THE BULLETIN

NEW YORK STATE PSYCHIATRIC ASSOCIATION

Fall 2008, Vol. 51, #4 • Bringing New York State Psychiatrists Together

President's Message: Conflict or Opportunity?

By C. Deborah Cross, MD

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This year has seen an increasing focus on conflicts, specifically conflicts of interest. This has been true in our field, certainly, as we have seen our own APA respond to a US Senator's request for information regarding our involvement with pharmaceutical companies. Additionally, of course, has been the information put forward regarding Dr. Schatzberg, our President Elect, and his relationship with research and a pharmaceutical company. But this seems to be only the tip of the iceberg. Starting in 2009 pharmaceutical companies can no longer give out pens and pads of paper! And medical schools have now been graded on potential areas of conflict with only 7 of 150 medical schools receiving a grade of A on the AMSA PharmFree Scorecard 2008 posted in June 2008. One in five medical schools was in the midst of revising their conflict of interest policies. Everyone seems to have jumped on the band wagon! If you are an MD or a medical school it is now assumed that it is wrong to have a professional association with a pharmaceutical company! Of course I am in total support of open and full disclosure of any relationships (with drug companies or any other commercial endeavor) which might influence our opinions and decisions. However, it does seem as if there is a tremendous rush to paint any association with a drug company as "bad" or "evil." As a psychiatrist I certainly do not want to go back to the pre-psychopharmacology era—and I really don't think many of you want to either!

How did we get to this point? As a profession, both in psychiatry and in the rest of medicine, there are more pharmacologic interventions there ever before—life saving and life prolonging ones! How did we get them? By drug companies investing money in research—and then by selling their products! This is a capitalistic society—these companies exist to make money for their shareholders. But as 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 in this area has been the explosion of direct to consumer marketing which has led to an incredible increase in the number of prescriptions written. But our field is not alone in the consumerism and advertising which has expanded in so many areas. The

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New Law Makes Changes to Physician Discipline 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 charges filed against a physician, and (iii) improving infection control training and practices. The law will go into effect on November 3, 2008.

All of these changes were driven by the case of Harvey Finkelstein, M.D., a Nassau County anesthesiologist, whose practice of reusing a single syringe to draw medicine from multiple multi-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 receiving a 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 began notifying Dr. Finkelstein's patients that they might have been exposed to hepatitis B, hepatitis C or HIV. 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. Finkelstein's failure to follow proper infection control procedures may have led to the spread of communicable disease. In spite of these allegations, Dr. Finkelstein was never found to have engaged in professional misconduct. At the time, many lawmakers called for changes to the physician discipline 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 Finkelstein investigation.

Changes to Physician Disciplinary Process

Effective November 3, 2008, the new law makes a variety of changes to the physician disciplinary process overseen 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 licensee has been notified of the charges.

If the investigation committee that receives the charges is unanimous in its decision to

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MEDICARE UPDATE: Medicare Improvements for Patients and Providers Act of 2008

By Rachel A. Fernbach, Esq.

On July 15, 2008, Congress overwhelmingly voted to override President Bush's veto of the Medicare Improvements for Patients and Providers Act of 2008 (H.R. 6331), thereby avoiding the 10.6 percent cut in physician payments that would have taken effect on July 1. Under the new law, current reimbursement rates will remain the same throughout 2008, with a 1.1 percent rate increase for participating providers in 2009.

H.R. 6331 was originally passed by the U.S. House of Representatives on June 24, 2008, and by the U.S. Senate on July 9, 2008, in an effort to avert the scheduled July 1 rate cuts and to make other improvements and changes to the Medicare program.

President Bush then vetoed the bill on July 15, 2008, citing his objection to provisions of the bill that would decrease reimbursement for certain privately managed fee-for-service Medicare plans. However, Congress moved quickly and voted to override the President's veto on that same day, restoring H.R. 6331 as law.

The following are some additional highlights of the bill:

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

H.R. 6331, for the first time in the history of the Medicare program, eliminates the disparate and discriminatory 50% coinsurance for outpatient mental health services that has been in place since the inception of Medicare more than 40 year ago. Under the new law, outpatient mental health services billed under the Medicare program will be subject to the same 20% coinsurance that applies to all other Medicare Part B services.

Psychiatrists should take note, however, that this change will not happen overnight. Rather, starting in 2010, the 50% coinsurance rate will be reduced 5% per year through 2013 (i.e. 45% in 2010, 40% in 2011, 35% in 2012, and 30% in 2013). Effective 2014, outpatient mental health services billed under the Medicare program will be paid at the standard 80% and will finally have parity with other Medicare outpatient services. This landmark change in the outpatient mental health services coinsurance reflects many years of hard work and advocacy by the APA on behalf of psychiatrists and their patients.

18 Month Increase in Psychotherapy Fees

In addition to the rate cut and the gradual elimination of the 50% coinsurance, the bill also provides for a five percent increase in rates for psychotherapy services provided in an inpatient, outpatient, office, partial hospital, or residential care setting. The rate increase will be in effect during the 18 month period between July 1, 2008 and December 31, 2009, retroactively. A complete listing of the affected psychotherapy codes (90804-90829) and the increased fee schedule is available on the NYSPA website (www.nyspsych.org).

Changes to Medicare Part D

Finally, H.R. 6331 provides that, effective January 1, 2013, the Medicare Part D Prescription Drug Program will cover benzodiazepine and barbiturate prescriptions. ■

Albany Report

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

For the past year and three-quarters, among our many activities, NYSPA has been working closely with the State Insurance Department, the State Office of Mental Health, and our coalition partners to see to it that the New York State mental health parity statute ("Timothy's Law") is being implemented fully and properly. As reported regularly in this column and periodically in other Bulletin articles, the work has included numerous meetings with regulators on implementation issues; the preparation and enactment of a technical clean-up bill; the conversion of DSM terminology used in the law to billing codes used in the field; and the on-going collection/resolution of compliance issues and complaints from consumers and providers.

Dealing with such matters now is imperative because Timothy's Law will sunset on December 31, 2009, unless acted upon beforehand by the Legislature and the Governor. In light of the recent passage of federal mental health parity legislation (see, Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008), we are mindful of the fact that New York Timothy's Law provides critical building blocks that will maximize the utility of the federal legislation for New Yorkers with health insurance.

That said, we note with some alarm how little we have heard from psychiatrists about the affect of Timothy's Law on their practice. In the last Albany Report, we discussed implementation and compliance issues and wrote: "We urge all psychiatrists to share with us any coverage problems that are linked, even remotely, to Timothy's Law. The current law sunsets at the end of 2009 and we have begun to work on drafting legislation to extend the law and expand its scope. Contact: richardgallo@galloassociates.org."

Not a word from anyone. In fact, if it were not for earlier inquiries from a former NYSPA President, who is ever vigilant about health insurance matters and a few additional questions last spring, we'd have no way of knowing whether the provisions of the landmark legislation have helped or hindered access to treatment by a psychiatrist.

Does that mean?

- Timothy's Law is working well for your practice and the health plans you deal with have warmly embraced it;
- None of your patients have ever mentioned the law or asked questions about it;
- The law is irrelevant to your practice because you no longer accept any insurance;
- You are not a member of NYSPA and therefore feel constrained about commenting or complaining;
- You have experienced problems and uncertainty with Timothy's Law but you're sure someone else has already told us about it, or;
- Perish the thought, you don't read the Albany Report.

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FROM THE EDITOR'S DESK... By Jeffrey Borenstein, MD

This edition of the Bulletin highlights new legislation about Medicare as well as Medicare claim processing problems. The President's message discusses the relationship of psychiatry with the pharmaceutical industry. The Area II Trustee's Report provides an update on national APA issues. The Albany Report highlights key legislative issues with a focus on Timothy's Law. We also have an article about a new law concerning the physician discipline process. As we are going to press, national mental health parity legislation has been passed by Congress 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. ■


Jeffrey Borenstein, MD

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sales of cosmetics, clothes, etc. have also mushroomed. The individual debt of the average American is staggering.

Expenditures on health care and medications are only a part of this. We are a society now focused on buying—and living—life to the fullest—and quickly! And of course everyone is searching for the healthiest life and the most beautifully toned body—all through chemical means!

Concurrently with this has been the growth in our field of specialists in "psychopharmacology," with a corresponding decrease in psychiatrists providing psychotherapy. In the August 2008 "Archives of General Psychiatry" an article discusses this and postulates that these changes were likely driven by "financial incentives" (read insurance payments which pay more for medication than therapy) and by the growth in psychopharmacologic treatments.

Without the involvement of physicians in all specialties interacting with the field of pharmaceuticals at all levels (research, development, and prescribing) with appropriate feedback loops there is little hope that significant progress will continue. How can drug companies know if their product is working as well as (or better or worse) than their competitor's if they can't have meetings with the doctors on the front line prescribing them!

One of the things that research continues to teach us, at least about psychiatric illnesses, is that we really still don't understand the basic neurochemical interactions and why two patients with the same symptoms of depression respond differently to the same medication. Unless the drug companies invest in research and development there will be little or no further "breakthroughs" in the development of medications focused on different pathways.

I strongly believe that medications in the US cost too much!! But our entire economy is made up of products that get subsidies from the government and therefore don't cost what they should, and other products that cost a whole lot more than what they cost in other countries. You only have to look at gasoline prices here versus Europe and then look at medication prices here versus Europe!

While our profession and organization tries to ride out this furor against involvement 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. ■

Albany Report 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 your day to day practice concerns. But 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 "Troopergate" to execrate, indignation to resignation, the wheels of state government could do little more than run over their drivers.

The installation of Governor David Paterson in March brought some measure of calm, order and good-will to the prevailing acrimony. Using his 20 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 David 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 - on 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 back to "normal," Senator Joseph Bruno (R-Brunswick), on the night before the last day of session, stuns his colleague (and everyone else) by announcing that he will step down as the Senate Majority Leader, effective the following morning.

Now, just one seat separates which political party will control the New York State Senate in January. Regardless of whether or not the Democrats will end the 65 year (save one 2 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 partnerships 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 untiring 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 September 9, 2008 Democratic Primary to secure his party's nomination. The 21st Congressional District incorporates portions of seven upstate counties, including most of the Capital District region. Mr. Tonko's prospects for winning in November are excellent considering Democrats have a 3 to 2 enrollment edge over Republicans in the district.

Having worked closely with Paul Tonko throughout the long and arduous struggle to enact Timothy's Law, we know him to be a dedicated, hard working, thoughtful, and effective legislator at the State level and we are confident he will make a difference in Congress, if elected. ■

MIT Night

Over 75 residents attended MIT Night on Tuesday, September 16, 2008 at Borgo Antico Restaurant in Manhattan. NYSPA officers Deborah Cross, M.D., President, Glenn Martin, M.D., Vice President, Seth P. Stein, Esq., Executive Director, and Jeffrey Borenstein, M.D., Bulletin Editor welcomed the residents and emphasized the importance of APA membership. The event was partially funded by an unrestricted grant from PRMS.

Anil Thomas, M.D., the Area II Members-in-Training Representative to the APA Assembly invited all interested residents to attend the next MIT Committee meeting which will be held at the LaGuardia Marriott from 9:00 AM to 10:30 AM on Saturday, October 25, 2008.

AREA II TRUSTEE'S REPORT By James Nininger, MD

James Nininger, MD

This report is written immediately following the Board of Trustee's meeting of October 5-6, 2008. As Charles Dickens said, "It is the best of times and the worst of times." This year we have seen some major breakthroughs legislatively on passage of full parity of health coverage for mental illness and phasing out of discriminatory 50% Medicare co-pay for psychiatric care. At the same time, the APA (and everyone else !) is saddled with budgetary concerns. Reven ues have fallen especially from advertising an d symposia sponsored by pharma. Members hip is strong and increasing in certain sub-gr oups but not increasing in the category of full dues paying members. The APA Reserve Fun d which has been strengthened in recent year s has been dented by recent market forces. T he advent of DSM-V will strengthen our rev-enue but is several years away.

There was discussion at the Board of the wis h of some members to have minutes of the DSM-V workgroups posted. Attempts are be ing made to make the discussed issues more available to members and regular updates p rovided. The sixth meeting of the DSM-V Ta sk Force is being held October 26-27, 2008. The four DSM-V Task Force study groups o n cross-cutting issues (Lifespan Developmen tal Issues, Diagnostic Spectra, Gender and C ross-Cultural Expression and Psychiatric/Ge neral Medical Interface) have met face to fac e in their respective groups and brought thei r recommendations back to the full Task For ce for discussion during each of the Task For ce meetings. Each study group has held app roximately 10-15 conference calls since their formation, in April of 2007. The study gro ups are being expanded slightly so that wor k group chairs are no longer also chairs of st udy groups, and the Lifespan Developmenta l group has been restructured to bring in ad ditional expertise across the entire lifes-pan. A fifth study group, charged with work ing to implement measures of impairment a cross diagnoses, has been formed, and held its first in-person meeting October 7-8.

To balance this next year's budget, there will be cuts in all areas of our Association. The hard-working central APA staff is down sev-eral full-time positions and there is currently a hiring freeze.

Current "hot topics" are the need to balance availability of electronic medical records an d confidentiality, and the need for appropri-ate disclosure of conflicts of interest espe-cially in those making decisions and speak-ing for the organization. A Task Force is exa mining where the bar should be set for psy-chiatrists participating in various activities o f the association, such as DSM-V develop-ment, the Board, Assembly, components, Pr actice Guidelines Steering Committee, etc., i n terms of amount or percent of income rel ated to potential sources of conflict of inter-est such as pharmaceutical companies, med-ical device companies, etc.

Other Work Groups, currently active on the Board, discussed October 5-6 include the Ad Hoc Work Group on Mental Health Care Sy stems (Dr. Sharfstein), the Ad Hoc Work Gr oup on Adapting to Changes in the Psychiat ric Environment (Dr. Weissman), and the A d Hoc Work Group on Changes in Pharmac eutical Revenue (Dr. Geller).

I am making it my policy to provide at Area II meetings (and to make available to all DB s), the most recent minutes of the APA Boar d Meetings and the most recent report of th e Treasurer to the Board. I reminded the Bo ard at the latest meeting that all non-unani-mous votes of the Board are subject to a roll call and to be entered into the minutes. M embers should have a clear idea of the issue s being debated and the vote taken by their representatives elected to the Board. I wel-come your contact and input on issues fac-ing us and am happy to provide more detail on concerns or questions you may have. ■

James Nininger, M.D.
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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 paper 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 the scanner. We also have received reports of computer programming problems that affect all claims. Since this is a problem that affects all physicians, we are working closing with MSSNY to bring our concerns to the carrier and CMS.

Since federal Medicare law mandates that paper claims still must be accepted and processed from physicians with small private practices, both MSSNY and NYSPA will insist that CMS take steps to insure that paper claims are processed in a timely fashion. MSSNY is in the process of surveying its members to determine the number of its members who are submitting paper claims to Medicare and have asked NYSPA to survey its membership. Therefore, we would appreciate if you could complete the questions below and fax (516-873-2010) or mail (New York State Psychiatric Association, 400 Garden City Plaza, Suite 202, Garden City, NY 11530) your responses back to us.

You can also email your responses. If you have not already received this survey by email, we would be happy to forward a copy to you (the survey was emailed on October 1, 2008). To receive a copy of the survey by email, send an email to centraloffice@nyspsych.org and write REQUEST FOR SURVEY in the subject of your email. We will forward a copy of the survey that you can complete and email back to us.

1. Have you encountered unusual delays in the processing of Medicare claims this year? Yes ❑ No ❑
2. Does your practice use a computer system? Yes ❑ No ❑
3. Do you submit paper or electronic claims? Paper ❑ Electronic ❑
4. Does your practice have internet access? Yes ❑ No ❑
5. Please check if your practice uses the email listserv from
   CMS ❑ National Government Services ❑ Does not use either listserv ❑

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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, NYSPA 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.
- At any time after a determination and order has been issued, a physician may file a petition to have the determination and order vacated based on new evidence.
- All licensed physicians will now be required to update their physician profiles on www.nydoctorprofile.com within the six month period prior to re-registering their licenses. This will ensure that the information available to the public about licensed physicians is accurate and up-to-date.

Changes to Infection Control Practices

The new bill also addresses issues regarding threats to public health and improvement to infection control procedures and training. The following changes are included:

- The bill authorizes the New York State Department of Health ("DOH") to disclose to the public information regarding any threats to public health discovered during the course of an OPMC investigation.
- DOH is now permitted to order the physician being investigated to immediately discontinue any dangerous activity that is causing or is likely to cause transmission of a communicable disease.
- Failure to provide relevant records that have been requested by the State or local health department, without good cause, will constitute professional misconduct.
- Physicians who perform office-based surgery who suspect transmission of blood-borne communicable disease must report such suspected transmission within one business day.
- All medical students, medical residents and physician assistant students must now complete course work or training in infection control practices.
- DOH, in consultation with the Council on Graduate Medical Education, is now required to update infection control training curriculum with an emphasis on outpatient and ambulatory care settings.
- DOH must develop and distribute to physicians evidence-based infection control guidelines, including safe injection practices, on an annual basis.
- DOH will conduct a study and issue a report to the Governor and Legislature by January 1, 2009, regarding whether the use of disposable single-use equipment instead of multi-dose vials would improve infection control practices. ■

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