BACKBONE

Volume 12 *a publication of the Connecticut Orthopedic Society* *Spring 2007*

President's Corner *Robert A. Green, M.D. - President*

As we approach the annual meeting of the Connecticut Orthopedic Society for 2007 and the completion of my term as society president, I would like to take this opportunity to remind the members of the work that needs to continue on behalf of the orthopedic surgeons of the state.

Scope of practice issues have not and will not go away. In spite of the fact that we believe that we have reached an equitable solution to the podiatry issues, you may be assured that they will be back. It is our responsibility to provide the highest quality foot and ankle care at a level that is unobtainable to the average podiatrist and a level that will be obtainable only by those podiatrists who commit themselves to a very high degree of education.

The chiropractors will continue to push the issue of manipulation under anesthesia and hospitals that find their reimbursements decreasing may be willing to open the door to any willing source of income. Manipulation is considered a surgical procedure practiced ONLY by “physicians licensed to practice medicine and surgery”; however, we should not be complacent as the chiropractors are likely to manipulate the under educated and unsuspecting legislators to pass this issue.

It is evident that legislative monitoring has been one of our focused activities. Some of this work is solely by the COS and our lobbyist and some is shared with CSMS or AAOS. At whatever level, our board members, including our UConn representatives to the BOD, have testified before the legislature. Most recently, three residents from the University of Connecticut Orthopedic Residency Program gave testimony regarding the proposed 3% tax on physician’s net revenue if they passed the Universal Health Care Bill. One of the major reasons that the proposed tax was removed from the bill is directly related to the resident testimony and the impact it would have on their decision to practice in this state.

Finally, all of the above work cannot be accomplished without the financial support of the membership. As we approach the Annual Meeting, I urge you to send in your membership dues for this year and I strongly encourage you to support the COS Foundation. The residents of today may be your partners tomorrow, but without support for the UConn and Yale orthopedic educational programs these wonderful young people may leave Connecticut.

Looking forward to seeing you May 18, 2007 for the Annual Meeting. Program details and registration information inside this issue.

Edward Collins, MD

The Connecticut Orthopedic Society wishes a fond "Bon Voyage" to Dr. Ted Collins as he embarks on his new medical career in Key West, Florida. Dr. Collins has served the Society for many years as President, Secretary-Treasurer and AAOS Councilor. He has made his political presence known both in Connecticut and with his many trips to Washington, D.C. for meetings with Connecticut representatives on the Hill during the AAOS National Orthopedic Leadership Conference.

Dr. Collins was one of the founding fathers in the lawsuit against the practices of Blue Cross/Blue Shield, now Anthem, as they related to physicians. He continues to fight this lawsuit along with other individual physicians. Thanks to Dr. Collins' dedication and commitment to the profession of medicine, orthopedic surgeons in Connecticut have been represented by a true leader. His enthusiasm and political passion will be missed here in Connecticut.

Save The Date

Connecticut Orthopedic Society Annual Meeting

Friday, May 18, 2007

Registration 8:00 a.m. Program 8:15 a.m. - 3:30 p.m.
Farmington Marriott Hotel, 15 Farm Springs Road, Farmington, Connecticut

Michael Kaplan, M.D., Program Director, has assembled an impressive educational program for the Society's 2007 Annual Meeting. **You won't want to miss this event which will provide you with important clinical information, updates and an opportunity to earn up to 5 hours of AMA Category 1 CME Credits.**

All Society members (2007 dues paid), medical interns and residents are invited to attend this event free of charge. Emeritus Members can attend for $35.00. Physician assistants, physical and occupational therapists will be charged $150.00 for the meeting and luncheon.

LOOK FOR REGISTRATION MATERIALS AND COMPLETE DETAILS IN THE MAILOR USE THIS FORM. Please contact the Connecticut Orthopedic Society's Executive Director, Susan Schaffman at (860)561-5205 or log onto www.ctortho.org for questions. The Society looks forward to your participation.

Speakers

"Hip Resurfacing Arthroplasty" and "Total Knee Replacement:Managing Multiplanar Instability"
Paul Lachiewicz, MD

"Management of Humeral Shaft Structures" and "Management of Periprosthetic Femur Fractures"
Matthew Jimenez, MD

"Sports Medicine 2007 - Patellofemoral Update" and "Focal Resurfacing of the Knee & Shoulder for Osteochondral Defects"
Anthony Schepsis, MD

Spinal Stenosis & Other Topic tba
Bruce McCormack, MD

Orthopedist of the Year Award
Presented to John O'Brien M.D.

Connecticut ORTHOPEDIC Society

2007 Annual Meeting Registration Form

___**Yes**, please register me (us) for the Annual Meeting on May 18, 2007, at the Farmington Marriott Hotel from 8:00 a.m. - 3:30 p.m.

Name_____

Name_____

Practice_____

Address_____

City_____**Zip**_____

Telephone_____ **Fax**_____

E-mail_____

Registration Status (check one)

___Connecticut Orthopedic Society Member (2007 Dues Paid - NO FEE)

___Connecticut Orthopedic Society Emeritus Member ($40.00 FEE)

___Medical Student, Resident or Intern (NO FEE)

___Physician Assistant, Physical or Occupational Therapist ($150.00 per registrant)

Return form and payment (if applicable) to:

Connecticut Orthopedic Society
Administrative Office
26 Riggs Avenue, West Hartford, CT 06107
(860)561-5205 phone - (860)561- 5514 fax
email - sasshops@aol.com

In Practice

The Record Reviewer's Apology
by Ron Ripps, MD

In the Jewish tradition, at a funeral burial, family members and loved ones pitch the first shovels of earth onto the casket, because it would be improper for a stranger to perform this final tangible act between the living and their beloved dead… an unpleasant but necessary rite.

I started doing med-mal reviews many years ago- when my group decided to distribute income more on a productivity basis and less on a shared basis. Med-mal reviews paid well then- still do. It was not an easy transition for me, because I had strongly opposed the concept of malpractice litigation since its inception in the 1960's. In my naiveté, I had never known a physician who didn't mean well or try his best, so the notion that a physician could be sued for negligence ran contrary to everything that I had conceived a physician should be.

I wrote several editorials in our local paper over the years. Initially I decried the salacious way the newspapers handled these tragic cases, and I condemned the predatory attorneys who advertised their skills at "reaping just rewards". Later I tried to educate small businesses as to the true cost of this litigation, and, most recently, I ranted about patient safety issues and the "culture of concealment" that malpractice litigation has created. I noted that upright and ethical physicians would rather ignore cases of negligence than submit a colleague to the public disgrace of a malpractice trial (not to mention their own risk at being sued for slander). As attorney Phil Howard noted in his writings for the Common Good, 70% of healthcare professionals mistrust our system of justice. What that means is that physicians are so skeptical of the outcomes of the court's theater and its random findings that they would rather hide from patient safety issues than confront them in an open and analytical way.

Physicians know that malpractice premiums are a heavy burden and a cost of doing business that cannot be passed on to their customers. With managed care and government programs cutting back reimbursement on a regular basis, malpractice premiums have become disproportionately enlarged, to the point where they have crushed some practices and have generally made quality medicine less accessible to all.

A young woman from Kansas came to my office with a hand problem. After horsing around with her boy friend several months prior, she found she couldn't flex her ring finger and sought medical attention there about a month later. The surgeon took her to surgery for a tendon transfer. The surgery was complicated by a nerve injury that left her with an insensate hand and a stiff painful ring finger. I noted that she had had a "jersey finger" (avulsed flexor profundus tendon), and she was aware that sometimes nerve injuries occur in the course of surgery. When we re-explored her wrist, however, I found the median nerve had been neatly transected and resutured and that all the pulleys in the ring finger had been incised. After we repaired her hand, an attorney's letter arrived from Kansas soliciting my help in a malpractice suit.

My initial response was to decline his invitation in no uncertain terms. He then asked me to simply review the record, to which I agreed. As I read through the thick portfolio, it became apparent that the surgeon had not known what he was doing- that he not only sacrificed all the pulleys, but he had mistakenly begun to harvest the median nerve for a tendon graft- hence the nerve injury. He had told her the nerve had been damaged "in the scar tissue," but there was, of course, no scar tissue in the wrist at the time of her surgery. Every one of us has, I'm sure, encountered a moment like this, when we suddenly become aware of a terrible accident that a colleague has made. We are conflicted between our allegiance to the innocent patient, who has clearly been violated, and our colleague, who probably meant well. Unfortunately, intentions don't count. We ask ourselves, "Could that be me? Could I ever find myself in a situation where I might do something like that?"

Physicians have always found the hardest part of malpractice litigation is to maintain one's objectivity. Attorneys and judges find this to be a perplexing weakness among

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Coding Course Update

On March 8th, over 100 orthopedic surgeons and their office staff took part in the popular coding workshop at St. Francis Hospital and Medical Center. Thanks to the Society's underwriting of the program, Society members and their staff were able to learn important coding updates and reimbursement tips for orthopedic practices at a fraction of the normal program cost.

The Society would like to extend special thanks to

• Robert Green, M.D., Society President and Ms. Carol Hornish for organizing the event and;
•Lara Wynne and Genzyme Pharmaceuticals for their financial support of the program.

Regulatory News

The Chiropractic Examining Board issued a declaratory ruling on expanding chiropractors scope of practice to include manipulation under anesthesia.

With patient safety and lack of training issue being significant issues, both the CT Orthopedic Society and the CT State Medical Society consulted and retained legal counsel and identified a spokesperson to participate at the public hearing held on March 22, 2007. With special thanks to Dr. Brian Smith, CT Children's Medical Center, Hartford, CT, the Society and orthopedic surgeons were well represented during the official proceedings.

The testimony provided on behalf of all physicians included the lack of training chiropractors have, the absence of experience when dealing with a patient under anesthesia and the vagueness of the request which did not specify type of manipulation, anesthesia administration and location of procedure.

We currently await the ruling of the Chiropractic Examining Board and will alert our members when a decision has been reached as to your Society's next action steps.

Connecticut ORTHOPEDIC Society

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26 Riggs Avenue
West Hartford, CT
06107

The Record Reviewer's Apology by Ron Ripps, MD

physicians. A judge I know, who is married to a physician, once told me she could not fathom why doctors don't just shrug off malpractice as simply a cost of doing business- like getting a speeding ticket as we race from our office to the hospital. Legal professionals have learned how to insulate themselves in a way that allows them to keep their clients and their clients' problems at arms length. In medicine, the very best doctors have the keen ability to do just the opposite- to climb into their patients' heads and hearts to gain their confidence and share their fear.

I testified against the surgeon- not just because he had incised all the pulleys and mistakenly tried to harvest the median nerve - but because he denied it.

Another attorney sent me the file of a young man from Ohio who had sustained a paint gun injury to his nondominant index finger. A general practitioner saw him in the office, saw only a small puncture wound, and assured the young man he would be all right. As the pain escalated four hours later, the gentleman went to the Emergency Room, where the gravity of this seemingly innocuous trauma was appreciated, but none of the local surgeons on call took Workers Comp insurance. Ten hours later he was transferred to a university hospital in the next state, where after three weeks and three surgeries the finger was lost.

The attorney was suing the general practitioner for negligence, stating he should have recognized the severity of a paint gun injury and should have found a surgeon for the young man. I spoke with the chairmen of family practice programs, who informed me that while such a hand injury might be briefly mentioned in their curriculum, it was something they would rarely see in the course of day-to-day practice.

According to the Emergency Medical Transportation and Labor Act (EMTALA), a hospital emergency room has an obligation to provide certain emergency services to avoid long delays in appropriate care (the anti-dumping act). Since the first 10 hours has been shown to be critical to the survival of the digit in paint gun injuries, I advised the attorney that the general practitioner should not be held liable for negligence in failure to recognize a condition that didn't fall into the realm of things he should know, but that the hospital had not fulfilled a responsibility to this young man to address his emergency in a timely way.

And so I got started reviewing med-mal cases- perhaps some of yours. Don't judge me too harshly. I am at a stage in my career where, quite frankly, I don't need the income. But, rest assured, I do not take this responsibility lightly. No, I am not an academic, and my curriculum vitae does not bristle with pages of scientific articles I have published. I am not usually an expert witness. I have been in practice for 31 years, and I have made mistakes, just like you. I know how to conscientiously research the issues I am asked to address, and I am not hesitant to call my colleagues for their information or advice. I am comfortable knowing that I can evaluate my colleagues in a just way and deflect unfair and unwarranted litigation.

I didn't create malpractice litigation, and I remain adamantly opposed to it. But it is a fact of life in our medical world. It is neither appropriate nor good science for our records to be reviewed by those who might profit from our demise or who are strangers to the profession- like the nurse case reviewers and hospital moles employed by plaintiffs' attorneys. *We* need to be the standard bearers for our own profession and to uphold the trust society has in us. In maintaining our professional nobility, we have a duty to police our ranks and to remedy our deficiencies- peer review with teeth. We need not only work from the outside in with more favorable legislation- but also from the inside out with comprehensive, accurate reviews and with truthful testimony.

From time to time the courts and commissions call upon us to provide advice and expert testimony. This is not a menial task we should disdain. This is the arena where public perceptions are forged and where we need to assert what we believe is true. The American Academy of Orthopedic Surgeons has created a code for expert witnesses, which stresses a thorough review of all the medical records and in-depth research of the disputed issues. One can no longer simply base his conclusions on his experience. After you participate in the judgment of a colleague, you will never emerge with a sense of accomplishment or even a sense of relief… only a sense of having been stained by an unpleasant but necessary task.

In the Jewish tradition, when we return from the cemetery, a pitcher of water and towels are placed outside the door of the house so that we can wash our hands before we go in.

The Backbone is a publication of the **Connecticut Orthopedic Society.** *Comments and suggestions should be directed to:* **Susan Schaffman,** *Executive Director*
26 Riggs Avenue, West Hartford, CT 06107
(860) 561-5205 phone
email: sasshops@aol.com

Legislative Update 2007

The Connecticut Orthopedic Society continues to represent all its members on the legislative front with our very capable lobbyist, Bill Malitsky of Halloran & Sage. The Society has worked with the CT State Medical Society and other specialty societies to represent a strong, consistent voice at the Legislature. The following is a brief legislative update excerpted from the CT State Medical Society report as of March 2007. *(Please note that this is not a complete list of all the items on the legislative front and for further details log onto www.csms.org or www.ctortho.org).*

Universal Health Care

CSMS and specialty societies have provided testimony and responded to many proposals aimed at increasing access to health care and health insurance. All of these have been dubbed Universal Health Care Bills. Of most concern is House Bill 6652, An Act Establishing the Connecticut Healthy Steps Program. Although this bill has many of the same concepts as the other proposed bills, it has some very specific provisions that other bills have not offered that are problematic. Originally the bill contained a health care service tax of 3% on revenue derived from furnishing health care services in Connecticut - a proposal that has come up and been defeated in recent years. This proposed tax would have applied to all providers of medical services: physicians, hospitals, nursing homes and other facilities. On Tuesday March 6th a public hearing was held on HB 6652. Physicians were well represented to oppose the 3% tax at the public hearing. In an effort to engage patients to get involved and show their concern for quality medical care by physicians, an ad in the Hartford Courant (funded in part by the CT Orthopedic Society) ran on the morning of the public hearing. CSMS lobbied hard and successfully to have the 3% tax removed from the bill prior to it being voted out of committee. Although the bill is being considered a "work in progress" and will be one of many bills to become part of the "universal debate," we continue to strongly oppose the bill and work to ensure that if it does become the vehicle for reform, several other negative provisions be removed. Provisions we continue to lobby hard to have removed are:

• A tax on "cosmetic" services
• A requirement that ALL health care providers accept HUSKY A and B recipients as well as Medicaid Fee-for-Service patients
• Language prohibiting physicians from charging more than 200% of Medicare for any service

Scope of Practice

The main scope of practice issue that will impact orthopedic surgeons is the Podiatric Scope of Practice. After last year's legislative session, a mandate to mediate the podiatry and orthopedic societies discussion was administered with Drs. Aronow and Cimino spending many hours in arbitration sessions with the podiatrists, Department of Public Health and an independent arbitrator paid for by the CT Orthopedic Society, CT State Medical Society and the Podiatry Society. The final result is this year's legislation before the legislature HB- 6700, An Act Revising the Scope of Podiatric Medicine. This bill is based upon the recommendations of the podiatric arbitration panel convened by Commissioner Galvin to address potential changes in podiatric scope of practice with respect to ankle surgery. The recommendations reflect a consensus between representatives of the Connecticut Orthopaedic Society and the Connecticut Podiatric Medical Association with respect to creating a process to allow qualified practitioners of podiatric medicine to perform ankle surgery and also specifically define "ankle surgery". Only podiatric surgeons who meet the criteria of the American Board of Podiatric Surgery for board certification or qualification in reconstructive rearfoot/ ankle surgery would be allowed to independently perform ankle surgery. Podiatric surgeons would be allowed to independently perform standard or specifically defined advanced ankle procedures based upon their ability to document adequate training and experience via well defined criteria. All podiatric surgeons who have completed a 2 year or longer CPME accredited podiatric surgery residency would have the opportunity to meet the criteria for obtaining a permit to perform ankle surgery. In addition, other pieces of legislation concerning scope of practice received the attention of CSMS and the special societies. S.B. 7161 An Act Revising the Definition of Advanced Nursing Practice would give nurse practitioners, nurse psychotherapists and certified nurse anesthetists authority to independently practice within a broad and vaguely defined scope of what is now considered the licensed practice of medicine. CSMS presented testimony in opposition of the Bill at the public hearing and requested that the Public Health Committee work with CSMS to identify the circumstances where we can assist our colleagues to create opportunities for them to continue to benefit from collaboration with a physician in the treatment and care of patients. At this point, after much discussion with Public Health Committee Chairwoman Representative Peggy Sayers, it appears that no action will be taken to allow for the independent practice of APRNs. Rather, the Chairwoman will require that work be done during the off session to determine whether claims of difficulties by APRNs are true and how they can be addressed. H.B. 7159, An Act Updating the Scope of Practice of Optometry is a significant unprecedented expansion of the services optometrists would be allowed to deliver in Connecticut

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without providing adequate and necessary safeguards for patient care and H.B. 1254, An Act Allowing Electrologists to use Laser Technology for Hair Removal would allow non-physicians the ability to use lasers for hair removal. CSMS testimony stressed the potential negative and often irreversible outcomes that can occur when lasers are used by health care and other professionals who are not medically trained physicians. As a result this is another scope of practice issue that appears to be headed for no action this session.

Workers Compensation

CT Orthopedic Society Board member, Michael Saffir, M.D., has taken the lead of meeting with the Workers Compensation Commission prior to this legislative session and has worked with CSMS staff to highlight the need for a fee schedule approach that works for physicians in Connecticut and continues to guarantee increases, while preventing plans from using their own code editing policies to reduce payments to physicians. After a meeting with the Workers Compensation Commission to discuss changing the formula used to index and update the Workers Compensation Fee Schedule, the approach that has been proposed is to tie the base units of the Workers Compensation Fee Schedule to the RVUs within the Medicare RBRVS Physician Fee Schedule, without using the conversion factor or budgetary adjustments applied by CMS. The new approach also requires plans to follow the Correct Coding Initiative (CCI). Although the Society and CSMS support the use of CCI over the current system, at the public hearing on S.B. 1378, An Act Concerning the Workers' Compensation Medical Practitioner Fee Schedule, the CSMS and Society testified in support of the Bill that the adherence to CPT codes, guidelines and conventions would be more appropriate as this is what physicians must follow.

Standards in Contracts

A good first step in establishing standards for contracts between health insurers and physicians was achieved by CSMS and the state specialty societies when HB 6841 An Act Establishing Standards in Contracting between Physicians and Health Insurers passed the Public Health Committee unanimously. Unfortunately, the legislation was sent to the Insurance and Real Estate Committee who were unable to act on it prior to their deadline. Therefore, in its current form the legislation is dead. However, this was not unexpected and the positive vote out of the Public Health Committee gives momentum to continue with the strategy to make issues of transparency and contracting part of the entire universal debate.

Medical Necessity

H.B. 7055 An Act Ensuring Real Access to Health Insurance. The legislation would establish a statutory definition of "medically necessary" for health insurance coverage and ensure consistency throughout health insurance policies; it would also create a presumption that a procedure or treatment is medically necessary if the utilization review company's credentialed health care provider orders such procedure or treatment. Along with CSMS, the bill has support from other specialty societies, including the CT Orthopedic Society. Attorney General Richard Blumenthal and Health Care Advocate Kevin Lembo also testified in favor of providing coverage for patients who seek treatment that is medically necessary based on a physician's diagnosis. The CSMS testimony stressed that medical necessary services are not only those for the actual treatment of a condition, but also for the purpose of preventing, evaluating, diagnosing and/or treating an illness, injury, disease or its symptoms. The current version of the bill requires some revision, as it establishes a standard for medical necessity to include cost effectiveness which could establish a situation that CSMS is trying to prevent, namely that appropriate medical decision might be made on the basis of cost rather than medical appropriateness. Subsequently, the Insurance and Real Estate Committee made several favorable amendments to the Bill and voted it out of committee.

Other Testimony

On behalf of all physicians, CSMS submitted testimony to amend H.B. 6109, An Act Reducing Licensure Renewal Fees for Retired Dentists and asked that the bill be amended to waive the licensure fee for any retired physician who provides pro bono health care services. Connecticut has a large population of retired physicians who, on a regular basis, inquire about volunteering or providing pro bono services to Connecticut under-served population. However, these physicians find it prohibitive due to the $450 licensure fee that is required. As a result of the efforts by CSMS, the bill was amended to include such a provision for any physician who provides at least 100 hours of pro bono service a year. The bill is slated to be voted on this session.

PLEASE TURN TO PAGE 8 FOR IMPORTANT REGULATORY INFORMATION ON CHIROPRACTORS AND MANIPULATION UNDER ANESTHESIA.

Orthopedic Foundation Contributions

As a member of the Connecticut Orthopedic Society, your involvement and support of the Society has been instrumental in our ability to fund key education, training and research initiatives in Connecticut for future orthopedic surgeons and the practice of medicine.

Through the Connecticut Orthopedic Foundation, Inc., we continue our commitment to the training and education of orthopedic surgeons and to this end have donated $30,000.00 over the past few years to both the Yale and University of Connecticut School of Medicine Orthopedic residency programs.

Since beginning the campaign for contributions late last year, the following members generously answered our request to support the Foundation and the future of orthopedics by contributing over $5,000.00 to the Foundation.

T. Jay Kleeman, M.D. - Wilton, CT

Ted Collins, M.D. - Willimantic, CT

Robert A. Green, M.D. - West Hartford, CT

Murray Morrison, M.D. - Westport, CT

R. J. Sullivan, M.D. - Simsbury, CT

John Mara, M.D. - Avon, CT

John Fulkerson, M.D. - Hartford, CT

Michael Kaplan, M.D. - Waterbury, CT

Tim McLaughlin, M.D. - Farmington, CT

Anthony Spinella, M.D. – Wethersfield, CT

Ken Kramer, M.D. – Woodbridge, CT

Jesse Eisler, M.D. – West Hartford, CT

Michael Marks, M.D., MBA – Weston, CT

Brian Smith, M.D. - Avon, CT

Gary Friedlaender, M.D. - Woodbridge, CT

Michael Aronow, M.D. - West Hartford, CT

Alfredo Axtmayer, M.D. – Wallingford, CT

Ross Benthien, M.D. - Hartford, CT

Regina Hillsman, M.D. - Westport, CT

Please join your colleagues in supporting the future training of the next generations of orthopedic surgeons by making a contribution to the Connecticut Orthopedic Foundation. Your tax-deductible gift will help make a difference.

Connecticut Orthopedic Foundation 2007 Contribution Form

Enclosed is my contribution, made payable to the "Connecticut Orthopedic Foundation, Inc."

(Please Print)

Name_____

Home Address_____

City_____

Zip _____

Phone_____

Email_____

I am pleased to support the Connecticut Orthopedic Foundation with a gift of

(check one)

____$500.00

____$250.00

____$125.00

____$ ____(other)

Please send to the Connecticut Orthopedic Foundation, 26 Riggs Avenue, West Hartford, CT 06107. Your cancelled check is your receipt.

Thank you!