

BACKBONE

a publication of the Connecticut Orthopaedic Society

Volume 15

Winter 2012

President's Corner *William G. Cimino, M.D. - President*



Your membership in the Connecticut Orthopaedic Society continues to be vital to the collective success for orthopaedic surgeons, including hard won legislation to guarantee reimbursement for preauthorized services and holding the trial lawyers at bay by running out the legislative clock for a proposed change to the certificate of merit legislation that would have weakened the standards for expert testimony.

Effective January 1, 2012, the provision contained within Public Act 11-

58 to prohibit insurers from reversing or rescinding prior authorizations protects those physicians who provide services based on prior authorization approval (for specific details go to <http://www.cga.ct.gov/2011/act/pa/pdf/2011PA-00058-R00HB-06308-PA.pdf>)

Your ongoing support will be critical to our mission in 2012 which will include proactive legislative work on enhancing the certificate of merit bill which will be brought back before the legislature by the trial attorneys. Your continued involvement and dues payment enables our Society to project a strong, unified voice in state and national issues. ***The COS is the ONLY in-state organization that has as its sole objective, the interests of the orthopaedic surgeon.*** In 2012, your Society will continue to work diligently on your behalf with the following activities and focus:

Legislative – Working with the Society's lobbyist and members' fundraising efforts has guaranteed the Society a seat at the **legislative table with upcoming debates and decisions including, protecting the certificate of merit language, seeking meaningful liability reform and working to obtain collective bargaining for physicians.** We will continue to safeguard the practice of medicine and assist the Society's members with presentations at public hearings, bill tracking and meetings with key legislators.

Worker's Compensation – Continue an open dialogue with the Commission and key legislators to discuss an update of current

treatment guidelines and address in office prescription dispensing issues.

Programs for Your Practice - Educational seminars are offered at reduced rates with continuing education credits. Don't miss the **Coding Workshop** scheduled for March 14, 2012 at the Farmington Marriott. This popular workshop is half the cost of similar programs and beginning in 2012 attendees will receive CME credits. (See page 6 for registration form.)

Annual Meeting & CMEs - Provide educational opportunities and CME credits at the Society's Annual Meeting. This year's event will be held on May 11, 2012, at the Farmington Marriott Hotel and will offer informative clinical sessions from renowned speakers and more.

Communicate and update members with the Society's website (www.ctortho.org), online newsletter, "Backbone" and **new this year, valuable legal services, articles and alerts provided by Barry B. Cepelewicz, M.D., Esq., Meiselman, Denlea, Packman, Carton & Eberz P.C.**

Your Society works diligently to be the collective representative for orthopaedists and their practice and we have been able to keep the dues for 2012 at \$250.00, which includes admission to the Annual Meeting with CME credits, reduced rates for coding workshops, legislative and regulatory representation and much more.

If you have not yet renewed your membership for 2012, please complete the form on page 2 and return with dues payment (for your convenience, we accept MasterCard or VISA).

The Connecticut Orthopaedic Society wishes you and yours a happy and healthy new year.

President's Corner

(cont. from front page)

Connecticut Orthopaedic Society 2012 Membership

2012 Renewal Membership \$250.00
Political Activities Contribution (optional) \$ 50.00*

Please complete the information below and mail with payment and payable to the Connecticut Orthopaedic Society. (not tax deductible)

(Please print/type)

Name _____

Address _____

City _____ Zip _____

Telephone _____

Fax _____

Physician Email Address _____

Practice Web Address _____

Practice Manager's Name _____

Email Address _____

CREDIT CARD PAYMENT

Type of Card (circle one) MasterCard VISA

Cardholder's Name _____

Account Number: _____

Expiration Date: _____(month) _____(year)

Signature _____

For questions or comments, please contact Susan Schaffman, Executive Director at (860)690-1146, email ctorthoexec@gmail.com.

To return via fax: 860-561-5514

To return via mail: COS, c/o 26 Riggs Avenue, West Hartford, CT 06107

2012 Legislative Session

At the close of the 2011 legislative session, the CT Orthopaedic Society's initiative to obtain protection for physician services that require a preauthorization, was passed and became effective January 1, 2012. This hard fought battle could not have been accomplished without the participation of fellow members, Drs. F. Scott Gray, Frank Gerratana and Robert Green and Society lobbyists Billy Malitsky and Jim Paolino.

As we embark on the 2012 session beginning in February, COS will be working on proactive legislation to curtail any further breakdown of the Certificate of Merit bill by offering alternate language to strengthen the credibility of expert witnesses. In addition, we will be seeking liability reform and continue to work with the CSMS and specialty societies to augment efforts on legislation impacting your practice, your profession and your patients.

To accomplish these goals we need your involvement. Please consider representing the Society at the legislature for key public hearings throughout the session. We need you to testify at hearings and contact/meet with your legislators on the key issues of concern to medicine.

If you are interested in taking an active role in Legislative 2012, please contact Susan Schaffman (860)690-1146 or email ctorthoexec@gmail.com for details on how to get involved. We will keep you posted throughout the session on critical matters facing medicine at the Capitol.

For Your Practice

As a reminder, Smith Brothers Insurance offers a Combined MEDDEFENSE Plus/e-MD writeNow! Program to COS members at an exclusive low-rate.

The program offers coverage for defense reimbursement for actual or alleged billing errors, defense for other medical regulatory violations including HIPAA, EMTALA and STARK and network security, data recovery costs and credit monitoring insurance. Contact the Society at 860-690-1146 for more information.

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

Legal Matters and Your Practice

A SIMPLE AGREEMENT CAN GO A LONG WAY

Barry B. Cepelewicz, M.D., Esq.

Over the years we have urged physicians in private practice to have every member of the office staff sign a confidentiality agreement. This relatively brief agreement is the employee's acknowledgment that what they see and learn about patients is confidential and should not be discussed outside of the office.

Two recent cases, one from North Carolina and one from Illinois, with differing results, point out the importance of properly training the office staff about their obligations regarding patient privacy and whether the physician/ employer could be held liable for their actions.

In *Acosta v. Byrum*, decided by the North Carolina Court of Appeals, the plaintiff, Ms. Acosta, claimed invasion of privacy and intentional infliction of emotional distress against Ms. Byrum, the office manager of a medical practice. Ms. Acosta claimed that Ms. Byrum had personal animus against her. She also claimed negligent infliction of emotional distress against Ms. Byrum's physician employer, Dr. Faber. It was alleged that Dr. Faber knew of Ms. Byrum's personal animus and improperly allowed Ms. Byrum to use his access code, thus permitting her to retrieve confidential psychiatric and medical records of Ms. Acosta. Ms. Byrum then provided that information to third persons without Ms. Acosta's consent. The plaintiff alleged that Dr. Faber, in giving others access to the records through the use of his code, violated, among other things, HIPAA.

Dr. Faber moved the court to dismiss the claim against him. That motion was granted by the lower court. The Court of Appeals, however, re-instated the claims and sent the lawsuit back to the lower court for further proceedings.

In *Bagent v. Blessing Care Corporation*, decided by the Illinois Court of Appeals, the plaintiff, Ms. Bagent, made similar emotional distress claims against Ms. Young, a phlebotomist, and the hospital for whom she worked. Ms. Young drew blood from Ms. Bagent and later learned as part of her job responsibilities the results of the blood tests indicating that Ms. Bagent was pregnant. On a subsequent weekend night, Ms. Young visited a local tavern and saw Ms. Bagent's twin sister who was a close friend of Ms. Young's. An exchange of questions resulted in the sister learning of the pregnancy. The plaintiff claimed that the hospital was liable under the doctrine of *respondeat*

superior. This doctrine holds an employer liable simply because the person was an employee.

The hospital moved to dismiss the claim against it. The Illinois Court of Appeals decided to grant summary judgment to dismiss the claims against the hospital.

In the first case the plaintiff claimed that Dr. Faber acted negligently by allowing Ms. Byrum to use his medical records access code knowing of the personal animus between Ms. Byrum and Ms. Acosta. Using HIPAA to prove a standard of care, the Court held that the allegations would, if proven, sustain a claim for money damages.

In the second case a negligence theory was unavailable to the plaintiff. Discovery proceedings showed that Ms. Young had been trained regarding patient confidentiality. She had signed a copy of the confidentiality policy acknowledging that she understood the policy and accepted its terms. Ms. Young had given testimony that as soon as she made her remark she "instantly knew" that she had made a mistake. Those facts were sufficient to insulate her employer from a claim of negligently training the employee, or negligently entrusting information to the employee. The *Bagent* case then was decided on the legal issue of whether Ms. Young's statements were made in the "course of the employment." The Court held they were not.

The lesson to be learned from these cases is to make sure your office staff knows of their obligations regarding patient privacy and that they acknowledge those obligations. Such actions will go a long way to defeat any claim that employees were negligently trained about patient privacy rights.

(Editor's Note: Barry B. Cepelewicz, M.D., Esq. is a partner at Meiselman, Denlea, Packman, Carton & Eberz P.C., which serves as general counsel to the Connecticut Orthopaedic Society. Barry is Chair of the firm's Health Care Group and can be reached at (914) 517-5000, or bcepelewicz@mdpcelaw.com.)

In Your Practice

Antitrust laws to work FOR You

As you may have read in last month's *AAOS Now*, the Department of Justice (DOJ) and the Federal Trade Commission have indicated that they are committed to ensuring competition in the health care market and are working to put consumers before the anticompetitive behavior of the health care industry.

This is a significant departure from the past 15 years during which time, COS Board Member and AAOS Councilor, Michael Connair, MD, worked to bring to light the inequities of the ardent prosecution of physicians over health insurance companies by the DOJ.

As reported in the *AAOS Now*, the DOJ will review cases forwarded by the American Medical Association (AMA) of physicians who believe they are victims of anticompetitive practices of dominant health insurers or hospitals. To forward the information, please contact Henry Allen, JD, Senior Attorney for the AMA Henry.Allen@ama-assn.org. The AMA will forward complaints to the DOJ that they believe are important.

To read more and find out about anticompetitive behaviors, use this link to the article in *AAOS Now*-December 2011 Issue <http://www.aaos.org/news/aaosnow/dec11/advocacy5.asp>

Members Making a Difference

The Connecticut Orthopaedic Society proudly acknowledges members who are making a difference in the community and for their patients and the profession.

Michael Aronow, MD, Vinyak Sathe, MD and resident member, **Lauren Geaney, MD** were part of a volunteer team from the New England Musculoskeletal Institute offering free foot screenings and new shoes for the less fortunate in central Connecticut.

Robert Green, MD and **Bruce Browner, MD** received the prestigious Mind, Body and Spirit Physicians' Award from the Arthritis Foundation of Connecticut. They were honored for their dedication and commitment to their patients.

Imaging Survey - We Need Input

The CT Orthopaedic Society Survey of imaging use among orthopaedic surgeons is underway and we have collected information for over 500 patients but we need your participation in this study being conducted to evaluate reasons imaging studies are requested by Orthopaedic Surgeons in Connecticut. To date there has been only one prospective study (from the state of Pennsylvania in 2010) that has assessed reasons orthopaedic surgeons order radiology tests.

The Board of the COS strongly feels that more prospective information is necessary so that we can help to answer the true cost/incidence of imaging studies that are performed for reasons other than clinical. In addition, the AAOS has provided the COS with a grant to conduct the survey

We are asking you to fill out the form on page 7 and complete the table on page 8 (make additional copies as needed) for 100 patients when you order one of the following imaging studies – X-ray, MRI, CT, Ultra Sound or Bone Scan. You will need to document:

Body Part Imaged

Image Modality Ordered

Reason for Ordering the Test

Location of Visit

We greatly appreciate your participation in this study and the valuable information that it will provide. While your reports and identity will be kept confidential in the final analysis, our Executive Director Sue Schaffman or the residents on the COS Board may be in contact with you to facilitate data collection.

Your collection of data should begin asap. Please send data either via email ctorthoexec@gmail.com, fax results to 860-561-5514 or mail to: 26 Riggs Ave., West Hartford, CT 06107.

Final results will be distributed to the membership and shared with the AAOS.

Thank you for taking the time to participate. If you have any questions, please contact Brian Smith, MD at brian.g.smith@yale.edu or Susan Schaffman at 860.690.1146.

Save the Date

Connecticut Orthopaedic Society Annual Meeting

Friday, May 11, 2012

Registration 8:00 a.m.
Program 8:15 a.m. - 3:00 p.m.

Farmington Marriott Hotel
15 Farm Springs Road
Farmington, Connecticut

You won't want to miss this event which will provide you with important new clinical information, updates in treatments and an opportunity to earn AMA Category 1 CME Credits.

Details and registration information will be available on our site, www.ctortho.org soon, or contact the Connecticut Orthopaedic Society's Executive Director, Susan Schaffman at (860) 690-1146.

Ortho Foundation

In 2011, the Connecticut Orthopaedic Society contributed over \$10,000.00 to support the future training of the next generations of orthopaedic surgeons. Please join your colleagues in making a tax-deductible contribution and help make a difference in 2012.

Your Contribution Makes a Difference.

Enclosed is my contribution, made payable to the "Connecticut Orthopaedic 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 Orthopaedic Foundation, 26 Riggs Avenue, West Hartford, CT 06107. Your cancelled check is your receipt. **Thank you!**

2012 COS Board Members

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Secretary/Treasurer F. Scott Gray, M.D.

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Immediate Past President Brian G. Smith, M.D.

Phone: (203) 737-5660 E-mail brian.g.smith@yale.edu

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Michael P. Connair, M.D.

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Michael R. Marks, M.D., MBA

Phone: (203) 852-2613 E-mail mmarks1988@gmail.com

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Aris D. Yannopoulos, M.D.	Bloomfield	860-243-1414

Mastering Orthopaedic Coding- Implementing 2012 Coding Changes

Sponsored by the Connecticut Orthopaedic Society

Don't miss new information, updates and changes for your practice including:

- Differentiate CPT Coding and Medicare Coding Rules
- Develop Effective Appeals Using CPT and AAOS Global Service Data Guide When Payors Inappropriately Deny Services
- Optimal Use of E & M
- ICD 10 - An Intro
- and More

Wednesday, March 14, 2012

8:00 a.m. Registration and Breakfast

8:30 a.m. - 2:30 p.m. Program and Lunch

Farmington Marriott - 15 Farm Springs
Road, Farmington, CT

The workshop is conducted by **Karen Zupko & Associates, Inc.**, a nationally-recognized practice management consulting firm, that provides coding and reimbursement workshops for the American Academy of Orthopaedic Surgeons and features speaker, **Ms. Mary LeGrand, R.N., M.A.**

The Connecticut Orthopaedic Society is pleased to offer this workshop at a **reduced rate of \$295.00** per attendee to its 2012 dues paying members and their office staff. The fee includes program workbook, continental breakfast and lunch. Complete the form below and return to : **COS Administrative Office c/o Susan Schaffman, 26 Riggs Avenue, West Hartford, CT 06107.**

This activity has been planned and implemented in accordance with the Essentials and Standards of the Connecticut State Medical Society through the joint sponsorship of the Hospital of Saint Raphael and the Connecticut Orthopaedic Society. The Hospital of Saint Raphael is accredited by the CSMS to provide continuing medical education for physicians. The Hospital of Saint Raphael designates this live continuing medical education activity for a maximum of 6 AMA PRA Category 1 Credit(s)[™] Physicians should only claim credit commensurate with the extent of their participation in the activity. The Hospital of Saint Raphael strives to ensure that all educational programs are presented in an objective manner and offer material based on scientific knowledge. All faculty participating in continuing medical education programs are required to disclose to audiences any relevant conflicts of interest related to the content of their presentations within the previous year. Further, speakers are required to disclose any intent to discuss the off-label uses of any drugs or devices or products that are still investigational.

Please register me(us) for the coding workshop, payment is enclosed. (checks payable to Connecticut Orthopaedic Society or use your credit card.)

YES, I am a 2012 Dues Paying Member of the Society Enclosed is payment of \$295.00 per participant

I am NOT a Society Member. Enclosed is payment of \$495.00 per participant.

Name _____ Name _____

Practice _____

Address _____ City _____ Zip _____

Email _____ Telephone _____ Fax _____

Payment by Credit Card - fax (860) 561-5514

Cardholder Name _____ Type of Card (circle) MasterCard Visa

Account No. _____ Expiration Date _____

Signature _____

COS Member Survey - Imaging Study

Zip Code in which you practice _____

Years in Practice _____

Orthopaedic Subspecialty if any? _____

Academic Y___ N___

Hospital Employed Y___ N___

How many times have you been litigated against? ____ When was the last date litigation was brought against you? _____

Date Study Started _____

Date Study Ended _____

Instructions: In the table printed below and on adjacent page (make copies before starting), please mark down for each image ordered: The type of imaging ordered, the body part imaged, and check the column next to each order that applies. Please record data for consecutive patients. Copy additional sheets as necessary. Under Insurance requirement, is the test ordered because they won't let you for example operate without the MRI.

2012 COS Imaging Study - Data Sheet

Imaging Modality Ordered (Please Circle)	Body Part Imaged (knee, L-spine, femur, etc)	Required for Clinical Care	Ordered because the patient requested	Ordered for defensive reasons	Ordered Due to Insurance Requirement	Locale (please circle)
Xray MRI CT US Bone Scan						INPATIENT OFFICE EMERGENCY ROOM
Xray MRI CT US Bone Scan						INPATIENT OFFICE EMERGENCY ROOM
Xray MRI CT US Bone Scan						INPATIENT OFFICE EMERGENCY ROOM
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