rather than "systems." Because focus is on individual physicians, each is very concerned about their individual reputations, and each experiences a tremendous financial stress about being insurable by a malpractice carrier. As a result, the system experiences destructive cycles of defensive medicine both in assurance behavior over-testing and over-treatment and avoidance behavior meaning not doing certain procedures. This is obviously not the way a health care system should work.

Dr. Sage noted that the political debate over malpractice reform in 2005 is still focused on MICRA. MICRA is 1975 and today is 2005. The health care system has changed enormously in 30 years. The academic debate is not just about MICRA, but about administrative compensation systems, such as medical courts or enterprise liability. Enterprise liability would house dispute resolution/compensation systems and the insurance systems within medical organizations, such as hospitals or group practices.

Dr. Sage believes that there should be some distinct demonstration projects — possibly state based, or through Medicare. He referred to an Institute of Medicine committee report released in 2002 on rapid advanced demonstration projects. The demonstration attributes would be a public infrastructure with definitions of avoidable injuries, a prospective schedule of noneconomic damages, and data on access, cost and safety.

The demonstration project concept had some options — a provider-based
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Dr. Sage addresses the audience on the issue of medical liability.

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early payment option, a statewide option and an employer-based option. Various guidelines among all three options included:

- Promptly paying economic loss and predefined noneconomic damage for identifiable classes of avoidable injuries
- Immunity from suit for participating providers
- Provisions from the Federal government for reinsurance on a shared-cost basis to providers
- Allowances for private employers to structure an alternative system to preempt state tort law (this scenario would need to overcome tension between malpractice reform and general business tort reform)

Dr. Sage recommended reform be implemented through Medicare. There would be a close connection to patient safety, pay-for-performance and other quality initiatives, and be established as a pilot program with provider “earn-in” with a malpractice insurance subsidy. This system would change tort politics to health care politics. A member of the audience questioned whether the Medicare program would be the appropriate branch to handle this project due to their strong approach to fraud and abuse. Dr. Sage responded that Medicare would be responsible for running the administrative system, provide immunity from state tort law, and be used to better align the existing payment reimbursement side and the quality links to the medical error reduction in patient safety side.

Dr. Sage concluded that liability should be understood as part of the health care system, and that legal change should integrate liability with health care cost, access and quality.

The Potential of Health Information Technology to Reduce Errors and Reduce Premiums – Barry Chaiken, M.D., Chief Medical Officer, American Board of Quality Assurance Utilization Review Physicians – Boston, MA

Dr. Chaiken reviewed data which showed that 35% of physicians and 42% of the public have had a medical error happen to them or a family member. When asked the causes of those errors, physicians primarily indicate the nursing



Dr. Chaiken responds to a question from the audience.



Dr. Hickson provides the physicians in the audience with some case studies.

shortage or overwork/stress. Patients primarily indicate physician errors. A recent Health Information Management Systems Society study identified medication errors as a good target for technology. Only about 19% of institutions have implemented barcodes for medications. Within this study, 76% said that computerized physician order entry (CPOE) would be helpful, however, only 21% said it had been implemented in their organization. A portable portal would be ideal, providing patient information in a pocket — demographics, results, transcriptions and reports, medications, allergies, vitals, and reminders/alerts to drug interaction, allergy or overdose. It would greatly improve communication between the physician and the pharmacy and avoid confusion over similar drug names. Establishment of a universal continuity of care record (CCR) could be utilized by all vendors with a core data set having interoperability for exchange of information. All of these elements combine to reduce medication/patient errors; however, the prevalence of CPOE at this time is at about 5%.

CPOE enhances patient safety by improving outcomes. Dr. Chaiken noted that there is no reason why physicians who use these tools, who have a lower probability of making medical errors, should not get some benefit from it. Why not link these tools together with medical liability to have incentives towards specific quality measures and particular goals?

The How and When of Communicating Unexpected Outcomes – Gerald Hickson, M.D., Associate Dean for Clinical Affairs, Director, Vanderbilt Center for Patient and Professional Advocacy

Dr. Hickson discussed a “balance beam” approach to reporting errors to patients. His aim is to promote and encourage physicians to think about disseminating appropriate disclosure-related strategies throughout their practice or medical center. Sometimes premature disclosures are made while other times disclosure comes too late. In some cases, there is a clear error, obviously

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related to an adverse outcome. The greater challenge is to walk in and discover there has been an adverse outcome. How to disclose in a way that generates the least amount of inflammation? A patient wants to hear the truth, an apology and know how the problem is going to be remedied. Remember that "I'm sorry" can mean two very different things. It could mean remorse for simply having made a mistake, or it could be an expression of concern for the patient as an individual having suffered an adverse event. Dr. Hickson stated that often families have told his researchers that the doctor seemed to be sorry about the impact on his/her reputation rather than for the patient as an individual. Be precise, be genuine, and don't cast blame without all the facts. From that point, move forward. Increasingly patients and the public want to know "what have you learned from this event and how will things be changed to keep this from happening again?"

Dr. Hickson emphasized that physicians must also be mindful of the system in which they practice. Some patients still view their physician as captain of the ship and whatever he or she says goes. Physicians need to know their limits and abilities, and how potential adverse outcomes can be reviewed. Never promise something that can't be delivered without a doubt.

It is also important to remember that a physician is only one part of a system of disclosure. As John Nance says — as long as carbon-based units are involved in the practice of medicine "stuff happens." When "stuff happens," it's widely known that poor communication will prompt some patients to sue. It's also known that small numbers of physicians attract a disproportionate number of suits, so it is the responsibility of all physicians to deal with those colleagues. In closing, Dr. Hickson reminded that the process of disclosure about an adverse outcome begins with the patient's first contact with the physician's practice — so make it a positive one.

National Health Policy Update – Tort Reform Initiatives at the Federal Level – Mr. Dan Nickelson, Health Care Consultant, Washington, D.C.

Mr. Nickelson began by stating that he



Mr. Nickelson begins his presentation to the audience.

is confident that the House will once again pass the medical liability reform legislation, as it did in the last session. The bill passed in the last session was very much identical to one modeled after the California statute (MICRA) with the key feature being the limit on the award for pain and suffering of \$250,000. In the last Congress, the Senate was unfortunately short by twelve votes, despite support from the president, organized medicine and both Ohio Senators. It takes 60 votes to overcome a filibuster in the Senate. In the last Congress, there were 48 votes. While the Republicans

have gained some seats in this Congress, there are still only 50 to 51 votes, therefore, it is unlikely that the Senate would pass the legislation this session. However, Mr. Nickelson noted that there is some discussion about passing legislation that would assist certain high-risk specialties with their medical liability issues — such as emergency physicians, neurosurgeons and OB/GYNs. However, even this type of legislation is going to require leadership from both parties to work together. Mr. Nickelson briefly touched on patient safety legislation at the federal level as well as Medicare and Medicaid funding issues.

Dr. William H. Seitz, Jr., wrapped up the session by providing a quick overview of the topics covered during the course of the day and asking the audience to support the AMC/NOMA in our legislative endeavors relative to medical liability and patient safety.

(This overview of the seminar is a brief synopsis of the presentations. It does not include all portions of the presentations.)

(Note: The AMC/NOMA is in the process of planning our next seminar for 2006 — if any of our members have any suggestions for topics, please email your suggestions to ebiddlestone@amcnoma.org.) ■

MEMBER MATTERS

Colleague's Corner

Recognizing outstanding AMC/NOMA members for their honors, awards and achievements, in addition to their work to spread health and wellness messages to the community.

Dr. Riebel Named Lakewood Hospital's President

Dr. William Riebel, medical director of infection surveillance and medical education at Lakewood Hospital, was named president of the medical staff.

Dr. Nissen Earns Cardiovascular Research Award

Dr. Steven Nissen, medical director of the Cleveland Clinic Cardiovascular Coordinating Center, received the University of Kentucky Linda and Jack Gill Heart Institute Award for Outstanding Contributions to Cardiovascular Research. He was recognized for his contributions in the

field of cardiovascular imaging as a pioneer in the development of intravascular ultrasound.

Dr. Seitz Presents at 4th Combined Meeting

AMC/NOMA immediate past president, Dr. William H. Seitz, Jr., along with other members of his surgical team presented a total of twelve papers at the Fourth Combined Meeting of the American and Japanese Societies for Surgery of the Hand in Honolulu, Hawaii. The Cleveland Clinic was the most widely represented at this conference. ■

AMC/NOMA physician representatives provide proponent testimony on SB 88

(Continued from page 1)

Columbus. The AMC/NOMA members urged enactment of the mandatory arbitration proposal as a way to control sharp increases in the cost of medical malpractice insurance.

Dr. Jonathan Myles, presented on behalf of the AMC/NOMA, and the Cleveland Clinic. Dr. Myles is also the president of the Ohio Society of Pathologists. Dr. Myles stated that the Cleveland Clinic provides liability coverage for its employed physicians. However, the malpractice coverage problem affects such a self-insured institution as well as other providers. CCF must maintain a capital fund adequate to cover its potential liabilities, with bond rating agencies setting the required level of capitalization. He explained the provisions of SB 88 in which a three-member panel, selected by both parties in a malpractice suit, would consider the evidence before a case goes to court and render a decision in a less expensive setting. He stated that while advocates believe most cases would not advance beyond the arbitration stage, parties who do not agree with the result still could go to trial and present evidence, including the arbitration panel's decision. Dr. Myles informed the Senate Committee that SB 88 is an innovative approach that hurts no one while removing cost from the system and helping to keep health costs down.

Dr. Michael Delahanty, presented on behalf of the AMC/NOMA and the Summit County Medical Society. Dr. Delahanty indicated the continuing insurance problem has forced many experienced physicians to leave the region or retire early. He stated the liability crisis has also affected doctors wishing to add a new partner to their group because of the additional insurance expense for the practice, stating that it is difficult to recruit and retain physicians to the area due to the hostile liability climate in Northeastern Ohio." Dr. Delahanty said the Northeastern Ohio Universities College of Medicine has "barely half" of its students remaining in Ohio to complete their residencies. Citing his own experience, Dr. Delahanty said his five-physician practice has had only one settlement paid in 15 years and no judgments against it. Still, its insurance company rating was no longer accepted by his hospital last year and he had to find alternative coverage. He stated that

their premiums are now 50% higher for lesser coverage with an anticipated increase in premiums in the future even without any claims.

Dr. John Bastulli, vice president of legislative affairs of the Academy of Medicine of Cleveland/Northern Ohio Medical Association, informed the Senate Committee that arbitration usually could be completed faster and less formally than a traditional trial. He said a similar arbitration process was at one time used in Ohio for medical negligence cases and should be used again, with some changes. He stated one key difference in the process outlined in SB 88 is that the arbitration would take place prior to a suit being filed. The bill also provides that if a party objects to an arbitration panel's

decision and proceeds to trial, they would have to pay the opposing party's actual costs unless the verdict was at least 10% more favorable to the rejecting party than the evaluation. He informed the committee that when the arbitration process was utilized previously for medical negligence cases in Ohio, the arbitration was conducted after discovery and expert reports were produced and there was no potential penalty for appealing the arbitration award. Several of the Senators had questions regarding the legislation that were addressed by the three physicians.

The personal injury lawyers have already come out in strong opposition to SB 88. The Ohio Academy of Trial
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THE ACADEMY OF MEDICINE
CLEVELAND



Northern Ohio Medical Association

March 9, 2005

Mr. Richard Mason
Executive Director
Ohio Academy of Trial Lawyers
395 E. Broad Street, Suite 200
Columbus, Ohio 43215

Re: OATL press release regarding mandatory arbitration legislation

Dear Mr. Mason:

As the Vice President of Legislative Affairs of the Academy of Medicine of Cleveland/Northern Ohio Medical Association (AMC/NOMA) and a practicing physician in Northeastern Ohio, I was very surprised by the comments made in your recent press release regarding SB 88 – the mandatory arbitration legislation.

Your organization is of the opinion that SB 88 "ignores joint deliberations by doctors, lawyers and insurance companies that concluded that screening panels do not work, but in fact only drive up the costs of litigating a claim." The statements made by the legislative chairman of OATL in your press release give the impression that the doctors that participated in a "study committee" on HB 215 (Medical Review Panels) concluded that medical screening panels or mandatory arbitration was not appropriate for resolving disputes.

I can assure you that the physicians in Northeastern Ohio, including the 4,100 members of the AMC/NOMA **do not** believe that the use of medical review or arbitration panels is inappropriate. On the contrary, there are other states as well as national organizations that believe that alternative dispute resolution mechanisms such as medical review panels, arbitration, or mediation are an appropriate alternative to resolve medical negligence disputes. In addition, a recent survey released by the Ohio Department of Insurance clearly showed that physicians across the state would favor a form of alternative dispute resolution.

I do not know who the doctors were on the study committee; however, I am certain that their views were not representative of the physician members of the AMC/NOMA. In fact, I am inclined to doubt the validity of your organization's assertion that the physicians on this study committee were against medical review panels or arbitration. Additionally, I would be most surprised if the physician representation on this committee included physicians from Northeastern Ohio.

The AMC/NOMA supports alternative dispute resolution and I will continue to encourage our membership to support SB 88.

Sincerely,



John A. Bastulli, M.D.
Vice President of Legislative Affairs
AMC/NOMA

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AMC/NOMA physician representatives provide proponent testimony on SB 88

(Continued from page 7)

Lawyers (OATL) has expressed its strong opposition to SB 88. The OATL alleges that SB 88 “ignores recent joint deliberations by doctors, lawyers and insurance companies that concluded screening panels do not work, but in fact only drive up the costs of litigating a claim.” The OATL is of the opinion that “this issue has already been thoroughly discussed by fair-minded practitioners from all sides of the debate. Professions that often differ on public policy concluded that screening panels or mandatory arbitration would hurt more than help the process of resolving disputes.”

The AMC/NOMA sent a letter to OATL regarding their statements. A copy of that letter is printed in full (see page 7).

During the month of April and May, Senator Coughlin’s office has been receiving comments from interested parties relative to SB 88. It is possible that a substitute bill will be crafted in the coming months. The AMC/NOMA will continue to keep our members informed on the status of SB 88.

The AMC/NOMA needs your support — we ask that you write or call your legislator and members of the committee reviewing this bill — the Senate Insurance, Commerce and Labor Committee — voicing your support of SB 88. Members will find the addresses of their legislators in the legislative directory sent out from the AMC/NOMA last month, or log onto our Web site at www.amcnoma.org and go to the legislation link to look up your legislator and send a letter directly via email.

Additional background information and a sample letter to legislators may also be obtained on our Web site at www.amcnoma.org.

If members have any questions about SB 88, please contact Ms. Elayne R. Biddlestone at the AMC/NOMA offices at (216) 520-1000, ext. 321. ■

Snapshot of Key Points in the mandatory arbitration legislation:

- The statute of limitations is tolled until sixty days after the arbitration panel serves all parties with the panel’s decision;
- A four (4) year statute of repose for medical negligence cases;
- A procedure for a medical provider to file an Affidavit of Noninvolvement to extricate himself/herself from a medical negligence case;
- The requirements for expert witnesses set forth in R.C. 2743.43 apply to the arbitration;
- The Ohio Rules of Evidence apply to the arbitration, and all statements or evidence submitted at the arbitration are admissible at a subsequent trial to the fullest extent allowed under the Ohio Rules of Evidence;
- The arbitration panel’s decision is admissible at the subsequent trial of the claim (however, the panel’s written opinion will not be admissible);
- A provision requiring the filing of a \$50,000.00 bond by a party whose claim or defense is determined by the arbitration panel to be frivolous;
- Penalty provisions, including attorneys’ fees, if a party reject the arbitration panel’s decision and a subsequent trial of the claim results in a decision that is not as favorable to that party.

FEDERAL LEGISLATIVE INITIATIVES

Representative Thornberry Introduces Legislation to Create Special Health Courts

Representative Mac Thornberry of Texas has introduced legislation in the House that would authorize funding for states to create special health courts on a pilot project basis.

Known as the Medical Liability Procedural Reform Act of 2005, HR 1546 would authorize grants to as many as seven states to establish special health courts to restore reliability to medical justice. The hallmark of the courts would be full-time judges with health care expertise, whose sole focus would be on addressing medical malpractice cases. Each participating state would be required to report on the effectiveness of the health courts, and the U.S. Attorney General would be required to hire a research organization to evaluate them.

“American health care is in crisis, in part because patients and doctors have both lost confidence in the medical justice system,” said Rep. Thornberry. “The solution, which this bill promotes, is a system of special courts which ensure that malpractice cases will be resolved by judges with the necessary medical expertise to guarantee consistency among similar cases.”

“With this bill, Congressman Thornberry has taken a crucial step toward restoring reliability to medical justice,” said Philip K. Howard, Chair of Common Good. “This bill sets the stage for a dramatic improvement in health care in America.” Common Good has called for the creation of special health courts as a way of restoring reliability to

medical justice. Their call was precipitated by the inadequacies and inequities of the current system:

- The current system cannot reliably distinguish good doctors from bad ones, exposing medical professionals who have done nothing wrong to the risk of ruinous liability. Studies estimate that 80 percent of claims involve situations where doctors did no wrong. Nonetheless, plaintiffs receive compensation in a quarter of these cases.
- The current system harms patient quality and safety. Fear of litigation drives costly and inefficient “defensive medicine,” while creating incentives for health care providers to cover up their own mistakes and the mistakes of their colleagues. This culture of silence prevents doctors from learning from mistakes, and leads to needless suffering and death.
- The current medical liability system does not provide consistent rulings on the standard of care from case to case. Instead, jurors determine the standard of care on an ad hoc basis, which means that no precedents are set and that like cases are not decided alike.

(Note: This story was reported through Common Good. To view the Reform Act go to: <http://cgood.org/assets/attachments/136.pdf>) ■

Ohio Medical Malpractice Commission Completes Final Report

Michael Caputo, AMC/NOMA lobbyist

The Ohio Medical Practice Commission was created in 2003 in legislation to address the medical liability crisis in Ohio. That legislation, SB 281, was enacted in response to concerns that rapidly rising premiums were driving away physicians and compromising the ability of patients to obtain appropriate health care. The bill contained tort reforms meant to address litigation costs as well as provide stabilization of the malpractice market. Over the last two years, the Commission has held more than twenty meetings. Speakers with experience in certain medical malpractice-related topics were invited to testify before the Commission. The Commission heard from actuaries, doctors (one from the AMC/NOMA), state regulators and other experts on various topics. Based on a review of the testimony, the commission has focused on ten key issues and made recommendations for each one.

Issue No. 1 – Effects of Senate Bill 281. The commission is of the opinion that due to the nature of ratemaking by insurance companies — relying on loss experience over a period of time — and the fact that many of the malpractice cases now being heard in Ohio courts are not subject to SB 281 because they arose before its effective date, the commission is not able to evaluate the effects of SB 281 on the market, or on malpractice cases in Ohio. However, the Commission heard from experts from other states with tort reform in place and based on that testimony the Commission is of the opinion that tort reform will have a stabilizing impact on the malpractice market in Ohio in time. Therefore, the Commission recommended that Senate Bill 281 remain in effect in Ohio with the expectation that it would help to stabilize medical malpractice market over time.

Issue No. 2 – Rate Making. The Commission agreed with the premise that the primary driver of medical malpractice rates is costs associated with losses and defense of claims. In addition, allegations that investment losses have caused the rapid rise in medical malpractice premiums in Ohio are without basis. Returns on investments have been between 4 to 5 percent since 1999. Furthermore, Ohio law prohibits the recoupment of investment losses in prospective rates, and the Ohio

Department of Insurance (ODI) ensures through its rate review that this does not occur. Further, investment income primarily plays a part in rate making with respect to the estimated returns on funds placed in reserves, to determine whether sufficient reserves, including investment earnings, would be available to pay claims. The Commission does not recommend a change in the rate review system in Ohio since the rates are already very well regulated. The Commission does recommend, however, that the ODI require medical malpractice companies to file and justify their rates even if no change is requested, at least once every year.

Issue No. 3 – Data Collection. Senate Bill 281 required clerks of courts to report medical malpractice lawsuit data to ODI, however, it was quickly noted through testimony from the clerks that there was unreliability of the data that would be collected under that system. Therefore, HB 215 was enacted in the fall of 2004, requiring detailed data reporting to ODI by insurance companies and self-insureds. Additional data reporting requirements were also enacted for attorneys and insurers. The Commission concludes that the new data reporting and collection requirement appears to be comprehensive and sufficient at this time, but should be evaluated after being fully implemented to determine whether additional changes are warranted. The Commission recommended that the data collection provisions recently promulgated by the Ohio Department of Insurance shall be reviewed and evaluated annually after each cycle of data has been collected. The annual report by the Department required by House Bill 215 should provide the necessary basis for evaluating the manner by which the Department collects data.

Issue No. 4 – Medical Error Reduction. The Commission heard testimony regarding several initiatives occurring in Ohio to address medical error such as the Ohio Patient Safety Institute, which is developing a statewide system for reporting medical errors and others. While testimony was offered indicating that most large hospitals have various error-reduction initiatives already underway, the Ohio State Medical Board, which is charged with disciplining the

profession, testified that it lacks sufficient resources to investigate all the complaints that it receives. Based on this information, the Commission strongly supports the need for a coordinated and specific effort in medical error reporting and patient safety in Ohio. The Commission recommends that the Department of Health and the Ohio State Medical Board work together to develop and implement a statewide protocol for medical error reporting and a statewide repository for such reporting. The Commission also noted in their report the fact that Ohio lacked a patient safety center. Although efforts at various institutions are commendable, no coordination or evaluation on a collaborative basis of methods and alternatives exist. Therefore, the Commission recommends that the Department of Health seek the authority to study the alternatives and make a recommendation to the legislature in the near future regarding the creation and funding of a patient safety center in Ohio. The goal of such a center would be to coordinate patient safety efforts at institutions across Ohio, work to identify best practices, educate health care providers about best practices, and identify funding sources for the implementation of best practices strategies.

Issues No. 5 – Health Care Access, Recruitment and Retention. The Commission heard specific testimony from leaders at medical education institutions in Ohio that recruitment of new doctors and retention of experienced doctors, particularly in certain specialties like surgery and obstetrics, have been impacted by the medical malpractice crisis. The report referenced the physician survey commissioned by the ODI completed in the summer of 2004, which reflected the response from almost 40% of doctors responding to the survey, that they have retired or plan to retire in the next three years due to rising insurance expenses. The survey also showed a direct impact on health care access because of doctor's unwillingness to conduct high-risk procedures or to see patients in certain locations. It can be concluded that a correlation does in fact exist between the medical malpractice crisis and access to health care and recruitment and retention of doctors. Based on these findings, the Commission

(Continued on page 10)

Ohio Medical Malpractice Commission Completes Final Report

(Continued from page 9)

recommends the investigation of programs to forgive educational loans and other incentives for doctors in certain specialties and for doctors who agree to stay in Ohio for a specified period of time. In addition, the Commission is expected to recommend that ODI continue to monitor patient access to health care and doctor departures and advise appropriate parties and agencies of such issues as they arise.

Issue No. 6 – Patient Compensation Funds. SB 281 required that ODI conduct a feasibility study of patient compensation funds for Ohio. The study report concluded that the anticipated change in overall premiums based on the recommended model would be about a 5 percent reduction in rates. The Commission did not feel that a PCF with only a 5 percent reduction in premiums, to be funded entirely by health care providers, would be beneficial. Therefore, the Commission is expected to recommend that no further action on a patient compensation fund be taken at this time.

Issue No. 7 – Captive Initiative. ODI has developed legislation that would permit the formation and provide for the regulation of captive insurers in Ohio. The Commission believes such legislation could increase insurance capacity in Ohio particularly needed in the medical liability market. Therefore, the Commission is expected to recommend that ODI pursue potential legislation authorizing captive formation in Ohio.

Issue No. 8 – Nonmeritorious Lawsuits. The Commission recognizes that claims, settlements and lawsuits generate costs for insurance companies whether or not any money is paid out to the claimant. The Commission heard considerable testimony that these cost factors drive premium increases. Failure to mitigate these costs will impact a provider's liability premium regardless of the underlying merits of the lawsuit. The Commission also heard testimony on the viability of pretrial screening panels, or medical review boards. Based on their review, the Commission is of the opinion that many issues still need to be resolved regarding pretrial screening panels, including whether they are constitutional and if they reduce costs. The Commission therefore recommends that ODI continue to pursue a pilot project of

a less formal mediation alternative to be created and coordinated with the Supreme Court. The Commission also recommends that a pilot project be created in one or more counties that establishes specialized medical malpractice courts or dockets. Finally, the Commission recommends the process reforms enacted in House Bill 215 (i.e., affidavit of merit for the plaintiff at the initial filing of a malpractice case, filing of affidavits of noninvolvement, and state medical board disciplinary authority over out of state medical experts) be evaluated by the Supreme Court after they have been in effect for two years to determine their impact on medical malpractice cases. The evaluation should be reported to the Governor, legislative leadership and the Department.

Issue No. 9 – Charitable Immunity. In addition to SB 281, the Commission was directed to review four specific elements of SB 86, which extended the charitable immunity law to volunteer health care professionals. The Commission was to review the affordability and availability of medical malpractice insurance for healthcare volunteers and nonprofit health care referral organizations; the feasibility of state provided catastrophic claims coverage to healthcare workers providing care to the indigent and uninsured; the feasibility of a state fund to provide compensation to persons injured as a result of the negligence of healthcare volunteers; and other states' Good Samaritan laws. The Commission found that Ohio's approach to charitable immunity is comparable to a majority of other states. However, free clinics in Ohio still have difficulty obtaining affordable medical liability coverage even though no claims have been made against them. Therefore, the Commission recommends

the issuance of guidelines by ODI which would require medical liability insurance carriers to incorporate into their underwriting and pricing of policies for free clinics appropriate modifications to reflect past and prospective claim experience in Ohio. In addition, the Commission recommends the inclusion of free clinics in a statewide medical area reporting system in order to insure those patients are receiving the best care possible.

Issue No. 10 – Medical Liability Underwriting Association. HB 282, enacted in 2004, provided for the transfer of 12 million dollars previously held by the Ohio Joint Underwriting Association into a new fund that could be used to create a new medical liability company or to fund other medical malpractice initiatives as approved by the Ohio General Assembly. The legislation also gave the Director of Insurance the authority to create a Medical Liability Underwriting Association (MLUA) if the current medical malpractice market were to further deteriorate. The Commission recommends the legislature retain the current funding set aside for the potential enactment of the MLUA.

A final vote on the Medical Malpractice Commission report was made in April 2005. Subsequent to that vote, the Ohio General Assembly as well as Governor Taft will receive these recommendations and choose to act on them as they deem fit. The AMC/NOMA and its lobbyists will keep members apprised of the status of the recommendations and any ensuing legislation which develops.

(Editor's Note: This article is a synopsis of the final report of the commission. To obtain a full copy of the final report contact ODI.) ■

ATTENTION! AMC/NOMA MEMBERS AND STAFF

The 2005-2006 edition of the *Academy of Medicine of Cleveland/Northern Ohio Medical Association (AMC/NOMA) Member Directory and Community Health Resource Guide* will arrive in your office in the next month. The *Directory* contains AMC/NOMA member information about the AMC/NOMA, our Web site, the Academy of Medicine Education Foundation (AMEF) and the AMC/NOMA committees. The *Directory* also contains hospital listings, legislator listings and over 100 community resource addresses, phone numbers and Web sites. The *AMC/NOMA Directory* is utilized as a resource by many health care agencies, hospitals and other health care-related entities. The *Directory* is provided free to our members. Additional copies may be obtained at a minimal cost. ■

AMC/NOMA Board of Directors Adopts New Policy

Last year, the AMC/NOMA published a document entitled “Antitrust Implications of Physician Work Stoppages.” This document was presented for educational purposes to aid physicians in their individual decision-making process in determining whether to participate in a work stoppage and it was not meant to be a substitute for legal advice. Included in the document was a reference to then AMA policy E-9.025 “Collective Action and Patient Advocacy.” A complete copy of this document is posted on the AMC/NOMA Web site at www.amcnoma.org under the Physician Advocacy link.

At the American Medical Association Meeting in December 2004, the Council on Ethical and Judicial Affairs presented Report 5 — an amendment to the ethical opinion regarding collective action. Due to the recent physician activities advocating for change to medical liability laws in various states, including Ohio, the AMA reviewed its current opinion on collective action and made several changes in order to provide guidance on non-employment-related matters as well as labor matters. The new policy also emphasizes that physician participation should be voluntary and free from undue pressure from colleagues. The report was adopted and will be published as AMA policy.

The AMC/NOMA board of directors reviewed the new AMA policy now entitled “Advocacy for Change in Law and Policy” and agreed that the AMC/NOMA would adopt this as policy, with some minor changes.

The board policy reads as follows:

The AMC/NOMA believes that a physician’s overriding ethical responsibility is to his/her patients; and patient care and the public interest should be of paramount importance. Physicians may participate in individual acts, grassroots activities, or legally permissible collective action to advocate for change, as provided for in the AMA’s *Principles of Medical Ethics*. Whenever engaging in advocacy efforts, physicians must ensure that the health of patients is not jeopardized and that patient care is not compromised.

Formal unionization of physicians, including physicians-in-training, may tie physicians’ obligations to the interests of workers who may not share physicians’ primary and overriding commitment to patients. Physicians

should not form workplace alliances with those who do not share these ethical priorities.

Strikes and other collective action may reduce access to care, eliminate or delay necessary care, and interfere with continuity of care. Each of these consequences raises ethical concerns. Physicians should refrain from the use of the strike as a bargaining tactic. In rare circumstances, individual or grassroots actions, such as brief limitations of personal availability, may be appropriate as a means of calling attention to needed changes in patient care. Physicians are cautioned that some actions may put them or their organizations at risk of violating antitrust laws. Consultation with legal counsel is advised.

Physicians and physicians-in-training should press for needed reforms through the use of informational campaigns, nondisruptive public demonstrations, lobbying and publicity campaigns, and collective negotiation or other options that do not jeopardize the health of patients or compromise patient care.

Physicians are free to decide whether participation in advocacy activities is in a patients’ best interests. Colleagues should not unduly influence or pressure them to participate nor should they punish them, overtly or covertly, for deciding whether or not to participate.

(Any questions regarding this policy should be directed to the AMC/NOMA staff at 520-1000.) ■



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by John A. Bastulli, M.D.,

Vice President of Legislative Affairs from the

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Golf Outing

AMC/NOMA will host the second annual golf outing on August 8, 2005, in memory of Marissa R. Biddlestone to benefit the Academy of Medicine Education Foundation (AMEF) at Chagrin Valley Country Club.

By participating in this special fundraiser your contributions will assist in expanding educational programs and implementing new initiatives for both physicians and the patient population.

The Academy of Medicine of Cleveland established the Academy of Medicine Education Foundation (AMEF) in 1996. The foundation is a 501(c)(3) tax-exempt, nonprofit corporation organized for charitable, education and scientific purposes. *Contributions to the Foundation are tax deductible to the fullest extent allowable by law.*

The categories for participation are as follows:

Event Sponsor: \$3,000.00 includes fees for a foursome

Hole Sponsor: \$1,000.00

Per Golfer: \$ 350.00

For more information or to register - see the brochure enclosed in this issue of the *Cleveland Physician* or contact Linda Hale at the AMC/NOMA at (216) 520-1000 or lhale@amcnoma.org.

AMC/NOMA sends letters of support to Congress regarding contact lens legislation

During the last Congressional session, based on input from some of our members, the AMC/NOMA contacted the Food and Drug Administration (FDA) regarding the safety concerns of decorative contact lenses.

It was the opinion of the AMC/NOMA, as expressed to the FDA, that even if the contact lenses do not correct vision, they still need to be fitted correctly by an eye care professional. The use of contact lenses does carry risk of many complications, including bacterial infections, corneal abrasions and microbial keratitis — which can cause loss of vision. In our state of Ohio, the Attorney General issued a warning to consumers considering the over-the-counter purchase of cosmetic contact lenses. Unfortunately, the legislation supported by the AMC/NOMA and other organizations did not pass in the last legislative session.

Once again legislation has been introduced at the federal level in the House (HR 371) and Senate (S 172), which would amend the “Federal Food, Drug and Cosmetics Act” to recognize and regulate both corrective and noncorrective contact lenses as medical devices, regardless of their intended use. The AMC/NOMA supports the measures in these bills and we have written to our representatives and urged immediate passage

of the legislation as it is an effective response to eye injuries to people, including children, who wear colored lens for fashion or cosmetic reasons and it addresses our original concerns as expressed to the FDA.

In April, the *Plain Dealer* reported on the latest push by Congress to request stricter FDA oversight of the lenses. Ohio Republican Senator Mike DeWine and other lawmakers argue that cosmetic lenses should be subject to the strict scrutiny that medical devices, including conventional contact lenses, receive because they can cause so much damage when used improperly. DeWine’s coalition has introduced the bill outlined above.

Quoted in the *Plain Dealer* article was AMC/NOMA member **Dr. Thomas Steinemann**. Dr. Steinemann has written medical journal articles on the eye problems caused by the decorative lenses and he has been extremely active in working toward the passage of this important health care legislation. The AMC/NOMA has also been working with Dr. Steinemann in preparing letters to Congress in support of the bill. Physician members who are interested in additional information regarding this legislation may go to American Academy of Ophthalmology Web site at <http://www.aao.org> ■

Ohio Department of Insurance releases physician medical malpractice insurance survey

In March, the Ohio Department of Insurance (ODI) released a physician survey that clearly showed that the rising cost of malpractice insurance has significantly impacted Ohio physicians. The Director of ODI, Ann Womer Benjamin, presented the survey results at the AMC/NOMA-sponsored seminar on March 4th, 2004 (see related story on page 2). Nearly 40 percent of the respondents to the ODI survey said that they have retired early or plan to retire in the next three years due to rising insurance expenses. Only 9 percent of the respondents were over the age of 64.

Northeastern Ohio data showed that more than 40 percent of the physicians responding from our area plan to leave in the next three years. 96% of the respon-

dents had rate increases in 2004. In addition, the survey showed that 66% of the respondents have turned down or referred high-risk procedure patients and 75% order more tests to assist in defending their medical decisions.

This survey clearly shows what the AMC/NOMA and our members have already known for some time — in fact, we were the first organization to mobilize regarding the issue. The AMC/NOMA leadership believes implementing mandatory arbitration or some form of alternative dispute resolution is needed in Ohio to assist Northeastern Ohio physicians with this ongoing crisis. To view a complete copy of the ODI report go to <http://www.ohioinsurance.gov/agent/medmal.htm> ■

It's Time For Your Financial Check-Up

Thanks in large measure to the work of health care professionals like you, Americans are enjoying longer, healthier lives than ever before. Plan to make the most of the coming years. Retirement planning is like preventive medicine, build a nest egg now and be more comfortable later.

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Dr. Arthur E. Varner to Provide the Pollen Count for the AMC/NOMA *Pollen Line*

The AMC/NOMA is pleased to announce that Allergist **Arthur E. Varner, M.D.**, will be providing the daily pollen counts along with preventative methods to help allergy sufferers cope with the sniffing and sneezing brought on by the season. The AMC/NOMA *Pollen Line* will be providing pollen counts Monday through Friday beginning May 1st. Dr. Varner's report is updated daily and local news stations, *The Plain Dealer* and many Northeastern Ohio residents who suffer from allergies and hay fever use the information. The *Pollen Line* has been serving the community for over 40 years with seasonal reports concerning local allergen levels. This coming season will be the 44th year that the hotline has been in existence.

The public can call the free hotline at (216) 520-1050 to hear Dr. Varner's recorded report on the density of the allergens, the probable effect on those



Dr. Varner spent time at the AMC/NOMA offices in early March to learn more about the pollen count.

who are sensitive to those agents, and what precautions to take. The *Pollen Line* will be accessible 24 hours a day Monday through Friday from May 1st to October 1st, with the reports recorded by 8:00 am each morning. In addition, during the

week of May 2nd Dr. Varner appeared on the AMC/NOMA acclaimed radio program, *Healthlines*, on WCLV 104.9 FM at 5:45 p.m. on Monday, Wednesday and Friday to discuss the AMC/NOMA *Pollen Line*. Patients may also listen to the *Pollen Line Healthlines* program on our Web site at www.amcnoma.org.

Dr. Varner was educated at Miami University and graduated in 1992 from the Ohio State University College of Medicine. His postgraduate medical education included a two-year fellowship in Allergy and Clinical Immunology at the University of Wisconsin Hospitals and Clinics. The American Board of Allergy and Immunology certified him in 1997. Dr. Varner has been a distinguished member of the AMC/NOMA since 1998.

The AMC/NOMA wishes to extend our deepest appreciation to Dr. Varner for taking the time each day to provide this important community service. ■

Joslin Diabetes Center Affiliate at St. Vincent Charity Hospital

Daniel Weiss, M.D., FACP, Medical Director of Joslin Affiliate Program

Type 2 diabetes has reached epidemic proportions such that an estimated 20 million persons are affected in the United States. This represents about 8 percent of the population. Sadly, one third of affected people are not diagnosed. And even for those who are diagnosed, serious complications continue to occur. For example, over 40 percent of new cases of kidney failure are due to diabetes. Cardiovascular events — strokes and myocardial infarctions — occur at a rate up to 4 times that of the nondiabetic population. Yet these complications are often preventable.

But treatment of diabetes is not simple and the physician alone cannot accomplish comprehensive treatment of diabetes. In addition, studies show that physicians judge diabetes-related office visits to be time consuming and demanding. But aggressive and evidence-based treatments are essential to improve outcomes. A multidisciplinary team approach is now available in Cleveland to assist physicians in the care of their patients with this devastating and challenging condition.

The Joslin Diabetes Center Affiliate at

St. Vincent Charity Hospital opened in January 2005 to provide a state-of-the-art multidisciplinary team approach to treatment of Type 1 and Type 2 diabetes. This center is affiliated with the internationally recognized Joslin Diabetes Center located in Boston.

The Joslin Diabetes Center Boston is affiliated with Harvard Medical School and was established in 1898. It is a non-profit institution dedicated to diabetes treatment, research, and patient and professional education. There are 25 affiliates around the world. Among the many discoveries of the Joslin Diabetes Center are laser therapy for diabetic eye disease and blood glucose control protocols for diabetes during pregnancy. Affiliated centers use materials and approaches, which have been proven effective by the Joslin Diabetes Center in Boston.

The Joslin Diabetes Center Affiliate at St. Vincent Charity Hospital is the only Joslin affiliate in northern Ohio. This diabetes center of excellence at St. Vincent Charity Hospital complements the hospital's longstanding expertise in cardiovascular medicine and bariatric and podiatric surgery.

The Joslin Diabetes Center Affiliate team at St. Vincent Charity Hospital consists of a board-certified endocrinologist, (Daniel Weiss, M.D.), nurse practitioner (Pamela Combs, RN, ANP), certified diabetes nurse and dietitian educators, and exercise therapist. Patients may be referred directly to the physician for initial consultation or may be sent for counseling with the educators without physician consultation. No primary care is provided by the Joslin Center Affiliate medical staff although patients may be seen without physician referral. Ongoing communication with the patient's primary doctor is provided. There will be rigorous analysis of patient outcomes.

Based on need, patients may receive counseling and self-management education in over 13 areas such as nutrition, foot care, insulin use and sick day issues. The education program at St. Vincent Charity Hospital is also recognized (certified) by the American Diabetes Association. Patients or physician offices may access the Joslin Diabetes Center Affiliate at St. Vincent Charity Hospital by calling (216) 363-3301 or (800) 834-4917. ■

AMC/NOMA Lobbyist Presents to Marymount and Summit County AMC/NOMA members

Mr. Michael Wise, of McDonald, Hopkins, Burke and Haber was invited recently to attend a medical staff meeting at Marymount Hospital to present on the AMC/NOMA legislative activities. Mr. Wise became the lobbyist for the AMC/NOMA in November 2004 and since that time has been working closely with the physician members of the organization on legislative issues of importance to the medical profession. As a former legislator, Mr. Wise understands the legislative process and how to get the attention of your legislator. Mr. Wise outlined for the group the important role physicians can play to make things happen at the Statehouse. He stressed the importance of getting to know legislators on a personal level as well as writing to them on specific issues. Mr. Wise also provided the group with an overview of some of



AMC/NOMA lobbyist, Mr. Mike Wise, makes a point to a group of Summit County members.

the legislative activities of the AMC/NOMA, most specifically on the mandatory arbitration bill. Ms. Biddlestone, the Executive Vice President/CEO for the Academy, responded to various questions from the physician audience on a variety of issues.

In March, Mr. Wise also presented a leg-

islative update to a physician group from the Summit County Medical Society. Also on hand to present was **Dr. John Bastulli** and Ms. Biddlestone.

The AMC/NOMA extends our thanks to the physicians at Marymount Hospital and Summit County for inviting our lobbyist to attend and present at their meetings. AMC/NOMA also thanks the Marymount and Summit County physicians for their support of the organization. Marymount Hospital is one of the medical staffs in Northeastern Ohio that has worked with the AMC/NOMA on group membership and we thank them again for their efforts in this regard.

The AMC/NOMA lobbyists and physician leaders of the organization are available to address medical staffs at Northeastern Ohio hospitals. Call the AMC/NOMA for more information. ■

AMC/NOMA continues to partner with Cuyahoga Community College (Tri-C) to offer Discounted Practice Management Classes to members

The Academy of Medicine of Cleveland/Northern Ohio Medical Association (AMC/NOMA) is pleased to partner with Cuyahoga Community College's (Tri-C) Center for Health Industry Solutions to offer Certification Courses and Continuing Education Unit Seminars at discount prices for AMC/NOMA members and staff. Participants in the classes also earn Certification and CEUs through Cuyahoga Community College's Medical Practice Management Seminars. Day programs are taught by Practice Management Institute (PMI) and focus specifically on medical practice needs. Several of the Tri-C classes have been held at the AMC/NOMA offices.

In February, the Practice Management Institute (PMI), and Cuyahoga Community College (CCC or Tri-C) presented a four-day Certified Medical Office Manager Course and Certification. This course offered valuable information regarding all aspects of the management of today's challenging medical practice. The course started on February 10 and ended February 18 at the corporate offices at AMC/NOMA. This condensed course covered the financial management of the medical office, practice administration, personnel and time man-

agement in the medical practice, and managed care issues. After completing all four days, the attendees were eligible to take the certification examination.

In March, PMI and Tri-C presented another seminar at the AMC/NOMA offices, which focused on accounts receivable and patient collections for the medical practice. PMI provided the attendees with strategies to help private practices as well as major hospital chains stay afloat during these tough economic times. This seminar was designed to give suggestions for successful collection practices and procedures which included managing accounts receivable and collection of bad accounts, tightening internal controls for "lost charges," collection from third-party payers and patients who are "past due." Attendees of this seminar were presented with materials that included an informative booklet and a certificate from PMI for 0.3 CEUs. One seminar participant noted that she found the seminar "...very informative and helpful with the collection procedures..." and she was also pleased with the personalized attention provided by the presenter.

The last seminar held at the AMC/NOMA offices in March, covered



An instructor from Practice Management Institute provides key points on accounting to a class held at the AMC/NOMA offices.

everything from CPT and ICD-9 2005 updates to Advanced Beneficiary Notices (ABNs). Office managers and billing specialists attending the seminar agreed this was a valuable seminar, which addressed their questions regarding the many 2005 coding changes. One participant — a coder specialist, stated "... the information was very informative, and was held in a perfect location..."

These courses along with many others are provided to our members at a discounted rate. If you are interested in attending a Tri-C seminar or need a schedule of upcoming dates and topics, you can contact Linda Hale at AMC/NOMA (216) 520-1000 or email lhale@amcnoma.org ■

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I N B R I E F

Medicare Cuts On the Horizon for 2006

The Center for Medicare and Medicaid Services (CMS) has said Medicare's physician reimbursement will be cut 4.3% in 2006. Medicare spending on physician services rose 15% in 2004 because of greater use of office visits, minor procedures, high-end imaging scans, laboratory services and in-office prescription drugs, the agency said in a letter explaining the cut to the Medicare Payment Advisory Commission. The American Medical Association has again called on lawmakers to revise the current Medicare formula for establishing physician reimbursement and said the reimbursement cut would threaten seniors' access to care. The cuts are driven by an inequitable and unsustainable formula called the Sustainable Growth Rate (SGR) that determines Medicare physician payment updates. The AMA is of the opinion that physicians are penalized with lower payments when growth in use of medical care exceeds Gross Domestic Product growth.

Service use is driven by patient needs, new technology, and public policies that encourage patients to seek care, none of

which physicians can control. The CMS fails to include numerous policy changes in the SGR, such as new Medicare-covered benefits that help to drive utilization increases. Because CMS includes the cost of physician-administered drugs in its calculations of Medicare spending for physician services, drug spending consumes an ever-growing share of the SGR and is a major factor in projected pay cuts.

One in 10 practicing physicians said they would retire if Medicare payments fall 5% next year, according to an e-mail survey of 5,486 doctors conducted in February and March by the American Medical Association. Just over 60% of the physicians said they would put off purchasing new equipment, and 38% would accept fewer Medicare patients. The AMA has stated to Congress that Medicare payments to physicians already seriously lag behind the increasing cost of providing medical care. If Congress and the Bush administration don't act soon, Medicare reimbursement cuts of 26% over the next six years will drive many physicians out of business.

Organized medicine is asking Congress to prevent physician payment cuts that

will go into effect on January 1, 2006. The AMA would like the administration to remove drug costs from the SGR, which would significantly reduce the cost of legislation to preserve Medicare patients' access to physician services. In addition, the Medicare Payment Advisory Commission (MedPAC) has recommended that Congress scrap the SGR and adopt the same approach for physician payment updates that is used for hospitals and other Medicare providers. Under this approach payments would reflect practice cost increases.

What can you do?

AMC/NOMA members are encouraged to write to their members of Congress to: prevent physician payment cuts that will go into effect on January 1, 2006 and ask Congress to replace the sustainable growth rate (SGR) with a payment system that reflects the increasing costs of physician-provided care. For more information on this issue go to the AMA Web site at www.ama-assn.org AMC/NOMA members can access their members of Congress through the legislative link on our Web site at www.amcnoma.org.

(Continued on page 17)

End-of-Life Decisions and Advanced Directives – Where to obtain information

The AMC/NOMA has been receiving calls regarding end-of-life decisions, more than likely based on the media attention paid to this topic in recent months. The state of Ohio has several informational Web sites available that include advance care planning guides and advance directives forms (Living Will, Durable Power of Attorney for Health Care, and Do Not Resuscitate information). The end-of-life choices or advance directives were developed to help physicians and health-care providers along with the patient to plan specific treatment for an emergency situation, terminal illnesses, and/or serious health conditions. The AMC/NOMA has been referring callers to the Ohio Hospice and Palliative Care Organization (OHPCO) for additional information. Physicians can download the information, order copies or direct their patients to the Web site as well. The Ohio Hospice and Palliative Care Organization Web site is www.ohpco.org. For information or to obtain a copy of a law pamphlet which includes detailed information on various end-of-life choices, patients and physicians may also go to The Ohio Bar Association Web site at www.ohiobar.org. Other resources: National Hospice and Palliative Care Organization — Help Line (800) 658-8898 or www.nhpco.org

Medicare Issues Fraud Alert Warning

The Centers for Medicare and Medicaid Services (CMS) has issued a warning to physicians and other health-care providers about a group calling themselves Medicare Fraud Investigators and/or Medicare employees representing the claims and audit units, or the enrollment department of CMS in order to try to get providers to submit identity information to the caller so this information can be used to change telephone numbers, addresses, pay-to addresses and to falsify enrollment data.

A caller from one of these groups will tell the physicians/providers or their staff that Medicare's computer system has malfunctioned and they are calling to update lost or corrupt information. The caller will then ask for the physician/provider to submit the data via phone or fax. Some of the information they may ask for follows:

- Copy of Provider's Drivers License;
- Copy of Provider's Social Security Number (SSN);

- Unique Provider Identification Number (UPIN);
- Verification of education;
- Verification of Provider Location;
- Copy of Provider's Medical License;
- Copy of Provider's Charts for a specific period of time.

Once the information is received, the groups falsify enrollment data using the provider's name and request a change to their practice locations, telephone numbers, and pay-to addresses.

Please be advised that if you receive such a call, CMS has not suffered any computer system malfunction, and are not calling providers requesting the above information. Physicians are advised to contact their Medicare carrier if they receive such a call or suspect fraud.

If you should receive such a call, please try to verify the telephone number of the caller, and immediately notify your Medicare carrier that you suspect fraud.

CMS Mandates Carriers Provide Better Customer Service

The U.S. Government, as of Jan. 1, 2005, is requiring all Medicare carriers to have in place a "provider customer service program" designed to give the best answers to physician queries. The program was mandated by Congress in its 2003 Medicare Reform measure after the American Medical Association and other groups complained that program participants were getting slow, inaccurate information from contractors.

As a result, the Centers for Medicare & Medicaid Services issued an instruction manual in Sept. 2004 requiring all carriers

to have an automated voice response system on their telephone lines allowing physicians to check claim status, determine patient eligibility or obtain definitions for specific code types. To handle more challenging questions posed, carriers must create a triage system which quickly routes inquiries to more experienced staffers. The most difficult questions regarding coverage, coding and payment are being deferred to advanced specialists with special training in program policy.

Physician requests of potentially substantial federal reimbursement are to be submitted in writing so a written response can be reciprocated and documented.

Medicare carriers are also being required to provide special education and outreach to smaller physician practices with fewer than 25 full-time-equivalent employees. Straightforward coding questions will be referred to other organizations such as the American Medical Association and the American Hospital Association's Coding Clinic. Detailed inquiries should be submitted in writing to stand the best chance of physician protection.

Enhanced customer service enforcement comes on the heels of the GAO's Aug. 2004 report citing approximately 96 percent of Medicare billing policy telephone inquiries to carriers received incomplete or inaccurate responses. For a complete instruction manual on CMS' new "provider customer service program," visit http://www.cms.hhs.gov/manuals/pm_trans/rll30tn.pdf ■

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AMC/NOMA celebrates 181 years of organized medicine in Northeast Ohio

The Academy of Medicine of Cleveland/Northern Ohio Medical Association (AMC/NOMA) held its 2005 Annual Meeting Dinner and Awards Presentation at the Ritz-Carlton Cleveland Hotel on Friday, April 29.

This year's prominent list of honorees included **Wilma F. Bergfeld, M.D.**, who received the AMC/NOMA's highest honor — the John H. Budd, M.D., Distinguished Membership Award for her work in the Greater Cleveland community, and for her outstanding accomplishments in medical research and clinical practice. **John A. Bastulli, M.D.**, was honored for the second time with the Charles L. Hudson, M.D., Distinguished Service Award for his work as an outspoken representative of the AMC/NOMA on behalf of all northeast Ohio physicians. Dr. Bastulli is the first AMC/NOMA member to ever receive this prestigious award on two separate occasions. The Clinician of the Year Award was presented to **Howard E. Rowen, M.D.**, for his long-time devotion and services to his patients.

Stanley H. Nahigian, M.D., was honored with the Outstanding Service Award for his long-standing commitment and activity in the interest of the AMC/NOMA. The Special Recognition Award went to **Ann Womer Benjamin**, the Director of the Ohio Department of Insurance (ODI). Ms. Womer Benjamin was recognized for her dedication to the citizens of Ohio and for her ongoing leadership at the ODI.

Lute Harmon, the Chairman of Great Lakes Publishing Company, received the Honorary Membership Award mainly for his initiation of the first Medical Hall of Fame awards presentation in 1996. A Presidential Citation was presented this year to **Michael J. DeFranco, M.D.**, a fourth-year resident at the Cleveland Clinic for his dedication to the healthcare community, specifically for the creation of the new program "Protect Your Bones" geared toward the education of high school students. Another Presidential Citation was conferred upon Mr. Gary Fetgatter, the Executive Director of the Ohio Podiatric Medical Association for his perseverance in bringing about group membership of podiatrists into the AMC/NOMA.

This year, the AMC/NOMA Annual meeting included a keynote address from **Ohio Supreme Court Justice William**



Chief Justice Moyer presents his keynote address.

Moyer. Justice Moyer stated many of the physicians in Northeastern Ohio had supported him in his efforts to ensure the independence of the judiciary in Ohio. To that end, he has been working with legislative leaders on proposals to set a higher standard for lawyers who wish to become judges. One such proposal would require a judicial candidate to complete 40 hours of course work before their name could appear on the ballot. The classes could be in constitutional law, criminal and civil procedure, judicial ethics and court administration. There is also support for lengthening the time a lawyer would be required to practice in Ohio before being allowed to be a

judge. Common Pleas candidates would need ten years of practice and district appellate judges would need twelve. Another proposal would reduce the frequency of judicial elections by extending the terms of office for judges.

On the legislative side, Justice Moyer stated that the Supreme Court has submitted a proposed rule change to the General Assembly that would require each complaint contain an affidavit of merit (a sworn statement from a medical expert) that the standard of care was breached, and the breach caused an injury to the plaintiff. Another legislative proposal mentioned by Justice Moyer was SB 88, the mandatory arbitration legislation. Justice Moyer indicated he had recently sent a letter to the sponsor of SB 88 asking that the proposal include mediation and other forms of alternative dispute resolution. Justice Moyer noted it has been his long-held belief many disputes can be resolved outside the costly, lengthy adversarial system and there should be a search for the appropriate form of dispute resolution. Justice Moyer also briefly covered decisions of the Ohio Supreme Court relative to medicine and scientific issues.

The evening's honors also included recognition of AMC/NOMA physician members celebrating the 50th anniversary of their medical school graduation. The event concluded with a farewell speech from outgoing president **William H. Seitz, Jr., M.D.**, as he passed the gavel to George E. Kikano, M.D. ■

50 Year Awardees

Remigio L. Abello, M.D.	Amelia B. Gruber, M.D.	Simon Ohanessian, M.D.
George D. Boutouras, M.D.	Walter E. Heyse, M.D.	James A. Pelagalli, M.D.
Donald W. Bunde, M.D.	Paul W. Johenning, M.D.	John J. Plucinsky, M.D.
Ugo Cheracci, M.D.	John Y. Kalucis, M.D.	James J. Posch, M.D.
John S. Collis, Jr., M.D.	Richard A. Katzman, M.D.	Cleo A. Rasch, M.D.
Thomas L. Crawford, M.D.	Joye D. Kent, D.O.	Donald E. Seymour, M.D.
Carmen B. Dannug-Basug, M.D.	Taj A. Khan, M.D.	Robert V. Spurney, M.D.
Raul DeLaIglesia, M.D.	John Khosh, M.D.	William K. Sterin, M.D.
Lucina R. Dimaculangan, M.D.	Thomas F. Linke, M.D.	Sanford Waldman, M.D.
Miguel A. Dominguez, M.D.	Malaya V. Lontoc, M.D.	Frank L. Weakley, M.D.
James T. Enochs, M.D.	Aldona T. Lyon, M.D.	William T. Wilder, M.D.
Harry C. Garvin, M.D.	Armand A. Meyerson, M.D.	Renate Zeissler, M.D.
Gerald Goldberg, M.D.	James E. Mulligan, M.D.	Adolph F. Znidarsic, M.D.



President-Elect **Dr. George E. Kikano** spends a moment with his family prior to the start of the event.



The honorees for the evening gather for a picture (left to right), Gary Fetgatter; **Dr. Howard Rowen**, **Dr. Michael DeFranco**, **Dr. John Bastulli**, The Honorable Ann Womer Benjamin, **Dr. Stanley Nabigian**, **Dr. Wilma Bergfeld** and Mr. Lute Harmon.



Dr. Seitz passes the gavel to the AMC/NOMA president for 2005-2006 - **Dr. George E. Kikano**.



Dr. Wilma Bergfeld delivers her speech thanking the AMC/NOMA for honoring her with the John H. Budd Distinguished Membership Award.



All of the AMC/NOMA past presidents in attendance took a moment to line up for a group photo. (left to right), **Drs. James Lane**, **Dale Cowan**, **Victor Bello**, **Donald Junglas**, **Hermann Menges, Jr.**, **Ted Castele**, **William Seitz, Jr.**, **John Bastulli**, **Kevin Geraci** and **Ronald Savrin**.



The fifteen physicians receiving their 50-year award pose for a group photo (see pullout box for list of awardees).



In addition to receiving the Distinguished Service award for an unprecedented second time, **Dr. John Bastulli** was presented with a pictorial tribute comprised of his photos from the Cleveland Physician magazine - an attestation to his longstanding commitment to the AMC/NOMA.



Longstanding AMC/NOMA member **Dr. Stanley H. Nabigian** receives his Outstanding Service Award from **Dr. Seitz**.



Dr. James Lane (left) immediate past president of the AMC/NOMA, and chairman of the Honors Committee, presents **Dr. Howard Rowen** with the Clinician of the Year award.



The Honorable Ann Womer Benjamin received her Special Recognition Award from AMC/NOMA President, **Dr. William Seitz**.

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