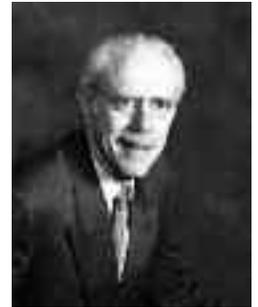




## President's Message "The Worst Case Scenario"

*Abe Levy, MD*

As I reflect on the changes in medicine over the last 45 years, one of the most profound is the wish of our current patients to be protected from the worst case possibility at the first interaction with a physician for a symptom. Gone is the idea of the greatest good for the greatest number.



In the immortal words of Rhett Butler in *Gone With the Wind*, "Frankly my dear, I don't give a damn!" has been the effect on healthcare costs in general and the malpractice crisis in particular of this elevation of the interests of the individual over the interests of a population. Lost also is even much consideration of the possibility that this might not even be in the best interest of the individual subjected to the onslaught of diagnostic technology and treatment.

The laws of probability and reason have been set aside in favor of the expectation that every illness and injury will be correctly diagnosed at the first visit to a physician and cured by the second visit. There can be no temporizing before the unleashing of a torrent of technology and treatment at the first medical contact including every laboratory test and imaging study that could have even a remote possibility of shedding light on the symptom. No longer is watchful waiting medico-legally safe.

The epidemic of cesarean sections with rates now approaching 50% is a travesty, and the poster case of "the worst case scenario" destroying logic and reason, when we all know that the rate should be dramatically lower. It was not so long ago that we found it shocking that the C-section rate was 25% and were determined to work hard to lower it.

I remember being trained that if you think of a lumbar puncture, then you must do it. Now that same dictum applies to every single test in our armamentarium. Another old phrase is that the second doctor to see a patient is always smarter than the first doctor. Now that has been turned on its head, and the first doctor has to be just as smart as the second doctor will be in hindsight. The Orthopedic Surgery doctrine of Skillful Neglect taught as late as the 1960's is dead and buried. An MRI not performed at the first visit after an injury is considered to be the cause of irreparable harm to a greater degree than the injury itself.

Make no mistake about it, I am not bucking this trend and am always mindful of my obligation in my patient's mind to diagnose the worst case scenario at the first visit. Any physician who does not practice medicine in this way does so at his or her peril. ♦

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## The Westchester Physician

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## Upcoming Events Mark Your Calendar

*Monday, March 19<sup>th</sup> - 5:30 - 7:30pm*  
**MSSNY Legislative Day Videocast\*\*\***

*Tuesday, March 20<sup>th</sup>*  
**MSSNY Legislative Day - Albany**

*Wednesday, March 28<sup>th</sup>*  
**Doctors' Day Symposium**  
Albert Einstein College of Medicine, Bronx, NY

*Monday, April 2<sup>nd</sup> - 5:00 pm*  
**CME Committee**

*Thursday, April 5<sup>th</sup> - 6:00 pm*  
**WCMS Board of Directors**

*Monday, April 16<sup>th</sup> - 6:00 pm*  
**WCMS Delegates Meeting**

*Tuesday, April 17<sup>th</sup> - 6:30 pm*  
**Medicare "Meaningful Use" Presentation**

*Friday, April 20<sup>th</sup> - Sunday, April 22<sup>nd</sup>*  
**MSSNY House of Delegates Meeting**  
Saratoga Hilton and City Center, Saratoga Springs, NY

*Monday, May 7<sup>th</sup> - 5:00 pm*  
**CME Committee**

*Thursday, May 10<sup>th</sup> - 6:00 pm*  
**Board of Directors**

*Friday, June 22<sup>nd</sup>*  
**WCMS/Academy Annual Meeting**

\*\*\*may attend at WCMS Headquarters or via personal computer

## Newsletter Submissions

Members are encouraged to submit articles, letters to the editor, classified ads, members in the news, etc. for publication in the Westchester Physician.

**The deadline for the  
April 2012 issue is March 15<sup>th</sup>.**

Please email your submissions for review to  
Brian Foy, Executive Director at [bfoy@wcms.org](mailto:bfoy@wcms.org).

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## FROM THE EDITOR

### *A Trip to India*

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*By Peter Acker, MD*



It came in the mail last September in a glossy envelope looking a lot like the mailings I get from pharmacological companies and various purveyors of CME's programs from around the country. Usually I shift through them quickly with the paper recycling bin near by, but a picture of an Indian Temple caught my eye and I opened it. It was a very official looking invitation from a board member of the AAP (American Academy of Pediatrics) asking me to join a delegation of pediatricians to India. I didn't take it quite seriously - it just seemed too exotic - and I wondered if it was some sort of a scam. But a short Google session put that fear to rest and I put the letter on my desk rather than consigning it to the trash.

To make a long story short, I decided that perhaps life had been a bit too tame for me recently (having sent the third of our three kids off to college) and perhaps an Asian adventure would be just the ticket to lift me out of my empty nest malaise. So, with my wife's blessing, I boarded a non-stop flight out of Newark over the pole to Delhi (15 hours!). I was met just outside of customs by a young Indian man named Shiv who placed his hands together in front of his chest in greeting. He led me to where various other members of our group were waiting. In all, it was ten pediatricians representing states from Texas to Michigan and North Carolina to Oregon.

The ten of us were thick as thieves for the next eight days as we traveled from Delhi, to Jaipur and to Agra. The trip was sponsored by an organization called People to People Ambassadors, started during the Eisenhower administration with the goal of promoting better international understanding by sending small groups of professionals abroad to various other countries to meet with colleagues. The cynic in me caused me to silently doubt the efficacy of such a seemingly Pollyanna-like endeavor started during the cold war era, but I have to say as we toured hospitals and met with groups of health professionals in all three of three cities, I was impressed with how quickly the dialogue became stimulating, thoughtful and meaningful. A highlight was a visit to school started by a non-governmental organization (NGO) in the middle of a sprawling Delhi slum. The building was, in a word, ramshackle, and the classrooms crowded with kids. Rather than separate desks, there were benches along a narrow, long table, with the kids packed together, shoulder to shoulder, each with a reader and notebook in front of them. But, remarkably, they seemed incredibly focused on the teacher and their work and probably not a one of them on Ritalin!

India is a remarkable country with an amazing array of strengths and weaknesses. Take their demographics, for example. Their population is huge and, unlike the US, it is concentrated in the younger ages. As one Indian told me, it is itself their greatest strength and weakness - social and infrastructure problems abound - but it also is a tremendous well of intellectual talent and energy which is being increasing harnessed by their rapidly improving educational system.

Next month, when I am completely recovered from what has proven to be a crippling jet lag, I will discuss the Indian healthcare system and other lessons I gleaned from what was an awe inspiring trip.



## Commissioner's Corner

March 2012

Dear Colleagues:

The health department has grappled with two outbreaks of Norovirus in the past month in Westchester residents. While winter cruises may come to mind when you hear Norovirus, in these cases, the outbreaks occurred here at home at assisted living facilities and involved about 76 residents and 32 staff members. For a frail, elderly and potentially immune-compromised population, Norovirus can be quite serious and potentially deadly.

That's why I'd like you to determine if patients with diarrhea and vomiting live in a congregate living setting such as an assisted living facility and to test for Norovirus in any such patients with clinically compatible symptoms. This testing is generally only available at public health laboratories. Stool specimens should be collected in containers with viral transport medium and refrigerated at your office or laboratory until the next working day for the Westchester County Department of Health to arrange for free testing. While a positive test won't change your treatment recommendations or supportive care, it can help us prevent the spread of the virus.

The health department can ensure that those affected are restricted from activities most likely to increase the spread of the virus (e.g. removal from food preparation, nursing, day care, and other similar activities). We can advise the patient about other measures, such as frequent hand-washing, limiting social contact, etc. And if those affected live or work in a congregate care facility, we can advise the facility administrators about what and how to clean to avoid spreading germs. Once a Norovirus incident is brought to our attention, our job is to perform a case investigation. This entails a wide-ranging response involving both Disease Control and Environmental health staff. Some of their activities include interviewing ill/well patients and staff, restricting activities, insuring that proper environmental cleaning practices are enforced, etc. to stop the spread of infection as quickly and effectively as possible.

As a reminder, to report a suspected outbreak or cluster of Norovirus cases, clinicians should call the Westchester County Department of Health at (914) 813-5159. Please visit the Professionals Corner on our website at [www.westchestergov.com/health](http://www.westchestergov.com/health).

Sincerely,



Sherlita Amler, MD  
Westchester County Commissioner of Health



## **"Let Your Voice Be Heard"**

Dear Colleagues:

Please accept my invitation to attend the State Medical Society's House of Delegates (HOD) on **Friday, April 20, 2012 beginning at 10:00am** at the Saratoga Hilton and City Center, Saratoga Springs, NY. **Reference Committees begin at 11:00am, at which all members of the Medical Society of the State of New York (MSSNY) can attend and be heard.** We are fortunate that this meeting takes place in Westchester two out of every three years; however, this year the meeting is in Saratoga Springs, about 2.5-3 hour drive due north of Westchester (about 30 minutes north of Albany). Doctors from all over the State come to the House of Delegates each year to debate, discuss and form policy. They represent the voices of the physicians in the entire state.



### **Westchester needs your voice along with the voices of our Delegates!**

Westchester County, like all other counties in the state, is represented by selected delegates and alternate delegates that volunteer their time to present, defend, and discuss resolutions generated by Westchester physicians. These delegates can also support resolutions from other counties.

However, on Friday morning, April 20, **any member** of the medical society, as well as invited guests, can speak on resolutions brought before the reference committees. These committees hear testimony from all interested parties on resolutions brought to their review by other physicians. I have chaired and participated in reference committees in the past and it is a very democratic process.

There are five reference committees dealing with many issues from legal issues, to regulatory issues, to socioeconomic issues, as well as public health concerns. If you have an experience to share or have significant interest or knowledge in a subject, please share your expertise and opinion at the reference committee on Friday, April 20. MSSNY will publish in advance a listing of all resolutions to be considered via their website and *News of New York*.

***If you are interested in attending the MSSNY Annual Meeting, please contact Brian Foy, Executive Director at 914-967-9100 or [bfoy@wcms.org](mailto:bfoy@wcms.org).***

I hope to see many of you there! Make sure you find me and let me know you came at my invitation!

Sincerely,  
Kira Geraci-Ciardullo, MD  
Vice Speaker, MSSNY HOD



## News from MSSNY

### **ADVOCACY ON OUT OF NETWORK REFORM LEGISLATION CONTINUES**

MSSNY continues its efforts to achieve the enactment of sorely-needed legislation (A.7489-B, Gottfried/S.5068-A, Hannon) to assure patients and employers are better informed regarding the scope of their health insurance coverage for out of network care. The bill would: (a) prevent insurance companies from selling policies with out of network coverage that fail to provide significant coverage for such costs; and (b) better assure transparency of health insurance policies that provide out of network coverage by requiring payment levels in all such policies to be benchmarked to the new FAIR Health database. The bill is before the Assembly Insurance Committee and on the floor of the Senate.

A recent **USA Today article** highlighted the extent to which many health plans operating in New York State have drastically reduced coverage for out of network health care services, even after former Governor Cuomo, as Attorney General, required health insurers to stop using the manipulated Ingenix database for out of network charges. These new insurer payment policies, frequently benchmarked to the woefully inadequate Medicare fee schedule, are leaving patients with staggering out of pocket bills for needed care that they believed would be covered through their insurance.

Not surprisingly, the insurance industry has aggressively opposed this legislation. To overcome this opposition, all physicians are urged to call to their local legislators to ask that this problem be fixed.  
Assembly – 518-455-4100, Senate 518-455-2800.

For more information, please contact the MSSNY Division of Governmental Affairs at [mauster@mssny.org](mailto:mauster@mssny.org).

### **MEDIA ATTENTION SURROUNDING PRESCRIPTION DRUG DIVERSION GROWS; PHYSICIAN GRASS ROOTS EFFORTS NEEDED**

The significant media attention to the issue of prescription drug diversion and abuse intensified this week with articles in the **Wall Street Journal** and **New York World**. The media highlighted legislation (A.8320, Cusick/S.5720, Lanza) that would create a new prescription drug monitoring database called I-STOP. The legislation would require physicians or their staff to check the database prior to writing of any controlled substance prescription and enter the prescription information into the database. Significant penalties would be imposed for failure to comply. The articles included extensive comments from representatives of MSSNY regarding the medical community's concerns with the legislation, as well as MSSNY's proactive proposals to address this problem.

As was noted by MSSNY Councilor Frank Dowling, MD in the *Wall Street Journal* article, while the medical community generally agrees with the goal of this legislation to increase data available to physicians, the I-STOP bill goes much too far. Not only would it create a tremendous administrative burden to physician practices, it may actually discourage many physicians from writing prescriptions for necessary pain medications at a time when many believe that pain is being undertreated. Moreover, it could cause delays for patients in doctors' offices and pharmacies. In addition to this week's articles, MSSNY's perspective on this issue has been earlier reported in articles on this legislation in media outlets across New York State. The Medical Society has also met with many legislators to discuss physician concerns with this proposed legislation, as well as proposed solutions to this problem. Importantly, MSSNY has also been working closely with the New York State Department of Health to expand the availability of data from the current prescription monitoring database.

For more information contact Moe Auster at [mauster@mssny.org](mailto:mauster@mssny.org), Gerard Conway at [gconway@mssny.org](mailto:gconway@mssny.org), Pat Clancy at [pclancy@mssny.org](mailto:pclancy@mssny.org) or Liz Dears at [ldears@mssny.org](mailto:ldears@mssny.org).



**9<sup>th</sup> Annual Doctors' Recognition Day Symposium,  
Poster Presentations & Physicians' Exposition**

***Symposium***

**"Pearls in Peri Operative Management  
for the General Practitioner"**

**Surgical Optimization and Innovation**

***Case Studies – Stroke/ Cardiology, Advanced Liver  
Disease & The Elderly & Surgery***

**Panel Discussion – Ask the Experts**

**Bronx Hospitals Surgical Departments –  
What's New in Your Hospital**

**Wednesday, March 28, 2012**

**Albert Einstein College of Medicine of Yeshiva University**

**Forchheimer Building – Robbins Auditorium**

**1600 Morris Park, Bronx, New York 10461**

***Physicians Exposition Opens 3:30 pm***

***Symposium 5:30 pm – 7:00 pm***

**Hosted by:**

**Bronx County Medical Society**

**Westchester County Medical Society**

**NY Chapter American College of Physicians**

This activity has been planned and implemented in accordance with the Essential Areas and Policies of the Medical Society of the State of New York (MSSNY) through the joint sponsorship of the Westchester Academy of Medicine. The Westchester Academy of Medicine is accredited by MSSNY to provide continuing Medical Education for physicians.

The Westchester Academy of Medicine designates this live activity for a maximum of 1.0 **AMA PRA Category I Credits™**. Physicians should claim only the credit commensurate with the extent of their participation in the activity.

The Westchester Academy of Medicine adheres to **ACCME Standards for CommercialSupport<sup>SM</sup>** of continuing medical education. All speakers participating in Continuing Medical Education activities are expected to disclose to the program audience any real or apparent conflict(s) of interest related to the content of their presentations.



## AMA Advocacy Update

### Medicare physician payment

#### **Congress extends Medicare physician payment rates through 2012**

On Feb. 17, both the U.S. House of Representatives and the Senate adopted the conference report on H.R. 3630, the "Middle Class Tax Relief and Job Creation Act of 2011." **Most significant for Medicare beneficiaries and physicians, the legislation averts the scheduled 27.4 percent reduction in Medicare payments called for by the sustainable growth rate (SGR) formula by extending current payment rates through the end of the year.** It also continues the current payroll tax rate reduction of 2 percent through 2012, and it extends and reforms unemployment insurance for the long-term unemployed. While negotiators added the nearly \$100 billion cost of extending the payroll tax holiday to the federal deficit, budget offsets were required for the other provisions. Negotiators also insisted that offsets for the \$18 billion cost of extending current Medicare physician payment rates be achieved through cuts in health care programs. These included:

- \$6.9 billion from reducing the amount of bad debt that is reimbursed to hospitals, critical access hospitals, dialysis clinics, skilled nursing facilities, federally qualified health centers, community mental health centers and rural health clinics
- \$5 billion from the Prevention and Public Health Fund created under the Affordable Care Act (ACA)
- \$4.1 billion from reduced disproportionate share payments to hospitals
- \$2.5 billion from the disaster-recovery Medicaid funding match for Louisiana provided by the ACA
- \$2.7 billion from reduced clinical lab payments

Additionally, the bill addressed a number of health care "extenders" through the end of the year:

- Hospital geographic reclassifications under Section 508 of the Medicare Modernization Act
- Work geographic adjustment floor for physician payments
- Exceptions process for Medicare therapy caps
- Payment for the technical component of certain physician pathology services (through June 30)
- Ambulance add-on payments in rural areas
- Outpatient hold-harmless provisions, except for sole community hospitals with more than 100 beds
- QI program for low-income Medicare beneficiaries
- Transitional Medical Assistance program

*(continued on page 9)*

*(continued from page 8)*

Finally, two provisions that have typically been included with health care extenders were eliminated as of March 1:

- Add-on payments for certain mental services, which disproportionately affect non-physician mental health providers
- Increased payments for bone density tests (DXA)

### **AMA position:**

While fully recognizing the importance of preventing the SGR cut from occurring, AMA leadership expressed continued dismay at Congress's annual failure to address the problem permanently.

"The House and Senate conference committee agreement averts a 27 percent cut on March 1, but it represents a serious missed opportunity to permanently replace the flawed Medicare physician payment formula and protect access to care for military families and seniors," said AMA President Peter W. Carmel, MD. "People outside of Washington question the logic of spending nearly \$20 billion to postpone one cut for a higher cut next year, while increasing the cost of a permanent solution by about another \$25 billion."

"Congress had an opportunity to permanently end this problem, which is the sound, fiscally prudent policy choice. We appreciate efforts by members of Congress on both sides of the aisle who publicly supported a framework for a permanent end to this perennial problem. We are deeply disappointed that Congress chose to just do another patch - kicking the can, growing the problem and missing a clear opportunity to protect access to care for patients."

Because Congress once again failed to repeal the SGR, the AMA projects that the next cut, scheduled to occur on Jan. 1, 2013, will be approximately 32 percent. ♦

### ***WCMS Blast FAX & Email Service***

If you have not been receiving WCMS blast FAXES and emails, we may not have your correct fax number or email on file. This is how we communicate with our members on important and timely issues, including legislative alerts and upcoming events.

Please update this information by sending it to Karen Foy at [kfoy@wcms.org](mailto:kfoy@wcms.org). Your information will be used for WCMS communications only and will not be shared with third parties.

### **PROFESSIONAL CONDUCT EXPERT**

Robert S. Asher, J.D., M.P.A. in Health, former Director Professional Conduct, N.Y.S. Bd. of Regents, concentrating on professional practice, representation before government agencies on disciplinary, licensure and restoration, narcotic control, Medicare, Medicaid and third-party reimbursement matters, advertising and buying and selling a practice.

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## WCMS Board Highlights - February 2012

*At its meeting on February 2, 2012, the WCMS Board...*

- Welcomed **Sherlita Amler, MD, the new Westchester Commissioner of Health**. Dr. Amler, who will regularly attend WCMS Board meetings as well as submit articles for the *Westchester Physician*, updated the Board on the recent outbreak of Norovirus, the increased number of reported cases of Pertussis in adolescents, and an increase in the number of reported cases of drug-resistant Tuberculosis in the immigrant population. She also discussed the flu season, which has been mild thus far. She thanked the WCMS for assistance in reaching physicians in Westchester with important public health alerts and information.
- **Welcomed Tom Stebbins, Executive Director, Lawsuit Reform Alliance of New York (LRANY)**. Mr. Stebbins reported on LRANY activities around the state with the stated goal of building a strong alliance of business, health care and other organizations to achieve meaningful tort reform in New York, despite the unfavorable political climate. He mentioned that he has spoken with several county medical societies, as well as MSSNY, and that medical liability reform is a huge part of the LRANY agenda. He addressed many questions from Board members regarding the specific medical liability reform initiatives endorsed by LRANY, including caps on non-economic damages. He also distributed information about LRANY, including organizational membership, and encouraged Board members to individually sign up to receive regular email alerts. The Board thanked Mr. Stebbins for his presentation and his organization's efforts on a very important issue.
- **Received the Report of the Executive Committee and the President, as presented by Abe Levy, MD. Dr. Levy reported that the Executive Committee:**
  - o Completed its due diligence regarding Charles J. Sellers and Co., based in Buffalo, NY, and recommends that Mr. Sellers be invited to a future Board meeting to discuss how his insurance products will benefit Westchester physicians as well as the WCMS.
  - o Reviewed a written report submitted by Kevin Lynch, WCMS-endorsed agent for health insurance, regarding the changes happening in the health insurance market, particularly affecting small groups. The Board asked that Mr. Lynch be invited to the next WCMS Board meeting to discuss further.
  - o Approved, pending adequate fundraising, that the 2012 Annual Meeting of the WCMS/Academy of Medicine be held on Friday, June 22<sup>nd</sup> at Westchester Country Club in Rye.
- **Approved the Report of the Membership Committee as presented by Kira Geraci-Ciardullo, MD, Committee Chair. The recommendations approved by the Board included:**
  - That WCMS, in partnership with MSSNY, implement a Westchester-only membership pilot project for 2013, whereby physicians who have never been members will be welcomed to join WCMS/MSSNY on a one-time basis at a 30% discounted dues rate in year one, followed by a 15% discount in year two. The new member would pay the regular dues rate in 2013. This proposal must also be approved by MSSNY.
  - That WCMS adopt, as a priority, the concept of establishing institutional memberships with Westchester hospital medical staffs, if feasible. This approach has worked very well in other parts of New York, including Suffolk County, where

*(continued on page 12)*



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is endorsed by the Westchester County Medical Society**

(continued from page 10)

they have seen a significant increase in members at a substantially discounted rate due to volume.

- Election of one new member, Sarah Washington, MD, a pediatrician in White Plains; and one life member, Elizabeth Rosenthal, MD, a member of the WCMS/MSSNY since 1976.

- **Heard from Bonnie Litvack, MD, Chair, Delegates Committee. The Committee recommended and the Board approved three resolutions as follows:**

- Regulation and Transparency of Imaging Benefit Managers' Contracts
- Voluntary Expert Witness Program for New York State
- Reimbursement for Cost of Sign language Interpreters

These resolutions and others approved by the Board in March will be published in their entirety in the April edition of *Westchester Physician*.

- **Heard from Thomas Lee, MD, President-elect and Chair, Legislative Committee, regarding the Committee's meeting with Congresswoman Nan Hayworth, MD, a WCMS member, to discuss the impending Medicare physician payment cut and the need for permanent repeal of the SGR payment formula. [In February, Congress voted to delay the cuts to 12-31-12 with no recommendation for a permanent solution to the growing SGR deficit.]** Dr. Lee also reported that the Committee will be working on Legislative appointments on March 20 in Albany in conjunction with MSSNY Physician Advocacy Day. MSSNY also plans to host a statewide videocast on the evening of March 19<sup>th</sup> for all members who cannot go to Albany on March 20. Details are included on page 14 **Lastly, Dr. Lee asked everyone to please note Sunday, September 23, 2012, 10:00am to 1:00pm, for the WCMS Legislative Brunch at Knollwood CC in Elmsford, NY.**

- **Heard from Brian Foy, Executive Director, regarding the following:**

- o The demo web site for WCMS has been established and Board members are encouraged to review and provide feedback. A link was sent to the Board. It is hoped that the new web site will go public in March.
- o That legal counsel will make a full report to the Board in March regarding the due diligence completed in researching DocBookMD as a member benefit. ♦

**We Wish Our WCMS Members a  
Happy Easter  
and a  
Happy Passover**

## Welcome to our Newest WCMS/Academy Members

Join us in welcoming the following new member who was elected into membership of the Westchester County Medical Society and the Westchester Academy of Medicine by the Board of Directors in February.

### New Member

Sarah Washington, MD

Pediatrician

White Plains

## WCMS Members in the News

### *Walsh Wins Duathlon World Title*



WCMS Past President William Walsh, MD, captured the world title in the men's 70-74 age group at the ITU Sprint Duathlon World Championships in Gijon, Spain, which were held in September. Duathlon is an athletic event that consists of a running leg, followed by a cycling leg and then another running leg in a format bearing some resemblance to triathlons. The International Triathlon Union governs the sport internationally.

Dr. Walsh, 73, recorded a winning time of 1 hour, 39 minutes, 9 seconds in the 5-kilometer run, 19.2k bike, 2.5k run event.

**CONGRATULATIONS, DR. WALSH!**



## **MSSNY PHYSICIAN ADVOCACY DAY**



### **Videocast**



**Monday, March 19, 2012**

**5:30 – 7:30 pm**

**WCMS Offices**

**333 Westchester Avenue, Suite LN01**

**White Plains, NY 10604**

**914-967-9100**

### **LEARN ABOUT LEGISLATIVE APPROACHES TO PROBLEMS FACING PHYSICIANS**

- ❖ *Unsustainably High Medical Liability Premiums*
- ❖ *Regressive Medical Liability Legislation*
- ❖ *Managed Care Market Abuses*
- ❖ *Out of Network Coverage*
- ❖ *Non-Physician Scope of Practice*
- ❖ *Accountable Care Organizations*
- ❖ *Prescription Drug Abuse/Drug Diversion*

**Listen to a Panel of Key Legislators:**

- ❖ **Honorable Richard Gottfried, Chair, Assembly Health Committee**
  - ❖ **Honorable Kemp Hannon, Chair, Senate Health Committee**
- ❖ **Honorable Joseph Morelle, Chair, Assembly Insurance Committee**
  - ❖ **Honorable James Seward, Chair, Senate Insurance Committee**

**Also Invited to Participate:**

- ❖ **Nirav Shah, MD, MPH, Commissioner of Health**
- ❖ **Benjamin Lawsky, Esq., Superintendent of Financial Services**

***Space is limited. Please RSVP to Karen Foy at 914-967-9100  
or by email: kfoy@wcms.org.***

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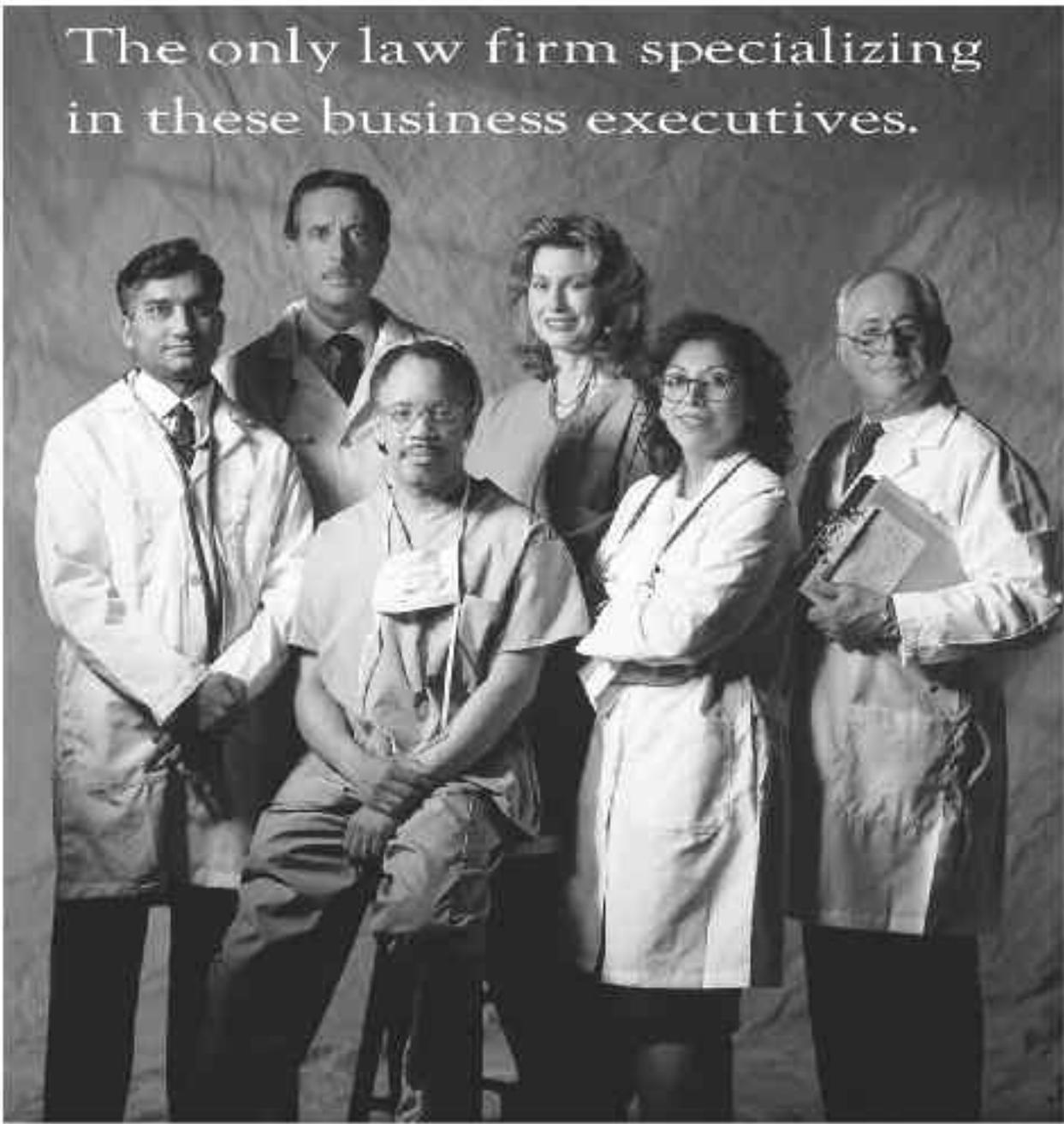
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## **Legal Corner**

### **Health Care Fraud Enforcement Efforts Break Record:**

The U.S. Department of Health & Human Services (HHS) released its annual Health Care Fraud & Abuse Control Program report ([www.oig.hhs.gov/publications/hcfac.asp](http://www.oig.hhs.gov/publications/hcfac.asp)) showing that it recovered nearly \$4.1 billion in Fiscal Year (FY) 2011, the largest sum ever recovered in a single year, and filed criminal charges against a total of 1,430 defendants for health care fraud related crimes, the highest number of health care fraud defendants charged in a single year in HHS' history. A total of 743 defendants were convicted for health care fraud-related crimes. The ever expanding Medicare Fraud Strike Force Teams charged a record number of 323 defendants, who allegedly collectively billed the Medicare program more than \$1 billion, and secured 172 guilty pleas, convicted 26 defendants at trial and sentenced 175 defendants to prison, with an average prison sentence of over 47 months. Approximately \$2.4 billion was recovered in FY 2011 through civil health care fraud cases brought under the False Claims Act. KACS' Daniel Giaquinto specializes in the defense of physicians charged with health care fraud.

### **The Long Arm of the Florida Board of Medicine Can Reach You:**

As physicians find themselves practicing under greater regulatory scrutiny, holding a license in more than one state can complicate their defense in even minor cases. Falling short of a CME requirement, missing a license filing deadline, getting pulled over for a DUI/DWI, failing to properly supervise subordinates or dispensing too much pain medication can not only create problems in their home state, but could lead to problems in every state where they ever held a license. These so-called sister-state licensing boards, like the Florida Board of Medicine, often insist on an accused physician appearing before them even if a physician's home state has already taken action. Unfortunately, some physicians do not take these sister-state actions seriously and find themselves being severely disciplined or having their licenses in those states revoked. Since such sister-state actions are reportable to the National Practitioner Data Bank, they can have a profound impact on a physician's practice back home when it comes time to re-credential with a hospital or health plan. In many states, simply retiring or relinquishing a license will not avoid problems. Physicians licensed in more than one state, when confronted with an issue at home, should always consult legal counsel who can assess the risk in those other states, as well. KACS' Bob Conroy, admitted to practice in NY, NJ, PA, FL, DC and CA, stands ready here at home to help tri-state physicians with potential sister-state licensure problems.

### **Distribution Ordered Entered in United Healthcare Settlement:**

U.S. District Court Judge Lawrence McKenna has signed a final order approving the distribution of the Net Settlement Fund in *AMA. v. United Healthcare*, brought by the Medical Society of the State of New York and the AMA, among other parties. The court order gives approval to the Settlement Administrator, Berdon Claims Administration, to distribute the Settlement Fund of \$350 million plus interest, minus court approved awards, fees and expenses, based upon approved claims that were submitted by class members, which included both physicians and United Healthcare subscribers. In addition to the \$350 million settlement in the case, United Healthcare agreed to certain business practice initiatives, including an agreement that it and its affiliates would stop using the Ingenix database to determine out-of-network reimbursement and instead use a new database independently established and operated by a not-for-profit consortium of NYS university-level schools of public health. This led to the creation of Fair Health, Inc. It is believed that the \$350 million settlement is the largest settlement against a health insurer.

For more information on any of the above items, contact us at 1-800-445-0954.

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New York eHealth Collaborative

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**6:30 – 8:30pm**

**Medical Society Offices**

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