BACK BONE

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President's Corner

Michael Marks, M.D., M.B.A.

Solving the Medical Liability Problem

Most intricate societal problems have difficult solutions and unfortunately due to political ramifications the solutions put forth are really just bandaids and don't address the real problem. Such has been the case with medical liability. The solutions proposed to date have been aimed at the economics of the problem (while maintaining the current system) without really looking to address the entire issue – fixing the problem.

Unfortunately, it appears that a true solution to the medical liability crisis will only occur when all the parties involved are willing to make concessions – change the process. For the most part, all the legislation that has been proposed or passed at both state and federal levels continues to promote the bandaid approach – no fundamental change or a cap on non-economic damages being the central theme. Our goal must be to improve the safety and efficiency of the healthcare delivery system. We must move forward to create an environment where medical mistakes or errors are brought forward. The current punitive system encourages secrecy. Disclosing and discussing errors will lead to better healthcare. However, part of any solution must also include a process whereby those patients who are injured by malpractice, not maloccurrence, are compensated quickly, efficiently and appropriately.

The central theme of any current proposed solution has been to follow the California MICRA model. This model has permitted California to maintain affordable insurance coverage. Opponents state it hasn't, but all truly independent studies including those by the RAND Corporation demonstrate it has kept awards lower than they would have been otherwise and hence, premiums lower. In Connecticut, the last real reform was in 1987. Unfortunately, many of those statues haven't really been enforced. Concepts such as Certificate of Good Faith, Periodic Payments and a schedule for lawyers' contingency fees seemed like a good idea but they haven't been followed. Legislative reform without enforcement is no real reform. It is for that reason I believe that physicians and physician groups have felt compelled to ask for a cap on non-economic damages; it is the only part of any reform that can be enforced. It is not open for interpretation. As mentioned above, reform to date has really been aimed at maintaining the ability to obtain insurance and make it affordable. Not really working at finding a new system that works better.

In most states, physicians must have insurance or else they can't practice medicine. They don't have the option of going bare. Contrary to popular belief, the insurance industry is not making a killing financially on medical liability insurance coverage. If they were, why would companies such as St. Paul, CNA and others be leaving this market? In Connecticut, the number of carriers has shrunk from nine or ten in the mid-1990's to the current three and only one – CMIC – the physician owned Mutual Insurance Company is committed to staying in the state. January 2005 would have found many physicians throughout the state without coverage but their hospitals have come to the rescue by starting insurance captives. The existence of captives only insures that coverage is available, not necessarily that it is affordable. But it still doesn't address the true problem by creating a new program – solution.

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2005 Society Membership Dues Payable Today!

Legislative Connections

2005 Legislative Session

The 2005 Legislative Session will bring many challenges for the house of medicine and your Society stands ready to work with other specialty societies and the state medical society to advocate for meaningful legislation that will provide practice relief for physicians and ensure quality care to patients.

PODIATRY SCOPE OF PRACTICE

One of the major issues that is facing the orthopedic surgeons in Connecticut is the movement by podiatrists in the state to expand their scope of practice to include the ankle. Thanks to the ongoing efforts of Dr. Michael Aronow (UConn) and your Society, meetings with Sen. Chris Murphy (Co-chair of Public Health Committee) have been successful and we will continue to monitor any bill that comes to the Capitol and provide testimony when necessary to express our concerns over training and patient safety as it relates to podiatry.

OTHER ISSUES

The other issues that we are working on with the Specialty Societies in Connecticut includes;

Definition of Surgery - to develop an appropriate definition of "surgery" to correct the current deficiency in the statutes by passing legislation to incorporate the appropriate definition in Connecticut's statutes.

Standards and Fairness in Contracting - to provide a contracting mechanism that would give physicians an explanation of payment methodology, require the contracting health organization provide each participating physician a copy of the fee schedule and delete any provision that allows contracting health organization to unilaterally change any term or provision in the contract.

Bundling and Downcoding of Services - to correct the inequities in the current health care insurance system so insurers can not bundle and downcode services provided by the physician community.

LEGISLATIVE CONNECTIONS PROGRAM

As the 2005 Legislative Session continues, the Society needs physicians from throughout Connecticut to get politically involved. If you are interested in contacting your legislator to talk about an issue, attend a meeting at the Capitol, testify during public hearings, we want to hear from you.

Please consider participating in this unique program which brings together an orthopedic surgeon with members of the Connecticut Legislature over the next few months.

The timing is critical It is important to our profession that we are out – meeting these legislators, educating them on the issues facing medicine and orthopedics, and offering assistance as they tackle critical health care issues.

The job is easy! We will provide you with all the necessary tools to make these meetings easy and effective…including:

·Information on the legislator, how to contact them and their biography;
·Talking points for the meeting;
·COS Priority Issues "leave behind"
·Information on orthopedic surgery from the AAOS
·Evaluation form to report on the outcome of the meeting
·A sample thank you letter to send following the meeting.

For more information and to register as a "CONNECTION" for the Society, please email Susan Schaffman at sasshops@aol.com or contact her at (860)561-5205.

CSMS Legislative Update

The CSMS Council and its Legislative Committee have prepared the 2005 legislative agenda. The obvious focus will be to enact legislation to fix the currently broken system that is forcing physicians to restrict, relocate or leave their practices prematurely.

Enact Legislation with a guaranteed 15% reduction in premium rates that will stabilize the medical liability insurance marketplace

·Establish Mandatory Pre -Trial screening expert panels of physicians and attorneys to determine if there was a deviation from the standard of care prior to going to trial.
·Reduce the Offer of Judgment interest rates; provide reasonable disclosure of facts to defendants in order to making informed decisions on acceptance of offer

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The Backbone is a publication of the **Connecticut Orthopedic Society.** *Comments and suggestions should be directed to:*

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26 Riggs Avenue, West Hartford, CT 06107
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Legislative Connections

CSMS Legislative Update

·***Require Collateral Source disclosure to the jury at trial***
·Mandate structured payments to injured parties on awards over $200,000.
·Modify certificates of good faith to require written testament from a provider of the ***same*** not similar specialty
·Mandatory adherence to the current sliding scale for contingent fees
·***Establish guidelines/ standards for balancing Non-Economic Damages against the physician's deviation of the appropriate standard of care provided.***
·Enact other reforms where appropriate to provide the 15% rate reduction necessary to maintain access to quality health care in Connecticut.

Improve Physician oversight and Peer Review

·Create an independent medical examining board, with full licensure, investigatory and disciplinary powers
·Extend current whistleblower protections for those physicians who now report suspected breaches of the standard of care to the DPH or to any recognized peer review organization or process
·Provide protection from suit to hospitals and professional societies who conduct formal peer review in order to improve the quality of medical care.

Improve the Quality of Medical Care in Connecticut

·Establish Mandatory Continuing Education for Physicians
·Promote legislation encouraging and supporting the use of electronic records systems and a statewide prescription monitoring system.
·Continue to advocate for appropriate scope of practice parameters to ensure patient safety and quality of medical care.

Initiatives for a Healthier Connecticut

·Improve protocols for communicating between state regulators and professional organizations during times of "personal and health related crisis situations" (homeland security; flu vaccine shortages, etc.)
·Ensure continued safety for patients receiving care in outpatient surgical settings.
·Support personal responsibility and initiatives that promote a healthier life style

Medical Malpractice Insurance Update

State to schedule hearing on medical malpractice insurance

Gov. M. Jodi Rell ordered state insurance regulators to schedule a public hearing to review ways to handle Connecticut's rising medical malpractice insurance rates. She ordered the review after doctors, lawyers and state Attorney General Richard Blumenthal called for a hearing on a 90% rate increase.

The informational hearing, which will likely be early next month, is intended to gather ideas for reforms to present to the General Assembly. It will not be a formal hearing on a specific rate increase.

"The governor believes we can get at meaningful information that will help develop policies to bring down rates in the future," said Rell spokesman Dennis Schain.

Insurance Commissioner Susan Cogswell said critics of an 89.6% rate increase for The Medical Protective Co. want to "let us know the impact on the health care of Connecticut, and that's what we're going to do."

Physicians have complained that high insurance rates are forcing some to retire early, leave Connecticut or scale back their practices.

The Insurance Department also has approved a 23.2% rate increase, effective Nov. 1, 2004, for ProSelect Insurance Co., which sought 25%. A 14.8% increase proposed by the Connecticut Medical Insurance Co. is under review.

The agency is having independent actuaries review medical malpractice filings.

Orthopedist of Interest

The Connecticut Orthopedic Society would like to hear from any member who has an interesting hobby, pastime or anything of human interest to your fellow colleagues.

If you would like to share your story, please email your 500 words (or less) article to the BACKBONE Editor, Ron Ripps, M.D. at ronripps@att.net. If your story is selected for the next issue, you will be notified. All submissions should be in Microsoft Word format and sent to Dr. Ripps prior to March 15th for the SPRING issue of BACKBONE. We look forward to hearing from many of our members.

My Opinion *(continued from page 4)*

Differential reimbursement endorses the RBRVS system. We know this as the Federal contrivance enthusiastically embraced by insurance companies sold to us as a mechanism to provide fair reimbursement for our services. Our own experience and collected data however indicate that this system is nothing more than a "sham" used by the insurance companies to maintain absolute control over our reimbursement and to continually "ratchet them down." How many have seen increased reimbursements since our malpractice premiums doubled?

Differential reimbursement hampers the ability of some practices to recruit new members for obvious reasons.

Differential reimbursement creates unrest in both the orthopedic and general medical community. This unrest is manifest by discussion such as the one we are having on these pages. As long as that continues, focus is to some degree diverted from the real issue, which is the insurance industries' abuse of the unique antitrust advantage which it enjoys.

Okay! If you must debate in favor of differential reimbursements you must begin with one word, ***OUTCOMES.*** As we embark upon noble quests such as a medical liability reform, insurance reform and antitrust reform, we should begin by getting our own "house" in order.

Connecticut ORTHOPEDIC Society

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26 Riggs Avenue
West Hartford, CT 06107

2005 BOARD MEMBERS

President's Corner *(continued from front page)*

The medical liability problem must have a new solution. Again the goals are: a safer healthcare system with physician accountability; and a process where patients injured by malpractice are compensated fairly and in a timely fashion.

Any system must start with the reporting of outcomes. Data must be collected on how physicians' perform in their task of taking care of patients. This data collection must be part of the relicensing process, just like CME should. A bad outcome from a surgical procedure or the need to admit a patient who has sustained a heart attack or gone into renal failure doesn't indicate that a physician did anything wrong. Recognizing a mass on a mammogram in retrospect doesn't mean that malpractice occurred. But reporting these statistics to a data base will improve the healthcare delivery system. Maintaining a punitive system where physicians are afraid of the consequences of reporting data must be a thing of the past. We must create an open, transparent system whereby the goal is to educate rather than punish.

In a new system, if a physician recognized that he had committed malpractice, he would notify the "Agency" (a division to be set up under the Department of Public Health utilizing monies from practitioner licensing fees and any additional funds to come from the general budget) that would get the process started of investigating and working towards compensating the injured patient. The patient would then be notified and counseled by the physician or his designee of the malpractice. The "Agency" using established monetary guidelines (similar to Worker's Compensation in many states) would offer a compensation package to the injured patient. The medical liability insurance company would have to comply with the decision of the "Agency". The physician, as part of the process, would have to demonstrate what he had learned from the mistake. At some point, if the Department of Public Health felt that the numbers of errors from a particular individual were far out of proportion to those of like practitioners they would have the obligation of investigating further whether this physician's license should be revoked.

If a patient felt that malpractice had been committed then they would have the option of notifying the "Agency" about their concerns. The "Agency" would convene an investigation. The investigation would involve getting all of the pertinent medical records and interviewing necessary individuals. A medical review of all of the information by a committee of experts in that particular medical field would then occur. (Experts would be obtained from the appropriate medical specialty societies – being compensated for their time to review the file and render an opinion). If the review found malpractice had been committed, then compensation would be paid according to established guidelines. If the conclusion was that no malpractice had been committed, the injured party still has the option of a hearing before a panel (patient advocate, legal counsel and medical expert) where oral arguments can be heard from both sides – with the decision of the medical experts being admissible. If the panel still finds that there wasn't any malpractice, the patient may still seek restitution in the courts but an adverse finding here would cause them to be responsible for all court costs.

At any time, the patient obviously has the right to obtain legal counsel to assist them in this process. I truly believe that the above can serve as a framework for creating a new system to deal with the medical liability problem that is no longer punitive but instead creates a safer healthcare system that will compensate patients fairly and quickly for true malpractice. To get such a system, physicians and the public must encourage legislators to act accordingly – FIX THE PROBLEM – CHANGE THE SYSTEM.

My Opinion

Editor's Note: This column expresses the views of a Society member and does not represent the views or endorsement of the Society. We invite others to submit their responses to this column and encourage those who oppose universal reimbursement to write a 300 word article supporting their viewpoint for publication in the Spring 2005 issue of Backbone. Email all comments to sasshops@aol.com.

Equal Work – Equal Pay

by Ted Collins, M.D., *Society's Secretary-Treasurer, AAOS Councilor - Willimantic, CT*

Equal pay for equal work. What a pure, simple and fair concept. It is one particularly applicable to orthopedics, where a relatively small number of highly-skilled, superbly credentialed professionals provide similar, specialized services throughout the state. Being a high profile, highly-skilled orthopedist myself, I am satisfied to be equally reimbursed with my peers for delivery of my services. Some, however, don't feel so collegial. I like to call them the "zip coders". They believe that the location of their practice should dictate higher reimbursements because of their "higher costs". The following reasons are why I believe the "zip coders" are wrong. Where do we begin? Morality? Ethics? God?

Obviously, highly sophisticated, high-risk services should be reimbursed based on the service itself and the risk associated with it. "Costs" such as rent, personnel expenses, local property values, etc. are discretionary and have no merit in reimbursement equations.

Non-discretionary expenses such as medical liability insurance (when time averaged) as well as medical licensure fees are equal within Connecticut.

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Connecticut Orthopedic Society Annual Meeting

Friday, April 29, 2005

Registration 7:45 a.m.
Program 8:00 a.m. - 3:00 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 2005 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 (2005 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 $100.00 for the meeting and luncheon.

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

(Additional Speakers to be Announced)

Maximizing Motion After Total Knee Replacement
Richard Laskin, M.D.

Meniscle Tissue Transplant
Wayne Gersoff, M.D.

AAOS Update
Karen Hackett, AAOS Executive Director

Presentation of Orthopedist of the Year Award
Presented to Joseph Zeppieri, M.D.

Treatment of Unicondylar Osteoarthritis
John Repicci, M.D.

Asset Wealth Protection
Joshua Teplitzky, CPA

The Connecticut Orthopedic Society

invites you to

Cutting the Cost of Malpractice Insurance With Dynasty Trusts

Wednesday, February 9, 2005

6:30 - 8:00 p.m.

In case of inclement weather, please call Susan Schaffman CT Orthopedic Society at (860)561-5205 by 3 p.m.

Norwalk Hospital
Patio Room
Maple Street, Norwalk, CT
(203)852-2000

Don't miss this informational program to learn how you can cut the costs of your skyrocketing malpractice premiums.

This seminar has been designed to help physicians learn more about overall asset protection and Dynasty Trusts. Developed by Mr. Barry Cohen, CPA and Attorneys Robert Mauceri and Margaret Pearce Langer to provide valuable information on asset protection affordability.

No fee for Members.
Space is limited, register today!
Complete the form below and return to

Susan Schaffman, Executive Director
fax (860)561-5514 or email sasshops@aol.com.

___**Yes**, I/We will attend the seminar on Wednesday, February 9, 2005.

Name_____
Name_____
Practice_____
Address_____
City_____ Zip_____
Telephone_____ Fax_____
Email_____