# Westchester Physician

April 2014

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## **PRESIDENT'S MESSAGE** Affordability

It is April, tax season. Lawmakers in Albany have come up with a budget that will affect our practices and finances (although I don't yet know the details). I just got my Westchester County Tax Bill that will pay for some indigent care. I'm working on my federal income tax returns. How will all this tax money be spent?

Can we afford this? This question keeps coming up. Can my practice afford new requirements of computerization and coding? Can my patient afford the medication or treatment plan that I am recommending? Can my patient afford a "surprise bill" because her insurance doesn't cover out-of-network care? Can physicians afford to stay in practice when insurers make them out-of-network? Will they get paid at all if they are out -of-network? Can physicians afford to take a chance on being financially stable enrolling or being enrolled in low-paying payment plans? Will my hospital be able to afford admissions being reclassified as observations and declining payments? Can the country afford to pay for Medicare, expanded Medicaid and the rest of the Affordable Care Act? Can patients, insurers, hospitals or the country afford another wave of \$10,000.00 a month drugs?

"...the elephant in the room goes far beyond \$10,000 per month new drugs. The \$3 trillion per year elephant is the entire health care system."

I decided to write about affordability because just two days ago I attended an educational session describing the exciting new developments in the care of metastatic lung cancer based upon new inhibitors of specific targets on some lung cancers. The next day I received the April 1<sup>st</sup> edition of the *Journal of Clinical Oncology* with an opinion article about the topic. They used the term "elephant in the room" to make the point that society cannot continue to pay \$10,000 per month for each new molecularly targeted drug. You can read the article at:

http://jco.ascopubs.org/content/32/10/983cmpid=jco\_etoc\_1April2014

The authors proposed cost-effectiveness analysis to form policy around our national health care plans and greater efficiency in drug development.

Of course they are correct. However, I would make the point that the elephant in the room goes far beyond \$10,000.00 per month new drugs.

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Robert G. Lerner, MD President, WCMS

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### **UPCOMING EVENTS**

Board of Directors Thursday, May 1st at 6 :30 P.M.

WCMS/Academy Annual Meeting Friday, June 20th at 6:00 P.M. Orienta Beach Club Mamaroneck, NY

Academy Golf Outing Thursday, October 2nd at 12:30 P.M. Westchester Country Club Rye, NY

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> Peter J. Acker, MD Editor

Karen A. Foy Managing Editor

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## FROM THE EDITOR... BOOK REVIEW THE BOYS IN THE BOAT PETER J. ACKER, MD

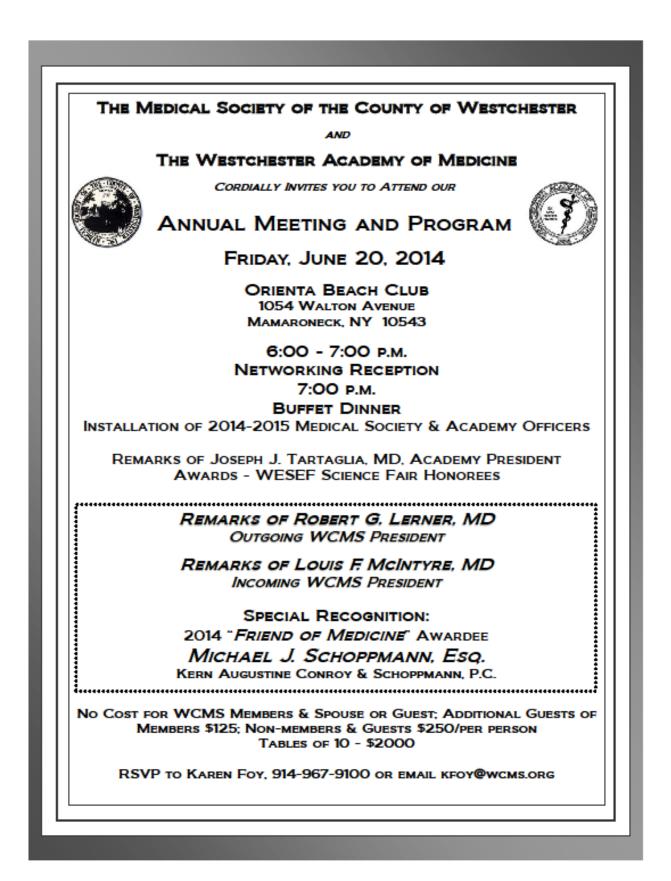


From time to time I have reviewed in these pages books that were usually written by doctors. The occasional books written by non-physicians that I have reviewed have contained a strong medical theme such as *The Cider House Rules* by John Irving with its stunning portrayal of Dr. Wilber Larch, obstetrician and abortionist. A couple of months ago, I wandered off the field a bit to review Andrew Solomon's *Far From the Tree* because it had fairly clear medical relevance in that it featured conditions such as autism and schizophrenia. This month, however, I have chosen to go completely off the grid and discuss a book, Daniel James Brown's *The Boys in the Boat*, that has no demonstrable medical relevance. My reasons for doing so perhaps will become clear as I proceed.

Part of is that this book resonated personally with me for a few reasons. In my last two columns I've described some of the struggles that I went through in order to become a doctor. My situation was perhaps unique in its details, but certainly the broad outlines are probably quite common i.e. many of us worked hard and overcame many obstacles both internal and external to achieve our goal of becoming physicians. Our craft involves a multitude of moving parts and requires years of study, diligence and differed gratification. So, I believe, this true story of the improbable quest of a group depression era University of Washington students, some of whom came from backgrounds that give the word hardscrabble a whole new depth of meaning, to win a gold medal in the 1936 Berlin Olympics will be of great interest to physicians. Now, I am not comparing my acquisition of a medical degree to winning gold at the Olympics, but simply pointing out the commonality of reaching a long sought goal after hard work. This book was also compelling for me for another reason. My father, after a difficult childhood in working class Groton, Connecticut, ended up through an improbable chain of events at Yale University. Finding that his local pond-hewed hockey skills were no match for prep school coached players on the Yale hockey team, he went out for crew instead and in his senior year rowed in the 1939 Henley Regatta, one of the highlights of his life.

Enough preamble! *The Boys in the Boat*, despite many instances of rather hackneyed phrases, delivers a stunning and dramatic narrative. He centers the tale around Joe Rantz, a young man who's childhood was Dickensian and certainly rivals Oliver Twist's travails and betrayals. He manages to overcome a myriad of obstacles and by dint of extraordinary determination and clearly an innate physical strength honed by years of hard manual labor to be chosen over dozens of others to make the final eight. The author conducted scores of interviews with Rantz who at the time was quite old and near death which gives the narrative a wealth of detail and authenticity. He skillfully draws in all the other major characters in the story: his crew mates, the dour coach Al Ulbrickson, the transplanted English boat builder, George Pollack.

(continued on page 6)



## PRESERVING ACCESS TO OUT-OF-NETWORK SERVICES THOMAS T. LEE, MD, FACS, MBA IMMEDIATE PAST PRESIDENT, WCMS CHAIR, LEGISLATIVE COMMITTEE



It is with pleasure that I inform you of the passage of the out-of-network provisions included in the 2014 New York State Budget. This accomplishment was made possible by the collaboration and strong advocacy by MSSNY, specialty societies, county medical societies, individual physicians, our elected officials, and various consumer groups.

The final Budget negotiated between the Governor and the Legislature contains provisions to provide greater transparency of a health insurer's out-of-network coverage, broader availability of a patient's right to go out-of-network if the insurer's existing network is insufficient, provisions to assure that out-of-network benefits are more comprehensive, and provisions to address payments for emergency care and "surprise bills" by out-of-network physicians.

The provisions will do the following to enhance network adequacy and expand out-of-network coverage availability for patients, and expand rights of physicians to have flexibility as to which plans they can choose to participate with:

- Require health insurers to describe their out-of-network coverage in a manner that is based upon the % of the "usual and customary cost" of out-of-network health care services, including examples of anticipated out of pocket costs for frequently billed out-of-network health care services, and an internet site that enables patients to determine what out of pocket costs they can reasonably expect to face based upon the out-of-network coverage provided by insurer;
- Define "usual and customary cost" as the 80th percentile "of all charges for the particular health care service performed by a provider in the same or similar or specialty and provided in the same geographical area as reported in a benchmarking database maintained by a nonprofit organization specified by the superintendent." This would appear to imply FAIR Health. Importantly, efforts by the insurance industry to sunset this definition in 2016 were defeated;
- Require health insurers issuing a "comprehensive group or group remittance health insurance policy or contract that covers out-of-network health care services" to "make available" coverage for at least 80% of the usual and customary cost of each out-of-network health care service. Importantly, efforts to exempt these products from state "premium prior approval" requirements were defeated. The coverage baseline was increased from what had originally been proposed (70% UCR) to 80% of UCR;
- Enables the superintendent to require insurer offering of out-of-network coverage to the group market in a region if no coverage available;
- Require all health insurance products, not just HMOs, to have adequate networks;
- Afford patients enrolled in all health insurance products the right, currently available only to those
  enrolled in HMOs, to receive treatment from a specialist appropriately qualified to treat a patient's
  particular condition at no additional cost to the patient, if the network of such insurance product
  fails to include such appropriately qualified specialist;
- Establish a new patient external appeal right to go out-of-network if the insurer network is insufficient to meet health care needs of enrollee.

(continued on page 5)

### **PRESERVING ACCESS TO OUT-OF-NETWORK SERVICES** (continued from page 4)

The bill would also make all bills for emergency care and other "surprise bills" for care by nonparticipating physicians (taking assignment) subject to an independent dispute resolution (IDR) process after an insurer made an initial "reasonable payment" for such care, and efforts to informally settle the payment dispute were unsuccessful. Either the physician or insurer could bring the claim to the IDR process. To encourage reasonableness on both sides, the IDR entity would be required to choose between the plan's payment or the non-participating physician's fee ("baseball arbitration"). Only in the rare instances where the reviewer believed that a settlement is reasonably likely or both the physician fee and insurer payment represent unreasonable extremes, the reviewer can give the parties ten business days to negotiate a fee without consequence if one or neither party wishes to participate in such a re-negotiation. Claims for certain CPT codes under \$600 would be exempted from the IDR altogether. A physician of the same or similar specialty as the physician providing treatment will be required to be involved in the review of the fee. To the extent practicable, the physician shall be licensed to practice in this state. As part of the IDR entity's review, they would be required to consider:

- Whether there is a "gross disparity" between the fee charged by the physician as compared to what they usually charge in other non-par situations;
- Whether there is a "gross disparity" between the fee charged by the physician as compared to other fees paid to similarly qualified non-par physicians in the same region;
- The non-par physician's usual charge for comparable services;
- Individual patient characteristics;
- The level of training, education, and experience of the physician;
- The circumstances and complexity of the case, including the time and place of the services; and
- The usual and customary cost of the service.

All decisions by the IDR entity, including those involving claims which the reviewer requests the parties to re-negotiate, would be required within 30 days of the submission of the dispute.

The IDR is a loser pays process unless the alternative negotiation is invoked by the reviewer in which case if an alternative payment is agreed to each party divides the cost of dispute resolution equally.

Given that one of the major goals of the legislation is to reduce the incidence of "surprise" medical bills, to better assure patients are made aware of situations where they may end up receiving treatment by an out-of-network physician, the bill would also impose substantial new disclosure requirements on physicians and hospitals, including:

- The plans in which the physician participates and the hospitals where the physician is privileged;
- The anticipated fee a non-par physician will charge the patient for scheduled services must be provided upon request;
- The identity and contact information of other health care providers who may be involved in the patient's care when a non-emergency service is scheduled, including anesthesiology, laboratory, pathology, radiology, or assistant surgeon;
- With regard to scheduled services that will be provided in a hospital, the identity and contact information of other physicians involved in the patient's treatment whose services will be arranged by the treating physician.

(continued on page 6)

### **PRESERVING ACCESS TO OUT-OF-NETWORK SERVICES** (continued from page 5)

This hard-fought battle took over three years and could not have been won without the strong advocacy of many physicians, specifically Dr. Michael Brisman and Dr. Andy Kleinman, to name a few. MSSNY was behind our collective efforts at all times. We also had strong support from our friends in the Senate, especially Senators Skelos, Hannon, and Ball. We also appreciate the input and foresight of DFS Superintendent Benjamin Lawsky, Troy Oeschsner, Special Assistant to the Superintendent and Executive Deputy Superintendent George Haggerty, who worked with the Governor to bring the executive budget forth in the first place. Last, but not least, we need to acknowledge Speaker Silver for his support and leadership in the Assembly to pass these provisions.

I want to emphasize that this accomplishment was only possible because of our ongoing and constructive working relationship with our elected officials. We need to continue the dialogue and continue to be involved in the political process. Thank you to all who have been involved in and supported this important fight. I can assure you, however, more fights loom on the horizon and we need to continue our important work to preserve our profession.

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### **BOOK REVIEW** (continued from page 2)

Having very little knowledge of the sport of crew, despite my father's experience, I was fascinated by the depth of detail that Brown gives us. There is a degree of subtlety to the enterprise which is astounding. First there is the intricate process of dipping the oar at just the right angle, taking a deep but not too deep cut of the water and then explosively, using most of the muscles of the body, to take a long powerful stroke. Then there are the intricacies of the rhythm and the coordination with the rest of the crew – even the slightest perturbation by one crew member will reverberate to all the other members and cost precious seconds. The role of the coxswain, which I never previously understood is described with incredible detail. Finally, the psychology of rowing: there is a tremendous will and internal mental fortitude needed to persevere through a degree of muscle pain and oxygen deprivation which rivals that of any other sport. The relationships among the crewmates with each other and their coaches both on and off the water are constantly threatening to sabotage their efforts. Brown is particularly good in describing the ups and downs of the process by which the team is finally able to meld into a cohesive team.

The denouement is artfully rendered. Throughout the book, the author provides brief contemporaneous descriptions of the Nazi leaders as they prepare the venue to be a spectacular show of their superiority. Adding to the drama, the American crew is put into the worst possible lane and two of their key members become quite ill just before the final race. This book is a real page turner and the perfect antidote to the stress of a long day at the office or the hospital.

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## WELCOME NEW MEMBERS

At the Board of Directors meeting held in April, the following were elected to membership in WCMS and the Academy:

Ritika Arora, MD Diagnostic Radiology Mamaroneck NEIL S. PERLMAN, MD ORTHOPEDICS WHITE PLAINS

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# LEGAL CORNER

News on medical-legal developments affecting physicians and health care professionals

# Patient Recording of an Office Visit

**Question:** Is a patient allowed to record his or her office visit without my consent? Should I allow patients to record office visits?

**Answer:** Most states, including New York and New Jersey, have "one-party consent" laws requiring only the taping party participating in the conversation to be aware of the taping. Therefore, no consent is necessary from the physician being surreptitiously recorded. In an effort to curtail such behavior, many practices take preventative steps such as having in place a written policy prohibiting the use of recording devices during office visits and handing a copy of the policy to patients along with the intake handouts.

When determining whether to allow an office visit to be recorded, certain factors must be weighed. Who is requesting authority to record the office visit (e.g. family, friend, or lawyer)? Why are they asking to record the office visit? Remind patients that not only may they take notes if they need to remember important information but also the conversation, along with all pertinent medical recommendations, is being documented in the medical chart. What are the potential HIPAA implications? Not only are there potential concerns over HIPAA compliance as it relates to the patient recording the transaction, but what are the potential risks that HIPAA information from other patients is recorded?

Although there are no bright line rules governing the recording of patient interactions, it is advisable that office polices be in place to deal with this emerging issue to minimize potential liability issues in the future.

If you have further questions or need assistance drafting or reviewing office policies dealing with the recording or patient interactions, please contact our Managing Partner, Michal J. Schoppmann, Esq. at 1-800-445-0954 or via email at MSchoppmann@DrLaw.com.

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### **PRESIDENT'S MESSAGE** (continued from page 1)

The \$3 trillion per year elephant is the entire health care system. I believe that we can afford it only if we have a national health plan. Economists and all other industrialized countries all agree that what we need is a national health plan.

We already have what it takes:

- Excellent hospitals, empty beds
- Enough well-trained professionals
- Superb research
- Current spending is sufficient

Medical societies and we physicians must recognize this and make sure our voices are heard as we design a national health program.

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# SAVE THE DATE

## The Annual Academy Golf Outing, Dinner and Fundraiser will be held on **October 2, 2014**, beginning at 12:30 p.m. *at Westchester Country Club*

Rye, NY

The Westchester County Medical Society would like to wish its members and their families a Happy Easter and Passover



# Hospice Is About Living

Doctors throughout the county can depend on Hospice & Palliative Care of Westchester to provide their patients with exceptional end-of-life care. As an essential resource for individuals with any life-limiting illness – offering the highest level of medical care, pain management and symptom control while enhancing quality of life – Hospice & Palliative Care of Westchester welcomes your early referrals. We are proud to continue to be "Westchester's Hospice of Choice" and invite you to contact Hospice & Palliative Care of Westchester to take advantage of its full spectrum of health care programs and services.



Mark Fialk, MD Medical Director Hospice & Palliative Care of Westchester



Gary Tatz, MD Pediatric Medical Advisor Comfort Crew

### The Hospice Advantage

- Dedicated team of physicians, nurses, and social workers providing expert medical care and support to patients of all ages and diagnosed with any life-limiting illness
- Patient care, wherever they reside: private residences, assisted living facilities or skilled nursing facilities
- Fulfilling complementary programs including therapeutic massage, music therapy, art therapy, reflexology, pet therapy and reiki
- Expanded Pediatric Palliative Care Program, "Comfort Crew," the first formalized palliative care program for children in Westchester
- · Bereavement services supporting patients' families for up to 13 months following the loss of a loved one
- Hospice & Palliative Care of Westchester continues to work with the patients' personal physician to keep them involved with their patients' care



& Palliative Care of Westchester

914-682-1484 Hospice & Palliative Care of Westchester 311 North Street • Suite 204 • White Plains, NY 10605 www.hospiceofwestchester.com



Hospice & Palliative Care of Westchester (HPCW) is proud to be celebrating its 22<sup>nd</sup> year of providing exceptional hospice services to patients and their families throughout Westchester County. We are an integral member of the Westchester community providing our quality end-of-life care that emphasizes compassion, dignity, and respect.

HPCW's team of medical professionals, and professionally trained volunteers, provides patients of all ages and their families with the care and support they need as they face **any** life-limiting diagnosis, including Alzheimer's, heart or lung disease, ALS, and cancer. Patients are cared for wherever they reside – in a private residence, an assisted living facility or a nursing home. Using the latest innovations in pain management and symptom control, HPCW's skilled team makes sure that each patient achieves the highest level of comfort and quality of life.

Most people think HPCW only provides medical, emotional, and spiritual care to our patients, but we also offer, at no cost to our patients, fulfilling programs encompassing the entire health care spectrum. These programs include The Anna & Louis H. Shereff Caregiver and Complementary Care Program, which offers therapeutic massage, music therapy, art therapy, pet therapy, reiki, and a bereavement program which supports the patient's family for 13 months following the death of their loved one.

Hospice & Palliative Care of Westchester also announced the recent expansion of its pediatric palliative care program named Comfort Crew. The Comfort Crew staff works with the child's own pediatrician to create an individualized plan of care that ensures the highest quality of life for the child and their family.

Most insurance carriers including Medicare and Medicaid cover hospice services, and the hospice team works with the patients' own physician whose services are under this benefit. It is a rare example of the health care system at its best: A benefit that is all encompassing in its payment that cares for the totality of the patient and family.

Changes to New York Medicaid will cover all medically necessary curative services, in addition to palliative care, for children under 21 who receive hospice care. This change in coverage policy complies with recent changes to the federal Affordable Care Act entitled Concurrent Care for Children.

As Medicare's best kept secret, hospice needs to be shared with more people. These services enable people to live as fully and comfortably as possible in familiar surroundings.

The sooner patients are referred to HPCW, the sooner they will have access to its broad spectrum of healthcare programs and services. HPCW's mission is to strive to provide extraordinary and dignified comfort, care and compassion to individuals and families facing a serious or life-limiting illness. The medical professionals ensure that respect and dignity are paramount with their expert care. Throughout its 22-year history, the mission of HPCW has remained the same and is the hallmark of its role as the "Hospice of Choice" in Westchester County.

Please visit us at <u>www.hospiceofwestchester.com</u> to view the newly released HPCW video.

## THE NEW YORK STATE PHYSICIAN PROFILE keith w. servis acting deputy director, office of primary care & health systems management, office of professional medical conduct

Physicians who are licensed and registered to practice in New York State must create and periodically update a profile within the NYS Physician Profile (NYPP). The NYSDOH, through the Office of Professional Medical Conduct (OPMC), is taking an active role in assisting physicians in complying with the statutory requirements related to the NYPP.

The New York Patient Health Information and Quality Improvement Act of 2000 required the DOH to create a statewide health information system designed to provide greater public access to information about medical providers, practitioners, and health plans. As part of this effort, information about licensed and registered physicians continues to be available via the NYPP website at www.nydoctorprofile.com and a consumer call center.

Once a physician has registered with the New York State Education Department, an initial profile is created by DOH. Newly-registered physicians are sent letters reminding them of their obligation to review their pre-populated profile by providing mandatory information and correct any inaccuracies. Physicians may review their profile online or request a paper copy. For assistance in completing the profile, physicians may call the Physician Help Desk at 1-888-338-6998 between the hours of 8:30 a.m. and 4:45 p.m., Monday through Friday.

To complete their initial profile online, physicians can use their Health Commerce System (HCS) account. This is the same account that physicians use to order their prescription pads and access information on dispensed controlled substances.

To establish an HCS account, physicians may log on to https://apps.health.ny.gov/pub/ top.html. For assistance with an account, physicians may call the HCS Support Unit at 1-866-529-1890, option 1. Once logged onto their HCS account, physicians can use the Online Help File to answer questions about the Physician Profile mandatory and optional fields.

Physicians who prefer to complete or update their profile by hand editing a paper copy may call the Physician Help Desk at 1-888-338-6998 and request a copy of their profile.

Public Health Law Section 2995-a requires each physician to update his or her profile information <u>within six months prior to the expiration date of their physician registra-</u><u>tion period</u>, as a condition of registration renewal under Article 131 of the education law.

Physicians who are required to complete or update their profile and do not do so, or who knowingly provide materially inaccurate information to the NYPP, **may be guilty of professional misconduct.** The OPMC seeks to work with physicians to ensure compliance and avoid any misconduct issues.

The OPMC receives a monthly report that identifies physicians who were required to initialize or update a profile during the previous month, but did not do so. When the report is received,

(continued on page 14)

## WCMS Board Highlights — April 2014

At its meeting on April 3, 2014, the WCMS Board...

- Welcomed David J. Birnbaum, Senior Director, Investments, Oppenheimer & Co., Inc. Mr. Birnbaum discussed the comprehensive financial management and investment services available through Oppenheimer to members of the WCMS and his interest in having Oppenheimer become a preferred business partner of the WCMS. The Board thanked Mr. Birnbaum for his excellent presentation, generous offer of services and benefits, and sponsorship of the Board meeting. A final decision on the specifics of partnership was referred to the WCMS Executive Committee.
- Heard from the President, Robert Lerner, MD, who reported that the Executive Committee met immediately prior to the Board Meeting and discussed the following:
  - That Dr. Lerner and Brian Foy, Executive Director, recently met with the Westchester/Bronx Psychiatric Society to discuss improved collaboration and coordination between the two organizations;
  - That WCMS Leadership recently presented to the Medical Board of Phelps Memorial Hospital regarding institutional membership with WCMS/MSSNY.
  - That plans to present ICD-10 educational programs/workshops for members will continue despite the one-year delay in implementation.
  - Approved the purchase of two tickets for the president and his wife to attend the Visiting Nurse Services of Westchester Annual Gala on May 15 in recognition of VNSW's long-standing support of the WCMS.
- Welcomed Paul Savage, Iona College, who discussed the newly-established "Center for Health Care Analytics" that he will direct at Iona. Mr. Savage stated that he looks forward to working with the WCMS and other partners in health care to use data to support efforts to improve healthcare delivery and cost-effectiveness through population health management strategies.
- Heard from Joseph Tartaglia, MD, President Westchester Academy of Medicine, who reported that the 2014 Westchester Science and Engineering Fair was a huge success. An article will be published in the May newsletter along with pictures and features on the award winners. He encouraged Board members to volunteer as judges.
- Approved the Report of the Membership Committee welcoming two (2) new members to the WCMS and Academy (see page 6).
- Heard from Thomas Lee, MD, Legislative Committee Chair, regarding the recently approved budget in Albany. WCMS and MSSNY achieved an important victory in preserving patient access to out-of-network physician services (see page 4). The Board thanked Dr. Lee for his outstanding leadership in making this important legislation a reality.

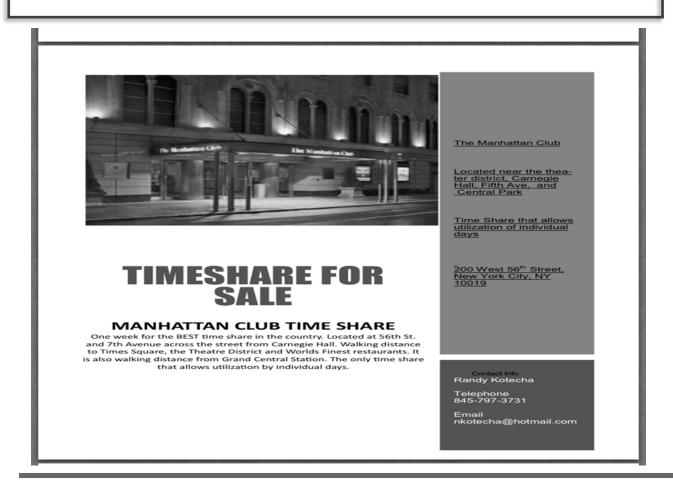
### **NEW YORK STATE PHYSICIAN PROFILE** (continued from page 12)

OPMC will contact the physician, notifying him/her of the current failure to comply, with the hope of resolving the matter. The physician will have 30 days to come into compliance with the profile requirements. Physicians who fail to comply within 30 days of notification from OPMC will be referred to the Board for Professional Medical Conduct for disciplinary action. The OPMC encourages physicians to comply with the profile requirements, to advance our common goal of providing the public with current, accurate information that can be used to inform patient decision-making.

If you have any questions regarding the profile requirements, please contact the Physician Help desk at 1-888-338-6998. We are happy to speak with you regarding the NYPP.

**Are You Receiving WCMS Email?** 

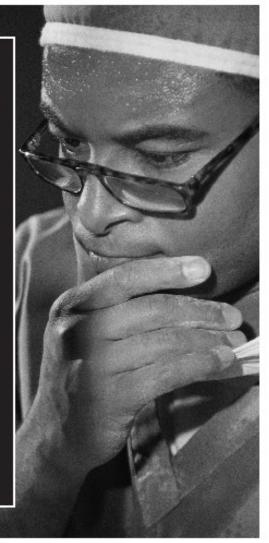
Your Medical Society regularly communicates timely information to members via email. If we do not have your correct email address, you are missing out on important updates. We also respect your privacy and do not send excessive email, *nor do we share* your address with any outside entities.



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