

California and National News



Federal Court Sides with CMA in Board-Certification Case: The Federal Court in Sacramento has once again upheld a CMA-supported law limiting to those physicians possessing an American Board of Medical Specialties (ABMS) or board certification deemed “equivalent” by the ABMS the right to advertise that they are “board certified.” The court ruled against the American Academy of Pain Management, which sued the Medical Board of California in 1998 challenging a 1990 law that limited such advertising. CMA was instrumental in the passage of the 1990 law, which was passed in response to complaints that physicians were advertising themselves as “board certified” when they had only attended very brief courses offered by non-ABMS boards.

Federal judge Lawrence Karelton in 1998 rejected the pain management academy’s request to have the law declared unconstitutional. The academy then appealed it to the 9th Circuit where it was again rebuffed when the court returned the case for trial. At that point, CMA filed an *amicus curiae* brief supporting the law in both the federal and the appeals courts. In this latest ruling, the court disposed of the case on a motion for summary judgment, upholding the validity of the statute limiting the right to claim board certification.

The presiding judge’s decision reflected CMA’s *amicus* argument that the state’s process of determining whether a board is equivalent to an ABMS board is objective and nondiscriminatory, and that the use of the term “board certified” by a physician whose board was not so certified was inherently misleading. For more information, sign onto the Members-Only web site at www.cmanet.org. Once on your personal home page do a Quick CMA ON-CALL search for document #0205: Physician advertising. *Information:* CMA’s paralegals, (415) 882-5144. (From *CMA Alert*, April 27, 2000.)

CMA to DOC: Plans Must Provide, and Pay for, Specialist ER Backup: Pointing out that many physicians are tired of providing what is essentially charity care to companies publicly traded on Wall Street, CMA has sent a letter to the Department of Corporations, calling on it to enforce state law that holds health plans responsible for providing adequate specialty backup in hospital emergency departments. The Jan. 26 letter points out that plans must pay on-call specialists promptly for emergency services rendered and, when necessary, pay physician stipends or other incentives. The letter reflects, in part, the conclusions of the *CMA/Cal-ACEP Emergency On-Call Task Force Report*.

That report, published in late 1999, found that lack of backup is creating emergency department gridlock and, in some cases, lack of access to care for health plans’ own patients. CMA’s letter cites numerous sections of the Knox-Keene Act as well as emergency transfer laws to support its opinion that plans are required by law to provide and reimburse specialist backup at all hospitals within each plan’s service area, and within the hospital’s capability. For a copy of CMA’s letter to the DOC, check “Improving Access to Care” at www.cmanet.org. *Information:* CMA Paralegal, (415) 882-5144. (From *CMA Alert*, February 24, 2000.)

Supreme Court Sides with CMA, Preserves Peer Review Confidentiality: The California Supreme Court has affirmed the confidentiality of peer review proceedings in *Fox vs. Kramer*, concurring with the position CMA, the California Healthcare Association, and the California Dental Association took in an *amicus curiae* brief in the case. The case involved a colonoscopy using conscious sedation and a plaintiff who later “dreamed” she had awakened during the procedure, screamed, and therefore, had withdrawn consent. Her husband, a physician at the same hospital, demanded peer review, and unusually, attended the peer review meeting.

The plaintiffs had also made a complaint that led to a Department of Health Services investigation. They then subpoenaed both the DHS report and the DHS investigator. Both the trial court and the appeals court excluded the testimony of the DHS investigator, as well as the DHS preliminary investigation report.

The Supreme Court upheld these rulings and made clear it excluded such evidence both from pretrial discovery and from trial, saying, “The purpose of the provision—preserving the confidentiality of hospital peer review proceedings—would clearly be undermined if a party in a civil action could obtain through a trial subpoena the same evidence that it was prohibited from obtaining through a pretrial discovery request, ... The legislature could not have intended such an absurd result.” This case should significantly reduce concerns arising from the court’s ruling in *Arnett vs. Dal Cielo*, allowing administrative agencies to subpoena peer review documents. *Information*: (415) 882-5144. (From *CMA Alert*, March 30, 2000.)

South Africa Officials Question Cause of AIDS: South Africa, a country with the fastest growing number of HIV-positive cases estimated at 1,600 a day, has shocked many scientists and other concerned people by questioning the cause of AIDS. South African President Thabo Mbeki recently called David Rasnick, a San-Francisco-based microbiologist, already estranged among many in the scientific community for upholding a dissident view of AIDS. Rasnick, Peter Duesberg and a few others are reportedly claiming that there is no scientific proof that the HIV virus causes AIDS, and that many people in Africa and other underdeveloped countries are in fact dying because of malnutrition and a lack of sanitation. Finally, these scientists are warning people not to use anti-HIV drugs as they are harmful and may lead to AIDS.

Mbeki initially sent a few written questions to Rasnick and later personally telephoned him. The two apparently spent about 10 minutes in deep conversation, alarming both local and world scientists and many AIDS activists. Raising doubts about the cause of AIDS and, in effect, calling for a reappraisal of the link between HIV and AIDS as some high government officials in South Africa have done, has resulted in a sharp rebuke from leading South African and international scientists. “HIV was discovered in 1983, 17 years ago ... we have accumulated so much evidence of the link with AIDS—it is nonsense to try to separate the virus and the disease,” said Professor Francoise Barre-Sinoussi.

Top government officials are also questioning the merits of AZT and other antiviral drugs; claiming that they are harmful in fact. Mbeki’s government has already refused to provide free AZT to pregnant mothers and rape victims, claiming that the drug’s “toxicity could even exacerbate the symptoms of AIDS.” (From *Bay Area Reporter*, March 23, 2000.)

A New Option May Exist for Hepatitis C (HCV) Patients Waiting for a Liver Transplant: Livers from HCV-infected donor appear to function as effectively as liver from HCV negative donor in recipients who are HCV-positive. HCV is the most common blood-borne infection in the USA, with four million Americans currently infected and 230,000 new infections each year. Forty percent of chronic liver disease is now HCV-related and is the most frequent indication for liver transplantation among adults. HCV-related chronic liver disease causes 9,000 deaths each year and the number of deaths attributed to HCV-related liver disease will increase substantially in the next decade. Intravenous drug abuse, especially heroin, currently accounts for 60 percent of HCV transmission, and it is estimated that after five years of such behavior that 90 percent of user are infected with HCV. Unlike hepatitis A and B, there is no vaccine to prevent HCV infection. Current serological testing and transaminase screening have markedly reduced the risk of transfusion-related HCV infection.

Although livers (and other organs) from HCV-positive donors are deemed unfit for routine transplantation, there is new evidence to suggest they are effective therapy for HCV-positive recipients. One center compared 23 HCV-positive patients who received livers from HCV-positive donors with 169

HCV-positive patients who received livers from HCV-negative donors. Both the one-year and five-year survival rates were comparable among the two groups. (From: *Gastroenterology* 1999;117: 149-53). [Ed.—An important benefit of this type of approach is expansion of the donor pool for liver grafts. This will allow a greater number of HCV-positive recipients to receive liver grafts and decrease the waiting time and associated morbidity and mortality.]

Radiologists Sue Yale Medical School: Three senior faculty members of the Radiology Department at Yale Medical School have sued Yale, claiming that policies endangering the lives of patients were initiated, and furthermore, that they were punished when they complained and tried to rectify the problems. They claim that their chairman retaliated for their complaints by reducing salaries, disrupting sabbaticals and making disparaging remarks. The plaintiff physicians allege that the chair had directed them to sign a backlog of radiology studies whom they had never treated, and that the chair directed residents to read x-rays in the emergency department unsupervised. These allegedly constituted a violation of Medicare laws as well as lesser quality of care. The University strongly denied that the changes in the Radiology Department put patients at risk. (From the *New York Times Metro*, April 30, 2000.)

Aetna-Blue Cross Merger Alarms CMA: CMA EVP Jack Lewin, M.D., today expressed alarm about “potentially harmful effects to patients” if WellPoint Health Network succeeds in its attempt to purchase Aetna, Inc. Aetna, which last year bought Prudential Health Care, now has 1.5 million enrollees in California. WellPoint, which operates in California as Blue Cross, has 3.7 million enrollees. If the Aetna-WellPoint merger is successful, most California patients and employers would see their choices reduced to just four plans.

CMA predicts, Dr. Lewin said, that if this merger receives government approval, patients and health insurance purchasers may see more of their premium dollar diverted to corporate profits and less to patient care. Dr. Lewin called on the U.S. Department of Justice, the Federal Trade Commission, and the California Attorney General’s office to take a very close, critical look at this proposed merger. (From *CMA Alert*, March 2, 2000.)

Majority of Nations Using Unsafe Blood: More than two-thirds of the world’s nations are supplying their populations with unsafe blood, increasing the transmission of HIV and hepatitis. According to the World Health Organization study, the use of unsafe blood is most common in developing countries—home to 80% of the world’s population, or some 4.8 billion people. Because of the high cost of blood testing—between \$40 to \$50 per unit—more than 13 million pints of blood annually are not checked for transmissible infections, including HIV, malaria and syphilis. Globally, transfusions of bad blood are thought to have infected up to 10% of AIDS patients. Moreover, unsafe transfusions and injection practices are estimated to cause up to 160,000 new HIV infections, 16 million new cases of hepatitis B and 4.7 million new hepatitis C infections each year. In response to these findings, the WHO, in cooperation with the International Federation of Red Cross and Red Crescent Societies, is launching a global campaign to promote blood safety. (From *The Kaiser Daily HIV/AIDS Report*, April 7, 2000.)

Physicians Must Report Deaths or Transfers from Outpatient Settings: AB 271, which went into effect Jan. 1, requires a physician who performs a scheduled outpatient procedure that results in a patient’s death or transfer to a hospital or emergency center for emergency treatment lasting more than 24 hours to report the incident to the Medical Board of California (MBC) within 15 days. This requirement also includes incidents that occur when the procedure has been performed by a person acting under a physician’s orders or supervision. Failure to report constitutes unprofessional conduct.

Further information and copies of the Patient Transfer Reporting Form and the Outpatient Surgery-Patient Death Reporting Form (Interim) are now available in CMA ON-CALL document #0202, “Surgicenters

and Other Outpatient Facilities.” The document is free to members who reach CMA ON-CALL from the Members Only page of www.cmanet.org. CMA ON-CALL documents are available to nonmembers for \$2 per page from the CMA home page. To use CMA’s faxback service for CMA ON-CALL documents, call (800) 592-4262. Information and documents are also available from Linda Perschon at the MBC, (916) 263-2380. *Information: (415) 882-5144. (From CMA Alert, April 13, 2000.) [Editor’s Note: These reporting obligations apply to non-hospital outpatient settings.]*

CalPERS HMO Rates to Increase 4.9%: The California Public Employees Retirement System, one of the nation’s largest purchasers of health insurance, said recently that it has negotiated HMO rate increases averaging 4.9% for next year, far lower than many analysts expected. Private-sector employers often track the rates negotiated by the program as an indicator of what they can expect, but that may not hold true next year. That’s because the program, in order to drop the average increase from 8.6% to 4.9%, agreed to raise co-payments for office visits and prescription drugs for the first time, something many employers in the private sector have already done. (From *USA Today*, April 19, 2000.)