Medical Legal Summit Addresses Issues of Importance to Physicians and Attorneys

In April, the Academy of Medicine of Cleveland & Northern Ohio (AMCNO) was pleased to participate in an outstanding Medical Legal program which took place at Cleveland Marshall School of Law. Co-sponsored by the AMCNO, the Academy of Medicine Education Foundation (AMEF), and the Cleveland Metropolitan Bar Association (CMBA). The summit began with opening remarks by Carter Strang, Partner with Tucker Ellis, LLC, and Kim Bixenstine, Vice President and Deputy General Counsel, University Hospitals, Cleveland, and a warm welcome by AMCNO President, James Sechler, MD. The first presentation featured keynote speaker Dr. Ezekiel “Zeke” Emanuel discussing his view of the State of Health Care in America. During his presentation, Dr. Emanuel addressed the issue of health care reform head on, providing his insight into the state of health care today and how reform might make it better tomorrow.

According to Dr. Emanuel, the United States federal government spends $15.65 billion for healthcare, making it the fifth largest health care economy in the world. He noted that national spending on health care from 2011-2012 was over $100 billion. The largest percentage – one-third of health care spending – goes to hospitals, according to Dr. Emanuel, with the second highest contribution in health care spending going toward doctor services.

Dr. Emanuel also addressed the common thought that health care reform involves rationing patient care. He noted that Switzerland does not ration care and presented data suggesting that should the US reform its health care system, it will not result in rationing of care. He then moved on to discuss the impact insurance coverage can have on health care, presenting data regarding the five-year survival rate of cancer patients in the U.S. Cancer patients who were covered by private insurance had a 77 percent chance for a five-year survival rate whereas those

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who were on Medicaid or were uninsured had a 12 to 14 percent chance for a five-year survival rate

He also noted that there is an uneven distribution in health care costs stating that younger patients consume 3.2 percent of the costs whereas ten percent of the population that is consuming over two-thirds of the overall costs are the patients with chronic diseases. He noted that the key to saving money is prevention – treat people with chronic illnesses and prevent them from getting sicker.

Tort reform was most certainly on the minds of the physicians and attorneys in the audience. Emanuel mentioned that high-risk specialists, such as neurosurgeons, have a 100 percent chance of being sued during their career, with even low-risk physicians having a 75 percent chance of being sued. There have been many suggestions made to address the topic such as caps on damages, special courts, and other concepts such as the I'm Sorry Disclosure Program in Michigan, however, it has also been shown through data that implementing tort reform would not result in significant savings in health care overall, according to Emanuel. He noted that he pushes for safe harbors – a program where a physician uses clinical based guidelines and qualified information technology and if they adhere to these guidelines then the physician is presumed to have acted appropriately – and this information can be used if the physician is sued for the care provided.

Emanuel briefly discussed the implementation of health care exchanges stating that insurance companies will sell to consumers who will buy predominantly based upon price as is the case in Massachusetts where this type of model has already been in place. He also mentioned competitive bidding, noting that historically the government has effectively set prices through Medicare for wheelchairs, hospital beds, and other medical equipment. But a demonstration project begun in 2011 introduced competitive bidding in roughly 100 metropolitan areas to see if market forces could bring down prices. He noted that the results of the project have been dramatic with prices for oxygen equipment, wheelchairs, and hospital beds significantly reduced with no adverse effects on beneficiaries. The Affordable Care Act will expand competitive bidding for these items to the rest of the country in 2016 but Emanuel believes there is no reason to wait to do this and suggests that the concept be rolled out sooner and expanded to include competitive bidding for blood tests and other lab procedures, X-rays, CT scans and pacemakers.

In response to a question about end-of-life-care, Emanuel mentioned there are several things the health care system might consider to try to improve end of life care – and it is possible that these will not save money but they could make a difference. Physicians and nurses should be trained in how to talk to patients and families about end-of-life care since it has been shown that even if physicians are well-trained in communication, these conversations take time and are emotionally draining. In addition, physicians should be paid a one-time fee to talk with patients about their preferences for end-of-life care and every hospital should be required to have palliative care services available. Finally, we need to revise eligibility for hospice care.

Saturday's General Sessions began with Apologies and Disclosures of Adverse Events: What to Say When Something Bad Happens to a Patient?. This session made clear that when there is a question of negligence during the care of a patient, it is in the best interest of the physician and the hospital to fully disclose the error to the patient not only because transparency is the best policy but because it is the right thing to do. A skit featuring Cynthia Zelis, MD, University Hospitals Medical Practices; Julia Skarbinski, Director of Patient Safety and Clinical Risk Management, University Hospitals; and Melissa Crum and David Hanson from the Great Lakes Theatre, demonstrated the importance of full disclosure when negligence occurred prior to a new physician taking over a case. The second skit, featuring William Morris, MD, and a nurse, both of the Cleveland Clinic as well as Crum and Hanson, acted out a scenario whereby a patient was in danger of losing his life due to a violation of prescription policy and the nurse’s failure to question it. The skit demonstrated the importance of full disclosure of the situation by the physician/nurse team.

The second General Session, a Debate on End of Life and Other Medical, Legal and Ethical Issues, featured Bixenstine; Gwendolyn Roberts Majette, Assistant Professor, Cleveland-Marshall College of Law; Browne Lewis, Associate Professor, Cleveland-Marshall College of Law; Russell J. Meraglio, Esq, Reminger Co., LPA; Martin L. Smith, S.T.D., Director, Clinical Ethics, Cleveland Clinic; and Mark P. Aulisio, Ph.D., Director, Center for Biomedical Ethics, MetroHealth, all of whom weighed in on end-of-life and ethical issues ranging from children making medical decisions for parents to living wills to organ transplants for illegal aliens to religious beliefs interfering with treatment.

Attendees were given the choice of four breakout sessions, all of which were designed to address the different issues facing physicians and their legal counsel. AFrank Conversation with Government Regulators featured a panel consisting of Constance Nearhood, Senior Assistant Attorney General; Carole Rendon, United States Attorney, Northern District of Ohio; Ronald Savrin, MD, Medical Director, Ohio KePRO and Past President of the AMCN; Stephen Sozio, Esq., Jones, Day; and Cheryl Wahl, Chief Compliance Officer, University Hospitals. Each panel member described the role his or her organization plays in the health care regulation arena. During the conversation Rendon noted that her office has been addressing many issues related to drug diversion as a result of the increasing use of heroin in our area. In addition, they have been handling litigation regarding Medicaid fraud and money collection based upon violation of the False Claims Act. Nearhood's division works with the Ohio Attorney General's office with regard to health care fraud issues related to Medicaid and Medicare fraud. She said that it is incumbent upon physicians to be aware of what they are signing or agreeing to for their patients. Savrin provided the group with an overview of the work of Ohio KePRO noting that the group works with physicians and hospitals to help them improve care, reducing adverse drug events, transitions of care, and the adoption and meaningful use of electronic health records. Wahl provided an overview of how she works within the University Hospitals system to provide information on a pre-trial level to guide employees on medical/legal issues related to health care, including privacy issues related to medical records. Attendees left the session knowing that individuals and organizations are in place to help guide them through the ever-changing health care landscape.

Physician Practice Acquisitions addressed the different aspects of acquiring a physician practice or related business. Craig T. Haran of Frantz Ward, LLP; Nathan L. Lutz, Assistant General Counsel, Cleveland Clinic; Robert Hauptman, CFA, Director, Stout Risius, Ross; Darrel Ranum, JD, CPHRM, Regional Vice President, Patient Safety, The Doctor's Company; and Raymond J. Marvar, Tucker Ellis, LLB; led the discussion, debating the different reasons why a physician might opt to join a hospital system and why a physician might choose to remain independent. Lutz outlined the different steps a hospital system takes when acquiring a practice or related business. Hauptman addressed non-disclosures, and Ranum presented the process from a physician insurance perspective. In all, the panelists dissected the physician practice acquisition process so that attendees could see it from all sides of the negotiation table.

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Protecting Patient Information from Technological Threats was a well-rounded discussion of data protection in the age of electronic records and cyber security threats. J. Ryan Williams of Walter/Haverfield, LLP, moderated the panel consisting of Ethan G. Leonard, MD, Associate Chief Medical Officer, Medical Director of Quality, UH Rainbow Babies & Children's Hospital; David Morgan, Supervisory Special Agent for Cyber Intrusion Investigations, FBI, Cleveland Division; Michael Lipinski, U.S. Department of Health and Human Services; and David S. Finn, CISA, CSI, CRISC, Health IT Officer, Symantec Corp. Lipinski noted that his office is accelerating Health Information Exchange (HIE) Meaningful Use, care coordination, and patient engagement, as well as extending the E-Donation Exemption through 2013. All of the panelists agreed that cyber security must be done differently than in the past with Finn pointing out that systems are becoming increasingly cloud-based, a concept whereby the word “cloud” is used as a metaphor for the internet, and servers, storage and applications are delivered to an organization’s computers via the cloud. It creates an opportunity for cost savings and more efficient workflow but requires more planning for extra security. The FBI’s MacFarlane noted that the cloud is a great enabler for good and bad, allowing hackers to pull patient information, put their own infrastructure into place, and use stolen data to target individuals. It was pointed out that another significant source of data leakage is hospital employees. All hospital systems must be able to contain any security breaches and respond to them appropriately.

The significant increase in prescription drug abuses was addressed in Pain Management in the Face of the Prescription Drug Abuse Epidemic. Prescription drug abuse is one of the leading causes of death in the United States. According to Orman Hall, Director, Ohio Department of Alcohol and Drug Addiction Services, there is a considerable number of accidental drug overdoses in the state of Ohio alone, resulting in one of the most serious drug epidemics facing the state’s treatment system since the establishment of his department.