

January 2010

**The New York Society of Physical Medicine & Rehabilitation
- FOUNDED 1921-**

Career and Fellowship Fair

On January 6th, 2010 the NYSPMR will be holding its career and fellowship fair starting at 6pm in The Hospital for Special Surgery (70th and York Ave, New York City) 2nd Floor Conference Center. Representatives will be present to provide you with information and answer your questions about various job and fellowship opportunities. We would like to thank Dr. Paul Rai and Dr. David Lee for their efforts in organizing the fair. For further information please contact Dr. Lee at lee.davidw@gmail.com

NYSPMR Monthly Lecture Series and CME

The next CME-accredited lecture/dinner program will be on February 3, 2010 at Hospital for Special Surgery, at 6 pm, by Dr. Jaishree Capoor, “Rehabilitation of the Child with Spina Bifida.” Dr. Capoor is board-certified in Physical Medicine and Rehabilitation as well as subspecialty-boarded in Pediatric Rehabilitation, Spinal Cord Injury Medicine, and Sports Medicine. For other upcoming lectures please visit us on our website at www.nyspmr.org or visit us at Facebook.

We would like to express our gratitude for the Hospital for Special Surgery for providing our CME accreditation this year as well as allowing us the use of their conference center for the past 5 years. Please visit their website for further educational activities offered through HSS. <http://www.hss.org/cme.asp>

- If you have questions or concerns regarding the content or presentation of a session please contact Dismayra Martinez, PA, MA, Coordinator of Professional Education at The Hospital for Special Surgery 212.606.1613 martinezd@hss.edu or Danielle McPherson at 212.606.1812 mcpersond@hss.edu

Upcoming NYSPMR Workshops

- **Spinal Cord Stimulator: With special thanks to Dr. Phalgun Nori**, the NYSPMR together with Medtronic, Inc. are pleased to announce a-hands on workshop on spinal cord stimulators on February 10 at 6pm. For further details please email Dr. Nori at psnori@gmail.com.
- **Legal medicine workshop series:** with Dr. Alan Lambert, Esq. March 10, 6pm. The next workshop will focus on legal topics pertinent to physiatrists, including preparing for court appearances, becoming an expert witness, and testifying in malpractice cases. For further details please email nysocietyofpmr@gmail.com

- **Musculoskeletal Ultrasound:** Thanks to the efforts of Dr. David Cheng, we are pleased to announce a hands-on workshop that will be held in Spring 2010. Further details to follow.
- **We would like to thank Dr. Tamar Kessel and Dr. Kevin Sperber** for our recently successful hands-on work shop on Cervical Dystonia. Plans are underway for additional workshops to include management of Upper Extremity Spasticity using Botulinum Toxin. Further details to follow.

Social Events occur regularly at nearby venues following the conclusion of the lectures. Please join us in these events to get to know your fellow physiatrist

NYSPMR Resident Bowl – May 5, 2010

We will be requesting a team of 4 residents from each program to join in the fun, and see who will win it all this year. Congratulations to SUNY at Stony Brook for winning last year. If Attendings wish to submit their own multiple-choice style questions to test residents' knowledge at the bowl, please submit them to Dr. Ruth Alejandro at alejanjr1@netzero.net

NYSPMR Resident Night – June 2, 2010

Submissions of original research abstracts or case reports (which have not been previously published or presented) are now being accepted and reviewed. To be considered for presentation please email your original abstract to Susan.Stickevers@va.gov

News from the NYSPMR Legislative Committee

Update from Marty Schaum, Esq., who has represented the interests of the society in Albany for over 20 years.

The Society will be closely monitoring the activities of the physical therapy lobby as it pursues legislation permitting physical therapists to have direct access to workers' compensation patients. During the last legislative session our opposition to this initiative was articulated and the same arguments will be advanced in 2010. At the same time we must remain vigilant concerning all efforts to intrude upon the medical province.

On the issue of medical malpractice insurance an important hearing was held by a special Senate subcommittee in December and attention was paid to the advent and growth of Risk Retention Groups (RRGs). It is possible that you have been solicited by an RRG and, if so, it is important to remember that these groups are not backed by the New York State Insurance Department so that if an individual RRG should become insolvent in the future there is no State insurance fund to offer you coverage. This possibility should be weighed against the attractiveness of the low premium offered to you. The Senate hearing was asked to impose greater control over RRGs and it will be interesting to watch this issue unfold.

The State elections to be held in 2010 will also be extremely important as those elected will redraw election district boundaries in the 2011 reapportionment process. If one party controls both Senate and Assembly it can redraw lines to strongly favor one party over another. Since this is a vital issue for both Republicans and Democrats in power the political game will be quite vigorously played in Albany in 2010.

- The NYSPMR has joined with the NYS Coalition of Specialty Care Physicians. This is an important new development to help with our lobbying efforts in Albany. The primary focus of the Coalition is scope of practice at the NYS level. Similar medical coalition initiatives have been undertaken and met with success in other parts of country, but activities were not as broad and diverse as what is proposed in NY. **May 11, 2010:** Joint Legislative Reception, Joint Position Statements and Health Fair in Legislative Office Building in Albany. All those interested in attending this event please contact nysocietyofpmr@gmail.com

Save the date: **March 9, 2010** MSSNY Lobby Day in Albany. Get an update on the issues; meet with your legislators to present your concerns. Transportation and cost to Albany is arranged by MSSNY.

Coding Changes in Electrodiagnostic Medicine

Members should be aware of the changes that will be imposed in 2010, including a more complete definition of traditional nerve conduction studies. Providers who use preconfigured electrode arrays will need to be ready for these changes. The NYSPMR will seek to bring you a brief summary of the upcoming coding and billing changes in the upcoming year once they have been released.

Medical Student Workshops: NYSPMR is committed to promoting medical students education and to help expose them to our field. We will now be participating in board review courses for Touro College of Osteopathic Medicine. I would like to thank Dr. Van de Walle, Dr. Jessica Au, Dr. Andrew Toy and Dr. Annemarie Gallagher for spearheading this endeavor and invite those also interested in participating to contact nysocietyofpmr@gmail.com

Membership Information:

The New York Society of Physical Medicine and Rehabilitation (NYSPMR) is a non-profit educational organization dedicated to the advancement of the specialty of Physical Medicine and Rehabilitation (PM&R). Please help support our educational, networking and legislative opportunities by becoming a member and paying yearly dues. If you are interested in becoming a member please contact: NYSPMR, c/o Valerie Davis, New York County Medical Society, 12 East 41st Street, 15th Floor, New York, NY 10017, Tel #: (212) 684-4670, ext. 220, Fax #: (212) 684-4741, Email: vdavis@nycms.org or visit our website at www.nyspmr.org

Inspirational Words of the Month “The only limit to our realization of tomorrow will be our doubts of today.” -Franklin D. Roosevelt

HAPPY HOLIDAYS AND A HAPPY NEW YEAR FROM THE NYSPMR!!

2009-2010 Officers

President: Michelle Stern, MD

President Elect: Susan Stickevers, MD

Co-Vice Presidents: Joseph Rothenberg, MD and Ruth Alejandro, MD

Treasurer: Irvin Kotkin, MD

Executive Committee Chair: Naheed Van de Walle, MD

Program Chair: Paulinder Rai, DO

Resident Section

Co-President: Laura Manfield, DO and David Cheng, MD

Co-Vice President: Seth Schran, MD and Tamar Kessel, MD

Secretary: Phalgun Nori, MD

Members at large: James Chang, MD, David Lee, MD, and Sheetal Deo, DO, Sagar Parikh, MD

Dr. Lambert is the Special Health Law Counsel to the New York Society of Physical Medicine & Rehabilitation. His latest article is on: Surviving Third Party Payer Audits and Investigations. If there are any further topics that our members wished to be addressed in future newsletters or workshops, please contact Dr. Lambert at 212-905-1513 or email: lambert@butzel.com, www.attorney-for-physicians.com.

Surviving Third Party Payer Audits and Investigations

Unfortunately, with increasing frequency, physicians and other licensed health care providers have been subjected to third party payer audits, investigations and demands for repayment. On the government payer front, New York State has one of the most active Medicaid Fraud Control Units in the country. In 2006, the Unit had a total of 203 civil settlements with an aggregate recovery of almost \$244 million. Federal investigators and prosecutors are closing out the year 2009 with a series of arrests and prosecutions for alleged Medicare fraud. On the private third payer front, with the economic downturn, many physicians are being subjected to audits and demands for repayment of significant sums of money. In the current climate, physicians and other licensed health care providers will need to understand how to prepare for and respond to third party payer audits and investigations.

This article will address some of the red flags as well as steps that may be taken with the advice and counsel of your individual attorney when you find your medical practice under audit or investigation by a third party payer.

- Audits and investigations are frequently the result of a complaint received by the

third party payer. Disgruntled patients, employees (former), and competitors are common sources of complaints. Perform a risk management review of your treatment, and compliance review of your coding and billing, before you consider placing a patient in collection or initiating other potentially adversarial conduct with the patient. Unfortunately, too many audits and investigations are initiated as a result of a retaliatory complaint by the patient to the third party payer. An audit can also be triggered when a patient calls up a third party payer seeking clarification of information they did not understand on an explanation of benefits (EOB). Make sure your patients understand the services provided and the related billing for same. Remember that your relationships with employees can be transient and the separation from employment may not always occur on the best of terms. Therefore, do not allow employees access to sensitive information that could be misrepresented by them to make a bad faith report.

- Audits and investigations may also be triggered by internal third party payer data. Third party payers commonly prepare comparative performance reports which compare you to your peers in terms of multiple variables such as the volume of diagnostic tests ordered, procedures performed, billing (CPT) codes used, cost of treatment per diagnosis and quality of outcomes. If you fall outside of the norm for your peers, you can be subjected to an audit. Frequently, the third party payers are unaware of, or fail to adjust for, differences in your patient population or case mix from that of your peers. With proper legal representation, data can be prepared that places your practice in proper perspective and justifies the services provided.
- Requests by third party payers for a copy of more than one medical record at a time could be a red flag that you are the subject of an audit. Another red flag is a letter that comes from a "special investigation" unit of the third party payer. The special investigation unit of a third party payer commonly addresses issues of suspected fraud.
- Respond to medical record requests in timely fashion. Delay can create suspicion on the part of the third party payer. It is important to be sure that the release of copies of medical records to the third party payer is in compliance with applicable state and federal law including applicable law on patient confidentiality. When you receive a request for medical records, do not alter the medical records. If you must make an addition to a medical record, this should be done in a separate note which is dated and timed to correctly identify when the note was written. Since even correctly dated and timed additions to medical records can raise risk management issues, it is best to review the matter with an attorney before making such additions. Remember that medical record fraud, or even the appearance of same, can convert an otherwise defensible or manageable case into a career ending fraud

case.

- Be careful about attempting to defend yourself during an audit or investigation by answering the questions of an investigator or submitting written statements without the advice of an attorney. Don't assume that the audit or investigation is all a terrible misunderstanding which can be clarified by showing good will on your part. Your statements, whether verbal or written, can subsequently be used against you. However, with the advice of an attorney, useful information such as medical literature justifying your approach to treatment and data justifying your volume of diagnostic tests ordered, procedures performed, and billing (CPT) codes used can be submitted. The submission of the aforementioned information may lead to an audit or investigation being closed out without any action being taken against you.
- In general, don't offer to make repayments without a written settlement agreement which addresses issues needed to protect your interest such as the reason for repayment, your right to continue to be a provider for the third party payer, and whether the matter has been, or will be, reported to government agencies such as state licensing authorities, state insurance departments, and the state/ federal criminal authorities.
- To reduce the risk of audits, investigations and prosecutions, consider implementing a compliance study of your practice to identify and correct problems relating to medical record documentation, billing and other practice issues. It is important that your medical records justify the medical necessity of the services provided. As part of a compliance plan, certified professional coders can be useful consultants.

The information contained in this article is presented for educational purposes only and does not constitute legal advice. You should consult with your individual attorney prior to acting on any of the educational information provided herein.