

chicago CHICAGO MEDICAL SOCIETY THE MEDICAL SOCIETY OF COOK COUNTY **medicine**

Newsletter, December 2004, Vol. 107, No. 16

MEDICAL LIABILITY

CMS focuses on media in communicating crisis

Society targets newspapers

KEEPING THE PUBLIC AND PRESS AWARE of the medical liability crisis has become a major public relations effort at CMS. Each time a letter, article or editorial about the medical liability crisis appears in a local newspaper, CMS quickly responds. CMS has sent letters from President Peter E. Eupierre, MD, President-elect Steven M. Malkin, MD, and Chairman of the Council Shastri Swaminathan, MD, to the *Chicago Tribune*, *Chicago Sun-Times*, *Crain's Chicago Business*, and *Pioneer Press*. Here are highlights from the most recent letters (to read them in their entirety, go to the CMS Web site www.cmsdocs.org):

● Dr. Eupierre responded to a *Chicago Sun-Times* article ("Illinois Has More Licensed Doctors, But Specialists May Be Fleeing the State" Oct. 31) that appeared to question the existence of a crisis in Illinois.

"I practice within the Resurrection Healthcare System. I know we have lost over 50 physicians due to the medical liability crisis. We cannot count licensed physicians as an accurate measure of physicians



Scott Warner

AMA President Addresses CMS Board

Speaking before the CMS Board Meeting on Dec. 15, John C. Nelson, MD, right, AMA president, emphasizes the importance of physicians belonging to organized medicine "if we are to have an impact on the political process."

practicing in Illinois. "Actively Licensed Physicians" in the chart does not mean "Actively Seeing Patients" in Illinois. Most physicians who leave the state after training here maintain their licenses and apply for a new license where they will practice. Physicians who are employed in administration, retired and not seeing patients also retain their licenses....The full impact has not been felt in Chicago because physicians are extending themselves to take care of patients in need, spending more hours in the office and hospital. As a growing number of obstetricians stops delivering babies, other obstetricians see more patients. But this can only bridge the gap for a limited time until the physicians who are left burn out."

● In Dr. Malkin's letter to *Pioneer Press*, he takes issue with a letter that appeared in the Nov. 11 issue of that paper, which had recommended that Governor Blagojevich "roll back medical malpractice premiums to realistic and

Continued on page 2

affordable limits that are in line with neighboring states." Dr. Malkin responds:

"While a rollback may sound good, the medical liability insurance carriers must place sufficient funds in reserve to pay projected future claims in defense of both frivolous and non-frivolous lawsuits. Illinois has gone from nearly 40 medical liability carriers to five in the past three years. By law, those remaining carriers must maintain substantial reserves to stay in business. The premiums charged are based on state-mandated ratios. Asking the Governor to roll back the premiums would put the few remaining companies at risk of being driven out of the medical liability insurance business in Illinois. To put Illinois medical liability premiums "in line with our neighboring states," Illinois would need to enact caps on non-economic damages similar to caps in our neighboring states."

● Following the *Chicago Tribune* editorial "Southern Illinois Sends a Warning" (Nov. 14) which continues a steady stream of endorsement for tort reform in Illinois, Dr. Malkin stated:

"The Illinois Supreme Court has a new member, Judge Lloyd Karmeier, who may help shift the view of the Court when tort reform is enacted by the legislature. For now, Gov. Rod Blagojevich needs to encourage his appointed mediator, Judge Donald O'Connell, to bring forth a workable solution that will end jackpot justice and stop the flow of physicians out of practice. This includes caps on non-economic damages, strengthening the requirements for expert witnesses and limiting frivolous lawsuits. The 27 states that have enacted caps on non-economic damages prove that caps work and at the same time that those patients with a legitimate medical liability claim still have their day in court."

● In a letter to the *Chicago Sun-Times*, Dr. Swaminathan responded to a letter from Kevin Conway (Dec. 13), president of the Illinois Trial Lawyers Association, which placed the blame for the medical liability crisis at the feet of the insurance companies. Dr. Swaminathan wrote:

"Mr. Conway further errs when he refers to the Institute of Medicine report, claiming that '98,000 deaths per year resulted from medical negligence' (the IOM report speaks of "errors"). If he had truly read the IOM report, he would find that the preponderance of deaths stems from system errors, not from medical negligence by physicians. These system errors include medication administration errors, medical equipment

malfunctions and other mistakes by members of the medical/hospital team. Like the captain of a ship, the physician commonly takes the burden of responsibility for errors often not his own, ranging from administrative to technological (equipment malfunction)."

Help your Society maintain a strong CMS presence

CMS needs full house in Springfield

SENDING A FULL COMPLEMENT OF CMS delegates and alternates to the ISMS HOD should be a top priority for CMS Branch leaders as we head into the months preceding the April meeting in Springfield.

Among the many important issues to be discussed: An ad hoc committee appointed by ISMS Speaker of the House Rodney Osborn, MD, will report on its review of the election and governance procedures of the AMA delegations. CMS members appointed to the committee are: Drs. Joan E. Cummings, Steven M. Malkin, John F. Schneider, and M. LeRoy Sprang, ISMS delegation chairman and ex-officio to the committee.

*If you are a delegate or alternate and unable to serve April 14-16, please let your Branch president know **now** so another delegate can be appointed.*

Fundraiser slated for Polish-American Medical Society

THE 55TH ANNUAL PHYSICIANS' BALL OF the Polish-American Medical Society will be held Saturday, Feb. 12, at the Drake Hotel in Chicago.

Tickets are \$195 per person (\$225 after Jan. 10); \$1950 per table of 10. The society is inviting physician colleagues to:

● Place a personal and/or business advertisement.

● Sponsor any of the Ball expenses.

● Donate items for the silent auction.

Proceeds from the Physicians' Ball 2005 will go towards the Achievement Award Fund of the Polish-American Medical Society and the Center for Polish Studies at Loyola University.

For information, please contact Bozena Witek, MD: bowitek@aol.com, (847) 373-3962.

How about eliminating the 'M' word?

CMS MEMBER RICHARD C. TREANOR, MD, encourages physicians to avoid using the word malpractice:

Insurance to safeguard your loved ones at your demise is not called "death" insurance. The insurance industry well knows that to call it thus would make for a poor image and inhibit sales. Therefore we know "death" insurance as "life" insurance or an annuity.

The prefix "mal," according to the World Book Dictionary, is described as follows: bad or badly, poor or poorly; unlawful. The word suggests guilt, a sense that something was done wrong, i.e., malfeasance = unlawful, poor, or bad legal behavior.

We in the medical profession have our own derogatory word, the "M" word, *malpractice*. Most physicians devote their lives to their profession, caring for the frightened, the sick, and the dying. Any untoward outcome is devastating and brings heartache and misery to the practitioner as well as to the patient. However, frivolous lawsuits and greedy participants are definitely on the rise, as we hear that 80% of all medical liability suits are thrown out of court.

My argument, therefore, is that to call our protective insurance *malpractice* insurance leaves the definite connotation of wrongdoing by the physician. It not only is detrimental to the practitioner but also leaves the wrong impression with patients.

I suggest that we wait no longer to remedy this situation, get rid of the "M" word, and change the name of our protective medical policies to *medical liability* insurance. This title for our protection eliminates the connotation of guilt and the perception by the public of wrongdoing.

I strongly recommend that the "M" word be elimi-

nated in any and all written and oral communication by our medical society and request that the word *malpractice* be systematically eliminated from the vocabulary of our media, insurance industry, and the legal profession as it applies to the innocent practicing physician.

Richard C. Treanor, MD
Kildeer, IL

Editor's note: The Chicago Medical Society prefers the use of the words medical liability over malpractice in its publications. Exceptions may occur, however, when making a direct quote or referring to a document with the "M" word in its title. The CMS Council has gone on record as supporting use of medical liability reform.



Scott Warner

CMS hosts Holiday Reception

CMS held its annual Holiday reception for members at Le Meridien Hotel on Dec. 15. Among those attending were, from left: Drs. John C. Wilhelm, Commissioner, Chicago Dept. of Public Health; Sandra F. Olson, past president, CMS; John C. Nelson, president, AMA; Neil E. Winston, past president, CMS; M. LeRoy Sprang, past president, CMS; Saroja Bharati, secretary, CMS; Robert M. Vanecko, past president, CMS; and Arthur Traugott, past president, ISMS. Holiday snapshots will appear in the winter issue of *Chicago Medicine*.

Find us online at CMS Internet address www.cmsdocs.org

NEWS FOR CHICAGO PHYSICIANS

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AMA MEETING

Highlights from Atlanta: Curing medical liability system is key

APPROXIMATELY 4,000 PHYSICIANS ATTENDED the AMA's recent semi-annual meeting to adopt new policy, attend educational sessions, and hear what steps AMA leadership is taking on issues such as the influenza shortage, expert witnesses in medical liability cases, and specialty hospitals. The four-day meeting was held in Atlanta Dec. 4-7.

Kicking off the Interim Meeting address, AMA President John C. Nelson, MD, MPH, spoke of the organization's four primary objectives: Curing the medical liability system; revising the Medicare physician payment system; insuring access to quality health care for all Americans; and eliminating racial and ethnic health care disparities. The organization also unveiled a fresh brand promise: "Together We Are Stronger." AMA's new action plan relies heavily on the involvement of AMA members. As an example, one recent initiative used survey results of physicians in the AMA policy-making process.

At the center of activity, however, were the four reference committees, which discussed and debated more than 125 reports and resolutions, many of which resulted in new AMA policy. Following up on their deliberations, the AMA HOD voted to adopt new policies on the uninsured, specialty hospitals, dextromethorphan abuse, health care personnel delivery systems, planning for long-term care services, concealed health care costs, Medicare cuts, confidentiality of the peer review process, reality TV, clinical trial gag clauses, importation of prescription drugs by wholesalers and pharmacies, expert witness testimony, and the flu vaccine shortage.

Many physicians attended educational sessions on topics like obesity, pay-for-performance systems and approaches for covering the uninsured. One such session, titled "Pay for Performance: The Good, The Bad and The Ugly," explored initiatives that affect a physician's reimbursement based on performance against a set of explicit measures. P4P incorporates evidence-based processes and outcome measures into daily practice to achieve quality improvements.

Policy Highlights

- The AMA will further efforts to ensure honest testimony from expert witnesses by creating model state legislation for physicians testifying in state court on medical liability cases. The legisla-



James Tarrant

CMS President Peter E. Eupierre, MD (right), attends the AMA House of Delegates meeting in Atlanta, along with Dupage County Medical Society President Gopal Lalimalani, MD.

tion would be based on existing rules that mandate full and timely disclosure of expert witness opinions, reports, qualifications, compensation and prior testimonial experience.

- The AMA adopted policy that states that expert witnesses in medical liability issues should, at the minimum, be required to have comparable education, training and occupational experience in the same field as the defendant; have occupational experience that includes active medical practice or teaching experience in the same field as the defendant; and that both practice and/or teaching experience be within five years of the date of the occurrence giving rise to the claim. The policy also calls for expert witnesses to be board-certified.

- Three vaccine-related items were adopted, including a BOT Report that supports the development of a strong adult and adolescent immunization program in the United States. Also adopted was an item advocating for programs that ensure the production, quality assurance and timely distribution of sufficient quantity of vaccines recommended by the Centers for Disease Control and Prevention to the U.S. population at risk.

- The AMA will continue to pursue MICRA-based reform as its top priority, and will pursue liability reform efforts by any and all legislative options that would result in fair and equitable remuneration for injured patients and promote patient access to care. Also, the AMA BOT will report on its coalition-building activities on efforts to reform our civil justice system and report back in June.

- The AMA will continue to make the prevention of further Medicare physician payment cuts a top priority. Due to the flawed Medicare physician payment formula, the AMA will seek replacement of the formula with payments that reflect actual increases in the cost of practicing medicine.

CLASS-ACTION SUIT

Do you know about the CIGNA physician settlement?

ATTENTION, SOLO PRACTICE PHYSICIANS, physician groups or physician organizations. If you provided service to patients covered by CIGNA HealthCare or a benefit plan insured or administered by CIGNA, a class-action lawsuit against CIGNA HealthCare may be of importance to you.

Two options are available to receive reimbursement: Category A Settlement Fund--\$30 Million Available or Category B Claim Distribution Fund--Uncapped Settlement Fund. (The service dates for this class-action suit are from Aug. 4, 1990, through Sept. 5, 2003.)

For Category A, you and/or your group must file a general proof of claim. CIGNA will divide the number of claims by \$30 million and give each physician/entity a check.

For Category B, you have three options. Submissions can be done in any or all of the subcategories:

- **Category One** code requires statement of what CPT code you billed, what code it was dropped to, the range for dates of service involved, and the fee you will (see Web site print-out for stated fees) receive for each claim filed. To do this you need to pull the documentation (EOB) of the incorrect payment and submit it with a proof of claim (see bottom of Web site).

- **Category Two** codes are those not listed in Category One. It is a catchall for any other CPT codes. Individual documentation would also have to be pulled for each claim submitted.

- **Medical Necessity Denial Compensation.** These are for claims that were denied due to medical necessity. Again individual documentation must be sent.

You may submit a proof of claim from either Category A or B, but not for both.

Proof of claims may be submitted through Feb. 18, 2005.

This is a basic overview of the suit, and your required actions. For more detailed information and the proof of claim forms on this lawsuit go to: www.CIGNAPhysicianSettlement.com, or www.hmosettlements.com.

FCC FAX REGULATIONS UPDATE

Is our communication with you in peril? Please let us send faxes

SMALL BUSINESSES, TRADE AND PROFESSIONAL associations use faxes to reach their clients and members. But under Federal Trade Commission regulations, scheduled to take effect July 1, 2005, associations like CMS will not be able to fax their members promotions for meetings, dues statements, applications, and invoices--anything that concerns a commercial transaction--*without your signed written consent*. Physician offices that use faxes as a business communications tool would also be affected.

Since 1991, it has been illegal to send unsolicited faxes. However, many associations and businesses were exempted due to a provision that allowed faxing to those individuals with an "established business relationship." The FCC repealed that exemption in August 2003 and set a start date of Jan. 1, 2005. In October 2004 it issued an extension on enforcement until July 1, 2005, to allow for

legislation to pass the Senate and House.

On July 20th, the House passed the Junk Fax Prevention Act (House Bill H.R. 4600) by voice vote. The companion bill in the Senate was passed on to committee (S. 2603) On July 22, the Senate Commerce, Science and Transportation Committee approved the measure and the bill was sent back to the Senate floor for a vote. This legislation would restore the established business relationship provision.

Senate legislators have little time to act. Failure to pass the bill before Congress adjourns for the year could force associations and businesses across the country to comply with the FCC's stringent new regulation. Physician offices should be sure to comply with the advance written permission rule by June 31. In the interim, CMS will continue to make every attempt to obtain your written consent.

By providing the fax number and e-mail below, the person agrees to receive fax advertisements from the Chicago Medical Society. The form requires a signature and printed name.

Fax _____

E-mail _____

Printed name: _____

Signature _____

***Fax this form to
(312) 670-3646
or mail to:
The Chicago
Medical Society,
515 N. Dearborn St.,
Chicago, IL 60610***

More flu vaccine available

PHYSICIANS WORKING IN CHICAGO AND suburban Cook County can now purchase influenza vaccine through both the Chicago Department of Public Health and Illinois Department of Public Health. Immunization providers

in Chicago should call (312) 746-4835 between 8:00 am to 4:00 pm on weekdays; physicians in suburban Cook County should call (217) 785-1455 between 8:30 am and 5:00 on weekdays. Complete details appear on the CMS Web site: <http://www.cmsdocs.org/>

CMS e-mailed notices from both CDPH and IDPH to all members for whom we have e-mail addresses; in the future we would like to reach everyone. To ensure we can send you important news alerts in a timely manner, please provide us with your e-mail address:

E-mail address _____

Name (Printed) _____

Signature _____

Celebrate Valentine's Day with Robert Steinberg, MD, aka "Dr. Chocolate"

All CMS members are considered members of ChicaGourmets, and will receive the ChicaGourmets discount for all events. Luncheon and dinner prices include tax, tip and wines.

CHICAGO GOURMETS, THE FINE-DINING ORGANIZATION endorsed by the Chicago Medical Society Service Bureau, Inc., announces upcoming dining events and programs:

● **A Valentine's Program from Doctor Chocolate: Robert Steinberg, MD, co-founder and principal, Scharffen Berger Chocolate Maker, Inc., Berkeley, Calif.** SATURDAY, FEB. 12, AT THE NEWLY LOCATED SCHOOL OF CULINARY ARTS AT KENDALL COLLEGE, 900 N. NORTH BRANCH ST. (JUST WEST OF HALSTED), CHICAGO. LECTURE AND VIDEO ON THE WHY'S AND WHAT'S OF CHOCOLATE, FOLLOWED BY RECEPTION, WITH FREE SAMPLES, 10 A.M. TO NOON. LUNCHEON FOLLOWING THE RECEPTION.



Dr. Robert Steinberg, right, with business partner and company namesake, John Scharffenberger, surrounded by cacao beans.

Robert Steinberg is a family physician, Harvard University graduate and accomplished cook. After being diagnosed with a form of lymphoma in May 1989, he sold his medical practice and decided to spend time doing things he loved--among them cooking and eating fine food. He soon became interested in making chocolate, studied the process in France, and teamed up with friend and former patient, vintner John Scharffenberger, to start a company that would become one of the premier chocolatiers in the United States. Today, Dr.

Steinberg travels widely promoting the joys of chocolate. He also continues to practice medicine part-time at the San Francisco Free Clinic.

For information on the luncheon menu and price, please contact ChicaGourmets.

● **TRAVEL:**

CULINARY ARTS & WINE CRUISE ABOARD SILVERSEA'S NEWEST SHIP, THE 382-PASSENGER SILVER SHADOW SAILING FROM ROME TO VENICE ALONG THE DALMATIAN COAST, APRIL 12-22, 2005. *This all-inclusive cruise experience will include cooking and wine demonstrations by Chef John Des Rosiers of Bank Lane Bistro in Lake Forest and Mary Colhoun of Landmark Vineyards. Also included are wine tastings and culinary visits in selected ports. For more information, contact ChicaGourmets. (See ad on facing page for Summer Danube Cruise.)*

* * *

To reserve for ChicaGourmets events, please prepay by sending in your check, and identify yourself as a CMS member. (Memberships will be verified.)

Send checks to: ChicaGourmets, Mail Boxes, Etc. PMB 347, 47 W. Division St., Chicago, IL 60610-2220.

For more details, view the ChicaGourmets website: www.chicagourmet.com/. Or, go to the Chicago Medical Society website: www.cmsdocs.org/ and click on "links," then go to the ChicaGourmets website. For further information, contact: Don Newcomb, founder, ChicaGourmets, (708) 383-7543; or e-mail donaldnewcomb@comcast.net