



NEWSLETTER

American College of Surgeons

New Jersey Chapter

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PRESIDENT'S MESSAGE

The New Jersey Chapter of the American College of Surgeons is alive and well. Compared to the rest of the world, not only are we solvent, but as witnessed by our recent annual meeting, we made money! Fortunately this was the largest, most attended meeting in our history.

A second concern by many of us was our continued leadership with the anticipated retirement of our Executive Director, Mr. Arthur Ellenberger. For any of you who didn't know Mr. Ellenberger, he was literally an icon, who ran our organization for almost 50 years and essentially allowed many of us to sleep at night comfortably knowing that we were in continuously excellent hands and managed appropriately. He will indeed be sorely missed. But with the help of Drs. Moritz, Carniol, and Padberg we have been extremely fortunate in being able to recruit Ms. Andrea Donelan, our new Executive Director. In her first '100 days' she has already demonstrated her outstanding experience and abilities and I am confident she will serve us extremely well.

Our executive committee is relentless is our goal to transition our office, publications and communications to a more technologically compatible organization. We are finally seeing 'the end of the tunnel' and will enter the 21st century!! This will expedite information to our members, obviously keeping everyone more informed on all critical surgical issues. Our aim is always to increase our productivity for you.

I want to assure you that we are the surgeons' number ONE advocate and

continuously are addressing and hopefully resolving your concerns. Please do not hesitate to contact us if you believe an issue of yours is not been addressed adequately. You can reach the office at njsurgeons@aol.com or me personally at lewiswetstein@yahoo.com.

I am delighted to be your representative, and look forward to hearing from you. With warm personal wishes.

Lewis Wetstein, M.D.
President, 2008-2009



The Executive Council of the New Jersey Chapter with Arthur Ellenberger, retiring Executive Director and Andrea Donelan, the New Executive Director. From Left to right: Lewis Wetstein, President; Mark Moritz, Immediate Past President; Frank Padberg Jr., Vice-President; Mr. Ellenberger; Tom Russell, MD, Executive Director ACS; Andrea Donelan, new Executive Director NJ Chapter; and Paul Carniol, President-Elect. March 4, 2009.

WHEN A PLAN IS PROPOSED MEDICINE MUST SPEAK OUT

A parting shot by Art Ellenberger

Some think our Health Care Industry is too complex and expensive. Let's assume the Federal Government takes this big business from the private sector.

As starters you require a department of highly paid administrators. They would take up a few blocks of large buildings in which bureaucrats will each vie to increase their sphere of influence, number of employees, importance and salary. It must keep getting bigger as more clerks are assigned to it. Each department will plunge into related/contiguous areas merely to keep them out of another department's purview. Interdepartmental feuds will keep new developments or medical advances on hold for years. Personnel are required to write protocols, review each aspect of the system separately for fraud, cost, access and quality. They will survey it, amend it and write definitive reports with eight copies, three copies of which must be legible. Reports will all have cost estimates, diagrams, schematics, flow charts and three, five and ten year plans.

Because they are in charge of it, they will guard it and be resistant to information concerning business efficiencies. Complex subdivisions will sprout such as one to provide estimates, one to review low bids, one to coordinate outcome research and one to watch all reviewers and coordinators. One will run double blind studies on innovative, inane, cost conscious endeavors. Each department must fund one expensive absurdity, so that, when a budget crunch comes, they can reluctantly give it up. Hiring and equipment freezes, tight budgets and civil service regulations will frustrate progress and even routine service.

One department will make adjustments for budget neutrality of proposals and another will run brochure production for patients who will magically become recipients. Briefly, they may become a patient again if they know a Senator. Seniors will be on waiting lists for major surgery.

No new hospitals will be built. Existing ones will deteriorate for lack of routine maintenance, just as highway bridges dependent on government maintenance are left unattended. Medical decisions once made by fully licensed physicians will be made by civil service persons obsessed with spending the same amount they spent last year whether they need to or not. They will count on diagnosis and treatment by midlevel practitioners who helped in the campaign to change the system. In this environment, patients can be processed

as impersonally as other commodities, *i.e.*: low bid construction machinery parts -- just run an occasional quality check and avoid the headlines on a slow news day. Problems will no longer be \$500 hammers and \$600 toilet seats, but \$2,000 stethoscopes.

Marketing strategies and operations will be guided by a take it or leave it philosophy unless a Congressman intercedes. HCFA is not noted for negotiating. Federal Claims processing is impossible to understand, much less to influence or correct, unless you control a huge block of votes.

Then come the super expense account consultants flown in from California, managed care accountants, surveyors, draftsmen and architects of exact and inexact sciences. Then there is the infrastructure of offices and clerks who have to have pension and related sustenance plans. Government likes parts and people that are interchangeable; certainly not recipients who have unusual, multiple or abnormal symptoms. They will never relate to greater inpatient length-of-stay for sicker recipients.

They will increase the number of physicians and get angry when they all increase costs by ordering treatments and drugs needed by their patients. Other usual vagaries of government apply. Neither patients, nor physicians will be important in this environment. The entire unmanageable structure increasingly becomes more formidable, wasteful and costly. Our Federal Government is 2.9 million people doing badly much of which need not to be done at all. A plan won't fly at state level either. Our state government studies programs that are working well and redesigns them.

These diseases have thus far eluded a *specific*: Cancer, Bureaucracy, AIDS. Your sons and daughters will be thinking of how to put some of the system back in the private sector. They may not be able to do so.

Our national government gave up on running a post office. We are advised that the government spent backup monies for Social Security and Medicare and these programs will need bail-out monies shortly. Some lawyers advertise that they can get you under Social Security for your disability (*possibly being an illegal Mexican*). Medicare pays for less each year. Soon, I suspect you will be able to get Viagra through Medicare, but not an appendectomy.

P. J. O'Rourke once said, "If you think health care is expensive now, wait until you see what it costs when it's free." God bless America, but hurry.

HOW TO AVOID BEING FALSELY LABELED AS “DISRUPTIVE”

The impact of being branded by a “Scarlet Letter” in Nathaniel Hawthorne’s time pales in comparison to what is wrought upon unsuspecting physicians labeled as “disruptive” in today’s medicine. Virtually irremovable once affixed, the brand of “disruptive” can summarily ruin an otherwise brilliant medical career and should prompt every physician to immediately, and aggressively, risk manage their practice to avoid even the inference of any such status.

“Disruptive” - defined in countless fashions throughout medical staff by-laws, employee manuals/handbooks and other governing rules and/or regulations - is basically any style of interaction with physicians, hospital personnel, patients, family members, or others that is deemed to interfere with patient care. While no one questions the need for the orderly administration of patient care, the abuse of that worthwhile goal is revealed when one considers the stunning breadth of “any style of interaction” – interpreted by some to include even facial expressions, tone of voice and/or body language.

Equally disturbing is the question of who will hold the power to “deem” such interactions to be disruptive? Does that person hold inappropriate (*i.e.*, economic, personal, etc.) or appropriate motivations? Further, and in essence, is there anything that cannot be “deemed” to “interfere with patient care”?

The overly broad and unduly vague nature of such a label as “disruptive” can only lead to further misuse and greater abuse against physicians. In order to begin to risk manage such a threat, every physician should immediately obtain, review and challenge, if necessary, the following from their employer and/or their medical staff:

Any all Code(s) of Conduct

Any Employee Handbooks/Manuals

Any Medical Staff By-Laws

Any Departmental Procedures and Protocols

If any standard therein is poorly defined, unworkable in its vagueness or subject to self-serving interpretation, it should be challenged immediately through any means or mechanisms available (*i.e.*, the offices of the medical staff, human resources, union representatives, contract revisions and/or seeking new employment/affiliation). If accepting of the “behavioral standards” in either an employment setting or as a member of a medical staff (or both), every physician must orchestrate and maintain unwavering compliance with those standards or run the risk of being adversely and permanently labeled as “disruptive”.

In the event of an investigation of his or her conduct, every physician must be made aware of the fact that **no** investigation (even those couched as “informal” or “internal”) is brought that does not carry the potential for serious and irreparable professional damage. Therefore, **no** physician should (1) allow a complaint to go unaddressed and/or unresolved or (2) attend a meeting concerning their status (either as an employee and/or medical staff member) without first knowing (a) who will be attending; and (b) the topics to be discussed.

Every physician who attends such an investigative meeting should (a) take careful and copious notes of what is said and by whom (b) demand an opportunity to weigh what has been presented and respond at a later point – possibly in writing and (c) never be coerced into signing any document or documents at such a meeting.

Moreover, if an investigation is concluded in the physician’s favor, that disposition should be committed to writing, provided to the physician and

secured in the physician’s relevant file (*i.e.*, employee, medical staff, etc.) in order to accurately, and permanently, reflect the physician’s tenure and standing.

In conclusion, a physician’s ability to avoid the label of “disruptive” rests with whether he or she is willing to proactively secure a firm grasp of the standards by which such an adverse judgment may be placed and either abide by those standards, initiate the effort to change the standards or remove themselves from a climate in which the standards only serve to enable adverse action against the physician. To remain silent, unaware or uninvolved will only serve to empower the structures which seek to abuse the intentions, process and goals of those who honorably seek to address the truly “disruptive” physician.

Michael J. Schoppmann, Esq.

Kern Augustine Conroy & Schoppmann, P.C.

Mr. Schoppmann may be contacted at 1-800-445-0954 or via email:

schoppmann@drlaw.com

LOST OR STOLEN PRESCRIPTION BLANKS

If your prescription blanks are lost or stolen you **MUST** report it to the New Jersey Prescription Blank Unit (NJPB) with 72 hours. The NJPB can be reached at **(973) 504-6558**. A NJPH Incident Report must also be completed and mailed within seven (7) days. The form should be mailed to the Office of Drug Control. The NJPB form can be obtained by calling the Chapter office.

LEGISLATIVE UPDATE

WRONGFUL DEATH LEGISLATION A1158/S763

Wrongful death legislation has been reintroduced by Senator Scutari (S763) and Assemblywomen Oliver, Greenstein and Cruz-Perez (A1158). This legislation expands the wrongful death act to allow recovery for mental anguish, emotional pain and suffering, loss of society and loss of companionship. Wrongful death statutes establish a cause of action for the wrong done to an individual's beneficiaries when that individual dies as the result of the wrongful conduct of another person. Under current law, in wrongful death actions damages are recoverable only for pecuniary loss.

Assemblywoman Greenstein has stated her intention to have this legislation posted early next year. Organized medicine is opposed to this legislation. Please contact the Senate and Assembly Judiciary Committee members and encourage them to vote against this legislation when it is presented to them.

Senate Judiciary Committee

John H. Adler, Chair:	(856) 489-3442
John A. Girgenti, Vice-Chair:	(973) 427-1229
Bill Baroni:	(609) 631-9988
Jennifer Beck:	(732) 993-1591
Gerald Cardinale:	(201) 567-2324
Nia Gill:	(973) 509-0388
Joseph Kyrillos:	(732) 671-3206
Raymond Lesniak:	(908) 624-0880
Paul Sarlo:	(201) 804-8118
Nicholas Scutari:	(908) 587-0404
Bob Smith:	(732) 752-0770

Assembly Judiciary Committee

Linda Greenstein, Chair:	(609) 395-9911
Peter Barnes, Vice-Chair:	(732) 548-1406
Caroline Casagrande:	(732) 866-1695
Reed Gusciora:	(609) 292-0500
Amy Handlin:	(732) 787-1170
L. Grace Spencer:	(609) 292-7065

REVERSAL OF GARCIA DECISION S787/A1933

Governor Corzine signed into law legislation protecting a patient's option to receive care at an ambulatory surgery center owned by a physician. More importantly, the Medical Society of New Jersey defeated a late effort to include required licensure and taxation of single room surgical practices in the bill, preserving the historical ability of these physician owned enterprises to continue operating as the practice of medicine.

Key Features of the Bill Include:

- A clear-cut exception from the statutory ban on self-referrals for referrals to physician owned ambulatory surgery centers.
- Retroactive protections for physicians who have owned ASCs since 1991.
- Preservation of licensure and taxation exemptions for single room surgical practices.
- Limiting future ambulatory licenses to joint ventures between physicians and hospitals.

An entity that operates a surgical practice is required to register with the Department of Health & Senior Services within one year of the effective date of the law. A surgical practice is also required to obtain certification by the Centers for Medicare and Medicaid Services as an ambulatory surgery center provider or obtain ambulatory care accreditation from the accrediting body recognized by the Centers for Medicare and Medicaid Services.

Information courtesy of MSNJ "Legislative Alert"

NEW JERSEY CHAPTER, AMERICAN COLLEGE OF SURGEONS

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Opinions expressed in this newsletter are not necessarily those of NJACS. Mention of products or services does not constitute endorsement. Clinical, legal, tax and other comments are offered for general guidance only. Professional counsel should be sought for specific

2009 Chapter Officers

President.....	Lewis Wetstein, M.D.
President-Elect.....	Paul J. Carniol, M.D.
Vice-President.....	Frank T. Padberg, Jr. M.D
Secretary.....	Fred Weber, M.D.
Treasurer.....	Ronald S. Chamberlain, M.D
Executive Director.....	Andrea Donelan
Immediate Past President.....	Mark W. Mortiz, M.D.

Chapter Councilors

Steven E. Ross, M.D.	Cherry Hill
Jeffrey S. Hammond, M.D.	New Brunswick
Stephen F. Lowry, M.D.	New Brunswick
James N. Gardner, M.D.	Summit
Jordon M. Garrison, M.D.	Florham Park

Chapter Councilors Continued

Frank C. Koniges, M.D.	Camden
Howard M. Berger, M.D.	Toms River
Stanley Z. Trooskin, M.D.	New Brunswick
Richard J. Scott, M.D.	Little Silver
Leonard Galler, M.D.	Somers Point
Felix Garcia, M.D.	Neptune
Frank Ehrlich, M.D.	Montclair
Michael A. Goldfarb, M.D.	Long Branch
Stephen J. Pilipshen, M.D.	Moorestown
Henry Davison, Jr. M.D.	Princeton
Louis Galdieri, M.D.	West Orange
Michael Nussbaum, M.D.	Livingston

Arthur R Ellenberger, who served for 46 years as the First and only Executive Director of the New Jersey Chapter of the American College of Surgeons retired after the December 2008 Annual Meeting. Arthur was awarded honorary membership in the College for his dedicated service and leadership; the ACS has named the Executive Award after Mr. Ellenberger. The last NJ-Chapter Annual meeting was the largest gathering of New Jersey Fellows and Residents in recent years and was fully supported by registration and exhibitor fees. An all day meeting included a resident manuscript competition and Resident Jeopardy Competition along with presentation of the Sheen Award at the Annual Business Luncheon. Continuing Medical Education Credits were awarded for multiple surgical sessions including General, Trauma, Plastic, Vascular, Otolaryngology, Head & Neck, Bariatric, Neurosurgery, Orthopedic, Cardiothoracic, Oncologic, Urologic, and Colorectal Surgery at this meeting held at the Meadowlands Crowne Plaza, Secaucus, New Jersey. This photo was taken at the time of his retirement dinner on March 4, 2009.



Arthur Ellenberger, Executive Director, New Jersey Chapter, American College of Surgeons, 1962-2009, thrived on funny stories, jokes, and political advocacy

MARCH 14, 2009 SOCIO-ECONOMIC MEETING



Assemblyman Herb Conaway, Chairman Assembly Health & Senior Services Committee. Assemblyman Conaway is also a practicing physician.



John W. Poole, M.D., MSNJ, MedAC Chairman; Member, AMA Political Action Committee



Speakers and organizers of the Annual Spring Socio-Economic Meeting. From Left to Right: Drs. Paul Carniol, President-Elect; Frank Padberg, Jr., Vice-President; John Poole, "Current National Politics and Legislation: How it will effect Surgeons in NJ"; Lewis Wetstein, President; John S O'Shea, "What Medicare changes will do to your surgery practice in 2009-2010"; Assemblyman Herb Conaway MD, NJ Legislator, "Update on New Jersey ambulatory surgi-center legislation and rules: What it means to us"; Mark Cockburn, Moderator; Mark Moritz, Past-President. Not shown are Clive Callender MD, Washington D.C. and Senator Jennifer Beck.



Senator Jennifer Beck, 12th Legislative District

**INMEMORIAM
ERIC MUNOZ, M.D.
1947-2009**



**MEETING
SCHEDULE**

The Executive Committee meetings are as follows:

Wednesday, June 10, 3:00 p.m. at the Woodbridge Hotel & Conference Center, Route 1 South, Woodbridge. Dinner to follow at 6:00 p.m..

Wednesday, September 9, 3:00 p.m. at The Prospect House, Princeton University, Nassau Street, Princeton. Dinner to follow at 6:00 p.m., spouses and guests are invited.

**SAVE THE DATE!!!!
ANNUAL CLINICAL
MEETING**

Mark your calendars now! The NJ Chapter Annual Clinical meeting will be **Saturday, December 5** at The Woodbridge Hotel & Conference Center, Woodbridge. Watch your mailbox for the announcement.

**DO WE HAVE YOUR
CORRECT ADDRESS?**

Have you moved recently? Are we sending your mail to the correct address and telephone number? Please notify the Chapter office of any changes in your address, telephone number, fax number or e-mail address.

RED FLAG RULES

In 2003, Congress enacted the Fair and Accurate Credit Transactions Act (FACTA). Pursuant to FACTA the FTC issued what have become known as the "Red Flag Rules."

The Red Flag rules take effect August 1, 2009 and physicians who extend credit to their patients are required to comply. Does that include your practice? It does if your practice DOES NOT require payment in full from all patients at the time of service.

Chapter members can obtain a "Red Flag" model template from the Chapter office.

**TERMINATION OF THE
PHYSICIAN/PATIENT
RELATIONSHIP**

NJAC 13:35-6.22 requires that physicians notify patients in writing of termination of care no less than thirty days prior to the date of termination. The notification is to be mailed certified mail, return receipt to the last known address of the patient. Physicians are required to provide all necessary emergency care and services including prescriptions.

Physicians are not required to comply with the requirements if the physician/patient relationship has been terminated by the patient or if the physician has discontinued providing services to a particular managed care carrier or HMO in which the patient is enrolled.

Copies of the regulations can be obtained by calling the Chapter office, **(973) 539-4000**.

AIR FORCE RETIREMENT

Brigadier General Maria Falca-Dodson invites you to attend the retirement dinner in honor of **Colonel Lewis Wetstein, State Air Surgeon**, Saturday, July 11, 2009, 5:00 p.m. The dinner will be hosted at the McGuire Air Force Base Club Ballroom. The cost is \$35 per person and includes buffet dinner and gift. Business attire is suggested. Please RSVP by July 9 to **Mrs. Connie Cisek at (609) 562-0901**.

REMINDER

The following certificates are required to practice medicine in New Jersey.

NJ State BME

Mr. William Roeder

Executive Director

P.O.Box 183

Trenton, NJ 08625-0183

(609) 826-7100

CDS Registration

Susan Gartland, Chief Drug Control
Department of L& P Safety

P.O. Box 45022, 124 Halsey Street,
7th Floor

Newark, NJ 07101

(973) 504-6545

**County Clerk Registration
Certificate**

NJ SBME regulation 45:9.17 requires that you register your license with the County Clerk in the County in which you reside.

Morris County Clerk

(973) 285-6120

**Drug Enforcement
Administration**

80 Mulberry Street

Newark, NJ 07102

(973) 273-5063

FAX: (973) 297-4842

(800) 882-9539

www.deadiversion.usdoj.gov

**CHAPTER ADDRESS
CHANGE**

The Chapter office moved on January 1, 2009. Our new address and telephone number is: 51 Elm Street, Suite #A7, Morristown, NJ 07960; (973) 539-4000; FAX: (973) 539-9493; E-mail: njsurgeons@aol.com.



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