WESTCHESTER PHYSICIAN

February 2011 Vol. 21 No. 6

Tort Reform Now?

Joseph Tartaglia, MD, FACC, President
Robert Ciardullo, MD, Treasurer
Westchester County Medical Society

The President's State of the Union Address contained a landmark concession. When talking about reining in the cost of Medicare and Medicaid, the President said, "… I'm willing to look at other ideas to bring down costs, including one that Republicans suggested last year — medical malpractice reform to rein in frivolous lawsuits." ***Is there a chance that we could get some reform medicine at the national level to contain a half century of a raging malpractice epidemic and runaway jury verdicts?*** Caps on pain and suffering seem to be the only immediate remedy that effectively reduces premiums. States like California and Texas have led the way in this regard and to this day there has been no public outcry about unfair jury awards of malpractice victims in those states. Yet, President Obama, in his address to the AMA last year suggested that the kind of reform he would be willing to consider was the idea of immunity from liability for those doctors who practice evidence-based medicine within guidelines, an idea that may sound good on paper, but which actuaries don't think will reduce costs since guidelines are always changing, are subjective and debatable. Still, the republicans will get their chance to propose legislation for tort reform. The recent republican victories in the House may make Congress more willing to compromise on this issue since there is universal unhappiness with the runaway cost of the entitlement programs, Medicare and Medicaid, and reducing the malpractice expense component of RBRVS would be a cost free way of reducing spending for these programs. Furthermore, it has been estimated that defensive medicine costs the programs anywhere from 55.6 billion a year (Journal of Health Affairs Sept.2010) to 200 billion a year (2006 study by Price Waterhouse Coopers.)[1]

Physicians love to point out the absurd ethics of our current tort system. Donald J. Palmisano, MD, JD, FACS, a past president of the AMA, has testified before the House Judiciary Committee, which instituted hearings on Medical Liability in Congress this January. The current system is extremely wasteful. Dr. Palmisano points out that 82% of the suits against doctors are closed without payment and the doctor wins 87% of the cases that go to trial. He commented that there is little or no peer review for attorneys and, the few times they do win, the winnings are immoral. For example, he said, "We don't charge the plaintiff's attorneys a percentage of their lifetime earnings when we save their lives. [They] should have the same ethical standards." He suggests a possible solution, "For clients without money, maybe government legal care

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A Look Inside . . .

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Suite LN-01
White Plains, NY 10604
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Mark Your Calendar

March 3, 2011
WCMS Board Meeting—6:30 pm

March 7, 2011
MSSNY Legislative Day Webcast at WCMS
5:30-7:30pm

March 8, 2011
MSSNY Legislative Day
Albany, NY

March 29, 2011
ACOs—What They Are, What They Are Not and What They May Be—6-8 pm
White Plains, NY
(Details to Follow)

April 8-10, 2011
MSSNY House of Delegates
Westchester Marriott
Tarrytown, NY

April 14, 2011
WCMS Board Meeting—6:30 pm

May 5, 2011
WCMS Board Meeting—6:30 pm

June 9, 2011
WCMS Annual Meeting
(details to follow)

**All meetings held at WCMS offices unless otherwise specified*

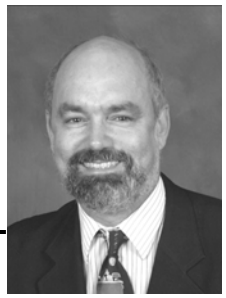
Newsletter Submissions

We encourage our members to submit articles, letters to the editor, announcements, classified ads, members in the news, etc. for publication in the *Westchester Physician.*

The deadline for the March 2011 issue is February 28th.

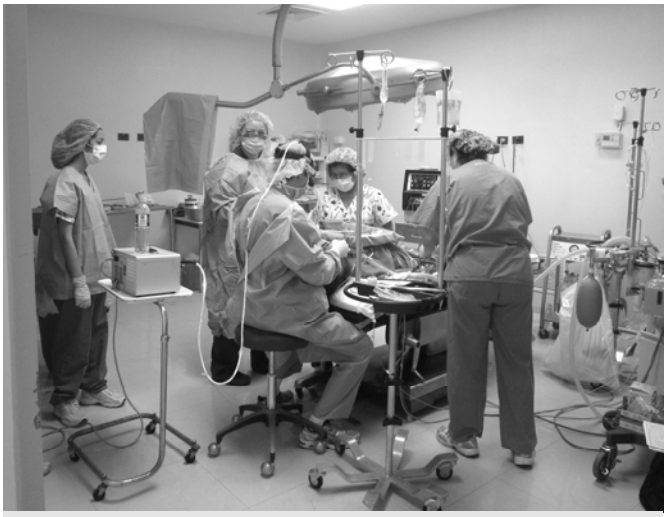
Please email your submissions for review to Brian Foy, Executive Director at *bfoy@wcms.org.*

FROM THE EDITOR
El Salvador



By Peter Acker, MD

It began as a casual inquiry as, so often, these sorts of things do. Dr. Elizabeth Ryan, an anesthesiologist at Greenwich Hospital, contacted me in my capacity as chair of the Department of Pediatrics. "Do you think someone in your department may want to go on a surgical mission to El Salvador?" I replied, "Sure," and made a mental note to pass on the info to the pediatricians in my department. A day or so later, it occurred to me that I would like to go. Furthermore, I thought, wouldn't it be fun to ask my premed daughter to come as well. I contacted Dr. Ryan and offered my services as part of a package deal – father and daughter.



Dr. Steven Salzer in the OR.

Soon I found myself in the midst of preparations. The group was to include an additional anesthesiologist, Dr. Tara Doherty, from the Maria Fareri Children's Hospital, Dr. Lori Dyer, a pediatric urologist, and Dr. Steven Salzer, an ENT surgeon. Two OR nurses from Greenwich Hospital, a recovery room nurse from New Haven, a nurse anesthetist from Cleveland and two non-medical volunteers, who acted as administrators, rounded out the group. As the date for our trip neared and organizational activities became more frantic (gathering myriad supplies, confirming travel arrangements, etc,) I found myself becoming increasingly tense and nervous. Not for the reasons that one might think (one colleague took me aside and cautioned me to avoid being kidnapped by guerillas) – no it wasn't geopolitics that I feared, but the more mundane sorts of things that often plague one before any trip: will I oversleep and miss the plane, will I get along with the other members of the team, what would the personnel in the rural hospital be like, would my daughter find it good experience.

Finally, the day arrived and, of course, to add to my worries, it snowed the night before and we had to drive at 4 in the morning to Greenwich Hospital with the constant thought of sliding off the road. Amazingly, from then on, it was smooth as silk – on time flight, comfortable, short bus ride to our hotel in San Salvador, a sumptuous repast the first night.

Early the next morning, we rode together in a small bus to a small town outside the capital to El Hospital de Maternidad La Divina Providencia, a small maternity hospital housed in a rather ramshackle set of one story buildings on

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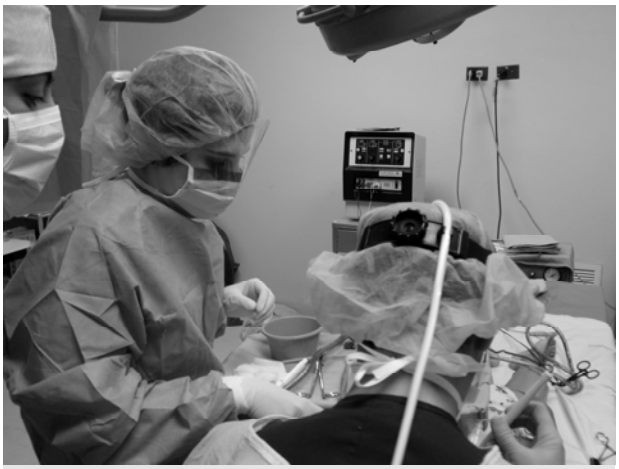


Jessica Acker assists in operating room.

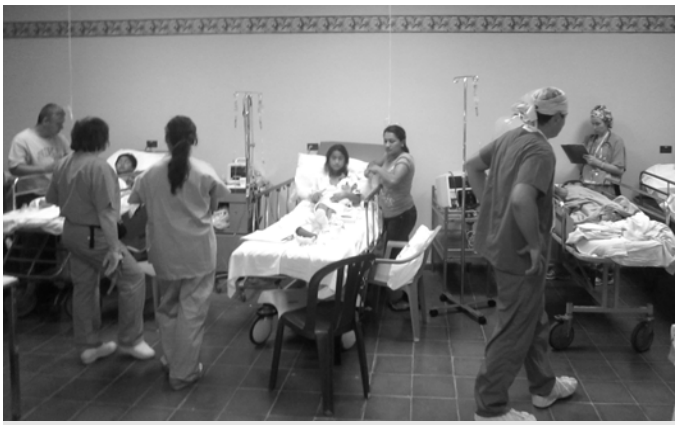
FROM THE EDITOR—El Salvadore *(continued from page 3)*

Dr. Peter Acker with El Salvadorian Nurses

the side of a hill. We were greeted by the head doctor, a group of nurses and a huge crowd of families. We quickly set to work, spending the first whole day evaluating the kids for any surgical or medical contraindications and assessing the necessity for surgery. That evening we constructed a surgical schedule for the week. For the next five days, we worked as a team to get kids into surgery and into recovery. One of the OR nurses broke her foot days before we left which afforded the opportunity for my daughter Jess to quickly learn the broad outlines of scrub nursing. Some impressions: the kids in El Salvador that we saw were almost universally well behaved and friendly and, dare I say it, much more so than the typical Westchester child. The El Salvadorian nurses were incredibly diligent and had a capacity for improvisation most likely fostered by the inconsistent availability of various supplies. The El Salvadorian mothers were like mothers everywhere – devoted to their kids and willing to go to great lengths to help them – some of the patients traveled by bus 8 or more hours over rough roads to get to the hospital – and were very appreciative of all our efforts.

In short it was an incredibly fulfilling experience and I returned energized and enthusiastic about the profession I chose so many years ago. As for my daughter Jess: she got a real taste of what medicine is all about and it served to confirm her choice.♦

NOTE: *The organization that sponsored the trip was **Healing the Children, Northeast, Inc.** All expenses were paid for by the participants, though fundraising helped with the procurement of supplies. Please contact me you want further information about future trips.*



Recovery room.

TORT REFORM NOW?

(continued from page 1)

would be in order, and pay the attorneys a price-fixed amount per hour related to the SGR. Or the attorney could take the case and get paid by the hour if the attorney wins the case. That would bring about some careful evaluation of the case before accepting it. Frivolous suits would drop dramatically."

What would be acceptable reform solutions at the federal level? It is highly unlikely they would propose eliminating contingency fees. Howard Dean, a former Vermont governor and Democratic leader and physician, admitted while writing the Affordable Health Care Act, "The reason tort reform is not in the bill is because the people who wrote it did not want to take on the trial lawyers." The President voted against caps on non-economic damages when the bill was brought to the Senate by former Senate Majority Leader, Dr. Bill Frist. In 2006, he helped to develop, with Hillary Clinton, a bill that would force hospitals and doctors to disclose errors and negotiate compensation directly with injured patients, a bill which could ultimately invite more lawsuits. Considering the President's past statements and actions, it is unlikely, therefore, that caps will emerge as a bipartisan solution for medical malpractice reform. Some measures short of caps have been proposed to control malpractice insurance costs and may be offered as a way to reduce frivolous lawsuits and wasteful litigation.

The first idea would be obtaining a meaningful certificate of merit for a case to be brought forward. This would help to reduce the number of frivolous or non-meritorious cases. If the plaintiff's attorney cannot get an appropriate specialist to review the case, the court should have the authority to appoint a specialist from the roster of board certified practitioners within the area. Such practitioners would be bound to review the case and provided opinion as to the merits of the case. Such a review would serve as jury duty for the doctor involved.

Second, expert witnesses should be qualified and have certification in the specialty question. The expert should be in active practice, and have at least five years of active clinical experience. The identity of the expert should be made known at the outset of the expert being deposed. No contingency fees should be allowed for expert witnesses.

Third, several states have enacted legislation that defendants only be held liable for their portion of liability where there are multiple defendants involved rather than being subject to all portions of liability.

Fourth, legislation to make it easier to counter sue for frivolous lawsuits, or which provide sanctions against lawyers who bring many frivolous lawsuits, would be helpful in reducing the number of such suits. Former North Carolina Senator, and attorney, John Edwards suggested that there should be a "three strikes and you're out," rule. A plaintiff attorney who loses three malpractice suits in a row should be banned from bringing more malpractice cases to trial.

Fifth, medical courts where medical liability cases are heard before a judge who is an M.D. and a J.D., and who is expert in the type of litigation, rather than juries, is another idea that may reduce runaway verdicts.

Sixth, raising the standard of proof from preponderance of evidence to clear and convincing could also help reduce those cases which have the least legal merit.

Lastly, professional societies should have limited immunity from liability when imposing sanctions or expelling members found to have provided false testimony in malpractice cases.

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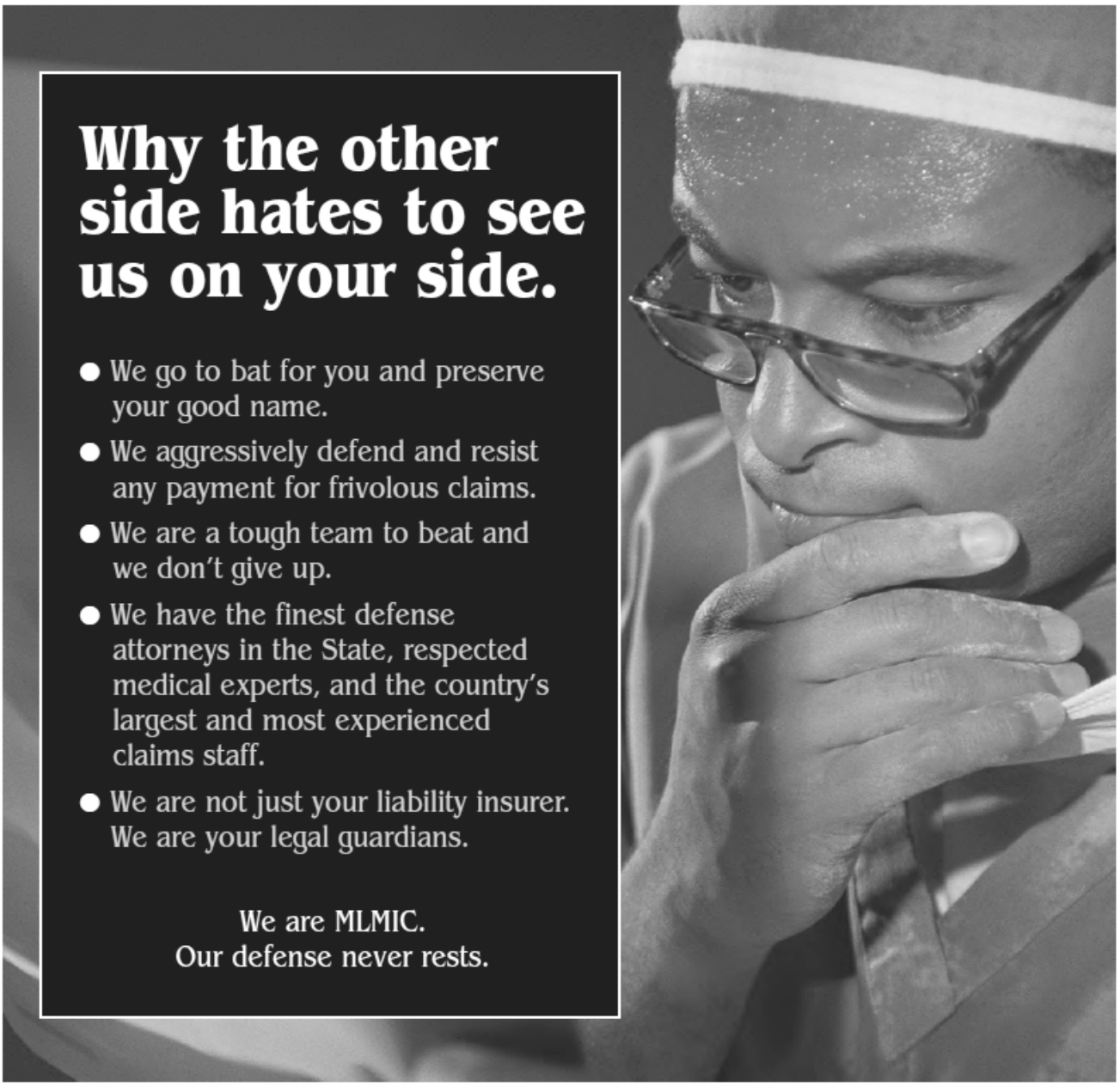

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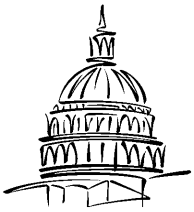


Plan to Participate MSSNY Legislative Day *March 7th and 8th*

MSSNY's Legislative Day will take place on March 7, and March 8, with two components: an Open Forum the evening of March 7, and lobby visits with legislators on March 8. The Open Forum, through web-conferencing, will occur on the evening of **March 7, from 5:30 to 7:30 pm.** MSSNY has invited Governor Andrew Cuomo or his designee, Senator Kemp Hannon and Assemblyman Richard Gottfried, the Chairs, respectively, of the Senate and Assembly Health Committees, and Senator James Seward and Assemblyman Joseph Morelle, the Chairs, respectively, of the Senate and Assembly Insurance Committees. Live and remote attendees are encouraged to submit questions for the participants in advance. Dr. Jerome Cohen, MSSNY Speaker, and WCMS Past-President Dr. Kira Geraci-Ciardullo, MSSNY Vice-Speaker, will ask the questions and moderate the two-way discussion. **If you would like to submit it question, please send it in advance to *lobbyquestions@mssny.org*.**

Westchester Physicians who are unable to attend the session in Albany can participate in the web-conference, which will be held at the WCMS offices in White Plains. Please RSVP to Karen Foy at (914) 967-9100 or *kfoy@wcms.org*.

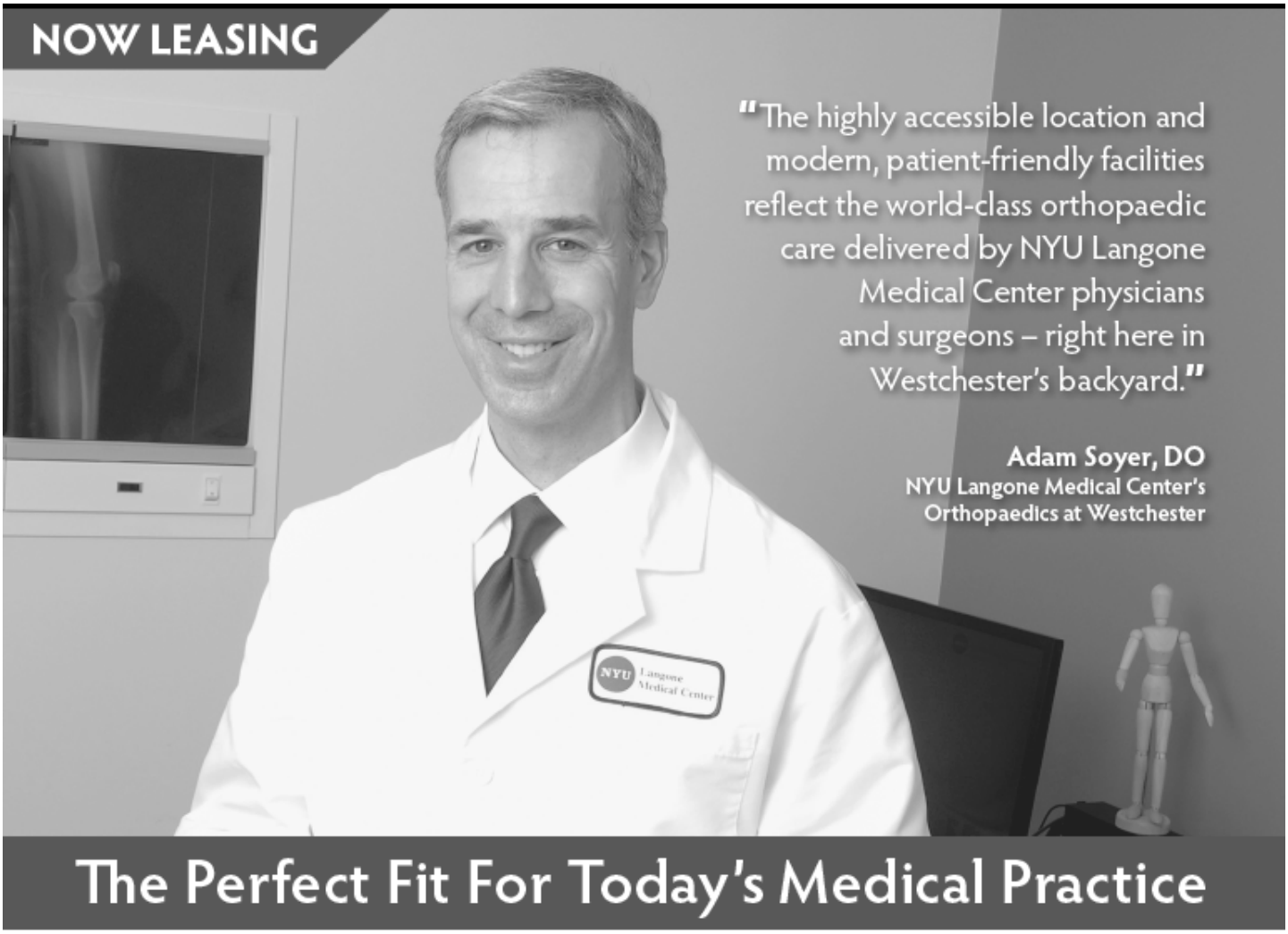
On the morning of March 8, MSSNY staff will be providing a briefing for physicians who attend the session in Albany in person. The briefing will deal with the proposed state budget, medical liability, managed care, scope of practice, and important public health issues. These meetings will be held at the Hampton Inn and Suites in downtown Albany.

If you are interested in traveling to Albany with WCMS leadership on March 8, please contact Brian Foy at (914) 967-9100 or ***bfoy@wcms.org***.

TORT REFORM NOW? *(continued from page 5)*

The sad truth is that, according to the landmark Harvard Practice Study, only a small percentage of injured patients file a claim, and, of the claims filed, there is no relationship between negligence and outcome of the trial. Only the degree of injury predicted outcome. Our current system does not compensate patients injured by malpractice and it inflicts a great deal of collateral damage on competent physicians. In our opinion, the best chance of passing meaningful legislation for tort reform at the national level would be to link it with reducing medical errors and eliminating the need to show negligence. An alternative "no fault" system similar to that used in New Zealand or Scandinavia, which would seek to swiftly compensate victims of medical errors, and then only for economic damages, may dissuade wronged patients from turning to the courts for redress. Such a system would compensate victims in a more uniform and efficient manner without placing blame on the provider. If this is the kind of reform President Obama is talking about, we should pursue this idea and try to work out a compromise, because any change to improve the current climate should be welcomed by all physicians. ♦

[1]In a study published in the September issue of the journal *Health Affairs*, the cost of malpractice litigation and defensive medicine combined at $55.6 billion annually in 2008 dollars, or 2.4% of total healthcare spending. A 2007 study by the conservative National Center for Policy Analysis estimated that the annual cost of defensive medicine was between $100 billion and $178 billion in 2005. A third 2006 study by Price Waterhouse Coopers reported that the cost of malpractice insurance and defensive medicine exceeded $200 billion.



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MSSNY Annual Meeting
April 8-10, 2011- *Tarrytown, NY*

All WCMS members are welcome to attend and participate in the MSSNY Annual Meeting, set for April 8-10, 2011, at the Westchester Marriott in Tarrytown. You do not have to be a delegate to MSSNY to attend this meeting! Any member may attend and speak at any of several Reference Committees (scheduled for April 8, 9:30am - Noon) and sit in on the deliberations of the MSSNY House of Delegates (all day Saturday, April 9 and Sunday morning, April 10) as it debates/establishes policy based upon resolutions submitted by physicians from all over NY State. The Presidents' Dinner on Saturday evening, April 9 is also open to all members of MSSNY.

If you are interested in attending the MSSNY Annual Meeting, please contact Brian Foy, Executive Director, at 914-967-9100 or bfoy@wcms.org so you can be registered in advance.

MSSNY Poster Symposium Seeks Judges

If you're coming to the House of Delegates in Tarrytown – or just live in the neighborhood – and are free on Friday afternoon, April 8, from 2 – 5pm, please consider participating as a judge at the **MSSNY Resident and Fellow Section Poster Symposium**. It's always an exciting, lively event!

Please contact ***sbennett@mssny.org*** or call (516) 488-6100 ext. 383, if you're interested.

NYMC Student-Run Clinic Needs Physician Volunteers

La Casita de la Salud (which means "The Little House of Health") is a clinic run by NYMC students and has offered medical services to the uninsured people of East Harlem since October, 2005. It is located in conjunction with La Clinica del Barrio, an existing Metropolitan Hosptial satellite clinic at 413 East 120th Street.

In addition to providing basic medical care, La Casita also serves as a teaching facility to enhance medical education. While they have a seemingly unlimited number of eager students, there are only a few devoted physicians who volunteer on a regular basis.

La Casita is looking for more attending physicians to help keep the clinic open on a weekly, reliable schedule to provide more continuous and regular care for their patients.

Two Clinical Care teams work each Saturday. A Clinical Care team, consisting of two students, completes an interview and physical exam, formulates a preliminary management plan, and then presents the case to the attending physician. The attending physician sees each patient to confirm the assessment and plan. Malpractice is covered under Metropolitan Hospital's indemnification agreement with New York City.

They need your help! As a volunteer physician, you can be a positive role model for future physicians by supervising and mentoring student teams.

To get involved, please contact one of the following Physician Coordinators:
Becky Lou @ *becky_lou@nymc.edu* or Breige O'Donnell at *mary_odonnell@nymc.edu*.

Physician Judges Wanted

We are still in need for physicians to serve as judges for the Westchester Science & Engineering Fair 2011. The Westchester Academy of Medicine provides sponsorship for the "Fourth Place in Category" awards and the prestigious awards for the top projects in Medicine and Health.

Westchester Science & Engineering Fair (WESEF) provides a forum for high school students to showcase their scientific research studies and compete for scholarships and prizes, including a grand prize all-expenses paid trip to the INTEL® International Science & Engineering Fair. Students prepare a poster detailing their projects which, in most cases, have involved complex research conducted under the guidance of a professional researcher in their field of interest, and deliver formal presentations to scientists, business leaders, and the general public.

The top 8 individual projects and top 4 teams are awarded the honor of representing Westchester & Putnam counties in the INTEL® International Science & Engineering Fair, where they will compete with over 1500 top high school research students from over 50 different countries worldwide! Year after year, WESEF Finalists compete and win against the best High School research students

Since its inception in 2000, the WESEF organization has grown tremendously; last year almost 200 students participated in the fair from over 23 different schools.

This year's fair will be held on Saturday, March 12, 2011, at Sleepy Hollow High School. If you would like to serve as a judge, please call or email Karen Foy at the Medical Society at 914-967-9100 or kfoy@wcms.org.

Be Proactive - Don't Delay Your Enrollment in PECOS!

Do you order laboratory tests, radiology services, other types of diagnostic tests, diabetes self management training, medical nutrition therapy or durable medical equipment or supplies?

If the answer is yes, your National Provider Identifier (NPI) is entered on claims sent to Medicare as an ordering/referring physician. The implementation of the ordering/referring edits has been delayed. However, it is coming and when it does, if your individual NPI is not in PECOS, then your payments for claims that require an ordering/referring physician will **stop**. Additionally, if your practice will be registering for the Electronic Health Record (EHR) Incentives in 2011, you must also have a PECOS record.

If you order or refer items or services for Medicare beneficiaries and you do not have an enrollment record in the Provider Enrollment, Chain and Ownership System (PECOS), you need to submit an enrollment application to Medicare.

The fastest, easiest way to enroll is through the internet-based PECOS. To learn more about the implementation of the ordering/referring edits, please review the revised Centers for Medicare & Medicaid Services *Medicare Learning Network (MLN) Matters Special Edition* article SE1011.

Accountable Care Organizations
Panacea or Placebo?

By Mathew J. Levy, Michael J. Schoppmann & Stacey Lipitz Marder

Since the passage of the Patient Protection and Affordable Care Act of 2010 (PPACA) brought about the introduction of a previously heretofore unheard of concept known as a "accountable care organizations (ACOs)," there has been a growing conversation in the medical community centered around two primary questions - what are ACO's and what they foretell as to the future of medicine? ACOs were introduced as a Medicare savings program, intended to enhance quality, improve beneficiary outcomes and increase the value of care through incentives to healthcare providers. Although PPACA mandates that the federal government establish an ACO-based Medicare shared savings program by January 1, 2012, at this juncture there has been little guidance issued by the federal government with respect to these ACOs and how they will be structured.

In fact, until the demonstration project is completed (which will be a minimum of 3 years) and regulations are issued offering more guidance, it is unlikely that ACOs will truly impact healthcare systems in the near future. Parsing through the rhetoric and alarmism, it is important for physicians to understand that although many new ideas have been proposed with respect to Medicare (ACO's only being one of them), at this time, physicians are in no way precluded from continuing to care for Medicare patients even if they are not currently associated with an ACO. As such, physicians should be cautious and take this period of flux to truly understand and evaluate the risks and costs associated with ACOs prior to joining one or providing capitalization to an entity (i.e., an IPA) that will never even qualify to serve as an ACO.

What is an ACO?

An ACO is a group of providers or a network of groups, often affiliated with a hospital, which agrees to be "accountable" for the quality, cost, and overall care of Medicare beneficiaries who are enrolled in the traditional fee-for-service program (as opposed to an HMO in which the "accountability" rests with the insurer instead of the providers). In the event that the ACO provides exceptional or low cost care, it will be rewarded with a share of the savings as the result of efficiency the entity gains. Once again, physicians should take note - the specific quality performance standards which an ACO will have to meet have yet to be determined.

What requirements must be met to be an ACO?

As per PPACA, in order to participate as an ACO, the ACO must meet the following requirements: (1) Have a formal legal structure to receive and distribute shared savings; (2) Have a sufficient number of primary care professionals for the number of assigned beneficiaries (to be 5,000 at a minimum); (3) Agree to participate in the program for not less than a 3 year period; (4) Have sufficient information regarding participating ACO health care professionals as the Secretary of the Department of Health and Human Services (HHS) determines necessary to support beneficiary assignment and for the determination of payments for shared savings; (5) Have a leadership and management structure that includes clinical and administrative systems; (6) Have defined processes to (a) promote evidenced-based medicine, (b) report the necessary data to evaluate quality and cost measures (this could incorporate requirements of other programs, such as the Physician Quality Reporting Initiative (PQRI), Electronic Prescribing (eRx), and Electronic Health Records (EHR), and (c) coordinate care; and (7) Demonstrate it meets patient-centeredness criteria, as determined by the Secretary of HHS.

Furthermore, the statute lists the forms of organizations that may become eligible to participate as an ACO which are as follows: (1) Physicians and other professionals in group practices; (2) Physicians and other professionals in networks of practices; (3) Partnerships or joint venture arrangements between hospitals and physicians/professionals; (4) Hospitals employing physicians/professionals; (5) Other forms that the Secretary of HHS may determine appropriate. Therefore, before any physician joins forces with an ACO, it is imperative that he or she evaluates and understands the implications associated with the different models. For instance, in the event a physician

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Accountable Care Organizations—*Panacea or Placebo?*

(continued from page 11)

joins an ACO in which a hospital employs the involved physicians, the joining physician needs to understand that he/she will be giving up his/her autonomy and will serve the ACO strictly as an employee of the hospital. As a result, physicians contemplating retirement and/or physicians who are no longer interested in the stress of running a practice may see this as a viable option., however, physicians with a more entrepreneurial perspective may well find the ACO too limiting – both financially and professionally.

What are the legal Implications associated with ACOs?

As noted above, the Department of Health and Human Services (HHS) has yet to issue any regulations governing ACO's, which has left medicine with minimal guidance as to the specifics to govern the creation, formation and maintenance of ACOs. Further, it is not expected that any such regulations will be published in the near or even proximate future, as the federal government has only recently held its first public workshop to obtain comments and ideas from the legal and medical community. Amongst the commenters were the American Medical Association (AMA), Federal Trade Commission (FTC), and American Health Lawyers Associations (AHLA), in addition to several other leading organizations from the medical and cross-related communities.

Regardless of the eventual specifics, the current statute foretells that any design of ACO organizations will certainly implicate several critical state and federal rules and regulations, including, but not limited to, federal antitrust laws, fraud and abuse statutes (stark and anti-kickback), etc. Interestingly, to facilitate the establishment of ACOs, PPACA grants the Secretary of HHS the right to waive certain provisions of the fraud and abuse laws. However, since HHS has yet to promulgate these regulations, it is unclear whether the provisions of the fraud and abuse laws will indeed be waived or to what degree. As such, physicians should be extremely cautious with respect to joining an ACO as an improperly created entity could well expose the physician to potential anti-trust and/or fraud and abuse scrutiny.

What are the practical implications involved with joining an ACO?

Although many physicians are rushing to join quasi-ACOs as the result of scare tactics and starkly bad advice, the medical community needs to act with great caution as there are not only significant legal risks but also unprecedented anticipated costs associated with the formation of an ACO. Specifically, even the barest of structures will carry enormous capitalization costs, requiring new technologies, sophisticated consulting expertise and advance funding for staff and overhead.

Furthermore, in order to meet the statutory requirements for a "compliant" ACO, physicians will have to truly integrate their practices, both clinically and financially. For many physicians this is a daunting task and not an attractive option. However, any degree of non-compliance will quickly be revealed in either financial failure or investigative prosecution.

Conclusions:

In conclusion, while ACOs are the current "practice model of the day", their future (much like the PHO's of the past) are yet to be defined, realized or proven true. Therefore, physicians need to take a step back before leaping into this new foray. There is no urgency with respect to joining an ACO at this time especially since not even the regulations have been developed nonetheless published. With that being said, it is in every physician's best interest to hold off before joining an ACO until this additional guidance is issued so that they can ensure that the ACO under consideration is actually in compliance with all applicable healthcare rules and regulations. Certainly, physicians should take this time to explore and weigh the different ACO options as they present themselves but do so in order to be ready to act under the additional guidance yet to be provided by the federal government – not expend large amounts of precious capital with little guarantee of any return. ♦

Kern Augustine Conroy & Schoppmann, P.C., Attorneys to Health Professionals, www.drlaw.com has offices in New York, New Jersey, Pennsylvania and Illinois. The firm's practice is solely devoted to the representation of health care professionals. Any of the authors may be contacted at 1-800-445-0954 or via email - kacs@drlaw.com.

WCMS Board Highlights

January and February 2011

Brian Foy, WCMS Executive Director

At its regularly scheduled meetings in early January and February, the Board...

- Tabled a proposal to overhaul and completely redesign the WCMS web site in favor of a alternate, unexpected proposal offering a significant discount in overall cost. This new proposal is being pursued by staff and a full report will be presented at the March meeting. The new target date for launch of a new WCMS web site is April 15, 2011.
- Approved an increase in fees the Academy charges hospitals and other entities for joint-sponsorship of Category I CME programs, effective January 1, 2011. The new fee is $200 per credit hour and is discounted after reaching 35 hours of annual CME and for recurring programs (ie, tumor boards, grand rounds, etc.). The Academy Board deemed the cost necessary to offset the administrative costs associated with operating and maintaining a high volume CME program.
- Approved the Reports of the Membership Committee welcoming eleven new members to the WCMS and Academy (see page for listing of February members).
- Approved the 2011 WCMS Budget as recommended by the Committee on Budget and Finance. The budget reflects a renewed commitment to increasing membership and value while at the same time reducing overall expenses.
- Authorized staff to engage MSSNY and the New York Workers' Compensation Board to present a workshop on the newly adopted Medical Treatment Guideline as soon as feasible.
- Approved the following future 2011 Board Meeting Dates: March 3rd; April 14; May 5th; and June 9th (Annual Meeting).
- Approved, pending the negotiation of a final agreement, the acceptance of Microwize Technology, Inc., as a new "preferred business partner" of the WCMS. Microwize, headquartered in New Jersey with offices located throughout the NYC metropolitan area, is a value-added re-seller of medical billing and EMR software. Microwize will offer significant discounts in pricing to WCMS members.
- Approved WCMS co-sponsoring a member social in conjunction with the New York Medical College (NYMC) Medical Student Section on Friday, February 25, 2011, from 5:30pm-7:30pm. The social will feature several WCMS members who make their own wine and the wine tasting club of NYMC. All members are encouraged to attend this event (no charge) and enjoy an evening of friendship and interaction with medical students.
- Agreed to host an Open Forum on Monday, March 7th from 5:30pm-7:30pm at the WCMS Office. A webcast of the Legislative Forum being sponsored by MSSNY from Albany will be featured. All members are welcome as MSSNY expects several prominent Legislators to address questions from MSSNY members, including a presentation by Governor Cuomo.
- Approved three resolutions for submission to MSSNY in preparation for the MSSNY House of Delegates meeting, April 8-10, 2011 at the Westchester Marriott in Tarrytown. All resolutions will be published in the March issue of the Westchester Physician.
- Received an update from Andrew Kleinman, MD, Chair, WCMS Committee on Socio-medical Economics, on the grassroots advocacy by physicians both locally and around the state in response to the decision by several managed care payors to reduce out-of-network physician reimbursement to a Medicare-based fee schedule as opposed to a usual and customary fee schedule. This action will significantly increase patient out-of-pocket expenses and could put many physician practices in serious financial jeopardy. WCMS is collaborating with local/state specialty groups and MSSNY to seek immediate legislative regulatory remedies. ♦

Legislative Updates

ASSEMBLY HEALTH COMMITTEE ADVANCES COLLECTIVE NEGOTIATION LEGISLATION

Legislation (A.2474, Canestrari/S.3186, Hannon) to permit independently practicing physicians the ability to collectively negotiate patient care terms with health insurance companies, under close state supervision, was favorably reported from the Assembly Health Committee to the Ways and Means Committee. All members of the committee voted for the legislation. The bill was also introduced by Senator Hannon this week in the Senate and referred to the Senate Health Committee.

With nearly 80% of the enrollees in the commercial managed care market in New York State enrolled in just six health insurance behemoths, and most regions of the state dominated by just one or two health plans, most physicians face "take it or leave it" contracts that do not afford them any realistic ability to negotiate important plan participation terms. Such market domination permits health plans to take a number of steps adverse to physicians and patients, such as imposing burdensome time-consuming pre-authorization protocols when patients need specialized care or prescription medications, conducting abusive and costly extrapolation audits, and arbitrarily reducing payments.

Enactment of collective negotiation legislation is one of MSSNY's highest priorities for the 2011 Legislative Session. All physicians are urged to contact their legislators to urge support for this measure. Physicians can send a letter to their legislators in support of this measure from the MSSNY Grassroots Action Site by going to ***http://capwiz.com/mssny/issues/alert/?alertid=24056501&type=ST&show_alert=1***

BILL TO EXPAND SCOPE OF ORAL AND MAXILLOFACIAL SURGEONS REINTRODUCED IN BOTH HOUSES

A.2820 (Morelle)/S.3059 (Libous, Klein, Maziarz), a bill that would permit oral and maxillofacial surgeons, certified by the department, to perform a wide range of medical surgical procedures involving the hard or soft tissue structures of the maxillofacial area, has been reintroduced in both the Senate and Assembly. Unlike physicians who perform office-based surgery and whose offices must be accredited by one of three national accrediting agencies, oral and maxillofacial surgeons could perform surgery, including complicated plastic surgery procedures, in their offices without the office being accredited. MSSNY, together with many specialty societies and the American Medical Association and other national associations, strongly opposes this legislation. **Physicians are urged to go to the MSSNY Grassroots Action Center page, where you will find a letter which you can send to your Senator and Assembly Member to express your opposition to the bill.**

PEER REVIEW PROTECTION LEGISLATION INTRODUCED

Legislation (A.590, Gottfried/ S.1207, Hannon) to extend confidentiality protection to all statements made by persons in attendance at peer review committee meetings will be considered by the Senate Health Committee next week. The Assembly companion was recently reported by the Assembly Health Committee to the Assembly Codes Committee. The measure would close a loophole which exists in the law that allows disclosure of such statements in the event that the person who made the statement becomes a party to a subsequent proceeding involving the matter reviewed at the peer review session. The bill is the same as in previous years which narrowed the focus of the measure to peer review conducted in a hospital setting and created a new element of physician misconduct for the failure to "cooperate and participate reasonably and in good faith in the quality assurance, incident reporting and peer review programs" in such settings.

COMPREHENSIVE MEDICAL LIABILITY REFORM LEGISLATION RE-INTRODUCED

Assemblyman Robin Schimminger (D-Erie County) has re-introduced the "Medical Liability Reform Act", **A.4381.** The bill would enact a number of important provisions to control the outrageously high cost of liability insurance that physicians must pay in New York State, costs that if left unaddressed will continue to exacerbate existing access to care difficulties across New York State.

Provisions contained within the bill include: a $250,000 cap on non-economic damages in medical liability actions; requiring a physician consulted for a Certificate of Merit necessary for the initiation of a lawsuit to sign an affidavit; assuring that defendants in medical liability actions are only responsible for their proportionate share of fault; and requiring the disclosure of the identity of an expert witness who will testify in a medical liability action.

After two years of legislatively enacted rate freezes, medical liability insurance premiums were permitted by the Superintendent of Insurance in July 2010 to be increased by an average of 5%. For some specialists in some regions of New York, the increase was close to 9%. These increases are on top of the 55-80% increases in premiums paid by New York's physicians from 2003-2008, bringing the premiums paid by many specialists in New York to **amounts in the hundreds of thousands of dollars**. These exorbitant costs are unsustainable.

(continued on page 15)

Legislative Updates *(continued from page 14)*

As part of MSSNY's presentation to the Governor's Medicaid Re-Design Team, it was noted that as New York struggles to identify ways to address the $10 billion Budget deficit, we can no longer tolerate the excesses of a failed medical liability adjudication system. One way to reduce the extraordinary Medicaid cost burden to our State would be to better contain the liability costs facing physicians, hospitals and indeed, all health care providers. Not only would this reduce direct liability insurance costs, it would also reduce the very significant and well-documented costs of defensive medicine. Co-sponsors of this important legislation include Assembly members: Magee, Reilly, Tobacco, Kolb, Barclay, Castelli, Crouch, Galef, Hawley, J. Miller, and Towns. MSSNY applauds Assemblyman Schimminger as well as the co-sponsors for advancing this legislation to protect patient access to New York's health care system. Physicians may use MSSNY's Grassroots Action Center to send a letter to their elected representatives both on the state and federal level in support of liability reform by clicking here: ***http://capwiz.com/mssny/issues/***

Legislative News from Washington, DC

SENATE APPROVES PROVISION TO REPEAL 1099 REPORTING MANDATE, DEFEATS PPACA REPEAL AMENDMENT

By a bipartisan vote of 81 to 17, the United States Senate approved an amendment offered by Senator Debbie Stabenow (D-MI) to repeal a provision of the Patient Protection and Affordable Care Act (PPACA) that requires businesses, including physician offices, to file a Form 1099 with the Internal Revenue Service (IRS) to report payments made to other businesses for goods and services totaling more than $600 a year. The amendment was offered successfully to S. 223, a bill to reauthorize the Federal Aviation Administration (FAA). MSSNY supports repeal of this potentially burdensome reporting requirement.

New York's Senators Schumer and Gillibrand both voted against the amendment. However, both New York Senators supported an amendment that was rejected by the full Senate that would have repealed the 1099 reporting requirement and would have been paid for by imposing additional taxes on the oil and gas industry.

Another amendment to the FAA authorization bill, to repeal the entire PPACA law, failed in the Senate by a 47-51 vote. All Republicans voted in favor of the repeal measure. All Democrats, including Senators Schumer and Gillibrand, voted against the repeal.

The FAA authorization bill containing the 1099 reporting repeal now moves to the United State House of Representatives for consideration. Physicians are urged to contact their U.S. representative in support of the 1099 repeal measure by using the AMA grassroots hotline at 1-800-833-6354

FLORIDA FEDERAL JUDGE RULES HEALTH INSURANCE MANDATE UNCONSTITUTIONAL

U.S. District Court Judge Roger Vinson on Monday, January 31, ruled as unconstitutional the individual health insurance purchase mandate contained in the federal health care reform law, agreeing with the plaintiffs in a multistate lawsuit that the mandate exceeds Congress' power to regulate interstate commerce. Specifically, Judge Vinson wrote "[It] would be a radical departure from existing case law to hold that Congress can regulate inactivity under the commerce clause," adding, "[If] Congress has the power to compel an otherwise passive individual into a commercial transaction with a third party ... it is not hyperbolizing to suggest that Congress could do almost anything it wanted."

As a result of the fact that the health care law failed to include a "severability" clause, Judge Vinson also voided the entire law because he concluded that the mandate is "inextricably bound" to other provisions in the law. However, he refused to grant the 26 plaintiff states' request to suspend further implementation of the law, saying that such an order is unnecessary because of a "long-standing presumption" that the federal government will comply with judicial rulings such as his.

Vinson is the fourth federal district court judge in one of more than a dozen similar lawsuits across the country to rule on the overhaul. Two judges have upheld the insurance purchase mandate; two have invalidated it. In December, Virginia federal judge Henry Hudson ruled that individual health insurance coverage mandate is unconstitutional. However, Judge Hudson's ruling did not invalidate or block implementation of the federal health care reform law. Alternatively, in recent months, U.S. district court judges presiding over other lawsuits brought in Virginia and Michigan dismissed similar challenges to the insurance coverage mandate. The Michigan and Virginia decisions are now being reviewed by the US Circuit Court of Appeals. **Many believe that, given the conflicting federal court rulings, this issue will ultimately decided by the United States Supreme Court**.

Welcome to our Newest WCMS/Academy Members

Join us in welcoming the following new members who were elected into membership of the Westchester County Medical Society and the Westchester Academy of Medicine at the February, 2011, Board of Directors Meeting.

Vincent Carrao, MD
(General Surgery)
White Plains, NY

JoAnne L. Kitain, MD
(Ob-Gyn)
Mount Kisco, NY

Thirumoorthi V. Seshan, MD
(Physical Medicine & Rehabilitation)
White Plains, NY

Gary Adam Zeitlin, MD
(Infectious Disease)
White Plains, NY

In Memoriam

Harold Gissen, MD
Member since 1956
January 17, 2011

John J. Pileggi, MD
Member since 1951
January 29, 2011

AMA Survey Invites Physicians to Weigh In on Burdensome Regulations

In response to an executive order issued by President Obama on January 18, that called on all government agencies to complete an analysis of rules that may be ineffective, insufficient or excessively burdensome, the AMA has developed a survey that invites physicians to provide their input on how federal rules and regulations impact their practices.

Physicians who participate can indicate which rules and regulations negatively impact administrative costs and add to the burden of paperwork for their practices or interfere with patient care.

The survey is available on the AMA website at
www.ama-assn.org/go/regrelief

Members — Mark Your Calendar!

Accountable Care Organizations (ACO's)

"What They Are, What They Are Not and What They May Be"

TUESDAY, MARCH 29,

6:00 - 8:00 pm — White Plains, NY

This seminar, presented by Kern Augustine Conroy & Schoppmann, PC, is designed to help physicians gain a greater understanding of the rewards and risks of ACOs; the timeline and criteria for participating and what these new systems could ultimately mean to their practices and the patients they serve.

SPEAKERS

MATHEW LEVY, ESQ.
Kern Augustine Conroy & Schoppmann, PC

MARION DAVIS
President of Health Priorities, LLC

To RSVP, contact Karen Foy at (914) 967-9100 or kfoy@wcms.org.

Further details regarding the location of this meeting will be sent to members via WCMS eblasts and faxes.

SAVE THE DATE!

ACADEMY GOLF OUTING

September 21, 2011

PLEASE MARK YOUR CALENDARS—The Westchester Academy of Medicine will host its 2nd Annual Golf Outing and Fundraiser on Wednesday, September 21, 2011, at the Westchester Hills Golf Club in White Plains. All proceeds will directly benefit the Academy and its Scholarship Program, which supports activities that encourage high school students to consider a career in medicine**. Please indicate your interest in participating by contacting Brian Foy, Executive Director, at bfoy@wcms .org**

Tentative Schedule

Brunch	**11:00 am**
Shotgun Start	**1:00 pm**
Tennis	**TBD**
Reception	**6:00 pm**
Dinner/Awards	**7:00 pm**

The Academy thanks you for your anticipated support of its educational goals for the coming year.

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Home-office (zoned for prof. practice by homeowner).Raised ranch, 3000+ SF. Office about 1300 SF. 1 acre. Excellent school system. Turn-key. Proven successful practice location. Armonk, NY. Back-up 20KW generator with automatic transfer switch. Updated central air. Ideal for practitioner w. young family. 795K. Contact# 845 493-0274

MSSNY STATE LEGISLATIVE DAY

March 8, 2011

Albany, New York

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