

WESTCHESTER PHYSICIAN

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PRESIDENT'S MESSAGE ONE EIGHTY

I have often marveled at the "Ebb and Flow" of life. Just when things seem hopeless - salvation. When things seem darkest - dawn. I stare at the clock on the mantle of my study, and I wonder about the movement of the pendulum. Too far in one direction, followed by hasty retreat. Always searching for an elusive peace in the middle, and just when it's speed is greatest - headed in the wrong direction.

Fee for service medicine has an inherent bias. The more you do, the more money you make. Even when what you are doing is unnecessary, and even when it is dangerous for the patient. A Surgeon examines a patient with abdominal pain, and the ultrasound discovers a stone in the gall bladder. An Oncologist consults on a patient with an indolent lymphoma, incidentally discovered on a CTT scan. A patient with a viral illness sees his Physician, and the chest x-ray discovers a tiny pulmonary nodule. Action often results in financial success, and inaction risks insolvency. What if we were paid the same whether we removed the Gall Bladder or decided it was unrelated to the pain? Administered Chemotherapy, or placed the patient under careful observation? Referred the patient to a Thoracic Surgeon, or searched for an old film to compare? We could recommend what we felt was best for the patient independent of financial concerns. Liability would be determined by evidence based guidelines rather than a lottery. The peace of the middle.

I believe the crisis in health care affecting our country is in part related to fee for service medicine. And it cannot go on. We are the only ones that can fix it. And it will not be easy. As we enter "Value Based Care", and take on risk for the health of our communities, I feel the power of the pendulum. It is moving with great momentum, and at some point, we will be headed in the wrong direction - for us as a profession, and for our patients.

I am driving at breakneck speed and discover I am lost. I will be late for a meeting I need to attend. My mind wanders... I am in the car with my kids strapped in the back seat. They have sensed that Dad is lost, and they will not be going to the library. They shriek with delight, and a sense of adventure. Both hoping ice cream will be the end result. "No need to mention this to mom." I am jolted back to reality by a voice both calm, and kind. But slightly annoyed.

"Turn around when possible."



THOMAS J. LESTER, MD
President, WCMS

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UPCOMING EVENTS

WCMS/WAM Annual Meeting
Friday, June 3, 2016
Westchester Country Club
Rye, New York

WESTCHESTER PHYSICIAN

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FROM THE EDITOR...

PETER J. ACKER, MD
FRENCH FILM FESTIVAL



For many years, my wife and I have attended the annual “Focus on French Cinema”, a film festival sponsored by the Alliance Francaise of Greenwich. It features French language cinema which includes not just the country of France, but movies from anywhere French is spoken including Quebec, Algeria, Lebanon and Belgium to name a few. There is a tremendous diversity of themes, cultures and styles demonstrated in the films shown and over the last ten or so years I have been attending, I have never been disappointed. Virtually, every year, there is at least one movie that has some sort of medical theme or relevance. For example, several years ago in these pages I wrote about a movie (*La bruit des glaçons* –The Clink of Ice), which featured a character who personified a man’s a cancer. This year was no different.

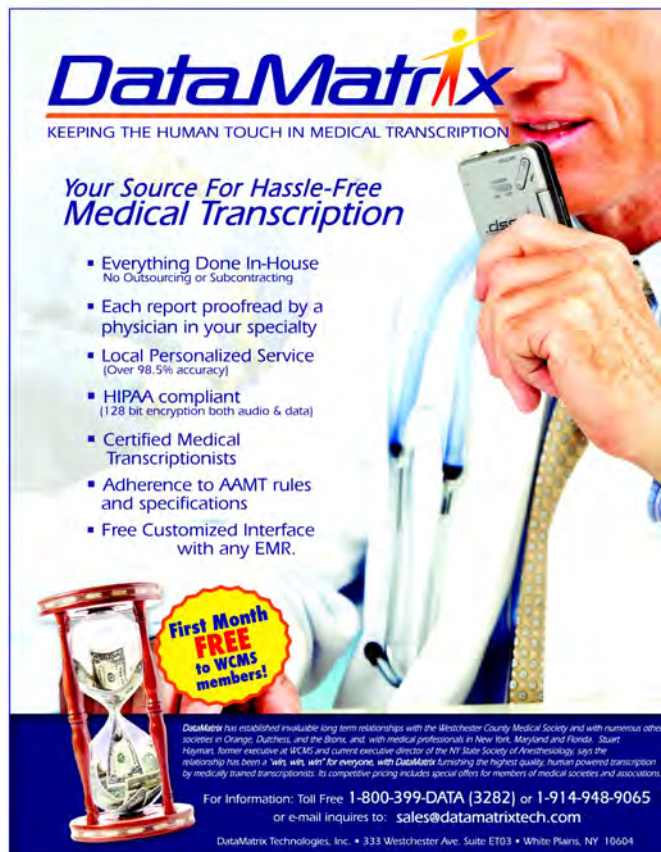
“L’homme qui re’pare les femmes” (The Man Who Mends Woman) is a documentary about the work of an internationally renowned gynecological surgeon Dr. Denis Mukwege from the Democratic Republic of the Congo. A native African, he received his post graduate training in France, but unlike many other doctors from the third world who receive specialized training in US or Europe, he returned to his country to practice, foregoing what most likely would have been a lucrative career in order to serve the very poor in one of the most war-torn areas of the globe. He works in the Panzi Hospital in the town of Bukavu which is on the eastern edge of the Congo and abuts Rwanda and Burundi. Nearby is a wealth of natural resources including gold and cobalt. There are multiple separate ethnic groups such as the Tutsi’s and Hutu’s. In addition, the governments of the three countries are unstable, weak and often corrupt. All of this has proven to be a toxic mixture as various marauding armies course across the area fighting and terrorizing. The worst of it is inflicted on the very poor, especially the women. One of the most potent weapons of terror has been the rape of women. Frequently, soldiers will storm out of the jungle and commit atrocities that defy the imagination. This has been going on for at least the last 20 years and the political situation shows no signs of improving in the near future. We are now seeing that same toxic brew playing out in the Middle East: unstable governments, displaced people, great oil wealth and an army (Isis) using sexual subjugation of women as a weapon of terror.

(Continued on page 11)

WCMS PRESIDENT, THOMAS LESTER, MD APPOINTS VICE PRESIDENT AND SECRETARY

On Thursday, March 17, 2016 at the WCMS monthly Board of Directors meeting Dr. Thomas Lester, WCMS President announced that he would like to appoint Marshal Peris, MD to the vacant Vice President seat, and that Dr. Peris would be replaced by Omar Syed, MD as Secretary. As per the WCMS bylaws all vacant positions can be filled by appointment of the President.

Each will serve the remainder of a one-year term in their respective positions. At the end of that term, each will be nominated for the next position in line (please refer to the Report of the Nominating Committee located on page 10).



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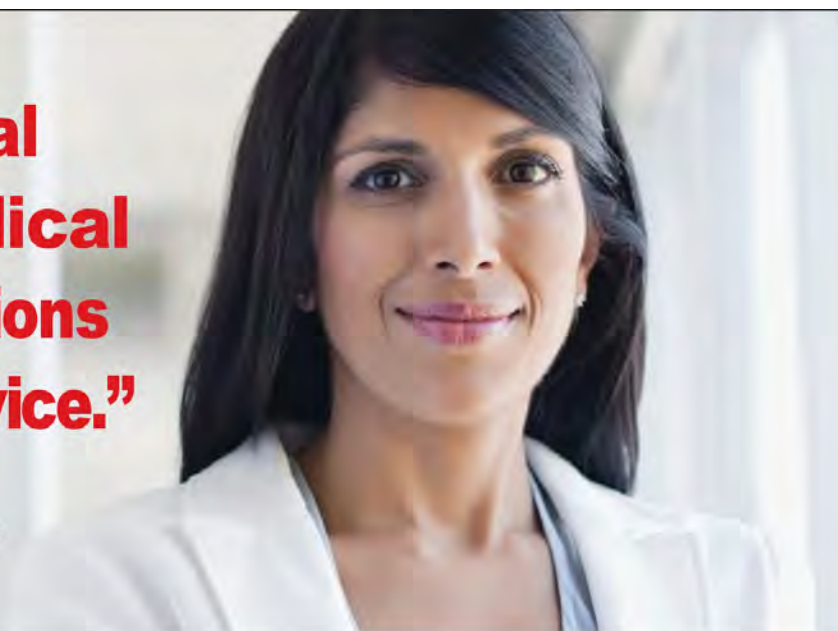
DataMatrix has established invaluable long term relationships with the Westchester County Medical Society and with numerous other societies in Orange, Dutchess, and the Bronx, and with medical professionals in New York, Maryland and Florida. Stuart Hymans, former executive at WCMS and current executive director of the NY State Society of Anesthesiology, says the relationship has been a "win, win, win" for everyone, with DataMatrix furnishing the highest quality, human powered transcription by medically trained transcriptionists. Its competitive pricing includes special offers for members of medical societies and associations.

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MSSNY HOUSE OF DELEGATES HIGHLIGHTS

The Medical Society of the State of New York (MSSNY) conducted its 2016 House of Delegates Annual Meeting, April 15 - 17th, 2016, at the Westchester Marriott, Tarrytown, NY. The following physicians from Westchester and Putnam Counties attended and served as your elected delegates and alternates to the House of Delegates

Delegates

Robert Ciardullo, MD, *White Plains*

Peter Liebert, MD, *White Plains*

Robert Lerner, MD, *Valhalla*

Gino Bottino, MD, *Mount Kisco*

William Zurhellen, MD (Putnam)

Norma Kurtz, MD (Putnam)

Daniel Gold, MD, *White Plains*

Marshal Peris, MD, *Brewster*

Alfred Tinger, MD, *Mount Kisco*

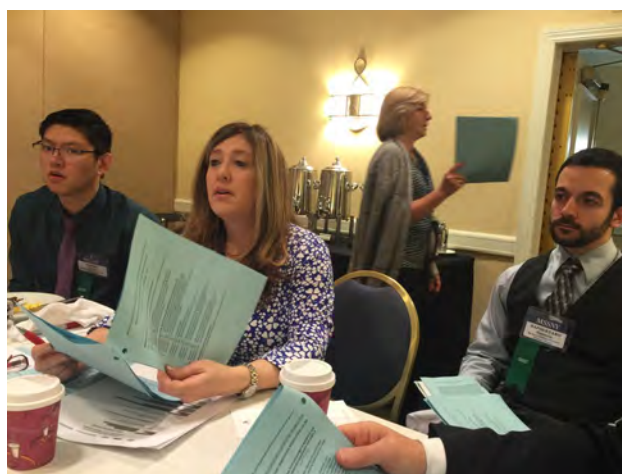
Charles Elkin, MD, *White Plains*

9th District Delegate

Edward Gordon, MD (Putnam)



Delegates of the 9th District Branch caucus and breakfast on Saturday, April 16.



Peter Voong, Medical Student; Bonnie Litvack, MD, President 9th District Branch and Umberto Napoletano, Medical Student

The Westchester and Putnam Delegations, part of the 9th District Branch and Caucus, were led by Bonnie Litvack, MD, Mount Kisco, 9th District President. The group caucused several times to consider resolutions submitted by physicians from all over the state. Caucusing with Westchester and Putnam were delegates from Orange, Dutchess and Rockland counties, as well as several physicians representing their state specialty societies. After completion of reference committee hearings and deliberation in the House of Delegates (HOD), the following actions were taken by the HOD on resolutions submitted by the 9th District Branch:

54 Health Insurance Guarantee Fund

Introduced by the Suffolk County Medical Society

**SUBSTITUTE RESOLUTION ADOPTED IN LIEU OF
RESOLUTIONS 54 AND 55**

(Continued on page 5)

9th District Resolutions – House Action

(Continued from page 4)

RESOLVED, That the Medical Society of the State of New York continue to advocate for the enactment of a Health Insurance Guarantee Fund to pay outstanding claims in the event of an insolvency by a health insurance company; and be it further

RESOLVED, that the Medical Society of the State of New York continue to advocate to assure the availability of funds to pay the outstanding claims of Health Republic, either through a Health Insurance Guarantee Fund or use of other state monies; and be it further

RESOLVED, the Medical Society of the State of New York continue to work with the Department of Financial Services to assure strong oversight of the financial integrity of health insurance companies operating in New York State.

55 New York State to Reclaim Responsibility for State-sponsored Plans

Introduced by the 9th District Branch Medical Societies

SEE RESOLUTION 54

200 - Combine MSSNY HOD with Legislative Day in Albany

Introduced by Ninth District Branch Medical Societies

REFERRED TO COUNCIL

RESOLVED, that the Medical Society of the State of New York have the House of Delegates meeting combined with Legislation Day.

105 - UCR-BASED OUT-OF-NETWORK POLICIES

Introduced by Ninth District Branch Medical Societies (Dutchess, Orange, Putnam, Rockland and Westchester)

SUBSTITUTE RESOLUTION ADOPTED

RESOLVED, that MSSNY continue to advocate strongly for preservation and expansion of usual, customary and reasonable (UCR) based out-of-network benefits available to our patients; and be it further

RESOLVED, that MSSNY energetically and proactively educate physicians on the importance of a meaningful UCR-based out-of-network environment in order to maintain an acceptable practice environment for physicians desiring to practice in-network and those physicians who are employed by an institution; and be it further

RESOLVED, that MSSNY energetically and proactively educate physicians including the identification of access to other information including links to social media and to successfully implemented business strategies concerning how the meaningful UCR-based out-of-network environment may be a viable option for physicians who wish to maintain independent out-of-network practices; and be it further

RESOLVED, That MSSNY proactively educate patients, employer groups and insurance agents on a UCR- based out-of-network plan.

(Continued on page 23)

THE MEDICAL SOCIETY OF THE COUNTY OF WESTCHESTER

AND

THE WESTCHESTER ACADEMY OF MEDICINE

CORDIALLY INVITES YOU TO ATTEND OUR

ANNUAL MEETING AND PROGRAM**FRIDAY, JUNE 3, 2016****WESTCHESTER COUNTRY CLUB****WESTCHESTER ROOM
99 BILTMORE AVENUE
RYE, NY 10580****6:00 - 7:00 P.M.****NETWORKING RECEPTION****7:00 P.M.****BUFFET DINNER****INSTALLATION OF 2016-2017 MEDICAL SOCIETY & ACADEMY OFFICERS****REMARKS OF *JOSEPH TARTAGLIA, MD*, ACADEMY PRESIDENT*****REMARKS OF THOMAS J. LESTER, MD******OUTGOING WCMS PRESIDENT******REMARKS OF GINO BOTTINO, MD******INCOMING WCMS PRESIDENT******SPECIAL RECOGNITION:******2016 "FRIEND OF MEDICINE" AWARDEE******DEE DELBELLO***

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\$125; NON-MEMBERS & GUESTS \$250/PER PERSON
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The Westchester County Medical Society
 Annual Meeting honoring
President-elect, Gino Bottino, M.D.
 Friday, June 3, 2016
 Westchester Country Club, Rye New York
 6:00 PM Cocktails - 7:00 PM Dinner – Westchester Room

2016 Souvenir Journal

In recognition of:

Gino Bottino, MD our President-elect,
Thomas Lester, MD our Outgoing-president, and our
"Friend of Medicine" award recipient, **Dee DelBello**

Friends of the Westchester County Medical Society may insert an advertisement in the journal, or inscribe their personal good wishes and greetings.

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Media Reports Growing Concerns Over New York's Medical Malpractice Market

Over the weekend, there were two big media stories related to the possibility of significant changes in New York's medical malpractice market. The first, "[Growing concern over shifts in N.Y. medical malpractice market](#)," appeared in *Politico New York*. The second, "New York medical malpractice insurer PRI struggles, but owner insulated," was published in the *Albany Times Union* (to access it click on the proper headline [here](#)). In tandem, the story they both tell about industry shifts may cause some worry among physicians, hospitals and dentists – and that's certainly understandable.

Standing apart in this environment, as noted in the reporting, MLMIC's finances remain strong. Certainly the kind of industry news that's in the spotlight right now affects the marketplace, and that's exactly why we have always emphasized the importance of responsible fiscal policy (see, for example, our recent blog post: "[Why Insurer Financials Matter to Policyholders](#)"). There's no question that the medical malpractice insurance business is volatile, but MLMIC's record of service and stability within the medical professional liability insurance (MPLI) marketplace goes back more than four decades.

Still, it remains important for MLMIC policyholders to understand how the insurance industry works in New York State and how changes in the marketplace relate to your own insurance coverage and level of exposure. Recent media reports are helping to educate the public and healthcare professionals about how marketplace regulations impact everything from premiums to liability.

In fact, the latter is what *Fierce Practice Management* has observed in its coverage of the *Politico New York* piece: "[Physicians face more malpractice exposure in New York State's market](#)." An attorney quoted in both articles expressed concern that doctors don't have adequate protection. While MLMIC can't speak to the coverage of our competitors, we can assure our policyholders that MLMIC's level of protection remains unchanged. We continue to provide exceptional coverage, a strong risk management program and [high quality legal counsel](#).

Of course, we'll keep you informed as these developments progress. If at any time we feel there is information that impacts you immediately or directly, we will guide you through it. In the meantime, if you have questions, we're here to help. Please [contact us](#) anytime.

Related posts:

- [Are You Exposed if Your Insurer Becomes Insolvent?](#)
- [MLMIC's Q3 Statement Shows Sound Financial Condition](#)
- [MLMIC Policyholders to Receive 20 Percent Dividend](#)
- [7 Questions You Should Be Asking About Your Medical Liability Insurance](#)

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WESTCHESTER COUNTY MEDICAL SOCIETY
WESTCHESTER ACADEMY OF MEDICINE
REPORT OF THE NOMINATING COMMITTEE 2016-2017

The Nominating Committee of the Westchester County Medical and the Westchester Academy of Medicine met on April 21, 2016, and hereby nominates the following candidates for election at the Annual Meeting on June 3rd, to take office effective **July 1, 2016:**

President-elect

Marshal Peris, MD

Vice President

Omar Syed, MD

Treasurer

Howard Yudin, MD

Secretary

Daniel Gold, MD

Delegates to the MSSNY House of Delegates

(Four for two years; term ending 2018)

Robert Lerner, MD

Joseph Tartaglia, MD

Gino Bottino, MD

Thomas Lee, MD

Alternate Delegate to the MSSNY House of Delegates

(Five for two years; term expiring 2018)

Marshal Peris, MD

Ranjana Chaterji, MD

Jason Winkler, MD

Amanda Messina, MD

Daniel Gold, MD

Alternate Delegates to the MSSNY House of Delegates

(One for two years; term ending 2017)

Richard Stumacher, MD

Note: Per the Bylaws, the current President-elect, Gino Bottino, MD, automatically assumes the Office of President and the current President, Thomas Lester, MD, assumes the Office of the Immediate Past President.

***Additional candidates may be nominated from the floor at the WCMS/Academy Annual Meeting, provided that each nomination is supported by a petition signed by at least 100 members, as specified in the Bylaws.**

FROM THE EDITOR...

PETER J. ACKER, MD
FRENCH FILM FESTIVAL
(Continued from page 2)

The movie documents the enormous number of victims and women on camera as they describe the horrors visited upon them and the extreme physical damage inflicted upon them – many described rectovaginal fistulas, large tears and even more extensive internal damage. Dr. Mukwege has operated on some 40,000 women victims. The images of women in the clinic and soldiers marching were interspersed with scenes of incredible beauty – the topography is magnificent rolling hills, large lakes, which contrasts with the unbelievable suffering. Dr. Mukwege is also very involved in the psychological healing of these women. He was shown having a group session with a number of women and has stressed unity among them as mutual support mechanisms. He has also traveled the world speaking out about the outrage that is taking place. He gave a major speech at the UN in 2012. Upon his

return to the Congo, a group of armed men attempted to assassinate him but he was able to escape though his body guard was killed. Fearing for his family, he went into exile to France for several months. However, in one of the hopeful events depicted, women across the nation united and staged meetings and protests that finally resulted in his return where he was greeted at the airport by thousands of cheering men and women. He now is surrounded by security men. He is truly a remarkable and brave man.

After the showing, a question and answer session was held, featuring Dr. Claude Rosenthal the president of Gynecologie Sans Frontieres (Gynecology Without Borders, www.gynsf.org) who has been in Africa for years doing similar work. He was flying the next day to meet Dr. Mukwege and to work with him. Dr. Rosenthal was interviewed by Dr. Alison Estabrook, a well known breast cancer specialist from Mt Sinai Medical Center. I hope some of you will consider making a contribution to this fine organization.



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The Westchester County Medical Society has formed a special partnership with *Healthcare News* that allows all physician members and their medical practices to receive a substantial discount of 30% on any marketing plans in the publications by *Healthcare News*.

Healthcare News is a respected monthly publication which focuses on health, wellness and other important trends in healthcare and the medical field. Started in 2006, *Healthcare News* has a circulation of nearly 100,000 with editions in Westchester, NY and nearby Fairfield County, CT. The target audiences are residents who seek the best health options, along with a diverse array of physicians aiming to promote their services in the community. Inserted into each edition of *Healthcare News* is *Boomer's & Beyond* publication for the ever growing 55 and over demographic.

In addition *Healthcare News* has a companion bi-monthly publication called *Hospital Newspaper* for which the advertising discount also applies. *Hospital Newspaper* has been a top source of news and information for medical professionals in the hospital industry since 2001.

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Robert P. Astorino
County Executive

Sherlita Amler, M.D.
Commissioner of Health

Re: **National Infant Immunization Week, April 16 – 23,**
“Immunizations: Power to Protect”

April 15, 2016

Dear Colleague,

National Infant Immunization Week highlights the importance of protecting infants from vaccine-preventable diseases and celebrates the achievements of immunization programs in promoting healthy communities throughout the United States.

You are an important partner in immunizing infants and educating parents and families about the importance of childhood vaccines, and I thank you for your efforts on behalf of Westchester families. Immunization is a shared responsibility, and healthcare professionals like you remain parents' most trusted source of information about vaccines for their children.

While we both participate in the Vaccines for Children program, the Westchester County Department of Health is also able to immunize the adult parents and grandparents of your patients for Pertussis and many other diseases that could place your patients at risk. Through our participation in the Vaccines for Adults program, we can increase adult coverage and reduce disparities in vaccination coverage.

Please encourage your clients' family members to call us at 914-995-5800 for an appointment at our clinics in White Plains and Yonkers, where we serve uninsured and underinsured residents. The health department also has Navigators who help families to access public and private insurance.

I urge you to ensure that your patients receive all their required vaccines on time by actively participating in the New York State Immunization Information System (NYSIIS). This statewide immunization registry can help you and your patients keep track of immunizations now and into the future, when they want to attend college or seek employment and need to document their immunizations.

For more information on immunizations, please contact the Westchester County Department of Health Immunization Action Program at (914) 813-5263. For help with your NYSIIS account, contact the NYSIIS Help Desk at 1-866-389-0371 or nysiishelpdesk@hp.com.

Thank you for your continued partnership. Working together with families, we can help protect the entire community.

Sincerely;

Sherlita Amler, M.D.

Sherlita Amler, MD, MS, FAAP
Commissioner of Health

Department of Health
145 Huguenot Street
New Rochelle, New York 10801

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Volume XXIV Number IV – April 15, 2016
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*Late breaking news on medical-legal developments
affecting physicians and health care professionals*

CMS' New Primary-Care Payment Model Projected to Affect 20,000 Physicians: The CMS' new primary-care model seeks to reimburse practices with a monthly fee to manage care for as many as 25 million patients. This move marks the CMS' largest plan to transform and improve how primary care is delivered and reimbursed across the nation. Titled "The Comprehensive Primary Care Plus" initiative, it will be implemented in up to 20 regions and include up to 5,000 practices, which would encompass more than 20,000 doctors and clinicians. The CMS has yet to identify regions since it must first assess interest by payers and providers since the program would collaborate with commercial, state, and other federal insurance plans. There are two tracks available for practices to participate. Under Track 1, CMS will pay a monthly fee to practices that provide specific services. That fee is in addition to the fee-for-service payments under the Medicare Physician Fee Schedule for care. In Track 2, practices will also receive a monthly care management fee and, instead of full Medicare fee-for-service payments for evaluation and management services, they will receive reduced Medicare fee-for-service payments and up-front comprehensive primary-care payments. The CMS believes the Track 2 hybrid payment design will allow greater flexibility in how practices deliver care outside of the traditional face-to-face encounter. Practices in both tracks will receive upfront incentive payments that they might have to repay if they do not perform well on quality and utilization metrics. The CMS will accept practice applications in the determined regions from July 15 through September 1, 2016.

Computerized Systems Still Miss Major Drug Errors: A new study reveals that computerized systems meant to restrict prescribing errors routinely fail to detect harmful – and sometimes fatal – medication orders. The study found that computerized provider order-entry systems failed to flag nearly 2 out of every 5 incidents where the wrong drug was prescribed, the incorrect dosage was requested or follow-up reminders failed to appear. While the software can alert physicians to medication conflicts, identify patients' potential allergic reactions and incorporate evidence-based guidance and recommendations, it does have its limitations. Some of the challenges computerized systems have include usability issues, such as the potential for selecting the wrong item from drop-down menus or having too many alerts, which providers can override. The study found that the systems failed to flag 39% of potentially harmful drug orders and 13% of potentially fatal ones, with the most common issues missed being wrong medications and wrong dosages.

Pharmacist owes a duty of care when filling a prescription issued by a physician: In the case of *Abrams v. Bute*, the defendant physician performed hemorrhoid surgery on the decedent. The physician wrote the decedent a prescription for hydromorphone and instructed the decedent to take eight milligrams of hydromorphone every three or four hours as needed for pain. The decedent filled the prescription at a CVS pharmacy, but about one hour after taking a dosage of the medication, the decedent was found "gasping for air," and shortly thereafter, died. An autopsy concluded the decedent died of acute hydromorphone intoxication. The plaintiff sued the physician, CVS and the individual pharmacist who filled the prescription. The plaintiff alleged the physician was negligent in prescribing eight milligram doses of hydromorphone, and the CVS defendants were negligent for filling the prescription. The CVS defendants argued that it is the prescribing physician who is solely responsible for exercising professional judgment, and courts should not impose a standard of care on pharmacists which would go beyond the need to accurately fill the prescription. The CVS defendants argued that if the court imposed a duty on pharmacists to independently verify the propriety of a physician's prescription, this would place an undue burden on pharmacists, would likely create antagonistic relations between pharmacists and physicians, and interfere with the patient-physician relationship. The plaintiff argued that a pharmacist is also a licensed professional, should be held to responsibilities as a professional, and should not be treated as a mere "warehouse for drugs" or a "shipping clerk" who must unquestioningly obey the written orders of the physician. The Appellate Division held that there is no merit to the CVS defendants' categorical contention that a pharmacist's duty will never extend beyond accurately filling a prescription. Instead, the appellate court held that the issue of a pharmacist's duty had to be determined on a case by case basis, and depending upon the facts of the case, where a prescription is clearly contraindicated the pharmacist could be held to a duty to take additional measures before dispensing the medication. In the *Abrams* case, the appellate court held that the record did not show the prescription was so contraindicated as to require the CVS defendants to confirm the prescription, and the appellate court held that summary judgment should be granted in favor of the CVS defendants.

For more information on the above items, contact Kern Augustine Conroy & Schoppmann, P.C. at 1-800-445-0954 or via email at info@DrLaw.com.



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OCR HIPAA AUDITS – IT'S REAL THIS TIME

By Jonathan Krasner, HIPAA Secure NOW!

Background

Although HIPAA is an important set of laws passed to protect the sensitive medical information handled by millions of covered entities and business associates, Health and Human Services Office for Civil Rights (OCR) has never established a permanent compliance audit program. Auditing activity to date by OCR has consisted of a pilot program of audits conducted in 2011 and 2012, involving less than 200 covered entities. It is no wonder that many medical providers have had little concern about ever being subject to a HIPAA compliance audit, and hence many have made compliance a low priority. They have never been audited nor have they heard of anyone who has. This situation is now going to change.

On March 21, 2016, **OCR announced its Phase 2 Audit Program**. With the alarming increase in patient data breaches, OCR has felt intense pressure from Congress and The Office of the Inspector General (OIG) to get this long delayed program underway. Organizations subject to HIPAA need to take this development seriously, as it is a signal that they must now put their compliance programs in place.

So who will be audited in the Phase 2 Program?

Unlike the Phase I Pilot Audits, Phase 2 will not be limited to just larger covered entities. OCR is aware that the vast majority of smaller organizations are not HIPAA compliant and that there is also a serious compliance gap among business associates, so Phase 2 will cover a larger and more diverse pool of organizations. According to the OCR website:

OCR is identifying pools of covered entities and business associates that represent a wide range of health care providers, health plans, health care clearinghouses and business associates. By looking at a broad spectrum of audit candidates, OCR can better assess HIPAA compliance across the industry – factoring in size, types and operations of potential auditees.

Who will be selected?

Organizations will be contacted via **email to obtain and verify contact information** (PDF). It will be important to ensure that this email does not end up in a SPAM or Junk folder, to avoid being flagged as not responding. Failing to respond will invite additional scrutiny. **Just the act of contacting enti-**

ties to let them know they are eligible should give that organization a good reason to start paying attention to HIPAA, if they have not done so already. Organizations will be required to complete a pre-audit questionnaire. Once this data has been collected, OCR will select organizations to participate in the actual audit program.

What is the audit process?

If you are selected for an audit, it will most likely be a **desk audit**. This means that you will be required to upload specified documents to a secure portal that OCR has developed for this purpose. The specific documents that will be requested have not yet been identified, so organizations should prepare for this by putting a comprehensive compliance program in place, as it will provide all of the documentation which could be requested. *You will have only 10 business days to upload your documents.* After the documents are uploaded they will be reviewed by an investigator. The results of the audit will obviously vary, but a further **compliance review** could be initiated. No one should take this program lightly – late, incomplete or inappropriate responses could be very costly.

Is this just one time event?

This is a precursor to a permanent audit program. Prudent organizations should assume they will be audited sooner or

How can HIPAA Secure Now! help me?

Our HIPAA compliance service will get you fully prepared for the upcoming audit program. However, we will be going one step further. If your organization is selected for the audit, we will provide assistance in helping you to respond. There will be no extra fee for this; the service will be included in our HIPAA Compliance Premier Subscription.

When is all this supposed to happen?

The process of verifying contact information has already begun, and OCR has stated that the desk audits will be **completed** by December 2016.

Preparing for HIPAA Audits

There are still many unanswered questions about the program. OCR will have to fill in the details over the coming weeks and months. However, one thing is very clear – if you are subject to HIPAA, you should be preparing to get audited.



NYS BUDGET IS VICTORY FOR MSSNY STATE BUDGET FOR FY 2016-17 FINALIZED

Working through Thursday night into Friday, the Legislature was finalizing the passage of a \$147 billion budget for the 2016-17 fiscal year. Importantly, it rejected several proposals that had been of great concern to physicians across New York State. Moreover, the final Budget also provides additional opportunities for certain physicians to receive e-prescribing waivers and leaves open the door to further action to address unpaid Health Republic claims.

The Governor's crowning achievement was the enactment of an increase in the state's minimum wage and paid family leave proposals. The latter proposal affords New Yorkers 12 weeks of paid family leave (to be collected through an employee payroll deduction similar to disability benefits) allowing employees to be paid up to two-thirds of their weekly wage or two-thirds of the state average, whichever is lower.

The minimum wage increase differs depending upon the size and location of the business as follows: (1) For workers in New York City employed by large businesses (those with at least 11 employees), the minimum wage would rise to \$11 at the end of 2016, then another \$2 each year after, reaching \$15 on 12/31/2018; (2) For workers in New York City employed by small businesses (those with 10 employees or fewer), the minimum wage would rise to \$10.50 by the end of 2016, then another \$1.50 each year after, reaching \$15 on 12/31/2019; (3) For workers in Nassau, Suffolk and Westchester Counties, the minimum wage would increase to \$10 at the end of 2016, then \$1 each year after, reaching \$15 on 12/31/2021; and (4) For workers in the rest of the state, the minimum wage would increase to \$9.70 at the end of 2016, then another .70 each year after until reaching \$12.50 on 12/31/2020 – after which it will continue to increase to \$15 on an indexed schedule to be set by the Director of the Division of Budget in consultation with the Department of Labor.

The budget also included a significant investment of funding for a massive, multi-year infrastructure investment for airports, roads and bridge construction as well as a strengthening of mass transit systems in the New York City area. This includes over \$55 billion of transportation investments statewide, including \$27.14 billion for State Department of Transpor-

tation and Thruway programs and \$27.98 billion for the Metropolitan Transportation Authority programs.

The final budget also included an increase of \$1.5 billion in education aid, -a 6.5% increase from last year.

Also included in the budget was an income tax cut for married couple earning up to \$300,000.

Among issues on which MSSNY strongly advocated:

Eligibility for Excess Coverage Preserved. The Legislature rejected the programmatic changes advanced by the Executive which would have resulted in over 13,000 physicians who currently have Excess coverage being dropped from the program. Moreover, the Legislature restored the \$25M cut to the appropriation for the Excess program thereby continuing funding for the program at its historical level of \$127.4M. Also continued was the authority for the Superintendent to set the rate for medical liability premiums. **MSSNY is thankful to leaders and members of both the Senate and Assembly for strongly supporting the restoration of funding for the Excess program and rejecting proposed programmatic changes that would have resulted in over 13,000 physicians losing Excess coverage.**

Retail Clinic proposal defeated; at least for now. The final budget does not include language to enable the establishment of 'limited service' clinics in retail stores owned by publicly traded corporations such as CVS, Walmart and Walgreens. MSSNY worked with other primary care and specialty medical societies in the defeat of this proposal. MSSNY will remain vigilant to oppose the proposal should it resurface toward the end of session.

Changes to the Workers Compensation program rejected; role of County Medical Societies preserved! The Legislature rejected the Executive's proposal to expand the list of providers eligible to deliver (and receive payment directly from the W/C program) to include acupuncturists, nurse practitioners, physician assistants, and social workers. Significantly, the Legislature also rejected the proposal to eliminate county medical society review and assistance for physicians looking to be authorized to deliver care.

(Continued on page 19)

NYS BUDGET IS VICTORY FOR MSSNY
STATE BUDGET FOR FY 2016-17 FINALIZED
(Continued from page 18)

We thank the many county medical society leaders across New York State who took the time to contact their local Senators and Assembly members to express their concerns with this proposal.

Health Republic. The budget expressly articulated the establishment of a fund to be known as the “health republic insurance of New York fund” which “shall consist of transfers as authorized by the director of the budget, in his or her sole discretion, between April first, two thousand sixteen and March thirty-first, two thousand nineteen, from amounts collected as a result of a judgement, stipulation, decree, agreement to settle, assurance of discontinuance, or other legal instrument resolving any claim or cause of action, whether filed or unfiled, actual or potential, and whether arising under common law, equity, or any provision of law, and all other monies appropriated, credited, or transferred thereto from any other fund or source pursuant to law”. Any payments to be made from this fund would be made after distribution of Health Republic’s remaining assets in a liquidation proceeding. We are seeking further clarification regarding which monies could be potentially assigned to this fund, and will continue to work with hospital associations to assure the deposit of sufficient monies to fully reimburse physicians and other providers for care provided to patients covered by the now defunct Health Republic. Despite being proposed in the Senate one-House Budget, the final Budget did not contain any provision to eliminate the DFS prior approval of health insurance rates. We thank the many State Legislators who fought to assure that the State Budget articulate a dedicated funding stream to assure these claims are paid.

No Regressive Tort Measures Included in Budget. Despite renewed attention on certain regressive tort bills including a date of discovery statute of limitations and repeal of the limitations on attorney contingency fees in medical liability cases, the measures were not included as part of the budget. MSSNY has been working collaboratively with GNYHA, HANYS and MLMIC to oppose these measures in the context of the budget. It is anticipated, however, that discussion on these issues will resume as MSSNY seeks to achieve meaningful tort reforms this legislative session.

Elimination of prescriber prevails rejected. The Legislature rejected proposals that would have eliminated “prescriber prevails” protections for prescribing medications to all patients insured through fee for service Medicaid, as well as for several classes of medications for patients insured under Medicaid managed care. The Executive’s proposal would have eliminated these protections for medications for patients covered in the Medicaid program, except for atypical antipsychotic and antidepressants.

E-Prescribing Exception for Low Volume Prescribers approved. E-prescribing will not be required of prescribers who issue twenty five prescriptions or less each year provided that they submit a certification to that effect to the Department of Health. A certification may be submitted on or before July 1, 2016 and retroactively apply to March 27, 2016. A prescriber who has made a certification on or before the expiration of the current twelve month period may do so for a maximum of three twelve month certifications. While this is a very positive development for low-volume prescribers, the 3-year limit will require this issue to be revisited by MSSNY and the Legislature in 2019. At the same time, the Legislature considered but ultimately did not include language to address concerns raised by MSSNY regarding the onerous and burdensome requirements for physicians without waivers who issue paper prescriptions through the invocation of one of three statutory exceptions and who must submit their name, contact information, patient initials and the reason for which they issued the appear script to an email address (erx@health.ny.gov) maintained by the bureau of narcotics enforcement. Many state legislators remain interested in addressing this issue, and MSSNY will continue to strongly advocate to reduce or eliminate altogether the requirement for submission of this information.

Modifications to Doctors Across New York (DANY) Program Approved. Changes to the DANY (physician loan repayment and physician practice support) program were made to equalize awards to up to \$40,000 per year, reduce the service commitment from five to three years and to allow recipients to receive one but not both awards. MSSNY has been working with other healthcare stakeholders including HANYS, GNYHA, Iroquois Hospital System and ACP to secure these legislative changes to this important program.

(Continued on page 23)

ANNUAL REGENERON - WESTCHESTER SCIENCE AND ENGINEERING FAIR

JOSEPH TARTAGLIA, MD, PRESIDENT,
WESTCHESTER ACADEMY OF MEDICINE



Robert Lerner, MD, WCMS Past President, with some of the 2016 WESEF Winners

Sitting on my desk are the letters of appreciation from many of the sixty-five high school students who won prizes sponsored by the Academy at the 16th Annual Westchester Science and Engineering Fair (WESEF) which was held on March 12th at Sleepy Hollow High School. These prizes are made possible by the generous support of the Academy and our members at the Annual Golf Outing and Holiday Party.

This year's winners come from many of the thirty high schools around Westchester and Putnam counties who participated in the Fair. All 370 students and their families are aware that the Academy and the physicians of the Medical Society care about furthering the ambitions of budding young scientists, many of whom have their eyes on a career in medicine or medical research. All their letters express utmost gratitude to the Society for recognizing them and their efforts. They realize that if it weren't for our support many of the students would receive no recognition for the many long hours spent over months and years dedicated to research in their particular subject matter.

The Academy presented three "Future of Medicine" prizes to the top scorers in the category of Medicine and Health. The winners of these awards are:

Future of Medicine Award

Donated by the Westchester Academy of Medicine

Three projects will win a plaque, \$50 and a celebration dinner.

Category School Name of Winner

Cell Biology, Blind Brook, Melissa Blum
Medicine and Health, Byram Hills, Alex Pfeffer
Medicine and Health, Briarcliff, Joshua Papson

The Academy also gives prizes in Medicine and Health to the next ten top scorers in the "Excellence in Medical Research" category and the 4th place awards in all other categories: Animal Science; Behavioral Science; Biochemistry; Cell Biology; Chemistry; Computer Science; Earth & Space Science; Environmental Science; Engineering & Math; Medicine; Microbiology; and Plant Science.

These children are our future. Their passion to solve the same problems that intrigue us is inspiring. This was the Academy's eighth year of participation in WESEF and it has grown into a very rewarding and fruitful relationship between the physicians who represent the Academy as judges and the communities of Westchester and Putnam counties. I hope more physicians will participate next year as judges and meet some of these prodigious young minds who are stepping up to the challenges of medicine today. **I hope you will make it a point to take a moment and see the projects and speak with the Future of Medicine award winners at our Annual Meeting on June 3rd.** You will not regret it.



2016 WESEF Winners



PHOTOS FROM THE ANNUAL PRESIDENT'S DINNER DANCE MSSNY 2016 HOUSE OF DELEGATES



Stephen Permut, MD, Chair AMA BOT; William Latreille, MD, Vice Speaker; Joseph Tartaglia, MD, ACC Delegate; Kira Geraci-Ciardullo, MD, Speaker; Malcolm Reid, MD, President MSSNY; Joseph Maldonado, MD, Immediate Past President MSSNY; and Dr. John Moorhead, Chair-elect ABMS



Robert Ciardullo, MD, Westchester Delegate; Kira Geraci-Ciardullo, MD, Speaker; and Vincent Geraci, Jr., MD, Nassau Delegate

WELCOME NEW MEMBERS!

At the Board of Directors meeting held on April 21, 2016, the following were elected to membership in WCMS and the Academy:

Hicham Alnachawati, MD

Preventative Medicine
Hartsdale, NY

Geejo Geevarghese, MD

Family Practice
Hartsdale, NY

Katarzyna Jankowska, MD

Family Practice
Hartsdale, NY

Kantha Kumar, DO

Family Practice
Hartsdale, NY

Sandra L. Santiago, MD

Diagnostic Radiology
Mount Kisco, NY

Jeffrey M. Vainshtein, MD

Radiation Oncology
White Plains, NY

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NYS BUDGET IS VICTORY FOR MSSNY STATE BUDGET FOR FY 2016-17 FINALIZED (Continued from page 19)

Allocations to the program added \$1M above the historical \$8M to provide 25 new DANY slots at \$40,000/year each.

Restoration of Medicaid Benefits 30 days Prior to Release from Prison/Jail. The Legislature authorizes the provision of Medicaid benefits, for "high needs" inmates who were on Medicaid prior to incarceration in a state prison or local jail, for the 30 days prior to release to pay for transitional services including medical, prescription, and care coordination services. This authority is contingent on NY applying for and getting CMS approval for offer federal share Medicaid for such services.

Additional funding (\$35M) to combat heroin and opioid epidemic. These funds will continue to support prevention, treatment and recovery programs targeted toward chemical dependency, residential service opportunities, and public awareness and education activities.

Prior Authorization for Medicaid Opioid Prescriptions. The final Budget requires Medicaid managed care plans to impose prior authorization requirements for patients with more than 4 opioid analgesic prescriptions in a 30-day period.

Joint Ownership of LLCs by Chiropractors and MDs defeated. The final budget did not incorporate language that had been advanced by the Senate to allow chiropractors and physicians to jointly own and share revenue from their joint partnerships and businesses.

New monies allocated to MSSNY programs. MSSNY's Committee for Physicians' Health (CPH) was allocation \$990,000 to continue its operations and MSSNY was allocated \$150,000 under the Veterans Mental Health Training Initiative through which MSSNY, NYSPA and NASW have offered training initiatives for physicians on the diagnosis and treatment of PTSD and TBI in returning veterans and will offer additional training in the future on substance abuse, suicide prevention and appropriate opioid prescribing and pain management for returning veterans
(DEARS, AUSTER, CLANCY, MCPARTLON)



9th District Resolutions—House Actions

(Continued from page 5)

211 - Attorney Ads on Drug Side Effects

Introduced by Ninth District Branch Medical Societies

SUBSTITUTE RESOLUTION ADOPTED

RESOLVED, that MSSNY seek by legislation and/or regulation to require attorney commercials that may cause patients to discontinue medically necessary medications to have appropriate warnings that patients should not discontinue medications without seeking the advice of their physician; and be it further
RESOLVED, that MSSNY introduce a similar resolution to the AMA.

212 - Laymen's Medical Advice Policy

Introduced by Ninth District Branch Medical Societies

ADOPTED AS AMENDED

RESOLVED, that MSSNY ask the AMA to support a public campaign to promote patient recognition that when seeking medical advice, they are best served through partnership with their personal physician.

251 NYS Private Payor Medical Necessity Guidelines

Introduced by Ninth District Branch Medical Societies

(Dutchess, Orange, Putnam, Rockland and Westchester)

ADOPTED AS AMENDED

RESOLVED, that MSSNY support legislation and/or regulation that prohibits insurance companies from using proprietary guidelines to deny pre-authorization and/or payment.



Westchester Delegates Robert Lerner, MD; Peter Liebert, MD and ACC Delegate Joseph Tartaglia, MD

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