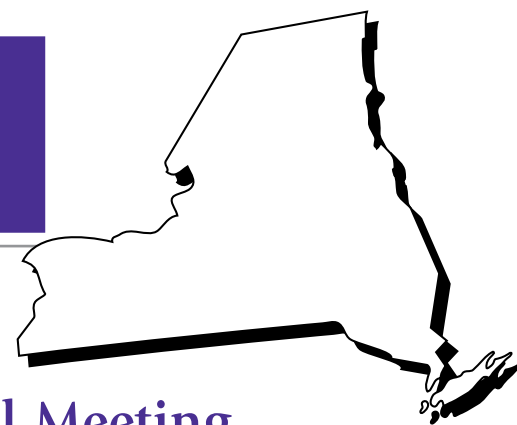


# THE BULLETIN

## NEW YORK STATE PSYCHIATRIC ASSOCIATION

Winter 2010, Vol. 53, #1 • Bringing New York State Psychiatrists Together



### President's Message: The Assembly and Board of Trustees

By C. Deborah Cross, MD

First off, I want to thank those members who responded to NYSPA's request to contact the Board of Trustees regarding the Assembly's budget for 2010. Your response was extremely important and effective. In fact, at its meeting in December 2009, the Board agreed that there would be no further reduction of the Assembly's 2010 budget from the originally requested \$200,000. Drs. Schatzberg and Bernstein's response to many of those who wrote to the Board very clearly spelled out the financial difficulties facing the APA at this time. What was not made clear in the email, I felt, was that the financial difficulties facing the APA could very well be a somewhat short term problem since the publication of DSM V may result in a significant increase in revenues. Additionally, points were made about other professional organizations and financial reimbursement of representatives (e.g., dele-



C. Deborah Cross, MD

gates to the AMA). In many instances AMA delegates have their expenses paid and other organizations reimburse their members in various ways. The email also raised questions about whether the Assembly needs to be as large as it is and whether it needs to meet twice a year. The size of the Assembly is

certainly a debatable point, depending on one's opinion of the function of the Assembly. As you have heard from me many times over the last few years, I believe the Assembly is essential to a well informed, well represented, psychiatric professional organization. In comparison to the AMA, there are (to quote the AMA's web site) "well over 500 delegates" to the AMA's House of Delegates. They meet twice a year and are the "principle policy making body of the AMA." It is characterized as a "democratic forum" which "represents the views and interests of a diverse group of

[See [President's Message](#) on page 2]

### Fall Area II Council Meeting

By Rachel A. Fernbach, Esq.

The New York State Psychiatric Association held its annual Fall Area II Council Meeting on Saturday, October 24, 2009 at the New York LaGuardia Airport Marriott in East Elmhurst, New York. NYSPA President C. Deborah Cross, M.D., called the meeting to order and invited all those attending their first Council meeting to introduce themselves. Introductions were followed with reports from NYSPA officers.

As part of her President's Report, Dr. Cross reported on three new workgroups created by Assembly Speaker Gary Weinstein, M.D.: (i) Model District Branch Work Group, (ii) Communications Work Group and (iii) Leadership Training Work Group. Seeth Vivek, M.D., a member of the Communications Work Group, spoke briefly about the group's activities.

Dr. Vivek, NYSPA Secretary, also presented minutes from the May 15-17, 2009, Area II Council Meeting at the Spring APA Assembly Meeting. NYSPA Treasurer, Darvin Varon, M.D., presented the financial statements for January-

September 2009 with a comparison for the same period for 2008 and 2007. In addition, Edward Gordon, M.D., Chair of the NYSPA Political Action Committee, presented the PAC financial statements for January-October, 2009, and a list of 2009 contributors to date.

#### Assembly William Sorum Award

Dr. Cross presented the Assembly William Sorum Award to the Queens District Branch, the Brooklyn District Branch and the New York County District Branch for sponsoring annual scientific research paper contests for residents. The Assembly William Sorum Award was created in honor of William Sorum, M.D., Past Speaker of the Assembly, to recognize members-in-training and district branches that have made notable progress in MIT activities, involvement and participation. Herbert Peyser, M.D., Seeth Vivek, M.D., Jeffrey Borenstein, M.D., Lenore Engel, M.D., Vivian Pender, M.D., Henry Weinstein, M.D., and Kenneth Ashley, M.D., accepted the

[See [Area II Meeting](#) on page 5]

### NYSPA Makes A Difference: Disciplinary "Catch 22" – An Update

By Rachel A. Fernbach, Esq.

*From time to time, The Bulletin plans to publish articles detailing how NYSPA makes a difference in the professional lives of its members and the patients they serve. The below article is an example of NYSPA's advocacy and efforts on behalf of a psychiatrist caught between the conflicting agendas of two state agencies.*

In early 2009, the Bulletin reported on a puzzling situation involving a conflict between the work of the NYS Office of Professional Medical Conduct (OPMC) in rehabilitating physicians brought up on charges and the work of the NYS Office of the Medicaid Inspector General (OMIG) in preventing fraud and abuse in the Medicaid program. Physicians caught in this bureaucratic "tug of war," are often unable to work towards rehabilitation, even in a proscribed supervised setting, because the OMIG refuses to reinstate them as a Medicaid provider. NYSPA is proud to report that its advocacy on behalf of a particular psychiatrist caught in just such a "Catch 22" has resulted in the psychiatrist's full reinstatement in the Medicaid program, permitting the psychiatrist to resume employment at a community psychiatric hospital as part of an OPMC supervised program of rehabilitation. NYSPA became aware of this unique situation when a member was asked to consider employing a psychiatrist who had entered into a settlement agreement with OPMC for rehabilitation and resumed practice under supervision at a licensed facility. As part of the settlement agreement, the psychiatrist's license had been suspended for a year

and the psychiatrist had entered into psychotherapy, as was required. The individual's license was restored with the contingency that the psychiatrist could only practice under supervision in a licensed facility. The psychiatrist's application for reinstatement to the Medicare program had already been approved.

However, the New York State OMIG refused to reinstate the psychiatrist in the Medicaid program as a result of the finding of professional misconduct. OMIG's final determination did not take into account the fact that the underlying professional misconduct did not involve any wrongdoing with respect to the Medicaid program and that the psychiatrist had already been reinstated in Medicare. No state licensed facility that participates in the Medicaid program can hire the services of a physician who has been excluded from the Medicaid program. Thus, OMIG's denial of reinstatement effectively prevented this particular psychiatrist from complying with the terms of their probation and completing the OPMC program of rehabilitation.

In an effort to bring this issue to the forefront, NYSPA contacted the Office of Governor David Paterson and Medicaid Inspector General James G. Sheehan, to address the apparent conflict between the activities of OPMC and OMIG. Following an unsatisfactory response from OMIG, the psychiatrist, with NYSPA's assistance, initiated an Article 78 proceeding in the Supreme Court of the State of New York to chal-

[See ["Catch 22"](#) on last page]

### Legislative Brunches

By Rachel A. Fernbach, Esq.



Richard Gallo and Barry Perlman, MD

The New York City District Branches of the APA hosted their Eleventh Annual Citywide Legislative Breakfast on December 6, 2009, at the New York Academy of Medicine in New York, New York. One week later, the Psychiatric Society of Westchester hosted its 23rd Annual Legislative Brunch on December 13, 2009, at the Crowne Plaza Hotel in White Plains, New York.

Barry Perlman, M.D., NYSPA Past-President and current Chair of the NYSPA Committee on Legislation, kicked off both events by providing an overview of current legislative issues affecting New York psychiatrists, including implementation of the new federal parity law, proposed budget cuts for mental health services, payment for atypical antipsychotics, concerns with the sexually violent predator civil confinement program, pending legislation that conflicts with the corporate practice of medicine doctrine and recently proposed changes to

physician licensing requirements.

Dr. Perlman also discussed issues of federal concern, including an increase in physicians opting out of Medicare and fewer graduating medical students choosing a specialty in psychiatry due to concerns about reimbursement for services. In addition, he cautioned against over-reliance on the use of certain guidelines as a basis for pay-for-performance and liability relief. Finally, at the Westchester event, Dr. Perlman expressed NYSPA's support for the continuation of Grant Mitchell, M.D., in his role as Commissioner of the Westchester County Department of Community Mental Health under new county leadership.

The New York City event was moderated by Marvin Nierenberg, M.D., a member of the New York County District Branch Committee on Legislation. Dr. Nierenberg welcomed those in attendance and introduced

[See [Legislative Brunches](#) on page 3]

# 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 has information about issues which impact the practice of psychiatry in New York. We report on the Legislative Brunches in which our members have an opportunity to interact with local political leaders. We also have a



Jeffrey Borenstein, MD

report about how to improve reimbursements from managed care. The President's message reviews key issues about APA governance and the Area II Trustee Report provides an update about the recent Board meeting. We also have a report on the Fall

Area II Council meeting. We have a new column, which will appear from time to time, entitled: NYSPA Makes a Difference. As we begin a new decade, I urge each of you to become more active members of our organization. Each of us can make a difference as we advocate for our patients and profession. ■

## President's Message continued from page 1

member physicians." A number of you, I am sure, have already heard the outcome of the November Assembly's discussions regarding how to implement the \$200,000 cut in 2010. The cuts were made with much debate and extensive testimony from numerous Assembly members. Various proposals were presented and ultimately the Assembly voted to preserve the twice-a-year meeting schedule, but to reduce the total number of representatives. This affected New York the most drastically in that we (Area 2) will be reduced from 19 representatives to the Assembly to 14. Additionally, New York, California and Missouri (all state associations) lost their Deputy Reps. Another change is that there will be no Deputy Reps (for those District Branches who still have them) seated at the November Assembly meeting. Additionally, though the MITs (residents), ECPs (Early Career Psychiatrists) and MURs (minority and underrepresented groups) will keep their Deputy Reps they will be "unfunded" members of

the Assembly. (This may well mean a significant financial hardship on this group, particularly the residents, which NYSPA will look at in light of our own budget. As I have said many times, our residents are the future of the APA and NYSPA!)

The Assembly indicated its strong wish to have the Board look at overall remodeling of the entire APA organization. In that regard, Dr. Carol Bernstein (President Elect of the APA) and Dr. Ann Sullivan (Speaker Elect of the Assembly) are co-chairing a Remodeling Committee which is to report back to the Board next year. It still remains to be seen whether the Board would consider a proposal to modify the current "bicameral" structure to something that would be more streamlined, efficient, and cost effective and which would continue to have a broad democratic base. Area 2/NYSPA has put forth such a proposal in the past and has strongly supported this type of reorganization. The financial savings would be significant. If the APA continues to face significant finan-

cial constraints, serious consideration should be given by the Board to implementing such a streamlined, but democratic, form of organization.

NYSPA's Area 2 Council will now begin work on how to implement the reduction in representation while at the same time preserving the very important work of all our District Branches. A very important piece of this restructuring is that the internal structure and functioning of NYSPA does not have to be changed. We have approximately 4,500 members in NYSPA and every member is vital and important to our work. Strong and vibrant representation by the Area 2 Council is essential to our ongoing work in New York State. Again, I was very impressed by the thoughtful responses from you, the NYSPA members, in this time of crisis. Your representatives to NYSPA work extremely hard to make sure that your concerns are heard and that we represent you both in New York State and in the national APA. As always, I encourage you to email me any thoughts or questions about this topic or any others. ■

## Area II Trustee's Report by James Nininger, MD

The APA Board of Trustees met December 5-6, 2009. The main focus of the meeting was to pass the 2010 budget. This process involved reviewing and discussing recommendations from the Finance and Budget Committee and then voting on the final product. The end result spared the Assembly from any cuts beyond the \$200,000 increment hammered out at the November Assembly meeting. The Board worked effectively and collaboratively to make hard decisions finalizing a budget in a continuing time of financial hardship and uncertainty. A few facts: 2009 revenues are projected at \$7.8M below those projected, primarily due to an abrupt decline in advertising which is expected to continue. As you know, the components were markedly cut and consolidated this past year and various internal grants (litigation funding, DB infrastructure, DB competitive) were significantly diminished. Dr. Scully and his staff have worked hard to decrease expenditures (down \$6.5M expected for 2009) but in November, 18 full time positions were eliminated. At the end of December, the staff will be down 15% from the high in 2005. So, all have sacrificed.

Membership, while not growing, has remained level, and hopefully the recent increase in dues will lead to greater financial returns in the coming year. In New York, MITs have been attempting to get a "point person" in each residency training program, and this should be pursued and perhaps then serve as a model for the rest of the country. The Guidelines for Elections to Distinguished Fellowship have been revised and will weigh more heavily on APA activities. The Board of Trustees voted to approve the recommendation

of the Membership Committee that new general members who have been out of training for at least six years be charged 50% of the full GM rate for the first year when joining and then be increased to the full amount of GM dues the following year.

Dr. Robert Cabaj, Chair of the Council on Advocacy and Government Relations, provided the Board with an update on the rapidly changing Federal health care proposals and discussed scope of practice issues prominent in several states. APA priorities in health reform for 2009/10 include that parity requirements be applied broadly and that mental illness and substance abuse coverage be included and enforced in any basic plan requirements.

Additional priorities include ending the two year waiting period for SSDI recipients to receive Medicare, fixing the SGR permanently, providing better coordination and/or integration of primary care and psychiatric services, expanding the use of telemedicine, and minimizing potential for scope of practice conflicts. Psychologist prescribing bills this past year were defeated in Arizona, Hawaii, Illinois, Mississippi, Missouri, Montana, North Dakota, Tennessee, and Texas. A study bill was passed in Oregon, and a bill was introduced this past November in the Virgin Islands.

Dr. David Kupfer reviewed progress in the development of DSM-V. Proposed criteria will be placed on line for public comment to provide feedback informing pilot testing and phase I field trials for 30 to 35 disorders. Feedback will be requested on how to determine level of severity, and plans also include using the PRN (APA Physician Research Network of 1400 members) for feedback as well. Emphasis is being placed

on developing cultural formulations, Axis 2 is being moved to Axis 1, Axis 3 is being reevaluated, Axis 4 is being examined for possible use of ICD-3 codes and Axis 5 is being looked at to develop new global impairment scales. Genetic issues are being studied for incorporation into the manual, and a request is being made to delay the publication date from 2012 to 2013 to permit more extensive field trials. A Board workgroup is providing overview for the DSM-V process including a review of the DSM budget. The cost of developing the document is great, but the eventual revenues should be a great help to the organization's fiscal status. Interim reports by two ad hoc workgroups active on the Board are of note: the Ad Hoc Workgroup on Preparing Members for the Future, chaired by Dr. Nada Stotland, is charged with identifying trends within the profession. This workgroup liaisons with a similar group from the American College of Psychiatrists and is identifying a variety of trends expected to affect psychiatric practice during the next 5 to 10 years. The group also consults with a focus group of early career psychiatrists and members-in-training. A brief on-line survey was returned by 2700 members and the results are being analyzed. Preliminary analysis suggests that neuroscience, evidence-based practice, reimbursement policies, new information technologies and prevention are the topics receiving the highest priority ratings from the respondents.

The ad hoc workgroup on Future Relationships with Industry, chaired by Dr. Sidney Weissman is working on a proposed model for pharmaceutical industry and medical device manufac-

[See Trustee's Report on last page]

## Legislative Brunches continued from page 1

Evaristo Akerele, M.D., President of the New York County District Branch and C. Deborah Cross, M.D., President of the New York State Psychiatric Association.

The following legislators attended the New York City breakfast: New York State Senator Toby Ann Stavisky (D-Queens); New York State Assembly Members Richard Gottfried (D-Manhattan) and Alan Maisel (D-Brooklyn); and New York City Council Members David Weprin (D-Queens), Maria del Carmen Arroyo (D-Bronx) and Gale Brewer (D-Manhattan). Gracie Stoddard, a staff member from the office of United States Congresswoman Carolyn Maloney (D-Manhattan, Queens), Warren Gardiner, a staff member from the office of New York State Senator Shirley Huntley (D-Queens), Evelyn Ortiz, a staff member from the office of New York State Senator Kevin Parker (D-Brooklyn), Mark Weinstein, a staff member from the office of New York State Assembly Member Peter Rivera (D-Bronx), and Mitu Maruf, a staff member from the office of New York State Assembly Member Felix Ortiz (D-Brooklyn) also attended the event. The legislators and staff members were

joined by Lloyd Sederer, M.D., Medical Director for the New York State Office of Mental Health.

New York City Council Member David Weprin was the first legislator to address the group. He reported on his work on the Council's Autism Initiative, which provided \$1.5 million dollars in funding for after school and summer programs for children with autism. He also discussed two mental health initiatives currently being supported by the City Council, one for the geriatric population and one for children under five.

The next legislator to speak was



Assemblyman Alan Maisel

Assemblyman Richard Gottfried who discussed state budget issues and federal health care reform and expressed appreciation for NYSPA's support of his pending anti-torture bill. He also expressed his support for an expansion of

Timothy's Law to cover those eligible for the Healthy NY insurance program as well as his support for NYSPA's proposed amendments to a pending bill



Assemblyman Richard Gottfried

that conflicts with the corporate practice of medicine doctrine. Assemblyman Gottfried also noted his support for the addition of antipsychotic medications to the New York State

Preferred Drug List. Next, Senator

Toby Ann Stavisky addressed the group. She discussed state budget issues, the bill affecting the corporate practice of medicine doctrine and her work as Chair of the Senate Higher Education Committee. She noted

that her committee frequently addresses scope of practice issues which she understands is a crucial issue for psychiatrists in New York and across the country.

Assemblyman Alan Maisel spoke next, noting that his previous career as an educator and school administrator has given him insight into mental health needs of children and families that are not being adequately addressed. He noted his support for expansion of mental health services across the state and increased awareness of the issues.



NYC Council Member David Weprin

Next, City Council Member Maria del Carmen Arroyo acknowledged the significant mental health issues affecting the aging and elderly populations and also expressed her support for enhanced mental health services for returning veterans and their families.

The last legislator to speak was City Council Member Gale Brewer who discussed

her efforts to improve mental health services in New York City schools. She continues to advocate with the New York State Education Department to bring issues of mental health to the forefront of educational policy and welcomes input on how to better achieve these goals. Council Member Brewer also addressed issues regarding housing for seniors.

Next, Lloyd Sederer, M.D., Medical Director for the New York State Office of Mental Health, provided an update on OMH activities, including budget issues, clinic reform, the use of evaluation and management codes by psychiatrists and a new prospective payment system for inpatient Medicaid services. Finally, Dr. Sederer noted that licensed clinics are now required to collect information on certain health indicators, including BMI, blood pressure and

[See [Legislative Brunches](#) on page 4]

### *The following is a transcript of Dr. Perlman's remarks at the 2009 Legislative Brunches:*

At Legislative Brunches dating back almost two decades, the array of issues which have made up NYSPA's agenda have covered a wide array of topics. However, there has always been a core set of concerns. The central matters have been: equity in access to mental health services, adequacy of accessible psychiatric practitioners, child, adult and geriatric, to meet the needs of persons seeking or requiring care, quality of care, adequate funding for those services, and respect for our field and those served by it.

#### **Parity**

Over the past several years, several of our goals have been largely realized while others remain elusive. For example, Timothy's Law, the NYS mental health parity bill, was signed in 2006 and implemented beginning in 2007. The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 became law just over a year ago. While we await the accompanying federal regulations, we recognize that the nexus of these laws will provide New Yorkers with among the most comprehensive mental health and addiction coverage in the country. This year we were pleased that Timothy's Law was made permanent.

Nevertheless, significant gaps remain. Healthy NY, the plan for individuals, sole proprietors and small businesses lacks any mental health or addiction benefit and its pharmacy plan does not allow for the prescription of medications to treat psychiatric disorders. New York's Family Health Plus and Child Health Plus plans have only very limited benefits for those conditions. As our country struggles towards national health system reform, it is critical that "parity" be realized in all plans for all Americans and that the gains of recent years not be diminished.

#### **Budget**

We are all aware of the fiscal crisis facing New York State. Without belaboring the point, we ask that budgets for the care of persons with serious and persistent mental illness be spared to the extent possible. We remind you that the population of concern is not only cared for in clinics and hospitals licensed solely by OMH. To a large measure they receive their care in institutions jointly licensed by both DOH and OMH, that is the Article 28 facilities. Many of these are inner city safety net institutions which find themselves in evermore precarious financial situations.

As much as what we would not like to see happen, we have suggestions for cost savings as well. Several years ago, NYSPA adopted a policy which we believe would save the state considerable monies spent on psychotropic medications. Pharmaceutical companies do not seem to compete on the basis of cost. We recommended that the Medicaid formulary adopt a policy of seeking first trials of costly atypical antipsychotics based on cost. New York State spending on just this class of medications has reached almost \$500 million, so what we are talking about is real money. This policy now seems even more doable than it did even several years ago as a prominent member of that drug class is now available as a generic. Our adopted policy presents an approach which we believe can be adopted without harming fragile patients.

As in the past, we continue to raise serious questions about the state's Sexually Violent Predator program – an expensive and expanding balloon which we have opposed for more than a decade not only because of its yearly cost (between \$200,000 and \$400,000 per individual if one includes security costs as compared to only \$30,000 for prison), but because of the violence it does to the mental health system by usurping the mental health system to solve what is truly a problem of the criminal justice system. In ten years, it is projected that this program may cost as much as \$400 million. However one views the SVP program, consider-

able savings could be realized now and in the future by revisiting the legislation and pressing for appropriately long and indefinite sentences for those convicted.

#### **Corporate Practice of Medicine**

We wish to acknowledge the role played this past year in blocking a dangerous change in New York State's corporate practice of medicine law, brought about as a by product of proposed changes to the education law in order to permit recognition of supervision of social workers in non-licensed settings. However arcane this issue may seem, it is raised in order to protect against large corporations becoming sponsors of medical practices, which is legally limited to licensed practitioners only. This issue is really a matter of public health policy meant to protect New Yorkers.

#### **National Health Reform**

Among the goals of national health system reform is to insure as many uninsured Americans as possible. We share that goal. However, there is much in the complex bills being debated which greatly concerns us. We remain concerned about the proposed cuts to Medicare, including physician providers. Medicare rates for New York City area psychiatrists remain low. Increasingly, given the yearly uncertainty about draconian Medicare fee cuts due to the Sustained Growth Rate methodology and the increases in practice costs including liability premiums, many medical school graduates who complete their educations with a heavy debt burden are choosing specialties other than psychiatry & especially geriatric psychiatry. In addition, many practicing psychiatrists are opting out of Medicare. (NYS DOH in its periodic inquiry of doctors gathers data on insurance participation by specialty but does not make the information publicly available.)

This direction is especially worrisome as we are on the cusp of the retirement of the baby boom generation. Let us not turn our wish to cover more persons into an access problem for seniors in many areas of the country, especially large cities. Rather, let us foster a system which will attract younger practitioners who want to participate in our system of public health insurance. In keeping with this concern, we oppose the creation of an independent Medicare board to set fees. Without the intercession of our representatives, many more would have already opted out of Medicare and the access issue would have reached crisis proportion years ago.

We also are concerned with plans to use so called "evidence based medicine" and "best practices" as the basis for pay for performance and liability relief. As doctors well know, these reified concepts are not nearly as clear as presented. They are compromises among experts. Patients most often don't neatly fit the matter addressed. As Professor Jerome Groopman, M.D., of Harvard Medical School has recently written, "A recent analysis of more than a hundred evidenced-based conclusions about clinical practice reported that after two years more than a quarter of the conclusions were contradicted by new data, and that nearly half of the 'best practices' were overturned at five years. This shows that guidelines are not gospel from a scientific point of view." We believe guidelines should be just that.

#### **Other**

These few minutes allow us to present only a few of the most important of our concerns. There are many other important matters which will arise and as they do we shall be in touch. But for now, I've spoken long enough. We would like to invite you, our legislators, to address us and to please make an effort to respond to the questions we've asked rather than to speak in broad generalities. Thank you for your participation in this brunch and your attention. ■

Barry Perlman, M.D., is a NYSPA Past-President and current Chair of the NYSPA Committee on Legislation.

## Legislative Brunches continued from page 3

smoking. This information is being collected in an attempt to address the serious health problems that disproportionately affect individuals with serious and persistent mental illness.

The New York City event was concluded with remarks from staff members from the offices of Representative Carolyn Maloney, Senator Shirley Huntley, Senator Kevin Parker, Assemblyman Peter Rivera, and Assemblyman Felix Ortiz.

The Westchester brunch, which took

place the following week, was moderated by Edward Herman, M.D., Legislative Representative for the Psychiatric Society of Westchester. He welcomed New York State Assembly Members Adam Bradley (D-White Plains), Sandy Galef (D-Ossining), George

Latimer (D-Mamaroneck), Amy Paulin (D-Scarsdale), Mike Spano (D-Yonkers) and Westchester County Legislators William Burton and Kenneth Jenkins. Grant Mitchell, M.D., Commissioner of the Westchester County Department of Community Mental Health, also attended the event. The first legislator to address the group was Assemblywoman Amy Paulin, who discussed the Medicaid formulary issue, the sexually violent predator civil confinement program and the corporate



NYC Council Member Gale Brewer



Assemblyman Nick Spano

practice of medicine issue.

Next, Assemblyman Adam Bradley announced that this is the last year he will be attending the legislative brunch as a legislator because he is about to become the next Mayor of the City of White Plains. He congratulated the group on the permanency of

Timothy's Law and indicated his support for adding mental health benefits to the existing Healthy NY program. Assemblyman Bradley addressed the civil confinement program for sexually violent predators and agreed that the focus should be on treatment for offenders within the corrections system rather than placement within the mental health system. Finally, he discussed the lack of treatment and services for those suffering from PTSD and recognized NYSPA's advocacy work on behalf of veterans and others.

Assemblywoman Sandy Galef spoke next, discussing state budget issues, her support for legislation addressing improper treatment of prisoners, and lack of available services for returning veterans and their families. Next, Assemblyman Mike Spano discussed state budget concerns and expressed his support for NYSPA's position regarding the sexually violent predator civil confinement program.



Westchester County Legislators William Burton and Kenneth Jenkins

Assemblyman George Latimer stated that he appreciates attending events like the legislative brunch because it provides him with an opportunity to be educated about issues of concern to his constituents. He discussed the state budget crisis and noted that mental health services are an excellent illustration of the important distinction that should be made between the cost of certain services and the value of those services. Assemblyman Latimer announced that he is hosting a public hearing on state budget issues on Thursday, February 18, 2010 at the Osborn, a senior living community in Rye, and encouraged anyone interested to attend.

Next, Westchester County Legislators William Burton and Kenneth Jenkins addressed the group, discussing the

state budget crisis and the need for enhanced mental health services in New York State prisons. The Westchester event was concluded with remarks from Grant Mitchell, M.D., a psychiatrist who serves as the Commissioner of the Westchester County Department of Community Mental Health. Dr. Mitchell provided an update on the Care Coordination Project, a pilot program aimed at the top users of Medicaid services within the county to provide coordination of care in an attempt to improve outcomes and reduce Medicaid expenditures. To date, the program, which costs only \$170,000 to operate, has saved \$1.8 million in incarceration costs, state hospital costs and Medicaid costs. Because of its marked successes, the Department will be expanding the program for 2010. ■

## MediComment: How To Get Managed Care to Pay You More by Edward Gordon, MD

Older readers of the Bulletin will remember prior columns with this name. When CPT introduced the E/M codes over 15 years ago, I wrote a series of columns to teach the proper use of the codes to members billing for their services. With all the recent coding issues and changes in state and federal laws, I decided to come out of hibernation and offer some new advice.

This column will review my recent experiences with managed care and my efforts, mostly successful, to obtain fee increases from managed care companies. If you never bill insurers, you won't benefit from this column, although you might get some ideas.

### Fee Schedules

Managed care companies operate with "standard" fee schedules. On signing a contract with insurers or their mental health contractors, such as ValueOptions or Magellan, the psychiatrist agrees to accept the attached fee schedule, among other requirements. Be aware that Magellan and ValueOptions fee schedules are among the lowest around. Review your options carefully before signing up with such mental health contractors, as other insurers you contract with may lower your payments if they buy into those networks and their corresponding lower fee schedules.

Thereafter, if things go right, bills are sent to the insurer, and the contracted fee, minus coinsurance and/or deductibles, is received within 30 days, according to New York law. Delayed

payments are subject to an interest payment.

What's wrong with this scenario? There is almost no incentive for the insurer to increase its fee schedule. In addition, inertia on the part of the psychiatrist helps the insurer to maintain its level of underpayment. I discovered that some of the fee schedules in my files hadn't been changed in many years. Although patient copayments and deductibles have been increased, often at an alarming rate, almost none of these funds have gone to pay for physician services. One tendency would be to decide not to accept patients covered by these plans. Most psychiatrists will, however, continue to treat old patients, and often end up building a stable of underpaying patients.

As the active network shrinks, insurers are left with "phantom networks." Patients unable to obtain care frequently complain to the New York State Insurance Department, which publishes an annual table of insurance company complaints, often printed in newspapers. Employers paying for insurance policies expect their employees to be able to get care. Insurers are thus under some pressure to increase fees, in order to provide enough care to reduce complaints and negative press.

How to get your fees increased? It's simple. Just ask. If your patients are upset by their insurer failing to pay for their care, as you must then bill them directly, encourage them to call their employer, their union, or whoever is paying for the policy. Complaints can

be filed with the Insurance Department online at <http://www.ins.state.ny.us/complhow.htm>.

### Negotiating

Here's how to proceed:

1. Review your fee schedules in light of your expenses and draft a "wish list" - what fees would you like to be paid for your standard services. What is the minimum which will allow you to accept new patients from this insurer?
2. Call the 800 number for your insurer and speak to your "Provider Representative." This is harder than it sounds, as these individuals can be difficult to reach and often fail to return telephone calls and emails. Request a copy of the insurer's most recent fee schedule. Speak to the Provider Representative and explain that you want your fees increased or you won't be able to accept and treat their insured. You will likely be told to make a list of the codes you want increased and where to send it. Don't yell at the Reps. It's not their fault. Besides, you need them to navigate the fee process.
3. Prepare a standard letter, keep it simple and polite, explaining your fee requirements, listed by CPT code. Ask for any increase to be retroactive to the date of the request. Since the approval process may take six months, this is important. Mail or fax it on and keep copies and request receipts, either from the post office or from your fax machine. Follow up every couple of weeks. They are slow. Keep a file on your desk on the progress of the

requests and follow up periodically.

4. Repeat for each insurer with which you are contracted.

Overall, when I received increases, most were in the range of 25-30%, depending on the variance from reasonable fees and the length of time since the last increase.

What results can you expect? That depends on your volume of service, the availability of others in your neighborhood who are willing to accept paltry fees, whether you treat a high priority group (e.g., children), as well as the nature of the company you are dealing with.

### Some Examples

From Company A, I received an increase to 110% of their highest published fee schedule, as well as agreement to reimburse me at this increased fee schedule, even for their lowball fee schedules (PPO, etc).

From Company B, I received an increase of fees to "reasonable fees," comparable to those paid to other physicians for E/M codes.

Company C declined to raise my fees. I will follow up again soon.

### Good luck!

Keep NYSPA informed of any problems you may have in getting your fees reviewed and increased, and the outcome of your efforts, successful or otherwise. ■

*Edward Gordon, M.D., a NYSPA Past-President, is currently a member of the Committee on Economic Affairs.*

## Area II Meeting continued from page 1

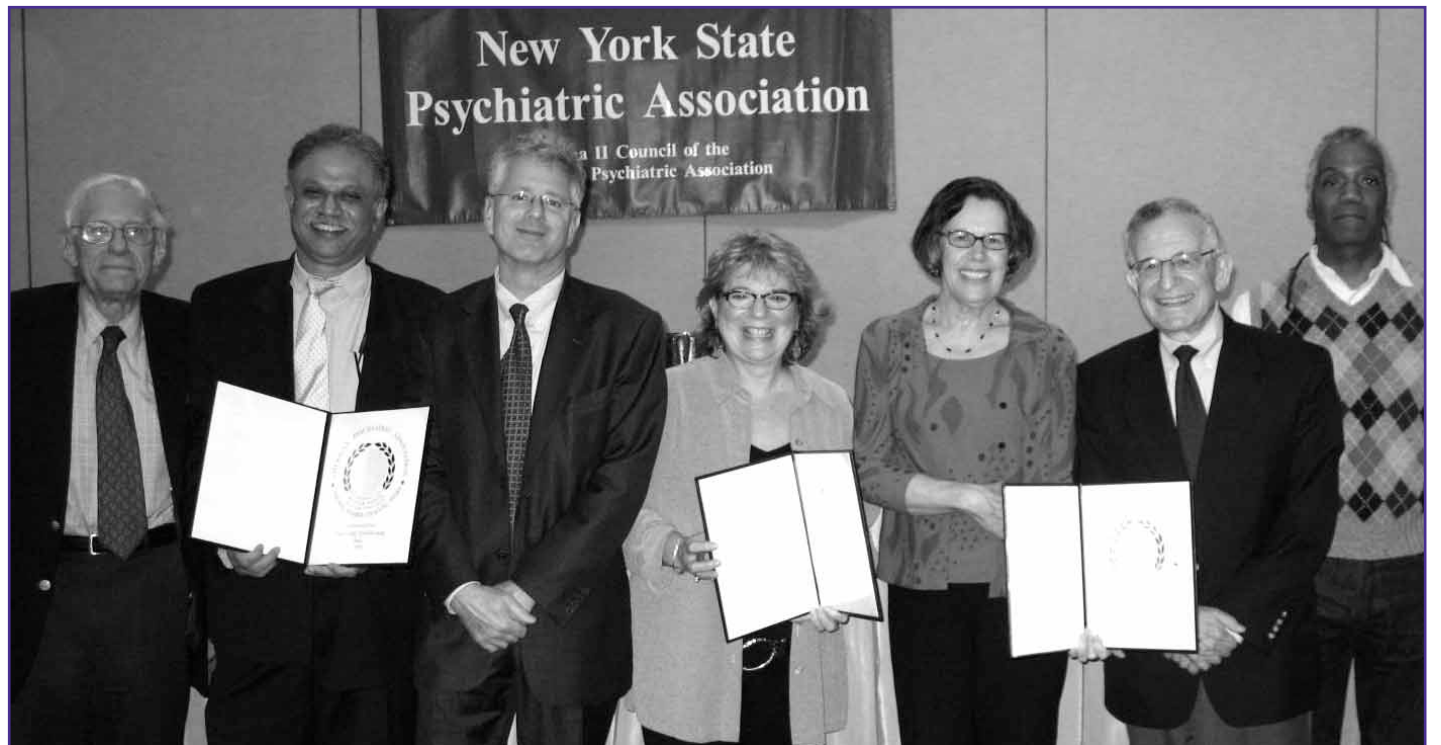
award on behalf of the three district branches. Dr. Cross also recognized Dr. Vivek for his work in establishing the NYSPA Annual Resident Paper Contest which accepts submissions from residents throughout the state.

### Legislative Report

Richard Gallo, NYSPA Government Relations Advocate, reported on the Veterans' Mental Health Training Initiative (VMHTI), a new program jointly sponsored by NYSPA, the National Association of Social Workers (NYS Chapter) and the Medical Society of the State of New York. VMHTI is conducting training sessions for mental health providers on mental health issues affecting returning veterans and their families. Upcoming training sessions will be held at Fordham University in New York City on April 23, 2010, and at SUNY New Paltz, on May 21, 2010.

Mr. Gallo provided an update on Timothy's Law, New York's mental health mandate which became permanent this past summer. The New York State Insurance Department recently issued a Circular Letter addressing how Timothy's Law will be impacted by the new federal parity law. NYSPA expects significant improvements in mental health and substance use disorders benefits for many New Yorkers.

Finally, Mr. Gallo provided an update on NYSPA's efforts to ensure that private insurance carriers process claims from psychiatrists for outpatient evaluation & management services. In response to NYSPA's advocacy, the Insurance Department announced that it plans to issue a Circular Letter on the topic. NYSPA will provide members



(from left) Herbert Peysler, MD; Seeth Vivek, MD; Jeffrey Borenstein, MD; Lenore Engel, MD; Vivian Pender, MD; Henry Weinstein, MD; Kenneth Ashley, MD

Force. NYSPA and other members of the Task Force provided comments on draft regulations and a revised version is now being reviewed by the Governor's Office of Regulatory Reform. In addition, a draft was submitted to all members of the Council for comment and feedback.

### Executive Director's Report

Rachel Fernbach, Esq., NYSPA Associate Executive Director, provided an update on significant changes to the HIPAA privacy and security rules that go into effect on February 17, 2010. No later than February 17, all providers that are subject to HIPAA will need to revise their HIPAA Business Associate

deficit, which will be offset by withdrawals from the reserve fund. In 2010, the APA expects a \$1.4 million deficit. In addition, APA central office plans to lay off some employees in an attempt to reduce costs. Finally, Dr. Nininger presented the Draft Report of the APA Workgroup on Relationships between Psychiatrists and the Pharmaceutical and Medical Device Industries.

### Assembly Update

Gary Weinstein, M.D., Assembly Speaker, and Bruce Hershfield, M.D., Assembly Speaker-Elect, both provided updates on Assembly activities and several cost-reduction and restructuring proposals currently being considered by the Assembly. Assembly Recorder Ann Sullivan, M.D., discussed the restructuring proposals and their potential effect on the functioning of the APA as well as member activity and involvement. Following the reports, the Council discussed issues relating to APA governance.

### OMH Report

Lloyd Sederer, M.D., OMH Medical Director, provided an update on OMH activities, including the clinic reform project, the OMH psychiatrist workforce, prescription of antipsychotics, and proposed budget cuts to clinic and other mental health services.

### Committee on Physician Health

Jeffrey Selzer, M.D., Medical Director for the Committee on Physician Health, addressed the Council. The Committee on Physician Health is a division of the Medical Society of the State of New York that provides non-disciplinary, confidential assistance to medical professionals experiencing problems from stress and difficult adjustment, emotional, substance abuse and other psychiatric disorders, including psychiatric problems that may arise as a result of medical illness. Dr. Selzer provided an overview of the activities of the

Committee and encouraged any NYSPA members who may be interested in providing volunteer evaluation services to contact him.

### Healthy Minds

Jeffrey Borenstein, M.D., provided an update on the Healthy Minds television program, which he hosts. Public response to the program has been extremely positive and the show is now being distributed nationally. Healthy Minds is currently broadcast in the NYC metropolitan area on Channel 13 on

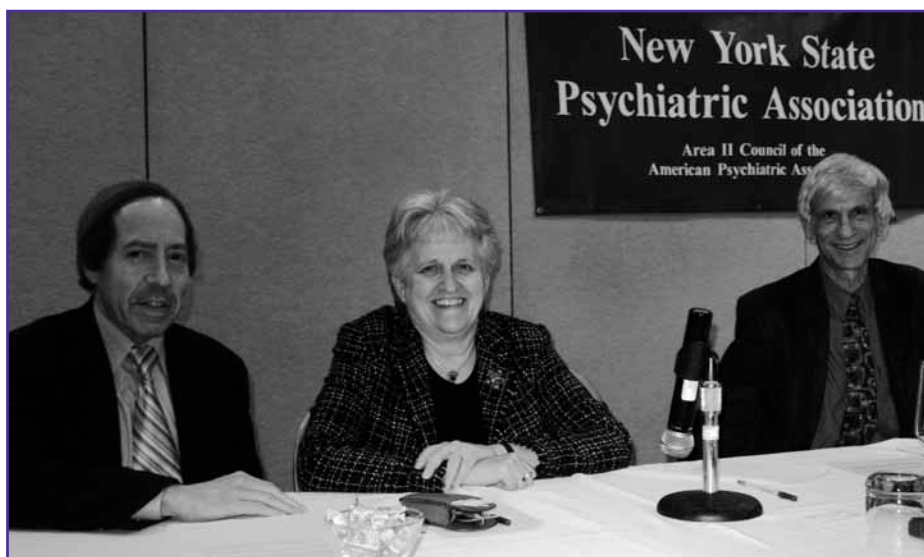


Jeffrey Selzer, MD

Saturdays at 7:00 a.m. and on WLIW 21 on Sundays at 9:30 a.m. and Tuesdays at 11:30 p.m. In addition, the ThinkBright digital public television stations in New York State are broadcasting the series on Tuesdays at 2:00 p.m. and 8:30 p.m.

### Committee Reports

Barry Perlman, M.D., Chair of the NYSPA Nominating Committee, reported that NYSPA will be holding its regular biennial elections for the offices of NYSPA President, Vice-President, Secretary and Treasurer in May 2010. Council members interested in holding an office are encouraged to contact the Nominating Committee. A proposed slate of officers will be presented at the March 2010 Area II Council Meeting. The meeting was concluded with reports from the following NYSPA Committees: Addiction Psychiatry, Children and Adolescents, Economic Affairs, Early Career Psychiatrists, Members-in-Training, and Public Psychiatry. ■



(from left) Gary Weinstein, MD; Ann Sullivan, MD; Bruce Hershfield, MD

with information regarding the Circular Letter as soon as it is made available. Barry Perlman, M.D., Chair of the NYSPA Committee on Legislation, provided an update on recent OMH guidelines on use of ECT in youth and adolescents. In response to the guidelines, NYSPA drafted a letter to Commissioner Hogan's office expressing its concern over many of the guidelines and also forwarded the matter to the APA ECT Advisory Committee. In addition, NYSPA has asked Laura Fochtman, M.D., a NYSPA member with expertise in the use of ECT in youth and adolescents, to prepare a recommended protocol on the topic to be submitted to OMH.

Finally, Dr. Perlman provided an update on the OMH Clinic Restructuring Task

Agreement, HIPAA Notice of Privacy Practices and HIPAA Policies and Procedures. In addition, as of September 23, 2009, HIPAA providers will need to provide written notice to any individuals whose unsecured protected health information is breached by an unauthorized third party. To assist members, NYSPA is preparing new model HIPAA documents that will be posted on the NYSPA website. Finally, Ms. Fernbach provided a brief overview of the new Medicare and Medicaid payment incentive programs for providers who adopt health information technology in their practices.

### Area II Trustee's Report

Area II Trustee James Nininger, M.D., provided an update on APA finances. In 2009, the APA expects a \$1.2 million

## "Catch 22" continued from page 1

lenge OMIG's final determination. An Article 78 proceeding permits a private individual to obtain judicial review of a determination made by a government agency or public official.

The Court found wholly in favor of the psychiatrist, stating that the OMIG's decision not to reinstate the psychiatrist in Medicaid was arbitrary and capricious and in direct conflict with the settlement agreement that had been approved and administered by OPMC. The Court chastised OMIG for making a determination that included no independent investigation or analysis and stated that "the IG's perfunctory refusal

to reinstate petitioner – thus hampering petitioner's return to such employment – was baseless."

The decision of the Court permitted the psychiatrist in question to resume full employment pursuant to the terms of the OPMC settlement agreement.

According to OPMC and the Committee on Physician's Health, this precedent-setting case has already benefited other New York State physicians caught in the same bind, allowing them to move forward with their plans of rehabilitation and return to practice. ■

## Trustee's Report continued from page 2

turers' relationships to psychiatric professional associations. This effort dovetails with the draft report by Dr.

Appelbaum's task force on the relationship of individual practitioners with this industry that has been circulated for comment. Some argue that it is not possible to separate marketing activities from scientific and educational ones and others feel that this separation is feasible and essential. I feel the American Psychiatric Foundation, where I serve as a Board member, can serve as an important vehicle to help define and maintain an ongoing relationship with pharmaceutical companies focusing on joint educational and therapeutic activities benefiting patients and their families.

Regarding other actions coming out of the meeting, the Board of Trustees voted to engage in a comprehensive review and assessment of the current

and recommended role of the subspecialties within the association. The Board approved a request to publish a Task Force report on Complementary and Alternative Medicine in Major Depressive Disorder: Evidence Challenges and Recommendations. Finally, a number of members have inquired about criteria for the Board going into Executive Session as it did in the recent budget discussion, and have requested roll call votes for non-unanimous decisions. Whenever there are divided votes, a Board member may request a roll call vote. I have done this in the past and will do so for any divided votes on substantive issues and request the Secretary include the results in the minutes. I will request the Board review the indications for Executive Session and report back to you in my next column. Please contact me with any concerns and feedback. ■

## NYSPA Brain Bowl Challenge

The NYSPA Members-in-Training Committee is pleased to announce the results of its inaugural Brain Bowl Challenge, an online contest for psychiatry residents, covering a broad range of topics in psychiatry, neurology and general knowledge. Each participating residency program identified two residents to compete in the contest, which was administered online between September 28, 2009 and October 30, 2009.

FIRST PLACE AND A PRIZE OF \$300:

SUNY Upstate Medical University in Syracuse, NY

SECOND PLACE AND A PRIZE OF \$200:

SUNY Downstate Medical Center in Brooklyn, NY

THIRD PLACE AND A PRIZE OF \$100:

St. Vincent's Hospital in New York, NY

Eleven residency training programs throughout the state competed in the competition.



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