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Monthly Report

June 2010

From the President

Theresa Impeduglia, MD

Dear Colleagues,

America's southeastern coastline is currently being threatened by the dispersion of millions of gallons of oil following the Deepwater Horizon oil rig explosion on April 20, 2010. Criticism has since emerged regarding the handling of the containment efforts and the appearance that the government was slow to intervene. The oil and gas industry generously supported the Obama campaign in 2008. Their interests, however, have been derailed by President Obama's recent hold on new drilling permits and suspension of planned oil drilling. Despite this decision, the public's perception remains that the intervention was delayed due to the campaign financing.

Once industry funding is accepted it is hard to deflect accusations of conflict of interest issues. These are the same issues that affect the medical profession. Due to publicized incidents of egregious clinical research manipulation to favor the sponsor's product, the public's tolerance of industry interference is waning. Although we as physicians feel that the tables have tilted too far in response to this unscrupulous behavior, it is now our burden to display to the public that industry support will not result in the use of a particular product or particular clinical action.

The Accreditation Council for Graduate Medical Education (ACGME) has incorporated guidelines within the resident general competencies regarding the influence of industry. Although the ACGME concedes that patients benefit from services provided both by physicians and companies, the concern is the risk of compromised professional judgment. We are quick to accuse the political realm as having the "culture of corruption." Medical professionals have always perceived themselves resistant to influence, but is this truly the case? It is hard to assess the impact that promotional support makes on decision making. It is up to the medical societies and individual medical educators to exemplify ethical values, professionalism and responsibility in reference to the largesse of medical industries. I believe this new awareness is not meant to sever the relationship with industry, but rather hold ourselves accountable for its impact on our clinical decisions, its transmitted behavior to surgeons in training and the perception by the public. Free lunch anyone?

SAVE THE DATE

October 28, 2010 - VSNJ Annual Meeting - Highlawn Pavilion, West Orange, NJ
December 4, 2010 - ACS-NJ 59th Annual Scientific Meeting

From the Statehouse

Beverly J. Lynch

Call to Action! Important medical liability legislation - Assembly bill A-1982, sponsored by Assemblyman Herb Conaway, Jr. (D-Burlington/Camden) and Assemblyman Declan J. O'Scanlon, Jr. (R-Mercer/Monmouth) and Assemblyman Jay Webber (R-Morris/Passaic), and Co-Sponsored by Assemblywoman Handlin (R-Monmouth) and Assemblyman Connors (D-Burlington/Camden), is expected

to be heard in the Assembly Health and Human Services Committee on Thursday, June 10, at 10 am.

The bill is expected to be heard "for discussion only" at this time, which means it will not be voted on by the committee members. Testimony will be accepted by some members of the public. The agenda for the June 10 meeting has not yet been filed, so dates/times are still fluid.

All supporters will not be permitted to speak, but can submit written testimony to the committee, and any press that is present.

It is important that the New Jersey physician community voice its support for this measure, and ask for the bill to be heard on the regular agenda (meaning the committee can vote on it and move the bill forward in the legislative process).

Please call the Chairman of the Health Committee (and sponsor of the bill), Assemblyman Herb Conaway at 856/461-3997, and call the Assembly Majority Leader, Assemblyman Joe Cryan (D-Union) at 908/624-0880.

If you prefer to attend the hearing (not sure how many physicians will be permitted to speak on the bill), you can email me for more information.

Below please find a summary of the bill's key provisions:

The bill provides for various revisions to the laws governing lawsuits and insurance coverage for medical malpractice.

The bill also provides that a malpractice action against a health care provider shall be commenced within two years after the plaintiff or patient discovers, or through the use of reasonable diligence should have discovered, the injury, but not more than four years after the date of the alleged act, omission, neglect or occurrence that is the basis of the action, except that in the case in which the allegation of malpractice against the health care provider is that a foreign object has been wrongfully left within a patient's body, the claim shall be barred unless commenced within one year after the plaintiff or patient discovers, or through the use of reasonable diligence should have discovered, the existence of the foreign object wrongfully left in the patient's body, whichever first occurs.

The bill also revises the requirements for an affidavit by an appropriately licensed person to be provided by a plaintiff in certain negligence and malpractice actions, by further requiring that the affidavit state that the care, skill or knowledge used in the treatment, practice or work that is the subject of the complaint did not meet a commonly recognized reasonable standard of care. In the case of an action for medical malpractice, the affidavit shall further: (1) establish that there was a provider-patient relationship and identify the specific act by the defendant which is the basis for the cause of action against the defendant, or, if there was no provider-patient relationship, identify the specific act by the defendant which is the basis for the cause of action against the defendant; and (2) be based on and refer to objective scientific clinical evidence. The person executing the affidavit shall include in the affidavit a certification, under penalty of perjury, that the patient's chart and other pertinent information submitted has been personally reviewed. A person shall be guilty of a crime of the fourth degree if the person purposefully or knowingly makes, or causes to be made, a false, fictitious, fraudulent, or misleading statement of material fact in, or omits a material fact from, or causes a material fact to be omitted from, any such affidavit.

The bill also provides that in an action alleging medical malpractice, a person shall not give expert testimony or execute an affidavit on the appropriate standard of practice or care unless the person is licensed as a physician or other health care professional in New Jersey, as opposed to the current requirement that the physician or professional be licensed in the United States, provided however, that a court may waive the requirement that a person providing testimony as an expert witness be licensed in New Jersey upon sufficient evidence that no person licensed in New Jersey meets the qualifications set forth in section 7 of P.L.2004, c.17 (2A:53A-41).

The bill further provides with respect to medical malpractice actions, that expert testimony shall be based on and refer to objective scientific clinical evidence, as defined in the bill. A person testifying as an expert witness in such an action shall be guilty of a crime of the fourth degree, and shall be forever barred from presenting expert testimony in this State if the person purposefully or knowingly makes, or causes to be made, a false, fictitious, fraudulent, or misleading statement of material fact in, or omits a material fact from, or causes a material fact to be omitted from, any expert testimony.

The bill also provides that an insurer shall not increase the premium of any medical malpractice liability insurance policy based on a claim of medical negligence or malpractice against an insured unless the claim, as defined in the bill, results in a medical malpractice claim settlement, judgment or arbitration award against the

insured. The bill also prohibits an insurer from increasing medical malpractice insurance premiums, if the alleged malpractice occurred in certain charitable or emergency situations.

The bill also provides that every claim or demand filed against an insured for damages in excess of \$100,000 per occurrence for economic loss and non-economic loss shall document the economic loss for which relief is sought and shall set forth in detail the economic loss incurred at the time the case is subject to a complementary dispute resolution proceeding, at the time settlement negotiations are entered into, or at the time a case is tried, as well as a detailed statement of claimed prospective economic loss resulting from the allegation of medical malpractice, which documentation shall be updated from time to time as necessary and shall be provided to the court, the complementary dispute resolution agent or, in the case of settlement, the defendant, as applicable.

The bill also provides, that in every trial in which damages are awarded in an action alleging medical malpractice, the trier of fact shall separately itemize damages awarded for economic loss and damages awarded for non-economic loss and the judge presiding over the proceeding shall review each verdict to determine whether the award is clearly inadequate, excessive, or disproportionate in view of the nature of the medical condition or injury that is the cause of action or because of passion or prejudice by the jury.

The bill also provides that it shall be presumed that a person who signs an informed consent form or document for a medical procedure or other form of health care has read that form or document.

The bill also provides that if an attorney representing a plaintiff in a medical malpractice action files the complaint using fictitious names for one or more persons who may be determined to be parties to the action but whose role is unknown at the time of the filing of the complaint, there shall be no time limitation within which the attorney may substitute the name of any person or persons for a fictitious name nor any other bar to such substitution if the person or persons are subsequently determined to be joined as a party to the action.

Finally, the bill provides that a physician licensed to practice medicine in this State shall not be liable for civil damages as a result of any act or omission in connection with the rendering of any treatment or procedure for illness or injury if the treatment or procedure is rendered while the physician is performing the treatment or procedure as a volunteer, in good faith and without consideration, at a clinic, other health care facility, or any other location where the treatment or procedure is being rendered.

Asset Protection: Most common planning mistakes and oversights

As a financial planner who specializes in working with physicians, I get the opportunity to meet with many doctors over the course of a year. Over the next few months I would like to share with you some of the observations that I have made as a result of those meetings with a focus on the most common planning mistakes and oversights that relate to asset protection.

When I mention asset protection typically the first thing that comes to mind are lawsuits and in particular malpractice lawsuits. But malpractice suits are just one of the potential threats to your assets that you need to plan to protect yourselves from. Three others are: the expense of a long term illness; Estate taxes; and a sideways or declining investment market.

As I mentioned, malpractice suits are always top of mind but they have not really been an issue for NJ doctors yet. NJ Doctor's personal assets have not been attacked as a result of a malpractice claim. All the cases that we know of have settled within the limits of your malpractice insurance policy. Doctors in some of our surrounding states, in particular NY and PA, have not been so lucky but NJ doctors have been immune so far. It has been much more likely to have your assets attacked as a result of a non-malpractice lawsuit. Over the past few years I have seen a growing number of cases where a claimant has sued the doctor personally as a result of an auto accident or a home related injury. Two of these cases are going to settle for large multi-million dollar payouts. We live in the most litigious area of the country. Public perception is that physicians make a lot money and have a lot of assets.

Many doctors that I have met with have insufficient protection from a non-malpractice lawsuit. To help shield your assets I strongly urge you to maximize the liability limits on your auto, home, boat, and umbrella insurance policies. Maximum limits will vary by provider but on average I recommend the following minimums: Auto policy- \$500,000; Homeowner's- \$1,000,000; Umbrella- \$2,000,000.

Next month we will review recommended ownership strategies for your primary residence and vacation home.

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

David J. Vargo, CFP®, CMFC

President, Varbeco Wealth Management, LLC

New Jersey Life Health + Beauty magazine has opened nominations for its **Doctors Who Make a Difference Honor Award**. In the April/May 2011 issue, the magazine will be honoring doctors and other medical personnel (such as nurses, therapists, alternative practitioners) who have made a positive impact in the medical community and in the towns where they practice. Candidates include those who:

- have pioneered research, developed a new procedure/device, or advocated for legislation that has improved the quality of health care for the state's residents;
- have received national recognition for their endeavors and by doing so have elevated the stature of NJ's medical community;
- should be recognized for their philanthropic work or who have founded organizations that have made a significant contribution to the state or beyond;
- have published a landmark or practice-changing book or article;
- have otherwise gone above and beyond in his/her practice of medicine.

Nomination deadline: August 27. Visit www.njlhb.com for online nomination and downloadable nomination form.