

AMCNO Files Amicus Brief Emphasizing Ohio's Law Concerning Standard-of-Care Testimony

By Susan Audey, Tucker Ellis LLP

The Ohio Rules of Evidence are pretty straightforward: for a physician to give expert testimony on the standard of care of another physician, that physician must practice "in the same or a substantially similar specialty" as the physician-defendant. Evid.R. 601(D)(3). Yet, earlier this year, the Ninth District Court of Appeals—covering Lorain, Medina, Summit, and Wayne counties—allowed just the opposite. In *McMichael v. Akron General Hospital*, 9th Dist. Summit No. 28333, 2017-Ohio-7594, the appellate court found no error in having a rheumatologist criticize the care provided by an emergency medicine physician.

Some brief facts about the case. The plaintiff was the husband of a 33-year-old woman who had been diagnosed with lupus as a teenager and had a history of headaches. She had been treated by several physicians throughout her life and had, at least since 2010, been under the care of a neurologist who diagnosed

cerebral edema, treated her with medication, and instructed her to seek emergency treatment if she ever had a 10 out of 10 headache pain accompanied by nausea and vomiting. Since that diagnosis and treatment, she sought emergency treatment for those symptoms from two different providers,

ultimately seeking emergency treatment at Akron General in June 2012. A resident under the supervision of the attending emergency medicine physician examined her but did not review any of her prior medical records. She was treated with pain medications and when her symptoms improved, was discharged. She returned to Akron General the next day in respiratory failure and died shortly thereafter.

In the lawsuit that followed, plaintiff's rheumatologist expert testified that the emergency medicine physician "breached the standard of care applicable to any qualified
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Annual AMCNO Mini Internship Program is an Eye-Opening Experience for All Participants

Northern Ohio community leaders teamed up with AMCNO physician members for our annual Mini-Internship program from Oct. 23-25, 2017, giving the non-medical professionals the unique opportunity to shadow our members during their workday.

This year's participants (or "interns") were: **Darrell Clay**, Litigation Partner, Walter Haverfield LLP Cleveland and Cleveland Metropolitan Bar Association President; **Justice Judi French**, Supreme Court of Ohio; **Roderick Ingram, Sr.**, Executive Director, Office of Public Relations and Marketing, Northeast Ohio Medical University (NEOMED); and **Judge David Matia**, Cuyahoga County Court of Common Pleas.

As in year's past, the event began with an Orientation Dinner, led by program facilitator Dr. William Seitz, Jr. This gathering allows the participants to learn more about the program and meet the physicians they will be shadowing.

During the two-day program, the interns witnessed surgeries (including orthopedic, cardiac, and reconstructive), sat in on office visits, participated in rounds, and were given
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AMCNO members gather around the four interns participating in the program.

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ADDRESS SERVICE REQUESTED

AMCNO
6100 Oak Tree Blvd.
Ste. 440
Cleveland, OH 44131-0999

AMCNO COMMUNITY ACTIVITIES

Annual AMCNO Mini Internship Program is an Eye-Opening Experience for All Participants *(Continued from page 1)*

an overview about preceptorships, electronic medical records and physician training.



Judge David Matia (center) receives his certificate of appreciation from the physicians he shadowed during the event.

All of the participants, including the physicians, reconvened at the AMCNO offices at the close of the program for a Debrief Dinner, where they shared their feedback.

Judge Matia said that he was impressed with the program, and that the physicians he shadowed and their colleagues were “wonderful teachers.” He described his time spent as a “wonderful experience that exceeded all expectations,” adding that if the “goal of the program is to generate goodwill, it was accomplished.”



Program facilitator Dr. William Seitz, Jr., (right) presents Darrell Clay with his certificate.

Clay said that this event was “one of the best experiences I’ve had that was outside my own professional path.” He also commented that the willingness of our members to bring the interns into their world is “incredible,” adding that he’s “deeply appreciative of the physicians and the Academy.”

Justice French watched several surgeries and sat in on ENT office visits. She said she was thankful for the opportunity to take part in this program, and that it was “reaffirming” for her to see how physicians interact with their patients.

“All of us have been patients,” Ingram said, “so we think we know everything. We don’t. It’s been amazing these last few days—how you take care of patients, you’re truly listening. I love the way you engage with patients.” He was also pleased to participate in the program, saying it was the “most amazing experience” and that it will help him with his job at NEOMED, where he teaches reflective essays.



Justice Judi French stands with Dr. Seitz to accept her certificate.

The physicians who participated in the program also reported positive experiences, indicating they enjoyed the event and look forward to participating in it again next year.

The purpose of the Mini Internship program is to expose non-medical professionals to the complexities involved with health care and the practice of medicine.



Rod Ingram (center) accepts his certificate surrounded by the physicians he was paired with during the event.

If you would be interested in participating in the Mini Internship program next year, contact the AMCNO offices at (216) 520-1000. For more information about the program, visit the AMCNO website at www.amcno.org, and click on the Education & Events tab. ■

ODM will Survey Primary Care Providers to Rate their Satisfaction with Managed Care Plans

The Ohio Department of Medicaid (ODM), in collaboration with the Health Services Advisory Group (HSAG), has developed a statewide initiative to survey Medicaid primary care providers (PCPs) to gauge their satisfaction with Ohio’s various managed care plans. The information collected will be used to compare performances among the plans to see how each one is rated against the others.

Surveys have been taken to rate patient satisfaction, but they have not been done for providers, so this type of data collection will be helpful for ODM directors to get a better picture of how the plans are performing and identify opportunities for quality improvement. The AMCNO and other medical associations across the state had asked the ODM to consider conducting a survey like this specifically for providers, so we are pleased that the ODM has taken this step.

The surveys will be sent to PCPs starting Jan. 22, 2018, and the submission deadline will be March 19. The cover letter sent with the survey will explain the purpose of it, the length of time to complete it and even how it can be completed online if the provider prefers. Individual PCPs will be selected for participation in this survey.

The surveys will be confidential—neither the health plans nor ODM will be aware of the identity of any individual who responds to the survey. All responses and comments made by the PCPs will be aggregated for reporting purposes, and no individual will be identified in this process.

Aggregated survey results will be given to ODM on June 30.

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physician because there was no evidence that he or his resident reviewed Ms. McMichael's medical records or acted on her patient history." *McMichael*, 2017-Ohio-7594, ¶ 46. Upholding the trial court's decision to allow this testimony, the appellate court found that the trial court acted within its discretion to offer "any physician" standard-of-care testimony. *Id.*

Because there is no "any physician" standard of care in Ohio, the emergency medicine physician appealed to the Supreme Court of Ohio and asked AMCNO for help in getting the case heard by that court. AMCNO agreed and filed an amicus—"friend of the court"—brief in late October 2017. It stressed the plain language of Rule 602(D)(3)'s "same or substantially similar specialty" requirement and highlighted that rheumatology is certainly not the same as emergency medicine, nor is it substantially similar. Relying on the standards for board certification in the two disciplines, it emphasized that emergency medicine deals with the *immediacy* of care and treatment to *acute* illness and injury in a *diverse* patient population. Both the preparation for and the day-to-day duties of emergency medicine physicians and rheumatologists differ significantly. AMCNO argued that to allow the appellate court to create a new rule of law to circumvent the plain meaning of the "same or substantially similar" requirement of Rule 601(D)(3) effectively eviscerates that rule, and disrupts the orderly and pragmatic expectations of Ohio physicians who depend on the consistent application of Ohio law when they find themselves involved in litigation.

But besides being contrary to the rule's plain language, AMCNO also argued that there is no "any physician" standard of care that would permit a specialist in a substantially *dissimilar* medical specialty such as rheumatology to offer expert testimony about the standard of care of an emergency medicine specialist. True, before the amendment to Rule 601(D)(3), Ohio courts allowed medical experts in "overlapping fields of medicine" to offer expert testimony even though the expert did not practice in the same specialty as the defendant. But even under that since-replaced standard, Ohio law did not permit a medical expert to give opinions on common skills taught and developed during medical school and residency. See *Nickler v. Mercy Med. Ctr.*, 5th Dist. Stark No. 2002CA00130, 2003-Ohio-231, ¶ 44 (rejecting plaintiffs' argument that their medical expert was qualified to criticize the

defendant's actions—conducting a physical examination, recording observations, and making referrals—because those actions are "endemic to all medical practitioners"). To be sure, the law requires much more "than the commonality of a medical degree." *Jeffrey v. Marietta Mem. Hosp.*, Franklin C.P. No. 06-CV-4508, 2008 WL 6742215 (June 5, 2008). Review by the Supreme Court is important to clarify that Rule 601(D)(3)'s standard for competency is the standard to be applied by Ohio courts and that it contains no "any physician" standard.

But as important as consistent application of Rule 601(D)(3) is, its misapplication was not the only error made by the appellate court. The court also upheld the trial court's decision allowing plaintiff's counsel to make disparaging and highly prejudicial comments about the emergency medicine physician during closing argument—i.e., that the physician cared more about his "\$10 million" than caring for the patient. It has long been a "cardinal principle of our jurisprudence that the rich and poor stand alike in courts of justice and that neither the wealth of one nor the poverty of the other shall be permitted to affect the administration of law." *Hudock v. Youngstown Mun. Ry. Co.*, 164 Ohio St. 493, 499 (1956). This is so because the wealth of the parties ordinarily has nothing to do with the evidence on liability. Even the appellate court acknowledged that plaintiff's counsel's remarks were improper. *McMichael*, 2017-Ohio-7594, ¶ 77. But instead of finding that these remarks violated core principles of our jurisprudence and are inherently prejudicial as have other courts in Ohio, the appellate court in *McMichael* merely cautioned counsel against making "such remarks in future litigation." *Id.*

But, as AMCNO argued, cautioning counsel as to *future* litigation does nothing to cure the inherent prejudice inflicted in the *present* case. In fact, this slap on the hands has no effect at all and effectively allows counsel to continue to make disparaging remarks in case after case without retribution in the case in which they are made. A physician sued for medical negligence—like any other party involved in litigation—expects and deserves to be judged on the facts of the case and the law that applies. Irrelevant, fictitious, and disparaging references made during closing argument about the physician's financial status play no role in the physician's liability and effectively deny the physician a fair trial.

One last area of the law that AMCNO supported in its amicus brief was the appellate court's refusal to find error in failing to give a hindsight instruction. Although the appellate court appropriately recognized that, under Ohio law, a properly stated jury instruction should be given when it correctly states the law and is supported by the evidence, it found the trial court's failure to do so did not unfairly prejudice the defendant-physician because he was "able to draw attention to the concept of hindsight" through the testimony of other expert witnesses. *McMichael*, 2017-Ohio-7594, ¶ 67.

But, as AMCNO pointed out, the Supreme Court has consistently held that it is the trial court's duty "to separate and definitely state to the jury, the issues of fact made in the pleadings, accompanied by such instructions as to each issue as the nature of the case may require * * *." *Marshall v. Gibson*, 19 Ohio St.3d 10, 12 (1985), quoting *Baltimore & Ohio RR. Co. v. Lockwood*, 72 Ohio St. 586 (1905), paragraph one of the syllabus. To abdicate that duty—as the appellate court permitted—effectively allows mere evidence of hindsight, standing alone, to be sufficient without instruction by the court on how to resolve that evidence.

The reasoning, however, is backwards and distorts the analysis an appellate court should employ when reviewing whether a trial court erred in refusing to give a properly stated and requested jury instruction. It is not whether evidence of a particular issue exists that *excuses* an instruction, but whether evidence on the issue exists that *warrants* the instruction. Without correction by the Supreme Court, the appellate court's faulty analysis and reasoning will be used to justify a trial court's refusal to give, not only a hindsight instruction, but any properly requested instruction that is supported by the evidence presented in the case. AMCNO argued that this is not, nor should it be, the law of jury instructions in Ohio. Jury instructions exist to guide the jury in the correct application of law to the facts. Leaving the jury to ferret out the law based on the evidence at trial, without instruction, is like a captain navigating a ship without providing guidance to the crew; someone has to be in charge of ensuring the ship reaches shore.

Briefing on this case is now complete. The Supreme Court will decide whether to accept this case for review on the merits in the next few months. If it does take the case, AMCNO may again be your voice on these important issues. ■

Physicians Discuss Specialty Choices with Medical Students during Annual PALS Event

The AMCNO hosted its annual PALS (Physicians Are Linked with Students) networking event recently at the CWRU School of Medicine. Second- and third-year medical students were invited to take part in this invaluable program.

The purpose of this event is to empower students as they try to learn more about some of the various specialties that are available and choose one that fits them. The physicians provide a general overview of their chosen field, and offer advice based on their own experiences, to help give students a better understanding of a certain specialty and the field of medicine as a whole. Students can also network with the physicians, and feel confident that they can talk to someone if they have additional questions or need advice.

In his opening remarks for the program, AMCNO President Dr. Fred Jorgensen discussed the work of the AMCNO and Academy of Medicine Education Foundation (AMEF), and he stressed to the students the importance of becoming a member and completing an AMEF scholarship application once they are eligible.

The physician members who participated in the event represented the following fields of medicine: anesthesiology, cardiology, emergency medicine, family medicine, gastroenterology, gynecology, infectious diseases, and orthopedic surgery.

Physicians and a few of the students sat at random tables throughout the room and talked about the physician's specialty for a few

minutes, as well as how the physician became involved in medicine and what a typical day is like for him or her. An alarm sounded and the students had to move to the next physician table to talk with him or her for a few minutes, and so on.

All of the students and physicians who participated in the program and completed an evaluation form said they enjoyed it. Many students said that even in such a short time, they felt that they had developed a relationship with the physicians. The physicians said they enjoyed taking part in PALS because they liked meeting with the students and helping provide guidance in their academic paths.

One student commented that he liked being able to "talk to physicians from a variety of specialties. The breadth is really helpful when trying to figure out what [specialty] to go into."

Another student said he liked the personal interactions of meeting with the physicians in small groups and that the "physicians were ready to answer questions."

One physician said that "it is always gratifying to help students navigate through unfamiliar circumstances." He also commented that he liked the interaction between the small groups, but found that the "time seems to go



AMCNO President Dr. Fred Jorgensen discusses the field of family medicine with medical students during the PALS event.

too quickly." He added that he hopes that the students "find that they are not alone in their feeling that the next step in their training can be confusing."

Another physician said that he enjoyed meeting the students as well, but he observed that they may need to learn more about the financial aspects of medicine, which the physicians could discuss in future conversations.

All attendees agreed that the program should continue next year.

If you would be interested in participating in next year's PALS event, contact the AMCNO offices at (216) 520-1000.

Photos from the event can be viewed on the AMCNO Twitter feed (@AMCNOTABLES). ■

AMEF and AMCNO Sponsor the Doc Opera Event "Indiana Bones"

Now in its 33rd year, Doc Opera is a collaborative fundraiser and musical production organized by the students and faculty. This annual variety show is written, directed, and performed entirely by medical students at the Case Western Reserve University School of Medicine and Cleveland Clinic Lerner College of Medicine.

In keeping with Case's commitment to give back to the community, the show's primary mission is to raise funds to provide quality healthcare and related services to individuals and families in our community regardless of their ability to pay through its beneficiaries: Circle Health Services and the CWRU Student-Run Free Clinic. It also provides a venue for creative expression and inter-professionalism among the medical and health professional students of Cleveland. This year's theme was "Indian Bones" and included music from the Indiana Jones movies, with skits and props to fit the occasion.

Doc Opera is a non-profit organization that relies on area businesses to help defray the costs of production and to contribute to the donations made to the program's beneficiaries. The Academy of Medicine Education Foundation (AMEF) and the Academy of Medicine of Cleveland & Northern Ohio (AMCNO) were pleased to once again sponsor the Doc Opera event.



The cast, mostly comprised of medical students, perform a fun skit during the show.

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AMCNO State Legislation and Administration Update

New Bill Calls for Medical Price Transparency

A new bill, HB 416, would allow Ohioans who need certain medical procedures to get detailed cost estimates before undergoing the procedures.

Rep. Steve Huffman (R-Tipp City) said the legislation would impact procedures that require prior authorization, helping consumers shop for providers and facilities that might have lower rates. The bill does not address emergency situations or other cases where time is of the essence.

Huffman, who chairs the House Health Committee, said patients, hospitals and physicians want transparency in the system, and this bill would help achieve that goal.

The cost estimates would require providers to offer a good-faith estimate of costs, including the expected cost for the patient and information about whether the provider is out of the patient's insurance network. Huffman added that since some patients trust their physicians and hospitals, they won't seek the information. But, the information would be available to help patients make more informed decisions about their care, he said.

Provisions in the bill include:

- Requiring a healthcare provider, upon request, to provide a good-faith estimate for each scheduled service (a service or procedure scheduled at least seven days in advance)
- Specifying that the estimate must contain the anticipated cost to the patient, as well as a notification if the provider is out-of-network
- Requiring a health plan issuer to provide a good-faith estimate for each service that a provider seeks preauthorization for

This new legislation would succeed a related two-year-old law that has never been implemented due to an ongoing court challenge, according to Huffman. That provision was included in a Bureau of Workers' Compensation budget bill (HB 52, 131st General Assembly), and was challenged in court by a coalition of medical organizations, including the AMCNO.

The AMCNO supports this new bill, and we will provide updates for our members as the debate on this legislation continues at the Statehouse.

HB 131 – Physical Therapy



AMCNO Past President Dr. Matthew Levy and Rep. Sarah LaTourette discuss the scope of practice legislation for physical therapists.

Throughout the last three General Assemblies, legislation has been introduced that would alter the scope of practice for physical therapists (PTs)—and each time, the AMCNO and other medical organizations across the state have opposed these bills. We have consistently opposed the idea of allowing PTs to make a diagnosis or order tests or X-rays.

The latest version of a bill meant to change the scope of practice for physical therapists is HB 131. The AMCNO is concerned about this bill because it would grant PTs the ability to diagnose a medical condition—in effect, giving them the ability to independently practice medicine. Medical decision-making and diagnoses are the result of the interpretation of many variables, including history,

examination, and diagnostics. Although we agree that PTs are an important part of the healthcare team, we do not believe they are adequately trained to diagnose a medical condition. We believe that the diagnosis of medical conditions should be done by trained physicians or mid-level providers who are working collaboratively with a physician.

In addition, the bill would permit a PT to order plain X-rays, but only if the PT meets certain educational requirements as outlined in the bill. The AMCNO believes that there are some very real patient safety concerns when a PT orders imaging—mainly because the imaging education and training of PTs, even in PT doctorate programs, will not be sufficient enough for them to provide these services on their own.

There is an alternative proposal that could potentially allow a PT to order X-rays, namely to attain adequate training in imaging **and** enter into a formal collaboration arrangement with a physician, similar to how advanced practice registered nurses and physician assistants do under their existing scopes of practice. At this time, there is only one other state that authorizes a PT to order images, so even if the collaborative approach were to move forward, Ohio would be an outlier state relative to this authorization.

Proponents of this legislation have opined that the major purpose of this bill was to have better avenues for PTs to bill health insurers for PT services. If, in fact, this is the case, we believe this could easily be accomplished through a collaboration arrangement with a physician.

The AMCNO has been meeting with legislators and we have sent written testimony to the Ohio House Health Committee expressing our concerns. At the present time, the bill is still under discussion and another substitute bill is

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expected to be drafted in the future. We will keep our members apprised on the status of the legislation.

Issue 2 Defeated at the Ballot Box

In November, voters across Ohio resoundingly voted no on Issue 2. The AMCNO Board of Directors voted to join the Ohioans Against the Deceptive Rx Ballot Issue, a broad-based coalition of Ohio organizations and associations that opposed this issue. The AMCNO had evaluated the independent reviews of this measure and concluded that, despite the claims of its supporters, this initiative would likely increase—not lower—state prescription drug costs.

Healthcare policy experts, including three former Medicaid Directors, studied the proposal and determined that this initiative would, in fact, increase the costs of prescription drugs for many Ohioans and could potentially reduce patient access to medications.

The AMCNO remains deeply concerned about the affordability of prescription drugs, and we want patients to have access to the treatments they need. The AMCNO also supports reform to protect consumers and lower drug costs, but this ballot measure was not the right solution and could have resulted in negative consequences for the very patients it was meant to help. The AMCNO will continue to look for other solutions that could impact the cost of high drug prices.

Take Charge Ohio Initiative Promotes Safe Pain Management Practices and Offers Resources

The Ohio Department of Health, along with several key partners, developed the Take Charge Ohio initiative to help promote safe pain management practices and prevent the misuse of pain medication. The website, TakeChargeOhio.org, is available to healthcare professionals and the public, and offers valuable resources for both groups.

Resources and tools are offered for prescribers and other healthcare

professionals who are looking to properly educate patients on safe medication and pain management practices. For patients who want to learn more about the scope of the problem in Ohio, the consequences, and how they can take action by sharing what they've learned can do so through free, ready-to-use resources.

The website includes toolkits for healthcare professionals, patients, the general public, and public awareness campaigns. An opioid risk quiz assesses a person's risk level for addiction when prescribed an opioid medication to manage pain, and there are tips on safe pain management as well as information on the safe disposal of unused medications.

The mission of this initiative is to empower all Ohioans to work together to safely use pain medication. All of Ohio is affected by the opioid epidemic and it will take all of its citizens to turn the tide.

Ohio Department of Medicaid Delays Hospital Rate Reduction

Per House Bill 49 (the state budget), the Ohio Department of Medicaid (ODM) is taking steps to reduce hospital spending by \$1.1 billion throughout the next two years. Most of the reduction has already been achieved, and an additional 5% rate reduction was considered for January 1. Current budget projections are sufficient to offset the remaining cut, however, so ODM will delay the hospital rate reduction for six months and reassess at that time whether a reduction is necessary to keep spending within the budget's appropriation levels.

The ODM has indicated that they will delay a planned reduction in hospital rates until July 1, 2018, in light of these new budget forecasts. The Governor's Office of Health Transformation stated that new caseload and per-member costs in November showed 47,000, or 1.5%, fewer people on Medicaid in 2018 than originally expected, along with lower per-person costs. This change means the program will spend \$160 million less than expected in 2018—1.2% below the

original estimate in the budget. This reduction in costs has allowed the state to delay the planned hospital rate cuts. The ODM will re-evaluate the rate reduction in May 2018 to determine if it is still necessary. For more information about this issue go to <http://healthtransformation.ohio.gov/Portals/0/Hospital%20Rate%20Reduction%202017.pdf>.

New ICD-10 Requirement Becomes Effective December 29, 2017

Starting December 29, 2017, the Ohio State Board of Pharmacy (BOP) Prescribing Rule 4729-5-30 (or ICD-10 Requirement) goes into effect. This new rule requires all prescribers to:

- Include the first four alphanumeric characters of the diagnosis code or full procedure code on opioid prescriptions.
- Include a diagnosis/procedure code (CDT) for all other controlled substance prescriptions, beginning on June 1, 2018.
- Indicate the days' supply on all other controlled substance and gabapentin prescriptions.

Visit the BOP website, www.pharmacy.ohio.gov, and click on the Laws & Rules tab to review the rule in its entirety.

More information about this rule can also be found on the State Medical Board of Ohio website, www.med.ohio.gov under the Resources, Prescriber Resources tab. This section also includes additional information on acute and chronic pain as well as resources for related topics.

Betty Montgomery Appointed to State Medical Board

Governor John Kasich has appointed Betty Montgomery of Columbus, OH, (Franklin County) as a public member of the State Medical Board of Ohio for a term that began on November 15, and ends on Sunday, July 31, 2022. Ms. Montgomery served as Ohio Attorney General (1995-2003), as Ohio Auditor of State (2003-07), as a member of the Ohio Senate (1989-95), and as Wood County Prosecutor. ■

AMCNO Members Participate in Panel Discussion on Harm Reduction Strategies

The Center for Community Solutions recently held its annual “Celebration of Human Services” event, which featured a breakout session entitled, “Harm Reduction Strategies in Northeast Ohio.”

The speakers for this session included an AMCNO board member, **Dr. Kristin Englund**, who is on staff at the Cleveland Clinic in the Department of Infectious Disease and has also served as the Medical Director of the Free Clinic, as well as longstanding AMCNO member **Dr. Joan Papp**, who is the founder of the MetroHealth Project DAWN project and is now leading the MetroHealth Office of Opioid Safety as the Medical Director.

Also participating in the panel discussion was **Terry Allan**, Health Commissioner of the Cuyahoga County Board of Health, who served as the moderator, and **Lisa Fair**, who manages HIV testing/prevention and the syringe exchange service program at Circle Health Services.

Allan began the session by outlining the definition of harm reduction, noting that it is a range of policies designed to address negative consequences of various human behaviors. He began the conversation by stating that one very important harm reduction strategy is to find a way to address the impact of drug use in our community. He then invited the panelists to share their experiences with harm reduction strategies.

Dr. Papp said that she first became interested in harm reduction in 2007 when she started to see a change in the people who were coming to the emergency room—many were addicted to pain killers. It rapidly became apparent that there was a need to do more, and while doing some research she began to learn about innovative programs using naloxone. She then worked with local leaders to establish a similar program in our community and began to educate community members on

how to mitigate risks. Part of this education includes teaching people how to recognize an overdose and educate them on how to respond should an overdose occur, and how to administer naloxone and put the kits together, if needed. Dr. Papp has also been involved in advocacy efforts to change laws so that it is now easier to access this life-saving drug. She noted that there is clear evidence that mortality rates have decreased due to the use of naloxone, and there is a continued need to have even more of the drug available in our community.



Panelists discuss harm reduction strategies during a breakout session. (l-r: Terry Allan, Dr. Joan Papp, Lisa Fair, and Dr. Kristin Englund)

Fair discussed how the syringe exchange program at Circle Health Services works. She also noted that addiction is a disease of the mind and many of the people she sees do not want to be addicted—in fact, they had at one time been productive members of society. She emphasized that the community needs to do things collectively to produce change. Fair said that the syringe exchange program at Circle Health Services helps prevent the spread of HIV, hepatitis C and other infectious diseases. In addition, she mentioned a program they have started—providing fentanyl detection strips that can test the potency of a substance prior to use, which has the potential to save some lives.



AMCNO Board Member Dr. Englund shares with the audience her strategies when treating HIV-positive and -negative patients.

Dr. Englund stated that people continue to be diagnosed with HIV, so there is a need to get these patients actively engaged in care. If we engage them in care we can get the disease under control, she said, adding that treatment today is much different than it used to be—now one pill once a day can keep a patient alive for decades. If an HIV-infected person is involved in a relationship and his or her partner is HIV negative, it is essential to keep that person HIV negative. The first responsibility is to get the infected person’s condition under control and keep his or her partner HIV negative. Treatments are now available for both the HIV-infected and HIV-negative person that can decrease the risk of disease transmission by 90%. Dr. Englund also discussed working with patients who are currently HIV negative, but they may be engaging in some activity that is putting them at risk of acquiring HIV, so she counsels them about harm reduction and how to avoid risky behavior. She also tests them to be sure they remain HIV negative and counsels them on how to stay healthy.

All of the panelists agreed that implementing harm reduction programs can be challenging and at times the benefits of these programs are not always fully understood by members of the community. Attendees expressed their views to the panel as well, regarding the need for increased access to medication-assisted treatment (MAT) programs and the need to address the stigma that can be placed upon drug users by the public. ■

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THE ACADEMY OF MEDICINE OF CLEVELAND & NORTHERN OHIO

6100 Oak Tree Blvd., Suite 440,
Cleveland, OH 44131-2352
Phone: (216) 520-1000 • Fax: (216) 520-0999

STAFF Executive Editor, Elayne R. Biddlestone

Associate Editor: Tara Camera

Contributing Staff: Abby Bell

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AMCNO Participates in Region V State Medical Society Meeting

In December, staff from the Academy of Medicine of Cleveland & Northern Ohio (AMCNO) participated in the Centers for Medicare & Medicaid Services (CMS) Region V State Medical Society quarterly meeting. Also attending this meeting were representatives from statewide medical associations representing Ohio, Michigan, Indiana, and Missouri. Although several topics were covered during the meeting, this article gives a brief overview of two key topics—the Quality Payment Program (QPP) Year 2 and the New Medicare Card.

Dr. Robert Furno, Chief Medical Officer at CMS, presented to the group on the upcoming proposed changes to the QPP. The QPP was established by the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA), and it is a quality payment incentive program for physicians and other eligible clinicians, which rewards value and outcomes in one of two ways: through the Merit-based Incentive Payment System (MIPS) and Advanced Alternative Payment Models (APMs). Dr. Furno noted that as CMS moves into Year 2 of the QPP they have been listening to feedback to ensure that the program's measure and activities are meaningful, clinician burden is minimized, care coordination is better and clinicians have a clear path to participate in Advanced APMs.

Dr. Furno outlined how CMS recently launched the "Patients Over Paperwork" initiative, a process that evaluates and streamlines regulations with a goal to reduce unnecessary burden, and increase efficiencies. The QPP final rule with comment period includes the following as part of this initiative: excluding individual MIPS eligible clinicians or groups with less than or equal to \$90,000 in Part B allowed charges or less than or equal to 200 Part B beneficiaries; CMS will include virtual groups as a participation option, and making it easier to clinicians to qualify for incentive payments by participating in Advanced APMs that begin or end in the middle of the year.

Dr. Furno explained that a virtual group is a combination of two or more Taxpayer Identification Numbers (TINs) made up of solo practitioners and groups of 10 or fewer eligible clinicians who came together "virtually" (no matter specialty or location) to participate in MIPS for a performance period of a year. CMS has developed a Virtual Groups Toolkit with more information including the election process to become a virtual group. This toolkit and additional QPP information are available on the CMS website

at www.cms.gov/Medicare/Quality-Payment-Program/Quality-Payment-Program.html as well as qpp.cms.gov.

Ms. Brenda Delgado, Regional Administrator, CMS Region V, provided a detailed presentation on the New Medicare Card. MACRA mandated the removal of the Social Security Number (SSN)-based Health Insurance Claim Number (HICN) from Medicare cards to address current risk of beneficiary medical identity theft. The legislation requires CMS to mail new Medicare cards with a new Medicare number (also referred to as the Medicare Beneficiary Identifier, or MBI) by April 2019. The new Medicare numbers will not change Medicare benefits. People with Medicare may start using their new Medicare cards as soon as they receive them.

New cards start mailing in April 2018 and all cards will be replaced by the April 2019 deadline. Gender and signature line will not appear on the new cards. Once the card is mailed, someone with Medicare also can access their new Medicare number on a Medicare Summary notice or through MyMedicare.gov. The Railroad Retirement Board will issue new cards to its beneficiaries.

Ms. Delgado outlined the process for the project. CMS plans to generate new, unique Medicare numbers for all people with Medicare, including existing (currently active, deceased, or archived) beneficiaries and people new to Medicare. CMS will then issue new, redesigned Medicare cards containing the new Medicare number. This will require the modification of systems and business processes in order to accommodate receipt, transmission, display, and processing of the new Medicare number. The HICN was the primary beneficiary account holder security number plus the beneficiary identification code (BIC)—a 9-byte SSN plus 1 or 2-byte BIC—and the key positions 1-9 were numeric. The new Medicare number will be an 11-byte



Dr. Robert Furno gives a presentation on the Quality Payment Program at the regional meeting.

unique identifier and the key positions 2, 5, 8 and 9 will always be alphabetic. CMS anticipates that the MBI won't be changed for an individual unless it is compromised.

Ms. Delgado indicated that the transition period will run from April 1, 2018, through Dec. 31, 2019. CMS will complete its system and process updates to be ready to accept and return the new Medicare number on April 1, 2018. **All stakeholders who submit or receive transactions containing the HICN must modify their processes and systems to be ready to submit or exchange the new MBI by April 1, 2018. Stakeholders may submit either the new MBI or HICN during the transition period.** CMS will accept, use for processing, and return to stakeholders either the new Medicare number or HICN, whichever is submitted on the claim, during the transition period. CMS plans to give State Medicaid Agencies and supplemental insurers the new Medicare numbers for Medicaid-eligible people who also have Medicare before they mail the new cards.

CMS understands that providers are making system changes to support the new Medicare number. CMS is supporting providers during this transition by providing general information and guidance, developing a secure look-up tool for providers (to find a new number at point-of-service) and messaging on the HIPAA Eligibility Transaction System (HETS) to tell if a beneficiary's new Medicare card was mailed. CMS also has posters and other educational materials available on its website if physicians would like to post information in their office about the new Medicare card. Visit www.cms.gov/medicare/new-medicare-card/nmc-home.html.

AMCNO and First Year Cleveland are Working Together to Improve Infant Mortality Rates in Our Region

By Bernadette M. Kerrigan, Executive Director, First Year Cleveland

“While the mother is the environment of the developing fetus, the community is the environment of the mother.”

Dr. Lawrence Wallack



It is a tragic loss for parents who lose a baby just before it can survive outside of the womb or who lose a healthy infant as a result of a sleep-related event. For the City of Cleveland and Cuyahoga County, these are alarming trends that have persisted in our community for more than four decades.

Choosing to no longer stand by after decades of high infant mortality rates in our community, grieving parents and their families, friends and frontline infant caregivers—as well as health system, civic, government, faith-based, City of Cleveland, and Cuyahoga County leaders—came together to launch First Year Cleveland (FYC).

With more than 250 community partners, including the AMCNO, First Year Cleveland is working to get to the bottom of these disturbing trends and make lasting change based on the premise that all newborns will live to celebrate their first birthday, and all women in their second

term of pregnancy will get those pregnancies to full term—or at least to a viable gestation.

Through FYC’s recent strategic planning process, three major themes related to the infant mortality rate in our community emerged that require our community’s attention: racial disparities, extreme prematurity, and sleep-related deaths.

Researchers estimate that of the modifiable factors that impact maternal and child overall health, 20% are attributed to clinical (healthcare quality and access), 30% to health-related behavior and 50% to community issues such as racism, housing, education, employment and transportation. FYC is eager to work closely with AMCNO leadership and its physician members to bring their expertise to the table as well as a commitment to stopping our African American babies, who are particularly at risk, from dying and improving our overall infant mortality rates. We look forward to working with the AMCNO

on projects to address these complex issues, such as:

- Leading or attending education seminars that tackle prevention of premature births (ie, through access to progesterone and contraception to space pregnancies, education on smoking cessation and prevention of preventable sleep-related deaths);
- Learning more about FYC’s data collection discussion and work with Better Health Partnership to identify and resolve issues contributing to infant deaths, and also to see if there is a way to standardize the reporting of the data and provide additional data and statistics on infant deaths in our county; and,
- Reducing first- and second-hand smoke during pregnancy and after the birth of a child.

Please join us in these community efforts. ■

AMCNO President-Elect Dr. Bruce Cameron Participates in CMS Provider/Physician Roundtable at UH

The Centers for Medicare & Medicaid Services (CMS) recently announced a new initiative, “Patients over Paperwork,” to reduce the regulatory burdens impacting patient care and the practice of medicine.



Local leaders gather for a roundtable discussion on CMS’ new initiative.

The AMCNO was invited to a small roundtable discussion at the University Hospitals (UH) Cleveland Medical Center concerning provider administrative burden with the CMS Administrator Seema Verma. AMCNO President-Elect Dr. Bruce Cameron attended the event on our behalf. He is on staff at UH, and he is a clinical professor of medicine/gastroenterology at the CWRU School of Medicine.

During the roundtable, Dr. Cameron focused on the impact of MACRA on physician practices and related issues, citing examples from his own practice experiences to emphasize why changes need to be made.

The AMCNO was pleased to be invited to this important meeting, and we will continue to monitor CMS activities and report new information to our members.

AMCNO Hosts Annual Vote & Vaccinate Program at the Polls

The AMCNO hosted its 16th annual Vote & Vaccinate program on Election Day, Nov. 7, 2017.

The intent of this program is to provide individuals with an opportunity to receive a seasonal flu vaccination at a specific site in Cuyahoga County, making it easier for them to get vaccinated before the flu season kicks into high gear. The program runs parallel to the voting process and is not connected in any way with the Board of Elections.

The AMCNO was pleased to have participation from St. Vincent Medical Center in this valuable program. We would like to express our sincere gratitude to the participating site staff at Marion Sterling School in Cleveland. Many members of the local community were able to get vaccinated against seasonal flu at the school.

The AMCNO plans to host this community event again in 2018. If your group or hospital is interested in participating with the AMCNO as a co-sponsor or would like to host a site, please contact the AMCNO offices at (216) 520-1000.

Photos from the event are available on the AMCNO Twitter feed, @AMCNOTABLES.



A voter receives a seasonal flu vaccination at her polling location.

SAVE THE DATE!

2018 Medical/Legal Summit

April 13-14, 2018

Cleveland's Medical/Legal Summit will be co-sponsored by the Cleveland Metropolitan Bar Association, Academy of Medicine Education Foundation, and The Academy of Medicine of Cleveland & Northern Ohio (AMCNO).

Co-Chairs:

- Justin Cernansky, JD, Associate General Counsel, University Hospitals
- Fred Jorgensen, MD, Cleveland Clinic, Fairview Hospital, and AMCNO President

The Summit is intended to bring together doctors, lawyers, health care professionals and others who work in allied professions for education, lively discussion and opportunities to socialize.

For more information, call the CMBA at (216) 696-3525 or AMCNO at (216) 520-1000.

SUMMIT DETAILS

April 13 – CME, CLE and UH CRME TBD

April 14 – CME, CLE and UH CRME TBD

Friday, April 13, 2018 - Afternoon

Join the CMBA's Health Care Law Section for their annual health care law update, prior to the Summit. Visit www.CleMetroBar.org for more info or call 216-696-2404.

FRIDAY, April 13, 2018

Friday evening Keynote Speaker

"Overcoming the Stigma of Addiction", Christopher Kennedy Lawford and Q&A followed by a networking reception

SATURDAY, APRIL 14, 2018

Continental Breakfast followed by a half day of Plenary Sessions

- **Opioid Issues**
- **Interaction between Hospitals, Law Enforcement and Mental Health Facilities**
- **Cyber Security & Liability**
- **Patient & Provider Communications**

Location:

**ONE CLEVELAND CENTER
1375 EAST NINTH STREET
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REGISTRATION RATES

\$85 CMBA members, AMCNO members and other healthcare providers

\$150 Non-Members



At a young age, Christopher Kennedy Lawford became addicted to drugs and alcohol, the latter of which has been a genetic "curse" in his family for generations. Sober for almost 30 years now, he continues to campaign tirelessly in both the public and private sectors for the recovery community. He currently works with the United Nations, White House Office on Drug Control Policy, and World Health Organization.

Lawford holds a BA from Tufts University, a JD from Boston College Law School, and Masters Certification in Clinical Psychology from Harvard Medical School, where he held an academic appointment as a lecturer in psychology. He is the author of three New York Times best-selling books related to his personal experience with addiction and recovery.

At the Summit, as he does when he travels around the world for speaking engagements, Lawford will discuss addiction and mental health issues as well as how to overcome the stigma associated with both.

Summit Only

\$85 CMBA members, AMCNO members and other healthcare providers
\$150 Non-Members
\$15 Students and Residents

Total _____

Health Care Law Update and Summit

\$150 CMBA members, AMCNO members and other healthcare providers
\$225 Non-Members
\$15 Students and Residents

Total _____

Name _____ Atty. Registration No. _____

Firm _____

Address _____

City _____ State/ZIP _____

Phone _____ E-mail _____

I have submitted a membership application within the last 30 days.

Check Enclosed Visa MasterCard Discover AmEx

Credit Card No. _____ Exp. Date _____

Signature _____

Add \$15 to registration fee the day of the program. Registration must be pre-paid by cash, check or credit card to qualify for the advance registration price.

Attorney Registrations: Please make checks payable to Cleveland Metropolitan Bar Association. Mail to P.O. Box 931891, Cleveland, Ohio 44193, or fax your reservation form to (216) 696-2129 (all fax reservations must include a credit card number, expiration date, and signature). CANCELLATIONS must be received in writing three business days prior to the program.

Refunds will be charged a \$15 administrative fee. Substitutions or transfers to other programs are permitted with 24 hours written notice. (Transfer is to a single program and the funds may be transferred only once!) Persons needing special arrangements to attend this program are asked to contact the CMBA at (216) 696-2404, (fax 696-2129) at least one week prior to the program.

Physician and Health Care Provider Registrations: Phone/fax or mail to: AMCNO, 6100 Oak Tree Blvd., Ste. 440, Independence, OH 44131, Phone: (216) 520-1000 FAX: (216) 520-0999. Physicians and other healthcare providers may also pay the AMCNO online at www.amcno.org. Make checks payable to the AMCNO.

