



Winter 2007

PNS NEWS

Pennsylvania Neurosurgical Society in Association with Mid-Atlantic Neurosurgical Society

President's Report

Raymond C. Truex, Jr., MD, FACS, President



This has been my 32nd year in the practice of Neurosurgery; during my resident years, before the CT scan was introduced, pneumoencephalography was a standard diagnostic tool.

From this perspective, I continue to be amazed at the advancements in neurosurgical technology, such as stereotaxic radiosurgery, MR spectroscopy, DTI imaging, disc prostheses, targeted molecular treatments for CNS malignancy, minimally invasive surgeries, and many other examples of how our frontier is rapidly moving forward. From a scientific standpoint, these are exciting times to be a neurosurgeon.

I wish that Pennsylvania's judicial and reimbursement systems were as progressive and innovative, but alas they are not. We continue to lack limitation on pain and suffering tort awards, and the proposed Highmark-IBC merger, if approved, will complete the formation of an unprecedented monopoly, putting physicians in a position of greater disadvantage with regard to reimbursement for services. Increasingly, the private practice of neurosurgery is, out of financial necessity, giving way to hospital system employment. From a socio-economic standpoint, these are terrible times to be a neurosurgeon.

During the last year, the PNS has been a participant in discussions with the Governor's Office and staff regarding the Mcare Fund. So far, we have been successful in maintaining the Mcare Fund 100% abatement for neurosurgeons, but that abatement continues to face challenges, and we are enlisting the cooperation of all the high risk specialties in opposing any rise in Mcare Fund premiums.

I wish to express my gratitude to the many individuals who have worked so tirelessly to make our Society function. Michele Gaiski, our executive, has been 100% responsive to our requests, and proactive in recognizing issues and formulating solutions. Thanks too to our Meeting Manager, Jessica Winger, for her expertise in synthesizing our annual PNS meeting, and to our Assistant Executive, Nicole Barry, for her skills (and patience) in publishing this newsletter.

For the past two years, our Annual Meeting at The Hotel Hershey has proved to be extremely successful in terms of both scientific content and fiscal integrity. I extend to Kevin Cockcroft my gratitude for organizing an outstanding scientific program these past two meetings, and recognize also the other members of the program committee. We have decided to continue holding the Annual Meeting at The Hotel Hershey in the month of July, and William Welch, our incoming Program Chair, has already started to lay the

Thank you for your support...

The Pennsylvania Neurosurgical Society wishes to thank and acknowledge the following organizations for supporting our 2007 Annual Scientific Meeting:

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Pennsylvania
Neurosurgical Society

President

Raymond C. Truex, Jr., MD
Spine and Brain Neurosurgery Center
601 Spruce Street
West Reading, PA 19611-1443
(610) 375-4567
Fax (610) 375-1203

President-Elect

Eric L. Zager, MD
Hospital of the University of Pennsylvania
3400 Spruce Street
Philadelphia, PA 19104-4208
(215) 662-3497
Fax (215) 349-5534

Secretary-Treasurer

Eric M. Altschuler, MD
Pittsburgh Neurosurgery Assoc.
1501 Locust Street, Suite 224
Pittsburgh, PA 15219-5128
(412) 471-4772
Fax (412) 471-0659

Immediate Past President

Daniel M. Bursick, MD
Pittsburgh Neurosurgery Assoc.
1501 Locust Street, Suite 224
Pittsburgh, PA 15219-5128
(412) 471-4772
Fax (412) 471-0659

Historian

Robert M. Jaeger, MD

Councilors

Kevin M. Cockroft, MD
M. Sean Grady, MD
Robert E. Harbaugh, MD
Paul J. Marcotte, MD
Ashvin T. Ragoowansi, MD
William C. Welch, MD

Newsletter Editor

Bruce L. Wilder, MD, MPH, JD
Clinical Neurosciences, Ltd.
436 Seventh Avenue, Suite 1050
Pittsburgh, PA 15219-1826

(412) 683-6015
Fax (412) 683-6430
bwild@interprofessional.com

Executive Director

Michele Gaiski
777 East Park Drive, PO Box 8820
Harrisburg, PA 17105-8820
(717) 558-7750, ext. 1515
or (717) 909-2682
Fax (717) 558-7841
mgaiski@pamedsoc.org

Opinions expressed in this newsletter do not necessarily reflect the Society's point of view.

OIG Says On-Call Coverage Compensation Creates Fraud and Abuse Risk for Physicians

Courtesy of Karen Zupko & Associates

While acknowledging that there are legitimate reasons to pay physicians for on-call coverage, the Office of Inspector General (OIG) in a recent advisory opinion on September 20, 2007, stated that on-call coverage compensation could violate the anti-kickback laws. According to the OIG, payments for on-call coverage can be used to disguise unlawful remuneration.

What does this likely mean for physicians? Physicians receiving compensation for hospital on-call coverage must review their on-call compensation arrangements with experienced health care legal counsel to assure that the compensation is fair market value for actual and necessary items or services and not determined in any manner that could be construed by the OIG as payment for referrals. Each on-call coverage arrangement must be evaluated based on the totality of the facts and circumstances.

We asked health care attorney, Patricia Hofstra, JD to provide specifics:

“Physicians can not assume that on-call coverage compensation arrangements drafted by the hospital will pass muster with the OIG. The ‘hospital said it was OK’ defense will not work. Physicians and hospitals will both be prosecuted for problematic on-call coverage compensation arrangements and subject to civil and criminal liability.”

According to Hofstra, the OIG has identified four problematic compensation structures. These include:

- 1) Lost opportunity payments
- 2) Compensation where no identifiable services are provided
- 3) Aggregate on-call payments that are disproportionately high compared to the physician’s regular medical practice income
- 4) Payment structures where the physician receives on-call compensation and reimbursement from the patient or insurer

If you receive on-call coverage compensation or plan to seek on-call coverage compensation in the future, work with experienced legal counsel to assure that the compensation arrangement complies with all legal and regulatory requirements both on paper and in actual practice.

Editor’s Note: The full text of OIG Advisory Opinion 07-10 can be found at http://www.neurosurgeon.org/advocacy/wc/pdf/OIGAdvisoryOpinionRECallStipends_20071001.pdf

Dues Reminder

Dues statements for 2008 have been mailed. Do your part to prevent future dues inflation, encourage your colleagues to join the Pennsylvania Neurosurgical Society. For more information, contact the PNS staff at (717) 558-7750 ext. 1515.

Of Chocolate, Trauma and iPods:

News from the PNS 2007 Annual Scientific Meeting, Hershey, PA

by Kevin M. Cockroft, MD, MSC, Annual Scientific Meeting Program Chair

With over 80 registrants, our 2007 annual scientific meeting was the largest gathering of Pennsylvania neurosurgeons in PNS history. Our theme this year was neurosurgical emergencies and trauma. Honored guest Dr. Steven Giannotta, Chair of the Department of Neurological Surgery at the University of Southern California and current head of the Neurosurgery Residency Review Committee of the ACGME, started the meeting out with an enlightening discussion of some of the complex



issues involved in the training of neurosurgical residents. For the remainder of the morning, experts from around the state reviewed current issues in the

management of various cranial neurosurgical emergencies. Dr. Jack Wilberger, Chair of Neurosurgery at Allegheny General Hospital and former Chair of the Joint AANS/CNS Neurotrauma Section, spoke on the state of neurosurgical trauma care in Pennsylvania, while other diverse topics included pediatric abusive head injury, hypothermia in the neurosurgical ICU and the use of brain tissue oxygenation monitoring. Friday's afternoon session focused on spinal emergencies in particular, including a presentation on the burgeoning field of spinal radiosurgery.

Saturday's morning abstract session featured 32 oral and poster presentations. This year three President's Awards were given. Dr. Hugh Moulding of Thomas Jefferson University won the best clinical science award for a presentation entitled "Revisiting Anaplastic Astrocytomas—Differences in Growth Pattern Convey Prognostic Significance," and Dr. Elias Rizk from Penn State Hershey Medical Center won best laboratory science presentation for two reports based on his work on the role of folic acid and the folate receptor in central nervous system injury. Both presenters took home checks for \$500.00. The award for best poster went to Dr. Gregory Heuer of the University of Pennsylvania for his work entitled "Use of a Catheter System for Drainage of Chronic Subdural Hematomas."

Attendees were again overwhelmingly pleased with The Hotel Hershey's facilities and its central, mid-state location. Events ran smoothly thanks to the careful planning and diligent efforts of Jessica Winger, PNS Meeting Manager, and Michele Gaiski, PNS Executive Director. This year, we hosted 23 exhibitors of various neurosurgical products and services. Special thanks are due



in particular to Boston Scientific Neurovascular, Integra Life Sciences Corporation, Synthese Spine and Penn State Milton S. Hershey Medical Center for their generous educational grants. In an effort to increase exhibitor-physician interaction, a video iPod was raffled off to those who



visited all of the exhibits. Although current PNS officers were not eligible to win, our final winner turned out to be none other than former PNS president, Dr. Brian Holmes.

Planning is already underway for the 2008 meeting to be held July 11-12, at The Hotel Hershey. Dr. William Welch of the University of Pennsylvania will take over as the new program chair and I am sure that we can anticipate another thought-provoking and educational meeting. On behalf of the Annual Meeting Planning Committee,



we invite you to join us again for some fellowship, food and fun...not to mention a few CME credits. A call for abstracts will go out in January and registration materials will be mailed in early April. On-line registration will be available again this year, along with traditional paper materials.

Pennsylvania Medical Society:

There's Still Work to be Done on Medical Liability

The following is a statement from Peter S. Lund, MD, president of the Pennsylvania Medical Society, in response to Governor Rendell's press conference on Oct. 24, 2007, regarding the medical liability climate. Dr. Lund is a practicing urologist from Erie, Pa.

Pennsylvania's medical liability climate for both physicians and patients does show some signs of improvement. But at the same time, the data also suggest there's still a long way to go.

The statistics cited by Governor Rendell today at his press conference in Philadelphia for the most part were positive. The trends he cited confirm that, as the Pennsylvania Medical Society said sev-

eral years ago, lawsuit abuse reforms do work. Based upon the good news from the Governor, each step in tort reform does help. The Pennsylvania Medical Society applauds these past steps and the efforts of our legislature and governor.

However, while incremental reform measures taken through Act 13 of 2002 and the Pennsylvania Supreme Court are gradually reversing some trends within the state, Pennsylvania still finds itself in an unfavorable position when compared to other states. Ultimately, this unfavorable position hurts efforts to recruit the best and brightest physicians to Pennsylvania. And this is happening at a critical point—when the number of elderly in our state is increasing rapidly as the baby boomer generation ages. The Pennsylvania Medical Society is particularly concerned that the number of physicians in Pennsylvania that Governor Rendell cited has been flat in recent years as health care demand has increased.

And, there are some other statistics concerning the medical society. For example:

- Pennsylvania's average physician liability payout is 60 percent higher

than average payouts in the rest of the nation.

- In Pennsylvania, per capita physician liability payouts are slightly more than double the U.S. average.

As the Governor stated, there's some good news in some statistics. We're glad to hear past tort reforms are addressing certain lawsuit abuse issues.

But, other statistics such as flat levels of physician supply suggest there's still work to be done.

The Pennsylvania Medical Society suggests that, in order to plan for the future of our commonwealth, we must find answers to the bigger question: Why is Pennsylvania so much higher than other states in payout averages? Most likely, the answer is related to the fact that Pennsylvania allows the sky to be the limit on non-economic awards.

That seems to be the next area of lawsuit abuse reform that needs to be fixed.

Editor's note: An account of Governor Rendell's remarks can be found at http://www.mcall.com/news/nationworld/state/all-a13_malpractice.6107433oct25,0,5554563.print.story.

PNS New Members

November 1, 2006 –
November 2, 2007

Active

Jonathan B. Bellotte, MD
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Howard B. Levene, MD, PhD
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Neil R. Malhotra, MD
Philadelphia, PA

Stephen M. Pirris, MD
Pittsburgh, PA

Plan to Join Us for the 2008 Annual Scientific Meeting

William C. Welch, MD, Program Chair

The 2008 Annual Scientific Meeting, entitled "Neurosurgery of the Future," will feature presentations discussing the delivery of neurosurgical care in the 21st century. Topics include OR's of the future, neuromodulation for common diseases, advances in neuroimaging, resident training of the future, and others. **The meeting will be held on July 11-12 at The Hotel Hershey.**

Editorial: The Dream of Universal Health Care

Pushing 60 and No Place to Go

Bruce L. Wilder, MD, MPH, JD, Editor



From the time I was a little boy, I can remember, and still see, what it is like for doctors to treat people who can't pay for their health care, and what it was like for those patients. I can also remember discussions about universal health care, and "socialized medicine" from that time to the present. My father was a general practitioner in a small town in New Hampshire. My mother thought Harry Truman was practically the devil incarnate and sincerely believed that his proposed system of universal health care was "socialized medicine," and that it would take food off our table.

Recall that when Medicare was introduced in 1965, the AMA called it a "cruel hoax." More recently, Bush's outrageous veto of SCHIP, is looked

upon by most observers as pandering to those who fear a creep toward "socialized medicine."

Whether one equates "socialized medicine" with universal health care should not be the focus of our discussions in 2007. If one looks at the state of medicine today, it should be all too clear that the marketplace and the private sector have failed. Of course, an argument will be made that it is government regulation that is responsible for that failure. Yet, it is difficult to understand how the Byzantine regulatory environment that pervades all of medicine today could have arisen at all, if the marketplace had worked. In any event, the evidence of this failure is abundant: 40 million uninsured, and many more underinsured; inattention to patient safety (the relatively recent initiatives are arguably beginning to show success only because of govern-

mental involvement, including support for private initiatives); a tort system that is highly inefficient, both as a tool for error prevention and for equitable compensation of patients injured as a result of medical errors; a reimbursement system that provides incentives for high-tech and sophisticated care at the expense of preventive programs and comprehensive primary care; and the list goes on.

The change to universal health care is not going to be easy. Major barriers include huge moneyed interests that see it as a threat, including, the pharmaceutical industry, insurers (including HMOs, the Blues, workers' compensation carriers, indemnity companies, and medical professional liability carriers), and all the ancillary industries, including a bureaucracy, that feeds off coverage disputes, issues of reimburse-

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Scope of Practice Debate Heats Up:

Physicians Working to Protect Patient Safety and Quality of Care

The Pennsylvania Medical Society has several serious concerns regarding proposed regulations to expand the scope of practice of certified registered nurse practitioners (CRNPs). The Pennsylvania Medical Society is developing a comprehensive action plan, in collaboration with several specialties, to comment on the regulations and spur grassroots physician action.

Individual physician responses to the proposed regulations will be critical at

several points throughout the regulatory process, which is now in its beginning phase and may take as long as two years. Specialty specific scenarios illustrating how changes in CRNP oversight would potentially affect patient safety and patient care issues will be particularly useful.

Legislation signed into law in July makes relatively modest changes in the scope of practice of CRNPs, and most importantly, maintains the collaborative agreement between physicians and

nurse practitioners, and does not authorize independent practice models. The Pennsylvania Medical Society and the CRNPs reached a compromise on the legislation after weeks of intense negotiations.

However, in the midst of the negotiations, the State Board of Nursing announced that it was preparing to finalize draft CRNP practice regulations, almost five years after legislation passed giving the Board of Nursing

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Scope of Practice

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sole authority to regulate CRNPs. The proposed regulations would remove the ratios of physicians to CRNPs and expand a CRNP's authority to prescribe scheduled drugs. Prior to December 2002, licensing authority over prescribing CRNPs was held jointly by the State Board of Medicine and the State Board of Nursing.

Those draft regulations were adopted by the State Board of Nursing in late July 2007, and are now moving through the regulatory process. The regulations are currently under review by the Department of State.

The Pennsylvania Medical Society has several serious concerns regarding the proposed regulations and potential adverse effects they may have on patient care, and is developing a comprehensive plan, in collaboration with several specialties, to comment on the regulations and spur grassroots physician action. The Pennsylvania Medical Society's concerns include:

- 1) lack of essential elements for collaboration, as required by law;
- 2) insufficient requirements for collaborating physician and CRNPs to be in the same specialty;
- 3) lack of restrictions on prescribing of controlled substances;
- 4) broadly defined tasks that are beyond CRNP education or training or are restricted otherwise by law;
- 5) removal of notification and identification requirements necessary for patients to make informed choices regarding their health care providers;
- 6) removal of the health care facility policy committee requirement; and
- 7) apparent lack of coordination with physician licensing boards when the regulations were drafted.

To assist in developing an objective, fact-based response to the various elements of the proposed regulations, the Pennsylvania Medical Society, with the assistance of several specialty societies, formed an expert panel of physicians who interface routinely with CRNPs in the delivery of health care services. A report on the findings of individual interviews with these physicians is being finalized.

The regulatory process: How you can make a difference

Individual physician responses to the proposed regulations will be critical at several points throughout the regulatory process. Specialty specific scenarios illustrating how changes in CRNP oversight would potentially affect patient safety and patient care issues will be particularly useful.

The regulatory process differs greatly from the legislative process. It can take up to two years before a regulation is finally promulgated. To be effective in providing input to legislators and regulatory bodies on a regulatory issue, it's important to understand the differences. Important points in the process when physicians can take action are as follows:

First, the regulation is drafted by a state agency (in this case, the Board of Nursing) and undergoes internal review. Then it is given to the Attorney General (AG), who has 30 days to approve or disapprove. It is then given to the Independent Regulatory Review Committee (IRRC), the House and Senate committees (professional licensure) and published in the Pennsylvania Bulletin, beginning the 30-day public comment period.

Action: The Pennsylvania Medical Society and specialties will contact the AG and IRRC, and write letters to legislative committees, possibly requesting hearings. Grassroots physician organizations and individuals can send letters to the nursing board expressing their concerns, and contact their legislators.

Second, legislative committees may submit comments, recommendations, and objections at any time prior to submission of the regulation in final form. IRRC conducts independent outreach to solicit input from groups that might be impacted by proposed regulations. IRRC comments are due 30 days after the close of the public comment period.

Action: Individual physicians and grassroots organizations can contact their legislators, testify at committee hearings, and respond to requests for IRRC comments.

Third, final form regulation and the promulgating agency's response to all comments must be submitted to legislative committees and the IRRC and sent to commentators who requested notice of the final regulations.

Action: Grassroots action by individuals who provide comments is key to influencing the regulatory process. The sheer volume of comments on a particular regulation can help slow the process and allow time for thoughtful consideration of concerns. The Pennsylvania Medical Society will testify at any public hearings to be held by IRRC.

IRRC approves or disapproves the final-form regulation at a public meeting in accordance with approval criteria. The General Assembly may object to the final regulations by passing a concurrent resolution.

Medical Records Reproduction Fee Schedule for 2008

The Pennsylvania Medical Society receives a significant number of inquiries from physicians and their office staff concerning medical record copying fees. While physicians have not traditionally sought to make a profit on providing medical records, they have sought to recover their costs, particularly when a medical record is substantial.

A patient may request a copy of their record for his or her own use. It is important to note that the medical record for a patient is defined by state regulation as, all “clinical information pertaining to the patient which has been accumulated by the physician, either by himself or through his agents.” This includes diagnostic test results, x-rays, physician notes, and any records from prior treating or consulting physicians. The following charge list does not apply to an X-ray or any other portion of a medical record which is not susceptible to photostatic reproduction.

The Department of Health and Human Services has stated that, under HIPAA, medical record copying fees for patients may not include costs associated with searching for and retrieving the medical record. For a subpoena, attorney or insurance company requests you may charge the Act 26 fees, including the search and retrieval fee. To determine your cost for copying and mailing medical records for a *patient* request under HIPAA, you should consider the following:

- Salary and benefits of the person who does the copying. Include all steps of the process, i.e., verifying validity of authorization, pulling the chart, reviewing the record, removing the records, copying, preparation for mailing, re-assembling the chart, and re-filing the chart.
- Cost of the supplies, i.e., paper, toner, envelopes, etc.
- Cost of equipment, i.e., prorated lease or depreciation expense.

	Act 26 (2008)	HIPAA	Charge to Patient
Retrieval Fee	\$19.00	\$0	\$0
Pages 1-20	\$1.28/page	Cost of copying & mailing	Cost up to \$1.28/page
Pages 21-60	\$0.95/page	Cost of copying & mailing	Cost up to \$0.95/page
Pages 61+	\$0.32/page	Cost of copying & mailing	Cost up to \$0.32/page

In addition to the amounts listed, charges may also be assessed for the actual cost of postage, shipping and delivery of the requested records. **Neither Act 26 nor HIPAA mandates that charges be assessed for copies of medical records. It merely sets the maximum fees that can be charged.**

If a district attorney requests a medical record for an action or proceeding, a flat fee of \$19.00 may be charged. No independent or executive agency of the Commonwealth is required to pay any costs associated to medical charts or records unless required by law. At this time, Workers’ Compensation (utilization review) and Auto (peer review) pay \$.12 per page, plus actual mailing costs (scope of release is limited to the treatment of the work related or auto injury). Attorney requests for Workers’ Compensation and Auto treatment records are not subject to the \$.12 limitation. If the medical record is requested for the purpose of supporting a claim or appeal under the Social Security Act, a flat fee of \$24.08 plus postage may be charged (the attorney should be able to supply a copy of the *Appointment of Representative* from the Social Security Administration). **Note:** Some health insurance contracts may require the physician to forward patient records to another physician within a network at no charge.

President’s Message *continued from page 1*

foundation for an academically stimulating agenda next year. Also, we are entering into discussions with the Maryland Neurosurgical Society with regard to holding future joint meetings with them, one year at Hershey, and perhaps the next year at Annapolis or some other Maryland venue. We will keep you posted on that.

In July, I will turn over the gavel to our next President, Dr. Eric Zager, and extend my best wishes to him for a smooth and successful term of office. It has been a privilege to serve as your President the past two years.



Pennsylvania Neurosurgical Society

777 East Park Drive

P.O. Box 8820

Harrisburg, PA 17105-8820

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ment, investigation of fraud in reimbursement schemes, and other issues that arise as a result of the multitude of private insurers, and a present system that still largely prioritizes acute care services. It should not be a mystery that all of this activity saps the health care dollar. Exactly where organized medicine fits into this picture is not clear. I sense a great deal of ambivalence, possibly related to concerns about the effect it may have on our own lives and livelihoods. Our commitment should focus on the provision of health services, including public health, for all people, but also demand that the resources for that commitment be sustainable.

Additionally, we as a society, and we as a profession, have not addressed the incredibly difficult task of deciding how medical care is to be apportioned when everyone cannot have everything. In any plan to establish a system of universal health care, we will need to come face-to-face with this issue and stare it down, recognizing, of course, that whatever solution is reached will be far from perfect. It surely is within our power, however, to do better than we have so far.

Only if organized medicine makes a commitment to universal health care, and more importantly, to getting it done, will it have the ability to build a system that allows us to maintain our professionalism, and sustain the resources that only we can provide.