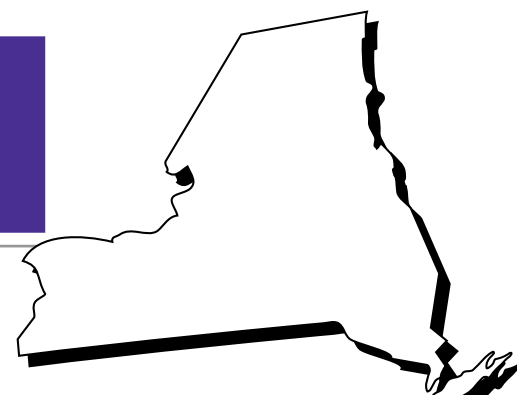


THE BULLETIN

NEW YORK STATE PSYCHIATRIC ASSOCIATION

Summer 2010, Vol. 54, #2 • Bringing New York State Psychiatrists Together



President's Message

By Glenn Martin, M.D.

I suspect that if I read the inaugural column of each incoming NYSPA president there would be some reference to the dangers, opportunities, and challenges our organization and members face. This column will be no exception.

As a result of action taken by the APA Assembly, New York State had to cut its delegation to the national Assembly. For the first time each district branch in the state no longer has a representative in the assembly. Two pairs of our district branches are "sharing" a representative on a rotating basis and both New York County and Greater Long Island are sending one fewer delegate to the Assembly. This arrangement was agreed to by the NYSPA council after a statewide cut was forced upon us by the Assembly in



Glenn Martin, MD

response to budget cuts imposed by the Board of Trustees. Despite these significant changes, but not surprisingly, at the May annual meeting our delegation was collegial, cohesive and influential in the reference committees and on the Assembly floor.

The three action papers introduced by our delegation passed enthusiastically. One called for the legal authority of prescribing physicians to cancel outstanding refills when appropriate. The second, an end to practices that compel prescribing 90 days supplies of medications where it is not appropriate, and finally a paper to ask for APA support for nationwide polices to allow for psychiatrists to use any CPT code, and especially E & M codes when billing.

[See [President's Message](#) on page 6]

DEA Rule Paves the Way for Electronic Prescribing of Controlled Substances

By Rachel A. Fernbach, Esq.

This past March, the U.S. Drug Enforcement Administration (DEA) issued an interim final rule creating standards for the electronic prescription of controlled substances. This rule, which went into effect on June 1, 2010, now permits licensed practitioners who are registered with the DEA to transmit electronic prescriptions for Schedule II, III, IV and V controlled substances to participating pharmacies. An electronic prescription is generated by means of a software application and transmitted to the pharmacy in the form of an electronic data file.

One important caveat to this announcement is that NYS Department of Health regulations currently prohibit electronic prescribing for controlled substances in New York State. However, DOH has posted information on its website indicating that it is working to update its regulations to allow for electronic prescribing of controlled substances.

Providers in New York will not be permitted to send electronic prescriptions for controlled substances until these new regulations are put in place.

In addition, even though the interim final rule is currently in effect, actual electronic transmission of prescriptions for controlled substances is likely still a ways off. Before the first electronic prescription for a controlled substance can be sent, the DEA must establish processes for certifying existing software applications, validating the identity of registered prescribers and distributing credentials to those prescribers. Clearly, there is much work to be done.

Please note that the use of electronic prescriptions for controlled substances is **voluntary** for both prescribers and pharmacies. Health care providers may continue to write and manually sign prescriptions for Schedule II, III, IV and V controlled substances and pharmacies are still authorized to dispense controlled substances in response to those written prescriptions. In addition, oral prescriptions and fax copies of manual-

ly signed prescriptions remain valid for Schedule III, IV and V controlled substances. Finally, the DEA has made clear that the interim final rule merely enhances and does not replace the current regulations on prescription of controlled substances in general.

Similar to paper prescriptions, electronic prescriptions for controlled substances must contain the full name and address of the patient, drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address and registration number of the prescribing practitioner. It is permissible for a staff person in the provider's office to enter the required information into the electronic prescribing system, however, only the registered prescriber may review, "sign," and authorize the electronic transmission of the prescription.

First Steps

Once New York State updates its regulations, providers may begin the process for implementing electronic prescribing for controlled substances within their practices. Most physicians who engage in electronic prescribing use a computer software application that is either accessed via the internet or downloaded to their computer's hard drive. In both instances, electronic prescribing applications must undergo an independent certification process. However, this process is not yet available because the DEA must first identify authorized independent certification organizations. Allscripts, a national provider of free electronic prescribing software (see www.nationalerx.com), has reported that it expects the certification process to be underway sometime within the next six to twelve months.

Identity Proofing

Once an electronic prescribing application has received its independent certification, each provider using the system must complete identity proofing.

[See [DEA Rule](#) on page 6]

Albany Report

By Richard Gallo, Barry B. Perlman, M.D. & Jamie Papapetros

Not Quite the End-of-Session Report

Perhaps the most important thing to note about the proceedings of the 2010 "Regular" Session of the New York State Legislature is that it came to an end (sort of) on July 1. We say "sort of" because while the Assembly concluded its work just before midnight on the 1st -- having passed all remaining Budget Bills before them -- the Senate Majority could not muster the thirty-two votes necessary to pass the last final budget before them (the so-called "revenue" bill.) Consequently, the Senate must return to Albany, in the not too distant future to take up this remaining budget bill and perhaps some other bills that have already passed the Assembly.

In addition, the budget feud between the Governor and the Legislature, which has hung over the entire legislative session like a toxic fog, is not over yet. Picture this. The Senate and Assembly are web-casting their "end-of-session" bill passing marathon on their respective web-sites, while over on the Governor's web-site is a live feed of David Paterson web-casting his one by one vetos of approximately 6900 legislative member items totaling \$193 million. Hence, if legislators want to bring home the bounty for local not-for-profit programs and projects, both houses will have to return at some point to override the Governor's vetos one at a time, i.e. 6900 separate motions to override.

NYSPA'S INTERESTS - WHERE THINGS STAND

Budget Issues

The Health and Mental Hygiene budgets for FY 2010-11 were enacted with cuts totaling \$775 million and \$151 million, respectively. Highlights of some items of interest to NYSPA members are:

HEALTH

Eliminate 2010 Trend Factor. The remaining share of the calendar year 2010 trend factor (1.7 percent) would be eliminated for hospitals, nursing homes (excluding pediatric nursing homes) and home and personal care providers. (2010-11 Savings: \$99.1 million)

Reduce Indigent Care Reimbursement. Total payments for indigent care will be reduced. (2010-11 Savings: \$72.2 million)

Limit Payments for Preventable Readmissions. State would establish readmission benchmarks for non-mental health care services and reduce reimbursement to hospitals that have a higher than expected level of preventable readmissions for the same condition. (2010-11 Savings: \$10.0 million)

Eliminate Medicare Part D Drug Wrap. Medicaid coverage for anti-depressants, atypical anti-psychotics, anti-retroviral and anti-rejection drugs for dual eligible enrollees is discontinued, as these drugs are already covered through Medicare. Wrap-around coverage will continue for drugs not covered by Medicare Part D (e.g., barbiturates, benzodiazepines). (2010-11 Savings: \$4.3 million)

Discontinue Exemptions under Preferred Drug Program. The Preferred Drug Program exemption for anti-depressants, atypical anti-psychotics, anti-retroviral and anti-rejection drugs will be discontinued in order to collect supplemental drug rebates

MENTAL HEALTH

MH State Operations Efficiencies. Key actions include reducing non-critical staff via attrition; converting certain information technology consultant staff to less costly State employees; reducing overtime and the use of stand-by/on-call shifts; increasing the use of alternative work schedules; delaying the "unmet needs" study to October 2011; and eliminating all non-essential non-personal service spending. (2010-11 Savings: \$43 million)

OMH Inpatient Restructuring. Eight psychiatric center wards will be closed at various facilities, reducing State-operated inpatient capacity by approximately five percent. The resources associated with closing six wards will be used to support less costly and more appropriate community programs, and two wards will be replaced with Transitional Placement Program beds, a less staff intensive outpatient model designed to support the transition of patients to community care. (2010-11 Savings: \$9 million)

OMH Forensic/SOMTA Reforms. The census for civilly confined sexual offenders is projected not to exceed 230 individuals in SFY 2010-11. As a result, inpatient capacity for sexual offenders at Manhattan Psychiatric Center will no longer be required. The bill also reflects efforts to encourage courts to use video-conferencing to reduce transportation, overtime, and security costs. (2010-11 Savings: \$11 million)

Other Bills of Interest

The Legislature did take up bills unrelated to the Budget and the New York State's fiscal crisis. However, they didn't do so in any meaningful manner until the beginning of June. Suddenly, all sorts of bills thought to be under wraps started to advance through the process. Among them were several bills proposing to establish or expand the scope of practice of allied health professionals. Although most of the bills were not new, there appeared to be a resurgence of interest in them on the part of the Legislature.

Working with the Medical Society of the State of New York (MSSNY) and participating as a member of a newly formed New York Coalition of Specialty Care

[See [Albany Report](#) on page 4]

THE BULLETIN

NEW YORK STATE PSYCHIATRIC ASSOCIATION

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Information for Contributors

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.

The opinions expressed in the articles or letters are the sole responsibility of the individual authors, and may not necessarily represent the views of NYSPA, its members, or its officers.

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

This edition of the *Bulletin* focuses on issues which affect the practice of psychiatry, both nationally and in New York State. The Albany Report includes information about the budget as well as potential legislation concerning the scope of practice for physicians and non-physician health care practitioners. The President's Message focuses on significant changes in the APA Assembly and how this affects New York State. The Area II



Jeffrey Borenstein, MD

Trustee's Report reviews the results of a survey of our members concerning the relationship between psychiatrists and industry. We have an article about potential liability exposure for psychiatrists who work at an institution which closes due to financial insolvency. We also have a report about electronic prescribing of controlled substances. Finally, we cover an event hosted by the Early Career Psychiatrists. I want to thank our outgo-

ing leadership team: Outgoing President Deborah Cross and Treasurer Darwin Varon. I am looking forward to working closely with the new team, our President Glenn Martin, Vice President Seeth Vivek and Secretary Richard Altesman along with Jim Nininger, who continues to serve as the Area II Trustee. I am honored to serve as Treasurer and to continue to serve as Editor of the *Bulletin*. The leadership team will work diligently to advocate for our profession and our patients. ■

Area II Trustee's Report By James Nininger, M.D.

I would like to share with you the results of an "e-survey" on the Workgroup Report on the Relationship between Psychiatrists and the Pharmaceutical and Medical Device Industries. The relationship between the APA and individual psychiatrists and the pharmaceutical industry is important to address and define. Opinions vary from practitioner to practitioner and across different work and educational settings. To learn how our members-at-large feel on emerging relevant issues, I plan to "tap the pulse" of those willing to respond periodically through this mechanism. Thank you.



James Nininger, MD

- The APA recommends that psychiatrists and trainees not accept gifts from pharmaceutical, device, and other commercial entities, and that psychiatrists not display products with commercial logos. **Members Agree - 93; Disagree - 23; Neutral - 11**
- The APA recommends that the same rules that apply to gifts in general should be applied to food: that psychiatrists not permit pharmaceutical, device, and other commercial entities to supply free food and refreshments for educational or social functions or to wards, clinics and offices, and that they not accept food that they are aware is being paid for by pharmaceutical or device companies. **Members Agree - 66; Disagree - 45; Neutral - 13**
- The APA recommends that psychiatrists limit the use of free samples to situations in which their use is clearly in the interests of patient care, and that psychiatrists be alert that the purpose of samples is to increase market share of a particular medication. Samples intended for use by psychiatrists and their families should be considered gifts and should be avoided per the recommendation on gifts above. Psychiatrists in group, clinic, or hospital settings should consider setting up mechanisms for centralized receipt and distribution of samples. **Members Agree - 92; Disagree - 25; Neutral - 9**
- The APA recommends that psychiatrists participate in educational sessions sponsored by pharmaceutical, device, and other commercial entities, only if they are ACCME-accredited or otherwise have in place procedures to ensure that speakers are fully responsible for the content of their presentations. Payment for travel and lodging to attend CME programs should be considered gifts, and should be declined in compliance with the recommendation for gifts above. **Members Agree - 87; Disagree - 38; Neutral - 0**
- The APA recommends that involvement as program planners or speakers for industry-supported presentations should be limited to programs that are ACCME-accredited

or otherwise have in place procedures to ensure that speakers are fully responsible for the content of their presentations. Payment for such activities should be proportional to the actual time and effort expended. Whenever possible, to insulate speakers from pressures from industry reps, such payments should

be made to the academic entity sponsoring the program, which would then pay the speakers. **Members Agree - 90; Disagree - 33; Neutral - 2**

- The APA recommends that psychiatrists avoid participation in consulting arrangements in which they are unlikely to make substantive contributions. Payment for legitimate consultation activities should be proportional to the actual time and effort expended. **Members Agree - 106; Disagree - 11; Neutral - 7**

- The APA recommends that psychiatrists be aware that the role of pharmaceutical and device representatives is to market their company's products, and seriously consider the issues described above and the implications for patient care before deciding whether to interact with them. Institutional policies may also limit psychiatrists' interactions with industry representatives. In any case, psychiatrists should avoid reliance on pharmaceutical and device representatives as primary sources of treatment-related information. **Members Agree - 103; Disagree - 19; Neutral - 4**

- The APA acknowledges the strong desire among the public for greater transparency of the relationships between physicians and pharmaceutical and device companies, and endorses the concept of physician disclosure of these relationships on an annual basis. To maximize the likelihood that such information will be understood and used appropriately, the APA encourages the development and adoption of uniform and accessible formats and content for disclosures required by academic institutions, funding agencies, journals and other entities, and experimentation with the best means of communicating this information to its target audience in a meaningful manner. **Members Agree - 104; Disagree - 7; Neutral - 13**

- The APA recommends that psychiatrists and trainees engage in on-going education on ethics issues, including relationships with industry, and stay current with their institutional policies regarding conflicts of interest. **Members Agree - 109; Disagree - 8; Neutral - 7**

- The APA endorses the recommendation of the Association of American Medical Colleges and the American Association of Universities (23) that researchers generally should not be involved in research that may affect the interests of a company with which they, their spouses, or their dependent chil-

dren have financial relationships apart from the funding of the study itself. Exceptions to this general rule should occur only under compelling circumstances (e.g., initial clinical testing of a device invented by the researcher that is unlikely to be pursued by other investigators), and only when an acceptable plan for management of the conflict created by the relationship has been developed and implemented. **Members Agree - 101; Disagree - 4; Neutral - 16**

- The APA recommends, in addition to the routine disclosure of financial relationships recommended above, that prospective research subjects be told in a clear fashion that such relationships exist before being asked for their consent to participate. In addition, psychiatric researchers should be in compliance with the applicable disclosure requirements of their institutions (24) and funding agencies. **Members Agree - 113; Disagree - 6; Neutral - 4**

- The APA recommends strongly that psychiatrists not participate in research that involves payment unrelated to actual costs and appropriate compensation for time expended. **Members Agree - 98; Disagree - 3; Neutral - 19**

- APA believes that it is critical that mechanisms be created in every clinical trial to ensure publication of clinically significant findings, including negative ones. Psychiatrists should not participate as authors without full access to the relevant data and the ability to report negative results and adverse events. **Members Agree - 122; Disagree - 0; Neutral - 2**

- The APA recommends that all authors be acknowledged, that their roles in the research and preparation of the manuscript be accurately described, and that they strictly abide by the requirements of the International Committee of Medical Journal Editors (29), including that "Authorship credit should be based on 1) substantial contributions to conception and design, acquisition of data, or analysis and interpretation of data; 2) drafting the article or revising it critically for important intellectual content; and 3) final approval of the version to be published." Every coauthor is equally responsible for the content of the entire paper, and each must seek to ensure that data presentation and interpretation meet the highest scientific standards. Financial support, if any, for the preparation of the manuscript should be disclosed. **Members Agree - 111; Disagree - 6; Neutral - 6**

I would like to share with readers some members' individual comments:

- Stating an ethical and moral position is the right of a professional organization. However, I believe the transparency pendulum is swinging way to far over to the left and attempting to control what individual physicians do is frankly smacking of socialism and moving away from a free society

[See **Trustee's Report** on page 3]

The Potential Liability Exposure of Employed Psychiatrists Should Their Institution Become Insolvent

By Barry B. Perlman, M.D.

Many of NYSPA's members, myself included, are employed full or part-time by hospitals or other licensed agencies. In most such cases the institutions provide professional liability coverage for their psychiatric employees. The liability coverage may be provided by a number of programs, including self-insurance reserve funds or through the purchase of group coverage policies. Despite the failure of numerous hospitals in New York State and throughout the country, most psychiatrists and other employed physicians generally have felt secure in the coverage contractually provided as part of their compensation packages. Few have raised questions about their potential liability exposure should their institutional employer become insolvent and declare bankruptcy and a claim be generated subsequent to the institution's closure. (In New York, the statute of limitations for professional liability claims is 2-1/2 years for adults, 10 years or 2-1/2 years past the age of majority—whichever occurs first—for children.)

For me, that comfort level changed with the recent bankruptcy and closing of Saint Vincent's Hospital in New York City. The closing of that institution, where many colleagues of long standing worked, raised my concern about what protection they would have in current and future liability suits. Answers were not easy to come by.

I sought answers from a number of sources including an attorney who was a partner in a firm which specialized in such matters, NYSPA's General Counsel, a hospital risk manager, staff at New York's prominent hospital associations, and staff at the APA, among others. The following pieces of information were obtained but do not represent a comprehensive, definitive overview. 1)

In the case of bankruptcy, the self-insurance fund becomes an asset to be distributed as part of the resolution by the court. 2) Those covered by the institution's plan do not have access to the NYS insurance guaranty fund. (Institutions that purchase insurance cannot access the guaranty fund because it is the purchaser not the insurer that has become insolvent. State guaranty funds may be thought of as similar to the more familiar Federal Deposit Insurance Corporation, which protects our savings accounts if our bank becomes insolvent. Generally, in the case of liability insurance, the guaranty fund covers a portion but not the full potential liability.) 3) Pending liability suits are stayed and settlement is incorporated as part of the bankruptcy proceeding. (Recent newspaper articles have reported on the 712 pending malpractice cases against Saint Vincent's hospital of which 295 have been resolved and for which plaintiffs are owed a combined \$34.5 million. For many, little or no money will be forthcoming.) 4) Covered doctors would be unable to purchase an individual "tail" since they did not possess individual liability coverage policies. As one individual I spoke with said, "There is the potential for a lot of collateral damage when bankruptcy occurs."

We hope that our members and medical colleagues can avoid becoming "collateral damage" consequent to a bankruptcy. The question then becomes, what steps can institutionally based psychiatrists and physicians take to protect themselves? The greatest risk lies in suits filed subsequent to the bankruptcy but still fall within the statute of limitations. To find answers, our concerns have been raised with NYSPA, the APA, MSSNY, the hospital associations, individual attorneys, and

others. Again, there is no simple, single answer to our question. While some preliminary thoughts will be addressed at this time, I hope that a more specific set of possibilities will be forthcoming in a future issue of this Bulletin.

First, physicians may purchase their own insurance while employed and covered through their employer's insurance program. While this may represent the "gold" standard for self protection, it is not a satisfactory alternative as one would not wish to incur the cost of purchasing insurance which would most often be duplicative given the contractually-provided coverage. An employer reimbursing for all or part of the cost of an individual policy might be a better answer especially for those who require personal policies if they have a practice in addition to their job. However, it is likely that institutions would find this route too costly in relation to other options. A second possibility might be for individual doctors to purchase policies with a "nose" should they find themselves in the predicament being addressed. An insurance product which includes a "nose," covers potential liability for events which occurred prior to the purchase of the policy. Thus it differs from claims-made policies for which a "tail" must be purchased when the practitioner halts the purchase of a current liability policy. The APA has agreed to raise the possibility of offering policies which incorporate "nose" coverage with the insurer it endorses. Other possibilities could be for self-insured institutions to establish discrete self-insurance reserve funds which would not be considered assets as part of bankruptcy proceedings. Possible vehicles worth exploring might be variants of "captive" arrangements or the creation of funding outside self insurance trust funds which could be

utilized for funding potential tail liability. These approaches might be complemented by the use of reinsurance. Yet, other approaches might seek statutory changes to assure access to state guaranty funds or, as suggested by Seth Stein, NYSPA's Executive Director and General Counsel, to treat employed doctors as "deemed" insured for their work within institutions so as to permit them to purchase commercial claims-made insurance going forward which would protect them at such time as their institutions seek bankruptcy protection. These latter ideas are possibilities requiring further exploration, as the ramifications are complex and potentially costly. They would require that costs be borne either by the state, medical institutions, or individuals.

Until more definitive answers and options materialize, I suggest that employed psychiatrists and other physicians raise their concerns with their institutional or agency employers. Physicians should ask how their institutions provide for their coverage and how they would continue to be protected should their institution become insolvent. As more answers and options are obtained, they will be shared with NYSPA's members. The questions raised in this article are important not just to physicians but to the public as well. In cases of genuine malpractice, harmed persons deserve to be appropriately compensated. As such, finding a broad solution to this issue would represent a public good aligned with the interests of employed physicians in New York State. ■

Barry B. Perlman, M.D. is the Director of the Department of Psychiatry at Saint Joseph's Medical Center in Yonkers, New York. He is also Chair of the NYSPA Committee of Legislation and is a NYSPA Past President.

Trustee's Report continued from page 2

where physicians can make individual choices.

- I believe that some of the recommendations in this proposal assume that medical schools have chosen individuals to be physicians that do not have the maturity, intelligence or ethical ability to make informed and correct choices without the governance afforded small children. We should have continuing medical education in ethics. The pharmaceutical companies have played a major role in funding research in our field as well as providing appealing forums for continuing medical education.

- This is long overdue and we can only hope that this will be accepted by the APA, the AMA, and all practicing physicians; there is ample evidence that prescribing patterns and other behaviors are influenced by gifts and other forms of pharmaceutical industry contact, and as psychiatrists we are particularly vulnerable to this criticism. The only way to prevent government intervention into our practices is to accept this guide of ethical behavior. As a Member in training, my belief is that APA and its ability to help guide the practice of psychiatry hinges on the organization being able to stand for a set of principles, including the principle of not being influenced by pharmaceutical industry. The APA will go a long way toward recruiting MITs and future APA members if it is more proactive about defining its independence from pharmaceutical

industry influence.

- Food alone is not appropriate. Food within the context of a speaker presentation is OK.

- I think that attendance at an educational event where pharmaceutical, etc. entities supply food/refreshments should be permitted and does not impair a physician's ability to apply discrimination regarding the information presented. I think this goes beyond the pale of limiting so-called "influence."

- Samples are very helpful in the introduction of a new med as the need to fill what may be a costly prescription is obviated.

Further, not infrequently a patient may, for one reason or another, have run out of or lost his medication (or the insurance company rejects payment.) I find the ability to offer samples a great benefit in my practice.

- Samples for patients are good and helps engage patients into treatment along with appropriate disease based literature. Samples for physicians as gifts should be avoided. I agree that samples for individual physician use are not ethically correct.

Promotional meetings are regulated by the FDA and none of the content is biased. The content is fair balanced and reviewed heavily by the FDA. Promotional meetings are often the venues where much learning occurs in an intimate setting and to regulate them away would be wrong and would worsen the process of learning and

engagement of our membership in academic discourse.

- Any teaching session sponsored by industry regardless of ACCME imprimatur is not educational but promotional. Education is not a function of industry but of educational institutions. Prior to the 1980s, NIMH offered training grants to university medical schools to support teachers at grand rounds, educational conferences. These should be reinstated. The selection of "teachers" from industry sponsored lists, even if ACCME accredited changes teaching to selling sessions.

- I do not think that pharmaceutical companies should be sponsoring educational conferences.

- Consulting by physicians can help companies appropriately direct their resources towards innovation that will help many. But the financial relationship should be proportional to the value of the work involved.

- Ultimately, we as an Association should move toward not allowing industry representatives in any patient care-related areas. While it is hard to quarrel with the idea that psychiatrists should be aware and seriously consider issues, restricting access to pharmaceutical representatives also inhibits the free exchange of ideas, or, stated otherwise, the free working of the marketplace of ideas.

- At our district branch we continually dis-

cuss and argue the various issues involved as well as the financial implications of such contact, sponsorship for our social and educational endeavors.

- Accepting payment above and beyond actual costs and appropriate compensation for time expended should be an ethical violation, subjecting the researcher to sanctions by the APA and/or the academic institution, unless the researcher is employed full-time by a pharmaceutical company. The employer would then be allowed to offer any incentives it wished.

- I would prefer the free-market to determine compensation; this issue is unnecessary if full disclosures are happening. ■

A complete set of comments will be provided upon request from NYSPA at 516-542-0077 or by email centraloffice@nyspsych.org

Classifieds

C.J. Medical Services, P.C. is looking for BC/BE Child Psychiatrist, registered with and/or qualified to register with NYC W/MBE, to provide late afternoon services on week days, weekend and urgent night care NYC juvenile facilities. All interested and qualified candidates please contact Martha Gallo at either 347-217-5868 or gallo.martha@gmail.com.

Albany Report continued from page 1

Physicians (NYCSPC), NYSPA added its voice to the crescendo of opposition to these bills and the actions taken to amend or defeat the bills. So far, the outcomes are more favorable than not large-

ly for organized medicine but the margin of victories are steadily eroding. Our next Albany Report for the Bulletin will deal in greater depth with the encroachments on the practice of medicine

by non-physician health care practitioners and where we think physicians stand with the Legislature on these matters. The below chart provides a bill status summary on scope of practice legislation

opposed by NYSPA, MSSNY and a host of medical specialty societies. The summary also includes the status of a few other bills of interest.

SCOPE OF PRACTICE BILLS – OPPOSED BY NYSPA	ASSEMBLY BILL NO. (SPONSOR)/ SENATE BILL NO. SPONSOR	STATUS
Optometry Authorizes optometrists to prescribe certain drugs that may be used for therapeutic purposes and taken orally	A.3718 (Paulin)/S.2667 (Valesky)	IN COMMITTEE
Physical Therapy Scope of Practice Relates to the establishment of rates of payment and delivery of health care	A.4302-A (Canestrari)/S.4631-A (Oppenheimer)	PASSED BOTH HOUSES
Dental Scope of Practice Relates to the scope of practice of dentistry	A.4656-B (Morelle)/S.8347 (Klein)	IN COMMITTEE/PASSED SENATE
Podiatry Scope of Practice Expands the definition of podiatry to include conditions of the ankle and all soft tissue structures of the leg below the knee affecting the foot and ankle	A.2518-B (Pretlow)/S.2992-B (Klein)	IN COMMITTEE /PASSED SENATE
Naturopathic Scope of Practice Regulates the practice of naturopathic medicine	A.1370 (Hoyt)/S.1930 (LaValle)	IN COMMITTEE
Midwifery Scope of Practice Relates to the definition of the practice of midwifery	A.8117-B (Gottfried)/S.5007-A (Duane)	PASSED BOTH HOUSES
Nurse Practitioner Reimbursement Provides for reimbursement for nurse practitioner services under certain policies of health insurance including individual and group accident/health	A.6651-A (Gottfried)/S.4490-A (Duane)	PASSED ASSEMBLY /IN COMMITTEE
Nurse Practitioner DNR Authorizes nurse practitioners to issue orders not to resuscitate	A.1719-A (Gottfried)/S.2947-A (Hannon)	PASSED BOTH HOUSES
Nurse Practitioner Scope of Practice Allows certified nurse practitioners to practice without collaboration of a licensed physician and provides coverage for services performed by a nurse practitioner	A.765-B (Gottfried)/S.2948-B (Montgomery)	IN COMMITTEE
Pharmacy Authorizes pharmacists to perform collaborative drug therapy management with physicians or nurse practitioners in certain settings	A.6848-A (Canestrari)/S.3292-A (LaValle)	PASSED ASSEMBLY & REPORTED TO SENATE FLOOR
Limited Medical Service Practices Relates to limited service medical practice to treat a limited range of medical conditions and provide diagnostic or preventative health care services	A.10150 (Paulin)	IN COMMITTEE
Psychology Due Process Bill Prohibits hospitals from denying staff membership or professional privileges to psychologists without cause	A.1729 (Gottfried)/S.5002 (Duane)	PASSED BOTH HOUSES
Corporate Practice of Multiple Professions (Limited exemption)	S.5921-A (Stavisky)/ A.8897-A (Pretlow) A.11440 (Chapter Amendment)	Chapter 130 of Laws of 2010 Chapter 132 of Laws of 2010
NO POSITION TAKEN BY NYSPA		
Medical Marijuana Legalizes the possession, manufacture, use, delivery, transfer, transport or administration of marijuana by a certified patient or designated caregiver	A.9016 (Dinowitz & Kellner)/S.4490 (Duane) A.11565 (Gottfried)	REPORTED TO FLOOR IN COMMITTEE
Ian's Law Enacts Ian's Law, which provides enhanced consumer protections in the event of an insurer's discontinuance of coverage	S.6263-C (Schneiderman)/A.9243-B (O'Donnell)	PASSED BOTH HOUSES
MALPRACTICE BILLS – OPPOSED BY NYSPA		
Contingent Fees Repeals that restriction of the judiciary law prohibiting contingent fees and requiring a sliding scale fee for attorneys in claims or actions for medical, dental or podiatric malpractice.	S.2040 (DeFrancisco)	IN COMMITTEE
Medical Liability Statute of Limitations To amend the statute of limitations for medical, dental or podiatric malpractice to include a discovery of injury rule.	A.4627-B (Weinstein)/ S.1729-A (Schneiderman)	IN COMMITTEE
Damages in Wrongful Death Actions This bill would permit the families of wrongful death victims to recover compensation for their emotional anguish.	A.2872 (Weinstein)/S.2391 (DeFrancisco)	IN COMMITTEE
Pre-Judgment Interest Permits pre-judgment interest in personal injury actions; stops running of interest as an offer of compromise without more favorable judgment	A.6757 (Brennan)	IN COMMITTEE
Ex-Parte Interviews Prohibits interviews of other party's treating physicians or health care providers in malpractice or wrongful death actions	A.1254-A (Lancman)/S.3203-A (Klein)	REPORTED TO FLOOR/ IN COMMITTEE
OTHER BILLS – OPPOSED BY NYSPA		
Physician Collective Negotiation Enacts the health care consumer and provider protection act relating to collective negotiations by health care providers with certain health care plans	A.4301-B (Canestrari)/S.5204-A (Breslin)	IN COMMITTEE/REPORTED TO FLOOR
Medical Liability Reform Enacts the "medical liability reform act"; repealer	A.6184 (Schimminger)/S.6799 (Hannon)	IN COMMITTEE
PSYCHIATRISTS WISHING ADDITIONAL INFORMATION ABOUT ITEMS APPEARING IN THIS REPORT OR ANY OTHER NYS LEGISLATIVE MATTER PLEASE EMAIL richardgallo@galloassociates.org OR CALL NYSPA'S ALBANY OFFICE AT (518) 465-3545		

ECP Committee Hosts Successful Meet & Greet Event By Rachel A. Fernbach, Esq.

On June 15, 2010, the NYSPA Early Career Psychiatrists (ECP) Committee hosted its first annual ECP Meet & Greet Event at Merchants East in New York City. The Meet & Greet is an opportunity for psychiatrists early in their career to network and socialize with peers and colleagues. The event was open to all APA members in their first seven years after residency as well as fourth-year residents.

Emily Stein, M.D., an organizer of the event, kicked off the evening by welcoming those present and noting many new faces in the crowd. She introduced NYSPA President Glenn Martin, M.D., who thanked everyone for coming and stated that NYSPA is proud to represent approximately 4,300 psychiatrists in New York State. He noted that ECPs represent the future of the organization and that NYSPA is committed to meeting the needs of its members. Dr. Martin also introduced two NYSPA Past Presidents who attended the event, C. Deborah Cross, M.D. and Barry



Emily Stein, M.D., Glenn Martin, M.D., Rashmi Gupta, M.D.

Perlman, M.D.

The event was co-sponsored by PRMS, a professional liability carrier that provides malpractice insurance for psychiatrists. Joining the psychiatrists at the event were PRMS staff members Martin Tracy, President and CEO, Melanie Smith, Senior Vice President for Public Relations, and Rich Stagnato, Accounts Representative, who were available to speak with members and answer questions.

Dr. Stein concluded the presentation by

introducing members of the ECP Committee, including Anna Skiandos, D.O., Rashmi Gupta, M.D., and Reba Bindra, M.D. She encouraged anyone interested to become a member of the ECP Committee, which is always looking for new individuals with energy and enthusiasm.



Anna Skiandos, D.O. and Varinder Rathore, M.D.

"Early career psychiatrists often have common goals and mutual interests, such as career advancement, paying off student loans and establishing a private practice," noted Dr. Stein. "It is important for this segment of APA member-



Emily Stein, M.D. and Anna Yusim, M.D.

ship to connect and support each other during this vital period of their career." Dr. Skiandos added "It is incumbent upon early career psychiatrists to share their point of view on issues of importance for our patients and our profession. I see the voice of ECPs as a type of compass, assisting APA leadership in navigating the future of the organization. It is essential for ECPs to be actively involved in the APA so that we can feel empowered and be invested in shaping the APA's future." ■

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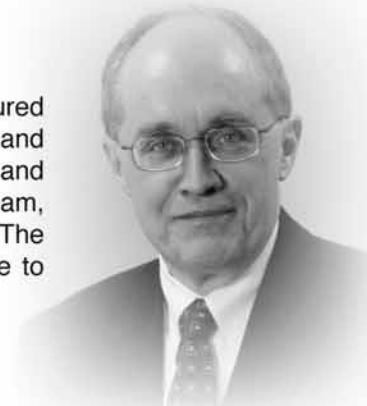
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President's Message continued from page 1

One good thing to come out of this change to our delegation is that I think it compels a review of our own state organization structure. To that end we will be exploring some changes to our governing council. Personally I would like to make the council somewhat larger and better integrated with the district branch leadership. I am very mindful of the need for our council to preserve geographic diversity and representation both to reflect the differing needs of our members throughout the state and to maintain a real sense of involvement for our members. Additionally our committee structure could benefit from a review. Moribund committees with poor membership should be resuscitated or removed. Membership should be more involved in our committees, and better use of social networking, on-line conferencing, etc. should be incorporated. Additionally we may give some consideration to giving committee chairs greater voice in our governance structure.

The future of our district branch structure is also worthy of some soul searching. Our state is unique in the numbers of district branches we host. They include the oldest DB's in the nation! For many they are the backbone of the organization and bring the most value to our members. To others they are an inefficient structure that imposes extra dues on its members, are difficult to fiscally maintain, especially in the absence of industry support. In the face of easy to obtain CME (e.g. online with your subscription to the American Journal of Psychiatry) some members see DB's as less important in their professional lives. Clearly it is not for the state society to dictate the existence of the local branches. It is our responsibility to be supportive of the members. For a DB that might want to dissolve or for others that may wish to consolidate we need

to provide legal and administrative expertise and support. Additionally, we need to think of alternate structures within NYSPA, such as a "chapter" that may be more efficient and cheaper but still provide a local nexus for activities.

It is also important to focus a moment on events in Albany. With single party control of the executive and both branches of the legislature there has been a flurry of activity involving scope of practice, physicians' ability to organize to negotiate with insurers, and malpractice reform/regression. As I write this during the last weekend in June it is too early to know the outcome. What is certain is that it is absolutely crucial for psychiatrists in the state to remain aware of the issues, respond to our e-Bulletins asking for action and to belong to our PAC. For those who can become more involved and wish to learn how to effectively visit legislators in Albany or their home offices please contact your district branch legislative representatives.

Finally let me welcome our new leadership team: Seeth Vivek, your Vice-President, Richard Altesman your Secretary and Jeff Borenstein your new Treasurer. All three have been active in NYSPA for years, have experience in hospital and private practice settings and are well versed in state and local politics. And of course I need to acknowledge and thank our outgoing President Deb Cross and Treasurer Darvin Varon for their years of selfless service on behalf of the psychiatrists and our patients in New York State.

For those who wish to discuss any of the issues I have raised I encourage you to speak with your district branch leadership and representatives to the NYSPA council. I can be reached most easily by email at doctor@glenmartinmd.com. Have a great summer! ■

DEA Rule continued from page 1

Identity proofing is an in-person interview process for confirming the identity of each prescribing practitioner. Again, the DEA is responsible to identify authorized credential service providers or certification authorities who will be responsible for this task. The final rule also provides for remote identity proofing to accommodate providers located in remote areas.

Only those providers who have undergone identity proofing will be eligible to receive the authentication credentials necessary to transmit prescriptions for controlled substances electronically to a pharmacy. Providers should await guidance from their application service

Two-Factor Authentication Credentials

Prescribers that have completed identity proofing will be provided with a two-factor authentication credential. The two-factor authentication credential is the mechanism by which prescribers will authorize and "sign" each electronic prescription for a controlled substance. Each two-factor authentication credential will be comprised of at least two of the following elements:

- (i) something the prescriber knows (a password or response to a challenge question);
- (ii) something the prescriber is (biometric data such as a fingerprint or iris scan); or
- (iii) something the prescriber has (a hard token).

A hard token is a separate, tangible object such as a PDA, cell phone or one-time password device that contains a cryptographic key. Prescribers must maintain sole, physical possession of

any hard tokens and should not share them with office staff or other persons. Instead of the two-factor authentication credential, some providers may opt to obtain a personalized digital certificate from a federally-approved certification authority. A digital certificate is a data record that contains a public key and a private key assigned specifically to the provider.

Provider Responsibilities

Providers who opt to send prescriptions for controlled substances electronically are subject to specific responsibilities and obligations. For example, if an electronic prescription for a controlled substance is not successfully delivered to the pharmacy, the prescriber must ensure that any manually signed replacement indicates that it is a replacement for an original electronic prescription that failed. Further, if a provider becomes aware of any unauthorized electronic prescriptions or any prescriptions that are not consistent with ones he or she authorized, the provider must notify the DEA and certain designated office staff, where applicable.

NYSPA will provide members with any updated information regarding the status of electronic prescribing for controlled substances in New York State as soon as it becomes available.

For more information on electronic prescribing in general, please see the Electronic Prescribing tab in the Members Only section of the NYSPA website (www.nyspsych.org). For more information on the DEA final interim rule, please visit http://www.deadiversion.usdoj.gov/ecomm/e_rx/index.html. ■

Please join our Federal, State and City Legislators to discuss the mental health needs of New Yorkers.

Let your voice be heard.

The New York City Branches of the American Psychiatric Association

will be hosting its

Twelfth Annual Citywide Legislative Breakfast

on

December 5, 2010

from

10:30 AM - 1:30 PM

at

The New York Academy of Medicine

1216 Fifth Avenue

(corner of 103rd Street)

New York, NY 10029

The Psychiatric Society of Westchester

will be hosting its

25th Annual Legislative Brunch

on

December 12, 2010

from

11:00 AM - 1:30 PM

at

The Crowne Plaza Hotel

66 Hale Avenue

White Plains, NY 10601

For further information regarding the Citywide Legislative Breakfast or the

Psychiatric Society of Westchester Brunch or to purchase tickets

contact your District Branch at the phone number below:

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