VOL. XXXIX, NO. 2 March/April 2012

Medical Society News
Santa Barbara County

A Point of View

Dante Pieramici, M.D.
2012 SBCMS President

Super Patients

We all have patients that we'll never forget. These people remain branded in our memories, surfacing in our consciousness from time to time, particularly when someone asks what you like best about being a doctor. One elderly patient, I'll call Clark, is such a person for me. Just thinking about the time I spent with Clark makes me smile. His case was not a particularly unique one, nor was my treatment of his condition a quantifiable success. Some might even call it a failure. No, I think my warm feelings toward this patient stemmed from the fact that he was a likeable human being who taught me something about being a doctor.

Clark has an engaging personality. He always seems energized and in a good mood. He's the patient that you and your staff love to see on the schedule. It is not uncommon that I will enter the exam room and find Clark theatrically singing out loud with oversized headphones in place. It often takes me a minute to gather his attention but in this instance I don't mind (unlike my feelings toward the business executive busy on the cellphone as I enter the room, signaling with his finger that he will be with me in a minute, but I digress). Clark was sent to me for an urgent evaluation and repair of a retinal detachment. He had lost significant vision already and he needed to have surgery soon. As I discussed the condition, its surgical repair, and the uncertainty of the visual outcome, he listened attentively. When I was finished I asked Clark if he had any questions or concerns. He told me to do whatever was necessary to save his vision, but mostly he wanted to know if I would be able to restore his X-ray vision. It turns out that Clark believes he is Superman. Well, I am not sure he truly believes this, but he does dress the part. Under his clothes he always wears the Superman superhero costume, a fact that I became aware of in the surgical pre-op area.

How does one measure the success of a patient/physician interaction? Is it simply in terms of easily measured outcomes? This is an important topic today as the government and insurance companies try to restructure (but mostly reduce) physician payments. The "en vogue" concept is that doctors should be paid for performance and quality rather than for services rendered. On the surface this sounds like one of those "jump-on-the-bandwagon" slogans that is very alluring. The devil, of course, is in the details—of which there are many. The Centers for Medicare and Medicaid call this the Physician Quality Reporting System, formally known as the Physicians Quality Reporting Initiative (PQRI), also known as Pay for Performance or P4P. Most physician groups agree that better quality is good for medicine, but most are concerned about the validity of the measures used to determine quality, and the increased burden that documenting and reporting outcomes may have on administrative costs.

To date, the reporting of such measures has been voluntary and rewarded with payment incentives. Soon these incentives will disappear and doctors who don't report will be penalized. Whether this initiative will lead to improvements in care is uncertain in the long-run, but so far the results appear

Continued on page 2, column 1

Save the Dates

April 17	38th Annual CMA Legislative Conference, Sacramento
April 27–29	15th Annual CMA Health Care Leadership Academy, Disneyland Resort, Anaheim
June 13	CMA Workshop: "Know Your Rights: What You Need to Know When Dealing with Private Payers" & "A Mid-Year Medicare Update," Santa Barbara
October 12–15	CMA House of Delegates, Sacramento

For additional information on any of these programs, please contact our office.

A Point of View, Continued from Page 1

to be modest, at best. Many of the Medicare P4P demonstration programs launched in the last seven years have yielded disappointing results both in terms of quality improvements and savings to Medicare. It appears that many of the initial advocates of P4P oversold these programs and one reason is that they underestimated the complexity of health care delivery.

Clarks' surgery was uneventful and an anatomic success. At his six month follow-up visit, a time when we generally have a good sense of the magnitude of visual return, Clarks' vision was not nearly 100%. As I generally do before entering the exam room, I glanced at the documented vision in the chart and felt a little disappointed. I prepared myself to discuss these feelings with the patient. To my surprise Clark was elated. Despite the limits to his vision, as measured with the distance acuity chart, Clark felt things were going very well from his perspective. Best of all, his X-ray vision was functioning at 100%. I'm not sure there is a PQRI assessment category for that outcome measure.

For Over 100 Years...

Providing In-Home Health Care

- Nursing & Rehabilitation
- Palliative Care
- Hospice Care at home
- Serenity House, an inpatient hospice house
- Bereavement support and counseling
- Equipment Loan Closet
- Personal Care & Care Management

Make your referrals with confidence.

Santa Barbara 965-5555
Santa Ynez 693-5555
Lompoc 735-4444

www.vnhcsb.org • se habla español

Expert Fees for Treating Doctors (Part 1)

by Robert W. Olson, Jr., J.D.

Doctors are frequently asked to consult with an attorney or testify on a patient's diagnosis, treatment and prognosis. Unfortunately, once the doctor becomes involved, attorneys on both sides will try to obtain this consulting and testimony without offering to pay proper expert fees. This article (in two parts) will help doctors receive their deserved expert fees before providing that consultation or testimony. Part One concerns requests from the patient's attorney and setting expert fees. Part Two, concerning depositions and court ordered testimony, will continue in the next publication.

Informal Attorney Request

The patient's attorney usually will ask the doctor to discuss the patient's case voluntarily. There is no need to be intimidated by the attorney's request; although it is a necessary part of the pre-lawsuit process the doctor is not required to cooperate at this point. If the doctor wants to cooperate, two things should be in place before the doctor speaks with the attorney: a patient release authorization and an expert retainer agreement.

Before providing any information about a patient to the attorney, the doctor legally must have prior written patient authorization to do so. When the patient's attorney requests information, the doctor should inform that attorney that a signed release authorization is required before providing information about any patient, and the doctor cannot even acknowledge that someone is the doctor's patient without that authorization. The authorization should include language that the doctor is authorized to "provide records, diagnoses, prognoses, and all other aspects of patient's past and prospective care, with [law firm] and its principals, employees, agents and representatives," but should not include the patient's name.

Expert Retainer Agreement

The doctor has no obligation whatsoever to discuss the patient's case with the attorney unless and until the attorney agrees to pay your "Reasonable and Customary Fee" (see below) to discuss the case. The attorney is unlikely to suggest this, so the doctor must make it clear that all time and expenses discussing the case must be paid by the attorney. The doctor can even require payment in full before talking to the attorney. Here is a sample letter setting forth this agreement:

"You have told me that a patient of mine has a pending lawsuit and as part of your investigation you want to discuss my treatment of that patient. Before I discuss any matter regarding any of my patients, I require the following: a signed patient release authorization (see attached); and your agreement to pay my $____ per hour fee for my time commitment (includes telephone, email, meetings, preparation, travel time, and meetings or testimony cancelled on less than two full business days notice) plus any out of pocket expenses. Payment in full for my preparation and estimated meeting time must be tendered at the start of the meeting, with any cancellation, excess time and expenses to be paid within five days after I provide you an itemized statement. Once I receive your written agreement to these terms

Continued on page 7, column 2

A Win for Patients and Physicians in California

By James T. Hay, M.D., President, California Medical Association

Because of the efforts of a coalition led by the California Medical Association, a final ruling was issued on Feburary 1, by Judge Christina Snyder of the California Central Federal District Court, which blocks a 10 percent Medi-Cal reimbursement rate reduction. Her decision is a huge win for physicians in California and for the patients they treat.

California faces a budget deficit every year, and to close that widening gap, programs are cut and services are slashed. Medi-Cal is a program that is constantly targeted, and proposals always seem to include reducing reimbursement rates for physicians as a short-term solution. CMA has repeatedly informed the state, the federal government and the courts about the unacceptable impact of those cuts.

Year after year, we're obliged to tell the same story: if Medi-Cal rates are cut, physicians will be forced to stop accepting the patients that need care the most. Thanks to the hard work of CMA's legal and legislative staff, our voices have been heard, yet again. As we argued, Judge Snyder's ruling stated that "fiscal crisis does not outweigh the serious irreparable injury plaintiffs would suffer absent the issuance of an injunction."

It is more important than ever that we fight these fights and that we set a precedent for other states to follow. As the nation faces a changing health care landscape over the coming years, it is also critical that we physicians stand together. We thank our members for helping us accomplish this important outcome, preventing deterioration of access to care. My hope is that this achievement will serve as a reminder to those who are not yet members, and encourage them to join CMA today. To have continued success winning these battles for all California physicians and patients, it is crucial that we gain the support of those that benefit most.

To read the full statement issued by the coalition of plaintiffs in CMA et al. v. Douglas, please visit CMA's website: www.CMAnet.org.

Expert Fees, Continued from page 2

and the signed release authorization, we can schedule our first meeting."

Patient's Attorney Responsible for Fees

At this stage, the patient's attorney is primarily responsible for all the doctor's time and expenses. If the doctor has the attorney's written agreement on the rate and terms of payment, preferably under an Expert Retainer Agreement as suggested above, that agreement will control how and when these payments are made. Expert witness fees and expenses are generally not recoverable as part of the lawsuit, and although it is the patient's attorney who contracts for the doctor's services, the patient is legally required to repay the attorney for those fees, regardless of the outcome of the lawsuit.

Reasonable and Customary Fees

"A reasonable and customary fee" is not set by law. The doctor's average hourly fee charged to patients certainly would qualify, but expert witness fees can go much higher depending on the doctor's expert experience and fees charged by other medical experts in the community. When setting an expert fee, the doctor should consider the doctor's average hourly fee to patients, what expert fees the doctor has charged and received in other lawsuits, the number of times the doctor has charged and received that fee (particularly in the last two years), and the fees charged by experts for similar services in the community. Local expert fees range from $250 to $850 per hour, depending on specialization, type of work, and experience.

If the doctor is subpoenaed to testify (discussed in Part 2), and the attorney who subpoenas the doctor does not accept the doctor's fee demand, the doctor and attorney should meet informally to set an agreed fee. Failing resolution, the attorney can ask the court to determine the proper fee, considering the same factors described above. The loser at the hearing will be fined for misuse of the court system, so it is important to keep expert fee demands within reason.

Part Two, concerning depositions and court ordered testimony, will continue in the next publication.

© 2009-2012 by Robert W. Olson, Jr., JD.
Robert W. Olson, Jr., is the former Chairman of the Santa Barbara County Medical Legal Committee and a local attorney specializing in medical and dental practice transitions.

Peace of Mind. On Their Terms.

Trusted, affordable caregiving. When they need it.

So those you care for can live independently and safely at home.

- Needs Assessment in your office or patient's home
- Experienced caregivers and flexible options
- From 2 to 24 hours a day or live in

COASTAL HomeCare

Montecito (805) 969-3312
Santa Barbara (805) 966-3312

Serving Montecito, Santa Barbara & North County.

from SENIOR PLANNING SERVICES
www.SeniorPlanningServices.com