COOPERATIVE OF AMERICAN PHYSICIANS

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We welcome your comments! Please submit to communications@CAPphysicians.com.

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Legal guidance for individual matters should be obtained from a retained attorney.*

THE MONTHLY PUBLICATION FOR CAP MEMBERS

CAPsules®

COOPERATIVE OF AMERICAN PHYSICIANS

CELEBRATING 40 YEARS OF SUPERIOR PROTECTION

From Santa Monica to Sierra Leone, Children Are His Life's Work

Want to find Dr. Robert Hamilton? Look for a man surrounded by kids.

Everybody has a number of kids they care about.

Dr. Robert Hamilton has six children, seven grandchildren, a bustling pediatrics practice in Santa Monica, and has taken two dozen journeys to Africa to help hundreds of families.

What made children his life's work?

"Early in my career, I met Ben Kagan, the legendary chairman of pediatrics at Cedars-Sinai in Los Angeles" Dr. Hamilton recalls. "I asked him, 'Why do you do what you do?' And he said 'If you save a baby, you save an entire lifetime.' Those words really spoke to me."

Dr. Hamilton's empathy for children who are sick has roots in his own childhood. "I had asthma as a child, and became all too familiar with doctors and emergency rooms when I was small. My Dad, who'd been a medic in the Navy but became a mill worker to support the family, always said "'Bob,' you should be a doctor.'"

Dr. Hamilton didn't begin his career in pediatrics right away, "I'm 64, and in those days, a lot of people lived in communes. So I did that for a while. But I eventually met a really pretty girl named Leslie. She was from Eureka, just like me. I decided I wanted to marry her. We had kids when we very young," he explains.

During his third year of medical school, Dr. Hamilton began his pediatric rotation. "All day, I'd pick up crying babies and comfort them – then come home at night and do the same," he says. His life has been Pediatrics ever since.

"I'm president of Pacific Ocean Pediatrics, which is a small private practice in Santa Monica. One of the three doctors who work with me is my oldest daughter, Noël. Another daughter, Emily, is my business manager and my sister-in-law handles billing. People who work here tend to stay a long time," he says.

And longevity extends to the Cooperative of American Physicians as well. "I've been with CAP right from the start," says Dr. Hamilton. "They're incredibly professional, always ready to help. It has been a very positive relationship."

In his free time, Dr. Hamilton keeps busy. "I like to read. I've run marathons for the past six years in a row. I'm not fast, but I get to the finish line." Along with a Christian-based organization called Lighthouse Medical Missions, he's been to Africa 24 times working in post-conflict countries like Liberia, Sierra Leone, and Burundi. On a recent trip to Gambia, Dr. Hamilton and his group were invited to visit the newly inaugurated president of the country and the following day, the First Lady of Gambia came to visit their clinic.

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DR. ROBERT HAMILTON AT-A-GLANCE

Medical Specialty: Pediatrics
Practice Location: Santa Monica
Years in Practice: 33
CAP Member Since: 1996

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These days, nobody named Hamilton can escape being asked whether they are related to Alexander Hamilton. Dr. Hamilton answered the question with good humor. “I’m not, though I am related to Henry Clay, the 19th century senator from Kentucky," he says. "When I went to New York to appear on *Good Morning America*, three of my daughters came with me and immediately ran off to see the play Hamilton, with the original cast. I joked later that when they arrived in New York, they had much more interest in ‘Hamilton’, the play, than ‘Hamilton’ the doctor.”

His travels with his wife and children are among his greatest joys. “We love Italy and Ireland, and especially Israel. Waking up in Jerusalem one Easter morning a couple of years ago was incredibly meaningful to me. I like to grab one of our kids and say, ‘you’re coming with me’. All of my children have been with me to Africa and I have wonderful memories of riding bicycles with my daughter Sarah across the Negev Desert in Israel for three days," he recalls.

"It’s a great, big world.”

YOU ASKED… WE DELIVERED!

Introducing Dental and Vision Coverage for You and Your Staff

As you know, being an independent physician brings many rewards... as well as some challenges, including securing affordable health benefits for you and your employees.

In response to requests made by CAP members throughout the years, we are pleased to report that you and your employees can soon secure affordable dental coverage through MetLife Dental and vision benefits through EyeMed Vision Care. **Keep your eyes open for emails from CAP over the next couple of months with details about these two outstanding new coverages and instructions on how to enroll.**

Even if you already have vision and dental plans in place, we encourage you to **compare your current plans with the high-level coverage and group rates that CAP offers. We believe you’ll be pleasantly surprised by the significant savings.** And if you do not already offer dental and vision benefits, there are a number of good reasons to consider enhancing your current employee benefits package.

1. Good health-related coverage helps attract and retain quality employees.
2. Businesses get the tax advantage of deducting plan contributions.

3. Employees often will accept better benefits in lieu of a higher salary.
4. You’ll also be able to personally take advantage of these discounted rates for you and your family members.

“Because of our members’ need for affordable health-related benefits, CAP Agency staff has worked diligently to secure dental and vision coverage at significantly discounted rates that leverage the group buying power of your 12,000-member cooperative," says Deidri Hoppe, chief executive officer of CAP Physicians Insurance Agency, Inc.

Prescription Drug Pricing in the Spotlight

Public Policy

The cost of prescription drugs continues to be a topic generating action in the California Legislature as some policymakers consider drug costs a material component of high healthcare costs.

Billed as an attempt to bring greater transparency to prescription drug pricing practices, state Senator Ed Hernandez (D-West Covina), introduced SB 17 in January. Described as a "common-sense approach," the Hernandez bill would require drug makers to give prior notice to purchasers before raising prices and also would require health plans to report the percentage of consumers' healthcare insurance premiums that is spent on drugs. SB 17 also would require detailed descriptions of insurance premium changes related to drug spending.

This is Hernandez's second attempt in this area, having introduced a similar bill in 2016 only to see it stall last August. The drug-cost spotlight continued last year, however, as Proposition 61 made its way to the November General Election. That voter initiative sought to lower prescription drug prices by requiring state agencies to pay for medicines at the same rates paid by the federal Department of Veterans Affairs. While both sides of the initiative conducted heavily funded campaigns, the initiative was defeated on a 54-46 margin.

Among other things, SB 17 would require a drug manufacturer to notify specified state purchasers, health plans, and insurers, at least 90 days prior to a planned effective date, if it is increasing the wholesale acquisition cost (WAC) of a prescription drug. The bill also would require health plans to release data on drug purchasing trends, including the 25 most prescribed and 25 most expensive medications. This data would be provided to the Department of Managed Health Care or the California Department of Insurance, which would be required to produce a public report addressing the impact of drug costs on healthcare insurance premiums.

Legislatively, SB 17 remains in active status, having made its way out of the Senate Health Committee, Senate Appropriations Committee, and the Senate floor. SB 17 also was heard and passed in the Assembly Health Committee and is currently awaiting action in the Assembly Appropriations Committee once members return from their August recess. The bill is not without strong and vocal opposition from biotech and pharmaceutical manufacturers, who contend that transparency bills do not lower the price of drugs and instead create barriers for investments into new medicines, making it more difficult to deliver breakthrough therapies to patients.

by Carole A. Lambert, MPA, RN

Putting It Together: Patient Care, Quality Measures, and Physician Safety

Over the past months, we have looked at the components of the Merit-based Incentive Payment System (MIPS), the track of the Quality Payment Program (QPP) on which most physicians will find themselves. The components are Quality (Q) – 60 percent; Advancing Care Information (ACI) – 25 percent; and Improvement Activities (IA) – 15 percent. We reviewed the basics in each area and focused on identifying what the practice does best and does consistently as laying the foundation for effective reporting.

A striking feature of the QPP is its acknowledgement of the dynamic relationship among all the components of the comprehensive patient-centered care CAP member physicians and practitioners provide. But there is another aspect to MIPS and the QPP, another way to view collecting the data, and another consideration of what it all can mean for the physician. The documentation of that comprehensive patient-centered care, which is the foundation for quality measures reporting, is also the foundation for responding to medical-legal challenges and promoting physician safety. The work truly has meaning beyond the task.

What can practitioners who are not participating – or are not fully participating – in 2017 do to ensure that they are prepared for 2018? Practitioners should consult with colleagues and take advantage of the free support services available to understand where their practices stand in relation to the reporting structure, measures, and requirements. We are convinced that the gifted and dedicated practitioners in CAP will get organized to demonstrate to themselves, to the Centers for Medicare & Medicaid Services (CMS), and to the wider community just how good they are – and get paid as well!

TO REVIEW:

QUALITY (Q): Consider Quality and the measures that will contribute to that important 60 percent of the MIPS 2017 performance score. If we persist in our approach of taking credit for what we do best, based on years of practice and thousands of patient/family interactions, we can look at the list of measures and select measures that best fit the practice: six measures including one outcome measure and one high-priority measure. There are 300 from which to choose. We can refine our search by specialty – there are 30 specialty measure sets – or by high priority or by data submission method. Chances are, you will identify "those things that are done commonly in the course of practice," as Naomi Levinthal of The Advisory Board Company notes.

ADVANCING CARE INFORMATION (ACI): Look at ACI and the required measures in this performance category. There are four required measures, seven performance measures, plus bonus measures. The required measures will prompt key questions regarding electronic documentation of patient care. The answers can be of great help in understanding how your practice is doing in advancing care information, supporting improved patient engagement, and connectivity.

IMPROVEMENT ACTIVITIES (IA): The IA category of MIPS, despite the wordiness of its title, gives us an opportunity to identify, clarify, and account for the things we do best. The nine subcategories and the approximately 90 activities distributed among those subcategories allow us to document our meaningful interactions and interventions for the health and well-being of our patients and their families. They offer us a chance to shine a bright light on the energy,

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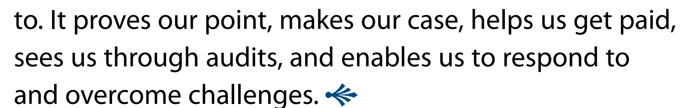
intelligence, creativity, and commitment physicians and their staffs bring to the care of their patients, patient families, and communities.

Let's circle back to the goal of taking credit for what you do best. Patient care, quality measures, and physician safety are inextricably linked by precise, accurate, and timely documentation. Precise, accurate, and timely documentation builds a bedrock to stand on and refer



to. It proves our point, makes our case, helps us get paid, sees us through audits, and enables us to respond to and overcome challenges.

Carole Lambert is Vice President, Practice Optimization for CAP. Questions or comments related to this article may be sent to clambert@CAPphysicians.com.

Let CAP's Membership Services Department Help You with Your Year-End Planning

If you are contemplating a change in your practice, such as, but not limited to:

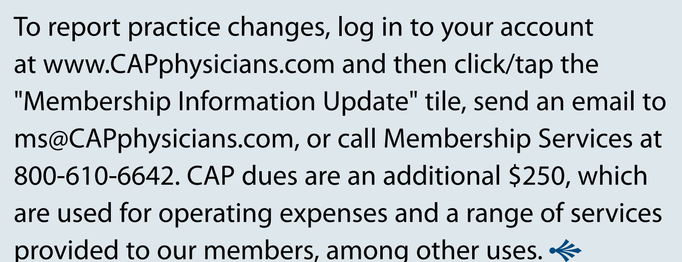
- Retirement from practice at age 55+
- Part-time practice
- Reduction or change in the scope of your practice
- Employment with a government agency or non-private practice setting
- Employment with an HMO or other self-insured organization
- Joining a practice insured by another carrier
- Moving out of state

The Board of Trustees of the Mutual Protection Trust will levy an assessment in November 2017. To allow ample processing time, we recommend that members advise us in writing no later than October 31, 2017, of any of the above changes to be considered eligible for waiver or proration of the next assessment.

How is my assessment calculated? What are MPT dues?

MPT assessments are based on a great number of factors, the largest being claims loss experience. With the assistance of CAP's Risk Management and Patient Safety Program, MPT has made great strides in reducing claims frequency. And through a strict budgeting process, MPT makes sure that operating expenses are necessary, productive, and consistent with its mission. The MPT Board of Trustees gathers all relevant information and with the assistance of internal financial analysts and external actuaries, establishes a competitive assessment that reflects the needs of paying claims and meeting operating expenses. The assessment process is one component of disciplines that have earned MPT an A+ (Superior) rating from A.M. Best Company every year since 2006.

MPT dues are established separately and are $190. Dues income is used to offset MPT operating expenses and importantly, to educate policymakers on why the Medical Injury Compensation Reform Act (MICRA) promotes quality healthcare in California. The Board of Trustees believes that using dues to fund political action committees for such public policy efforts is vitally important to keeping medical professional liability protection affordable in California.



To report practice changes, log in to your account at www.CAPphysicians.com and then click/tap the "Membership Information Update" tile, send an email to ms@CAPphysicians.com, or call Membership Services at 800-610-6642. CAP dues are an additional $250, which are used for operating expenses and a range of services provided to our members, among other uses.

Southern California Members: Litigation Education Retreat Is Coming Your Way

Recognizing the damaging effects a lawsuit can have on a physician's personal and professional well-being, CAP invites its members to attend its daylong Litigation Education Retreat. Our next program, and the final one we will be offering this year, takes place in Orange County on October 14. CAP, a CME-accredited provider, designates this educational activity for a maximum of six AMA PRA Category 1 Credit(s)™.

At the program, a nationally recognized expert in the field of behavioral health provides valuable suggestions on alleviating the stress associated with being named in a lawsuit, while legal and communications experts help physicians develop the skills that will improve their chances for a favorable outcome.

We also invite you to bring your spouse, partner, or a friend who will support you through the litigation process. This event is free to all CAP members and guests. If you are interested in attending the retreat, please contact Andrea Crum at 800-252-7706 or at LERinfo@CAPphysicians.com.

Customized Home Loan Programs and Support Exclusively for Medical Professionals

If you are looking to purchase a new home, we encourage you to apply for financing through Bank of America's specialized Doctor Loan program, a great new practice management benefit we are offering under our CAPAdvantage umbrella.

Through Bank of America's Doctor Loan, physician members can take advantage of a number of **benefits designed specifically for medical professionals,** including:

- **Low down payments.** As little as 5% down on mortgages up to $1 million and 10% down on mortgages up to $1.5 million.
- **Delayed job start.** Start a new position up to 60 days after closing.
- **Flexible options.** Student loan debt may be excluded from the total debt calculation.
- **Choice of loan types.** Choose a fixed or adjustable-rate loan.

When you work with Bank of America, you can count on help every step of the way from a dedicated loan officer who specializes in medical professional lending. To learn more or get prequalified, simply contact Bank of America Senior Lending Officer Kristin Bati at 949-300-0012 or Kristin.bati@bankofamerica.com. You also can visit https://mortgage.bankofamerica.com/kristinbati/ to apply online.

The Cooperative of American Physicians, Inc. and subsidiaries contract to receive compensation from certain product vendors as commissions or marketing fees. CAP uses these funds to control costs and provide additional services to its members.

The Correlation Between Staff Engagement and Patient Satisfaction (and Malpractice Claims)

Defined as "the personal and emotional attachment an employee has to his or her work," employee engagement has been a topic of workplace conversation for some years now. Whether you employ one person – even only your spouse – or 100, how engaged your staff members are has a ripple effect on your practice. This is especially true in the areas of:

- Retention
- Efficiency and productivity
- Growth and profit
- **Patient loyalty and satisfaction**

While you may think everything is fine among your employees, studies show otherwise. According to a 2014 Gallup poll, more than 50 percent of U.S. workers identified themselves as "not engaged."

As you can imagine, low morale and hostility are as contagious as the common cold and can be especially detrimental to a smaller practice with a close-knit staff. And when that poor attitude or apathy carries over into patient relations, you could be facing what could have been a preventable malpractice claim for a real or perceived grievance.

Paylocity, one of CAP's valued providers under our CAPAdvantage practice management services program, has published a white paper that examines what factors influence and impact engagement and why engagement is important to a business' success. You can download it for free at http://bit.ly/2f0tLC9.

And if you're in need of outstanding payroll and HR support, including benefit administration, talent management, time and labor management, applicant tracking, performance reviews, and more, we encourage you to look into Paylocity. As a CAP member, you're entitled to a significant discount on Paylocity's à la carte services. For more information, please contact Denise Figone, Paylocity's director of channels and alliances, at dfigone@paylocity.com or 415-975-1435.

CAPAdvantage is a program of CAP that offers members a suite of no-cost or competitively priced practice management benefits extending beyond our superior medical malpractice and risk management protection. The Cooperative of American Physicians, Inc. and subsidiaries contract to receive compensation from certain product vendors as commissions or marketing fees. CAP uses these funds to control costs and provide additional services to its members.

Case of the Month

by Gordon Ownby

Court Explains Limits of Early Defense Against Retaliation Claims

In a new case, a California Court of Appeal has held that conducting a formal peer review proceeding does not always provide a defense against a physician's claim of retaliation.

At issue is a legal defense called an "anti-SLAPP" motion. "SLAPP" stands for "strategic lawsuit against public participation" and the motion allows defendants to seek an early dismissal of harassing lawsuits concerning free speech.

According to the allegations relied on by the Court of Appeal in *Bonni v. St. Joseph Health System* (all of which are subject to proof), Dr. Aram Bonni, a surgeon, complained to Mission Hospital in October 2009 that the hospital's robotic surgery program was so understaffed that patient care was directly and adversely impacted. In his email to the vice president of medical affairs at Mission, Dr. Bonni wrote that at times he was unable to complete scheduled surgeries because of these issues. In January 2010, Dr. Bonni reported his safety concerns to the same Mission officer regarding a da Vinci robot malfunction that he experienced during a surgery he performed on December 22, 2009. The surgeon made further reports in 2010 of his concerns with the robotic program.

Dr. Bonni alleged that defendants Mission Hospital and St. Joseph Hospital of Orange retaliated against him for his complaints by summarily suspending his hospital privileges and conducting a peer review.

In a declaration filed with the court, Dr. Bonni stated: "Instead of addressing these issues, Mission referred the case to the Quality Review Committee for outside review of my performance of the December 22, 2009 surgery. I believe that this was done in retaliation for my reports regarding the inadequate robotics program and substandard hospital equipment and staff."

Dr. Bonni based his retaliation lawsuit on California's "whistleblower" statute, Health & Safety Code Section 1278.5, which prohibits health facilities from retaliating against a medical staff member over a grievance, complaint, or report to the facility or its medical staff.

The hospitals responded with an "anti-SLAPP" motion, arguing that all activities at issue in Dr. Bonni's retaliation claim constituted protected peer review activities and the defendants' actions "were motivated by concerns for patient safety because of plaintiff's poor surgical technique." (In his declaration, Dr. Bonni included a letter sent by an outside expert to Mission Hospital opining that during the surgery in question, Dr. Bonni did not deviate from the standard of care.)

The trial court granted the anti-SLAPP motion brought by the hospitals and Dr. Bonni appealed.

To win an anti-SLAPP motion, a defendant must make a threshold showing that the plaintiff's claim *arises from* a protected activity (in this case, the peer review process). In this regard, Dr. Bonni argued a *retaliatory decision to initiate* the disciplinary actions was different from the otherwise protected peer review process.

In ruling for Dr. Bonni, the Court of Appeal explained: "Plainly, a defendant health facility may take all manner of adverse actions against an employee or medical staff member . . . without violating Section 1278.5, so long as the adverse action is not taken to discriminate or retaliate because the employee or staff member made a complaint to the facility." But the court went on to explain that the basis for a retaliation claim can be a retaliatory purpose or motive for the adverse action, not the action itself:

"[M]erely because the peer review process serves an important public interest does not make it subject to the anti-SLAPP statute where the process is employed for a retaliatory purpose."

In this case, Dr. Bonni's allegation that the peer review process was initiated by the hospitals because he complained about conditions was sufficient to defeat the defendants' anti-SLAPP motion – thus allowing him to proceed with his suit.

Gordon Ownby is CAP's General Counsel. Comments on Case of the Month may be directed to gownby@CAPphysicians.com.

Five Things to Know About the Balance Billing Law

by Ann Whitehead, RN, JD

Last year, the California Legislature passed Assembly Bill 72, which forbids balance billing for out-of-network care at in-network hospitals or facilities. The law took effect July 1 of this year.

In a recent *San Diego Union Tribune* article, Betsy Imholz, special projects director for Consumers Union, a nonprofit policy and advocacy group affiliated with the product testing and rating publication *Consumer Reports,* stated that California has implemented some of the strictest rules in the country against balance billing. Some of the most common balance-billing situations involve anesthesiologists and imaging services delivered in settings that range from hospitals and labs to stand-alone imaging centers. Other possible situations include lab testing, EMS ambulance services, ambulatory surgical centers, and other in-hospital services.

Here are five things to know about the rules:

1. Assembly Bill 72 forbids balance billing for out-of-network care at in-network facilities.

2. Older California statutes forbid balance billing in emergency situations.

3. Insurers are required to accept complaints for suspected surprise billings and have 30 days to solve the problem. If consumers are dissatisfied with the result, the state's Department of Managed Health Care will step in.

4. California's balance billing legislation doesn't include self-insured health plans regulated by the U.S. Department of Labor under the Employee Retirement Income Security Act, which covers an estimated 40 percent of those with commercial insurance in the state.

5. Only 15 states have some protections against balance billing to date, and only six have comprehensive protection.

More information can be found at the California Society of Anesthesiologists website at csahq.org/ and at the California Medical Association website at www.cmanet.org (membership required).

Other Resources:
California Legislative Information: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB72
California Ambulatory Surgery Association (CASA): www.associationdatabase.com/aws/CASA/pt/sp/about.

The above item was authored by Ann Whitehead, RN, JD, Vice President, Risk Management and Patient Safety for CAP. Questions or comments related to this article should be directed to awhitehead@CAPphysicians.com.

This communication is not intended to create or constitute, nor does it create or constitute, an attorney-client or any other legal relationship. No statement in this communication constitutes legal advice nor should any communication herein be construed, relied upon, or interpreted as legal advice. This communication is for general information purposes only regarding recent legal developments of interest, and is not a substitute for legal counsel on any subject matter.

Important Notification on CAP/Medical Interactive Online CME Program

Thank you for your interest in the **Online Continuing Medical Education (CME) Program** from Medical Interactive made available to CAP members. This is to notify you that CAP will be terminating its access to these CME courses on **September 30, 2017**.

Please access the Medical Interactive site through the Member's Area of the CAP website at www.CAPphysicians.com/cme prior to **September 30, 2017** to complete any unfinished courses and/or print out certificates.

For technical support, please contact Medical Interactive directly at 855-464-7475 and ask for the Help Desk.

Thanks again for your participation in the CAP/Medical Interactive Online CME Program.