

# THE BULLETIN

## NEW YORK STATE PSYCHIATRIC ASSOCIATION

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### President's Message: Guidelines or Mandates—That is the Question

By C. Deborah Cross, MD

At the May APA Assembly a major topic of interest was a report by Paul S. Appelbaum, MD, past president of the APA, and current Chair of a Workgroup on Relationships between Psychiatrists and the Pharmaceutical and Medical Device Industries. (This Workgroup was established by the APA Board of Trustees in 2008 and presented their report to the Board on March 15, 2009.) The report, as is Assembly custom, was assigned to a Reference Committee made up of representatives from all the Areas and other groups such as MITs, ECPs, etc. The debate on the report was extensive. Dr. Appelbaum testified (the Reference Committee model is based on the similar model at the AMA where people come in front of the Reference Committee and "testify" regarding the issue at hand). Numerous other people also spoke. The issue was quite controversial. I will very briefly summarize the main points in the report; however, I urge all of you to access it through the APA web site. (I believe that the report is going to be circulated to the entire APA membership for comments at some time in the near future.)

In brief, there was a two paragraph introduction which stated "The American Psychiatric Association (APA), therefore, offers these recommendations to educate its members about the poten-



C. Deborah Cross, MD

tial for conflicts of interest and to guide their decisions about relationships with industry." It went on to say that "These steps are necessary to protect public trust in the integrity of the profession and to promote the well-being of our patients."

The body of the report spelled out 11 recommendations in several sections. The first section, "Recommendations Relevant to all Psychiatrists", listed the following.

- 1) Gifts: "The APA recommends that psychiatrists and trainees not accept gifts of any value from pharmaceutical, device, and other commercial entities, and that psychiatrists not display products with commercial logos."
- 2) Food: "The APA recommends that the same rules that apply to gifts in general should be applied to food." The recommendation goes on to state basically that no free food should be supplied for educational or social functions in hospitals, clinics and offices and psychiatrists should not accept food that is being paid for by pharmaceutical or device companies.
- 3) Medication samples: The recommendation is that psychiatrists limit the use of free samples to situations where it is clearly in the interests of

[See **President's Message** on page 2]

### Spring Area II Council Meeting

By Rachel A. Fernbach, Esq.

The New York State Psychiatric Association held its annual Spring Area II Council Meeting on Saturday, March 28, 2009, at the LaGuardia Marriott Hotel in East Elmhurst, New York. C. Deborah Cross, M.D., NYSPA President, called the meeting to order and welcomed Council guests.

After introductions, members of the Executive Committee provided reports. In her President's Report, Dr. Cross provided an update on public affairs activities. She announced that the APA Board has decided to sunset the APA Public Affairs Committee and place it under

the jurisdiction of the Council on Communications. Dr. Cross hopes for an increased focus on public affairs activities at the state and local level. Finally, she provided an update on various district branch public affairs activities and efforts.

NYSPA Vice-President, Glenn Martin, M.D., provided an update on the NYS Medicaid Pharmacy Preferred Drug Program and the NYS Legislature's request to add antidepressants to the preferred drug list. Dr. Martin reported that starting in 2011, Medicare providers

[See **Area II Council** on page 5]



C. Deborah Cross, M.D., Richard Altesman, M.D., Abraham Halpern, M.D., and Aaron Satloff, M.D.

### Albany Report

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

#### NEWS FLASH!!! NYS Senate resumes passing Legislation after five weeks of gridlock and bill to make Timothy's Law permanent becomes law.

Since writing this report, there have been two important developments in Albany:

- 1) Senator Pedro Espada, Jr. has returned to the ranks of the Senate Democrats, which again provides his Party with a 32-to-30 Majority in the upper house; and
- 2) The Senate unanimously passes Timothy's Law permanency bill and it is signed into law by Governor David Paterson on the following day.

It seems each year the "End of Session" *Albany Report* remarks about the bizarreness of the Legislative Session and how it was stranger than preceding years. We can now state unequivocally that all previous reports were overstated by comparison to the 2009 legislative session as we continue to observe the unprecedented goings-on in the State Senate. While the New York State Assembly adjourned its "regular session" in an orderly fashion on June 23, 2009, the New York State Senate looks to be nowhere near concluding its business, as of the time we wrote this report. As anyone with access to a news media source knows, on June 8, 2009, 30 Senate Republicans and 2 Senate Democrats put on the floor a motion to adopt a resolution of the Senate that gave the GOP control of the chamber and elected Senator Pedro Espada Jr. as "President Pro Temp" and Senator Dean Skelos as "Majority Leader." The legality of the vote under the parliamentary procedures of the upper house and the question of whether the house was actually in session when the vote occurred are at the core of the ongoing power struggle and resulting dysfunction.

To complicate matters further, Senator

Hiram Monserrate, the other Democratic Senator who aligned himself with the GOP, has since returned to the Democratic Conference creating an even 31-31 split, without a Lieutenant Governor to cast a tie-breaking vote.

#### Session Stats

For those of you who keep track of such things, the 2009 Legislative Session produced 15,161 bills (as of June 29, 2009), with the Assembly passing 1,242 and the Senate passing only 262 to date. So far, 183 bills have passed both houses: 67 have become law, 6 have been vetoed, and 22 are awaiting action by the Governor. Thus far, the 2009 Legislative Session has yielded important successes for NYSPA, as well as some disappointments.

#### State Budget Issues

The 2009-2010 budget was a mixed bag with regard to NYSPA's interests. The overall appropriation for the NYS Office of Mental Health, which we comment on annually, was relatively generous as proposed by the Governor and increased through negotiations with the Legislature. A significant win for NYSPA and our Timothy's Law

[See **Albany Report** on page 3]

### NYSPA Legislative Day

By Rachel A. Fernbach, Esq.

On March 11, 2009, members of the NYSPA Executive Committee traveled to Albany for a day of lobbying meetings with various state legislators and representatives from the Governor's office. Also present were Richard Gallo, NYSPA Government Relations Advocate, Seth P. Stein, Esq., NYSPA Executive Director and General Counsel, and Rachel A. Fernbach, Esq., NYSPA Staff Attorney.

NYSPA distributed and discussed the following list of key issues for the 2009 Legislative Session:

- Timothy's Law: The law is scheduled to sunset at the end of 2009 and must be reauthorized by the Legislature. NYSPA advocates that the Legislature remove the sunset provision and make Timothy's Law permanent.
- State Budget Proposal: NYSPA raised concerns about certain provisions in the state budget proposal affecting the NYS Medicaid Preferred Drug List, pharmacy benefit managers, and the influence of drug manufacturers on prescribing practices. NYSPA is also concerned about proposed budget cuts to Article 28 hospitals and resulting adverse consequences

for the mental health system.

- Sex Offender Management and Treatment Act (SOMTA): NYSPA is advocating for changes to SOMTA, including the adoption of an outpatient treatment model to relieve burdens currently placed on the mental health system.
- E & M Claims: NYSPA raised concerns regarding the refusal of private insurance carriers to process claims from psychiatrists for outpatient evaluation & management services.

In its first meeting, the NYSPA delegation met with staff members from the office of Assemblyman Richard Gottfried (D-Manhattan), Chair of the Assembly Health Committee. The staff members expressed Mr. Gottfried's support for a permanent Timothy's Law and the support of NYSPA's position on many other issues currently affecting psychiatrists. In addition, they agreed to follow-up with the New York State Department of Insurance regarding the processing of E & M claims by private insurance carriers.

Next, the NYSPA delegation met with Kristin Sinclair, Committee Director, in

[See **Legislative Day** on page 2]



# THE BULLETIN

## NEW YORK STATE PSYCHIATRIC ASSOCIATION

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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.

### Information for Advertisers

*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, MD

This edition of the Bulletin provides an update on NYS legislative issues including the Albany Report and the NYSPA Legislative Day. The State Senate unanimously passed the Timothy's Law Permanency Bill, and it was signed by Governor



Jeffrey Borenstein, MD

Paterson the next day. The President's Report focuses on the relationship between psychiatrists and the pharmaceutical industry. The Area II Trustee Report focuses on the challenges our organization is facing on the national level. We also report on the Area II

Council Meeting. We have a report about serious mental illness and increased cardio metabolic risk and a report on the Medicare RAC Audit Program. I am also pleased to have a report about a Mental Health Community Education event sponsored by the American Psychiatric Foundation, which was hosted by Holliswood Hospital. ■

## President's Message continued from page 1

- patient care and should not accept samples for themselves or their families.
- Attendance at industry-supported educational programs: The recommendation is that psychiatrists only participate in educational sessions that are ACCME-accredited or otherwise have procedures which ensure that speakers are fully responsible for the content. Any payment for travel and lodging to attend CME programs should be declined as gifts.
  - Planning and presenting at industry-supported educational programs: The recommendation is that psychiatrists other than salaried employees of pharmaceutical and device companies not participate as presenters in industry-sponsored speakers' bureaus or similar activities. Any involvement as a speaker should be limited to programs that are ACCME-accredited.
  - Consulting arrangements: The recommendation is that psychiatrists avoid participation in consulting arrangements in which "they are unlikely to make substantive contributions."
  - Contact with pharmaceutical and device representatives: The recommendation basically states that in any contact with such representatives, psychiatrists should be aware that the role of such representatives is to market their products and "seriously consider the issues described above and the implications for patient care before deciding whether to interact with them."
  - Disclosure of relationships with pharmaceutical and device companies: The recommendation states that the APA encourages development and adoption of uniform and accessible formats for disclosures required by academic institutions, funding agencies, journals, and other entities.
  - Ethics Education: The recommendation is that psychiatrists and trainees engage in on-going education on ethics issues about rela-

tionships with industry. The report then lists a number of recommendations relevant to psychiatrists who conduct research on pharmaceuticals and devices which I will not list here, but urge you to read if these are pertinent to you and your work. The report closes with a final paragraph which is worth quoting in its entirety: "These recommendations are intended as a 'living document', subject to amendment as additional issues require attention and as new approaches are developed to the subjects addressed here. It is hoped that they will stimulate reflection and discussion among psychiatrists, and will contribute to heightened awareness of concerns stemming from relationships with industry." The Reference Committee did not report its discussions about the Report to the entire Assembly, since they were given instructions that the assignment of the Report to the Reference Committee was for the purpose of hearing debate. Rather, on Sunday morning, Dr. Appelbaum came before the entire Assembly and discussed the report and answered questions. Again there was no Assembly vote on the Report, since the Assembly was told that the purpose of the discussion was for feedback to the Board. Personally, it appeared to me that there was considerable controversy about a number of the recommendations. Without going into detail about the specific recommendations, one of the major general concerns voiced by many present was the fear that what was presented as "recommendations" could quickly morph into "requirements" and that a psychiatrist who did not follow the "recommendations" could be found "unethical" by APA standards. Additionally, many expressed the concern that the APA was not sensitive to the concerns of its many diverse members and their day-to-day issues (in other words, this was seen by many as a "top down" edict which was at odds with most people's current professional lives). A number of Assembly members praised the report for its balanced and thoughtful language and felt that the

APA needed to take on this issue, particularly in light of the current climate and the recent Institute of Medicine report released in April 2009 (which contained many of the same recommendations as the Work Group report). Some Assembly members who expressed the view that the report did not go far enough and that the recommendations should, in fact, be mandates on all members. However, this view was, in my opinion, in the minority. Dr. Appelbaum stated that our culture has changed and is continuing to change and that what was seen as totally acceptable behavior in the past is now viewed by many as suspicious and presenting conflicts of interest in our role as physicians. It is certainly true that our profession, over time, has changed its view as to what is acceptable behavior. We need only look a few years back when there was great controversy as to whether it was acceptable to have personal romantic relationships with out patients to understand that time does change the way we view what is acceptable professional behavior. The APA as a body, and specifically the leadership and high profile members, have been under attack by the government (e.g., Senator Grassley), the press and other entities for real and perceived conflicts of interest and secrecy regarding our relationships with Pharma. The Board has taken the position that our profession needs to police itself and this Report is a first step. Whether it is adopted in its current form as "policy" of the APA or whether there are minor or significant changes to the Report is really up to the membership. The rank and file of the APA needs to acquaint themselves with the Task Force Report, discuss it at your District Branch meetings, ask questions of your leadership and each other and then let your opinions be known—to the Board of Trustees of the APA, your Area 2 Trustee on the Board, Jim Nininger, to me, your Representative to the APA Assembly and other leadership of the APA. Contact me at [deborahcross@usa.net](mailto:deborahcross@usa.net). I look forward to hearing from you. ■

## Legislative Day continued from page 1

the office of Senator Shirley Huntley (D-Queens), Chair of the Senate Mental Health and Developmental Disabilities Committee. The group conveyed its appreciation for the Senator's sponsorship of a permanent Timothy's Law bill and discussed SOMTA and its use of the mental health system, proposed cuts to Article 28 hospitals, and concerns regarding the activities of pharmacy benefit managers. The third meeting was with Joe Baker, Deputy Secretary for Health and Human Services, and Michael Seereiter, Program Director for Mental Hygiene

Services, both in the Office of the Governor. Issues discussed included Timothy's Law, possible hospital closings, possible improvements to SOMTA, and the proposed changes to the Medicaid program. Mr. Baker also agreed to speak with a contact at the Department of Insurance regarding the processing of E & M claims submitted by psychiatrists to private insurers. Finally, NYSPA representatives met with Assemblyman Peter Rivera (D-Bronx), Chair of the Assembly Standing Committee on Mental Health, Mental Retardation and Developmental

Disabilities. Assemblyman Rivera expressed his support and concern for all of NYSPA's legislative priorities and other issues facing psychiatry. He stated that he is actively working to ensure the reauthorization of Timothy's Law prior to its sunset at the end of the year. "The day was very successful because it gave NYSPA representatives the opportunity to sit down at the table with key policy-makers in Albany and to outline vital issues affecting our members, our patients and the mental health community at large," remarked NYSPA President C. Deborah Cross, M.D. ■



# American Psychiatric Foundation, New York Psychiatrists Bring Mental Health Education to the Community

By Rhondalee Dean-Royce

One in five people has a diagnosable mental disorder, but fear and shame can prevent them from seeking help. That message rang through the halls of Holliswood Hospital in Queens, New York on June 16 during an event appropriately named Community Connections: Let's Talk Depression.

The event, the last in a year-long series of community-based educational programs, sponsored by the American Psychiatric Foundation, provided audience members with real information and resources about depression and other mental illnesses along with the ability to ask questions about treatment options available in their communities. These events help remove the stigma of mental illness and demonstrate that for people living with a mental illness there is help, there is treatment and as Dr. Jeffrey Borenstein, who hosted the event in New York stated, there is hope. The speakers consisted of the top mental health experts across New York and the country including Jeffrey Borenstein, M.D. Chief Executive Officer/Medical Director, The Holliswood Hospital; Carol Ann Bernstein, M.D., DIO and Associate Dean for Graduate Medical Education, Bellevue Hospital Center and President-Elect of the American Psychiatric Association; Annelle B. Primm, M.D., MPH, Director, Office of Minority and National Affairs of the American

Psychiatric Association; James Nining, M.D., Clinical Associate Professor of Psychiatry of Cornell University Medical College and Janet Sussin, President of the National Alliance for the Mentally Ill for Queens/Nassau of New York.

The event featured a wide range of topics surrounding depression, from its general warning signs and the treatment of depression to the impact on culturally diverse populations to its impact on the elderly.

According to Dr. Bernstein, who introduced the program, major depression can and does affect about 8 – 10 percent of the population and tends to run in families. Depression, however, is treatable with medication, psychotherapy and other treatments, resulting in 80 to 90 percent of those individuals eventually responding well and almost all gaining some relief from their symptoms.

Dr. Primm, who discussed disparities in mental health care for diverse cultures, stated the disparities are often based on factors of economics and cultural experiences. "African Americans carry a heavy burden when it comes to depression because they are less likely than Caucasians to seek mental health services or to receive proper diagnosis and treatment. They are also more likely to have depression for longer periods, resulting in greater disability," she said. Discussions on depression also focused



Left to right: Glenn Martin, M.D., Paul Burke, James Nining, M. D., Annelle Primm, M.D., MPH, Janet Sussin, C. Deborah Cross, M.D., Carol Bernstein, M.D., and Jeffrey Borenstein, M.D.

on the impact the illness has on the older adult community. Dr. Nining shed some light on the issue of depression taking a heavy toll on older adults if left alone.

According to Dr. Nining, depression in the elderly is a common problem; however, only a small percentage gets the help they need. The reason is the disease is often overlooked. The elderly face such issues as a death of a spouse or ongoing medical problems, or social exclusion. "Some assume seniors have good reason to be down or that depression is just part of aging. This can lead to depression, especially for those with no support system in place," he said.

He added, "If you learn how to spot the signs of depression and seek treatment, the golden years can certainly be happy and vibrant."

"Increasing community members' ability to identify depression in common settings such as school, work and home, and to tell them where to seek help in their community is an incredible tool we offer with this educational program," said Dr. Borenstein. "Providing communities with an increased understanding of the importance of early recognition and treatment of depression will result in overall community health and well-being." ■

## Albany Report continued from page 1

partners was full funding, \$99,200,000 to be exact, to continue the small business subsidy provided for in the original Timothy's Law.

The budget did not expand the New York State Medicaid preferred drug list to include anti-depressants, as was proposed by the Governor and supported by NYSPA. By the same token, a provision that sought to give pharmacy benefit managers (PBM) the authority to switch patients from a prescribed medication to an alternative medication and a proposal eliminating "physician override" of the PDL formulary, both opposed by NYSPA, were not adopted leaving physicians prescribing authority intact. Also, the \$400 increase in the physician biennial registration fee was not adopted.

The final budget did not include all of the changes Governor Paterson proposed for the New York State Sex Offender Management and Treatment Act (SOMTA) that would have addressed some of NYSPA's concerns with the program. However, the changes that were enacted included:

- Certain respondents will be allowed to remain on parole or in the custody of the Department of Correction pending their civil confinement trials resulting in a savings of \$15.2 million.
- Planned staff will be reduced by 217 jobs saving \$11.7 million.
- The Office of Mental Health will adapt its treatment of sex offenders from an inpatient to an outpatient model that is comparable to other states and more cost efficient.

### Timothy's Law/Insurance Parity

New York is as close as it has ever been to prohibiting mental health insurance discrimination thanks in part to NYSPA's tireless work and relentless advocacy by members of the Timothy's

Law Campaign. Governor Paterson introduced legislation on May 5, 2009, to make Timothy's Law permanent on what would have been Timothy O'Clair's 21st birthday. In the Assembly, the Governor's bill, A8611, introduced by Assemblyman Morelle (D-Rochester) and others, passed unanimously, 148-0. The Senate companion bill, S5672, introduced by Senator Huntley (D-Queens) and others, is currently on third reading. Although there is a great deal of uncertainty surrounding the Senate these days, the bill is expected to pass once some semblance of normalcy resumes.

Unfortunately, a bill that would require the Healthy NY program, which insures 153,000 New Yorkers, to provide coverage for biologically-based mental illnesses enumerated in Chapter 748 of the laws of 2006 is not expected to progress at this time. In addition, a bill that would expand the list of biologically-based mental illnesses covered under Timothy's Law to include post-traumatic stress disorder faces uncertainty even though it sits on third reading in the Senate.

### Managed Care Reform

The fate of Governor Paterson's proposal for managed care reform remains unclear even though the Assembly unanimously approved it before adjourning. Provisions of the proposed legislation, as drafted, include:

- Giving a provider 90-day notification of an "adverse reimbursement change" and subsequent opportunity to cancel the contract.
- Requiring insurers and HMOs to pay an electronic claim within 30 days.
- Codifying an insurers and HMOs culpability to locate and pay former policy holders dividends if they fail to meet a certain loss-ratio

requirement.

- Prohibits insurers and HMOs from treating a "participating provider as a non-participating provider."

### Scope of Practice/Licensure Issues

Late in the session, NYSPA worked feverishly to prevent the passage of a State Education Department (SED) program bill, which would have suspended the corporate practice of a profession doctrine to accommodate certain licensing problems at the SED. For over a year, SED has been rejecting license applications of psychologists, clinical social workers, mental health counselors, marriage and family therapists, and creative arts therapists, who received their post-graduate clinical experience in a program or agency that lacked an appropriate state agency operating certificate or whose organizing documents expressly prohibit the provision of Title VIII professional services. The below excerpt from NYSPA's Memorandum of Opposition indicates our concerns about the bill:

"We strongly support the provisions of the bill to extend for an additional two years the exemption from the psychology, social workers and mental health practice acts for individuals employed by programs operated, regulated, funded, or approved by a New York state or federal agency, political subdivision, municipal corporation or local government agency or unit. This extension is necessary to ensure the continuity of care and services provided by such entities.

We also strongly support efforts to resolve the problem of individuals pursuing licensure pursuant to Education Law Articles 153 (psychology), 154 (social worker), and 163 (mental health practitioners) who obtained supervised clinical experience (necessary in order to secure

licensure) from entities that were not authorized under law to provide such clinical services.

However, we strongly oppose the provisions of the bill that propose to solve the narrow licensing problem by an unprecedented and dramatic expansion of the long-standing restrictions on the corporate practice of a profession. This bill would establish a mechanism to permit both not-for-profit agencies and for-profit business (including publicly owned corporations) both those that have provided and those that have never provided such clinical services to register with the Education Department and thereby become authorized to provide such professional clinical services including psychotherapy and counseling services. This last step is both unacceptable and unnecessary."

The bill died in the Assembly and is not expected to pass in the Senate.

### Other Matters of Interest

The Assembly passed a bill creating a Child Psychiatry Access Project that would ensure primary care providers obtain "timely" access to child psychiatry consultations.

Whether it's the bill that would prohibit a health care provider's participation in torture, regulate the use of electroconvulsive therapy, or permit certain specialties to establish certain professional services corporations, we will continue to track and monitor the legislation as it progresses juxtaposed to NYSPA's interests.

Finally, we continue to pursue clarification from the New York State Insurance Department regarding the use of evaluation and management codes by psychiatrists. ■





James Nininger, MD

The APA is facing the challenge of how to best use our resources in a time of general economic hardship. We are re-examining our relationship with industry and attempting to be more forthcoming and transparent in disclosing possible conflicts of interest especially if serving on professional groups that set policy or exert considerable influence such as the Board of Trustees, Assembly Executive

Committee, and Work Groups developing DSM-V and Practice Guidelines. At the March Board meeting, Work Group reports were received on topics such as the Integration of Psychiatry and Primary Care, and the Relationships Between Psychiatry and the Pharmaceutical and Medical Service Industries.

This past year those of you with email addresses on file with NYSPA received a short survey to tap your views on a number of related issues that were coming before the Board in March.

Approximately 300 members responded and the results were published in my report in the last NYSPA Bulletin. I would like to periodically use this mechanism to get members' feedback on a number of important issues facing us as psychiatrists and facing our Association.

The APA previously had over 90 committees and councils. On the basis of the recommendations of the Work Group on

Governance, chaired by Dr. Alan Shatzberg, the Board of Trustees voted in March to approve a major restructuring of its governance functions. The following changes were implemented immediately after the end of the APA Annual Meeting. The current 14 councils have been consolidated into nine councils, most committees (a total of 68) under these councils were sunset, and many of the functions of those committees are being rolled into the appropriate councils. The councils will meet twice a year, once at the annual meeting and once in September.

New Task Forces, as needed, will be used to address specific issues in a time-limited fashion to offset the loss of some committees' functions.

The following nine councils were created or retained to work on new priorities:

- Council on Adult Psychiatry
- Council on Children, Adolescents and Their Families

- Council on Communications
  - Council on Advocacy and Government Relations
  - Council on Healthcare Systems and Financing
  - Council on Minority Mental Health and Health Disparities
  - Council on Psychiatry and Law
  - Council on Medical Education and Lifelong Learning
  - Council on Research and Quality Care
- The Assembly budget was reduced by 20% for the year 2010. (The original recommendation from the work group on governance had been 40%.) The Board of Trustees eliminated three voting members and one non-voting member and reduced meetings to three per year. The Joint Reference Committee budget was reduced by 70%. These actions will hopefully enable the APA to maintain its financial reserves and operate within a balanced

[See **Trustee's Report** on last page]

## Serious Mental Illness and Increased Cardiometabolic Risk: What the Research Says By Veronica Hackethal MD, MSC

The landscape of psychopharmacology has changed, especially concerning antipsychotics and their associated risk of cardiometabolic adverse effects. Increased cardiometabolic risk may help explain why people with serious mental illness have a life expectancy which is 20% shorter than the general U.S. population. The primary cause of this premature mortality is heart disease.<sup>1</sup> People with serious mental illness also suffer from diabetes at higher rates than the general population.<sup>2</sup> Moreover, studies have shown that those with serious mental illness also develop metabolic syndrome at very high rates. In the Clinical Antipsychotic Trials of Intervention Effectiveness (CATIE) study, even when age, race, ethnicity, and body mass index (BMI) were controlled, men were 85% more likely and women were 137% more likely to have metabolic syndrome when compared to their counterparts without mental illness in a representative sample of the general U.S. population.<sup>3</sup>

The underlying causes for this excess morbidity and mortality are multifactorial. They may stem from lifestyle factors, underlying disease mechanisms, as well as limitations on access to and utilization of preventative healthcare. However, in recent years second generation antipsychotics have been increasingly associated with raised cardiometabolic risk. The CATIE study brought this issue to the forefront. The CATIE results called into question the presumed superior efficacy of second generation antipsychotics, while at the

same time implicating atypical antipsychotics with cardiometabolic problems. Further studies have confirmed the relationship between second generation antipsychotics and increased cardiometabolic risk.<sup>4,5,6</sup>

CATIE also brought attention to the differential cardiometabolic risk of certain second generation antipsychotics.<sup>7</sup> The CATIE study showed that olanzapine was associated with the greatest weight gain and greatest increases in measures of glucose and lipid metabolism. Further analysis of the CATIE results<sup>8</sup> showed that after three months of treatment, prevalence of metabolic syndrome increased for olanzapine (from 34.8% to 43.9%), but decreased for ziprasidone (from 37.7% to 29.9%) (p=.001). Moreover, a recent, independent literature review<sup>9</sup> has shown that olanzapine and clozapine carry the highest risk for cardiometabolic problems. Another recent analysis using the FDA adverse event data base found that olanzapine, risperidone, clozapine, and quetiapine had higher associations of diabetes-related adverse events.<sup>10</sup>

The APA has taken a leadership role in increasing awareness of the metabolic risks of antipsychotics, even before the CATIE study released its findings. In 2004, a joint effort between the APA, the American Diabetes Association (ADA), the American Association of Clinical Endocrinologists, and the North American Association for the Study of Obesity developed consensus recommendations for monitoring medical abnormalities related to psychotropic medication use.<sup>11</sup> These

recommendations draw attention to screening and monitoring for metabolic syndrome, a group of risk factors that increases a person's chances of developing heart disease, adult onset (type 2) diabetes, and stroke.

From a preventative medicine standpoint, garnering awareness about the metabolic syndrome may be an important way to forestall more serious medical problems down the road. In people who are taking psychotropic medications that can increase cardiometabolic risk—especially in those who already have high cardiometabolic risk and are taking such medications—the recommendations generally advise periodic monitoring of fasting blood glucose, triglyceride and HDL cholesterol levels, as well as regular measurement of weight/BMI/waist circumference and blood pressure. These recommendations also stress the importance of family history, past medical history, and ethnicity, which may all contribute to the tendency to develop metabolic syndrome and related medical problems.

In New York State, the Office of Mental Health (OMH) is working collaboratively with the Department of Health (DOH) to increase physician awareness of the differences in risk profiles for antipsychotics. They are working together on a number of initiatives including a Continuous Quality Improvement project in community mental health clinics, a prescriber education program for primary care physicians, and drug utilization review.

Through collaboration with the New York State Psychiatric Center/ Columbia

University a national Scientific Advisory Committee was established to support development of quality indicators, clinical recommendations, and educational materials. The Scientific Advisory Committee, Chaired by Jeff Lieberman, MD, identified four antipsychotics as high risk for metabolic disturbance: Chlorpromazine (Thorazine), Olanzapine (Zyprexa), Quetiapine (Seroquel), Thioridazine (Mellaril).

Through these initiatives, web-based CME courses are being developed. To date, three courses are available on line at the PSYCKES Medicaid and the NYS DOH websites. A number of nationally prominent psychiatrists have been engaged in this effort including Dr. Robert Findling of Case Western Reserve University, Dr. Christopher Correll of Albert Einstein Medical College, and Dr. Alex Miller of the University of Texas Health Sciences Center, with introductions by Dr. Lieberman and Dr. Sederer. In addition, quality indicators have been developed that look at the use of high/moderate risk agents in the context of co-morbid hypertension, ischemic vascular disease, hyperlipidemia, diabetes/pre-diabetes, and obesity among consumers who are taking antipsychotic medications. NYSPA has been involved in these efforts, and has two representatives on the Stakeholder Advisory Committee. For more information and to access the CMEs please visit:

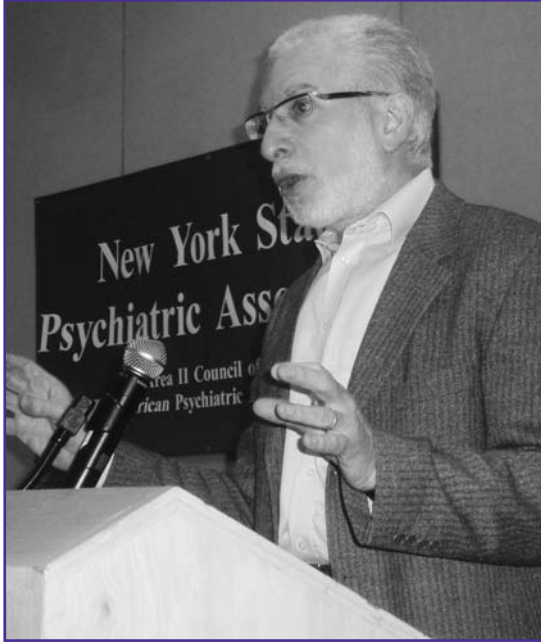
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## Area II Council continued from page 1

who adopt electronic health records software will receive a subsidy in connection with software costs. Finally, he reported on various changes to the HIPAA privacy and security rules required by the American Recovery & Reinvestment Act of 2009 that will be phased in over the next 12-18 months. Darvin Varon, M.D., NYSPA Treasurer, presented the financial statements for



Lloyd Sederer, M.D.

2008, 2007 and 2006 and January-March 2009, along with a comparison for the same time period for 2008 and 2007. Dr. Varon stated that dues revenue is currently lower than it was at this time last year due primarily to the timing of the dues mailing. Other factors for decreased revenues include a decrease in the number of members and an increase in the number of Life Members, who no longer pay dues.

### OMH Report

Lloyd Sederer, M.D., OMH Medical Director, provided an update on OMH activities and initiatives. He discussed proposed budget cuts to Article 28 hospitals and its potential effect on mental health services, proposed simplifications to the hospital survey process and implementation of new clinic standards of care.

### Area II Trustee's Report

James Nininger, M.D., Area II Trustee to the APA Board of Trustees reported that the Board has been re-evaluating its relationship with the pharmaceutical industry and may phase out pharma-



Carol Bernstein, M.D.

ceutical-sponsored symposia. He announced that reports from the Work Group on Integration of Psychiatry and Primary Care and the Work Group on Relationships Between Psychiatry and the Pharmaceutical and Medical Service Industries are now available for review.

Dr. Nininger also reported on the recent NYSPA survey sent via email soliciting member opinion on APA governance issues and the relationship between APA and the pharmaceutical industry. NYSPA received a response from approximately 300 members, which provided valuable feedback on important issues. Dr. Nininger hopes that NYSPA will continue surveying members in the future.

### APA Update

Carol Bernstein, M.D., APA President-Elect, provided an update on Board activities. The Board is currently working on a plan to reorganize APA councils, components and committees as a way to save costs and preserve resources. Dr. Bernstein also reported that the Board would like increase involvement between the APA and its allied organizations and promote the role of the APA as an umbrella organization for all of organized psychiatry.

Bruce Hershfield, M.D., Assembly Recorder, provided highlights from the recent Board meeting and reported on "The Action Paper," a new email newsletter written by and for members of the Assembly.

### Warren Williams Award

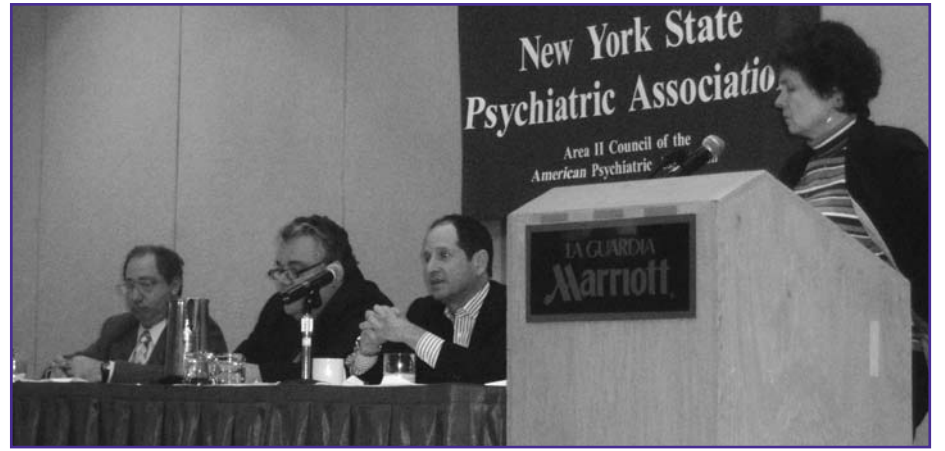
Aaron Satloff, M.D., and Richard Altesman, M.D., presented the Warren Williams Award for Area II to Abraham Halpern, M.D., a member of the Westchester District Branch. Dr. Altesman recognized Dr. Halpern, a forensic psychiatrist, for his many contributions to organized psychiatry and the APA, his extensive publications in the field, and for his participation in humanitarian and civil rights efforts. Dr. Halpern thanked the Council for the honor and recognition.

### Legislative Committee

Barry Perlman, M.D., Chair of the NYSPA Legislative Committee, provided an update on NYSPA's lobbying efforts in connection with the proposed New York State budget for 2009-2010. NYSPA has made several suggestions in connection with proposed changes affecting pharmacy benefit managers, including restrictions on medication switches, physician override of Medicaid prescribing restrictions, and influence of drug manufacturers on physicians. In addition, NYSPA is advocating that the sex offender civil confinement program be restructured with a focus on outpatient treatment in order to alleviate burdens currently placed on the mental health system. NYSPA is also concerned with the affect that proposed cuts to Article 28 hospitals will have on community and local mental health services.

Dr. Perlman reported that Timothy's Law, New York's mental health mandate, sunsets at the end of 2009 and must be extended, especially in light of the new federal parity law, which is expected to work with Timothy's

Law to provide full parity for mental health and substance use disorder benefits in New York State. Lastly, he provided an update on NYSPA's efforts to ensure that private insurance carriers pay claims for E & M services billed by



Executive Committee members at the Dais

psychiatrists. To date, the NYS Insurance Department has not responded to NYSPA's request for guidance on this issue.

### Executive Director's Report

Seth Stein, Esq., NYSPA Executive Director, provided an update on NYSPA's lawsuit against the NYS Department of Health seeking to enforce the provisions of a 2006 amendment to the New York Social Services Law mandating that psychia-

for her paper entitled "Suicide Prevention: The suicide risk assessment and inpatient psychiatric hospitalization." Dr. Hamilton presented a summary of her paper to the Council. Second Place went to Abigail Dahan, M.D. for her paper entitled "A Proposed Role for the Psychiatrist in the Treatment of Adolescents with Type 1 Diabetes." Third place was awarded to Sophia Wang, M.D. for her paper entitled "Cardiovascular Risk & Memory in Non-Demented Elderly Women." Dr.



Debby Standard and David Ho from Fountain Gallery

trists receive 100% payment of the Medicaid share of the Medicare copayment for patients who are covered by both Medicare and Medicaid. The court dismissed the lawsuit on procedural grounds and the Executive Committee has voted to appeal the dismissal.

Second, Mr. Stein reported that psychiatrists are encouraged to submit E & M codes for psychiatric services billed under Medicaid, in addition to Medicare. The use of E & M codes when billing private insurance carriers, however, is still unresolved. Finally, Mr. Stein provided an update on the OMH restructuring of the COPS reimbursement methodology. The first phase of the new reimbursement system will begin January 1, 2010. NYSPA has proposed eliminating the current requirement that only a psychiatrist can sign off on all treatment plans as a way to better reallocate the time and expertise of psychiatrists.

### NYSPA MIT Scientific Paper Contest

Glenn Martin, M.D., announced the winners of the second annual NYSPA MIT Scientific Paper Contest. This year, 21 papers were submitted for consideration. First Place and a \$500 cash prize was awarded to Celine Hamilton, M.D.

Dahan and Dr. Wang each received a plaque.

### Fountain Gallery

Dr. Perlman introduced Debby Standard and David Ho from Fountain Gallery, an art gallery sponsored by Fountain House that exhibits and sells artwork by individuals with serious mental illness. NYSPA was pleased to display various works of art from the Fountain Gallery Annual Outsider Art Exhibit during its luncheon.

Dr. Cross announced that the winner of the MIT Deputy Representative Election is Louise Mullan, M.D., a resident at St. Vincent's Hospital. In addition, Norma Panahon, M.D., reminded members that the Western New York District Branch is hosting its 5th Annual Comprehensive Review of Psychiatry, a three day event featuring speakers and programs, to be held on July 10, 11 and 12, 2009 in Buffalo, New York.

The meeting was concluded with reports from the following NYSPA committees: Addiction Psychiatry, Public Psychiatry, Children and Adolescents, Psychiatry and the Law, Membership, Economics Affairs, MITs and ECPs. ■



# Permanent Medicare RAC Audit Program Now in Effect

By Rachel A. Fernbach, Esq.

Effective March 1, 2009, the Centers for Medicare and Medicaid Services ("CMS") began implementation of a permanent Medicare audit program utilizing third-party recovery audit contractors ("RACs"). RAC audits were originally authorized by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, to assess the use of recovery audit contractors in identifying Medicare underpayments and overpayments and recouping overpayments. A three-year demonstration project in five states, including New York, ended in March, 2008. In later legislation, Congress required CMS to include the RAC demonstration project as a permanent part of the Medicare program. The contractor currently assigned to New York (and five other states) is Diversified Collection Services, Inc.

The RAC audit program is unique because it is the only CMS audit program that compensates contractors on a contingency fee basis. In other words, the RAC will receive a portion of all Medicare overpayments that it correctly identifies. Further, RACs are permitted to use extrapolation methodology and can receive their full contingency fee on extrapolated claims. This has the potential to turn a relatively small overpayment into a very large overpayment, which will also result in a very large fee for the RAC. This financial incentive suggests that RACs may utilize extrapolation whenever possible. As a result, psy-

chiatrists should be careful to respond promptly to any request for records and file appeals where appropriate.

In order to identify potential underpayments and overpayments, RACs may use two types of review: (i) automated reviews, using data mining techniques to identify obvious payment errors and (ii) complex reviews, using data analysis and review of records to determine whether an overpayment or underpayment occurred.

Under the permanent program, RACs can only review claims paid on or after October 1, 2007, and in the case of a request for records, the initial request must be sent within three years of the date the claim was initially paid. In addition, there are limitations on the number of records that a RAC may request from a provider. For 2009, for a sole practitioner, a RAC may request no more than 10 records within a 45-day period. For a group of between two and five providers, the limit is 20 records within a 45-day period.

Providers being audited must respond to a request for records within 45 days of the request, although the provider may request an extension prior to the original deadline. Psychiatrists who are subject to HIPAA and who receive requests for clinical records that include psychotherapy notes must ensure that the patient has signed a HIPAA authorization before releasing such psychotherapy notes. (Note: The HIPAA "psychotherapy notes exception" provides heightened privacy

protection for psychotherapy notes by requiring written patient authorization prior to use or disclosure, with some exceptions. In order to be eligible for the heightened privacy protection, the psychotherapy notes must be maintained separately from the rest of the medical record.)

Providers who do not agree with an overpayment determination may appeal the decision. Generally, the RAC appeals process is similar to the five-level Medicare appeals process:

(i) redetermination; (ii) reconsideration; (iii) review by an ALJ; (iv) review by the Medicare Appeals Council; and (v)

review in Federal District Court. In addition to an appeal based on the merits of a disallowance, providers may also dispute whether the extrapolation methodology used by the RAC was statistically sound. The RAC will be required to return any contingency fees earned on an overpayment determination that is ultimately overturned on appeal.

Any NYSPA member who needs assistance in complying with a RAC records request should contact NYSPA Central Office at 516-542-0077. For more information about RAC audits, visit [www.cms.hhs.gov/RAC](http://www.cms.hhs.gov/RAC). ■

## Trustee's Report continued from page 4

budget.

The central APA staff has been serving us well in spite of hiring and promotion freezes, loss of FTE positions, decrease in the merit pool, etc., and has maintained good morale under the leadership of Jay Scully, our Medical Director.

At the March Area Council meeting, I reported on, and made available, a Report of the Workgroup on Relationships Between Psychiatrists and Pharmaceutical and Medical Device Industries. The Assembly did not support the Report as currently written, but many of the suggested items can serve as an important stimulus for discussion. I plan to send out another "e-survey" on the suggested recom-

mendations from this report to elicit your responses and opinions.

The desired outcome is that the APA will become less unwieldy and more lean, focused and efficient. It remains to be decided whether the governance structure will undergo any further fundamental changes and, as you know, an Action Paper arising from Area II proposed a scaling down of the Assembly, but only if that is coupled with a new unicameral governance structure. The task is how to determine and advance our priorities, maximize two-way communication between our elected representatives and our members, and how to best serve our patients and profession. ■

## Can your claims examiner pass this test?

1. What does Axis III of the DSM-IV classification signify?
2. What is tardive dyskinesia?
3. What is the significance of the "Tarasoff" decision?
4. How often should lithium be monitored?
5. Which population is most at risk for suicide?
6. What precautions should be taken before administering ECT?
7. What is the definition of suicidal ideation?

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