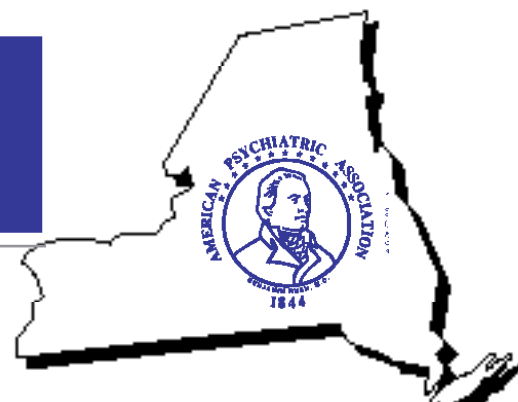


# THE BULLETIN

NEW YORK STATE PSYCHIATRIC ASSOCIATION

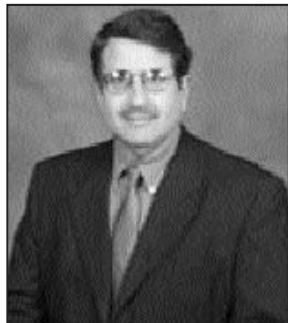
Summer 2004, Vol. 47, #2 • Bringing New York State Psychiatrists Together



## President's Message: Insurance

By Barry Perlman, M.D.

While undoubtedly the APA endorsed Professional Liability Insurance Program is one of the most important member benefits and a vital element of APA efforts to recruit and retain members, APA relinquished control and management of the insurance program when APA sold its interest in the program in 2000. The program is now owned and managed by PPG (Psychiatrists Purchasing Group, Inc.) and PRMS (Professional Risk Management Services, Inc.), two entirely separate corporations which are neither owned nor controlled by the APA. As a consequence, APA finds itself in the difficult situation of being blamed when problems arise in the administration of the program, but has no ability to take action to resolve those problems. Indeed, Jay Scully, M.D., the APA's Medical Director informed me that when he reaches out to members on the APA "drop list" in the hope of persuading them to continue their affiliation, the most frequent complaints he hears are about the APA endorsed malpractice insurance program. For the more than 1400 of NYSPA's 4350 member psychia-



Barry Perlman, M.D.

trists who purchase their professional liability insurance through the APA endorsed insurance program, the last several years have been weighted by concern and anxiety.

Most recently, we had to scramble to make sure that AIG, the insurance carrier that provides coverage under the APA endorsed program, complied with a continuing

education requirement required by state law. In early February, 2004, I learned that all physicians insured in New York State were required to participate in a 5 hour risk liability course and complete a "project" by March 1, 2004. Physicians could only take the required course offered by their own insurer. Failure to comply would lead to the retroactive loss of the Excess Medical Malpractice Insurance provided through the NYS program for the prior year. This requirement had been enacted as Chapter 1 of the Laws of 2002 and the State Department of Insurance (SDI) issuing Regulation 124 which was implemented in August, 2003. Malpractice carriers prepared their risk management courses and submitted them to the Medical Society of the State of New

[See Insurance on page 2]

## Oxford Announces Documentation Policy for Psychotherapy Services

On May 28, 2004, Oxford Health Plans released its proposed documentation policy for psychotherapy services. The release of the proposed policy represents the culmination of efforts by NYSPA in response to Oxford audits of psychiatrists and other mental health professionals in 2002 and 2003. Previously, on November 25, 2003, Oxford agreed to drop all pending audits, return medical records and refund audit settlement payments already made. At the same time, Oxford Health Plans also announced that it would be working with professional associations to develop a documentation policy for psychotherapy services.

Two meetings were held this year at Oxford offices with representatives from the New York State Psychiatric Association, American Psychiatric Association, American Psychoanalytic Association, NYS Psychological Association, American Psychological Association, NY Society for Clinical Social Work and National Association of Social Workers. Seth Stein, NYSPA Executive Director, took a lead role in drafting the documentation policy together with Edward Gordon, M.D., Tracy Gordy, M.D., Sam Muszynski, Ellen Jaffe and Becky Yowell representing NYSPA and the APA.

The proposed documentation reproduced at the end of this article represents an unprecedented collaborative effort between a health plan and professional organizations to develop a documentation policy for psychotherapy that meets the legitimate needs of the health plan while also protecting patient confidentiality to the greatest extent possible.

Under the proposed documentation policy, if Oxford requests documentation of psychotherapy, only seven basic elements plus an eighth additional item for medical management and evaluation (codes 90807 and 90805) must be disclosed to Oxford. The policy does not require the disclosure of any individualized clinical or personal information about the patient or the patient's treatment other than the patient's diagnosis (which was already disclosed on the Oxford claim form) and instead focuses on the clinical activities of the psychiatrist.

The proposed policy is also fully HIPAA compliant. For those psychiatrists who maintain their psychotherapy notes separately, the policy does not require the disclosure of any material that would be considered specially protected psychotherapy notes under the HIPAA regulations. The release to Oxford of any additional mate-

[See Oxford on page 7]

## NYSPA Responds to NYS Lawsuit Against GlaxoSmithKline.

Barry B. Perlman, M.D., President of the New York State Psychiatric Association, issued the following statement in response to an announcement by Eliot Spitzer, Attorney General of the State of New York, of the filing of a lawsuit against GlaxoSmithKline alleging that the company withheld from the public and the medical community important research data concerning the safety and efficacy of its antidepressant medication paroxetine HCL (sold under the name Paxil®) for the treatment of children and adolescents with depression. NYSPA was contacted by the Office of the Attorney General and invited to respond to the filing of the lawsuit.

Dr. Perlman stated:

"As physicians, our profession embraces the principle that the relationship between a doctor and a patient must be based upon a sense of trust. In order to hold true to that principle, physicians must have access to all relevant medical information regarding treatment including various medications that we discuss with and recommend for our patients. Any obstacle placed in the way of full and complete communication with our patients undermines the trust upon which the doctor-patient relationship is based and prevents us from providing the best care we can to our patients.

It was to preserve that relationship that our profession fought against "gag" rules imposed by the managed care industry forbidding physicians from advising patients of all of their treatment options. It is for the same reason that we today support government action to assure full access to research findings which may provide vital information about medications our patients need. While we express no opinion regarding the merits of the Attorney General's lawsuit, any unnecessary restriction or limitation on physicians' access to relevant clinical data raises



Eliot Spitzer with Barry Perlman, M.D.

the possibility that patients will not receive proper treatment or, worse, that patients may be harmed.

The need for full disclosure of relevant clinical data is most important in those cases where a medication is utilized for purposes other than those for which it has been approved by the FDA. These so-called "off label" uses are common and vital to our ability to offer efficacious treatment. It is especially so in the case of the treatment of many illnesses including mental illness which occur in children since most pharmacological research submitted for approval to the FDA is based on research using adults. Although the present lawsuit concerns itself with the treatment of children with an antidepressant medication, the principle at stake involves all areas of medical practice.

The general public and the medical community should not have to fear that clinical findings of significance regarding a medication may be suppressed and remain unavailable to their physicians because the findings may be deemed unfavorable to the financial interests of the manufacturer.

[See NYSPA Responds on page 2]

## Parity Breakthrough in NYS Senate

By Seth Stein, Richard Gallo, and Karin Moran, MSW

On May 13, 2004, New York State took a historic step towards ending discriminatory insurance practices with respect to treating mental illnesses. Senator Thomas Libous (R-Binghamton), Chair of the Senate Mental Health Committee has long been a supporter of mental health parity legislation, as he has sponsored Timothy's Law for the past two years, but recently his efforts to provide insurance coverage for mental illnesses garnered unprecedented support from the Senate's Majority Leader, Joseph Bruno when they introduced a bill into the Senate that seeks to provide enhanced coverage for the treatment of mental illness. Although the bill is not as broad as Timothy's Law, which provides for full parity, it does, however, provide a springboard for negotiations between the Senate and the Assembly in which advocates are cautiously optimistic will result in enhanced coverage.

The NYS Senate bill (S 7296-A), however, only provides a very limited mandate for coverage of mental illness:

- mandates coverage for children and adults only for the following "biologically based" mental illnesses - schizophrenia, schizoaffective disorder, major depression, bipolar disorder, delusional disorders, paranoia, panic disorder, obsessive compulsive disorder, bulimia, and anorexia
- Provides for additional coverage for children with "serious emotional disturbances" which has been defined in the bill as a combination of at least one of the following disorders-attention deficit disorders, disruptive behavior disorders, or pervasive developmental disorders, plus one or more of the following symptoms or behaviors: suicidal or psychotic symptoms, risk of causing personal injury or property damage, or risk of removal from the home.
- applies only to businesses employing more than 50 employees
- includes an "opt out" if a carrier can demonstrate that the cost of the mandate

will increase premiums by more than 2%;

- includes a sunset provision in 2007

Clearly, the Senate bill is much less than the Timothy's Law legislation passed by the Assembly. Tom and Donna O'Clair, the parents of Timothy whose completed suicide at age 12 prompted them to join the fight for parity, have declined to endorse the Senate bill at this time. However, the anticipated passage of the Senate bill in early June will be the first time any mental health insurance mandate has passed in the NYS Senate. The next step after passage of the NYS Senate bill is a conference between the Assembly and the Senate. In conference, leadership from both houses will try to reach a compromise on final legislation somewhere between the Assembly full parity bill and the Senate limited mandate bill. It is also possible that the houses will reconcile their differences behind closed doors. In that case an agreed upon bill would proceed without the public "conference committee" process.

NYSPA has taken a central role in the Timothy's Law Campaign (TLC) that is the main driving force behind parity legislation. NYSPA, with the assistance of Richard Gallo, NYSPA's legislative consultant, has taken a leadership role in the campaign and in efforts to work with the Senate leadership to secure a commitment to take action this year on discriminatory coverage. NYSPA and other campaign members will be working to secure the most comprehensive coverage possible during the next few weeks. Advocates are hopeful that a compromise will be reached that will establish mandatory coverage for the treatment of mental illness for all health insurers and HMOs doing business in the state. Of course, state legislation will only effect health insurance and HMOs subject to state regulation and will not affect ERISA exempt health insurance plans (self-insured, union health plans) that are not subject to state regulation. Federal legislation is necessary to end discrimination in ERISA exempt health insurance plans. ■

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*The Bulletin* welcomes articles and letters that NYSPA members will find timely, relevant, and compelling. Articles should be between 750 and 1500 words (three to five double-spaced manuscript pages) and letters no more than 750 words. All submissions must be made electronically, preferably by email to the editor. All authors are encouraged to also provide a photograph of themselves which will be printed alongside their article.

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*The Bulletin* welcomes advertisements from both NYSPA members and commercial enterprises. Total circulation averages 5,500 copies per issue. *The Bulletin* is received by members of the American Psychiatric Association who belong to a district branch in New York State. *The Bulletin* is also sent to the leadership of other district branches across the United States and to New York State legislators, medical libraries, and science writers. *The Bulletin* is published quarterly. Both classified advertisements and display advertisements are available. Please contact the editor for current rates and media requirements. NYSPA members receive a discount of 50% off the basic classified ad rate.

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## FROM THE EDITOR'S DESK... By Jeffrey Borenstein, M.D.

I am pleased to report that the Bulletin received national recognition for Newsletter of the Year in the 12 to 16 page category at the APA annual meeting. I want to thank the Executive Committee of NYSPA for their support and assistance in helping the Bulletin maintain the highest level of excellence in providing important information to our members and other readers. I also want to thank all of the people who have contributed articles and photographs to *The*



Jeffrey Borenstein, M.D.

*Bulletin*, and the people who have shared information by participating in interviews. I want to thank Liz Lipton, our Assistant Editor and Donna Gajda, who assists in editing, as well as Lydia Dmitrieff for graphic design and production.

This issue of *The Bulletin* has important information about Oxford's documentation policy for psychotherapy services, NYSPA's response to the lawsuit brought by the NYS Attorney General against

GlaxoSmithKline, and efforts to enact Timothy's Law. The President's Message focuses on concerns about the APA endorsed malpractice insurance. We have a report on the Spring Area II Council Meeting as well as the election results at the APA Annual Meeting. The Area II Trustee Report provides an update on APA's finances. In addition, we have an article about the Office of Professional Medical Conduct and a feature article about Dr. Elaine Eng.

Finally, it is with great sadness that we note the passing of Howard Telson, M.D. Please see the In Memoriam. ■

## President's Message: Insurance continued from page 1

York (the State Insurance Department's designee for review of the programs) and for transmission to the Insurance Department for final approval. Most insurance carriers developed their risk management on-line and in-person programs last Fall.

However, by February, 2003, there was no approved program by the APA endorsed program prepared by AIG and it seemed unlikely that all of the psychiatrists insured through the APA endorsed plan would complete the required course material by the March 1 deadline. I contacted Alan Levinson, M.D., President and CEO of the Psychiatrists Purchasing Group (PPG) and representatives of Professional Risk Management Services, Inc., to ascertain what steps were being taken to rectify a situation which was potentially threatening for members as well as for APA because of its endorsement of the Program. I next spoke with our Executive Director and General Counsel, Seth Stein, and Richard Gallo, our Government Relations Advocate. Mr. Gallo in turn coordinated his activities with his counterparts at MSSNY, who, as usual, responded forcefully to our concerns. Finally, I updated Jay Scully, M.D., about the circumstances and requested his assistance in impressing upon those involved the urgency of the situation. By late March we were informed that through the efforts of our staff, MSSNY's staff and representatives of AIG, whose companies underwrite our liability insurance, a 60 day extension had been granted by SDI for members to complete the required course and thus preserve their prior year's excess liability coverage. PRMS arranged for 3 opportunities for members to take the course in person at various sites throughout NYS during March. (Members also were able to take a Web based version.) Having participated in one, I can attest to the high quality of the content.

My concern is why members weren't informed until the "eleventh hour" of the new requirement and why an extension

of the final date for completion of the course should have been necessary. Once again, it seemed as though members were caused considerable anxiety and concern because of failures of those whose responsibility it is to make this program work smoothly for them.

This situation was only the latest among a number of problems related to the APA endorsed program. By now, we are all aware of the debacle surrounding the financial failure of the Legion Insurance Company, the program's previous insurance carrier. Explaining those legal entanglements is not the purpose of this piece. (To learn more of the current situation and history of the APA-endorsed insurance Program see the article by APA Presidents Marcia Goin, MD and Paul Appelbaum, MD in the Psychiatric News of 5/7/04.) Right now, the Supreme Court of Pennsylvania which has jurisdiction over Legion is considering an appeal to determine whether psychiatrists insured by Legion will have access to the reinsurance purchased by Legion. Without access to the reinsurance, psychiatrists who have claims may have to rely on their state insurance guarantee funds for a defense and payment of claims. (In New York, the state guarantee fund provides \$1 million of coverage.)

Recently, psychiatrists covered under the program received a Notice of Claim from the Pennsylvania Insurance Department which addressed the possibility of their filing a contingent notice of claims. Members were advised by PPG that no action needed to be taken at that time and that the deadline for such a filing would be June 30, 2005. It is unclear why PPG recommended any delay in filing a notice of claim as it seems

inevitable, based on conversations with legal counsel, that such a step will have to be taken prior to the deadline. The advice provided about this issue raised a question about how well aligned are the interests of members and PPG. In any event, little additional information has been forthcoming and many members may have long since laid aside or misplaced their claim forms.

By now a problematic situation has been compounded by inadequate communication between PPG and participants in the Program. The relationship between APA, PPG, PRMS, Legion and AIG are complex. APA appears constrained by a non-disparagement clause in its endorsement contract which may present an obstacle to the ability of APA to publicly and forcefully advocate on behalf of its members. The endorsement contract expires in October, 2005. As President of NYSPA, I am not bound by existing constraints and am free to raise concerns about the management of the program and the quality of service and timely information provided to our members by PPG and PRMS, the two entities responsible for managing the program. I urge APA to more visibly and vigorously advocate for its enrolled members with PPG and PRMS lest our organization suffer long term scars from this endorsement. I advocate for better alignment between members' interests and the APA endorsed program. I advocate for the formation of a task force to address what steps APA should take on behalf of its members in this area. The task force should commence its work promptly so that APA can move to implement its recommendations once it is freed of contractual restraints. ■

## NYSPA Responds Continued from page 1

Therefore, NYSPA supports all efforts to insure the complete and full disclosure of all relevant data regarding all medications offered to the public. Such efforts can only help improve the sense of trust and confidence necessary for the provision of quality health care.

One final note -the New York State Psychiatric Association is concerned that the publicity surrounding this lawsuit may discourage parents from seeking treatment for their children - especially children who may be suffering from symptoms of depression or another mental illness. The good news is that there is effective treatment for psychiatric disor-

ders for both children and adults. It would be tragic if concerns about the alleged improper suppression of clinical data by drug manufacturers resulted in parents becoming reluctant to seek professional help for their children. The greatest risk is that adults and children with depression and other psychiatric illnesses might be left untreated."

For more information and to read a copy of the complaint go to the website of the Office of the Attorney General at [http://www.oag.state.ny.us/press/2004/jun/jun2b\\_04.html](http://www.oag.state.ny.us/press/2004/jun/jun2b_04.html). ■

## Election news from the APA Annual Meeting in New York City

Congratulations to Michael Blumenfeld, M.D. who has been elected Recorder of the APA Assembly and Best Wishes to James Nininger, M.D., who has just begun his term as Secretary of the APA Assembly. These leadership roles in APA governance will be key in ensuring that issues in New York State get the attention they deserve.

NYSPA elections were also held. Our officers are:

Barry B. Perlman, M.D., President  
C. Deborah Cross, M.D.,  
Vice-President

Richard Altesman, M.D., Secretary  
Seeth Vivek, M.D., Treasurer

## In Memoriam: Howard Telson, M.D.

NYSPA notes with sadness the untimely death of Howard Telson, M.D. on April 5, 2004 from cancer at age 49. Dr. Telson obtained his B.A. at Princeton and his M.D. at Yale. He was a Clinical Associate Professor of Psychiatry at NYU School of Medicine where he trained as a psychiatrist. He developed several innovative programs at Bellevue Hospital that improved the mental health system, including the New York State outpatient commitment pilot program at Bellevue Hospital that was expanded statewide by Kendra's Law.

Dr. Telson was a Distinguished Fellow of the American Psychiatric Association, served as Chair of the NYSPA Committee on Public Psychiatry and was a member of the board of directors of the National Alliance of the Mentally Ill (NAMI) of NYC Metro.

# What Every Psychiatrist Needs to Know About OPMC

By Deborah Cross, M.D., Vice President, New York State Psychiatric Association



Deborah Cross, M.D.

OPMC stands for the Office of Professional Medical Conduct. Most psychiatrists in New York have heard of OPMC, but many have only a vague idea of what it is, what it does, and how it affects them. And most psychiatrists never come into contact with OPMC. However, when the staff of OPMC contacts a psychiatrist, you must be prepared for what the process is, and what the consequences to you and your career can be. OPMC is a New York State agency that serves as staff to the Board for Professional Medical Conduct. The Board is comprised of approximately 180 physicians and lay members, appointed by the Commissioner of Health, the Board of Regents and the Governor of New York State, and is responsible for developing direction and policy regarding medical conduct issues. In addition, and this is where it affects all physicians in the most critical way, the Board is responsible for adjudication of complaints and cases about physicians, physician assistants and specialist assistants that have been investigated by the OPMC. The mission of the Board and Office of Professional Medical Conduct is stated as being to protect the public from professional medical misconduct, provide physicians with due-process rights and assist the Department of Health and the Commissioner in creating health care policy.

The Board is the largest Board of its kind in the world and is vastly different from similar Boards in other States in that physicians of every specialty serve on the

Board. A Committee Hearing involving medical misconduct is heard by a panel consisting of 2 physicians, a lay person and an Administrative Officer (a lawyer). One of the 2 physicians on the panel is in the medical specialty of the physician who is appearing in front of the panel. I have heard from psychiatrists in other states who have appeared before their State Medical Boards and often the hearing officer or panel has NO physician at all on it, much less a psychiatrist who understands and practices in our field. Because of this requirement, physicians of every specialty are needed as members of the Board. Additionally, since hearings are held across the state, strenuous efforts are made to have enough physicians in different specialties in different geographic locations in the state. There is also diversity by ethnicity, gender and age in the physicians and lay persons on the panel.

Professional medical misconduct is defined in Education Law 6540 titled "Definitions of Professional Misconduct". There are 47 different paragraphs detailing what is professional misconduct, starting with "obtaining the license fraudulently" and ending with failure to use "...accepted barrier precautions and infection control practices as established by the Department of Health..." Most psychiatrists, if pushed, can probably name a few examples of medical misconduct—and might also list examples which are not misconduct. Just as many of us have only a vague idea of what OPMC is and does, understanding the differences between medical misconduct, unethical practice, or poor medical practice is not always easy, but such an understanding is necessary for us to practice in accordance with the law.

New York State physicians receive their license from the State Education Department and until 1991 discipline of physicians for misconduct was divided between the State Education Department and the Department of Health. In 1991 the Department of Health was given sole responsibility for physician discipline.

OPMC receives approximately 6,000 complaints a year. Approximately half of these complaints are closed after a preliminary review from OPMC staff. A number of complaints to OPMC deal with issues for which it has no legal authority to act, such as complaints regarding fees or a physician's attitude. If a complaint raises possible misconduct issues, it is assigned to an investigator with a medical coordinator providing technical guidance. If, after interviews with all persons involved in the case and review of all records, there is evidence suggesting misconduct, the case is presented to an Investigation Committee. If sufficient evidence is not found, the investigation is terminated and the case is closed. Complainants and physicians are notified of the closure.

The Investigation Committee is similar to a Grand Jury in many ways. However, an Investigation Committee can order that a non-disciplinary warning be given to a physician. If the Committee finds evidence of misconduct, charges are filed against the physician and a hearing is scheduled.

Some of the most serious charges of professional misconduct are negligence, incompetence, impairment, sexual abuse, and fraud. Let's look briefly at each of these. Negligence is defined as the failure to exercise the care that would be used by a reasonably prudent physician in the same situation. Under NYS law two or more acts of negligence or a single act of gross negligence in the practice of medicine will support a charge of physician misconduct. Gross negligence is defined as a single act of negligence of egregious proportions. Unlike a malpractice lawsuit, negligence does not require that an injury actually result from a physician's deviation from accepted standards.

A physician who does not possess the requisite skill or knowledge to practice medicine is considered incompetent. There is a clear distinction between negligence and incompetence. Negligence relates to an act or omission of a physi-

cian that constitutes a breach in his duty to care for the patient. Incompetence, on the other hand, relates to the physician's lack of required knowledge or skill to perform necessary acts for patients. Again, state law requires proof of practicing with incompetence on more than one occasion or gross incompetence that involves a total and flagrant lack of necessary knowledge or ability to practice. In a very simple way, incompetence means you don't know what you're supposed to do, while negligence means you know (or should know) what you're supposed to do, you just don't do it.

We have all heard examples of physicians found guilty of incompetence and negligence. Here are a couple of examples: A physician pleaded guilty in State Supreme Court to fourth degree criminal facilitation for writing notes for patients falsely stating they were disabled so they could obtain fare discounts on subway and rail lines—his license was suspended for five years, later changed to 5 years probation and community service. A physician surrendered his license after pleading guilty to conduct evidencing moral unfitness to practice medicine for inappropriate sexual contact with two patients. Other examples include prescribing drugs to patients without doing minimally necessary exams or histories, and failure to adequately perform and interpret ultrasound and laboratory tests in order to diagnose and treat an ectopic pregnancy.

Impairment is another serious charge of professional misconduct. If a physician's physical or mental impairment compromises his/her patients' safety then there can be a charge of misconduct. Most usually "impairment" is applied to substance abusing physicians. If a physician can prove he/she has been rehabilitated his/her license may be restored but a monitoring program is put in place for relapse.

NYS law specifically prohibits any physical contact of a sexual nature between a psychiatrist and a patient. Verbal abuse

[See [OPMC on page 7](#)]

## Elaine Leong Eng, M.D. by Liz Lipton, M.A.



Elaine Leong Eng, M.D.

It takes a special kind of individual to rise above adversity. Elaine Leong Eng, M.D., is such a person. Dr. Eng became blind at age 29, yet she did not let that stop her from leading a remarkable career as a psychiatrist.

A Distinguished Fellow of the American Psychiatric Association, Dr. Eng specializes in the interface of psychiatry and Ob-Gyn. In her private practice, Dr. Eng treats patients with premenstrual dysphoric disorder, menopause, infertility, and postpartum depression. As a Clinical Assistant Professor of Psychiatry in the Department of Obstetrics and Gynecology at Weill-Cornell Medical College, she teaches about the psychosocial aspects of Ob-Gyn. Furthermore, she is the President of the Board of Directors at the Boro Pregnancy Counseling Center in Flushing, the Vice President of the Queens County Psychiatric Society, and the author of two books, one of which is a mental health

education text on anxiety disorders and depression in the church community.

Considering how active she is in her field, it is not surprising that Dr. Eng is the recipient of numerous awards including the Queens County Psychiatric Society's Award for "outstanding inspirational leadership," the Heartbeat International's Servant Leadership Award, and the Dr. Paul Kay Award for writing.

After graduating from Princeton University and the Albert Einstein College of Medicine, she trained in the Lay Ministry Program of Concordia College in Bronxville, NY. As an expert on the integration of faith, medicine, and psychology; Dr. Eng appears on radio programs and gives lectures at various venues including The Alliance Theological Seminary's Graduate School of Counseling (Nyack, NY), where she is a member of the faculty.

### Background

At age 29, Dr. Eng, was completing the third year of her Ob-Gyn residency when she learned of her diagnosis and that she would be blind. She stopped her residency. A few years later, she decided to become a psychiatrist, and then went on to complete her residency at age 36.

Asked if she was interested in psychiatry during medical school, Dr. Eng replied, "No, I never had an interest in psychiatry. I never even took one psychology course in college.

"It never dawned on me that this would be my field. It wasn't that it didn't appeal to me; It's that I have always loved Ob-Gyn. I

always thought. I would be working with women since high school."

She explained why she selected the field of psychiatry: "The thing is there are not too many fields a blind physician can be in. My ophthalmologist said I had two choices: statistics and psychiatry. Since I hated math, naturally statistics was not an option."

She continued, "Psychiatry is gratifying because I'm helping people, but ... it's a hard field. You deal with a lot of suffering—as opposed to Ob-Gyn, which is for the most part a happy field where you're delivering babies."

### Adaptive Technology

Dr. Eng uses adaptive technology to do a variety of tasks: She scans journal articles, correspondence, and other information into her computer, which reads it back to her via special software. To communicate via email and write word processing documents, Dr. Eng types on her keyboard—she memorized the layout of the keys—and then her computer reads it back to her. Using this technology, Dr. Eng was able to write most of her first book and all of her second book by herself.

"I'm really thankful that there is this adaptive technology and that somehow in my weakness as a handicapped individual, God has placed things in my life that have converted my weakness into strength," she said.

### Book Author

Published in 2000, her first book, "Martha, Martha": How Christians Worry (The

Haworth Press), is a mental health education text on anxiety disorders and depression in the church community.

Dr. Eng explained, "It can be used for all audiences—not just for the church. ... Many people in society who have anxiety disorders and depression are not aware of their diagnosis. My book will help them recognize what they have and how they can get help."

Dr. Eng has received several excellent reviews of her book: "A very helpful book about the 'secret suffering' of persons with conditions such as obsessive-compulsive disorder, panic disorder, and post-traumatic stress disorder. ... Effectively advocates for an enlightened approach to caring for those who otherwise might live their lives in mental darkness," wrote The Reverend Curtis W. Hart, MDiv, the Director of Pastoral Care and Education at New York Presbyterian Hospital/New York Weill Cornell Center. Additionally, many readers have told her how much the book helped them.

Published in February 2004, her second book, *A Christian Approach to Overcoming Disability: A Doctor's Story* (The Haworth Press), is the story of her personal and professional journey. She explained, "I wanted to be able to write this book as a means to help others who are coping with their own personal issues or handicaps or disabilities. One doesn't have to have a striking illness like blindness to have a disability. People in our mental health field

[See [Dr. Eng on page 5](#)]

The Spring 2004 Area II Council Meeting was held on Saturday March 27, 2004, at the LaGuardia Marriott Hotel in East Elmhurst, New York. Barry Perlman, M.D., NYSPA's President, moderated the event.

Secretary Glenn Martin, M.D., said the November 2003 minutes, which were inadvertently left out of the packet of materials, will be presented to the Council at the Area II Council meeting during the APA Assembly Meeting in May. After brief remarks by Treasurer Aaron Satloff, M.D., the treasurer's report was approved.

Edward Gordon, M.D., Co-Chair of the NYSP-PAC committee reported that the NYSP-PAC is "alive and well, but needs money." He urged members to give to the PAC.

Dr. Perlman urged members to also contribute to the APAPAC. He announced that on Friday April 30 Vivian Pender, M.D., Secretary of the APAPAC, will be hosting an APAPAC fundraiser at her home for Congressman Charles Rangel (D-15th Congressional District), "who has been a good friend of organized psychiatry for years."

Dr. Perlman announced that *The Bulletin* won the APA's "Newsletter of the Year Award" in the 12-to-16 page category. He congratulated Jeffrey Borenstein, M.D., the Editor-in-Chief: "*The Bulletin* has been terrific under Jeff's leadership. ... And we are so proud of Jeff." He also congratulated Liz Lipton, M.A., the Assistant Editor.

James Nininger, M.D., Chair of the Committee on Nominations reported that Dr. Perlman and C. Deborah Cross, M.D., are running unopposed for President and Vice-President, respectively. Dr. Martin and Richard Altesman, M.D., are running for secretary. Dr. Satloff and Seeth Vivek, M.D., are running for treasurer.

Dr. Perlman spoke about several important issues. Please see the "President's Message" on Page 1. Richard Gallo, NYSPA's Government Relations Advocate, reports about Parity Legislation (Timothy's Law) on page 1 and The Back Page. Seth Stein, Esq. NYSPA's Executive Director and General Counsel, spoke on several important issues. To read about Area II Trustee Ann Sullivan's, M.D., presentation, please see "Area II Trustee's Report" on page 6. APA Assembly Speaker Prakash Desai, M.D., addressed the Council as did the candidates for APA Speaker-Elect: Thomas Grieger, M.D., and Joseph Rubin, M.D., the APA Assembly Recorder.

### **Barry Brauth, M.P.A., Winner of NYSPA's Distinguished Service Award**

NYSPA selected Barry Brauth, M.P.A., The Director of Financial Planning for the NYS Office of Mental Health, as the winner of NYSPA's Distinguished Service Award.

Dr. Perlman said, "For as long as I've known Barry, and that extends back more than 15 years, he has possessed a quality with which I have been terribly impressed. That quality is the effort he makes to truly understand the clinical perspective so that he can bring that view to bare when he analyzes data. As clinicians, we are well versed in clinical information and the practical experience which comes of treating patients. We see the mental health care system from a 'micro' perspective based on our focus on treating the individual seeking our care. Data analysts see the world, the same world, from a 'macro' perspective, viewing the totality of a system. The conversation between persons from these distinct worlds is often marked by frustration based in the lack of comprehension they find in their counterparts.

"Barry has the rare virtue of working to bridge this divide," he said.

"It is clear that Barry Brauth is a very special public servant and an invaluable resource for citizens of New York State who depend on the public mental health system for their mental health care. I am proud to present him our Distinguished Service Award."

### **Irvin L. "Sam" Muszynski, J.D., NYSPA's Liaison to APA's Central Office**

Irvin L. "Sam" Muszynski, J.D., APA's Director of Healthcare Systems & Financing, is NYSPA's liaison to APA's central office.

Mr. Muszynski will serve as a multifaceted ombudsman for Area II. He urged members to let him know if they have special concerns. "Let's keep communication open," he said.

Mr. Muszynski will also assist members who are working on action papers. "How an action paper is written, drafted, and forwarded will actually have an impact on how it's estimated and the feasibility of it actually being fulfilled once it's passed by the Assembly. So I can serve in kind of a special consultative role with the originators of action papers to help keep them realistic, focused, definable, and work with the cost estimates," he said.

Mr. Muszynski also spoke about some of the projects he is working on as the Director of Healthcare Systems & Financing. One such project is a collaborative effort with NAMI and NMHA concerning Medicaid funding issues. "We have done a lot a creative partnering with them [NAMI and NMHA], and we rely, in many cases, on NAMI and NMHA affiliates around communication issues," he said.

Mr. Muszynski's phone number is (703) 907-8594. His email address is [imus@psych.org](mailto:imus@psych.org).

### **Here is information on the committee reports:**

#### **C. Deborah Cross, M.D., Committee on Public Affairs**

Dr. Cross, Chair of the Public Affairs Committee, reported that the committee held a joint meeting with the Legislative Committee. She said, "I do see the Public Affairs Committee for NYSPA as coordinating with the Legislative Committee, and, in that fashion, I spoke with Dick Gallo [NYSPA's Government Relations Advocate] as to how we can be helpful."

She also spoke favorably about the former National Public Affairs Institute: "There are still plans afoot, hopefully, to re-establish the National Public Affairs Institute which has been very successful, along with the Legislative National Institute, in training people how to lobby and how to deal with public affairs."

Dr. Cross also reported that experts from APA's national office are available to lead workshops at the DBs on working with the media. To arrange this, contact Dr. Cross at 718-270-1449.

#### **Jeffrey Borenstein, M.D., Editor-in-Chief of *The Bulletin***

*The Bulletin* won the APA's "Newsletter of the Year Award" in the 12-to-16 page category. Jeffrey Borenstein, M.D., Editor-in-Chief said, "I just want to take the opportunity to thank everyone involved with *The Bulletin*, in particular I want to thank Liz Lipton [Assistant Editor]; and I want to thank Donna [Gajda, NYSPA's Coordinator], who helps with the editing; and Lydia [Dmitrieff] who helps with type print; and certainly the Executive Committee for their support."

#### **Jeffrey Borenstein, M.D., Committee on Addiction Psychiatry**

Evaristo Akerele, M.D., has taken over as Chair of the Addiction Psychiatry

Committee. Committee Member Dr. Borenstein reported that the group is trying to invigorate the committee. To facilitate this, they are asking people in the DBs to suggest potential members.

Dr. Borenstein reported that the group discussed drug courts. They are going to speak with Richard Gallo, NYSPA's Government Relations Advocate, to learn more about these courts and how to advocate for them.

Dr. Borenstein also spoke about forming liaisons with other entities. "We want to see if we can work more closely with OASAS [Office of Alcoholism and Substance Abuse Services] on issues. [Committee Member] Michael Scimeca, M.D., and I both serve on the Medical Advisory Committee to the Commissioner of OASAS, and we will ... try to work more closely with them. We will also work as liaisons with the American Academy of Addiction Psychiatry and ASAM [American Society of Addiction Medicine] as well."

#### **Manoj Shah, M.D., Committee on Children and Adolescents**

Manoj Shah, M.D., chair of the Committee on Children and Adolescents, said the committee discussed the FDA guidelines on SSRIs. The committee will be conducting a survey of emergency departments and inpatient services. Their goal is to identify bottlenecks that prevent proper discharge planning.

The group, led by Committee Member Lenore Engel, M.D., will develop a flow chart of the Juvenile Justice System. Additionally, the committee, led by Paul Kymissis, M.D., will create a flow chart of the services for children who need placement in residential treatment facilities.

#### **Karen Gennaro, M.D., Committee on Early Career Psychiatrists**

Karen Gennaro, M.D., Chair of the ECP Committee, reported that in October 2003, the committee held a very successful private practice panel. Fifty members attended the event. The committee is planning a networking/social gathering on Monday, May 3, 2004, during the APA Annual Meeting in New York.

#### **L. Mark Russakoff, M.D., Committee on Economic Affairs**

L. Mark Russakoff, M.D., Chair of the Economic Affairs Committee, reported that the committee discussed the unpublished "Manual on Admission and Continued Stay Criteria for Medicaid Patients." Already completed, the manual was a collaborative effort between OMH and DOH and with input from NYSPA.

At the committee's 2003 fall meeting, Dr. Russakoff reported that OMH sent the manual to IPRO [Island Peer Review Organization] for review. Also, at the fall meeting, the committee requested that NYSPA send a letter to IPRO to speed up the process. Subsequent to IPRO receiving the letter, the criteria were sent back to OMH for final editing and formatting.

Its current status? "Our understanding is that those criteria have gone to OMH and then to be utilized by IPRO," said Dr. Russakoff. "We will continue to monitor the status of the manual."

The committee also discussed the Empire Medical Services Carrier Advisory Committee. These meetings were taking place about four times a year in New York. However, this is changing: "There is a national move afoot to combine the state meetings. They are now combining New York and New Jersey, and they are reducing the frequency of the meetings. They're certainly not making it easier to participate in those meetings, and it remains to be seen what the ramifications will be," said Dr. Russakoff.

He added, "Ed [Gordon, M.D.] is the rep-

resentative of NYSPA to the CAC and has been a very able and effective advocate for psychiatry along with Seth [Stein]."

The committee also discussed the over-prescription of antidepressants and recent *New York Times* articles on this subject. "These medications are being prescribed by non-psychiatric physicians, and we thought this might be an opportunity to reach out to non-psychiatric physicians regarding consultations by psychiatrists."

#### **Mahmoud Mohamed, M.D., Committee on MITs**

Mahmoud Mohamed, M.D., Chair of the Committee on MITs, said, "We initiated email to the chief residents' listserve and phone conferencing with the MITs in Area 2, but this was not satisfactory."

An ongoing problem is that inactive MIT representatives are not replaced until the following year. To solve this problem, he suggested that each DB appoint an additional MIT representative from all of the residency training programs within each DB. "This will help the DB to have more than one rep at a time and facilitate communication among the MITs in Area II," he said.

He also suggested establishing mentors for the MIT Rep and MIT Dep Rep. "This will help us to have a more positive experience," said Dr. Mohamed, who is the MIT Rep.

Dr. Mohamed will be submitting a summary of his ideas to Dr. Perlman.

#### **Edmond Amyot, M.D., Committee on Public Psychiatry**

Edmond Amyot, M.D., reported that the Public Psychiatry Committee will be creating a position paper on the state's psychiatric hospitals. The following topics will be included: bed capacity, projected closings, and professional staffing. Upon completing the paper, the committee will try to get support from key individuals.

#### **Ruth Waldbaum, M.D., Committee for District Branch Presidents and Presidents-Elect**

Ruth Waldbaum, M.D., Co-Chair, along with Jeffrey Borenstein, M.D., of the Committee for District Branch Presidents and Presidents-Elect, reported that committee members discussed their efforts to increase membership. These initiatives included visiting residency programs, making their meetings more creative, and encouraging training directors to pay for residents' membership in their DBs.

The committee discussed the ongoing issue of whether DBs should be decreased or merged. None of the members in attendance thought that this would be feasible or beneficial. "In fact, it was pointed out, for example, that on some of our boards, we have representatives from all the local teaching hospitals ... and, we had very intimate personal access to the Members in Training--something that would not be possible [if the branches were merged or decreased]," said Dr. Waldbaum. ■

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William M. Tucker, M.D., Acting Chief Medical Officer of the NYS OMH, spoke about Risperdal® Consta™ at the Spring Area II Council Meeting held on March 27, 2004, at the LaGuardia Marriott Hotel in East Elmhurst, New York. Risperdal® Consta™ is the first long-acting novel antipsychotic approved by the FDA. Costing about \$220 an injection, Risperdal® Consta™ delivers and maintains therapeutic medication levels in the body through just one injection every two weeks.

Dr. Tucker, who serves as the OMH liaison to NYSPA, spoke positively about the drug's effectiveness: "We are trying to find out if this drug is as good as it looks in trials—which is to say that low doses are effective [and that its] steady state provides adequate antipsychotic coverage with even fewer side effects than the oral form of this medication. It has significant advantages, which many of us in the public sector have been looking ... forward to for some time."

### The Problem

Currently, outpatients on Medicaid in NYS do not have access to this drug, because it is excluded from the Medicaid formulary. Hospitals could purchase it, but they are reluctant to initiate treatment that cannot be continued once the patient is discharged, he said.

In a phone interview, Dr. Tucker provided some background information on how Medicaid coverage works: What usually happens is that the clinic is reimbursed approximately \$67 for the clinic visit itself. This reimbursement does not include medication. The patient receives a prescription that is filled at a pharmacy, which in turn is reimbursed by Medicaid.

However, because Risperdal® Consta™ is not covered by Medicaid, if physicians want to prescribe it to Medicaid patients, they would have to pay for it themselves or have their clinic or hospital pay for it—at a substantial loss. "Obviously, this is not workable," he said.

Dr. Tucker explained why the drug was excluded from the Medicaid formulary in New York—which is one of only three states that has chosen to restrict its use in

this way. "Basically as you all know, the state Medicaid departments are overwhelmed with drug budgets. They were able to find a way to prevent including expenses for this drug on the Medicaid formulary, simply by excluding it on the basis that it is not self-administered. That's just a technicality, but it gave them time to stop and think about what's happening to expenses for novel antipsychotics."

Dr. Tucker said that if this drug had been added to the formulary, the Medicaid budget would have increased. Why would this happen? After all, if the physicians would have prescribed the new drug Risperdal® Consta™, wouldn't they also be eliminating one or more of the antipsychotics that the patient is already taking? No! According to Dr. Tucker, the underlying reason that the budget would increase is that the standard of care for many physicians is polypharmacy. Consequently, according to Dr. Tucker, these physicians would prescribe Risperdal® Consta™ in addition to all the other antipsychotics the patient is taking. "Therefore, whatever the cost [of antipsychotics] is for Medicaid now—let's say it's X dollars, then it would be X plus the cost of this drug," he said.

### Dr. Tucker's Solution: Fiscal and Clinical Benefits

Dr. Tucker said OMH would like Medicaid to cover this drug as a medical procedure, which can be administered during a regular clinic visit, but at the same he realizes there are serious concerns about the Medicaid budget and in particular, the cost of antipsychotics.

His solution? Physicians should prescribe Risperdal® Consta™ as monotherapy. And in fact, OMH is doing just that: "Within the Office of Mental Health, where we purchase the drug, we adopted a policy where we are asking doctors who prescribe it to do so as antipsychotic monotherapy." (The psychiatrists have six weeks from the time of the first Consta™ injection to discontinue the patients' other antipsychotics). In fact, OMH physicians have been asked to prescribe Risperdal® Consta™ as monotherapy since early March of this year. The agency will begin collecting data on its effectiveness shortly.

According to Dr. Tucker, "The first 80 patients who were put on this drug before this guideline was in place were going to cost an additional 2 million dollars on an annualized pharmacy budget, which is already 18 percent over the amount originally budgeted."

He summarized, "We're asking Medicaid to bend over backwards and approve a new drug ... and pay for it. And in return we're going to guarantee Medicaid it's not going to increase costs—a matter of fact it's going to decrease costs because we're going to ask people who prescribe this drug to do so as monotherapy."

But the cost savings is only one of Dr. Tucker's concerns. He emphasized, "I wouldn't do this if I didn't think it made sense clinically." Dr. Tucker asserts that with one possible exception, "there is no demonstration that polypharmacy [with antipsychotics] is more effective than monotherapy."

### Advocating for Medicaid to Approve this Drug

OMH Commissioner Sharon Carpinello RN, Ph.D., supports his efforts: "Commissioner Sharon Carpinello is firmly and strongly in favor of this guideline and is moving the Medicaid approval process forward. This involves our convincing the Department of Health, which oversees Medicaid, to approve this drug as a medical procedure or in some other acceptable reimbursement category."

Dr. Tucker is urging other oversight agencies, such as the NYC Health and Hospitals Corporation, to establish policies in which their physicians prescribe Risperdal® Consta™ as monotherapy. This is critical. Why? "Only, at most, perhaps 3,000 OMH outpatients would be eligible for this drug. This is not very significant in comparison to the perhaps 100,000 Medicaid patients in NYS who might benefit from it. Having these other agencies and institutions adopt this policy would help persuade Medicaid officials that their costs will not increase if the agency approves the drug," he said.

### Discussion

In the question and answer period follow-

ing Dr. Tucker's presentation, L. Mark Russakoff, M.D., Director of Psychiatry at Phelps Memorial Hospital Center, raised several points regarding antipsychotic polypharmacy.

Dr. Russakoff said, "I understand that OMH also has a move afoot to cut down on polypharmacy with antipsychotics. ... However, there are a lot of claims that antipsychotics in fact differ. ... They are not considered to be interchangeable. Each one is seen to confer a unique benefit. Thus, the justification for polypharmacy."

He continued, "So it seems in certain ways you are doing an experiment, and the experiment is contrary to a lot of so-called clinical wisdom that these medications are in fact not interchangeable and there may be benefits from adding one antipsychotic to another."

Dr. Tucker replied, "Mark, you're absolutely right, we are doing an experiment. The answer to the question as to whether or not antipsychotic polypharmacy is more effective than monotherapy is not in. A lot of people question whether the standard of practice of using lots and lots of drugs is really a good idea. They have side effects that no one in the world can understand because the combinations are so complicated."

"In fact, there are no real data at all in the psychiatric literature stating that polypharmacy makes any sense at all. Also, I believe that it is fairly safe to say across the country that anyone who has studied this—leaders in our field—will tell you that there is absolutely no evidence that polypharmacy has any rationale except for adding a traditional antipsychotic or Risperdal to a novel antipsychotic that doesn't hit the D-2 receptors."

He continued, "If this is true, then, from the perspective of Medicaid, or the patient, or the advocate, or the psychiatrist, or the public—why are we paying for all this antipsychotic polypharmacy? We want to treat people the best way possible and give them the best medicine possible, but why are we footing the bill for something that doesn't necessarily make sense?" ■

## PROS: Personalized Recovery Oriented Services By Liz Lipton M.A.

NYS OMH is requiring that all psychosocial clubs, vocational support programs, on-site rehabilitation programs, and intensive psychiatric rehabilitation programs convert to PROS (Personalized Recovery Oriented Services) in a phased implementation schedule beginning this spring, explained Robert Myers, Ph.D., NYS OMH's Deputy Director of the Division of Community Care Systems Management. Dr. Myers has a lead role in the development and implementation of PROS.

What is PROS? "PROS (Personalized Recovery Oriented Services) is a comprehensive recovery oriented NYS OMH program for individuals with severe and persistent mental illness. The goal of the program is to integrate treatment, support,

and rehabilitation in a manner that facilitates the individual's recovery," according to a summary statement about PROS on the NYS OMH Web site.

There are four "service components" in this program: Community

Rehabilitation and Support, Intensive Rehabilitation, Vocation Support, and clinical treatment, which is an optional component, according to the Web site.

Why is NYS OMH instituting this requirement? A key reason is funding.

These programs have been receiving funding from State funds. Once they convert to PROS, they will be able to participate in Medicaid, which means that the federal government will pay about 50 percent, and the state will fund the remainder

including covering the local share of Medicaid, said Dr. Myers. He added, "The additional funding will allow program capacity to expand and will assist some providers to recruit additional qualified staff and pay more competitive salaries."

Dr. Myers explained, "The NYS OMH is using Medicaid's 'Rehabilitation Option' to introduce a Medicaid funding stream to these programs. They [these programs] will be able to bill Medicaid for Medicaid-allowable services such as skill development, symptom stabilization, and development of supports to compensate for functional deficits."

However, before these programs can bill Medicaid, they must obtain a Medicaid license from the NYS OMH. (The name of

this license is PROS.) To be granted this license, the programs must conform to NYS OMH's PROS regulations.

He continued, "We're hoping over time PROS will improve quality because the rehabilitation research literature is showing that if you provide services in an integrated manner where you're providing treatment, support, and rehabilitation together, you get better outcomes. And we're also going to use this to advance evidence-based practice approaches to rehabilitation services." ■

Detailed information is available on the PROS section of the NYS OMH Web site: <<http://www.omh.state.ny.us/omhweb/pros>>.

## Dr. Eng Continued from page 3

work with patients with mental health disabilities.

"[In writing the book] I, was hoping that even though this is my story--and [it is] individual and unique--that it would offer some commonalities to others, some hope, some encouragement. And it also suggests to others that they have their unique story to tell; They have their own way of coping and adaptation that should be listened to by others who are in their environment." She continued, "I am also a very, very strong believer in the help of God in my

own personal adaptation. ... It [writing the book] gave me the opportunity to thank and acknowledge God's role in my success and progress."

Another reason Dr. Eng wrote the book is because she believes that "the field of psychiatry, sometimes, neglects the important role of faith in the healing process: I think as a psychiatrist and as a human being ... we in the field need to talk more about the role of faith in therapy. It goes under the rubric of cultural competence. Psychiatrists in training are always admonished to be

competent with people's cultures and diversity, and understanding faith, and the role of faith is a very important segment of cultural competence."

The book, *A Christian Approach to Overcoming Disability: a Doctor's Story*, contributes insight to this issue as noted in the following review: "inspiring. ... you will laugh, cry, and be nourished by Dr. Elaine Eng's spiritual medicine. ... This book is what you get when you cross Edith Schaeffer with a blind Amy Tan—quirky, wise, and humane. After you finish this

book, you will feel like you have just had a savory meal and are ready to conquer the world with fun, love, laughter, and a deeper soul," wrote Dr. Tony Carnes, Senior News Writer at Christianity Today; Chair of the Seminar on Contents and Methods in the Social Sciences at Columbia University; and Director of the Research Institute for New Americans in Manhattan.

If NYSPA members are interested in contacting Dr. Eng, they can email the Queens DB's Executive Director, Deborah Wessely, at [dawqcps@earthlink.net](mailto:dawqcps@earthlink.net). ■



Ann Sullivan, M.D.

The APA ended fiscal year 2003 with a surplus of approximately 4.9 million dollars! This is great news, and is in large part due to staying within budget, and decreasing expenses (operating expenses were decreased by \$540,000). The actual cash surplus is due to increased annual meeting revenue last year of 2.5 million, and increased publishing (1.1 million), grants and contracts (1.1 million) and dues (280,000). It is not yet time to celebrate however, and it is important to remember that we had good years in the past, but failed to replenish our reserves resulting in the crisis a few years ago. The board therefore decided that solid reserves were a priority and 2.5 million will be added directly to the reserves. About 1.3 million will be set aside to purchase the Association Management Information System. This system will provide a true membership management system and accountability at the national, state and district branch level. Included in the cost is the necessary hardware and software costs for each district branch. By purchasing, rather than leasing, the long-range gain is about 500,000.

The board also prioritized assistance (\$380,000) to the District Branches and State Associations. \$100,000 is available for infrastructure support to District

Branches in 2004. A financial summary was sent to the District Branches to gather information on what their needs are and then to address them. Please answer the survey! An additional \$280,000 in 2004 is available for targeted District Branch initiatives. Areas for such initiatives could include, advocacy, public affairs, membership recruitment, community education, etc. Be creative! The general guidelines developed by an Assembly and Board Task Force for how to access these monies should be available soon, and all District Branches are invited to participate! Finally, any additional surplus goes towards increases in health costs for employees 17% and 2% cost of living.

The Board also reviewed our investments and voted to "conservatively" diversify our portfolio. We are doing better with investments this year - about 1.5 million above cost - but we are not budgeting for or cashing in these returns. Again, taking a highly cautious approach.

In addition, Dr. Scully has initiated several staff development projects: workforce diversity; employee incentive and recognition program; and a reassessment of the workplace culture. Central office staff are the face of national APA to the member, and such initiatives are time well spent.

Finally, after tireless work by Dr. Peyser, the board approved a resolution to consider obtaining an independent consultant when appropriating 500,000 or more for a business or financial initiative!!

Hopefully, this will bring forward serious consideration of the need for second opinions where considerable dollars are invested, such as was done for the Association Management System.

**ADVOCACY**

A reorganization of the Advocacy structure will hopefully provide a more effective and more efficient team. The Division of

Advocacy will oversee government relations, communications and public affairs, and healthcare systems and financing. Gene Cassel will head the Division and Nick Meyers will direct DGR operations. This coordinated effort is clearly needed if we are to be successful in the key advocacy objectives. **To name a few:**

- **Preventing Psychologist Prescribing:** A serious set back occurred when a second state, Louisiana, passed legislation permitting psychologist prescribing. The current recommended regulations for prescribing by psychologists are extremely thin in their requirements for training and supervision, in both New Mexico and Louisiana, setting a dangerous precedent. In numerous other states the APA has continued to be successful in preventing psychologist prescribing, but much more needs to be done. Dollars help and you will soon receive a request for money, which would be well spent! The Board meetings in June will also re-focus efforts in our approach to prevent further problems in other states! We have been successful in New York State, largely through NYSPA, in preventing psychologist prescribing here!
- **The APA and GNYHA** has been active in developing a strategy for Prospective Payment system for inpatient psychiatric beds that serves the needs of our patients. This is a crucial issue if hospitals are to continue to be able to provide this critical service. Adequate reimbursement is essential!
- **The Business Initiative** has been actively meeting with corporate leaders to lobby for appropriate coverage for mental illness. Large employer based insurance is a major source of coverage for working Americans, and needs to be parity based!
- **The Vision Statement** has been broken down to specific strategies the APA can

take to fix the system. The staff is currently pricing the strategies and the Board will review and suggest priorities in June and then get further input from the Assembly and District Branches. It is critical to determine how to spend our dollars in this long-range effort. The plan and the specific strategies are available on the Members Only web site.

- **Healthcare Systems and Finance** has begun a coalition with NAMI and FAMI to develop strategies on a national and state level to deal with the nationwide reductions in Medicaid services. This will include joint projects with District Branches and state advocacy groups. The Federal changes in Medicaid could seriously adversely affect our patients!
- **DGR** has been actively lobbying for the so far successful increases in NIH and SAMSA funding (small, but at least not a decrease).
- **DGR** continues to lobby to end the 50% Medicare co-pay. There are now bills introduced in both the house and senate.
- **A White paper** on "Mental Illness and the Criminal Justice System: Redirecting Resources Toward Treatment, Not Containment", has been prepared by the APA Board Task Force under Dr. Marcia Goin's leadership (May 2004). It can be viewed on the Members Only web site, and provides a blueprint for the problem and possible solutions to the criminalization of the mentally ill.

Finally, I would like to thank each of you for belonging to the APA! Your membership ensures that the activities described above and more are able to continue! Also, your individual active participation in any activity is more than welcomed! Thanks for your support, and once again, contact me with any thoughts, ideas and suggestions. ■

Ann Sullivan, MD  
ann.sullivan@mssm.edu

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## NYSPA Hosts First MIT Night

Over 60 residents from 13 psychiatric residency programs in the Metropolitan area met on May 19, 2004 at the Hi Life Restaurant in Manhattan. Presentations, which were very well received, were given by

NYSPA officers Barry Perlman, M.D., President, Deborah Cross, M.D., Vice President, Seth P. Stein, Esq., Executive Director, Ann Sullivan, M.D., Area II Trustee, and Jeffrey Feola, M.D., ECP Deputy Representative. The speakers

addressed NYSPA and APA advocacy activities on behalf of members and their patients and emphasized the need for residents to continue APA membership after they complete their training. In addition to learning more about

NYSPA and the APA, residents had an opportunity to network with colleagues from other programs as well as to learn about current issues facing psychiatrists practicing in New York. ■



Ann Sullivan, M.D.



Deborah Cross, M.D.



MIT NIGHT

Photo Credits: Donna Gajda



Barry Perlman, M.D.



Seth Stein

## Oxford Continued from page 1

rial from the treatment record other than the information listed in the documentation policy will require that Oxford obtain a separate and contemporaneous HIPAA compliant authorization signed by the patient for such additional material requested by Oxford. Both the American Psychiatric Association and the New York State Psychiatric Association have endorsed the policy as a major breakthrough in the protection of patient confidentiality.

It is anticipated that Oxford will be sending the policy to all mental health providers in the Oxford provider networks in the next several months. Oxford will recommend that the required elements be maintained separately from the remainder of each session note so that the information can be copied and forwarded easily. Oxford also will be preparing a sample documentation template that can be used to record the required information.

Of course, this policy does not establish a standard for minimally acceptable psychiatric records for purposes of state licensure law, government agencies or other third-party payors. Psychiatrist will still be required to maintain medical records that are consistent with generally accepted psychiatric standards.

### THE EIGHT REQUIRED ELEMENTS FOR PSYCHOTHERAPY NOTES IN THE OXFORD PROPOSED DOCUMENTATION POLICY:

- 1. Patient Name.** If each record of each session is kept on a separate sheet of paper, then the patient's name should appear on each record. If records of multiple sessions are maintained on a single sheet of sheet, then the patient's name may appear once on the sheet of paper containing multiple records.
- 2. Clinician Name.** As in the case of the patient's name, the name of the clinician who rendered the service should appear either in the record of the session, if the record of each session is maintained separately, or on the sheet of paper containing the record for multiple sessions.
- 3. Date of Service.** Include date of the session.
- 4. Diagnosis.** DSM-IV diagnosis, ICD-9CM diagnosis or focus of treatment should be included in the record. However, a notation in the patient's record rather than each session is acceptable. If there is a change in the diagnosis or focus of treatment during the course of treatment, the change should be noted in the record of session when the change occurred.

**5. CPT Code or Description of Service.** A clinician may simply note in the record of the session the CPT code for the service provided or instead include a description of the service. For example, the record of the session could include either "90806" or "45 minute psychotherapy session without medical evaluation and management." For psychotherapy codes that do not include specific time periods within their CPT definitions (e.g., group, family therapy), the length of the session is not required.

**6. Participants Other Than Patient.** Include identification (e.g., mother, father, spouse, child) of any persons other than the patient who participated in the psychotherapy session and indicate whether family therapy, marriage counseling or collateral to individual psychotherapy.

**7. Brief Summary of Focus of Psychotherapy Session.** The record of the psychotherapy session should include no more than a brief summary of any one of the following items: functional status, the treatment plan, or symptoms. It is intended that this documentation will meet the standards for non-psychotherapy note material as defined in federal privacy regulations (HIPAA) at 45 CFR §164.501. The following are examples of

actual documentation that would satisfy this requirement:

- "Assessed [family][work][marital][social] issues"
  - "Assessed symptoms of patient's illness or condition"
  - "Assessed patient's functional status regarding [home][work][activities of daily living][social activities][family]"
- 8. For psychiatrists only:** if the psychotherapy service includes medical evaluation and management (e.g. 90805, 90807), the record of the individual session should include a description of the medical evaluation and management service provided. The following are examples of actual documentation that would satisfy this requirement:
- "Prescribed medication"
  - "Assessed [efficacy of current medication][side effects][adverse reactions]"
  - "Discussed medication with patient"
  - "[Assessed][updated] patient mental status"
  - "[Assessed][discussed] non-psychiatric health issues"
  - "[Discussion][consultation][coordination of care] with [physician][other health care professional][family member][caretaker]" ■

## OPMC Continued from page 3

of a sexual nature and inappropriate physical examinations are also examples of medical misconduct.

Fraudulent practice involves the intentional misrepresentation or concealment of a known fact within the practice of the profession. For example, such practices can include knowingly submitting false bills for services or submitting false or exaggerated medical reports. Fraud can also be charged if a physician gives false statements on an application for hospital privileges.

Once the Board files charges against a

physician, a hearing is set and all parties are notified. This hearing is similar to a trial with both the State and the physician represented by attorneys, and witnesses are called to testify. There is also an appeal mechanism for the Hearing Committee's decision to an Administrative Review Board, made up of 3 physicians and 2 lay members of the Board.

The Board, through the Hearing Committee, has the authority to take several actions against a physician. Some of these actions include revocation or sus-

pension or the physician's license, limiting the license to a specific area or type of practice, requiring the physician to pursue a course of education or training, censure and reprimand, fines, probation and monitoring of physicians placed on such probation, and community service. As you can see, the penalties can be severe. Once there is a final decision, called a Determination and Order, the charges on which the decision is based and the penalties are public record.

The entire process is complex and can be lengthy. However, the Board tries to close

cases as quickly as possible. A hearing must be completed within 120 days of its first hearing day.

In many ways, we psychiatrists are fortunate to live in New York State where OPMC and the Board work very hard to live up to their charge of protecting the public from medical misconduct. However, we must educate ourselves as to what the law defines as medical misconduct and practice our profession in such a way so that we do not leave ourselves open to charges of medical misconduct. ■

### NYC Council Resolution Calls for State to Adopt Timothy's Law

By Richard Gallo and Karin Moran, MSW

On Tuesday, June 8, 2004, New York State Psychiatric Association President, Barry Perlman, MD and the President of the Queens Psychiatric Society, Jeffrey Borenstein, MD, joined New York City Council members David Weprin and Margarita Lopez at a press conference and hearing that formally called upon the New York State Legislature to end discriminatory insurance practices with respect to treatment for mental illnesses. Council members Weprin and Lopez sponsored Resolution 248, which specifically called for the State Legislature to adopt S.5329 and A.8301, also known as "Timothy's Law" which seeks to provide insurance parity between treatment for mental illness and chemical dependency and other "medical" diagnoses.

Drs. Perlman and Borenstein both provided testimony before the New York City Council's Committee on Mental Health, Mental Retardation, Alcoholism, Drug Abuse and Disability Services in support of the resolution. Throughout their testimony, Drs. Perlman and Borenstein spoke to the scientific advances and the potential cost savings associated with lifting the current restrictions on mental health benefits, pointing to the treatment efficacy rates for such illnesses as schizophrenia, bipolar disorder, major depression, and panic disorder. "Scientific research has provided us with dramatic advances in understanding these illnesses and treating them cost effectively. Now the time has come to make the same advances in health insurance coverage for the treatment of mental illness" said Dr. Perlman.

Dr. Borenstein followed those thoughts with statistical data that debunked the insurance industries claims that the costs associated with a parity mandate would

result in excessive costs to businesses. Not true, said Dr. Borenstein, "it is estimated that the direct business costs associated with untreated mental illness exceed \$70 billion per year, primarily in the form of lost productivity, absenteeism, and increased use of sick time." "However, many corporations have voluntarily implemented broader based mental health and chemical dependency benefits for their employees and are reporting significant savings. For example, Dupont,

Dow, Federal Express, and Xerox, reported reduced costs of 30 to 50% over a one to two year period after eliminating restrictive mental health coverage."

Other downstate advocates, such as NAMI-NYC (National Alliance for the Mentally Ill), LIRA (Long Island Recovery Advocates) and Tom O'Clair, Timothy's father, spoke about the detrimental costs to society of not providing equal treatment for mental illnesses. "Timothy's Law is not about my son, unfortunately it is

too late for Timothy, but instead it is about protecting other families throughout New York State, so they aren't faced with the tragic loss that my family has experienced" said O'Clair. Mr. O'Clair's testimony was followed by the passing of Resolution 248 and a promise by Council members to continue their efforts in the crusade for a mental health parity law. The Resolution will be voted on by the full City Council within the coming days. ■



Barry Perlman, MD, Council Member Lopez, Mr. O'Clair, Council Member Weprin and Jeffrey Borenstein, MD.

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