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AMC/NOMA Heralds Passage of SB 88

Seven Ohio Counties Would Pilot Mandatory Arbitration
of Medical Negligence Claims

The Academy of Medicine Cleveland/Northern Ohio Medical Association scored a major victory May 24 on behalf of its 4300 NE Ohio physician members when the state senate voted 23-10 to approve SB 88, the AMC/NOMA-backed legislation calling for a mandatory arbitration pilot program intended to resolve medical negligence claims through a pre-trial panel review.

"This vote is a triumph for the area's doctors and proof that our unified voice through the AMC/NOMA was heard loud and clear in Columbus," **John Bastulli, MD**, vice president of legislative affairs said. "Our members asked for a solution, and we believe we've found them one in SB 88."

A last-minute amendment from Sen. Armbruster extends the pilot to be tested in a total of seven Ohio counties: Cuyahoga, Summit, Lake, Geauga, Lorain, Erie and Huron.

Bill sponsor Sen. Kevin Coughlin (R-Cuyahoga Falls), in presenting a substitute version to the full Senate, called the bill "a silver lining" in the state's medical liability crisis and pledged to work with the AMC/NOMA and other interested parties through the summer months preparing it for presentation in the Ohio House. Sen. Eric Fingerhut (D-Cleveland) was the sole Democrat to support the bill. He said Cuyahoga County is the "heart of the matter" with regard to health



(l to r) **Drs. Jonathan Myles** and **John Clough**, Sen. **Eric Fingerhut**, Sen. **Kevin Coughlin** and **John Bastulli, MD**, the day these AMC/NOMA physicians traveled to Columbus to offer proponent testimonies on behalf of Senate Bill 88.

care in the state. "If we want a state-of-the-art health care industry, then we must have a state-of-the-art dispute resolution system," Fingerhut said. The senate vote followed proponent testimony in committee on the preceding Tuesday by three

"This vote is a triumph for the area's doctors and proof that our unified voice through the AMC/NOMA was heard loud and clear in Columbus."

—**JOHN BASTULLI, MD**

AMC/NOMA physician members. **Drs. John Clough, Jonathan Myles** and **John Bastulli** traveled to Columbus to offer support on the substitute bill's merits. Dr. Clough called the addition of bifurcation of liability and damages that arbitrators will consider a "key component" to the sub bill, one that "has the potential to have a significant positive effect on the medical malpractice process, loss costs, and premium rates."

(Continued on page 7)

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AMC/NOMA Engages in Forum Discussion of Nation's Uninsured Local Panel Debates Issues' Costs and Consequences

The Academy of Medicine Cleveland/Northern Ohio Medical Association (AMC/NOMA) was proud to co-sponsor and participate in a local forum organized by the Sisters of Charity of St. Augustine Health System that addressed the costs and consequences of the nation's uninsured millions.

Cover the Uninsured Week (May 1-7, 2006) highlighted the needs and concerns of the nearly 46 million Americans — including 1.3 million Ohioans — who live without health insurance. Organized by the Robert Wood Johnson Foundation, this annual series of nationwide events seeks to raise awareness about, and find solutions for, the problems of the uninsured.

John Bastulli, MD, provided both introductory and summary remarks during the May 3rd local event held at Trinity Commons in downtown Cleveland. Other panelists included Steve Millard, Executive Director of the Council of Smaller Enterprises (COSE); Gregory Hall, MD, St. Vincent's Medical Director of Community Outreach; former Ohio Congressman Dennis Eckart; Greg Moody of Health Management Associates; and Karen Davenport, serving as keynote speaker in her role as Director of Health Policy at the Center for American Progress in Washington, DC. Ms. Davenport was gracious enough to also appear on the AMC/NOMA's *Healthlines* radio program during her brief stay. She spoke on the subject of implementing public policies to address this critical issue for the country. (An MP3 recording of this discussion can be accessed at www.amcnoma.org under the Healthlines link.)

Each guest presented on the overarching subject of the uninsured, with unique perspectives from their professional experiences. Panelists cited hard facts from the business and healthcare community, including the overwhelming proportion of the working uninsured, medical debt and bankruptcy figures. From a local standpoint, many made note of the hospital closures that have taken place, typically in the more disadvantaged city neighborhoods, and the burden this creates for those institutions that remain, as well as the citizens left with resulting limited access to care.

Questions abounded from the audience, which panel members fielded in turn depending on their expertise. Much of the discussion surrounded the economic costs of providing coverage, on either a local, statewide or national scale. Statistics were presented relative to demographic breakdowns of those without coverage, as well as staggering figures of the aggregate economic impact such is having on the entire health care delivery system.

On this note, Dr. Bastulli drew a link between the rising incidence of emergency room visits and the decline in services being provided due to skyrocketing institutional costs as well as the pressure on physicians to reduce their scope of practice. He suggested more community health clinics in neighborhoods where access is limited, legislative advocacy, or holding states

accountable for Medicaid utilization and associated costs. On the subject of the new Massachusetts law, which several audience members inquired about, Dr. Bastulli explained both its merits and potential pitfalls, noting especially how such a "narrow scope" may not be applicable in other states.

In summation, Dr. Bastulli acknowledged the many outreach activities organized around the issues of the uninsured, and lauded the efforts to date, including those participating in the forum panel.

"Though the answers aren't easy, and the solutions are many," he said, "The difference

will be made by those willing to work toward them, together."

For more on the community health initiatives in which the AMC/NOMA participates and partners throughout NE Ohio, contact Elayne Biddlestone at (216) 520-1000. ■



John Bastulli, MD, fields a question as a member of the forum panel on providing care to the uninsured in our area.

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Health IT Conference Targets Improving Patient Care

"Our members agree that information technology offers the potential to expand access to health care, to improve health-care quality, potentially reduce patient costs and to transform the manner in which our patients are treated in the future," President **Paul Janicki, MD**, said in delivering his welcome remarks at a recent Health IT gathering organized to inform and encourage continued adoption of information technologies as they benefit the delivery of quality medical care. Presented by NOHIMSS, local chapter of the not-for-profit professional membership organization that provides leadership in healthcare technology management, The Academy of Medicine Cleveland/Northern Ohio Medical Association (AMC/NOMA) was pleased to act as co-sponsor to the June 2 conference.

"While information technology makes a difference," Dr. Janicki went on, "by organizing clinical data and making it available at the right time, in the right place, the key will be to focus not on the data, but to recognize and prioritize the need of the patient and to give meaning to it. This is something that, ultimately, only an attending medical professional can, and necessarily, should do."

The conference, entitled "The Value of

Information Technology in the Continuum of Care," was held at Tri-C's Corporate College East and was well attended by area health care professionals with an interest in streamlining patient care in an electronic environment.

As Chief Technology Officer of CyberTrust, Peter Tippett, MD, provided the keynote address regarding keeping computer systems — including hospital EHRs — up and working and the challenges an IT person must face to handle the different levels of security necessary to keep systems running in good order.

Tom Gregorich of the Cleveland Clinic Foundation discussed surveys he had done within the Clinic system with users of IT asking what the value of IT had been. His data found that access to information and operational efficiency were key for users. Though he has not surveyed physicians or nurses en masse on these same questions, however, he would believe that physicians would cite saving time and improving outcomes would be of value. He did stress that IT personnel will need to understand the health care industry to provide the needed structures.

Dr. Brian Keaton next delivered a detailed overview of the RHIO concept in its development stages here in NE Ohio.*

And Davis Bu, MD, from the Center for Information Technology Leadership provided several conclusive studies — on the value of ambulatory computerized physician order entry, or ACPOE. Most striking was the reveal that widespread adoption of ACPOE can prevent millions of medication errors and save billions of dollars. The clinical and financial benefits are compelling as well. Dr. Bu also supplied information on the Healthcare Information and Interoperability (HIE) report, or technology that enables the electronic flow of information among medical organizations.

While individual organizations are



President **Paul C. Janicki, MD**, delivers introductory remarks at the NOHIMSS conference highlighting Health IT and sponsored in part by the AMC/NOMA.

making progress in digitizing administrative transactions and providing clinical information to clinicians, he said, the exchange of this type of information among organizations is nascent.

In conclusion to the program, a panel of four physicians who currently utilized EHRs in their daily practice was featured. Overall, panelists noted both their staffs and the physicians within the practice have adapted well to the use of EHR and it has been of great assistance to the practices and the institutions represented.

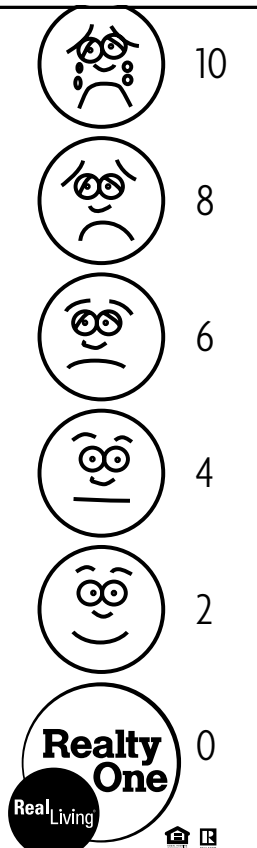
Much like the AMC/NOMA's own 2006 seminar "Riding the Wave of Change in the Practice of Medicine," which touched on similar technological topics, as well as our integral partnering with the NEORHIO project, our organization intends to continue our involvement in this critical discussion as it moves ever forward in Northeast Ohio, and provide our membership with timely and pertinent updates as they develop.

* Covered at length in the May/June *Cleveland Physician* article, "Building an On-Ramp to the Healthcare Information Superhighway," the NEORHIO, or NE Ohio Regional Health Information Organization, will strive to create interoperable data and systems standards in an effort to streamline EHRs, communications, and most strikingly, the patient care of the future. The NEO RHIO began as a cooperative effort between major hospitals in the Cleveland-Akron-Canton corridor, but has quickly expanded to include physicians through medical societies (the AMC/NOMA as one), hospital associations, insurers, business groups, quality improvement organizations, and other stakeholders.

For more on these subjects of interest to physicians regarding Health Information Technologies, contact *Elayne Biddlestone*, (216) 520-1000 ext. 321. ■

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First AMC/NOMA Legislative Breakfast Brings Ideas to Fore

On May 5, The Academy of Medicine Cleveland/Northern Ohio Medical Association organized its initial meeting between member doctors and state legislators in an effort to bring together ideas and issues affecting the practice of medicine in our area. Held at the University Suburban Health Center, the early morning breakfast meeting allowed those gathered to exchange information pertinent to what legislative initiatives are of interest to physicians, their patients and the practice environment in NE Ohio.

In addition to the physician guests, legislators in attendance were: State Rep. Kenny Yuko, State Rep. James Trakas, and State Sen. Eric Fingerhut. AMC/NOMA Executive Vice President Mrs. Elayne R. Biddlestone and lobbyist Mr. Michael Wise were likewise on hand at the meeting.



(l to r) AMC/NOMA lobbyist Michael Wise, State Reps. Kenny Yuko and James Trakas, Sen. Eric Fingerhut and Lawrence Kent, MD, listen intently as a question is raised during the Academy's first legislative breakfast session between physicians and legislators.

As VP of AMC/NOMA Legislative Affairs, Dr. John Bastulli provided the group with an overview of the Academy's legislative initiatives, primarily focusing on Senate Bill 88. He informed the group that the AMC/NOMA advocates on behalf of physicians and

takes positions on health care-related bills under review at the state legislature. The AMC/NOMA surveys its members on a regular basis to ascertain their needs and acts upon their input and in doing so, the AMC/NOMA became aware of a medical liability crisis in Ohio long before other organizations began to evaluate the issue. And while tort reform has been passed in Ohio, Dr. Bastulli said the legislation does not go far enough to achieve a balance in the medical liability arena. Dr. Bastulli briefly outlined the AMC/NOMA sponsored solution to this issue — alternative dispute resolution (see related story page 1).

Mr. Wise stated he has noticed that his own physician has become much more politically active and involved in the process since the advent of the medical liability crisis, and encouraged the physicians around the table to remain engaged as well.

During a lively exchange between the physicians and legislators, discussion topics ranged from loser pay provisions in ADR legislation, the legislative oversight of the Ohio Department of Insurance, misleading information regarding stabilized liability rates in Ohio, and even the Supreme Court's role in medical issues.

On medical liability, Sen. Fingerhut stated that he does not in any way think that the crisis is over in NE Ohio. A supporter of the bill, he said SB 88 is on the right track since it looks at how the adjudication system works.

Several panel members also noted that the medical community had a huge impact on the Ohio Supreme Court races — however, it might be difficult to determine or have an influence over the local races because there are so many of them. It was suggested that the Chief Justice might be able to provide some benchmarks or provide a record of the medical liability cases heard by a particular judge with such questions as — how long does it take for these type of cases to move through their court?

How long does it take them to make issue decisions? Perhaps a report from the Chief Justice could be useful on these points, it was discussed.*

Rep. Yuko noted that it would be important to continue this type of dialogue. Because there are term limits in the legislature and there will be new people and new faces at the beginning of the year, certainly a series of such meetings could further the educative process on the issues of interest to the medical community.



President Paul C. Janicki, MD; Rep. Kenny Yuko, John Bastulli, MD; Rep. James Trakas and Phillip Junglas, MD, following the event at USHC.

The meeting ended quite positively and with a general consensus that additional meetings of this type should be continued by the AMC/NOMA.

Editor's Note: The AMC/NOMA is actively planning and organizing more legislative meetings such as this at hospitals across the region. If you would like to participate in discussions between your colleagues and legislators, contact Elayne Biddlestone (216) 520-1000 for additional information.

*The AMC/NOMA is currently reviewing the feasibility of how to provide key information on the common pleas judges in NE Ohio for our membership. See related story, page 11. ■

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By Michael Wise, J.D./AMC/NOMA Lobbyist

What a spring for AMC/NOMA! On May 24, 2006, the Ohio Senate passed our SB 88. We all feel like our child has graduated High School. The next step is College . . . I mean the Ohio House. Read more about the big victory elsewhere in this issue. Below, please see some of the outstanding issues.

Election Update

First, on the political front, Primary Elections were held on May 2, 2006. On the Republican side, Betty Montgomery had dropped out of the race for Governor and into the race for Attorney General. That left current Ohio Attorney General Jim Petro running against current Ohio Secretary of State Ken Blackwell for Governor and Ken won a decisive victory. Betty defeated State Senator Tim Grendell in the Ohio Attorney General race. Local State Representative Jim Trakas dropped out of his race for Secretary of State and Greg Hartmann ran unopposed in that primary race. The biggest upset on the 2nd was incumbent Treasurer Jennette Bradley losing to Ashtabula County Auditor Sandy O'Brien.

On the Democrat side, SB 88 supporter State Senator Eric Fingerhut dropped out of the Governor's race leaving Congressman Ted Strickland to defeat former State Representative Bryan Flannery in that Gubernatorial Primary. Eric will not be on the ballot in 2006. For State Treasurer, former State Representative Richard Cordrey ran unopposed in that primary. Jennifer Brunner is the nominee for Secretary of State and Marc Dann for Attorney General.

The Ohio Governor's race will be historical. Democrats are polling stronger in this race than at any time since 1986 and they have a bona fide candidate in Congressman Strickland. Republicans will be attempting to elect a nationally high profile, aggressive conservative who would also be the first African American Governor in the state's history.

Here are the words of Congressman Strickland on why he is running; "Dear Friend, I am honored to be running for Governor of Ohio. Our great state is in desperate need of change, and I believe that I have the leadership, the vision, and the drive to lead Ohio to a new day. There is no state in the nation like Ohio. But like many Ohioans, I see a state that has lost its way. The current Republican administration has failed to lead us, putting at risk the future of our state and the



President Paul Janicki, MD with Hon. Richard J. McMonagle following a meeting at which the AMC/NOMA discussed different approaches to evaluate and provide background data on Cuyahoga County Common Pleas Judges in order to educate interested physician members.

safety and strength of our families. I won't stand by and let that happen. I will enter this office ready to pour my heart and soul into fighting for the dignity of families and all people in Ohio. I will dedicate myself to restoring the spirit, the hope and the optimism of our great and beautiful state. In the months ahead, I look forward to laying out my vision for Ohio's future. It is a vision which will bring Ohioans together to help rebuild our state, strengthen our communities, and lead our nation once again."

Here is Senator John McCain speaking about Ken Blackwell. "Ohioans need Ken Blackwell's clear thinking, straight talk and strong leadership at the top of the ticket. His agenda for limited government, economic development and job creation will put Ohio back on a winning path."

AMC/NOMA has invited both candidates for Governor to a forum to discuss health care issues. The staffs for both candidates are sorting through all these requests and we hope to hear soon whether we will have this opportunity to question the candidates. Whether this happens or not, AMC/NOMA will provide more comprehensive information to its members before the November elections.

Ohio Supreme Court

Besides the Governor's race, the Ohio Supreme Court races are very important to the health care community. The Republicans have cleared the field for their two candidates. For the open seat, previously held by Alice Resnick, the Republicans have chosen former State Senator and current Judge Bob Cupp. The Republican State Central Committee has endorsed him and all other interested candidates chose not to file for this seat. On the Democrat side, Ben Espy, a former State Senator and City Councilman from Columbus, defeated Peter

Sikora, a Cuyahoga County Juvenile Court Judge since 1989, in the race for Resnick's job.

The other Supreme Court race has Republican Justice Terrence O'Donnell running for reelection. Opposing Justice O'Donnell will be William O'Neill of South Russell, a second-term judge on the 11th District Court of Appeals. Bill defeated Montgomery County Common Pleas Judge A.J. Wagner. In 2004, O'Neill faced O'Donnell for the unexpired term of Justice Deborah Cook, who had joined the federal bench. O'Neill lost decisively in 2004.

AMC/NOMA members will be receiving a letter from the PAC soon to discuss the Supreme Court races and to ask for your financial support. We want to ensure that the Justices on our Supreme Court interpret the law and do not legislate from the bench. The AMC/NOMA's Political Action Committee (NOMPAC) believes that in order to make certain this occurs, we need to keep Justice Terrence O'Donnell on the court and elect Appellate Court Judge Robert R. Cupp. These individuals are dedicated to further establish and preserve the principles of judicial fairness. The AMC/NOMA's Political Action Committee (NOMPAC) will be very active in this campaign.

On the local Appellate Court, for the Democrats, Frank D. Celebreeze Jr., James L. Sweeney, Colleen Conway Cooney, Mary J. Boyle and Melody Stewart will be seeking election. For Republicans, Ralph Perk and Robert Moriarty are running against Mary Boyle and Melody Stewart respectively. Republicans failed to field candidates in the other three Appellate races. For the first time, AMC/NOMA will be active in these Court races. Stay tuned for much more information.

The other critical race is on the Federal level for U.S. Senator. Incumbent Mike DeWine is running against Congressman Sherrod Brown. This will be a high profile race and closely contested. Of course there also will be a myriad of State and Federal legislative races. Initial polls have Republicans maintaining their majorities in the Ohio House and Ohio Senate, as well as the U.S. House and U.S. Senate.

SB 88 — Our Work Continues

As mentioned above, SB 88 was the big story of the spring. SB 88 — legislation sponsored by Senator Kevin Coughlin (R-Cuyahoga Falls), provides for a pilot project in Northeastern Ohio to require alternative dispute resolution of medical malpractice claims. Specifically, pursuant

(Continued on page 7)

to a pilot program administered by the Ohio Department of Insurance and Ohio Supreme Court, the Bill now requires all medical malpractice claims in Cuyahoga, Geauga, Summit, Lorain, Erie, Huron and Lake Counties to be submitted to arbitration. This shall be done before a lawsuit is filed.

The work on SB 88 continues. Over the next two months a Representative in the Ohio House must be chosen to guide SB 88 through the House process. AMC/NOMA has begun that process. Our hope is to have hearings and a possible vote in the lame duck session after the November elections. Work also is needed on the substantive provisions of SB 88. The most discussed issue regards the Statute of Limitations for medical malpractice claims and whether it should be extended or "tolled" during the arbitration process.

At first blush, the defense reacts negatively to even the possibility that the Statute of Limitations could be extended beyond the two years provided by law. Under SB 88, it is conceivable that the

Statute could be extended and the Bill does provide for tolling in that situation. However, this situation only arises in the case of an arbitration that lasts longer than three weeks — a rare occurrence. Also, even in that situation, the case could very well be concluded (accepted defense ruling) or half completed (accepted plaintiff ruling). Only if the arbitration lasts longer than three weeks and the arbitration ruling is rejected, would we have a situation where loss costs could be greater than filings under current medical malpractice law.

Medical Malpractice process is currently complicated and the subtleties are important. AMC/NOMA has put together a strong team to address all of the outstanding issues and we will work hard to fine tune SB 88 so that it is fair and provides a better way to resolve medical malpractice disputes. The tolling issue will be resolved and likely another Substitute Bill introduced in the House. Special thanks to attorney Michael Jordan from Walter Haverfield for his invaluable counsel!

AMC/NOMA is working with sponsors and committee members on a number of other Bills. For the first time, AMC/NOMA is notifying members of the General Assembly about our positions on specific legislation. This activity includes direct conversations with Bill sponsors about our concerns. AMC/NOMA also has a comprehensive tracking system of all health care-related legislation in the General Assembly. If you are interested in receiving a copy of this document, please contact the Academy.

The Legislators have recessed until September. They will convene then for two weeks and then recess again until after the November elections. The remaining legislative session coupled with the November elections will make for an exciting fall, 2006. I will report on both in the next issue.

Editor's Note: For further information on any of the above, including the AMC/NOMA's position on candidates, healthcare-related legislation or the work of NOMPAC, please call Elayne Biddlestone at 216.520.1000. ■

AMC/NOMA Heralds Passage of SB 88

(Continued from page 1)

In essence, the substitute requires the state superintendent of insurance, in collaboration with the Ohio Supreme Court, to establish a pilot program in which medical malpractice claims would first go to arbitration in hopes of avoiding court. Claimants and respondents will each choose one member of the arbitration panel, who then selects a third to serve as chairman. The substitute provides for the chairman to have practiced law for at least eight years and to be from certain ADR services. While any party could reject a ruling of the panel and proceed to court, they then would become liable for the opposition's attorney fees if they did not win the case.

In offering words of support on the senate floor the evening SB 88 was presented, the following point was made: NE Ohio is in a category of its own with regard to the economy of the world-renown health care industry we have here, so a dispute resolution mechanism should be uniquely tailored to this area.

Since the AMC/NOMA joint press conference in March 2005 when SB 88 was first introduced, our member physicians, staff, legislative committee, lobbyists and of course the supportive legislators them-

selves have tirelessly pursued this monumental advance through the Ohio Senate. On three separate occasions in the last year, AMC/NOMA physicians have offered the only proponent testimony on the bill, as the AMC/NOMA has continued to be the sole physician organization in the state advocating for such a fundamental reform package tackling medical negligence case resolution. (For a complete historical timeline of these events, in-depth analysis of ADR and our work to date on the bill, visit the homepage of www.amcnoma.org.) While the AMC/NOMA has consistently (in print and online) published SB 88's merits and goals to our membership, we have likewise garnered much positive coverage in local and national publications including the *Plain Dealer*, *Crain's Cleveland Business* and *ADR World*.

"It preserves patient's rights while at the same time discourages frivolous lawsuits and will reduce cost to the health care and legal system," said Jonathan Myles, MD, in his appearance before the Senate Insurance, Commerce and Labor committee last month. "This bill will help preserve and strengthen our health care system in Ohio, which is one of the greatest resources we have."

In his letter of support, local arbitration expert Michael Jordan of Walter & Haverfield wrote, "SB 88 offers a fair

mechanism for the respective sides in a medical malpractice situation to have their claims and defenses fully presented. Arbitration has proven to be an effective means of dispute resolution in many other contexts, and there is no reason why it cannot be effective in the context of medical malpractice."

In another letter submitted to the committee, OHIC President and CEO Raymond Mazzotta wrote, "We express our support for SB 88 as we believe [it] is intended to meet the objectives to reduce the filing of nonmeritorious claims and to move cases with merit through the system more expeditiously and efficiently."

Throughout the summer months, the AMC/NOMA will continue to work with our supporters, members and lobbyists as the legislation is prepared for introduction in the House, and as always will keep our members informed with updates and news alerts as they occur. Members will be offered the opportunity to write their legislators urging support of the bill during this process via our Web site as well.

"The passage of SB 88 in essence defines what the AMC/NOMA is all about," Dr. Bastulli said. "Regional representation that makes a difference, effects real change for the doctors practicing in NE Ohio." ■

By Rudy Lakosh

A Glimpse into the National Perspective on Medical Professional Liability Insurance

An overview of a recent Premium Group presentation to the AMC/NOMA Board of Directors

The Crittenden Medical Insurance Conference 2006 was held recently in Phoenix, AZ. This conference brings together Medical Professional Liability Insurance (MPLI) Carriers from throughout the United States. A few of the panelists and presenters who are familiar to us in NE Ohio were: Victor T. Adamo, President, ProAssurance Corporation; Richard E. Anderson, MD, Chairman/CEO, The Doctors Company; and Timothy J. Kenesey, President and CEO, Medical Protective.

It provided the opportunity for a glimpse into the future of MPLI, as leaders of carriers large and small led workshops providing information on both current events and speculations regarding the future as it will ultimately affect the insured.

Several comments made during the conference have specific relevance to NE Ohio. "Some Markets Have Capacity Need" highlighted the fact that we in Ohio are fortunate to have carriers who not only have solid financials but also have the capacity to provide coverage for all the specialties. Northeast Ohio does have capacity. Capacity is dedicated to the states that are stable and have answers for the tort system shortcomings.

- The key tort reform element recognized throughout the United States as having a huge effect on MPLI is the elimination of "joint and several liability," (the provision providing for a recovery system based on proportionate liability; holds defendants liable only for their percentage of fault (noneconomic) in civil tort actions and adopts a "fair share" rule where defendants only pay damages commensurate with their percentage of fault). This element will have a significant effect on awards and subsequently on the premiums that our doctors will pay.

Another interesting comment was that "Doctors are looking for Insights and Solutions." This might seem to be more obvious than intuitive, however, to have the industry leaders address this as a principle that they and their companies continue to focus on is a very positive signal. The industry realizes that carriers and agents will be asked to do more. The "more" was identified as expecting carriers and agents to get

outside the box in finding solutions, supporting tort reform and understanding changes in the practice of medicine. Carriers who "stay in the box" will not be recognized as a partner to the doctor. Agents who do not innovate and find ways to facilitate the delivery of coverage and make the acquisition of insurance easier and more user-friendly will also not be part of the solution.

"Doctors benefit directly from the efforts of agencies that are dedicated to educating, servicing and providing a variety of solutions to their clients."

NE Ohio has been the focus of innovation by the dedicated carriers who have stayed the course through the "hard market." These carriers have remained committed to the doctors in NE Ohio, maintaining a presence and continuing to provide coverage in spite of the litigious challenges that they have faced in this jurisdiction in recent years. Consistent with the commitment by the carriers has been the dedication of agencies that provide access to multiple carriers, work aggressively with the carriers to provide options, and influence the political climate through, among other things, active support of tort reform. Doctors benefit directly from the efforts of agencies that are dedicated to educating, servicing and providing a variety of solutions to their clients.

Due to the long-term gestation period of medical malpractice claims, the plaintiff attorneys may be holding off significant numbers of such claims until President Bush leaves office. This resonates strongly for us in Ohio as we anticipate the same phenomena occurring here. Through the efforts of the medical community, among others, Ohioans are maintaining a conservative Supreme Court in Ohio and with diligence and perseverance at each critical election, hopefully, this effort will continue to prevail.

"Increasing probability of mergers and acquisitions in all areas of the industry" was mentioned. Industry leaders are anticipating this opportunity will be "good" for the industry. Expectations are that "good" means financial strength, efficiencies, and

dedication to the insured. The prediction of consolidation and mergers included medical malpractice agencies. The recognition that agencies specializing exclusively in medical malpractice are a different animal than other agencies was a point near and dear to us in Ohio. The doctors in Ohio rely on the agency system to provide comprehensive information on the available solutions. Agencies exclusively delivering malpractice insurance are uniquely positioned and focused on the questions and the answers. Like a specialist in the medical profession, an agency specializing in such has an intelligence enhanced by immersion in the specialty.

We are seeing the ramifications of the national climate in our one state system. We see the ramifications in Northeast Ohio. Availability of MPLI in our area has actually increased. The major carriers offering coverage in our area; Medical Protective, ProAssurance, The Doctors Company and OHIC have all demonstrated their capacity and their comfort with the current filed rates for NE Ohio. We continue to see the results of this capacity demonstrated by relaxed underwriting and a competitive attitude between carriers.

The major carriers in Ohio are all demonstrating solid financials and indicate having reached a plateau on new claims activity. This bodes well for each doctor in the state. We have crossed a bridge and are in a much better position regarding our costs and availability.

Rudy Lakosh is the Sr. VP/COO of The Premium Group, Inc., an agency specializing exclusively in Medical Professional Liability Insurance and representing the major admitted and surplus lines carriers throughout Ohio. ■

Comments from the Board: The AMC/NOMA believes that while rates may in some areas have begun to show signs of stabilization, such does not preclude the need for fundamental change in the system, specifically reform measures like SB 88 (see related story p. 1) that aims to reduce costs, time involved, damage to professional stature and most importantly, frivolous filings of medical negligence. For more information on the AMC/NOMA's work with the Premium Group, contact Elayne Biddlestone (216) 520-1000 ext. 321.

By David C. Epstein, MD, MBA, Medical Director – UnitedHealthcare/Northeast Ohio

Promoting Performance Transparency: UnitedHealth PremiumSM and UnitedHealth Practice RewardsSM

Dr. David Epstein presented recently to the Board, the following is a synopsis of his remarks.

Pay-For-Performance programs have gained momentum over the past years in the employer community and are viewed as a potential solution to the health care cost and quality challenges. These programs have matured since their emergence at the turn of the century. Initially, based on discrete cost and process-of-care measures, today there are close to 150 different pay-for-performance programs across the country, and some have evolved to include more quality-based clinical measures as well as financial risk-adjusted measures for determining health care cost outcomes.

Are today's programs the end game in performance measurement? Do gaps in methodology remain? Will these programs become an integral part of the health care purchasing landscape for patients, employers and government programs? The answers to these questions are "no," "yes" and "TBD" respectively. What is critical to understand, however, is that employers are *desperately* searching for strategies to contain their health care benefit insurance costs in order to survive! Employers, who pay the bulk of the costs of private insurance, are seeing costs rise far in excess of their revenues and profits. And as we have witnessed in Northeast Ohio, the skyrocketing cost of the traditional rich benefit plans prevalent in manufacturing and union-based employers have brought these businesses to the brink.

The current reality is that health care costs can no longer be considered in isolation from the rest of the business economy. And while we, as physicians, have invested considerable time and sacrifice to become experts in our clinical fields of endeavor, that expertise is going to be accompanied by greater performance transparency in health care. It has become apparent over the past several years that there is much in medical practice that results in either incomplete or duplicative care, or care that may even be harmful. The *New England Journal of*

Medicine, the Journal of the American Medical Association, and many other peer-reviewed journals are replete with articles and studies that expose the gaps in the U.S. health care delivery "system." From the public/employers' perspective, they are paying more and more for their health care, yet find employees and their families may be receiving care that is sub-optimal, or perhaps even harmful. Payers, well aware of these research studies, as well as the landmark reports from the Institute of Medicine, are demanding rapid action to address well-documented variations in the quality and efficiency of care.

To advance this goal, and to promote widespread adoption of evidence-based medicine, UnitedHealthcare developed the UnitedHealth Premium designation program. It is designed to measure clinical and financial performance against evidence and consensus-based clinical and risk-adjusted financial criteria. The program incorporates quality measures derived from external, and nationally accepted clinical societies and consortia e.g., American Quality Alliance, American Academy of Family Practice, Society of Thoracic Surgeons, American Hospital Association, and has been designed with extensive input from a variety of physician advisory groups. The program utilizes data from UnitedHealthcare and publicly available claim and administrative data sets, the measures have been validated through medical records/chart reviews, and the program's overall design has been assessed by an independent third-party (the Lewin Group). The program's measures for quality represent the current state-of-the art. Cost measures are focused on clinical episodes and are risk-adjusted based on the severity and complexity of the patients' conditions.

The UnitedHealth Premium designation is not a pay-for-performance program. Rather it is an informational tool for UnitedHealthcare members across the United States to assist them in making informed health care purchasing decisions. In the Cleveland and Chicago markets, UnitedHealthcare is also piloting an extension of this program, called UnitedHealth Practice Rewards that rewards physicians who meet defined quality, efficiency and administrative criteria by providing them with an

enhanced fee schedule. Quality represents 51% of a physician's total score, while cost and administrative components comprise 30% and 19% respectively. Physicians who meet the UnitedHealth Premium criteria for quality and efficiency are then statistically ranked by deciles and rescored under the UnitedHealth Practice Reward program. This program also incorporates the physician practices' administrative (e.g., electronic claims submission, online claims inquiries). An overall score is tallied resulting in financial recognition through fee schedule enhancements for the top 10 to 15% of designated practices. It is the only pay-for-performance program to our knowledge that operates with no administrative burden on practicing physicians, as it does not require chart abstraction or other data submission.

Insurers, providers, employers and government must work together to define a consistent set of measurements on which to assess the health care "value proposition." The medical profession has already begun to incorporate these measures into professional standards, certification and recognition programs, and clinical practice. By working together, all the actors in healthcare can lead a revolution to improve the picture of health care delivery in the United States. ■

Comments from the Board: The AMC/NOMA adopted policy last year on pay-for-performance programs as they've begun to roll out and will continue to impact our member physicians. We believe any incentive programs must be fair, ethical, patient-centered and assess physician performance with evidence-based measures. For more on our policy, contact your District's representative or call Elayne Biddlestone at (216) 520-1000. In addition, a presenter from Anthem is scheduled to meet with the Board discussing their program as well as another from Aetna in the months to come. We will keep you updated and are very interested in any feedback you'd like to provide on this issue, especially as it affects your practice.

The Electronic Document Retention Policy

A Necessary Defense to a New Litigation Threat

By PJ Malnar and Alan Parker, Reminger and Reminger Co., LPA

Office technology has had a wonderful impact on medical practice, not to mention on a physician's lifestyle. Voicemail, e-mail, and personal digital assistants have helped to free physicians from the confines of the office and the hospital. Drug information can be kept on a PDA, radiographs can be reviewed from the comfort of your own home office, and electronic medical records make the patient's chart accessible anywhere. Indeed we are entering an era of electronic medical records, purportedly to improve patient care, to reduce medical errors, and to increase practice efficiency. Certainly, electronic records are practical on a number of levels, from quick accessibility and ease of use to the simplification of storage space. More and more in today's medical care, electronic records are replacing the traditional chart. While all these advances have been embraced and enjoyed, the increasing use of electronic data warrants some forethought — at least to the degree that medical care intersects with the legal system.

New rules will take effect in United States federal courts on December 1, 2006. Under these new rules, each party to a lawsuit must provide a copy or a description of all electronically stored information in the possession, custody, or control of the party that may be used to support its claims or defenses. In other words, health care defendants in federal courts will be required to provide information about electronically stored information, even without a discovery request. Medical records that are kept electronically would therefore obviously be subject to this required disclosure. Less obvious are other sources of electronic data — that PDA, the office word processing system, or even some medical equipment that may store patient images, laboratory results, or diagnostic tests. While the vast majority of medical negligence cases are in state — not in federal — courts, there is no doubt that lawyers will begin to include requests for electronic records regardless of the court.

Why is electronic data of such interest to lawyers? There are good reasons and cynical reasons. The good reasons: the information is objective, contemporane-

ously recorded, and assists in a search for truth. The cynical reasons: the inquiry is burdensome, the possibility of an incomplete response is high, and an adversary can capitalize on mistakes in responding to an electronic records inquiry. Plaintiffs have had success in obtaining sanctions against defendants caught unprepared by requests for electronic discovery. These sanctions can have little or nothing to do with the actual underlying facts of the case, but rather are designed to punish a defendant for a failure to provide or to preserve an electronic document. Sanctions against the defendants run the gamut from monetary damages to a jury instruction suggesting a negative inference against the defendant's case.

Even in state courts, judges tend to look to the federal rules and the federal courts for guidance. Both the rules and existing cases stress the importance of establishing and faithfully practicing document retention policies that cover electronic records in order to avoid the litigation second-guessing game of determining what data should or should not exist. In other words, instead of enduring a case by case challenge of explaining why electronic documents no longer exist, it is far better to have a document retention policy that governs what is retained, what is destroyed, and how long the information is to be stored.

Luckily, there are relatively easy ways to avoid sanctions in the future by taking the time now to create and disseminate a document retention policy. A document retention policy is a carefully crafted, widely disseminated and uniformly applied policy and practice that provides for the systematic review, retention and destruction of all documents created or received in the course of business. By instituting an appropriate document retention policy, e-mails and other electronic data can safely be destroyed without the fear of reprisal from a court down the road. A document retention policy will provide a system for complying with document retention laws, save money, space and time, and ensure that valuable documents are available when needed. A document retention policy also protects against allegations of selective document destruction and provides

for the routine destruction of non-business, superfluous and potentially embarrassing documents. If a document policy does not exist, individuals are left with the difficulty of explaining why some documents, e-mails, etc. have been destroyed or deleted and others have not. If this destruction is done in conjunction with a document retention policy, then these questions are easily answered. The absence of such a policy can lead to the risk of sanctions in the event of a lawsuit.

There are several basic steps in order to create a document retention policy. Initially, a document retention manager should be identified. Then, the specific practice needs to be evaluated and a determination made regarding what types of documents are created; how long each document type should be kept; how and where those documents should be stored and/or destroyed, and/or if they should be destroyed. Additionally and importantly, the policy needs to be disseminated and followed.

The types of documents subject to a retention policy include: e-mails; computer disks; hard drives; Web pages; text message; voicemail message; archive data; back up data; disaster recovery data; PDAs and Blackberrys to name a few. All of these electronic instruments and communications can be the subject of discovery requests.

In today's health care practice, a document retention policy should include a litigation and/or a regulatory hold. This is a suspension of record destruction under the policy when litigation or administrative investigation is anticipated or occurring. Any information which is potentially relevant to pending or potential litigation should not be destroyed during the duration of the litigation. These holds should be implemented as soon as litigation becomes reasonably foreseeable. The best bet is always to err on the side of caution and envision the worst case scenario, then fit the hold accordingly. When an individual makes a determination that a litigation hold should be put in place that must be communicated to everyone that potentially has relevant documents, not just management. In other words, anyone who would potentially have an e-mail,

Physician Wins Monetary Sanctions in Case of “Frivolous Conduct”

A Cuyahoga County judge recently awarded a physician member of the AMC/NOMA monetary damages for defending himself and his group against a frivolous medical malpractice lawsuit. The plaintiff sustained a trimalleolar ankle fracture when she fell while roller skating. Paramedics took her to the emergency room of a local hospital, where she was treated by an emergency physician, as well as consulting physicians. Approximately three weeks later, the ankle was surgically repaired at another facility.

The plaintiff retained a personal injury lawyer and filed a complaint in December 2001 alleging a consulting orthopedist had breached the standard of care in delaying the patient’s surgical repair, causing a delayed and less-than-full recovery. The complaint also alleged that all defendants, including the orthopedist, accused the plaintiff of being a drug addict and refused to treat her because she did not have health insurance. The complaint included a claim for consortium for the patient’s husband, though the couple was unmarried at the time of the medical care.

This first filing of the case remained pending from December 2001 through October 2002. During that time, the patient retained a new personal injury lawyer, who did not produce any expert reports critical of the defendants, includ-

ing the orthopedist. They did not respond to discovery requests on behalf of the orthopedist nor request the depositions of the physicians that had been sued.

The patient’s personal injury attorney refiled the case a year later. Allegations in the refiled mirrored those of the first, but added a claim for punitive damages. Although the defendants completed the depositions of the patient and her new husband, the plaintiff’s personal injury lawyer did not conduct depositions of the medical providers involved. He did, however, send the case out for expert review. The expert reviewed the case and reported back that the case was meritless. The patient advised her attorney that she did not wish to continue with the case. Subsequently, the lawyer did not dismiss the case, but left it pending before the court, despite knowing it lacked merit and that the patient herself no longer wished to pursue it. The court eventually granted the defendants’ various Motions for Summary Judgment.

The orthopedist asked his attorney to pursue the personal injury attorney for sanctions for the frivolous lawsuit. After completing additional discovery on the issues of sanctions, a hearing was conducted. The court concluded that the personal injury attorney “engaged in sanctionable conduct”:

- (1) In bringing a loss of consortium claim when he knew that the Plaintiff’s were not married at the time of the alleged negligence;
- (2) In alleging that the orthopedist (and all the Defendants) accused the patient of being a drug addict and refused to treat her because she did not have health insurance;
- (3) In failing to dismiss the case when he learned the case lacked any merit and that his client no longer wished to pursue it; and
- (4) In making a claim for punitive damages in the refiled Complaint without any basis.

The court exercised its discretion and awarded the orthopedist the expenses incurred in preparing Motions for Summary Judgment on the plaintiffs’ claims and expenses incurred in pursuing the sanctions against the personal injury attorney. The court also ordered the personal injury attorney to pay the orthopedist an additional amount as a sanction for the plaintiff’s baseless allegations that he accused the patient of being a drug addict and refused to treat her because she had no health insurance.

For more information about this case or pursuing sanctions for frivolous lawsuits, contact David H. Krause at (216) 430-2103 or dkrause@reminger.com.

Editor’s Note: The AMC/NOMA is working closely with counsel of this physician member in terms of considering any further action relative to an appeal of the court’s decision. ■

The Electronic Document Retention Policy (Continued from page 10)

voicemail, or other electronic information which could be relevant to anticipated or pending litigation, needs to be made aware that that information should not be destroyed. Many electronic devices, including many computer programs, routinely overwrite data over time. Therefore, it is important to bring your IT personnel into the discussion at the onset of a litigation hold in order to ensure that things are not inadvertently destroyed.

When will the sanctions be imposed in civil discovery? When the defendant fails to have an effective document retention policy or, even when a document retention policy does exist, when the defendant fails to implement it effectively. Further, if the plaintiff can demonstrate purposeful or inadvertent destruction of relevant electronic evidence in a manner not consistent with an existing document retention policy, defendants can

find themselves fighting an uphill battle to avoid sanctions. Examples of discovery sanctions include adverse inference instructions, exclusion of relevant evidence, admission into evidence of specific discovery misconduct, monetary penalties, dismissal of Complaints and default judgments.

Should panic ensue? Certainly not. To the contrary, this is a classic example of the old adage that an ounce of prevention is worth a pound of cure. By putting in place the document retention policy now, you can help ensure that in the future you will be prepared to respond to discovery requests appropriately, to provide the necessary information that exists, and to have well documented reasons as to why information may have been destroyed. Because today’s medical practice is so intertwined with electronic medical records and in fact electronic communications, document retention policies are one of the necessary considerations to protect you against future lawsuits. ■

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Protecting The Medical Practice from Embezzlement

By Laurie Braun, CPA, CFE, Senior Staff Accountant at Lynch, Anselmo, Ott, Bryan & Company
Secretary of the North East Ohio Chapter of the Association of Certified Fraud Examiners

As Certified Public Accountants, our firm represents many small medical and dental practices. Also, as a Certified Fraud Examiner, I am always on the lookout for embezzlement in my clients' practices.

According to the 2004 Report to the Nation on Occupational Fraud and Abuse published by the Association of Certified Fraud Examiners, small organizations are at the highest risk for fraud. In the health care industry, the median loss is \$105,000.

My experience has shown that prevention is the number one factor in avoiding costly embezzlement risks. There are three areas which every owner of a medical practice should consider: fraud policy, fidelity insurance and internal controls.

It is important to have a fraud prevention program and a written policy that identifies the organization's philosophy and procedures in dealing with fraud-related matters. A fraud policy will let your employees know up front that you will not tolerate any actions constituting fraud and that you have a means to handle the fraud if it is committed. This does not have to be a lengthy document, but a statement letting the employees know that you are aware that fraud can occur and that you are not going to tolerate it. Your accountant or lawyer should be able to help you set up such a policy.

Fidelity Insurance policies can also protect you from any monetary losses suffered if one of your employees steals from you. Talk to your insurance agent about insuring those employees who handle the finances. In most cases of embezzlement, the money stolen may never be recovered; but if they are insured, your chances are better.

The third and most important means of protecting yourself from becoming a victim of embezzlement is strong internal controls. In a small medical practice with only a few employees who handle the daily intake and outlay of monies, internal control should be the number one priority. Separation of duties is an important factor, not only preventing embezzlement, but in preventing employees to be tempted to steal your money.

Create daysheets that record the patients seen, the procedures and charges performed and the money that

the patient paid that day. This sheet is invaluable. The charges recorded that day need to be cross checked by a different employee to make sure that they match the patients and procedures actually performed to prevent inaccurate charges or not recording charges at all. The money recorded also needs to be cross checked with the actual deposit slips. For example, I have a client who sends me their daysheets and deposit slips so I can cross check them with the actual deposits recorded on the bank statements.

“Prevention is the number one factor in avoiding costly embezzlement risks.”

When patients mail in their payments, you should have one employee open the mail and another record the payments on the patient accounts. This will prevent an employee from stealing the money outright and not recording it appropriately on the patient's account. Employees can manipulate checks or set up their own bank accounts in your practice name for their own schemes. When receiving payments, they should be stamped with the practice account information immediately and deposited that same day, if possible. Most practices use computer software to record their charges and receivables, so you should have monthly aging reports printed. Review these reports for accounts that may seem inappropriately large or past due and investigate them.

The accounts payable department is ripe for embezzlement. Do not use a rubber stamp to sign the checks. Make sure you sign each check and review the payee and amount being paid. Have all supporting documentation attached to the checks you are signing. Know your vendors, even if you have an employee responsible for purchasing the medical and office supplies. It is possible for employees to set up fake companies and write checks to these companies without your ever knowing, especially since modern computer equipment makes creating professional invoices easy. After

you sign the checks, you should immediately mail them. It is easy to alter the payee after the checks have been signed. Also run accounts payable reports.

Do not have your bank statements sent to your office. You should receive them at home or have them sent to your accountant. This way, you can review the checks that are written and the deposits made. For instance, I receive many of my client's bank statements, and I go through all the checks to identify checks that look unusual or suspicious. Look through the check register to make sure that the payee recorded on the check stub is the same payee written on the check. If you have someone in your office reconcile the bank account, make sure it is someone who is not responsible for handling the receivables or the payables.

When hiring new employees, it is wise to contact prior employers or to do a background check. Since most employees who steal money from the employer are not prosecuted, they merely go to a new job and do the same thing again. And, if you find that one of your employees is embezzling, contact your attorney so it can be handled appropriately.

Meet with your accountant to review your fraud policy and internal controls. They can perform operational reviews to make sure you are protecting your practice before it is too late.

In a small medical practice, the human element comes into play. Employees know each other very well and trust is a key factor. Trust is an essential element of small businesses, but it is also an essential element of fraud. You need to strike a balance between having enough trust in your employees to create an amicable working relationship, and not having enough trust in them to avoid becoming a victim of embezzlement.

Editor's Note: This article is the first in a series on special practice management features. Look to the Sept/Oct issue of the Cleveland Physician for a timely piece on tips for avoiding identity theft in the medical office setting. Contact Kristine Snider of the Academy's Practice Management Dept. with your questions/concerns at (216) 520-1000 ext. 314. ■

Stop Scheduled 2007 Cuts to Medicare Physician Payments!

We are faced again this year with the need for Congress to forestall the scheduled cuts to Medicare physician payments — a nearly 5 percent reduction totaling \$117 million to Ohio doctors next year alone. As you know, the sustainable growth rate (SGR) formula is inherently flawed because it penalizes physicians when the growth in utilization of medical care is greater than growth in the gross domestic product. There is widespread consensus among policymakers that the SGR is in fact unsustainable and must be replaced with a formula that accommodates for increases in the cost of practicing medicine. In fact, Medicare physician reimbursements have scarcely kept pace with the rising cost of providing patient care — the GAO conservatively estimates between 1990 and 2006 the cost of operating a practice rose 40%, while Medicare payments increased 19%. Ask your Congressional representative to take action and prevent physician payment cuts in 2007, secure a positive payment update that accurately reflects practice cost increases (for 2007 MedPAC has recommended rates be increased 2.8%) **and** replace the unsustainable growth rate formula with a payment system that prevents the need for congressional intervention year after year!

The 2006 Medicare Trustees report projects continued cuts in physician payment rates, due to the SGR, totaling 37 percent through 2015. In our state of Ohio, that's \$27,000 per year, per physician.

Write your Congressional Representative TODAY. Let them know that survey after survey (including 2005 AMC/NOMA data) has shown that the SGR will necessitate doctors begin limiting the Medicare patients they treat, or stop accepting new ones because to do so is becoming prohibitive.

Visit www.amcnoma.org, click on the prominent Medicare Cuts link to be easily directed to an "Action Alert" sample letter already prepared for AMC/NOMA members.

Proposed Changes to Physician Fee Schedule Announced

CMS issued a notice June 22 proposing changes to the Medicare Physician Fee Schedule (MPFS) that would improve the accuracy of payments to physicians for the services they furnish to Medicare beneficiaries. The proposed notice includes substantial increases for "evaluation and management" services. CMS will respond to public comments on both sets of proposals and announce final policies in a final rule to be issued in early November. In the notice, CMS proposes to:

- Adopt a "bottom-up" methodology for calculating direct costs. This involves using procedure-level data for clinical

staff times, supplies and equipment that have been previously reviewed by the RUC;

- Modify the methodology used to calculate indirect practice expenses;
- Utilize practice expense survey data for eight specialties: allergy/immunology, cardiology, dermatology, gastroenterology, radiology, radiation oncology, urology and independent diagnostic testing facilities; and
- Eliminate an exception to the current methodology, the so-called nonphysician work pool that has been used to calculate practice expense RVUs for services without physician work RVUs, and instead price these services using the standard practice expense methodology.

If approved, the changes will apply to payments for services furnished to Medicare beneficiaries beginning with 2007.

We will keep members updated as more information becomes available.

What CERT Means to You

CMS uses the Comprehensive Error Rate Testing (CERT) program to measure and improve the quality and accuracy of Medicare claims submission, processing and payment. Under this program, more than 140,000 randomly-selected claims are reviewed each year.

CMS' methodology includes:

- Randomly selecting a sample of claims submitted in a specific calendar year;
- Requesting medical records from providers who submitted the claims;
- Reviewing the claims and records to see if they complied with the Medicare coverage, coding and billing rules;
- Treating the claims as errors and sending the providers overpayment letters when providers fail to submit the requested documentation, submit insufficient documentation, or the submitted medical record indicates that the service was not medically necessary, incorrectly coded, or was not in compliance with some other Medicare coverage or billing rule.

What Should You Do?

- Provide the requested information: During a CERT review, you may be asked to provide more information related to a claim than you submitted so that the CERT review contractor can verify that billing was proper.
- Respond Promptly: Should you receive a CERT request for medical documentation, respond promptly by submitting the requested supporting documentation within the timeframe specified.
- Keep your enrollment information current:

It is important to keep your Medicare contractor informed within 90 days of

any changes to name, address, etc. Correct address information will help ensure that CERT documentation requests are received and will allow time for your response.

- Educate staff who receive the mail on: How to identify a CERT request for medical records and who to forward the letter to so it can be processed in a timely manner. Request needed documentation from third parties if necessary, attach the original bar code sheet to each individual set of records and fax or mail the requested information to the number or address listed in the CERT letter.

Obtain NPIs Early

Physicians who file claims electronically must begin using a National Provider Identifier by May 23, 2007, but CMS is urging physicians to obtain the unique 10-digit code early in an effort to prevent the system from being overwhelmed by individuals and organizations waiting until the last minute. Federal officials hope that the NPI and other electronic standards will reduce the administrative burden on physicians and encourage them to adopt electronic claims.

Physicians must submit certain information such as Social Security numbers, federal employer identification numbers and any other identifiers to apply for an NPI. The NPI, which will never change and will accompany a physician wherever he or she goes, also is required for physicians who use a separate billing agency to submit electronic claims. About 635,000 of the roughly 2.3 million physicians, hospitals and other health care entities that must obtain NPIs have done so in the first year of the application process. Most insurers by May 2007 will be required to accept the NPI alone, but smaller health plans will have an additional year to comply. ■

Did You Know?

The AMC/NOMA offers all manner of practice management assistance to our members from third party payor claims reviews to discounted Tri-C classes on billing/coding standards. Call the Physician Advocacy Committee and Practice Management staff at (216) 520-1000 ext. 314. Also, look for the Summer 2006 *Practice Management Matters* newsletter — a valuable resource for providers and staff — in your office mail soon!

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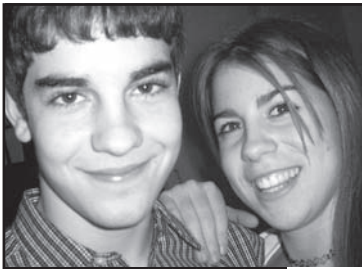
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Recognizing outstanding AMC/NOMA members for their honors, awards and achievements, in addition to their work spreading messages of health and wellness to the community.

AMC/NOMA member **Dr. Robert Dimeff** (left), Medical Event Director for the Rite Aid Cleveland Marathon, spends a moment with members of his medical staff during the May 21 event. Dr. Dimeff also serves as primary care director of SportsHealth at the Cleveland Clinic.



Dr. David R. Mandel, rheumatologist and AMC/NOMA member, saw the importance of recognizing osteoporosis as a “silent killer” affecting many generations. Dr. Mandel founded the Osteoporosis Walk Foundation and its annual event, Run/Walk for Stronger Bones has certainly gained its popularity over the past decade, with this year’s run and walk being its twelfth since its origin in 1994.

AMC/NOMA member **David Bronson, MD**, Chairman of the Division of Regional Medical Practice at the Cleveland Clinic Foundation, has taken office as Chair-elect of the Board of Governors of the American College of Physicians (ACP), the national organization of doctors of internal medicine.

Dr. Bronson is currently the ACP Governor for Ohio. He is also a consultant for the Cleveland Browns football team.

Dr. Thomas Steinemann is the recipient of the American Academy of Ophthalmology’s 2006 Secretariat Award for advocacy on the plano contact lens issue. Dr. Steinemann is a cornea and external eye disease specialist at MetroHealth Medical Center and was instrumental in getting federal legislation passed last year regulating the decorative devices. ■

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Can You Benefit from a Revocable Living Trust?

By Philip G. Moshier, CFP

In recent years, revocable living trusts have been touted as a simple, cheap supplement to wills. But are they? It's called a living trust because you set it up and put some or all of your assets into it during your lifetime. Typically, you serve as trustee which gives you control of the assets until death. After your death, they are distributed according to the terms of the trust document and don't go through probate, which can be costly and time-consuming.

While a useful estate planning tool in some instances, living trusts are not for everybody. Here's a look at some of the pros and cons:

Advantages

- **Medical Practice Succession.** If you own or are a partner in a medical practice, the trustee can transition your practice to a successor or assist with its termination — if that's your desire.
- **Avoiding Probate.** Under a will, an estate must be settled in probate court and is a matter of public record. Lawyers' fees and court costs often are substantial, and proceedings can drag on for a year, two, or more. Living trusts are generally settled without court intervention, so the process could be quicker, cheaper and more private, although this isn't always the case. Local laws should be examined to confirm whether privacy can be ensured.
- **Flexibility.** Since you can amend or revoke the trust at any time while you're alive, you can get the trust property back whenever you wish, or modify a distribution fact pattern to potential beneficiaries.
- **Control.** A living trust can provide a single receptacle to receive and distribute assets on your death. Non-trust assets such as life insurance proceeds can be left to your trust if you name it as beneficiary (although the proceeds will be subject to estate taxes if you own the policy at death). Also, where allowed by law, any assets not held in trust can be left in your will and passed to the trust after your death by the terms of the will. Thus, the trust can unify your estate so that it can be administered under one document.
- **Asset Management.** If you become disabled or otherwise unable to manage your financial affairs, a living trust and durable power of attorney enable

your spouse or anyone else you've named to act on your behalf to manage your assets without time-consuming court intervention. Note, however, in some instances a court-appointed conservator may still be needed.

Disadvantages

- **Tax Myth.** Unless properly drafted, a revocable living trust won't save you a dime in estate taxes. For many wealthy individuals, their priority is reducing estate taxes, not just probate.
- **Not A Will Substitute.** You still may need a will. Living trusts could be a supplement, but not a substitute for your will. You'll need a will to pass on assets not previously put into the trust, to appoint an executor to administer your estate, and to name a guardian for your minor children, among other reasons.
- **Costs/Hassles.** As with any trust, you'll have to pay legal fees to set it up initially, and possibly ongoing trustee fees if you use an institution such as a bank, or other trustee. And it can be costly and difficult to transfer legal title to your business, home, bank accounts and securities into the name of a trust. Before refinancing your home, for instance, your bank may insist that the title be removed from the living trust back into your name.
- **Another Factor.** If probate is an important concern, the kinds of estate assets should be looked at. Two of your biggest assets — your life insurance policy and pension plan — can be designed to go directly to your designated beneficiaries without passing through probate. And since assets owned jointly by you and your spouse pass by contract or deed, a living trust isn't needed to avoid probate.

While not a panacea, revocable living trusts may be valuable in some states where probate is costly and com-

plicated. However, since living trusts may not work to your advantage, it's best to consult a legal advisor and a financial counselor to determine whether it should be part of your desired estate plan.

To ensure compliance with requirements imposed by the IRS, we inform you that (i) any U.S. tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue code (ii) and any such tax advice is written in connection with the promotion of marketing of the matter's addressed. You should seek advice based on your particular circumstances from an independent tax advisor.

Philip G. Moshier, CFP is a registered representative of Lincoln Financial Advisors, a broker/dealer, and offers investment advisory service through Sagemark Consulting, a division of Lincoln Financial Advisors Corp.

Editor's Note: AMC/NOMA members may receive discounted financial services through our relationship with Sagemark Consulting and Mr. Moshier. A brochure outlining the available services can be easily downloaded from www.amcnoma.org by clicking on the 'Member Information' link in the left column, then 'Financial Services' under Member Benefits. ■

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Marissa Rose Biddlestone Memorial Golf Outing

August 28, 2006

Shaker Heights Country Club

PROCEEDS TO BENEFIT THE
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Call (216) 520-1000, ext. 309 for more information or to sign up for the event.

The Academy of Medicine Cleveland/Northern Ohio Medical Association held its Annual Meeting dinner and awards presentation Friday, April 28 with the special addition this year of Foundation scholarships awarded to local medical students during the evening's festivities.

“There is no organization that can offer you so much as a physician in Northeast Ohio. Although regional, the AMC/NOMA gives each of you a voice that can be heard at a distance.”

—PRESIDENT PAUL C. JANICKI, MD, addressing the membership during the 2006 Annual Meeting

The 2006 list of honorees was led by **John D. Clough, MD**, receiving the John H. Budd MD Distinguished Membership Award for his exemplary contributions to the local medical community. **John H. Sanders, MD**, was honored with the Charles L. Hudson Distinguished Service Award in recognition of his longtime dedication to organized medicine. The 2006 Clinician of the Year designation went to **Adrian M. Schnall, MD** in recognition of his outstanding accomplishments in active practice and scientific research. The Academy's Honorary Membership Award was bestowed upon **John F. Shelley, Esq.** in acknowledgement of his many years of counsel and ethical representation of area physicians. **Thomas L. Steinemann, MD**, received the Outstanding Service Award marking his role in the passing of federal legislation regulating all contact lenses as medical devices. And **Michael A. Michael, MD**, was presented the Special Honors Award for his professional dedication and service to the community.

The Academy of Medicine Education Foundation presented its annual scholarships this year to four deserving local medical students for the first time at the Annual Meeting of the AMC/NOMA.

And as always, physician members celebrating the fiftieth anniversary of their medical school graduation were honored during the program as well.

Following the awards ceremonies, outgoing president **George E. Kikano, MD**, passed the AMC/NOMA gavel for the 2006-2007 year to **Paul C. Janicki, MD**. ■



2006 Honorees (l to r): Adrian Schnall, MD; John Shelley, Esq.; Thomas Steinemann, MD; Michael Michael, MD; John Sanders, MD and John Clough, MD.



Past Presidents of the AMC/NOMA in attendance at this year's meeting (l to r): William Seitz, MD; George Kikano, MD; John Bastulli, MD; Robert White, MD; Herman Menges, MD; Fred Suppes, MD; George Leicht, MD; Victor Bello, MD and Ronald Savrin, MD.



Fifty-Year Awardees at the 2006 Annual Meeting (l to r): Fred Suppes, MD; Frederic Lafferty, MD; Erwin Rabin, MD; Howard Fagan, MD; Carl Doersbuk, MD; John Gardner, MD; Melvin Shafron, MD; Sayed Hussny, MD; Joseph Bauer, MD and Virgilio Avendano, MD.



Paul C. Janicki, MD, receives his presidential gavel and good wishes from outgoing president George E. Kikano, MD, during the annual meeting ceremonies.



AMEF Scholarship Awardees (l to r): Ana Radovic and Jennifer Neville of Case Western Reserve University; Joshua Netbing of NEUCOM and Charyse McMillion of Ohio University.

The Academy of Medicine Cleveland/Northern Ohio Medical Association
The VOICE of NE Ohio Physicians for more than 180 Years

Highlights of 2005-06 Advocacy on Behalf of Our Members and their Patients

Legislative Activities — Crafted and participated in debate to create a mandatory arbitration pilot program resolving NE Ohio medical liability cases — which passes Ohio Senate after more than two years of work by the AMC/NOMA and its supporters hoping to positively impact the still-looming liability crisis in our region.

Testified in support of and submitted amici curiae brief on behalf of Anesthesiologist Assistants to Ohio Supreme Court.

Supported and helped achieve Congressional regulation of cosmetic contact lens use.

Board Initiatives — Adopted policy on Pay-for-Performance programs holding that any such policy be fair and ethical, patient-centered and assess physician performance with evidence-based measures.

Developed policy on the Conscience Clause issue stating our support that a patient's access to legally prescribed medications be made available to them should a pharmacist conscientiously object to dispensing it.

Adopted directives to the FDA relative to enhanced physician access to the agency's drug safety/trials data.

Raised concerns in several missives to the Ohio Department of Health, the State Medical Board and participating corporations on the issue of state-wide implementation of medical services in a retail setting, or quick clinics, with serious questions on continuity of patient care.

Strenuously objected in letters twice to the Ohio State Medical Board outlining serious concerns on their proposed rules over terminating the physician-patient relationship and sexual misconduct.

Participation in the NEORHIO project, the region-wide Health IT collaborative, by committing funding toward its business plan development.

Requested OSMB review of expert witness testimony in medical liability cases by physicians.

Medicare Cuts Reversed — Thanks to national physician associations and local groups such as the AMC/NOMA, Congress reversed the 4.4 percent cut in physician's Medicare reimbursement rates and froze fees at the 2005 level. We continue to advocate (including our June 26 press release) overturning the SGR, the source of potential rate cuts for the next several years.

Media Coverage — *Cleveland Connection* radio program interviewed Dr. John Bastulli on legislation aimed at reducing liability premium burdens on NE Ohio physicians. George Kikano, MD, participated in a radio panel on direct-to-consumer advertising of prescription medications and the implications on the physician/patient relationship on WCPN's 90.3 at 9. AMC/NOMA's "Pollen Line" was featured as a great community resource by the *Plain Dealer* and *The News-Herald* at the start of allergy season. Dr. Ronald Savrin was interviewed by Jim McIntyre of WDOK 102.1 FM on the services and benefits the AMC/NOMA offers as was Richard Fratianne, MD, on his work at MetroHealth Medical Center. William Seitz Jr., MD, was featured on the nationally-broadcast *All Things Considered* NPR program for his specialization in a bone-lengthening technique. Dr. Thomas Steinemann was interviewed several times by the *Plain Dealer* on the issue of federally regulating cosmetic contact lenses. Several AMC/NOMA letters to the editor were printed in *Crain's Cleveland Business* and the *Plain Dealer* on subjects ranging from medical liability and retail "quick clinics" to improving patient care through better communication strategies. And Paul Janicki, MD, was featured in *Crain's Cleveland Business* and the *Plain Dealer* when installed as AMC/NOMA president.

Community Efforts — Conducted widely successful Vote & Vaccinate event on Election Day offering flu and pneumonia immunizations in underserved areas. Acted as initiative partner to SmokeFreeOhio campaign in their efforts to legislate workplace safety from secondhand smoke across the state. Hosted 21st annual Mini-Internship Program that allows community members to shadow AMC/NOMA physicians over two days.

Scholarships — Academy of Medicine Education Foundation awarded four \$5,000 scholarships to local third and fourth year medical school students based on scholastic merit and interest in the advancement of organized medicine.

Annual Seminar — Hosted well-attended and topical CME seminar addressing pay-for-performance, quality measurement, electronic health records and health IT as they begin to impact the practice of medicine in our region.

Benefits of Membership in the AMC/NOMA

- Renowned Physician Referral Service
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- Specialty Listing in Member Directory & Community Resource Guide
- Practice Promotion via Healthlines radio program
- Reimbursement Ombudsman
- CME Seminars
- Peer Review
- Speaker's Bureau opportunities
- Insurance/Financial Services
- Weekly, quarterly and bimonthly publications offering healthcare news and practice guidance
- Member Discounts including Worker's Comp, Practice Management Classes at Tri-C and so much more!

Is YOUR Voice Being Heard?

Already an AMC/NOMA member? Now is the time to renew your commitment to organized medicine that makes a real difference in your practice and our region. Look for a 2007 dues billing in your mail soon!

Not yet a Member? Now more than ever is the time to join the only regional medical association tirelessly working in the best interest of you—the NE Ohio Physician. Call our membership department at (216) 520.1000 ext. 309 for details on all the benefits and services available exclusively to our members.

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