

THE Bulletin

JANUARY 2011 Volume 87, Number 1

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ORGANIZATION MEETING
FEBRUARY 3, 2011**

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FOR YOU LATELY!**

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JANUARY 2011 Volume 87, Number 1

THE Bulletin

Read by 96% of GCMS members.

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Cover photo by Dr. John Love.

Our Vision

That the Genesee County Medical Society maintain its position as the premier medical society by advocating on behalf of its physician members and patients.

Our Mission

The mission of the Genesee County Medical Society is leadership, advocacy, education, and service on behalf of its members and their patients.

PLEASE NOTE

The GCMS Nominating Committee seeks input from members for nominations for the GCMS Presidential Citation for Lifetime Community Service. The Committee would like to be made aware of candidates for consideration.

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GETTING JCAHO'D

This has been an interesting week. One of our local hospitals has had the dubious honor of enduring a JCAHO survey. This engenders about the same level of enjoyment as an enema.

After the JCAHO surveyers left it became clear that many of the issues that were called into question were directly related to the medical staff.

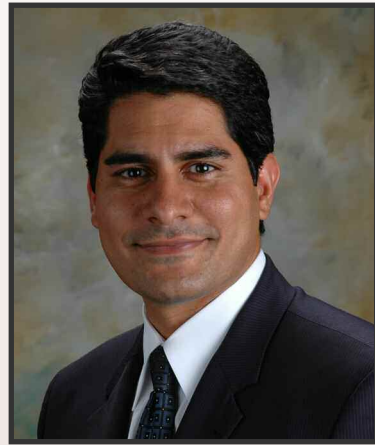
Once again I found myself being asked to change the way I document, based on new JCAHO edicts.

This time the new task was to place a date and time on every signature. Up to this point, I had always dated and timed my orders and progress notes. I dated most other documents like discharge summaries, H & Ps, etc. But the time thing was going to require me to change my habit, yet again. While it seemed trivial to me, it became abundantly clear that if the hospital didn't correct this deficiency by the time JCAHO came around again, bad things would happen.

One feels powerless when these verdicts come down from on high from JCAHO. Many among us chastise JCAHO about the unfairness of its requirements. It is too easy to feel like a victim in these situations.

Since becoming a member of our Michigan Delegation to the AMA, it has become clear that we do indeed have options when it comes to engaging JCAHO in a dialogue. While it is fruitless to attempt to discuss the merits of the regulation in question with the inspector who comes to the hospitals, there have been many successes when engaging them through organized medicine.

Its the power of leverage that comes through our combined memberships. This power is can be wielded in a surprisingly agile manner. Any member can write a resolution now in Genesee County. If it gets adopted at the MSMS House of



S. Bobby Mukkamala, MD

delegates, it gets sent to the AMA for consideration. If it passes there, then communication is established with JCAHO and a dialogue is started on the issue. From start to finish, the process could be done in less than a year.

Once again, this is a huge benefit of membership that is under-appreciated.

So the next time you hear a colleague complaining about being a victim of yet another JCAHO initiative, ask them if they are a member. If the answer is yes, invite them to call the GCMS to help craft a resolution and start the process. If the answer is no, then remind them that

the power to change the status quo comes only through membership and they should join.

Or, they could always considering writing a letter to JCAHO on their own letterhead. Have them address it to: The Joint Commission, One Renaissance Blvd., Oakbrook Terrace, IL 60181

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Consider a donation to the Medical Society Foundation for all of your holiday giving. What a wonderful way of expressing your holiday sentiments while supporting important health related causes.

The Medical Society Foundation has been coordinating physician giving in Genesee County since 1987. This holiday season, why not use the Foundation to make sure your gifts to family, friends and colleagues help to improve the health and well-being of our community.

By giving to the Medical Society Foundation, you receive a great year-end tax benefit at the same time that you tell others how much their health - and the health of those who are most vulnerable in our community - really means to you.

In the past, the Medical Society Foundation funds have been used to support specific public television programs, support of HIV programs, Reach Out and Read, Michigan State Medical Society Alliance, continuing medical education programs, Greater Flint Health Coalition, Turkish Red Crescent Society, Orissa Relief Fund, Sloan Museum's health exhibits, The Genesee County Free Medical Clinic and the Richard A. Rapport Memorial Conference Room.

Contributions can also be made in memory of an individual or to honor someone.

If you want to designate your gift(s) to a special cause, please indicate your choice on your check. A holiday card will be sent to the person(s) of your choice acknowledging your gift. (We will deduct only 10% from the amount of your check to cover expenses).

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Medical Society Foundation Mission Statement:

The Medical Society Foundation is organized and does operate for the purpose of supporting continuing medical education and health-related charitable activities that further the cause of medicine.

PET PERKS

The better I get to know men, the more I find myself loving dogs.

– Charles de Gaulle (1890 - 1970)

Few sights can elicit a smile more easily, even in the most hard-hearted person, than watching a child squeal with delight when playing with a puppy or kitten. Children seem to have a universal and natural affinity for the little critters. Measured by the money, effort, and time we Americans spend on our animal friends, it's apparent that the kids are not the only ones.

It is estimated that there are 77 million dogs and 93 million cats owned by U.S. households. Add to those numbers all the birds, rabbits, horses, various reptiles, fish, and a myriad of exotic animals. Americans spend \$9.8 billion each year on veterinary services (should have opted for vet school!) and another \$10 billion on pet food, medicine, and supplies. Pet care is one of the fastest growing retail industries, second only to consumer electronics. There are pet spas, doggie day care centers, mobile grooming vans, pedicure services, professional dog walkers, and massage therapists for pets. Grief counselors are available to help families cope with the death of a beloved four-legged family member. Many people consider the comfort of their animals when choosing a vehicle and more than 40 percent of dogs sleep in the same bed as their owners. It is abundantly clear that people love their animals.

Studies have shown that pet ownership has lots of potential positive effects on the health of the master. People who adopt a dog or cat have been shown to have lower blood pressure readings in stressful situations than non-pet owners. Pets offer greater psychological stability by their companionship and help combat loneliness and depression while promoting interest in life in the right



Daniel Ryan, MD

situations. People with pets tend to make fewer doctor visits, especially for non-serious medical conditions.

Pet animals are not only a positive influence in the home but can be helpful in the clinical setting as well. Animal Assisted Therapy (AAT), or pet therapy, is certainly not a new concept. Some of the earliest uses of pet therapy were for psychiatric patients. Most physicians have encountered therapy dogs in the hospitals, especially when on Psych rotation as medical students.

AAT uses trained animals and handlers to achieve specific physical, emotional, social, and cognitive goals for patients. Petting an animal supposedly releases endorphins. Fine motor skills can be improved by grooming, petting, and feeding an animal. Walking or running and playing fetch can help patients rehabilitate after a stroke or injury. Dogs are most commonly used as therapy animals but any domestic pet can be used as long as they are screened and trained appropriately.

Obviously, pet therapy will not provide a cure for cancer or heart disease, and many physicians are not convinced of its utility at all (probably animal haters). However, if a therapy dog or cat can lift a patient's spirits or distract them from acute or chronic pain, it certainly can be beneficial. On a similar note, please consider generously supporting organizations in our community that promote the care and well-being of our furred, scaled, and feathered friends such as the Genesee County Humane Society, Adopt-A-Pet, and C.A.R.E. These organizations, and others like them, do a lot of good work and need our help throughout the year.

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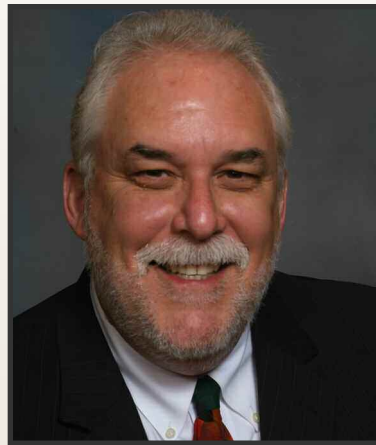
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WHAT HAS GCMS DONE FOR YOU LATELY!

GCMS is a great example of an organization that works aggressively on behalf of its members. While the office is no longer open on Fridays, the Society is aggressively pursuing the interests of our members. The following is a list of activities of the Society in the last several months that should be of interest to members. If you come across a non-member, please let them know that the Society is working tirelessly on their behalf and the benefit that they are receiving is being paid for by you the members. They should join!



Peter Levine, MPH

- GCMS keeps an accurate email list serve so we can update physicians on a daily basis if necessary on key issues.
- GCMS has been heavily involved in opposing the 3 percent Doctor Tax on gross revenues, supporting smoke-free workplace issues, working with the city in the Environmental Protection Agency in redeveloping brown fields
- GCMS works closely with MSMS on developing leaders, lobbying, fostering physician involvement in all aspects of MSMS's activities and related AMA activities.
- GCMS convenes Practice Managers monthly. We average 35 attendees. Topics are wide ranging, selected by the Practice Managers. On occasion, we then hold identical sessions for physicians on specific business issues that the Practice Managers identify. We have been working very closely with MSMS on many of these topics.
- GCMS holds Town Hall meetings quarterly on critical issues.
- GCMS has been focused on the state budget and health reform issues. In addition, significant energy has been expended communicating the vitality of the

Michigan Patient Compensation Act concept, which many of you know about as the No-fault Medical Liability initiative. MSMS has drafted legislation for this concept.

- GCMS works very closely with the Greater Flint Health Coalition. GCMS allocates staff and physician time on an unlimited basis to the Health Coalition, which involves itself in issues as diverse as, Timely Payment of Practitioners, the development of the Regional Health Information Exchange, community training programs to develop staff for vacancies in hospitals and physicians offices, working with the President Obama's Automotive Task Force to identify ways to help communities such as Flint.
- GCMS staff intervenes quite often with third-party-payers, and on occasion with regulators, on behalf of physicians in much the same way as the MSMS Reimbursement staff does. GCMS does also communicate with third-party-payers on issues relating to certification and efforts to simplify or improve methods of doing things that impact physicians and their patients.
- GCMS works very hard on leadership development relating to young physicians, foreign physicians, and physicians in general in an effort to refurbish its leadership core on an on going basis. The GCMS Board is 35 individuals, with a culling process on-going to make sure that new leadership develops and those leaders who are not stepping up effectively are replaced with those willing to try to participate
- GCMS works very closely with its Alliance to foster Alliance development, and foster leveraging of resources to increase lobbying efforts on behalf of physicians and their patients.
- GCMS consults with physicians and Practice Manager constantly on myriad issues

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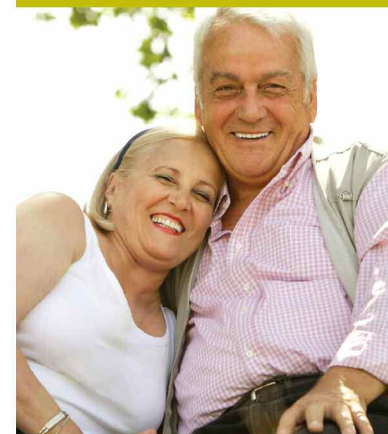
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HAPPY NEW YEAR FROM YOUR DISTRICT DIRECTORS

As you may have heard already, one piece of news out of East Lansing relates to the acquisition of American Physicians Assurance Corp, a malpractice insurer which many of our members use, by The Doctors Company (TDC). It is another milestone in the history of our "homegrown" insurance company that started as a physician owned mutual company and has evolved into a publicly traded company and now a valuable asset in TDCs holdings.



S. Bobby Mukkamala, MD
District VI Director

After hearing Dr. Richard Anderson, CEO of TDC, speak on the merits of the new company, I am convinced that it will serve those of us who are insured with them very well. They have unique coverage and "bonuses" that are physician oriented. I look forward to our collective relationship with them.

The Medicare / SGR issue still looms. Once again,

we are scrambling for a short term fix to avoid catastrophic cuts. The frustration is magnified in a year that saw major health care reform that left this critical piece out. For now, we will continue to fight for more equitable calculations. At the recent AMA interim meeting there was more buzz than ever before about exploring various participation (or not) options with Medicare. The AMA has literature on participation, which is very easy to understand.

All eyes on are the new governor as he sets up his cabinet. So far we have a good relationship with him

and I think this will serve us well as the state budgetary issues continue to plague us, and the Medicaid program is always in the mix.

Have a wonderful New Year, and please don't forget to renew your membership in GCMS/MSMS now for the 2011 year.

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YOUR \$\$\$ AT WORK

- GCMS helped three practices with significant billing problems
- GCMS worked with MSMS and the AMA to successfully defer Medicare physician pay cuts
- GCMS worked with two member physicians on certification issues
- GCMS worked to refine the Bulletin, the first all electronic medical news magazine in the state
- GCMS Presidents' Ball held to the amazement of all
- GCMS continued orienting new legislators to key physician issues
- GCMS planned February Dinner Business on Accountable Care Organizations



Happy Holidays!



Seasons Greetings and Best Wishes for a Happy New Year from the associates of The Rybar Group.

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Health Care Weekly Review Year-End Review

S. Bobby Mukkamala, MD, President, Genesee County Medical Society

2010 was a year of mixed messages, crossed wires, and competing interests.

Health reform passed at the federal level followed immediately by a complete transition from Democratic federal and state agendas to Republican ones. This left physicians in a quandary on some issues and very focused on others. The issue of individual mandates is confusing to those of us in the trenches, and their constitutionality is being questioned. At the same time we know that we have to keep pushing forward on electronic medical records because, ultimately, it is necessary. There are incentives to get this done and disincentives for non-adoption. Issues like accountable care organizations are flavor of the month but have no details attached to them yet. Hospitals and physicians will need to become engaged in dialogue on this and other issues in order to survive. They will need to be transparent with each other in ways that they never have been before. As a solo practitioner in a community with quite a few solo practitioners, the overall question is: how will this impact us and smaller groups. Outside of the large urban areas, physicians are oftentimes practicing on an island. It is not practical to think that all of them will be able to become organized in the ways that the incentives are leading. It is a confusing time and a very exciting time to be practicing medicine in the State of Michigan.

One of the great events of the past year was the passage in this state of the workplace smoking ban. Physicians have never understood why the Legislature was unable to do this for so many years. The fact that the Legislature couldn't do it, made specious their efforts to control Medicaid costs and reduce morbidity and mortality. The simple act of banning smoking in the workplace should have a tremendous impact, over the course of time, on the cost of health care.

Federal health reform has called attention to the need to reevaluate populations covered and benefits of the Medicaid program in Michigan. Physicians who care for the Medicaid population are doing so because they feel that ethically, they must. Policy makers who think that Michigan's depression will force physicians to accept Medicaid in larger numbers are dreaming. Medicaid does not cover the cost of care. It is only the goodwill of the medical community that keeps it going. The very fact that a doctor tax was ever raised for discussion is proof of how little the Legislature understands the nature of the Medicaid program and its impact on the physician population.

This is however an exciting time to be a young physician in Michigan. Everything is shifting and moving constantly. Just as the young physicians in the mid 60s were trepidatious in the new era of the infancy of Medicare, so too are we cautious about the era of PPACA. The advocacy we support on behalf of our profession and our patients will define how physicians 50 years from now look back at this time in our nation's history and judge the merits of our actions. That is precisely why we must continue to be at the table.

2010: The Year in Review

By Peter A. Levine, MPH

2010 will be remembered as the year of federal health reforms. It was also a year of huge shifts in Washington and Lansing in the balance of power between the parties. It was the year that the Republicans regained control of the Michigan Supreme Court and a year in which studies showed a major shift in health care utilization patterns in Michigan.

The passage of federal health care reform led to major activity at all levels of the health care system. This was due to an effort to position organizations and entire industries for the changes which will be taking place between now and 2014. Incentive programs, disincentive programs, and an overall terrible economy have resulted in tremendous opportunities for associations and consultants to become experts in the future of

health care delivery in the United States.

The major shift in the balance of power between the Democratic and Republican parties, both in Washington and in Lansing has been swift and dramatic. At the state level, opportunities to educate new legislators are myriad. Term limits guarantee that new legislators arrive with virtually no information about the hundreds of issues which they are facing. The opportunity to communicate valid messages in fields of health care are many. There are so many examples of why term limits have been catastrophic for the State of Michigan, not the least of which has been the budget battles over the past several years. When one sees a vast majority of the legislature coming in brand new, nobody feels that that is a positive for the State of Michigan, certainly not with the state of the economic crisis and the need for experts to help figure out how to solve it.

Physicians in general are thrilled by the recapturing of the Supreme Court by Republican Non-partisan nominees in the past election. As we face a future rife with physician shortages and dramatically increased demand due to health reforms, the threat of the loss of tort reforms passed in the mid 90s had the potential to dramatically deleteriously impact access to care. While there is always room to improve the malpractice climate in the State of Michigan, it is good to know that we will not be backsliding in the near future.

Finally, a very interesting report was published by the Center for Health Research and Transformation in Ann Arbor. This study showed utilization patterns in the State of Michigan and compared them to earlier data. It is thrilling to note that in Genesee County, a shift has occurred taking it from among the highest utilizing communities in the state to the middle of the pack for most of the items studied. It reflects well on the efforts of the hospitals, the Medical Society, and the Greater Flint Health Coalition along with third-party-payers and consumer groups working individually and collectively to establish appropriate utilization levels and to work. Other communities can learn a lot by watching the activities of the Greater Flint Health Coalition, a consensus based organization designed to improve cost, quality, and access issues based on the needs of the community.

Michigan remains the most interesting state to work in, as a person interested in health care interested policy, and 2011 promises to be equally fascinating.

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we have so
many unknowns
coming our way...**

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Special to Health Care Weekly Review

By Julie L. Novak, Executive Director, Michigan State Medical Society

Although predicting future changes in the health care system may be difficult, what we know for certain is that Michigan physicians will be faced both with difficult challenges and exciting opportunities in the next few years. For nearly 150 years the Michigan State Medical Society has worked to enable and empower Michigan physicians to provide the best possible care for their patients by providing a unified voice in our local communities, at the state capitol and in Washington, DC. That long tradition grounds us as we help physicians define the future and evolve as an organization to meet future physician needs. What we do know with certainty is that physicians must work together and with other stakeholders to make the changes that will come meaningful and effective for the patients they serve.

The mission of the Michigan State Medical Society is to promote a health care environment that supports physicians in caring for and enhancing the health of Michigan citizens through science, quality, and ethics in the practice of medicine. Central to that mission is our commitment to keeping physicians and their staffs educated about impending legal and policy changes that may alter the way patients receive care. With the passage of landmark federal health care legislation last March, the way medical care is delivered may change rapidly, and MSMS is on the front lines, keeping physicians informed as changes take effect.

We continue to analyze the bill and follow the legislative debate on behalf of our physicians. From a new federal long-term care insurance program and increases in health savings account withdrawal penalties that take effect on January 1, 2011, to the Medicare payroll tax hike that will hit most physicians on January 1, 2013, and the mandate that every American citizen purchase health care by January 1, 2014, MSMS is tracking the new federal law and keeping doctors and their staffs across in the know so they can focus on what they do best-providing their patients with the best medical care. We must also prepare physicians to deal with possible delay or change in the law as well, since the political debate continues on.

Michigan physicians dedicate their lives to saving and improving the lives of others. Whether it's through weekly email updates, comprehensive monthly newsletters, special meetings and urgent alerts, the Michigan State Medical Society provides physicians with the resources they need to carry out their mission, and we remain a vigorous, unified and respected advocate for physicians and their patients.

We understand that the only real solutions to health care challenges in Michigan will come from working together, seeing the problems from different perspectives, and looking at new approaches. Physicians play a critical part in that discussion, and each and every day, MSMS helps them to tell their stories, build on important collaborations that exist in Michigan and prepare to handle whatever the world, the state or Congress throws at them.



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Edward Christy, MD - Planning Committee for MSMS ASM, Task Force on a Patient Focused Compensation System

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Raymond R. Rudoni, MD - Committee on State Legislation and Regulations, Liaison Committee with Third Party Payer

Mona Sahouri, Alliance - Committee on State Legislation and Regulations

Randolph E. Schumacher, MD - Committee on Aging

Robert M. Soderstrom, MD - Task Force on a Patient Focused Compensation System

Laura Stoyanoff, Alliance - Committee on State Legislation and Regulations

Lakshmi K Tummala, Alliance - Planning Committee for MSMS ASM

Venu Vadlamudi, MD - Committee on Membership Recruitment and Retention Committee on State Legislation and Regulations

John A. Waters, MD - Committee on Health Care Quality, Efficiency and Economics

Alan P. Weamer, MD - Committee on Bioethics



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LEGISLATIVE LIAISON COMMITTEE YEAR-END MEETING

The Legislative Liaison Committee met in December with Representatives Woodrow Stanley and Lee Gonzales as well as staff from Rep. Paul Scott and U.S. Senator Debbie Stabenow to discuss election results and other issues.

Dr. Blight thanked Representative Gonzales for his years of service and his consistent participation in Legislative Committee activities. She noted he was highly communicative and supportive on most issues.

The Committee reviewed the recent elections and received an overview from Josh Richmond regarding leadership positions. Ninety-five percent of the MDPAC endorsed candidates won.

Chris Hennessey of Senator Stabenow's staff provided an overview of the SGR issues. An extension has been arranged through the month of December. No long-term fix is planned during the lame duck session of Congress. Red Flag Legislation, which recently passed, will exempt physicians. Senator Stabenow will chair the Senate Agriculture Committee. This is important to physicians because it controls nutrition standards which effect health.

Josh Richmond also noted that the State of Michigan passed legislation to establish a statewide trauma system.

The next meeting of the Committee will be in February.

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LAURA CARRAVALLAH, MD TO SERVE AS GCMS PRESIDENT-ELECT

Early in November, the recently elected president-elect of the Genesee County Medical Society had to resign his position. The GCMS Bylaws place responsibility for replacing officers with the Board of Directors. The Nominating Committee met to present a nomination to the GCMS Board of Directors. The Board of Directors voted on that nomination at its November meeting and elected Dr. Laura Carravallah, President-elect for this year. Her term as president will begin at the Presidents' Ball in November of 2011.

Congratulations to Dr. Carravallah!

PLEASE DONATE

When you are mailing donations, please do not forget the Medical Foundation. Your donations help fund charitable activities of the Genesee County Medical Society. Please call Peter Levine for more information on how you can make a difference in our community at (810) 733-9925, or send donations to the GCMS office:
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Genesee County Medical Society Dinner Business Meeting

Thursday, February 3, 2011

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3100 Lakewood Dr., Flint, MI 48507

A Town Hall Meeting on
Accountable Care Organizations
What every physician needs to know (and should be thinking about)!

Larry Schwartz, President & CEO
Medical Advantage Group

Robert J. Jackson, M.D., M.M.M.
*Medical Director of Oakwood Primary Care Physicians,
Wyandotte, I.P.A. and Medical Advantage Group*



COME READY FOR A DISCUSSION!

One of the coming issues in health care is that of Accountable Care Organizations. Is it a buzzword, or the future of health care delivery? This is a meeting that all members should attend, along with your Practice Managers and other key staff. Physicians will be asked to make critical decision regarding affiliations and other forms of relationships as the environment shifts. This is a meeting which will give physicians key points to consider and opportunities to become informed on issues, to be proactive, than reactive on this critical issue.

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All physicians, spouses, and family members, members and non-members of GCMS and GCMSA and interested other professionals are invited.

\$30 pp (cost of dinner): GCMS Members & Spouses and Practice Managers
\$20 pp: Hospital Residents and Students
\$50 pp: Non-Members and Non-Member Practice Managers

Reservations required by January 31, 2011.

6 p.m. Registration and Social Hour
6:30 p.m. Dinner
7 p.m. Meeting
7:15 p.m. Presentations

Please mail check with reservations to:
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New Members:

Joseph Arcidi, MD
Cardiothoracic Surgeon
401 S. Ballenger Hwy.
Flint, MI 48532
Ph: (810) 342-2590
Fax: (810) 342-2591
Dr. Arcidi received his medical degree from Johns Hopkins University School of Medicine in 1982 and completed his surgical residency at Massachusetts General Hospital in 1985. He is Board Certified in Thoracic Surgery. Dr. Arcidi is sponsored by Amitabha Banerjee, MD and S. Bobby Mukkamala, MD.

Harun Al Rashid, MD
Geriatric Psychiatry
Caro Center
2000 Chambers Rd.
Caro, MI 48723
Ph: 989-673-3191
Fax: 989-673-4164
Dr. Rashid received his medical degree from Rajshahi Medical College, Rajshahi, Bangladesh in 1988 and completed his residency at Wayne State University, Detroit, MI in 1999. Dr. Rashid is sponsored by Amitabha Banerjee, MD and S. Bobby Mukkamala, MD.

New McLaren Resident:
Shagun Arora, MD

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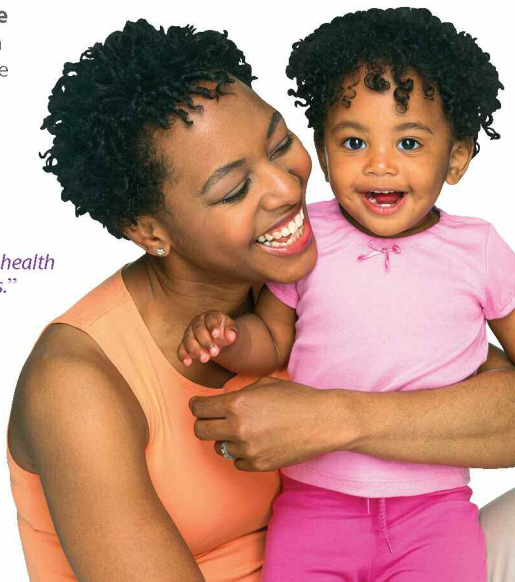
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Genesee County Medical Society Board of Directors Meeting

October 26, 2010 - MINUTES

Motion:

That all motions passed at the last Board of Directors meeting on September 29, 2010 be ratified for implementation. The Motion Carried.

Motion:

That the Board consider revision of the size of the Board or the number required for a quorum and that the issue be referred to the Bylaws Committee. The Motion Carried.

Motion:

That the Budget to Actual Report for the period ending September 30, 2010 be approved as presented. The Motion Carried.

Motion:

That staff contact the Michigan State Medical Society legal counsel regarding what would be appropriate to do for physicians who are members who have been determined by General Motors to be decertified for proofs of disability. Following discussion with MSMS legal counsel a letter, if appropriate should be sent to General Motors advising them of our Peer Review system and to Drs. K.V. Mathew and Kang Kwon to ask if they would like GCMS to act on their behalf and to ask them for information about the issue. The Motion Carried.

Motion:

That the Genesee County Medical Society Board of Directors consider talking to other counties regarding merging or providing administrative services. The Motion Carried.

Physician Dinner Meeting To Learn More About Diabetes Group Visits

The Greater Flint Health Coalition & Genesee County Medical Society invite you to join us to learn how Diabetes Group Visits can be conducted in your practice, leading to:
IMPROVED PATIENT OUTCOMES, IMPROVED PRACTICE EFFICIENCY, AND BETTER REIMBURSEMENTS!



**Please join us on:
January 26, 2011**

6:00 p.m. – 8:00 p.m.

**Genesee County Medical Society
4438 Oak Bridge Drive
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(Dinner will be served)**



This event is dedicated to providing the tools needed to implement diabetes group visits in your practice!

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I will be attending the January 26th Diabetes Group Visit Physician Dinner Meeting at the Genesee County Medical Society.

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ORGANIZATION: _____

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THE FAMILY MEDICAL LEAVE ACT: An Employer's Guide

By R. Paul Vance, Esq.

Although the Family Medical Leave Act ("FMLA") has been around for almost 20 years, like many laws, it can be confusing. Especially considering it was not created in a vacuum. With this in mind, below is a succinct overview of the FMLA and some of the most significant provisions that may impact your office.

WHO IS COVERED?:

Employers who employ 50 or more employees in 20 or more calendar work weeks in either the current or preceding calendar year are covered by the FMLA. To determine whether the 50-employee threshold has been satisfied, an employer must count all employees who appeared on the payroll during the previous 20 work weeks, including part-time employees. Also included in the count are employees on paid or unpaid leave, unless there is a reasonable likelihood that they will not return to work.

Generally, an employer that does not employ 50 or more employees is not covered by the FMLA, even if the employer incorporates the provisions of the FMLA into its employee handbook. However, an employer with fewer than 50 employees may be required to comply with the FMLA if its employee handbook provides FMLA leave for "all employees with one year of service who worked 1,250 hours." To avoid confusion, if you

employ less than 50 employees and want to ensure that your office is not covered by the FMLA, reference to the FMLA should not be included in the employee handbook.

EMPLOYER ELIGIBILITY:

Pursuant to the FMLA, an employee is eligible for leave if he or she has been employed by the employer for at least twelve months, has worked at least 1,250 hours during the twelve month period preceding the commencement of the leave, and currently works at a site where the employer employs 50 or more employees within a 75-mile radius. Importantly, the required twelve months of employment do not have to be consecutive.

DURATION OF LEAVE:

An eligible employee is entitled to a total of 12 work weeks of FMLA leave during any 12-month period, for (1) the birth of the employee's child and to care for a newborn child; (2) for placement of a child with the employee for adoption or foster care; (3) to care for the employee's spouse, son, daughter, or parent with a serious health condition; (4) for a serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job; or (5) for a qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee

is on active duty in the Armed Forces in support of a contingency operation.

INTERMITTENT AND/OR REDUCED WORK LEAVE:

FMLA leave may be taken intermittently or on a reduced work schedule. Intermittent leave is leave taken in separate blocks of time due to a single qualifying reason. Reduced work schedule leave is leave that reduces an employee's work schedule, usually from full time to part time. Generally, only the actual time taken off due to an intermittent leave or a reduced work schedule leave is counted toward the employee's twelve week leave entitlement.

An employee is entitled to intermittent or reduced work schedule leave when it is "medically necessary" due to the employee's "serious health condition" or to care for a qualifying family member with a "serious health condition" or a covered service member. Employees taking such leaves must make a "reasonable effort" to schedule the leave in order to ensure that they do not disrupt the employer's operations. When leave is taken after the birth or placement of a child, intermittent or reduced work schedule leave may be used only if the employer agrees to permit such leave.

In addition to the above, an employer may temporarily transfer

an employee on intermittent or reduced work schedule leave caused by foreseeable medical treatment to an alternative position with equivalent pay and benefits that better accommodates the employer's needs and the employee's recurring periods of leave. Although the alternative position must have the equivalent pay and benefits, it need not have equivalent duties. At the end of the leave, the employee must be restored to his or her former position or an equivalent position.

CERTIFICATION:

Employers may require an employee who is seeking leave for a "serious health condition" or to care for a qualifying family member with a "serious health condition" to submit a medical certification completed by a health care provider. The employer must give the employee written notice of the requirement for certification and the consequences for failing to obtain certification. Notification must be sent by the employer each time a certification is required.

The employer should request that an employee furnish the certification at the time the employee gives notice of the need for leave, or within five business days after the notice for leave is received by the employer. In the case of unforeseeable leave, notice of the need for certification should be given within five business days after the leave commences.

An employee must provide the requested certification within fifteen calendar days after the employer's request, unless it is impracticable to do so under the circumstances despite the employee's diligent, good-faith efforts. If an employee

submits an incomplete or insufficient certification, the employer must notify the employee, in writing, about what additional information is necessary to make the certification complete and provide the employee with seven calendar days to cure any deficiency. Generally, a certification is insufficient if the information provided is vague, ambiguous, or nonresponsive or if the certification form is not completely filled out.

If an employee requesting foreseeable leave fails to submit a completed and sufficient certification within the requisite time frame, the employer may deny FMLA coverage until the required

certification is provided. If the employee never produces the certification, the leave is not considered FMLA leave. Where the employee has been given at least fifteen days to provide medical certification and has been informed that he or she will be terminated if the deadline is not met, the employee may be terminated if he or she fails to provide medical certification.

MILITARY LEAVE ENTITLEMENTS:

One of the most recent amendments to the FMLA is the creation of the military caregiver provision. The military caregiver

Contd.

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provision allows an employee to take up to 26 weeks of leave during a 12-month period to care for a spouse, child, parent or next of kin who incurred serious illness or injury in the line of duty in the armed forces, National Guard or Reserves.

In addition, there is also a "qualifying exigency leave" provision which allows employees to take up to 12 weeks of leave for circumstances relating to family members in the National Guard or Reserves, but not relating to any serious illness or injury. It should also be noted that the qualifying exigency leave does not apply to family members of servicemen or women in the regular armed forces.

Qualifying exigency leave may be taken in a wide range of specific circumstances, including but not limited to: (1) provide emergency childcare or attend school activities which would otherwise be taken care of by a family member who has been called to active duty; (2) to spend up to seven days with a covered military member who has been notified of a call to duty only seven or fewer days before he or she will be deployed; and (3) to attend various post-deployment activities including arrival ceremonies, reintegration briefings, or to address issues arising from the death of a covered military member.

CONCLUSION:

Although the FMLA has been around for many years, often times an inquiry regarding a request for leave cannot easily be answered by a cursory review of the Act. When a "covered" employer is faced with an employee's request for FMLA leave, and there are uncertainties surrounding the basis for the request, it is highly recommend that you contact your legal counsel for guidance in order to make certain your office is FMLA compliant.

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— Theodore A. Wizenberg, MD, an Oakland County internist

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(l to r) Michael I. Vincent, Ron E. Ward, Angela K. Criswell

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GCMS MEETINGS

– JANUARY 2011 –

1/3, 8 a.m. - Legislative Liaison @ GCMS

1/5, 7:30 a.m. - Bulletin Committee @ GCMS

1/20 - Membership Committee
@ GCMS - New meeting day

1/25 - Finance Committee @ GCMS

1/25 - GCMS Board of Directors @ GCMS

1/26 - Community & Environmental
Health Committee @ GCMS

1/27 - Practice Managers @ GCMS

GCMS MEMBERS

If you are interested in having access to the "Members Only" section on the GCMS.org website please call or email your password to Marcia at mgzym@gcms.org or call 733-9923. Thank you.

Genesee County Medical Society Dinner Business Meeting *Thursday, February 3, 2011*

FLINT GOLF CLUB
3100 Lakewood Dr., Flint, MI 48507

A Town Hall Meeting on
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What every physician needs to know (and should be thinking about)!

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*Medical Director of Oakwood Primary Care Physicians,
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