



**Vascular Society of New Jersey**  
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## Monthly Report

January 2010

From the President

Joseph P. Costabile, MD

Dear colleagues,

As we close 2009 I reflect on what a tumultuous and difficult year it has been for us as physicians. There have been some occurrences that have been favorable for us such as the ruling on the Garcia case and some which have been not so favorable such as the PIP regulations and the proposed healthcare reform bills now in the Congress. 2010 will prove to be no less challenging for us. The proposed healthcare reforms and its assorted baggage will be quite onerous for medicine in general, if it gets passed in its present form. The American College of Surgeons has come out publically against the Senate bill on healthcare reform. We as practitioners and keepers of the watch must continue our efforts to convince our representatives in Congress to do the right thing not only for our profession, but for our patients. As members of VSNJ let's try this year to increase our membership as well, for it is only with numbers and unity can we be a strong voice.

A happy and healthy New Year to all and the best in 2010.

Sincerely,  
Joe Costabile

## REGISTER NOW

VS NJ 32nd Annual Scientific Meeting

March 3, 2010

Nanina's In The Park, Belleville

### *Speakers include:*

Paul Haser, MD of UMDNJ-Robert Wood Johnson Medical School  
Joseph V. Lombardi, MD of Cooper University Hospital  
Michael Marin, MD of Mount Sinai Medical Center  
Clifford Sales, MD, MBA of the Cardiovascular Care Group

download form at  
[www.vascularsocietynj.org](http://www.vascularsocietynj.org)

**From the Statehouse**

**Beverly J. Lynch**

December 14, 2009

I just returned to my office from the Statehouse, where they are wrapping up the last session in 2009. In early January, the Assembly and Senate will vote on January 4, January 7 and January 11 - and, at midnight on Monday, January 11, the 213<sup>th</sup> legislative session will come to a close. Any bills not on Governor Corzine's desk by midnight will go in the trash. As of December 11, there are 8,020 bills "in the hopper" for this session, and 315 (or 3.93%) have been signed into law.

I testified today on a bill that will expand the scope of practice for chiropractors. I was joined by others representing physicians, physical therapists, insurers, and the business community in opposition. This bill has been around for many years, and has been amended down quite significantly - but we still oppose the measure as overstepping their scope. We called for a requirement that, minimally, they should have to carry medical liability insurance (they don't have to). This amendment was accepted. But alas, we were defeated; the bill was released "without recommendation" by the Committee. I expect it to be up for a Senate vote on an agenda before they end the session. The new Senate President, Stephen Sweeney (D-Gloucester) has championed this measure for many years.

The physicians were also working hard during the "lame duck" session to seek passage of the assignment of benefits legislation. I issued a "call to action" to encourage grassroots calls to members of the Assembly Financial Institutions Committee. We were hopeful that this committee would release the measure, especially since it has already passed the State Senate. Alas, it doesn't appear (at this writing) that this will happen...although we haven't given up yet.

On a positive note, it doesn't look like the Legislature will move on the "wrongful death" bill. Again, you all received a "call to action" I wrote to encourage your grassroots opposition to this onerous measure that would have greatly expanded who can be sued for wrongful death. When the call to action went out, I received inquiries from physicians questioning why they were being targeted. Rest assured, most every business, profession, and group on State Street is opposed to this measure - and were working hard against it. Only the trial lawyers support the measure.

What's next in the new session? First, on January 12, the new Assembly is sworn in, with new leadership for the first time in four years. Speaker Joe Roberts has resigned, and Assemblywoman Sheila Oliver (D-Essex) will lead the house. Assembly Majority Leader Joe Cryan (D-Union) will be second in command. Assemblyman Alex DeCroce (R-Morris) will lead the republicans.

On January 19, Governor-Elect Christie will be inaugurated as the 55<sup>th</sup> Governor of the State of New Jersey. His new administration (and transition teams) will be appointing and nominating lots of new players over the coming weeks. He has named his chief of staff - Richard Bagger - widely respected former State Senator from Westfield, and Pfizer executive. Bagger comes back to Trenton with cheers from all who worked with him.

The new Legislature and Administration will face soaring budget deficits - with promises not to raise taxes,

and calls to do the same. A democratically controlled Legislature and a republican front office. Will they work together or point fingers? Time will tell. Should make for a very interesting 2010, to say the least.

Warmest wishes for a happy holiday season and prosperous and healthy new year. Rest assured, we will be watching your back every step of the way.

## Legal Report

Mark E. Manigan, Esq.

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### New Developments Related to Horizon Blue Cross Blue Shield of New Jersey Settlement

In 2007, the New Jersey Superior Court (the "Court") approved a settlement between Horizon Blue Cross Blue Shield of New Jersey ("Horizon") and approximately 40,000 New Jersey physicians (the "Settlement"), Sutter v. Horizon, N.J. Super. Ct., L-3685-02. The Settlement was a result of a class action lawsuit filed in 2002 on behalf of the physicians against Horizon and three other New Jersey-based health plans.

Pursuant to the terms of the Settlement, the physicians will not receive any payments, nor is Horizon admitting to any wrongdoing. Some of the key elements of the Settlement include, but are not limited to:

- Fee schedules for common procedures are to be made available to participating physicians via CD-ROM or electronically.
- Participating physicians must be provided 90 days notice of material changes to Horizon's contracts, policies and procedures.
- Participating primary care physicians to be permitted to close their practices to new patients covered by Horizon.
- Most fees not to be reduced for participating physicians more than once per year.
- Overpayments not to be recovered after more than 18 months of the original payment.
- More notice and information must be provided regarding overpayments.
- Determinations of medical necessity not to be revoked absent evidence of fraud, material error or material change in the condition of the patient prior to service.

Brach Eichler initiated an action to oppose the Settlement at the request of the American College of Emergency Physicians, the New Jersey Society of Pathologists, the New Jersey Association of Osteopathic Physicians and Surgeons, the Vascular Society of New Jersey, the Radiological Society of New Jersey, the New Jersey Academy of Ophthalmology, the New Jersey State Society of Anesthesiologists, and the Orthopedic Surgeons of New Jersey (the "Medical Societies"). Brach Eichler filed an objection to the Settlement because we firmly believe that the Settlement does not provide any benefit to physicians in New Jersey since the terms of Settlement do no more than require Horizon to comply with its current contractual obligations and existing

laws and regulations governing health benefit carriers. In addition, Horizon is not required to make any payments to New Jersey physicians under this Settlement. At the same time, the attorneys representing the "class" submitted a fee application of \$6,500,000, none of which is to compensate New Jersey physicians. The fee application was approved by the Court. Brach Eichler moved for a stay of the fee award, which was denied. Thereafter, Brach Eichler appealed the Court's decision to approve the Settlement terms.

On March 25, 2009, Judge Parker, writing on behalf of the New Jersey Appellate Division, found that the Court abused its discretion in denying Brach Eichler's request for a testimonial hearing pursuant to N.J. Court Rule 4:32-2(e). As such, the matter has been remanded to the Court for a testimonial fairness hearing. Moreover, the Appellate Division requested that the Court review and reconsider the reasonableness of utilizing a percentage recovery method in awarding \$6,500,000 in attorney fees. Brach Eichler is still awaiting the outcome of that review.

On September 8, 2009, the plaintiff in Sutter, filed suit against the Medical Societies, due to the Medical Societies' filing of objections to the Settlement, alleging (1) tortious interference with contract, on the basis that the Medical Societies are not parties to the Settlement; and (2) for tortious interference with prospective economic advantage because the Medical Societies' opposition to the Settlement has delayed the Settlement payment to the plaintiff. On September 16, 2009, Brach Eichler, on behalf of the Medical Societies, opposed the action on the basis that the filing of the Sutter plaintiff's complaint is frivolous and without foundation. On November 20, 2009, Superior Court Judge John Kennedy dismissed the suit holding that while the Medical Societies are not parties to the Sutter v. Horizon case, they have been granted "participant" status. Therefore, their criticism about the settlement is covered by the litigation privilege.

#### **Attorney General Milgram Recommends New Regulations Aimed at Preventing Conflicts of Interest between Pharmaceutical Companies and Physicians**

On December 3, 2009, New Jersey Attorney General Anne Milgram released a "Report on Physician Compensation Arrangements" ("Report") and endorsed its recommendations seeking enhanced regulation of the financial relationships between physicians, pharmaceutical companies and medical device makers. The Report urges the Board of Medical Examiners ("BME") and the Board of Pharmacy to adopt regulations that would ban physicians from accepting free meals, gifts, fees, or travel-expense reimbursement from pharmaceutical or medical-device companies. According to the Report, physicians should still be allowed to serve as consultants to drug and device companies, but should be required to publicly disclose the acceptance of more than \$200 in consulting fees, honoraria or funding for research or education.

The Report contains specific recommendations for amendments to the BME regulations that would forbid physicians from accepting any of the following from a drug or device company:

- Any payment or other subsidy (including tuition, fees, travel, lodging, or other incidental expenses) to support attendance as a participant at an accredited continuing medical education program.
- Any fees or travel or lodging reimbursement for non-faculty or non-consultant attendees at company-sponsored meetings.
- Items intended for the personal benefit of a BME licensee (including floral arrangements, artwork, CDs, DVDs or tickets to sporting events) or items that may be used in both a professional and non-professional setting (including DVD or CD players).
- Any payment in cash or a cash equivalent (such as a gift certificate) unless it is compensation for bona-fide services.

- Any company-funded entertainment or recreational item.

However, the Report's suggested regulations would allow physicians to accept items that could directly benefit patients, such as drug samples or anatomical models for use in examination rooms. Additionally, the Report states that physicians should be permitted to accept things of value, such as remuneration for serving as a speaker or faculty organizer for CME events, which directly benefit patients by advancing physician learning or legitimate research goals.

Note that the foregoing only discusses a portion of the Report. Please contact us if you would like a copy of the Report. At this time, Attorney General Milgram has asked the BME and the Board of Pharmacy to review the Report and initiate a rule-making process to adopt the Report's recommendations. We will continue to monitor this process and will keep you apprised of any developments.

### **Proposed Rules Aim to Regulate Collaborative Practice Agreements between Physicians and Pharmacists**

On November 16, 2009, the New Jersey Board of Medical Examiners ("BME") and the Board of Pharmacy ("Pharmacy Board") jointly proposed new rules ("Proposed Rules") that establish standards of practice for physicians and pharmacists who wish to enter into collaborative practice agreements for the management of patients' drug related therapies.

The Proposed Rules provide that a physician may enter into a collaborative practice agreement with a pharmacist, provided that the collaboration is within the scope of the physician's practice and the pharmacist is authorized to engage in such activities by the Pharmacy Board. Pharmacists wishing to participate in an agreement must be pre-approved by the Pharmacy Board to engage in such activities. In order to obtain Pharmacy Board approval, a pharmacist must have a Doctor of Pharmacy Degree or be currently certified or credentialed in the pharmacy practice area covered by the collaborative practice agreement. A pharmacist may also qualify for Pharmacy Board approval if he or she has a minimum of 2,000 hours of documented work experience in a clinical practice setting or in a specialty pharmacy that is specific to the area of practice covered by the agreement.

The collaborative drug therapy management must address an individual patient's specific condition or disease and specify the functions a pharmacist may perform, which may include the following: collecting, analyzing and monitoring patient data; ordering or performing certain laboratory tests; ordering clinical tests; modifying, continuing or discontinuing drug or device therapy; and therapeutic drug monitoring with appropriate modification to dose, dosage regimen, dosage forms or route of administration. The interpretation of clinical or laboratory results may only be performed by a pharmacist in direct consultation with a physician.

Under the Proposed Rules, individual patients must formally consent to having their drug therapy managed under a collaborative arrangement between their physician and a pharmacist. The written informed consent document must be signed by the patient and must clearly identify the risks and benefits of collaborative drug therapy management. The document must also provide notice to the patient that covering physicians and/or pharmacists may be used in the management of the patient's care and that certain services provided to the patient under collaborative management may not be covered by the patient's insurance.

Participation in or withdrawal from a collaborative practice agreement is voluntary on the part of the physician, pharmacist and individual patient. If the agreement is terminated by either the physician or pharmacist, the termination must be in writing and all patients who are undergoing collaborative drug therapy management under the agreement must be notified of the termination.

The BME and the Pharmacy Board are accepting comments on the proposal until January 15, 2010. Those wishing to submit comments to the BME should reference Proposal Number PRN 2009-347 and submit their

comments to: William Roeder, Executive Director, Board of Medical Examiners, 140 East Front Street, 2nd Floor, P.O. Box 183, Trenton, New Jersey 08625. Those wishing to submit comments to the Pharmacy Board should reference Proposal Number PRN 2009-347 and submit their comments to: Joanne Boyer, Executive Director, Board of Pharmacy, P.O. Box 45013, Newark, New Jersey 07101.

## Attention: Vascular Surgeons Call for Scientific Abstracts

*The 32nd Annual Scientific Meeting of the Vascular Society of New Jersey will be held on  
Wednesday, March 3, 2010  
at Nanina's In The Park, Belleville, NJ.*

*Winning presentation will receive*

**3<sup>rd</sup> Annual Robert W. Hobson, II, MD Award**

*Engraved plaque and \$500*

### **Abstracts are due by January 25, 2010.**

There will be two types of presentations again this year:

- (1) **Paper Session:** All types of submissions - clinical, research or basic science -- are encouraged. Participation by residents and fellows with member sponsorship are encouraged.

(Note - Papers remain eligible for submission to the Eastern Vascular Society or other major scientific meetings.)

- (2) **Case Presentation:** Members are requested to submit interesting and educational cases for audience participation and discussion. Case material with pertinent laboratory and radiological data should be submitted by the above deadline.

Submissions should be sent by email to the society offices at: [lmayers@blynchassoicates.com](mailto:lmayers@blynchassoicates.com)

Presenters will be responsible to provide the society with their presentation in advance of the meeting, to minimize audiovisual delays.

Registration materials will be forwarded in February outlining the entire program. For more information or if you have questions, please contact VSNJ at (609) 392-7553.

***Mark your calendar for March 3  
and  
Submit your Paper/Case Presentation Today!***

*Todd R. Vogel, MD  
Program Chairman*