

HHS Region V Director O'Brien Meets with Northeast Ohio Hospital Opioid Consortium

The Northeast Ohio Hospital Opioid Consortium (NEOHOC) welcomed at its November meeting **Douglas O'Brien**, U.S. Department of Health and Human Services (HHS) Region V director. This was an opportunity for Mr. O'Brien, who was in town from Chicago, to learn more about the work of the Consortium as well as for Consortium members to gain insight into HHS activities related to the opioid issue.

Mr. O'Brien emphasized the importance of work underway across the country to combat the opioid crisis, saying it's at the forefront of HHS's agenda, particularly for those 10 regional offices around the country.

"This is a community crisis that is going to be solved with community innovation," said O'Brien. "The work the people in this room are doing—clinicians, social workers, everybody in the continuum of care—is

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AMCNO member Dr. Tom Collins (left) spends a moment with Mr. Douglas O'Brien at the NEOHOC meeting.

AMEF and the AMCNO Support and Sponsor the Ohio Physician Wellness Coalition

The Academy of Medicine Education Foundation (AMEF) was pleased to provide funds that will assist in the launch of a statewide program geared toward assisting physicians with burnout. This innovative program is being developed by the Ohio Physician Wellness Coalition (OPWC), under the auspices of the Ohio Physicians Health Program (OPHP).

"Physician burnout, even among our physicians-in-training, is an area of high concern, as we already anticipate a significant physician shortfall within the next 10 to 15 years," said AMCNO member and Immediate Past President Dr. Fred Jorgensen. "Burned-out physicians practice less effectively, struggle to maintain good patient relationships, have less satisfying personal lives, and hope to retire early. We cannot afford this. We need to address this issue." Dr. Jorgensen is also a member of the OPWC Physician Advisory Council.

The OPWC is a coalition dedicated to addressing physician burnout and providing physician wellness initiatives. Members of the OPWC include: the Academy of Medicine of Cleveland & Northern Ohio; Ohio State Medical Association; Ohio Osteopathic Association; Ohio Psychiatric Physicians Association; Ohio Academy of Family Physicians; Ohio Hospital Association; Columbus Medical Association; Ohio Physicians Health Program; Ohio Chapter, American Academy of Pediatrics; and Ohio Chapter, American College of Emergency Physicians.

Our state and national physician organizations, as well as our large healthcare institutions, have recognized this important issue as well and are beginning to address it. As we all work together to find meaningful solutions, the OPWC is facing this issue head-on. The coalition is currently putting together videos that will cover important topics for physicians, such as Mindfulness and Meditation, Addiction, Stress, Burnout and Resiliency, and Benefits of Counseling and Therapeutic Support. Each video will be recorded by a physician expert within the corresponding field of medicine. The videos will be housed on the

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HHS Region V Director O'Brien Meets with Northeast Ohio Hospital Opioid Consortium *(Continued from page 1)*

winning this battle step by step, every day, and it's not going to come from a manual that we put out in Washington."

Mr. O'Brien also praised the model of the Consortium.

"I see so many task forces and consortia and working groups on opioids all around the Midwest and this is the only one I've seen that is hospital-driven," he said. "I think it really is a unique approach and something that has tremendous potential to be replicated in other parts of the country."

Drs. Randy Jernejcic of University Hospitals, **Joan Papp** of the MetroHealth System, **Kevin Smith** of the Northeast Ohio VA (Veterans Affairs) Healthcare System, **David Streem** of Cleveland Clinic, and **Tom Collins** on behalf of the Academy of Medicine of Cleveland & Northern Ohio (AMCNO), along with **Thom Olmstead**, director of external affairs for St. Vincent Charity Medical Center, each had the opportunity to share with Mr. O'Brien and the group an overview of their organizations' work to date to combat opioid addiction and overdose. Highlights of the various organizations' work are as follows:

- University Hospitals launched its Pain Management Institute, which has so far resulted in a 34% reduction in pills prescribed.
- MetroHealth System, through Project DAWN (Deaths Avoided with Naloxone), has distributed more than 10,000 naloxone kits, with more than 1,800 lives saved. The system also increased access to medication-assisted treatment (MAT) and peer support in its emergency department.
- Northeast Ohio VA Healthcare System has expanded patient access to suboxone and naloxone. In the last year, it has increased the number of veterans receiving suboxone by more than 400% by providing training and DEA certification for the entire psychiatry department outside of mental health. The system

also has focused efforts on naloxone distribution, and the Cleveland VA is the second highest distributor of naloxone kits across the VA system.

- Cleveland Clinic anesthesiology groups are working to reduce the use of opiates for patients with acute post-operative pain. The Clinic also is working with patients who have endocarditis as a result of an opioid use disorder, starting them on MAT and providing counseling, both of which continue upon discharge to long-term acute care. The Clinic's Back on TREK program uses non-pharmacologic techniques to improve the outcomes of patients with chronic low back pain.
- St. Vincent Charity Medical Center, which provides a full spectrum of treatment options through Rosary Hall, established a transportation system, utilizing Uber, at no cost to patients living in sober living homes to provide round-trip services to and from intensive outpatient treatment (IOP). In 2018, attendance rates for IOP patients utilizing the Uber system is nearly 90%.

Dr. Collins discussed the recent work of the AMCNO and its charitable component, the Academy of Medicine Education Foundation (AMEF), in collaboration with Case Western Reserve University School of Medicine, to sponsor an Opioid Prescribing Education online course for physicians. The course aims to decrease opioid abuse by strengthening physicians' knowledge to safely prescribe controlled medications that have potential for abuse. Dr. Collins also shared that the AMCNO, on behalf of physicians in Cleveland and Northern Ohio, would like to see improved insurance coverage for alternative treatments, coverage for addiction treatment by Medicaid and other insurance providers, and the use of telehealth to enhance the treatment of opioid addiction.

Mr. O'Brien discussed some of the regulatory issues that are having a bearing on the opioid crisis, particularly 42 CFR Part 2. This is a

federal regulation that protects the privacy of patients undergoing treatment for substance use disorders but in doing so hampers clinicians' abilities to access the full scope of patients' medical records, presenting a barrier to coordinated care. Mr. O'Brien voiced a commitment by HHS to work with providers to relieve regulatory burdens.

NEOHOC has participated in a coordinated advocacy effort to address the shortcomings of 42 CFR Part 2 by submitting a letter to Sens. Sherrod Brown and Rob Portman requesting their support for and encouraging their efforts at moving forward legislation pending in the Senate that would align these regulations with the Health Insurance Portability and Accountability Act (HIPAA) for the purposes of treatment, payment, and healthcare operations.

The legislation, H.R. 6082, passed the House of Representatives in June in a bipartisan vote, 357-57. It is currently in the Senate Committee on Health, Education, Labor, and Pensions (HELP) awaiting action. If it does not pass by year's end, the legislative process will need to begin anew with the start of the next session of Congress.

In mid-November, a letter signed by 220 organizations across the country, ranging from associations representing physicians, hospitals and nurses to nonprofit organizations, health systems and The Joint Commission, was sent to the chairman and the ranking member of the Senate HELP Committee urging them to consider the legislation.

As the Consortium meeting drew to a close, Mr. O'Brien left the group with some parting advice that was pertinent for the upcoming holiday season. He encouraged spreading the message that this is an opportune time to clean out medicine cabinets. During this time of year, it's common for people to have guests coming through their homes.

"The holidays are the biggest high point for [opioid] diversion," he said. ■

AMEF and the AMCNO Support and Sponsor the Ohio Physician Wellness Coalition *(Continued from page 1)*

coalition's website, www.ohiophysicianwellness.org, and continuing medical education (CME) will be offered for each. Other strategies, such as town hall meetings on wellness and focus groups, are also in the planning stages, with the goal of opening up even more lines of communication on the topic of burnout, from the physicians themselves.

A recent study concluded that physicians are spending 49% of their time on administrative tasks and only 27% with their patients. Burnout affects physicians at all levels of training and at various stages of their careers, according to the Mayo Clinic: 28-45% of medical students, 27-75% of residents, and about 37% of attending physicians. Clearly,

there is a need for change—to change physicians' workload and the environment in which they practice. And the OPWC, with sponsorship funds from the AMEF, is leading the efforts to help facilitate these changes—for the benefit of our physicians and their patients. ■

Legislative Updates

HB 7 Signed by the Governor

House Bill 7—legislation that includes numerous medical liability reforms which serve to reduce unnecessary litigation—has been signed by Gov. John Kasich. The bill will become law 90 days after it is signed.

The AMCNO strongly supported HB 7, and our Medical Legal Liaison Committee worked to assure that several changes were made to the bill before it was passed. The AMCNO provided input to the Ohio State Medical Association (OSMA) and the Ohio Hospital Association (OHA) on the bill, and we thank them and Rep. Bob Cupp (R-Lima) for all of their hard work on this legislation. A member of the AMCNO Medical Legal Liaison Committee also provided proponent testimony on the bill.



Ray Krncevic, Esq., testifies on behalf of the AMCNO, the OSMA and the OHA before the Senate Health, Human Services and Medicaid Committee in support of HB 7.

HB 7 will strengthen Ohio's existing medical liability statutes. Following are some of the key provisions in the bill:

"I'm Sorry" Law

HB 7 will amend the apology statute enacted in Ohio in 2004. It includes a clarification of the apology statute to further open the lines of communication between patient and physician and reduce overall lawsuits.

Insurer Reimbursements Can't Define Standard of Care

The bill will also prohibit the use of insurer payment policies and guidelines from being used to establish the standard of care. Recently-adopted payment guidelines and performance incentives were never intended to be used in legal proceedings to establish the standard of care, and this bill will keep this from occurring in Ohio.

Shotgun Lawsuits

HB 7 will help to eliminate the practice of "shot gunning" defendants in medical claims. This can result in unnecessary expenses to plaintiffs and pointless costs to physicians and their insurers, not to mention other adverse consequences for physicians associated with reporting of lawsuits filed against them. Under the new statute, plaintiffs would have a finite period to name additional defendants after the initial filing of a medical claim. Additionally, the legislation also requires plaintiffs to exercise due diligence to discover the basis for asserting claims against any such additional defendants within that period.

Disaster Care

HB 7 will provide limited qualified protection for healthcare providers who deliver healthcare services during a disaster—where an event has occurred that has caused widespread injury, illness or loss of life. Healthcare providers would receive some limited immunity, as long as the provider's act or omission does not constitute "reckless disregard" for the consequences on the health or life of the patient.

The AMCNO applauds the legislature for passing this important legislation, which constitutes a huge victory for physicians.



Scope of practice legislation continues to permeate the legislature, and the AMCNO has been working with other medical associations to assure that several bills related to scope of practice changes did not pass in this General Assembly. Pictured: Dr. John Bastulli, Vice President of Legislative Affairs, testifies for the AMCNO before the House Health Committee in opposition of HB 191 – a bill that would have changed the scope of practice of certified registered nurse anesthetists.

Step Therapy Reform Heads to the Governor for his Signature

The AMCNO is pleased to report that physician and patient advocates have achieved a major victory with step therapy reform. This is another huge victory for physicians and the AMCNO. Step therapy is the process by which a health insurer can deny coverage of a prescribed medication, requiring that the patient first try a different medication. This is usually done as a cost savings tool for the insurer. A physician may originally prescribe a certain medication for a patient, but the patient must "fail first" on a drug chosen by the insurer.

The AMCNO worked tirelessly for several years to support step therapy reform legislation (SB 56/HB 72) with a large coalition of groups representing the medical community and patients.

Step therapy reforms included in this legislation will apply to health benefit plans issued or renewed on and after Jan. 1, 2020. The bill's requirements will also apply to the Medicaid program, adapted slightly but functionally the same as the requirements applied to health plan issuers.

The new law will:

- Require a step therapy protocol utilized by a health plan issuer to be based on clinical practice guidelines or scientific evidence;
- Require health plan issuers to provide a clear, accessible, and convenient process by which a provider can request a step therapy exemption; and,
- Require health plan issuers to make disclosures with regard to a step therapy protocol.

Additionally, this legislation specifies circumstances in which a health plan issuer must grant a step therapy exemption.

The AMCNO is pleased that years of hard work with the Ohioans for Step Therapy Reform coalition have resulted in this success, and that Ohio is set to enact meaningful reforms to the step therapy process.

As of press time, the legislature had not yet completed their lame duck session. Any additional legislative updates will be provided to our members at a later date.

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Administrative Updates

Medicaid Director Steps Down

Barbara Sears, who is stepping down as director of the Ohio Department of Medicaid as the Kasich Administration comes to a close, will join Strategic Health Care at the beginning of the new year, the firm announced Wednesday.

Ms. Sears, a former Republican member of the House, will lead state and national healthcare projects on healthcare reform initiatives.

"We are very excited to have Barbara on the Strategic Health Care team," said Paul Lee, the firm's founder. "Barbara is known across the nation as a forward-thinking innovator, particularly in Medicaid payment reform initiatives. Our clients will be well-served by her leadership."

Ms. Sears previously worked as president and partner of Noble & Sears and was senior vice president at Roemer Insurance. She is set to earn a master's in health administration early next year.

Gov. Kasich announced that Jim Tassie will take over the Medicaid department on January 1 in an interim director role.

Ohio Issue 1 – Drug and Criminal Justice Policies Initiative Defeated at the Polls

The AMCNO Board of Directors agreed to join other organizations and individuals who opposed State Issue 1. Issue 1 was a constitutional amendment about criminal sentencing reform that would have reduced the sentences of individuals incarcerated for non-violent offenses, such as obtaining, possessing, and using controlled substances. Under the amendment, offenders would not face jail time until their third non-violent offense within 24 months.

As written, Issue 1 would have made the possession of powdered fentanyl in amounts of less than 20 grams a misdemeanor with only probation as a consequence. The AMCNO believed that this provision would send a message to drug dealers that they could do business in Ohio at low risk at a time when the data clearly shows that fentanyl-related overdose deaths are increasing at an alarming rate. As physicians, we were concerned that this had the potential to increase the addiction problem in Ohio, not reduce it.

The AMCNO understands that the proponents of Issue 1 want to address the impact of substance abuse in our state and our criminal justice system; however, Issue 1 as written would have put Ohio on the path of adopting some of the most lenient drug laws in the country. For that reason, the AMCNO opposed State Issue 1, and we were pleased to see that it was defeated. Ohio voters rejected Issue 1 by a vote of 63% to 37%. After the defeat of Issue 1, legislative leaders at the Statehouse have expressed the intent of the General Assembly to develop and enact legislation to reform Ohio's drug sentencing laws. The AMCNO plans to be a part of this discussion.

Office-Based Opioid Treatment (OBOT) Rules

The State Medical Board of Ohio (SMBO) OBOT rules had a public hearing in late November. Several comments were submitted to the SMBO at the hearing, including comments from the Northeast Ohio Hospital Opioid Consortium, which includes the AMCNO. The rules were put into a "hold" status with the Joint Committee on Agency Rule Review (JCARR) to provide the SMBO with sufficient time to review the comments they received and make any amendments to the rules that are needed. The usual procedure is that the rules will be filed in "revised" form with JCARR; and normally, they are not sent out for comment. Persons and organizations who submitted comments will be notified of the revisions, and the information on the SMBO's website will be updated to reflect the amended language. The AMCNO will continue to monitor how this matter is evaluated by the SMBO.

ODM Offers Medicaid Managed Care Complaint System for Providers

The Ohio Department of Medicaid (ODM) is now providing a Managed Care Plan (MCP) complaint tracking system on their website.

It only takes about three minutes to populate the online complaint form. A tracking number is attached to the complaint and the ODM connects with the plan, and the plan has to respond within a certain number of days.

The online form is for managed care providers only. Providers must appeal denied claims to the MCP before the ODM will process a complaint. If a complaint involves multiple MCPs, physicians must complete one form per MCP. The resolution time frames for managed

care complaints are 2 business days for ones that involve access to care, and 15 business days for all other issues.

To access the complaint system, visit <https://providercomplaints.ohiomh.com/ProviderComplaintForm.aspx?forcedirect=true>.

AMCNO Sends Comments to Ohio Supreme Court on Two Key Issues

The AMCNO sent comments to the Ohio Supreme Court (OSC) on their proposal to amend S.Ct.Pract.R. 3.03 to reduce the amount of time parties can stipulate to an extension of time to file merits briefs from 20 days to 10 days. The AMCNO opposes the proposed amendment because it adversely affects our ability to participate in a case before the Supreme Court as an amicus party.

The AMCNO Medical Legal Liaison Committee tracks cases moving through the court system that could impact current tort reform law in Ohio and we weigh in on certain cases. To date, the AMCNO has participated as *amicus curiae* in 12 cases on a wide variety of issues,

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AMCNO LEGISLATIVE REPORT

including the construction and/or constitutionality of the apology statute and the medical malpractice statute of repose, as well as issues affecting the tort of lack of informed consent and the admissibility of certain evidence in medical malpractice cases, to name a few.

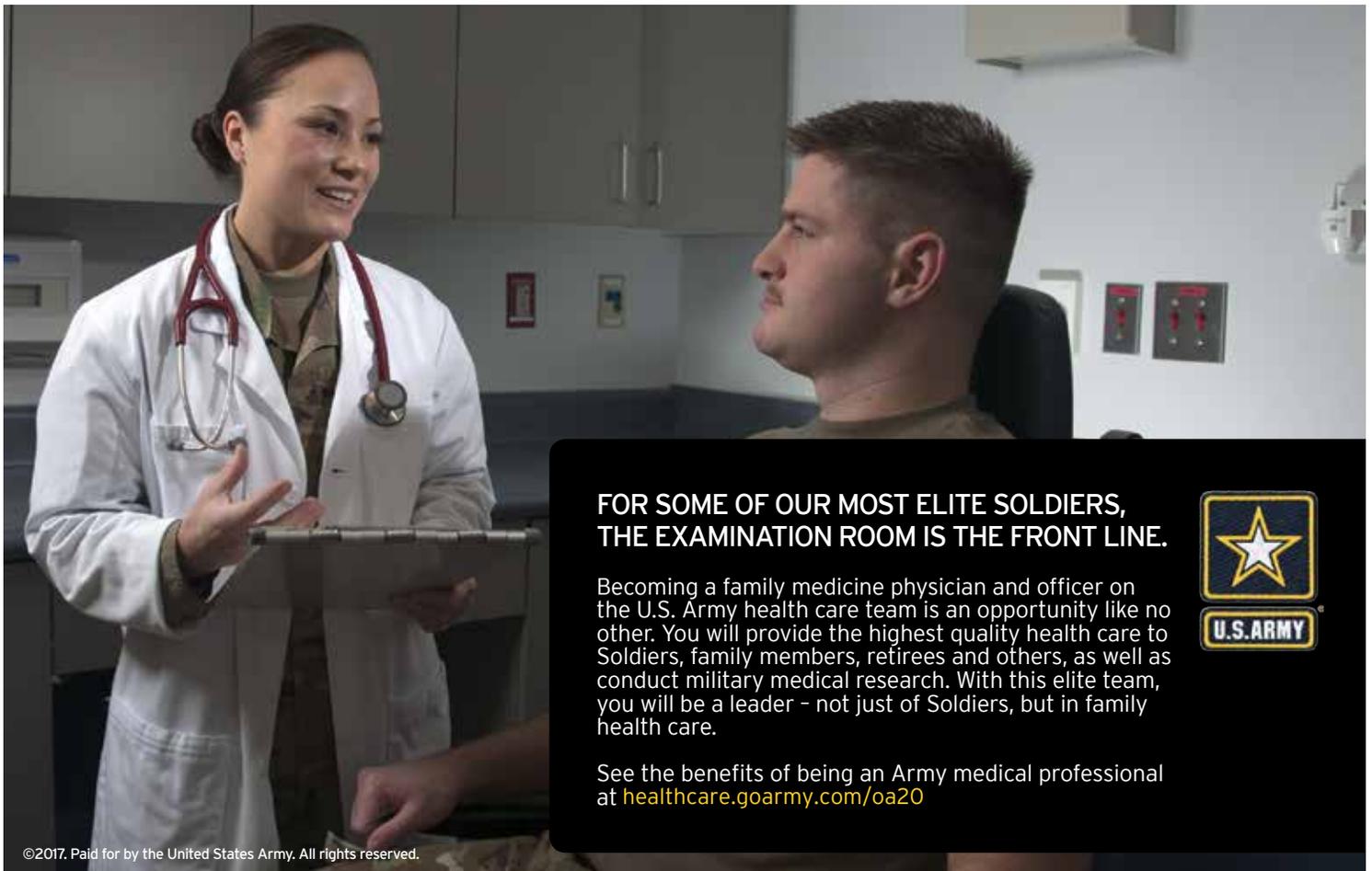
But because AMCNO is not a named party in these cases, we often do not become aware of issues before the Supreme Court until those issues are accepted for review. We then need to gain approval from our leadership to participate as an amicus party, secure an attorney who can commit the time to prepare the brief, and then have sufficient time to review the draft brief before it is filed—all within what is already a short time for a party not involved in the case from the beginning. We believe that changing the time frame to file merits briefs could impact our ability to file an amicus brief in a timely fashion, and we have asked the OSC to take these comments into consideration.

The AMCNO also sent comments to the OSC on their proposal to amend Evid.R. 803(18)—the Learned-Treatise Rule. As the rule is currently written, statements contained in a learned treatise as defined by the rule “may be read into evidence but may not be received as exhibits.” It has been proposed that the rule be amended to allow the treatise, at the court’s discretion, to be admitted into evidence as an exhibit and, therefore, available to the jury during its deliberations.

AMCNO opposes the proposed amendment. Medical literature, at any professional level, needs careful reading, interpretation and application. We opined that asking a jury to interpret medical literature—whether a textbook, a journal or an article—increases the potential for confusion, misinterpretation and misapplication. The current rule of evidence allows all litigants to provide experts who can interpret relevant literature as it may apply to the case at hand. Jurors can then deliberate upon the evidence that was

presented by both sides. Asking the juror to become both an expert witness and a juror places him or her in a confounded position. The result could include deliberation delays, as well as not reaching any conclusion.

The AMCNO submitted these and additional comments to the OSC and requested that the Rules Commission maintain the status quo with respect to Evid.R. 803(18). The rule in its current form provides ample opportunity for relevant medical literature to be introduced into a judicial proceeding, with appropriate opinion offered by all litigants. We believe that the proposed change increases the probability of juror confusion, deliberation delay and not reaching a verdict. The AMCNO comments and other comments from interested parties were recently reviewed by the commission and there was a vote to withdraw the proposed amendment for this rule cycle to give it further study. ■



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Top Considerations In Selling Your Practice Amid Ongoing Consolidation

By Isabelle Bibet-Kalinyak, Esq., and Rick Cooper, Esq., McDonald Hopkins LLC

Consolidation is far from over in health care. Physician practices continue to represent an attractive value proposition for investors. Despite robust consolidation activity in the past five years, numerous specialty markets still remain highly fragmented and continue to attract investors across the sector.

At the macro level, several factors fuel consolidation, including operational complexity, payer dynamics, the pressure on reimbursement rates, the erosion of profit margins, the availability of capital, physician practices' inability to drive significant volume growth, and importantly, the changing physician demographics. At the subsector level, attractive growth rates in certain specialty markets such as dental, dermatology, and vision care (ophthalmology) and other factors, compounded by persisting market fragmentation across most specialties (under 20% in most specialties except dialysis, emergency medicine, staffing, home infusion, and home health), further drive consolidation.

This is, therefore, a critical time for physicians. There is a lot of activity and many, if not most groups, have already been approached by one or more companies interested in buying them. There are a myriad of important considerations in weighing your options. One of the most critical is to familiarize yourself with the marketplace and the process well in advance. Advance preparation is likely to increase the number and value of future offers and reduce both your transaction stress and expenses.

TOP TEN CONSIDERATIONS

- High returns.** Multiples are high now (particularly in dermatology and vision care), and although they may slip a bit as each subsector becomes more mature, they will remain strong for the foreseeable future due to the aforementioned macro level trends and the overall market fragmentation, and factors unique to certain specialties that make them especially attractive to buyers. This is a good time to carefully study your options and keep apprised of market trends. Even if you are not looking to sell now, it makes sense to prepare your practice for a potential transaction in the future and doing the following:
 - Corporate housekeeping.** Make sure you are properly structured under state and federal law for maximum tax benefit at the time of the sale and have all of your organizational and other
- Specialty matters.** Acquirers are highly interested in dental, dermatology, and ophthalmology and are willing to pay significant amounts for these practices compared to other physician specialties and healthcare sectors. Some of the reasons for this include:
 - These practices tend to be more diversified than other physician
- Corporate documents in order and ready for the due diligence process** (employment contracts, shareholder agreements, buyouts, leases, etc.). Understand your voting powers and what it will take to authorize the sale of the practice when the time comes. Revise and update your corporate documents as needed.
- Prepare your partners.** Some of your partners may not be as close to retirement as you are or may simply be more attached to the idea of remaining independent. Some of your key physicians may not be key owners and will therefore not benefit directly from a sale. Understand their motivations and explore how they can also benefit from a sale. Selling a practice to extract the most value is not merely a subject matter reserved for retiring physicians or current owners.
- Play defense.** Where legally permissible as in Ohio, have appropriate non-compete, non-disclosure, non-solicitation and non-interference restrictive agreements in place with physician owners, physician employees, professional employees (including nurse practitioners, physician assistants and optometrists), and key non-physician management employees.
- Compliance.** Review your coding and billing practices and ensure that all your business relationships with vendors, facilities, and referring physicians are compliant (think Stark Law and Anti-Kickback Statute).
- Financial management.** Have sound and accurate financial systems in place and manage debt by taking advantage of low interest rates.
- Specialties and offer ancillary services and products of various types.** They own surgery centers, are involved in clinical trials, have a retail arm, etc. Diversification is positive in the view of any acquirer because it enhances sources of revenue, boosts return on investment, and spreads risk.
 - They are less dependent on payers than many other specialties and other types of healthcare providers and facilities since they have a significant self-pay patient base.
 - Although they will be affected by the aging population, they also appeal to younger people who are increasingly appearance conscious.
 - They are often very entrepreneurial, which acquirers like because they want you to be involved in growing the business once you join them.
- You do not need to sell.** What is right for one practice may not be right for you. Independence and autonomy are not bad things. It is ok to want to keep practicing as an independent and perhaps growing on your own. Independent groups will survive. This does not mean, however, that you should not educate yourself about opportunities and be aware of risks/threats to your practice. Is a large practice group in your specialty becoming established in your area either through consolidation among local groups or through acquisitions by an outside party, for example?
- Take the time to assess and understand.** If you are approached, do not leap at the first opportunity, even if the purchase price is attractive. You are often better off if you assess multiple offers either yourself or through an investment banker.
- Integrity.** Be aware of companies that lowball your value. This is happening. Check out who you are dealing with and their reputation in the investment community and/or your specialty.
- Confidentiality.** Do not give an inquiring party any confidential information without a confidentiality and non-disclosure agreement (NDA) in place. Make sure you carefully think about how to protect against unwanted disclosure of sale discussions internally to avoid raising concerns within your practice and retain key personnel.

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AMCNO Members Share their Workday with Community Leaders in Annual Mini Internship Program

Northern Ohio non-medical community leaders teamed up with AMCNO physician members for our annual Mini-Internship program in October. During the two-day event, three professionals (or “interns”) had the unique opportunity to shadow our members during their workday, exposing them to the complexities of health care and the practice of medicine.

The participants were: **Micki Byrnes**, President and General Manager of WKYC Media; **Judge Hollie Gallagher**, Cuyahoga County Court of Common Pleas; and **Rep. Stephanie Howse**, State Representative, House District 11.

Program Chairman **Dr. William Seitz, Jr.**, led the Orientation Dinner, which gives the participants a chance to meet before the program starts and where the interns receive HIPAA training.

A few members mentioned it was their first time participating in the program; several others said they have been involved in it for many years because they find it rewarding. The interns expressed interest in seeing health care from a physician’s point of view.

During the program, the interns experienced various activities and procedures, such as thoracic and orthopedic surgeries, office visits, echocardiograms and residency training.

On the final day of the event, all participants reconvened at the AMCNO office for the Debriefing Dinner.

Judge Gallagher said the program exceeded her expectations. She saw first-hand the “human” aspect of medicine—how kind physicians are and how much they care about their patients. She spoke about her assignments, which began with visiting patients in the infectious disease clinic with AMCNO Board member **Dr. Kristin Englund**. Judge Gallagher then visited with **Dr. Joseph Styron** and viewed an orthopedic surgery; sat in on cardiac procedures with **Dr. Jonathan Scharfstein**; and accompanied **Dr. Jeffrey Brown** on family medicine office visits.

During her first session, Rep. Howse said it was interesting to watch **Dr. Daniel Raymond**, a thoracic surgeon, who performed surgery on an early-stage lung cancer patient. She also shadowed AMCNO Past President **Dr. Matthew Levy** during his orthopedic office visits, and then Dr. Seitz during his live orthopedic surgeries. She ended her assignments with AMCNO Immediate Past President **Dr. Fred Jorgensen** and **Dr. Sandy Snyder**, who are family medicine physicians and outlined how residents are trained. Rep. Howse said she enjoyed seeing the intricacies of the doctor-patient relationship during the program.

Ms. Byrnes said she “thoroughly enjoyed” getting to know her physicians and attending her sessions. Overall, she said it was a great experience.

Dr. Mehrun Elyaderani, an orthopedic surgeon, expanded on his time with Ms. Byrnes, and emphasized how much he enjoys this event each year. **Dr. Irina Todorov**, an integrative medicine physician, was another member Ms. Byrnes shadowed. This was the first year she’s taken part in the program, and she said she will be back next year. Dr. Englund echoed her sentiments, and said she was happy to hear the interns’ comments because it gave her a re-appreciation of what she does.

Dr. Scharfstein said he enjoyed his experience with Judge Gallagher as well as talking with her about various topics related to both of their careers. Many members expressed the same sentiment about their interns.

After dinner, Dr. Seitz presented the interns with certificates for completing the program. (See pg. 8 for photos from the event.)

If you would be interested in participating in next year’s Mini-Internship, contact the AMCNO at (216) 520-1000. To learn more, visit the AMCNO website, www.amcno.org, and click on the Education & Events tab. ■

Top Considerations In Selling Your Practice Amid Ongoing Consolidation *(Continued from page 6)*

7. **LOI or MOU.** Do not sign anything until you know what it is and its implications. For example, most Letters of Intent (LOI) or Memorandum of Understanding (MOU) contain an “exclusive dealing clause” that prohibits you from discussing a transaction with any other party for a stated period of time, often at least 90 to 120 days.
8. **What else matters to you?** Although the multiples and the final purchase price are critical elements in selecting a buyer, they are not the only important elements. Others are:
 - Do you like and trust the potential investors?
 - Will there be a clash of cultures?
 - Do they have consideration for proper clinical practice?
 - Does their strategic vision match yours?
 - Do you respect the other doctors who have already joined them?
9. **Investment bankers.** Learn about the role and value of using an investment banker to prepare your practice to go to market and help you attract the most congruent investors and potentially highest bidders for your practice. Investment banking services come in different forms and at different costs. Weigh experience, familiarity with your specialty, and negotiate the terms of the deal up front and in writing.
10. **Carefully select your legal team.** Your current law firm may or may not be the

best ally in preparing your practice for a sale. Does it have a lot of experience in private equity deals or healthcare merger and acquisition transactions? If it does not, this will likely place you at a disadvantage during negotiations, as investors typically use sophisticated and often national law firms. Thus, your present legal team may intrinsically be motivated to help you stay independent to retain you as a client.

Isabelle Bibet-Kalinyak and Rick Cooper are partners with the national business law firm of McDonald Hopkins (www.McDonaldHopkins.com). Mr. Cooper is the co-chair of the Health Care Practice Group. Ms. Bibet-Kalinyak’s practice focuses on health care law (transaction and compliance) and business immigration, primarily in health care settings. For additional information about this topic, please contact Ms. Bibet-Kalinyak at IBK@McDonaldHopkins.com. ■

AMCNO COMMUNITY ACTIVITIES



1



2



3

1. The 2019 Mini-Internship participants gather for a photo. Back row (l – r): Drs. Irina Todorov, Jeffrey Brown, William Seitz, Sandra Snyder, AMCNO President Bruce Cameron, Mehrun Elyaderani, Kristin Englund. Front row (l – r): Judge Hollie Gallagher, Rep. Stephanie Howse, Ms. Micki Byrnes

2. Rep. Howse receives her program completion certificate from Dr. Seitz.

3. The three interns stand together for a moment at the Orientation Dinner.



4



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4. Dr. Seitz presents the completion certificate to Judge Gallagher.

5. Rep. Howse stands with three of the four physicians she shadowed. (l – r): Past Presidents Drs. Fred Jorgensen, Matthew Levy, and William Seitz.

6. Judge Gallagher stands with Dr. Englund (a physician she shadowed) and Dr. Seitz.

You're Invited...

The Academy of Medicine of Cleveland & Northern Ohio Membership Committee cordially invites physician members, residents, medical students and spouses to attend our 2019 Wine Tasting.

MARKET AVENUE WINE BAR
2521 Market Ave. • Cleveland, OH 44113

Sunday, Feb. 10, 2019 • 5 – 7 p.m.

Delicious hors d'oeuvres will be served, and wine samples will be presented by the Market Avenue Wine Bar wine expert.

Cost:
\$35 per member/spouse
\$20 residents & medical students

RSVP by Jan. 25, 2019:
Valerie Yanoska
Email: vyanoska@amcno.org
Phone: (216) 520-1000, ext. 102

You can also visit the AMCNO website, www.amcno.org, for the registration flyer.



Cybersecurity Program Safe Harbor – A Physician’s Perspective

By J. Ryan Williams, Esq., Brouse McDowell

There is no question that a data breach involving patient data will likely wreak havoc on a physician’s practice. A physician will need to deal with the immediate concerns, such as trying to regain access to data after a ransomware attack, making sure hackers no longer have access to a network, or immediately notifying patients. A physician will also experience the anxiety of whether patients will leave the practice. And, finally, a physician will probably face government scrutiny and may even be the subject of patient lawsuits.

Everyone knows that the best approach to preventing a data breach is to proactively review data systems and implement reasonable safeguards designed to maintain the integrity and security of patient data. Unfortunately, despite a proactive approach, data breaches and other security incidents happen. A new law in Ohio seems to recognize the inevitability of dealing with a data breach and provides some peace of mind, albeit unknown at this point, that good faith attempts to try to avoid a data breach are not an exercise in futility.

This new Ohio law, which went into effect on Nov. 2, 2018, is known as The Cybersecurity Program Affirmative Defense. This law essentially creates a legal safe harbor against tort liability arising from a data breach. The legislative intent is clear—the law is simply an incentive to encourage voluntary action to achieve a higher level of cybersecurity. The law does not create new standards or impose any liability or obligation on organizations to implement or maintain a particular cybersecurity practice.

To qualify for this safe harbor, a physician must create, maintain and comply with a written cybersecurity program that satisfies two requirements. First, the written cybersecurity program must meet the law’s design, scale and scope requirements. Second, the written cybersecurity program must conform to a recognized industry framework.

With respect to the design of the cybersecurity program, the law requires that the program must protect the security and confidentiality of the physician’s electronic data, guard against anticipated threats or hazards to the security or integrity of the electronic data, and guard against unauthorized access to or acquisition of the electronic data. Under the law’s scale and scope requirements, a cybersecurity program is appropriate if it is based on the size

and complexity of the physician’s practice, the nature and scope of the physician’s activities, the sensitivity of the information to be protected, the cost and availability of tools to improve security and reduce risks, and the resources available to the physician in implementing the cybersecurity program.

In addition to the requirements of the law, the cybersecurity program must reasonably conform to an industry recognized framework. Not surprisingly, one such framework is the Security Rule under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). If a cybersecurity program reasonably conforms to the standards set forth in the HIPAA Security Rule, it will be deemed to have satisfied the law’s industry recognized framework requirement.

On first impression, the law’s safe harbor is definitely welcome, but its practical application is largely unknown. For physicians responding to a data breach, the potential liabilities that present themselves typically revolve around notifying patients (and providing patients with useful options to shield any negative outcomes from the breach; ie, credit monitoring, ID theft protection, etc.) and responding to government investigations. This is mainly because HIPAA does not include a private right of action (the law, like HIPAA, also does not create a private right of action). While Ohio law does recognize a private breach of privacy claim (which is a tort) in limited situations, breach of privacy claims are typically reserved to class action lawsuits involving hundreds if not thousands of affected patients. Not often are physicians subject to one-off patient lawsuits as the result of a data breach.

In addition, the safe harbor seems to have limited application, especially as the cybersecurity practices of physicians and other healthcare providers continue to evolve. The safe harbor applies when a data breach

involves a person’s personal or restricted electronic information. One component of the definition of “personal or restricted information” is encryption. If the information is encrypted, the safe harbor does not apply. This encryption component is consistent with HIPAA’s breach notice rule, so it should not come as a surprise to physicians. However, encryption of data is becoming the standard and not the exception. Thus, the safe harbor would presumably never come into play for a physician who has taken the steps to properly encrypt patient data at all stages.

For physicians, the relationship between the law’s design, scale and scope requirements, and the industry framework condition is important. On initial review, the design, scale and scope requirements of the law seem redundant. Under the HIPAA Security Rule, physicians are required to conduct security risk assessments in connection with implementing the Security Rule’s technical, administrative and physical safeguards. The risk assessments required under the Security Rule include most of the components of the law’s design, scale, and scope requirements. For example, a physician conducting a security risk assessment for purposes of the HIPAA Security Rule must take into account the physician’s size and complexity, the nature and scope of the physician’s activity and the resources available to the physician in implementing the safeguards of the HIPAA Security Rule. As such, a reasonably compliant HIPAA compliance plan that conforms to the HIPAA Security Rule, which requires an annual security risk assessment, should satisfy most, if not all, of the law’s design, scale and scope requirements.

If nothing more, the law is likely to advance the intent of the Ohio General Assembly to incentivize and encourage physicians to remain diligent in their efforts to maintain a robust HIPAA compliance plan, including the implementation of safeguards under the HIPAA Security Rule designed to protect the security and integrity of electronic patient data. Nevertheless, it’s too early to determine if the law will have any practical benefits to physicians. ■

Update from CMS Region V Meeting

In December, AMCNO staff participated in the Center for Medicare & Medicaid Services (CMS) Region V State Medical and Hospital Association meeting. Also attending this meeting were representatives from statewide medical associations representing Ohio, Michigan, Indiana, and Missouri. Although several topics were covered, including Patients over Paperwork and the Quality Payment Program, this article gives a brief overview of two key topics from the meeting—items related to combatting opioid use disorder and plans to advance virtual care.

Presenters noted that as one of the largest payers of healthcare services, CMS has an important role in addressing the opioid epidemic and is focused on three key areas: 1. Prevention – managed pain using a safe and effective range of treatment options that rely less on prescription opioids; 2. Treatment – expand access to treatment for opioid use disorder; and 3. Data – use it to target prevention and treatment efforts and to identify fraud and abuse.

CMS has made significant progress in identifying overprescribing patterns and they are building on these efforts to promote effective, non-opioid pain treatments. CMS is also working to ensure that patients have choices for a broader range of treatments and access to treatment across CMS programs. CMS is using data to understand opioid use patterns across populations and monitor trends to assess the impact of prevention and treatment solutions. To view more on the CMS Roadmap to Address the Opioid Epidemic, go to www.cms.gov/About-CMS/Agency-Information/Emergency/Downloads/Opioid-epidemic-roadmap.pdf.

CMS representatives also discussed the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients Act—which adds the home of an individual as a permissible originating site for telehealth services (for substance use disorder or co-occurring mental health disorder) after July 1, 2019; and a new benefit category for opioid use disorder treatment services furnished by opioid treatment programs (OTPs) under Medicare Part B on or after Jan. 20, 2020. Also noted was the opioid-related provisions in the Quality Payment Program—in the quality performance category, the definition of “high priority” measures now includes opioid-related measures, and there are two new opioid-related measures for the e-prescribing objective in the promoting interoperability performance category.

Presenters outlined that in response to the Physician Fee Schedule proposed rule, CMS received feedback from stakeholders supportive of CMS expanding access to services that utilize technological advances in health care. CMS is aiming to increase access for Medicare beneficiaries to these services that are routinely furnished via communication technology. To support access to care using communication technology, CMS is finalizing policies to pay clinicians for virtual check-ins (brief, non-face-to-face assessments via communication technology); pay clinicians for remote evaluation of patient-submitted photos or recorded video; and pay Rural Health Clinics (RHCs) and Federally Qualified Health Centers (FQHCs) for these kinds of services—outside of the RHC all-inclusive rate and the FQHC Prospective Payment System rate.

The AMCNO was pleased to be a participant in the 2018 CMS Region V Medical and Hospital Association meeting. This meeting was held remotely, with the intent to have a face-to-face group meeting in the spring of 2019. ■

AMCNO's Annual Vote & Vaccinate Program Offers Flu Shots to Voters

The AMCNO hosted its 17th Annual Vote & Vaccinate program on Election Day, November 6, in partnership with St. Vincent Charity Medical Center.



The intent of this program is to provide individuals with an opportunity to receive a seasonal flu vaccination at a polling site in Cuyahoga County. The program is not connected in any way with the Board of Elections.

The AMCNO was pleased to once again work with St. Vincent on providing this valuable program. We would like to express our sincere thanks to site staff who participated in this event at Marion Sterling School in Cleveland.

If your group or hospital is interested in participating with the AMCNO as a co-sponsor or would like to host a site in 2019, please contact the AMCNO at (216) 520-1000.

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The Academy of Medicine of Cleveland & Northern Ohio and the Cleveland Metropolitan Bar Association Present the:

Medical Legal Summit

March 22-23, 2019

Location: CMBA Conference Center
One Cleveland Center
1375 East 9th Street, Floor 2, Cleveland, OH 44114

Friday, March 22, 2019

Health Care Law Update

A full day of sessions

This session is intended for attorneys and will qualify for CLE credit. CME credits for physicians will not be available.

4:15 p.m. Adjourn to Medical Legal Summit

Summit Details

Medical Legal Summit – Friday Evening Session March 22, 2019

(CLE TBD, 1.5 CME*, and 1 UH CRME**)

4:15 p.m.

Welcome & Introductions

Marlon A. Primes, Esq., CMBA President; **R. Bruce Cameron, MD, AMCNO** President; **Shannon Jerse, Esq.**, St. Vincent Charity Medical Center; **David Valent, Esq.**, Cleveland Clinic

4:30 p.m. - 6:00 p.m.

Keynote Presentation: "A Point/Counterpoint with the AMA President and ABA President"

These two leaders from the American Medical Association (AMA) and American Bar Association (ABA) will discuss relevant topics for physicians and attorneys.

AMA President Barbara McAneny, MD - Dr. McAneny is a board-certified medical oncologist/hematologist from Albuquerque, NM, and became the 173rd president of the AMA in June 2018.

ABA President Bob Carlson - Mr. Carlson is a shareholder with the Butte, MT, law firm of Corette Black Carlson & Mickelson, PC. He became president of the ABA in August 2018.

A networking reception follows

Saturday Session – March 23, 2019

(CLE TBD, 3.75 CME*, and 3 UH CRME**)

7:30 a.m. Registration & Breakfast

8:00 a.m. Welcome & Introductions

8:15 a.m. Preventive Medicine to Secure Your CyberWorld

(Co-Chairs: R. Bruce Cameron, MD, and Peggy Beat, Esq.)

Overview

Cyberattacks are one of the most dangerous threats facing health care today. These threats are disruptive and can cause harm to patients as well as financial, reputational and legal harm to the business. The ramifications, of which, can be far reaching. It takes a multidisciplinary team to ensure that a healthcare provider or organization possesses the proper safeguards and mitigation efforts should an attack ensue. The panelists will offer insight into ways to keeping your CyberWorld secure.

Speakers

Keith Fricke, MBA, CISSP, PMP, Partner, Principal Consultant, tw-Security;
Bryan McDowell, CIO, University Hospitals; FBI representative (invited)

9:15 a.m. #Metoo and You: Considerations for Healthcare Providers and Their Attorneys

(Co-Chairs: Kate Hickner, Esq., and Cheryl D. Wills, MD)

Overview

Debates about workplace discrimination and sexual harassment achieved prominence in the legal world with the Supreme Court Nomination hearings of Judge Brett Kavanaugh and in health care and academia with former physician Larry Nassar (gymnastics) and the late Dr. Richard Strauss (OSU wrestling). The panel will discuss various aspects of gender discrimination and sexual harassment and abuse in the healthcare, legal and academic professions in an effort to reduce the occurrence of offensive behavior in the workplace. The panel will approach the problem from various vantage points, including: training employees, investigating complaints, disciplinary action, working with victims, litigation strategies, and assessing damages.

Speakers

Claire Wade-Kilts, Esq., Founder, Sobel, Wade & Mapley LLC; **William D. Edwards**, Partner, Ulmer & Berne LLP; **Cheryl D. Wills, MD**, University Hospitals, Director of Child and Adolescent Forensic Psychiatric Services

10:15 a.m. Break

10:30 a.m. What's My Alternative? The Merits, Pitfalls, and Strategies of Alternative Dispute Resolution

(Co-Chairs: Matthew Levy, MD, and Raymond Krncevic, Esq.)

Overview

Most lawsuits never make it to trial. If not dismissed outright, they are settled, often through the use of Alternative Dispute Resolution (ADR). Using ADR (including mediation and arbitration) has its benefits in avoiding the uncertainty, publicity, and expense of trial. However, ADR presents its own challenges as well, particularly in medical malpractice cases. This panel will explore the merits, tactics, and strategies involving ADR: whether and when to use it; what formats work well; and after-the-fact considerations, such as insurance, credentialing, and licensure implications.

Speakers

Frank L. Gallucci III, Esq., Plevin & Gallucci Co, LPA; **Jim McMonagle, Esq.**, Of Counsel, Vorys, Sater, Seymour & Pease LLP; **Jane Warner, Esq.**, Counsel, Tucker Ellis LLP

11:30 a.m. Break

11:45 a.m. - 12:30 p.m. Addiction and Recovery 2018: Beyond Issue 1

(Co-Chairs: Kristin Englund, MD, and Isabelle Bibet-Kalinyak, Esq.)

Overview

Ohio is at the epicenter of the opioid crisis and legislators and community leaders continue to struggle with the best way to rehabilitate its addicted citizens. While voters defeated the constitutional amendment Issue 1 in the November 2018 mid-term elections, Ohio communities continue to face and must address the very same issues on a daily basis. Our drug courts are a critical component of recovery as are the community counseling and medication-assisted treatment programs. This panel will explore options in our community for medical rehabilitation and anticipate potential legal avenues to come.

Speakers

Joan Englund, Executive Director, Mental Health & Addiction Advocacy Coalition; **David Stroom, MD**, Addiction Medicine, Lutheran Hospital, Cleveland Clinic; **Judge Joan Synenberg**, Cuyahoga County Court of Common Pleas (invited)

Location: **CMBA Conference Center**
One Cleveland Center
1375 East 9th Street, Floor 2, Cleveland, OH 44114

This summit is designed to bring together doctors, lawyers, healthcare professionals and others who work in allied professions for education, lively discussion and opportunities to socialize.

Co-sponsored by the Academy of Medicine of Cleveland & Northern Ohio, Cleveland Metropolitan Bar Association, and Academy of Medicine Education Foundation.

Co-Chairs: **R. Bruce Cameron, MD, AMCNO President**; **Shannon Jerse, Esq., St. Vincent Charity Medical Center**; **David Valent, Esq., Cleveland Clinic**

For more information, call the AMCNO at (216) 520-1000 or CMBA at (216) 696-2404.

Registration

Medical Legal Summit Only (Friday keynote speaker and Saturday sessions)

- \$85 AMCNO Members & other Healthcare Providers (such as nurses and medical staff)
- \$150 Non-Members
- \$15 Medical Students (limited seats available)

All registrations that include the Health Care Law Update will be handled through the CMBA.

Online registration is available at www.CleMetroBar.org/CLE

TOTAL \$ _____

Name _____ Atty. Registration No. _____

Company _____

Address _____ City _____

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I have submitted a membership application within the last 30 days.

Credit Card No. _____ Exp. Date _____

Signature _____

Add \$15 to registration fee the day of the program. Registration must be pre-paid by cash, check or credit card to qualify for the advance registration price.

ATTORNEY REGISTRATIONS: Please make checks payable to Cleveland Metropolitan Bar Association. Mail to P.O. Box 931891, Cleveland, OH 44193, or fax your reservation form to (216) 696-2129 (all fax reservations must include a credit card number, expiration date, and signature). CANCELLATIONS must be received in writing three business days prior to the program.

Refunds will be charged a \$15 administrative fee. Substitutions or transfers to other programs are permitted with 24 hours written notice. (Transfer is to a single program and the funds may be transferred only once!) Persons needing special arrangements to attend this program are asked to contact the CMBA at (216) 696-2404, at least one week prior to the program.

PHYSICIAN AND HEALTH CARE PROVIDER REGISTRATIONS: Phone/fax or mail to: AMCNO, 6100 Oak Tree Blvd., Ste. 440, Independence, OH 44131, Phone: (216) 520-1000 FAX: (216) 520-0999. Physicians and other healthcare providers may also pay the AMCNO online at www.amcno.org. Make checks payable to the AMCNO.

**The MetroHealth System is accredited by the Ohio State Medical Association to provide continuing medical education for physicians.*

The MetroHealth System designates this educational activity for a maximum of 5.25 AMA PRA Category 1 Credits™. Physicians should only claim credit commensurate with the extent of their participation in the activity.



****The AMCNO has obtained approval from University Hospitals (UH) for four hours of Clinical Risk Management Education (CRME) credit for those physicians participating in the UH Sponsored Physician Program. Please note: 1 CRME credit is available for 3/22/19 (Friday) and 3 CRME credits are available for 3/23/19 (Saturday).**

Professional Practice Gap: The U.S. healthcare delivery system has significantly transformed over the last decade and changed the culture of medicine. Current changes in the country's administration and other forces are reshaping medical practice. They include issues related to opioid addiction and recovery; strategies for the use of mediation and arbitration in medical malpractice cases; cybersecurity liability and how to establish proper safeguards in hospitals and medical practices; and concerns about sexual harassment in the workplace and in patient-physician communications. This session is intended to increase knowledge of current rules and regulations and how they impact the practice of medicine.

- Current medical approaches and legislation concerning opioid therapy and how they impact the practice of medicine.
- The risks and challenges related to the use of alternative dispute resolution in medical malpractice cases.
- The current legal and cybersecurity initiatives and how they impact patients and physicians.
- Best practices, rules, and policies of sexual harassment in the workplace, and in patient-provider communications.