Vascular Society of New Jersey

Monthly Report- April 2011

From the President Paul B. Haser, MD - present day

While you can scan back through the past news letters via a few clicks on the web site, I thought it important to list two of the past Presidential opening statements, (Dr. Ciocca's newsletter was the first on the web, although he became President earlier in that year.) So, although it is a slight bit repetitive, I believe it helps us take measure of where we have come from as we look to really reinforce their messages - to get the word out to ALL vascular surgeons in the state that the Society can offer a great deal to each member, especially as we grow the membership to reach everyone practicing in the State - a lofty goal, but certainly not beyond our capabilities!

I owe a great deal of gratitude to my immediate predecessor, Theresa Impeduglia, MD, the VSNJ Board, the Administrative Staff and all of the members. The Spring meeting was very well attended, and the feedback is being processed to continue what has been a yearly rise in the attendance and positive feedback. The sponsors, listed below, continue to provide a valuable link between physician care and industrial support, which in turn helps us help our patients. Highlights of the program will become available as I work to update the web-site over the next several months to provide more readily available access to the information provided within - potentially even from your smart-phones.

So, as this new Society year begins, we will remember our legacy, "re-invigorate our membership" and "function to promote Vascular Surgeons as the champions of the management of vascular disease."

Paul B. Haser, MD

From the President ....Rocco Ciocca, MD (June 2003)

Now, more than ever, physicians and surgeons must assess the value of what we do. These are difficult times. The costs of running a practice are rising in the face of decreased reimbursement. What we do as vascular surgeons is rapidly changing, while we face increased competition not only from within our specialty but from others. The academic paradigms with which we were trained are changing rapidly and dramatically. Within this context, the Vascular Society of New Jersey must change and we must re-define its value to its membership. As President I am asking for help with that endeavor.

We have already experienced change. We have new administrative leadership. We have a long anticipated website but those are just a beginning. There are numerous ways to improve our society: Better communication within the society, electronic communication, stronger educational programs, consultative services via the Web, job listings, political action, etc. We need to re-invigorate our membership and I welcome your ideas as to how to best achieve a goal of increasing the value in membership in VSNJ.

From the President....Clifford Sales, MD (April 2004)

It is an honor for me to assume the Presidency of the Vascular Society of New Jersey at this stage. The Society, in many respects, has been revived under the direction of our immediate past-President, Rocco Ciocca. What had simply been a society dedicated to semi-annual functions has, under his leadership, emerged as a practical vehicle for Vascular

Surgeons to be heard and promoted.

The development of the Society's monthly newsletter is one very small, yet visible, way in which the society has progressed. Witness the recent Annual Meeting-clearly one of the better meetings in years in terms of quality, attendance and sponsor support-as a very apparent display of the Society's viability and renewed energy.

I hope to pick up and run with what Dr. Ciocca has provided for us. The Society MUST function to promote Vascular Surgeons as the champions of the management of Vascular Disease. We are the group most uniquely qualified to care for the entire patient and offer the full range of diagnostic and therapeutic options. That message must be delivered loud and clear to the citizens of our state. This approach must be coupled with the realization of the importance of our role in the "bigger picture" of total patient care and working with our colleagues in other disciplines to deliver the highest quality of care possible where each specialist brings to the table their expertise.

I look forward to serving as YOUR President over the ensuing year. I strongly encourage you to contact me with issues of importance to us as a society

We wish to thank the following companies for their sponsorship of the VSNJ 33rd Annual Meeting:

Abbott Vascular

AngioDynamics

Cook Medical

Rinko Orthopedic, Inc

W L Gore & Associates, Inc

We welcome our exhibitors & thank them for their contributions:

Bard Peripheral Vascular

Boston Scientific

Cordis, a Johnson & Johnson Company

David Lerner Associates

Endologix

LeMaitre Vascular

M2S, Inc

Medi USA

Medtronic Endovascular

Next Step Orthotics and Prosthetics

NJ PURE

Organogenesis

Spectranetics

Varbeco Wealth Management, LLC

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Horizon Settlement with New Jersey ASCs

In early March, the court vacated the order of the proposed Horizon settlement and injunction against the filing of PICPA (also known as MAXIMUS) arbitrations. As you may be aware, the proposed Horizon settlement ("Proposed Settlement") applied to all ASCs, licensed or unlicensed, that provided out-of-network ("OON") services to any Horizon subscriber on or after October 1, 2004. Any ASC that did not affirmatively opt-out of the Proposed Settlement by a specified date would have been bound by its terms.

DHHS Replaces "Conscience" Rule for Health Workers

The Department of Health and Human Services (DHHS) issued a final rule on February 18, 2011 (effective March 25, 2011) that rescinds in part and revises the 2008 rule entitled "Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law." The 2008 rule highlighted doctors and nurses long-standing federal right not to participate in certain procedures.

Prior to the issuance of the 2008 rule, Federal laws have long prohibited discrimination against health care professionals who refuse to perform abortions or sterilizations, or to provide referrals for them on religious or moral grounds. The 2008 rule, however, added requirements that institutions that receive federal money certify their compliance with the so-called conscience laws, so that monies could be cut-off if the law was not being followed.

The new rule retains just the federal conscience protections for abortions and sterilizations, along with a provision that spells out how health workers who feel they were discriminated against can ask the government to enforce that law.

CMS Medicaid RAC Program

The Centers for Medicare and Medicaid Services (CMS) announced on February 1, 2011 that States will not be required to implement their Medicaid RAC Program on April 1, 2011.

By way of background, Section 6411 of the Patient Protection and Affordable Care Act ("PPACA"), the new federal health care reform legislation, expanded the Recovery Audit Contractor (RAC) Program in an effort to reduce and combat fraud to Medicaid, Medicare Advantage and Part D providers. The Program required States to establish programs to contract with RACs on or before December 31, 2010 to audit such providers. Like Medicare RACs, these RACs will be tasked to audit claims to identify overpayments and underpayments and will be compensated on a contingency fee basis.

This is good news for providers in the State as it provides additional time to prepare for greater scrutiny and audits. CMS did not provide a definitive deadline for States to implement this new RAC Program, and stated it will announce a deadline later this year. We will continue to keep you updated.

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Cullen Act Regulations Published

We previously reported on the New Jersey Division of Consumer Affairs' (Division) proposed rules implementing the requirements of the Health Care Professional Responsibility and Reporting Enhancement Act, also known as the Cullen Act (Act). By way of background, the Act was passed in 2005 and requires health care entities (including hospitals, ambulatory care facilities, and home health agencies) to report health care professionals who have demonstrated impairment or incompetence or who engaged in professional misconduct. On March 7, 2011, the Division published the final, adopted rules (Rules) to the Act.

The Rules largely mirror the provisions of the Act that pertain to the reporting of individuals to the Division who may be impaired, incompetent or have engaged in professional misconduct. For example, health care entities must

report, among other things, when it has suspended or revoked a health care professional's privileges, removes a health care professional from a staffing registry list, or terminates or rescinds a contract with a health care professional. The Rules also include definitions for such terms as "conduct relating to adversely to patient care or safety," "imminent danger," "impairment," and "remedial action or training." Such definitions were not modified from the proposed rules.

Interestingly, and as we previously reported, the Rules state that it is a reportable event when a health care professional resigns from the staff of a health care entity, or voluntarily relinquishes partial privileges, when the entity is investigating, among other things, the health care professional's patient care, conduct demonstrating impairment or incompetence relating to patient safety, whether or not the investigation is known to the health care professional. The Act does not specifically state this and therefore, prior to the adoption of the Rules, it could reasonably have been interpreted that such resignations were only reportable if the health care professional knew of the investigation when he or she resigned or partially relinquished privileges. A commenter to the proposed rules requested that this language be modified to require the health care entity to notify the health care professional that an investigation or review of that health care professional is underway and that if he or she is contemplating resignation for any reason it will be reported. The commenter observed that a health care professional being investigated may resign for reasons having nothing to do with the investigation - better job, hours, location, money, etc. The Division responded to this comment by stating that in enacting the Act, the Legislature contemplated circumstances where a health care entity would not express, or might have a good reason to defer expressing, an intention to conduct a review to anyone, including the subject of the review. Accordingly, the Division refused to modify this provision. However, the Division did add language stating that the initiation of such an investigation must have been reflected contemporaneously in the health care entity's records.

Lessons Learned from the Massachusetts General Hospital Settlement

On February 24, 2011, the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) announced that it had entered into a Resolution Agreement with Massachusetts General Hospital (MGH) to settle potential HIPAA violations. As part of the settlement, MGH agreed to pay HHS $1,000,000.

The settlement stems from a March 9, 2009 incident when a MGH employee, while commuting to work, left medical records belonging to over 190 MGH patients on the subway train. The records, which included a patient schedule containing names and medical record numbers, billing encounter forms with names, dates of birth, health insurers and policy numbers and diagnoses, including HIV statuses, were never recovered. One of the patients whose information was lost filed a complaint, initiating the OCR's investigation into the matter.

In addition to agreeing to pay the $1,000,000 fine, MGH also agreed to enter into a Corrective Action Plan (CAP), which requires MGH to:

- Develop and implement a comprehensive set of policies and procedures that ensure protected health information is protected when removed from MGH's premises;
- Train workforce members on these policies and procedures; and
- Designate the Director of Internal Audit Services of Partners HealthCare System Inc. to serve as an internal monitor who will conduct assessments of MGH's compliance with the CAP and render semi-annual reports to HHS for a 3-year period.

The MGH settlement marked the second fine related to HIPAA noncompliance within the same week. We reported on the first fine of $4.3 million, imposed on Cignet Health, in our previous update. The lesson learned from the MGH and Cignet Health matters is that the OCR is becoming much more aggressive in enforcing HIPAA. Providers should ensure that they have in place a strong HIPAA plan that is periodically reviewed to make sure it reflects changes in the entity as well as changes in the law. Compliance audits and periodic staff trainings are also critical components of an effective HIPAA plan.

Health and Senior Services Commissioner Alaigh Resigns; O'Dowd to be Nominated as Commissioner

On March 25, Dr. Poonam Alaigh announced that due to an urgent illness in the family, she will be resigning from the position of Commissioner of Health and Senior Services, effective April 1, 2011. Deputy Commissioner of Health and Senior Services, Mary O'Dowd, will assume the duties of Acting Commissioner, and will be nominated by Governor Christie to be Commissioner of Health.

Dr. Alaigh was nominated by Governor Christie on January 27, 2010 and the Senate confirmed her nomination on March 22, 2010. She was serving as executive medical director at Horizon Blue Cross Blue Shield of NJ at the time of her nomination. Prior to joining Horizon, Alaigh served as medical director for GlaxoSmithKline. She also worked at the Veterans Administration Hospital in Lyons and as an assistant professor at the UMDNJ-Robert Wood Johnson Medical School. Dr. Alaigh is a board certified internist with a specialty in vascular diseases.

Mary O'Dowd was appointed Deputy Commissioner of Senior Services and Health Systems in March 2010. O'Dowd had previously served as Chief of Staff for the Department. Prior to joining the Department, O'Dowd worked in financial management for the Emergency Department at NYU Medical Center. O'Dowd is a graduate of Douglas College, Rutgers University and holds a Masters in Public Health from Columbia University Mailman School of Public Health. She also completed a fellowship in hospital finance at NYU Medical Center.

Dr. Christina Tan, who currently serves as the State Epidemiologist and Assistant Commissioner for Environmental and Occupational Health Services in the Department of Health, will be named Acting Deputy Commissioner of the Department, consistent with the requirement that either the Commissioner or Deputy Commissioner be a physician.

Licensing of One Room Surgical Suites

The New Jersey Department of Health and Senior Services (DHSS) is **proposing new rules** that would require all surgical facilities in the state to be registered and inspected.

The proposed rules apply to small surgical practices with no more than one operating room, which are currently regulated as private medical practices under the Board of Medical Examiners. Under the proposed rules, these physician surgical practices would have to be inspected and either certified by the federal Centers for Medicare and Medicaid Services (CMS) or accredited by one of four CMS-approved independent accreditation organizations. They would also be required to register annually with the Department.

Currently, there are 250 Ambulatory Surgery Centers that are either licensed by DHSS or certified by CMS, which requires an inspection by either DHSS or one of four CMS-approved national accreditation organizations. In anticipation of the rule, some 128 "one room" physician surgical practices have already voluntarily registered with the Department.
We have seen an advance copy of the proposal, and are reviewing it for impact on the society. If you would like a

copy forwarded, please email us at blynch@blynchassociates.com.

Additionally, legislation (S-2780, sponsored by Sens. Vitale and Singer; A-3909, sponsored by Assemblyman Benson) has been introduced that goes further than the proposed regulations.

This bill requires all "surgical practices" to be licensed by the Department of Health and Senior Services (DHSS) as ambulatory surgery facilities within one year.

As set forth in existing law, a "surgical practice" is defined as a structure or suite of rooms that has the following characteristics:
-- has no more than one room dedicated for use as an operating room which is specifically equipped to perform surgery, and is designed and constructed to accommodate invasive diagnostic and surgical procedures;
-- has one or more post-anesthesia care units or a dedicated recovery area where the patient may be closely monitored and observed until discharged; and
-- is established by a physician, physician professional association surgical practice, or other professional practice form specified by the State Board of Medical Examiners pursuant to regulation solely for the physician's, association's or other professional entity's private medical practice.

Pursuant to P.L.2009, c.24, all surgical practices were required to register with DHSS by March 21, 2010, and be subject to very limited oversight by DHSS. These one-operating room, physician-owned practices, however, provide the same type of surgical services as the larger, licensed ambulatory surgery facilities and, therefore, should be subject to the same regulations, requirements, and oversight by DHSS in order to ensure the safety of patients who use their services.

The bill, therefore, repeals the requirement that surgical practices be registered by DHSS, and provides, instead, that surgical practices must be licensed by DHSS within one year as ambulatory care facilities licensed to provide surgical and related services and be subject to the same regulatory requirements as the larger ambulatory surgical facilities.
The bill is awaiting consideration in both the Senate and Assembly Health Committees.

PIP and Out of Network

The Department of Banking & Insurance is preparing new regulations that will change the personal injury protection provider reimbursement program, to include (we hear)....additional codes that were not in the PIP reimbursement fee schedule before, including codes for hospital care; lower fees for some codes; a managed care option that can be purchased as you buy your auto insurance; and a component dealing with fraud/abuse and electronic medical records. We have not yet seen the details - stay tuned. This is a critical issue we are following closely.
The Out of Network legislation barely passed the Assembly, and is now poised for consideration in the Senate Commerce Committee. The OON Coalition continues hard at work on this issue, speaking with all stakeholders and elected/administration officials.
The Legislature has broken for its traditional "budget recess," when only hearings on the FY12 budget will be held. Traditional committee work will resume in mid-May.

Redistricting Wrapping Up

This is the final week of the redistricting negotiations. For an interesting article on the "inside game" of this important **political event, check out:**
Redistricting: The inside game
Publicly, the redistricting process in New Jersey is a state-level battle between two political parties vying to win approval from a neutral tie-breaker for a map that will best position them to win control of the legislature or a majority of congressional seats over the next decade. (Magyar, NJ Spotlight)
http://www.njspotlight.com/stories/11/0327/2357/

and on the Budget Front

Perhaps good news maybe on the horizon for the New Jersey's FY2012 spending plan, as projections for the $28.4 billion state budget remain largely on track this year, according to the Legislature's top budget officer who spoke to lawmakers on the Senate Budget Committee Monday, March 28, 2012.

David Rosen of the nonpartisan Office of Legislative Services said the revenue picture is "tranquil" compared to previous years, with revenue expected to grow in the coming year by $1.1 billion due to the improving economy. The number is close to the $1.2 billion in projected growth contained in Gov. Chris Christie's 2012 budget, which

begins in July.

Rosen said the current budget year, which ends in June, did not require the midyear emergency changes it has in recent years; Christie was forced to make $2 billion in midyear cuts during his first year in office. The OLS projections for the 2011 and 2012 budget years combined are about $125 million less than what Christie's administration last reported -- an insignificant difference considering the governor's proposed $29.4 billion budget for the 2012 budget year.

State Treasurer Andrew Sidamon-Eristoff was set to testify after Rosen on March 28, but his appearance was postponed at the last minute because of a conflict with a meeting on redrawing the state's Legislative maps. The treasurer will appear soon before an Assembly Budget Committee to give his first update since the governor unveiled his 2012 budget proposal last month.

For further information, please contact us at 609/392-7553.

Estate Planning Update- Part II

Until recently we routinely cautioned our clients that the federal estate tax exemption is something that belongs to each of us personally and cannot be shared. That meant spouses risked losing one of their tax-free amounts by leaving everything to each other in what are called simple or "I love you wills".

But the federal estate tax system signed into law on 12/17/2010 changes that with a new break for married couples. Starting in 2011, widows and widowers can add the unused exemption of the spouse who died to their own. This new "Portability" is an extremely positive development that can simplify planning for many people. It makes it unnecessary in many cases for spouses to use a bypass trust solely to preserve the federal exemption amount.

A bypass trust (also called a family trust) has never been for everyone and far fewer people may need it now than in the past. However, there are still some very important reasons to consider using one.

- Asset Protection. Leaving assets to heirs in a trust, rather than outright, is an excellent means of sheltering assets from creditors.
- Your spouse might remarry after your death. This raises a couple of concerns. One involves your kids not getting along with the step parent. The surviving spouse commingles the assets with the new spouse and your kids end up getting cut out. A bypass trust can help you avoid that.
  Another issue is that under the new law, remarriage cuts off the surviving spouse's ability to use the exemption amount of the first spouse. Using a bypass trust would help preserve the exemption.
- New Jersey has a separate estate tax that kicks in once your assets exceed $675,000. With rates as high as 16%, married couples may still want to fund bypass trusts to preserve the first spouse's exemption.
- Along with all of the other changes in the new law, portability is set to expire on 12/31/2012. If Congress doesn't act before then, not only could we lose portability, but the exemption amount will revert to $1million and the tax rate will increase to 55% from the current 35%.

Given all of the recent changes in the estate tax code now is probably a good time to sit down with your attorney and review all of your documents.

If you have any questions please contact me at (877)972-7900 or dvargo@varbeco.com.