New Law Makes Changes to Physician Disciplinary Process - The Filing of Charges Against a Physician Will Now Be Made Public

By Rachel A. Fernbach, Esq. and Seth P. Stein, Esq.

On August 5, 2008, Governor Paterson signed into law a bill amending the public health law, the education law and the criminal procedure law. According to the bill sponsors, the bill is aimed at improving patient safety by making changes to current law in three ways: (i) strengthening the physician disciplinary process; (ii) allowing the Office of Professional Medical Conduct (“OPMC”) to publish information about misconduct filed against a physician; and (iii) improving infection control training and practices. The law will go into effect on November 1, 2008.

All of these changes were driven by the case of Harvey Finklestein, M.D., a Nassau County anesthesiologist, whose practice of reusing a single syringe to draw medicine from multiple-dose medication vials was alleged to cause contamination and spread disease. Several of his patients may have contracted hepatitis B or hepatitis C as a result of reusing contaminated injection at his office. The story received a great deal of media attention in Fall 2007 when the New York State Department of Health was notifying Dr. Finklestein’s patients that they might have been exposed to hepatitis B or hepatitis C. It was later revealed that OPMC had been aware of the situation for nearly three years but did not act to warn patients or the public about the potential danger. The delay in patient notification led to public outcry and in November 2007, the Governor’s office ordered an independent investigation into the matter.

Although the use of multi-dose vials of medication is quite common and does not alone constitute professional misconduct, Dr. Finklestein’s failure to properly follow infection control procedures may have led to the spread of communicable disease. In spite of these allegations, Dr. Finklestein was never found to have engaged in professional misconduct. A call for changes to the physician disciplinary process and for new rules regarding public notice of possible physician violations. In mid-2008, New York State Senator Kemp Hannon (R-Garden City) introduced legislation in an attempt to address some of the systemic problems and delays that surfaced during the Finklestein investigation.

Changes to Physician Disciplinary Process

Effective November 3, 2008, the new law makes a variety of changes to the physician disciplinary process governed by the OPMC. Of these, there are two changes that require particular attention. The first and most important change now permits OPMC to publish information about misconduct charges made against a physician. Under prior law, charges against a physician were made public only after a determination had been made in the matter. Now, instead, OPMC has the authority to publish allegations made against a particular physician at the outset of the disciplinary process, five days after the license has been notified of the charges. If the investigation committee that receives the charges is unanimous in its decision to do so, then as if there is a tremendous rush to paint any association with a drug company as ’bad’ or ’evil’. As a profession, both in psychiatry and in the rest of medicine, there are more pharmacological interferences than ever before. Life-saving and life prolonging ones! How do we get them? By drug companies investing money in research—and then by selling their products! This is a capitalistic society—these companies make millions for their shareholders. But in any business, if the product doesn’t work, ultimately the “buyer” (physicians, since we prescribe them) stops buying. How do we learn if they don’t work? By research done by the competing companies?

One of the major changes in the last 30 years has been the explosion of direct to consumer marketing which has led to an incredible increase in the number of medications. One of the major changes in the last 30 years has been the explosion of direct to consumer marketing which has led to an incredible increase in the number of substances! How do we learn if they don’t work? By research done by the competing companies?

The following are some additional highlights of the bill:

• 50% Coinsurance for Outpatient Mental Health Services to be Gradually Eliminated
• By Richard J. Gallo and Barry B. Perlman, MD

50% coinsurance for outpatient mental health services to be gradually eliminated.

The Affordable Care Act of 2009 (H.R. 3631) as law.

The following are some additional highlights of the bill:

• 50% Coinsurance for Outpatient Mental Health Services to be Gradually Eliminated

H.R. 3631 as law.

The following are some additional highlights of the bill:

• 50% Coinsurance for Outpatient Mental Health Services to be Gradually Eliminated

How did we get to this point?

As a profession, both in psychiatry and in the rest of medicine, there are more pharmacological interferences than ever before. Life-saving and life prolonging ones! How do we get them? By drug companies investing money in research—and then by selling their products! This is a capitalistic society—these companies make millions for their shareholders. But in any business, if the product doesn’t work, ultimately the “buyer” (physicians, since we prescribe them) stops buying. How do we learn if they don’t work? By research done by the competing companies?

One of the major changes in the last 30 years has been the explosion of direct to consumer marketing which has led to an incredible increase in the number of medications. One of the major changes in the last 30 years has been the explosion of direct to consumer marketing which has led to an incredible increase in the number of substances! How do we learn if they don’t work? By research done by the competing companies?

The following are some additional highlights of the bill:

• 50% Coinsurance for Outpatient Mental Health Services to be Gradually Eliminated

H.R. 3631 as law.

The following are some additional highlights of the bill:

• 50% Coinsurance for Outpatient Mental Health Services to be Gradually Eliminated

By Richard J. Gallo and Barry B. Perlman, MD

50% coinsurance for outpatient mental health services to be gradually eliminated.

The Affordable Care Act of 2009 (H.R. 3631) as law.

The following are some additional highlights of the bill:

• 50% Coinsurance for Outpatient Mental Health Services to be Gradually Eliminated

H.R. 3631 as law.
President's Message continued from page 1

Like all matters relative to government and legislative affairs, NYSPA's “Albany Office” exists to serve the needs of psychiatrists and their patients, including those psychiatrists who have not yet become members of NYSPA. We understand the nature of our service can be somewhat otherworldly at times in relation to day to day practice concerns. It is the aggregate of such concerns that dictate NYSPA’s legislative priorities and resource allocations.

Speaking Of Otherworldly

The 2008 “Regular Session” of the New York State Legislature, while intriguing politically, was unbelievable, even by Albany standards. The first three months of the session were plagued with rancor, accusation, scandal and upheaval. From “Inspec嬌e” to execute, indignation to resignation, the wheels of state government could do little more than run over their drovers.

The installation of Governor David Paterson in March brought some measure of calm, order and good-will to the prevailing acrimony. Using his years of experience in the State Senate, Governor Paterson was quick to engage his former colleagues with a style they could relate to and within nine days of taking office Governor Paterson, flanked by the Legislative leaders, stood before the news media holding high the Holy Grail of New York State legislative aspiration: an agreed upon - time budget. Unfortunately, not much else happened during the remaining three months of the session, except for the dust settling from the first three months. Then, just when things seemed to be getting to “normal” New York Senator Joseph Bruno (R-Brunswick), on the night before the last day of session, stuns his colleague [and everyone else] by announcing that he would step down as the Senate Majority Leader, effective the following morning.

Now, just one seat separation which political parties will control the New York State Senate, in January. Regardless of whether or not the Democrats will end the 65 year (save one year term) reign of the Senate Republicans, a sea change is occurring in how the Legislature, especially the Senate, will conduct business in the future. With the help and support of psychiatrists across the state, our links with the State Medical Society and other organizations, NYSPA is ready and able to meet new challenges in a new era of legislative politics.

Parity Champion Wins Congressional Primary

We are pleased to note that former Assemblyman Paul Tonko (D-Amsterdam), the lead sponsor and unifying champion of “Timothy’s Law,” will be the Democratic Candidate this November for New York’s 21st Congressional District. Mr. Tonko handily beat a field of five in the primary and signed into law by the President. In our next issue we will provide information on how this impacts New York State. Parity legislation, both in NYS and nationally, is the result of years of advocacy. During these turbulent economic times, it is even more important for us to continue to advocate for our patients and our profession.

While our profession and organization tries to ride out this furor against investment with the pharmaceutical industry, I would like to caution all of us to take a critical look at what is actually being said and not just automatically come down on one side or the other. As with most issues, it really is not all black or white. This is a time of great change and opportunity. We have the ability to influence this debate but we need to understand the ramifications on all levels. We all have conflicts of interests in multiple areas of our lives—we need to understand them, explore them and ultimately make them work for us, not destroy us!

I would like to hear from our members regarding your opinions on this—and on other topics important to you. Please email me at deborahcross@usa.net.
**MEDICARE CLAIMS PROCESSING PROBLEMS**

Psychiatrists across New York have contacted NYSPA Central Office reporting significant delays in the processing of Medicare Part B claims. Delays have occurred particularly in the processing of claims, but delays in claims submitted electronically have also been reported. The Medical Society of the State of New York has received similar complaints from its members as well. Many of these problems began to be reported shortly after the consolidation of the three Medicare carriers in New York in the new multi-state Medicare Part B carrier, National Government Services. We understand that part of the problem in processing paper claims is that carriers no longer have staff entering data from paper claims but instead use scanners to read paper claims. The use of scanners creates the opportunity of rejected claims because of legibility issues, positioning of responses within fields, and misalignment in that part of the problem in processing paper claims is that carriers no longer have staff entering data from paper claims but instead use scanners to read paper claims. The use of scanners creates the opportunity of rejected claims because of legibility issues, positioning of responses within fields, and misalignment in

**FULL TIME PSYCHIATRIST FT. DRUM**

**GREAT OPPORTUNITIES TO CARE FOR OUR NATIONAL HEROES**

Center for Family Guidance, PC, parent company of CFG Health Systems, LLC, a physician owned and operated behavioral health-care organization, has a contract to provide Psychiatric services to Ft. Drum. We offer a generous salary, benefits package, paid time off, 401K, housing will be provided.

**Interested candidates can contact:**

NANCY DELAPO  
**DIRECTOR OF STAFF DEVELOPMENT**  
PHONE: 856 797-4761  
FAX: 856 797-4798  
E-MAIL: ndelapo@cfgpc.com  
Web: www.ctfamilyguidance.com

---

**HAVE YOU ENCOUNTERED UNUSUAL DELAYS IN THE PROCESSING OF MEDICARE CLAIMS THIS YEAR?**

**Yes** ☐  **No** ☐

**DOES YOUR PRACTICE USE A COMPUTER SYSTEM?**

**Yes** ☐  **No** ☐

**DO YOU SUBMIT PAPER OR ELECTRONIC CLAIMS?**

**Paper** ☐  **Electronic** ☐

**DOES YOUR PRACTICE HAVE INTERNET ACCESS?**

**Yes** ☐  **No** ☐

**DO YOU USE THE EMAIL LISTSERV FROM THE AMERICAN PSYCHIATRIC ASSOCIATION?**

**Yes** ☐  **No** ☐  **National Government Services** ☐  **Does not use either listserv** ☐
New Law continued from page 1

proceed to a hearing, the charges will automatically be made public after the five day waiting period. However, if the investigation committee is not unanimous in its decision to proceed to a hearing, the committee must unanimously vote in favor of publication before the charges will be made available to the public. In addition, the public notice must include a statement that the charges are only allegations that may be contested by the physician in an administrative hearing. If any or all of the charges are dismissed at a later date, the dismissal must also be made public within two business days. Finally, current law permits the investigation committee to publish its findings, conclusions, determination and order only when an order mandates the annulment, suspension without stay or revocation of a physician’s medical license. The new law, however, permits publication upon issuance of an order in all misconduct cases, as long as the publication includes a statement that the order is subject to administrative or judicial review.

Due to this marked change in OPMC policy and procedure, NYSPPA strongly advises psychiatrists who are notified that they are the subject of an OPMC investigation to immediately seek the advice of an attorney. Since the filing of charges is often tantamount to a conviction in the public eye, a physician being investigated has a strong incentive to respond aggressively to prevent charges from being filed and published, if possible. The second noteworthy change seeks to improve access by OPMC to the individual medical records of a physician charged with professional misconduct when there are allegations that the physician may be impaired by alcohol, drugs, physical disability or mental disability. Under prior law, OPMC was required to obtain an order of the court in order to gain access to such records. However, the law now permits a Committee on Professional Conduct to issue an order granting access by OPMC to the medical records of the charged physician without the need for a court order. The law also makes following additional changes to the physician disciplinary process:

- OPMC may require a physician to submit to a clinical competency examination when there is reason to believe that the physician has practiced medicine with incompetence.
- OPMC is now required to report to law enforcement any acts or omissions made by a licensed physician that constitute a crime under state or federal law.
- OPMC is now required to provide written notice to the physician under investigation at least 20 days prior to any scheduled interview of the conduct that is subject of the investigation, the issues relating to the conduct, the time frame, the patients involved and that the physician may be represented by counsel.
- OPMC is now required, in consultation with the DOH Patient Safety Center, to review medical malpractice claims and disposition information to identify potential misconduct and conduct investigations of same.
- The law now clarifies that the counsel representing a physician at a professional misconduct hearing must be an attorney admitted to practice in New York State.
- OPMC is now required to provide the physician being investigated with any evidence that tends to prove the physician’s innocence as soon as practicable.
- Physicians whose licenses have been revoked, surrendered, annulled, suspended for more than 180 days or restricted from the practice of medicine to provide notice within 15 days to patients, hospitals, primary practice settings and health plans with whom the physician is affiliated. Such physicians are also required to notify the DEA, return any unused official prescription forms for controlled substances and to discontinue advertising efforts.

Part-time Psychiatrist

Part-time Psychiatrist in well-respected Queens outpatient geriatric mental health clinic to work with clinic and homebound patients. Approximately 15 hours/week. Good compensation. Hours/time flexible.

FAX CV to 718-224-7544
Attn: Jane C. Bardavid, LCSW

ReceivethetheBulletin—Email BulletinCentral
Area II Council - American Psychiatric Association
400 Garden City Plaza
Suite 202
Garden City, NY 11530

The New York State Psychiatric Association
Area II Council - American Psychiatric Association
400 Garden City Plaza
Suite 202
Garden City, NY 11530

The Psychiatrists’ Program
Professional Liability Insurance Designed for Physicians
Call: (800) 285-3333, ext. 389; E-mail: TheProgram@jps.com; Visit: www.psychprogram.com