WESTCHESTER PHYSICIAN

June 2015 **Volume 30, Issue 6**

PRESIDENT'S MESSAGE
PARTING REMARKS

I would like to thank the WCMS and its members for the opportunity given to me to serve as President of the Society. We have many challenges as a Society, but that is as it always has been. I just seems that our challenges now are more existential; that somehow the very reason for our congress is being questioned and abandoned by those who benefit most from our valuable association as physicians and surgeons. This problem, of decreasing involvement in voluntary associations, is not ours alone but is a societal one and to me disturbing. This is because voluntary associations are at the heart of what it has been and is to be American. It is and has been part of the American DNA since our founding.

Alexis De Tocqueville came to the United States in the 1830s ostensibly to study our prison system, but his real goal was to study the American democratic system. He toured the young republic and wrote of Americans that"

"In the United States, as soon as several inhabitants have taken an opinion or an idea they wish to promote in society, they seek each other out and unite together once they have made contact. From that moment, they are no longer isolated but have become a power seen from afar whose activities serve as an example and whose words are heeded."

Tocqueville's own assessment of voluntary association is as follows:

"Among the laws that rule human societies there is one which seems to be more precise and clear than all others. If men are to remain civilized or to become so, the art of associating together must grow and improve in the same ratio in which the equality of conditions is increased."

I believe that De Tocqueville's observations still ring true and that associations like WCMS carry the community wisdom necessary to attain the greater good.

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LOUIS F. MCINTYRE, MD
President, WCMS

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August 8, 2015

Academy Golf Outing
Westchester Country Club
Rye, NY
October 8, 2015

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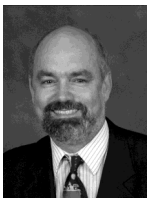
FROM THE EDITOR…

CUBA - PART TWO

PETER J. ACKER, MD



I tried to set the stage in last month's column by outlining my ties to the Hispanic world. Now I will describe my trip there. I signed up for this trip more than a year ago, long before December's events signaling the beginnings of a rapprochement between the United States and Cuba. It made our getting there much easier as we were able to fly directly from Miami to Cuba as opposed to going via Toronto or Mexico City.

Our group consisted of about thirty, all either alumni or the spouse of an alumni of Oberlin College. It was with palpable excitement that we traversed the short distance from Miami to Havana. After passing through customs, we boarded a bus and began to soak up our first impressions. Immediately, we became aware of the numerous vintage cars from the '50s filling the highways. I am not a care person, but I could not help gawking at the shiny old American cars - all appeared to be maintained in mint condition - indeed a common sight by the side of the road was a car with its owner lovingly cleaning the hood with a large rag. The other first impression was the architecture, a lot of it from colonial times, some in states of great disrepair, but others with scaffolding and signs of extensive restoration.

Our week was packed with activities such as lectures, musical performances, art exhibits, walking tours, and even a visit to Havana's only synagogue. Space does not allow me to give an exhaustive account, so I will try to describe a few of my personal highlights.

We toured the University of Havana with a Cuban professor of US History, Dr. Raul Rodriquez. It is a venerable institution, one of the first in the new world, having been established in 1728 by Spain in an effort to compete with Harvard (1636) and Yale (1701). Its long history is evident in the art work and some of its architecture and is mixed with very modern and well-maintained buildings, which bespeaks the priority that the Cuban government places on education. Education is entirely free, from preschool to graduate school, and Cuba possesses a near 100% literacy rate. Medical care is also entirely free and by all accounts, the medical system is quite sophisticated and includes high tech procedures such as heart transplants. In addition, Cuba has a tradition of engaging in international medical relief work. The Cuban team that provided relief in Africa during the Ebola outbreak was larger than that of any other country. As is well known, Che Guevara was a physician and also a witness to the abject poverty of rural South America and may explain some of the early emphasis after the revolution on rural medicine, which is still the backbone of the Cuban medical system. Its success is evident in the public health metrics such as life span and infant mortality that rival those of many developed countries.

After our tour, we sat down to listen to Dr. Rodriquez lecture on Cuban-American relations. He set the tone right from the beginning by stating

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IN MEMORIAM

Robert L. Soley, MD

1935 - 2015

WCMS Past President

PRESIDENT'S MESSAGE *(continued from page 1)*

This year we have said goodbye to the extraordinary executive leadership performed by Brian Foy and assisted by his lovely wife and right hand, Karen. We wish Brian and Karen all the best in his new role as Executive Director of the West Virginia State Medical Association. We say hello to new and steady leadership from Executive Director Janine Miller and her administrative assistant, Kalli Voulgaris. We continue to enjoy the excellent help of Rhonda Nathan. Our Board is committed and our leadership strong with Dr. Tom Lester taking the helm as President and Dr. Gino Bottino as President-elect.

One year is not enough time to ensure the health and vitality of associations that while old and venerable are still uncomfortably fragile. We all therefore must continue to be involved and support the WCMS; to continue its essential mission of advocating for the patients and physicians of Westchester County and New York State.

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CHANGES TO THE MEDICARE OPT-OUT LAW FOR PHYSICIANS AND PRACTITIONERS

Prior to enactment of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA), physician/practitioner opt-out affidavits were only effective for two years. As a result of changes made by MACRA, valid opt-out affidavits **signed on or after June 16, 2015**, will automatically renew every two years. If physicians and practitioners that file affidavits effective on or after June 16, 2015 do not want their opt-out to automatically renew at the end of a two year opt-out period, they may cancel the renewal by notifying all Medicare Administrative Contractors with which they filed an affidavit in writing at least 30 days prior to the start of the next opt-out period. Valid opt-out affidavits signed before June 16, 2015, will expire two years after the effective date of the opt out. If physicians and practitioners that filed affidavits effective before June 16, 2015 want to extend their opt out, they must submit a renewal affidavit within 30 days after the current opt-out period expires to all Medicare Administrative Contractors with which they would have filed claims absent the opt-out.

Westchester Academy of Medicine 2015 Golf Outing & Fundraiser

Thursday, October 8, 2015
Westchester Country Club
99 Biltmore Avenue
Rye, NY 10580

Save the Date…More Information Available Soon!

CUBA - PART TWO *(continued from page 2)*

that it was important to note that Cuban-American relations have never been good. A lot of this was because the great disparity of size wealth between the two countries and the early history of the struggle for dominance between the United States and Spain in the late 1800s with Cuban being a pawn in the middle. The Spanish-American War is know as the Spanish-*Cuban*-American War by Cubans and this difference speaks to the Cuban resentment of the dominance of huge countries over its dominion. However, he said there is a studied excitement about the future of relations given the recent events. The leadership, he said, has been aware for some time of the many ways their current systems simply do not work and there are moves to slowly reincorporate free enterprise. They want to do this in a careful, measured way and while excited about the economic possibilities of better relations, they have trepidations about the possibility of complete dominance and being culturally overrun.. As he stated, we do not need or want a McDonalds on every corner.

I am realizing that I have covered just one stop on my trip and am out of space...looks like there will be a Cuba - Part Three next month!

Westchester County Medical Society
Westchester Academy of Medicine

Annual Member Pool Party & BBQ

Saturday, August 8, 2015 1-5 PM

At the home of Drs. Kira & Robert Ciardullo
135 Osborn Road, Harrison, NY

You and your family are invited to spend an afternoon of fun and fellowship with WCMS Members, Colleagues and their families. Bring your bathing suits and towels—don't forget the sunscreen!

Food and beverages will be provided. Invite a non-member or colleague to join us.

Please RSVP to Kalli Voulgaris
email: kvoulgaris@wcms.org fax: 914-967-9232

CMS and AMA Announce Efforts to Help Providers Get Ready For ICD-10

With less than three months remaining until the nation switches from ICD-9 to ICD-10 coding for medical diagnoses and inpatient hospital procedures, The Centers for Medicare & Medicaid Services (CMS) and the American Medical Association (AMA) are announcing efforts to continue to help physicians get ready ahead of the October 1 deadline. In response to requests from the provider community, CMS is releasing additional guidance that will allow for flexibility in the claims auditing and quality reporting process as the medical community gains experience using the new ICD- 10 code set.

Recognizing that health care providers need help with the transition, CMS and AMA are working to make sure physicians and other providers are ready ahead of the transition to ICD-10 that will happen on October 1. Reaching out to health care providers all across the country, CMS and AMA will in parallel be educating providers through webinars, onsite training, educational articles and national provider calls to help physicians and other health care providers learn about the updated codes and prepare for the transition.

"As we work to modernize our nation's health care infrastructure, the coming implementation of ICD-10 will set the stage for better identification of illness and earlier warning signs of epidemics, such as Ebola or flu pandemics." said Andy Slavitt, Acting Administrator of the Centers for Medicare and Medicaid Services. "With easy to use tools, a new ICD-10 Ombudsman, and added flexibility in our claims audit and quality reporting process, CMS is committed to working with the physician community to work through this transition."

"ICD 10 implementation is set to begin on October 1, and it is imperative that physician practices take steps beforehand to be ready," said AMA President Steven J. Stack, MD. "We appreciate that CMS is adopting policies to ease the transition to ICD-10 in response to physicians' concerns that inadvertent coding errors or system glitches during the transition to ICD-10 may result in audits, claims denials, and penalties under various Medicare reporting programs. The actions CMS is initiating today can help to mitigate potential problems. We will continue to work with the administration in the weeks and months ahead to make sure the transition is as smooth as possible."

The International Classification of Diseases, or ICD, is used to standardize codes for medical conditions and procedures. The medical codes America uses for diagnosis and billing have not been updated in more than 35 years and contain outdated, obsolete terms.

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CMS and AMA Announce Efforts to Help Providers Get Ready For ICD-10

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The use of ICD-10 should advance public health research and emergency response through detection of disease outbreaks and adverse drug events, as well as support innovative payment models that drive quality of care.

CMS' free help includes the "Road to 10" aimed specifically at smaller physician practices with primers for clinical documentation, clinical scenarios, and other specialty-specific resources to help with implementation. CMS has also released provider training videos that offer helpful ICD-10 implementation tips.

The AMA also has a broad range of materials available to help physicians prepare for the October 1 deadline. To learn more and stay apprised on developments, visit AMA Wire.

CMS also detailed its operating plans for the ICD-10 implementation. Upcoming milestones include:

- Setting up an ICD-10 communications and coordination center, learning from best practices of other large technology implementations that will be in place to identify and resolve issues arising from the ICD-10 transition.
- Sending a letter in July to all Medicare fee-for-service providers encouraging ICD-10 readiness and notifying them of these flexibilities.
- Completing the final window of Medicare end-to-end testing for providers this July.
- Offering ongoing Medicare acknowledgement testing for providers through September 30th.
- Providing additional in-person training through the "Road to 10" for small physician practices.
- Hosting an MLN Connects National Provider Call on August 27th.

In accordance with the coming transition, the Medicare claims processing systems will not have the capability to accept ICD-9 codes for dates of services after September 30, 2015, nor will they be able to accept claims for both ICD-9 and ICD-10 codes.

Also, at the request of the AMA, CMS will name a CMS ICD-10 Ombudsman to triage and answer questions about the submission of claims. The ICD-10 Ombudsman will be located at CMS's ICD-10 Coordination Center.

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News on medical-legal developments affecting physicians and health care professionals from WCMS General Counsel Kern Augustine Conroy & Schoppmann, P.C.

OIG Issues Fraud Alert Concerning Physician Contacts that Violate the Anti-Kickback Statute

The Department of Health & Human Services' Office of Inspector General recently issued a fraud alert on the heels of a dozen recent settlements involving physician contracts. The alert likely indicates that the OIG is increasingly pursuing allegations against individual doctors, not just hospitals and ACOs. The alert warns doctors entering into payment arrangements, such as medical directorships, that their compensation must reflect fair market value for services provided. It is common for doctors to be employed by hospitals and other organizations as medical directors, but those arrangements might violate the anti-kickback law when their purpose is to get more referrals from those doctors, according to the alert. The anti-kickback law prohibits the exchange of money for referrals involving federal healthcare dollars. The alert states that "although many compensation arrangements are legitimate, a compensation arrangement may violate the anti-kickback statute if even one purpose of the arrangement is to compensate a physician for his or her past or future referrals of federal healthcare program business." This alert is the third in three years involving physicians. In 2013, the OIG issued a fraud alert about physician-owned device distributorships, and in 2014, it issued a fraud alert about lab payments to physicians.

Walgreens Pushing Expansion of Telemedicine

Walgreens, the nation's largest drugstore chain, expects to reach about half the country by the end of the year with a new telemedicine service that lets people see doctors for minor ailments without leaving the home or office. Walgreens hopes to achieve this by expanding a smartphone application it started testing last December to tablets and personal computers, and plans to make it available in 25 states. The growth comes as major insurers started covering telemedicine visits. For instance, UnitedHealth Group started covering earlier this year telemedicine visits for about a million people with employer-sponsored health plans and expects to expand that to 20 million customers next year. The American Telemedicine Association estimates that about 450,000 patients will see a doctor through a secure internet connection this year for a primary care consultation. The telemedicine apps aim to offer even more convenience by providing care wherever the patient is located and around-the-clock access to

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LEGAL CORNER *(continued from page 12)*

doctors who diagnose and treat conditions like allergies, a sinus infection or pick eye that do not require a physical examination. Walgreens said the doctors in its program are trained to quickly determine whether a patient needs more care than they can provide during a virtual visit.

New Labor Law Protects Health Care Professionals Volunteering Overseas to Fight Ebola

Labor Law 202-m, which became effective on May 13, 2015, provides that a health care professional who volunteers to fight Ebola overseas is protected by existing state laws prohibiting discrimination on the basis of actual or perceived disability. The law applies to both public and private employers, and defines "health care professionals" to include licensed physicians, physician assistants, nurse practitioners and registered professional nurses. The statute authorizes the Commissioner of Labor to promulgate regulations adding other healthcare professions. Upon return from fighting Ebola overseas, a health care professional must be provided with a bill of rights (the statute does not define whether this will be provided by the employer or the Department of Labor; this will likely be addressed in a regulation) outlining the discrimination laws. In addition to prohibiting discrimination, the statute provides that a health care professional has a right to seek a leave of absence to fight Ebola overseas without adverse employment consequences. The leave of absence will be unpaid, unless the employee requests that such time, or portion thereof, be charged against accrued paid leave. An employer is required to grant the request for leave unless the employee's absence would impose an "undue hardship" on the employer, which means the employee's absence would cause significant expenses or difficulty, including a significant interference with the safe or efficient operation of the workplace or a violation of a *bona fide* seniority system. If an employer determines a requested leave of absence would constitute an undue hardship, the employer must work with the employee to determine whether a shorter leave would not cause such hardship. The request must be in writing and provided to the employer a least twenty-one days prior to the proposed start date of the leave. Employees who take leave must be restored to the same or comparable position without loss of seniority upon return from overseas. The Department of Labor is required to issue regulations to carry out the law, but to date has yet to issue regulations.

If you have any questions, please contact KACS Managing Partner Michael J. Schoppmann, Esq. at 1-800-445-0954 or via email at MSchoppmann@DrLaw.com.

OPMC Reporter

PHYSICIAN FOUND GUILTY OF ABANDONMENT AND NEGLECT OF MULTIPLE PATIENTS

A physician recently received an indefinite license suspension for a period of no less than twelve months, after which the physician may petition for a modification order staying the suspension. The physician was found to have abruptly stopped seeing patients at his medical practice while simultaneously failing to make reasonable arrangements for the continuation of medical care to multiple patients who were in need of immediate care, including the ordering of medications and communication of lab results. The physician was also found to have failed to forward patients' medical records to their new medical providers despite many requests and/or attempts to have them forwarded.

GROSS NEGLIGENCE ON MORE THAN ONE OCCASION; GROSS INCOMPETENCE ON MORE THAN ONE OCCASION; HARASSING, ABUSING OR INTIMIDATING A PATIENT; MORAL UNFITNESS; HIPAA VIOLATIONS AND FAILING TO MAINTAIN RECORDS

The physician agreed he could not successfully defend against at least one of the charges alleging gross negligence; gross incompetence; negligence on more than one occasion; incompetence on more than one occasion; harassing, abusing or intimidating a patient physically or verbally; engaging in moral unfitness; failing to maintain accurate patient records and revealing personally identifiable facts, data or information without the prior consent of the patient. The investigation focused on the treatment of multiple patients of the physician psychiatrist that raised a number of serious concerns to OPMC. As a result, OPMC suspended the physician's license for six (6) months. The physician must also obtain a clinical competency assessment prior to the reinstatement of his license confirming his fitness to return to practice. The physician will also be on probation for thirty-six (36) months after the suspension has been lifted.

GROSS NEGLIGENCE ON MORE THAN ONE OCCASION; GROSS INCOMPETENCE ON MORE THAN ONE OCCASION; HARASSING, ABUSING OR INTIMIDATING A PATIENT; MORAL UNFITNESS; HIPAA VIOLATIONS AND FAILING TO MAINTAIN RECORDS The physician agreed he could not successfully defend against at least one of the charges alleging gross negligence; gross incompetence; negligence on more than one occasion; incompetence on more than one occasion; harassing, abusing or intimidating a patient physically or verbally; engaging in moral unfitness; failing to maintain accurate patient records and revealing personally identifiable facts, data or information without the prior consent of the patient. The investigation focused on the treatment of multiple patients of the physician psychiatrist that raised a number of serious concerns to OPMC. As a result, OPMC suspended the physician's license for six (6) months. The physician must also obtain a clinical competency assessment prior to the reinstatement of his license confirming his fitness to return to practice. The physician will also be on probation for thirty-six (36) months after the suspension has been lifted.

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