



WESTCHESTER PHYSICIAN

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REMEMBERING DR. NEIL SHAPIRO PETER ACKER, MD—IMMEDIATE PAST PRESIDENT

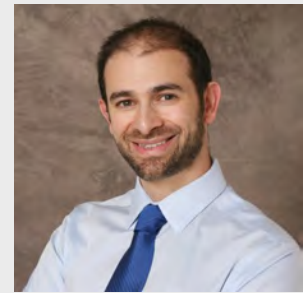
On April 24 I attended a memorial for Dr. Neil Shapiro at the Greenwich Reform Synagogue. He died on March 26, 2020 at the beginning of the pandemic so this event as has so often been the case in this era was postponed for two years. It was well attended and included besides family many physicians that had worked with him over the years at United Hospital in Port Chester which closed on December 31 2004. Our days at United Hospital were a halcyon period of medicine and talking after the service we all recalled the intimacy of a small community hospital and the sense of comradery it engendered.

Dr. Shapiro was a beloved and admired member of the medical community since the early 1980's. He practiced gastroenterology and was known for his supreme commitment to his work and his diagnostic acumen. He was born in Brooklyn on February 11, 1950 and was raised in Queens. He attended NYU as an undergraduate, and got his MD degree from The Medical School, Wayne State University. He went on to complete a residency at Beth Israel Hospital and a fellowship in gastroenterology from Montefiore Hospital.

I got to know Neil and his family because he and his wife Ilse brought their two daughters, Madeline and Lily to Pediatric Associates, the practice I joined in 1987. They primarily saw one of my partners but I remember them well. One of my prized possessions hanging in my house is a painting by Ilse Gordon, a gifted artist which she gave to me many years ago. They aged out of the practice and United Hospital closed so I mostly lost touch with the family.

As I sat with my wife at the service, I learned so much about Neil and his life, and a feeling of regret began to consume me that I had not gotten to know him as more than a colleague, but as a friend. I was stuck by many parallels. We were approximately the same age, he had two daughters, I had three. He had a wide variety of interests which included hiking, nature, reading, exotic travel and music which really

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JEFFREY JACOBSON, MD
President, WCMS

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**CINCO DE MAYO
NETWORKING EVENT**
Thursday, May 5
The Brazen Fox
White Plains, NY

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FROM THE EDITOR...**A QUESTION OF PERSPECTIVE**
PETER ACKER, MD

This is a column from the April 2005 issue

On most days I am happily ensconced in my pediatric office listening, dispensing advice, diagnosing, examining, keeping an ear out for the unusual, but trying not to give short shrift to the common. I try to keep up with the onslaught of journals that the postman brings in by the truck load and hope to be flexible enough to incorporate new ideas without diminishing the teachings of experience and intuition. The rhythm of clinical medicine suits me with its rough and tumble onslaught of new problems and unexpected queries. I enjoy scurrying back to my office to look up a fact prompted by a mother's question. I try to keep complacency at bay. I recognize that medicine is a delicate melding of art and science and that clinical clues are as likely to be found in a mother's furrowed brow as in say a textbook's entry on intussusception. In short I am practicing medicine to the best of my ability.

Ed Koch, former mayor of New York would often offer the query "How am I doing?" when arriving at political gatherings. Certainly divining the will and attitudes of the people is a key element of the art and craft of politics. People like to feel that their leaders have a "common touch". Bill Clinton was able to connect with people in a way that convinced them that he understood their pain and travails. Similarly, patients look to their physicians for a sense of compassion and empathy. The problem for both politicians and physicians is perspectival – there is no way to know for sure what your constituent or patient is thinking or feeling. Even the most surefooted of us on occasion trample upon outstretched bare toes. A well known misstep from the political side was George Bush Senior's revealing bafflement at seeing groceries being scanned at check-out.

Luckily for me (and for the nation), I am not the president and am free to wander through the community at will. In addition, I or my family are, on occasion, patients. Two recent experiences are what prompted the above musings. The first involved my 11 year daughter who broke her arm. It was a Friday night and we hot tailed it over to our local ER. Care was professionally and expertly rendered, though in slow motion. For one long stretch, my wife, daughter and I were prompted to wait in a corridor in the ER which commanded an excellent view of whole emergency ward. Of course, there were patients with various conditions, but what caught my eye more during this forty five minute period was the nurse's station where various staff members engaged in comfortable patter punctuated by amused laughter. Mind you, patient care was also going on, and of course the laughing staffers were probably on break and in no way involved in the expeditious performance of my daughter's x ray, yet it made our wait seem a tad longer than it was. As I watched the scene, I guiltily recalled my own behavior during long ER shifts.

(Continued on page 4)



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**REMEMBERING DR. NEIL SHAPIRO
PETER ACKER, MD—IMMEDIATE PAST PRES-
IDENT**

(Continued from page 1)

dovetail with my own. He was in particular passionate about opera and saw performances throughout the world. He also learned to sail as an adult and enjoyed the comradery at the Old Greenwich Yacht Club. In a sense we were opposites – I grew up in a waspy household and my father was an expert sailor and we belonged to a yacht club. My father tried mightily to teach me how to sail, but it never took. I would be immersed in book as we sailed and my father would shout out a command “man the jib” which would totally befuddle me and throw me into a panic. I thought as I sat there, how nice it would have been to return to the waters of Long Island Sound with Neil as the captain.

Speakers included his wife Ilse, his daughter’s Lily and Madeline (Madeline unfortunately had to speak over zoom since as is so common these days was quarantining with covid), a commodore from the Yacht club, his sister, an old friend from college days and his two son’s in law. The love and admiration were palpable in all their words. As was befitting his passion for music, some beautiful musical performances.

He will be greatly missed



FROM THE EDITOR...

A QUESTION OF PERSPECTIVE

PETER ACKER, MD

(Continued from page 2)

The second experience was with my internist, a bright, much younger man who I think highly of. I have for years have been on medication for hypertension. I ran across new guidelines that suggested that systolic blood pressure should be less than 120. Mine averaged closer to 130. It was the work of a minute to call for an appointment and soon I was on the other side of the examining room that I am not as accustomed to. My internist listened patiently to me, though I thought I detected a hint of amusement at the corners of his lips. It occurred to me that he must beat his head against a wall trying to get overweight middle aged men with cholesterols of 280 to quit smoking and here I am fussing over a BP of 127/70. I squirmed in my seat as I im-

agined that my own facial expression was probably similar to when I sat listening to a mother inquiring about medication for her son (who IQ’s north of 130) for the SAT’s. Anyway, we had a long discussion about the pros and cons of additional medicine, looked at other risk factors, etc. In the end we tweaked my regimen and my B/P as I write this (with deadline approaching, no less) is 119/65. I live in fear that new guidelines will be published lowering it to 110.

Anyway, I think it behooves us to try and put ourselves in the shoes of our patients and there is no better way than to approach our own experiences as patients with a reflective mien. It’s a matter of perspective.



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Save The Date
Westchester County Medical Society &
Westchester Academy of Medicine

Annual Meeting & Dinner

Wednesday, June 29, 2022

Westchester Country Club

99 Biltmore Avenue

Rye, NY

6:00pm—7:00pm

Networking & Cocktails

7:00pm

Buffet Dinner &

Installation of 2022-2023 Officers



The Westchester Medical Society Presents

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Free Drinks!



19:00 - 22:00



The Brazen Fox, 175 Mamaroneck Ave, White Plains, NY 10601

Join us for an evening of food, drinks, and networking on us!!!

RSVP to Janine Miller
jmiller@wcms.org



STOP THE TRAIN Elliot Barsh, MD

“A red flower placed in a window may expand its influence over all the area of your sight.” - Robert Henri

As I sit to write our column, I wonder about how we are all feeling?

What are we excited about when we wake up in the morning?

What feels good, and what do we want to accomplish?

Are we seeing the beauty of the red flower, in ourselves and one another, or are we distracted by fatigue and loneliness?

The pandemic has affected us in too many ways to count, and too deeply to fully admit to ourselves.

We have dedicated ourselves to carry the weight of our patients' fear and vulnerability.

The pandemic has forced us to face our own fear and vulnerability like never before.

How do we find the strength to carry both with grace and kindness?

As James Baldwin wrote, “...everything in our lives depends on how we bear the light.”

Thanks for reading and be safe.

“Forgetting some of the fear will allow us to more clearly recall the details we want to remember.”

We Will Forget Much of the Pandemic. That's a Good Thing.

Remembering too much, too vividly can negatively affect mental health.

“We are all vulnerable and don't have to be afraid of it, shamed of it, or dismiss it.”

In the Rush to Return to 'Normal,' What Happens to the Vulnerable?

We need a new normal.

“How do we find some peace in the middle of our day?”

The Calm Place

Everything is always happening. Here's the place without the things.

“We all need a companion to ease our jour-

ney”

The Patient Resident

“...bringing my anger into the room served only to distract me, preventing me from finding the compassion and connection that allow me to feel whole as I return each day to an environment rife with suffering.”

From Resentment to Reconnection-Reflections on Caring for the Unvaccinated

Mameen—by David Whyte

Be infinitesimal under that sky, a creature even the sailing hawk misses, a wraith among the rocks where the mist parts slowly.

Recall the way mere mortals are overwhelmed by circumstance, how great reputations dissolve with infirmity and how you, in particular, stand a hairsbreadth from losing everyone you hold dear.

Then, look back down the path to the north, the way you came, as if seeing your entire past and then south over the hazy blue coast as if present to a broad future.

Recall the way you are all possibilities you can see and how you live best as an appreciator of horizons whether you reach them or not.

Admit that once you have got up from your chair and opened the door, once you have walked out into the clean air toward that edge and taken the path up high beyond the ordinary you have become the privileged and the pilgrim, the one who will tell the story and the one, coming back from the mountain who helped to make it



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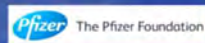

The Medical Society of the State of New York

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On Wednesday, April 13, 2022, the WAM sponsored a Member Tasting with the Medical Students at New York Medical College. The event, held at the Prospero Winery, was attended by over 50 medical students and WAM doctors and guests.

Our own vintners, Dr. Joseph Tartaglia, Past President WAM and Paul Gerardi, MD brought their own wines for the guests to sample and explained the wine making process. They were joined by Alfredo Veronesi of Prospero Winery. The event was sponsored by the Westchester Academy of Medicine.

The students enjoyed meeting the physicians and talking to them about their specialties. The Westchester Academy of

Medicine would like to thank the student organizers for all their help with planning and executing such a successful evening, and Prospero Winery for hosting the event.



MCB

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MARCH 18, 2022

Medical Malpractice Insurance Coverage in New York

BY: KENNETH R. LARYWON, ESQ. AND THOMAS A. MOBILIA, ESQ.

With ever-increasing pain and suffering awards, unsuccessful legislative attempts to establish caps on damages through tort reform, and expanded statute of limitations, such as Lavern's Law concerning failure to diagnose cancer claims, New York healthcare providers, practices and hospitals, often question what they can do to protect themselves in the event of a medical malpractice judgment. While the importance of insurance is obvious, practitioners should be appropriately informed as to their medical professional liability coverage, available limits of coverage, insurance coverage maintained by potential co-defendants, and the priority as between them.

OCCURRENCE, CLAIMS-MADE AND TAIL COVERAGES

Occurrence and Claims-Made coverage are the two basic types of medical malpractice insurance policies. An Occurrence policy covers a physician for any incident that "occurs" during the policy period regardless of when the malpractice claim is filed. Accordingly, it will continue to provide coverage even after a policy ends. A Claims-Made policy, however, will only provide coverage if both the alleged malpractice took place and the claim is filed during the policy period. Given that a lawsuit may be initiated years after an incident occurred, a Claims-Made policyholder must obtain extended reporting or "Tail" coverage if, for example, the practitioner changes from a Claims-Made to an Occurrence policy, or the practitioner retires, thereby ensuring continued malpractice coverage for incidents that may have occurred years earlier. Another consideration with Claims-Made coverage is to ensure that the retroactive date remains the first Claims-Made policy effective date. This will mean that as long as the Claims-Made policy is renewed with the same

retroactive date, the new policy will cover claims reported during that policy period.

WHO WRITES PROFESSIONAL LIABILITY COVERAGE IN NY?

There are a number of insurance companies writing medical professional liability insurance in New York. Some companies are licensed and regulated by the State of New York, and are thereby required to follow NY insurance laws and regulations. Others write coverage as registered Risk Retention Groups (RRGs) or as excess and surplus insurance carriers, and are not subject to all of the State's laws and regulations. It is highly advisable to be aware of the differences between insurance companies, as well as the coverage they offer, before making a choice.

LIABILITY LIMITS IN NEW YORK

The most common medical malpractice coverage in New York is a primary policy with limits of \$1.3 million per occurrence/\$3.9 million in the aggregate for a 1-year policy period. Physicians must consider several factors in deciding whether the limits of liability

coverage adequately protects their personal assets from a judgment in favor of plaintiffs, including the incidence of lawsuits associated with their specialty and potential sustainable verdict values for a plaintiff's non-economic (pain and suffering) and economic (e.g., loss of income) damages.

HOSPITAL PRIVILEGES

Another significant consideration with regard to coverage limits involves hospital privileges. Hospitals in New York routinely have bylaws requiring attending physicians to carry certain limits of coverage as a prerequisite to granting privileges. In addition to \$1.3 million/\$3.9 million primary insurance, a hospital may require the physician to maintain an additional layer of \$1 million/\$3 million in excess coverage. The decision to require primary limits versus primary plus excess and/or entity coverage will substantially alter the amount of coverage a hospital has in front of it in the event of a lawsuit against the hospital arising from alleged malpractice by an attending physician. A physician should also explore what types of policies the hospital will

Medical Malpractice Insurance Coverage in New York

CONTINUED FROM PREVIOUS PAGE

accept in the credentialing process prior to purchasing coverage.

IMPACT OF ALAE ON POLICY LIMITS

Hospitals and physicians should be aware that some policies issued by excess/surplus insurers include allocated loss adjustment expense (ALAE) within the policy limit. ALAE is the cost of settlement and defense, most notably defense costs, but also including expert witness fees, court costs, claims and investigation costs. Given the substantial defense costs in medical malpractice litigation, policyholders should be informed regarding whether ALAE costs will reduce their available primary limit.

DEDUCTIBLES AND RESPONSIBILITY FOR PAYMENT

Excess and surplus policies may also contain a deductible that is to be reimbursed by the policyholder. Typically, this involves the hospital or insurance carrier paying the judgment or settlement, then seeking reimbursement from the insured practitioner for the deductible amount. Under these circumstances, hospitals or practices should consider whether there is any credit risk created by a deductible or other risk sharing device in the policy.

SHARED VERSUS SEPARATE POLICY LIMITS

Insurance policies issued to practice groups and hospitals may have shared limits or separate limits. While physicians often have separate limits, there are also times when hospitals or groups may share limits with employed physicians and other practitioners. With shared limits, it is important to know both the policy limits for each practitioner and the aggregate or total shared limit. Is the aggregate sufficient to cover the number of practitioners insured under the policy? While a Certificate

of Insurance (COI) may appear to cover each physician with separate limits of \$1.3 million/\$3.9 million, this amount of coverage may not actually be available to each physician if the total aggregate is less than \$1.3 million times the number of insured practitioners. Therefore, best practice includes review of the COI and confirmation of the coverage provided for each practitioner.

IS EXCESS COVERAGE AVAILABLE?

For eligible physicians, New York State has a program which is often referred to as "Section 18" or "free" excess coverage above their primary coverage. If the eligibility requirements of the Section 18 program are met, and slots are available, its excess coverage provides an additional \$1 million/\$3 million above qualified primary coverage at no cost to the physician. In order to be eligible, the physician must maintain primary policy limits of \$1.3 million/\$3.9 million with a NYS licensed insurance carrier, have a current affiliation with a NYS acute care hospital and complete the required risk management course every two years. Another consideration for hospitals and physicians is that physicians covered with shared limits are not eligible for the free Section 18 excess coverage. Because Section 18 excess coverage is only available when primary coverage is through a NYS licensed carrier, a physician with primary RRG insurance should consider purchasing additional excess coverage. A physician should explore this issue prior to purchasing coverage.

CONTRACTUAL INDEMNIFICATION

Agreements between practitioners, groups or hospitals may provide for contractual indemnification, specific minimum coverage requirements, shared or separate limits, other insur-

ance, priority of coverage, named insured or additional insureds. Hospitals and practice groups often have these types of agreements for coverage of hospital specialty areas, including, most commonly, emergency medicine and radiology. These contracts and their effect on liability and limits should be considered in assessing the overall sufficiency of coverage.

PROFESSIONAL ENTITY COVERAGE

Practice groups may also have separate entity coverage providing an additional layer of insurance if the practice or its employee is named as a defendant.

CONCLUSION

In light of the foregoing considerations, healthcare providers, practices and hospitals can better protect themselves by being informed regarding the insurance coverage they have, additional coverage that is potentially available, and the coverage of those practicing around them. ■



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Thomas A. Mobilia is a Senior Trial Partner at Martin Clearwater & Bell LLP, where he defends teaching hospitals, medical practices and individual physicians in high exposure medical malpractice lawsuits. He also heads the Firm's COVID-19 litigation group.

1. Section 18 coverage is not available to new participants unless previously qualified physicians fail to reapply for the coverage. Physicians seeking Section 18 coverage for the first time are placed on a waiting list until an opening is available; however, a physician can purchase coverage from his or her admitted carrier during the waiting period. If a physician is accepted into the Section 18 program during the same policy year, the premium paid for the additional coverage will be reimbursed by the carrier.



MSSNY Podcasts

MSSNY

The Medical Society of the State of New York has created a number of podcasts on topics that are timely and relevant. In addition to weekly MSSNY Updates from the Division of Governmental Affairs, there are myriad timely and relevant podcasts on COVID-19 (both for physicians and patients) as well as a number of others on veterans, adult immunizations and emergency preparedness.

- | | |
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MSSNY Announces two NEW Podcasts on COVID-19

★ A Discussion on COVID Vaccine for Patients ★

MSSNY President, Dr. Bonnie Litvack, President-elect, Dr. Joseph Sellers and Dr. William Valenti, Chair of MSSNY’s Committee on Infectious Diseases discuss vaccines currently available for COVID-19 and answer many questions patients may have about the vaccines.

★ How to Talk to Patients About Vaccine Hesitancy ★

Dr. William Valenti, Chair of MSSNY’s Committee on Infectious Diseases discusses the history of vaccine hesitancy and offers sage advice to listeners on talking to vaccine hesitant patients.

★★The additions of these podcasts marks 100 podcasts published on the MSSNY Podcast website!★★



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