



# DENVER MEDICAL BULLETIN

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## Health Courts: Life Without Juries?

Most physicians would find no difficulty in agreeing with the proposition that the current tort-based system of resolving claims for medical injuries fails to serve the interests of patients, physicians and society at large. Physicians have learned to fear the vagaries of a legal system that can return widely varying jury verdicts that seem to bear little connection to actual quality of care or the injuries sustained by a patient. This has led to a medical errors system which inhibits sharing of information, stonewalling, and a culture of nondisclosure which prevents healthcare professionals and institutions from learning from their mistakes and creating effective systems to prevent future errors. At the same time, the tort system often fails to compensate patients for legitimate losses, and even those who are ultimately compensated must endure a long (an average 5 years of litigation) and contentious legal process which may create more suffering than is ultimately relieved by a plaintiff's award. The process itself is so inefficient that nearly 60% of the dollars involved go to administrative and legal costs rather than compensating injured patients.

Physicians would generally support a system that is based on clearly defined standards of practice, appropriate compensation for legitimate injuries, a feedback mechanism which helps to improve quality by learning from errors, and accountability for professional behavior which was harmful to patients. Unfortunately, most of the discussion about "tort reform" focuses on minor adjustments to the current system rather than envisioning a new approach to addressing medical errors.

One new approach that is attracting a great deal of

attention is the concept of administrative health courts which would utilize trained adjudicators that have specialized healthcare expertise to resolve injury disputes and equitably compensate injured patients. This approach is being championed by a non-partisan national coalition called Common Good and its affiliate Common Good Colorado, both of which focus on creating common sense policy solutions focused on restoring "reliability and balance to our legal system." Working with the Harvard School of Public Health through a grant from the Robert Wood Johnson Foundation, Common Good has been developing the "health court" model as a means to promptly and equitably compensate patients, decrease the fear and cost created by the adversarial nature of medical liability litigation, and create systems to improve quality and patient safety. Such a system would separate the function of compensating injured patients from the investigation of adverse events while still ensuring accountability for errors or substandard practice.

### "No-Fault" Possible Solution

Modeled after other so-called "specialty" courts such as those utilized for tax and bankruptcy cases or family law courts, this approach would bring specialization and expertise to a system dealing with increasingly complex and clinically technical issues. Common Good Colorado has proposed a model which would follow the experience with "no-fault" programs and would completely remove the link between compensation and ac-

*(Continued on page 3)*

***Disaster Planning Journal Available. . .Page 5***



Richard E. Anderson, MD, FACP  
Chairman and CEO, The Doctors Company

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## Health Courts

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countability. States would be able to select appropriate areas of practice such as obstetrics in which cases could be removed completely from the court system, basing compensation on medical causation and using a predetermined schedule of benefits. Review of the adverse event would occur in a separate arena based on medical, not legal, standards and focus on finding ways to avoid similar events in the future.

According to proponents, this system of health courts would better serve both patients and healthcare professionals by providing quicker resolution to cases, more consistent and fair awards, and clearer guidance and standards of care which would minimize providers' fear of litigation. By utilizing judges trained in healthcare and focused solely on the cases that come before the health courts, a body of written opinions would serve to create a more reliable medical justice system. This in turn could eventually lead to lower medical malpractice premiums. According to Common Good, available research suggests that such a system would cost about the same as the current system but would result in more dollars flowing to compensate patients for legitimate injuries.

The Common Good-Harvard project has studied similar administrative medical compensation systems in Sweden and New Zealand. Adopting a standard known as "avoidability", their model envisions a system in which expedited compensation would be awarded to patients suffering injury resulting in an Accelerated Compensation Event. These events would be predetermined scenarios in which medical experts had agreed that predictable injuries could be avoided by use of best practices. Not only would this approach help to expand access to compensation for more injured patients, proponents also claim it would improve safety and quality by shifting the emphasis from individual fault to identification of system failures and promoting adherence to evidence based standards of care. Patient compensation would be based on a compensa-

tion schedule which would implement a methodology to assign different values to different elements of an individual's circumstances, unlike the oft-cited criticism of liability caps which some argue impose a "one-size-fits-all" system without considering an individual's circumstances. The compensation model proposed by Common Good-Harvard would be a more flexible system that would allow award amounts to account for claimant's differences but would at the same time promote more equity among claimants by ensuring that those with similar injury and circumstances were awarded similar amounts.

### Standards for Judges and Expert Witnesses

The qualifications for health court judges are also considered in the model as well as standards for expert witnesses. Education and experience requirements for judges and a system of performance evaluations would be put in place, including evaluations by the parties that come before a health court judge. The most often discussed proposal for expert witnesses envisions a system in which experts would be appointed by the court and would provide their reports directly to the presiding judge in a case. Current models include an appeal mechanism to a medical appellate court and potential further review in the traditional court system.

Efforts are currently focused on establishing several demonstration projects to further develop and refine the health court concept. A bill introduced this spring, S1481, The Fair and Reliable Medical Justice Act by Senators Michael Enzi (R-WY) and Max Baucus (D-MT) would fund up to 10 state pilot projects to explore alternative dispute resolution and compensation systems for medical injury including special health courts. An identical bill, HR2497, was introduced in the House by Representatives Jim Cooper (D-TN) and Mac Thornberry (R-TX).

For more information on the health court model and current efforts to establish demonstration projects, visit [cgood.org](http://cgood.org).

**Denver Medical Bulletin:** Johnny E. Johnson, Jr., MD, DMS President and Publisher / Alan Y. Synn, MD, Chair of the Board / Nora E. Morgenstern, MD, President Elect / Randall M. Clark, MD, Treasurer / Kathy Lindquist-Kleissler, Executive Director / Barbara Kamerling, Program Director. The **Bulletin** is the official publication of the Denver Medical Society, established April 11, 1871, as the first medical society in the Rocky Mountain West. Published articles represent the opinions of the authors and do not necessarily represent the official policy of the Denver Medical Society. All correspondence concerning editorial content, news items, advertising and subscriptions should be sent to: The Editor, **Denver Medical Bulletin**, 1850 Williams Street, Denver, CO 80218. Phone (303) 377-1850. Fax (303) 331-9839. Web [www.denvermedsociety.org](http://www.denvermedsociety.org). Email: [dms@denvermedsociety.org](mailto:dms@denvermedsociety.org). Postmaster: Send address changes to 1850 Williams Street.



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## NPI Updates

Thanks to all the DMS practices that have already entered their NPI profiles on the Colorado NPI Repository. We notified you earlier that those practices that completed their profiles by July 31 were entered into a drawing for a free iPod. The winning practice was Mile High Gastroenterology, the practice of Thomas A. Reed, MD. Congratulations!

For those practices that have not created their profiles on the Repository, we encourage you to do so now. You can go to [www.denvermedsociety.org](http://www.denvermedsociety.org) and click on the link "Colorado NPI Database." Follow the prompts to simply and safely create your practice profile and edit the pre-populated physician-specific information for your DMS physicians. Be sure to enter the individual practitioners' NPI numbers, NOT the practice NPI.

This statewide database will allow physician practices to obtain necessary NPI data for physicians throughout Colorado with whom they have a professional relationship. You can contact our technology partner, MCAG at their customer support number 1-800-355-0466 if you have questions regarding the creation of your practice profile or use of the database.

### New Information from CMS

Physicians are also encouraged to check their records on the National Plan and Provider Enumeration System (NPPES) database to ensure that the information they furnished when applying for their NPI is up to date and accurate. Data elements furnished by physicians included in the NPPES records can be updated or changed at any time. The easiest way to make updates or changes is via the NPI website at <https://nppes.cms.hhs.gov>. Updates, changes and deletions can also be submitted on the CMS-10114, NPI Application/Update Form, which can be downloaded from the CMS forms page at <http://www.cms.hhs.gov/cmsforms/> (Click "CMS Forms" in the left column). The form may also be obtained by calling the NPI Enumerator at 1-800-465-3203. For those providers whose NPI application information was submitted by an Electronic File Interchange Organization (EFIO), the physician should contact their EFIO concerning any updates or changes needed.

Physician practices using clearinghouses to submit medical claims should confirm NPI procedures to ensure that claims are being properly submitted. Reports have been received that some clearinghouses are removing the NPI prior to submission. This will prevent proper handling of the claim by Medicare and will also prevent those claims from counting toward participation in the PQRI program. Additionally, some clearinghouses are not forwarding NPI informational claim error

messages from Medicare carriers to providers. Although carriers are currently paying claims based on legacy identifiers, these messages are intended to assist providers in identifying problems Medicare is encountering in making the connection between legacy identifiers and NPIs. Providers should ensure that they are receiving these error messages so that any problems can be addressed before they impact claims payments. Physicians should also be sure that they have reported their legacy numbers in the "Other Provider Identifier" or "Other Provider Identifier Type Code" fields in the NPPES database to assist Medicare in creating the necessary linkages between physicians' NPI and identifiers that Medicare has assigned to them in the past. Not including these legacy numbers, or removing them from your NPPES profile, can disrupt linkages that Medicare has established and could result in Medicare claims being rejected.

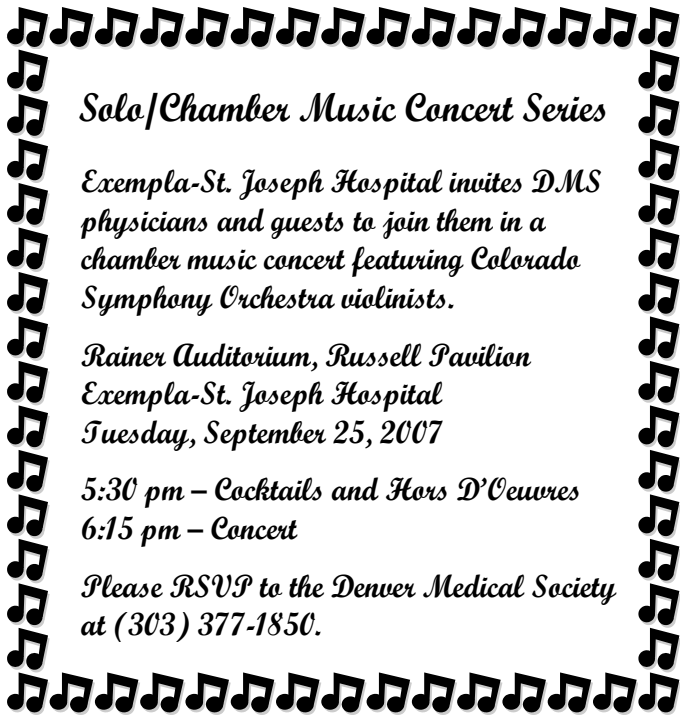
## New Disaster Planning Journal

A new medical journal devoted to the science of disaster planning and response has been introduced by the AMA. *Disaster Medicine and Public Health Preparedness* is a quarterly, peer-reviewed journal whose goal is to integrate many different medical as well as non-medical disciplines in its pages. The first of its kind, the new journal is the result of four years of planning and development by the AMA and has been supported by both the American Red Cross and the American Public Health Association.

The new journal is not part of the *JAMA-Archives* family because, unlike the more medical science and clinically oriented *Archive* journals, it is more focused on case studies and will involve a wider variety of health disciplines, including public health, emergency responders, and the transportation and communication sectors. It will have its own editorial board and will be overseen by editor-and-chief James J. James, MD, Director of the AMA's Center for Public Health Preparedness and Disaster Response.

"Talking with many of the thought leaders in this area, it became apparent that there was a level of interest in seeing a discipline of disaster medicine evolve in a way that was rooted in science, not in anecdote, and that was rooted in integration of medicine, public health, and the other sectors," said Dr. James.

The inaugural issue contains articles profiling displaced physicians following Hurricane Katrina as well as an analysis of death rates in the New Orleans area and the impact of a compromised public health infrastructure. For information about subscribing to the journal and receiving a special introductory subscription price visit [www.lww.com/ama](http://www.lww.com/ama).



**Solo/Chamber Music Concert Series**

*Exempla-St. Joseph Hospital invites DMS physicians and guests to join them in a chamber music concert featuring Colorado Symphony Orchestra violinists.*

*Rainer Auditorium, Russell Pavilion  
Exempla-St. Joseph Hospital  
Tuesday, September 25, 2007*

*5:30 pm – Cocktails and Hors D'Oeuvres  
6:15 pm – Concert*

*Please RSVP to the Denver Medical Society  
at (303) 377-1850.*

## ***A Healthier US Starts Here***

Medicare has launched an initiative to motivate seniors to take advantage of preventive services covered by the Medicare program. The campaign, dubbed A Healthier US Starts Here, will feature events and programs designed to promote conversations between Medicare beneficiaries, their families and health professionals about preventive services designed to keep beneficiaries healthy and promote healthy lifestyles.

Physicians may be hearing from their patients about Medicare-covered preventive benefits as they promote the message that beneficiaries should talk with their doctors to see what services are right for their individual needs. To assist physicians coding correctly when billing for these services, a quick reference chart has been established that provides coding and billing information on all Medicare preventive services. The chart can be downloaded at [www.cms.hhs.gov/MLNProducts/downloads/MPS\\_QuickReferenceChart1.pdf](http://www.cms.hhs.gov/MLNProducts/downloads/MPS_QuickReferenceChart1.pdf). Additional information about coverage, coding and billing of Medicare-covered preventive services can be found on the CMS web page at [www.cms.hhs.gov/MLNProducts/downloads/education\\_products\\_prevserv.pdf](http://www.cms.hhs.gov/MLNProducts/downloads/education_products_prevserv.pdf). This site provides products available free of charge to download or order hard copies that provide information on specific preventive services, general information about beneficiaries' eligibility, and web-based training to assist providers and their staffs.

## **NEW CARDS ARE IN!**

### **DENVER MEDICAL SOCIETY Rx DISCOUNT PROGRAM**



The DMS Physician's Rx Care program has been available to area physicians for a year now. To kick off our second year, the card has been redesigned. It is now being offered in a 5x10 glossy card stock with printed instructions on the front (including Spanish directions on the back) with the patient's card as a tear-off on the bottom.

Thousands of medications, both brand name and generic, are available for discount, along with several over-the-counter products including Nicoderm, NicodermCQ and Nicorette, and diabetic supplies. This benefit is free to you and your patients. Discounts average 15% for brand name drugs and 46% for generics. This benefit works for seniors when they reach the "donut" and for those who have coverage, but whose drugs are off the formulary.

Patients have saved thousands of dollars since we introduced the cards in 2006 and we want to make it easier for you and your staff to offer this as a value added community benefit.

There is no pre-registering or qualifying. It's a "win/win" for all. Just call DMS at (303) 377-1850 and let us know how many cards you need. We will be happy to mail them to you.

## **CLASSIFIED ADS**

### **Physician Opening**

OB/GYN Physician opening for multi location practice in Denver and Evergreen. Primary hospital central Denver location. Contact Glenn T. Foust, III, M.D., at 303-377-9500 or [gtfoust@aol.com](mailto:gtfoust@aol.com).

### **Thinking of Retiring or Relocating?**

I have room for an FP planning to close his/her Denver office and work less than full time. Aris Sophocles, MD. (303) 320-8686. [ArisS81039@aol.com](mailto:ArisS81039@aol.com).

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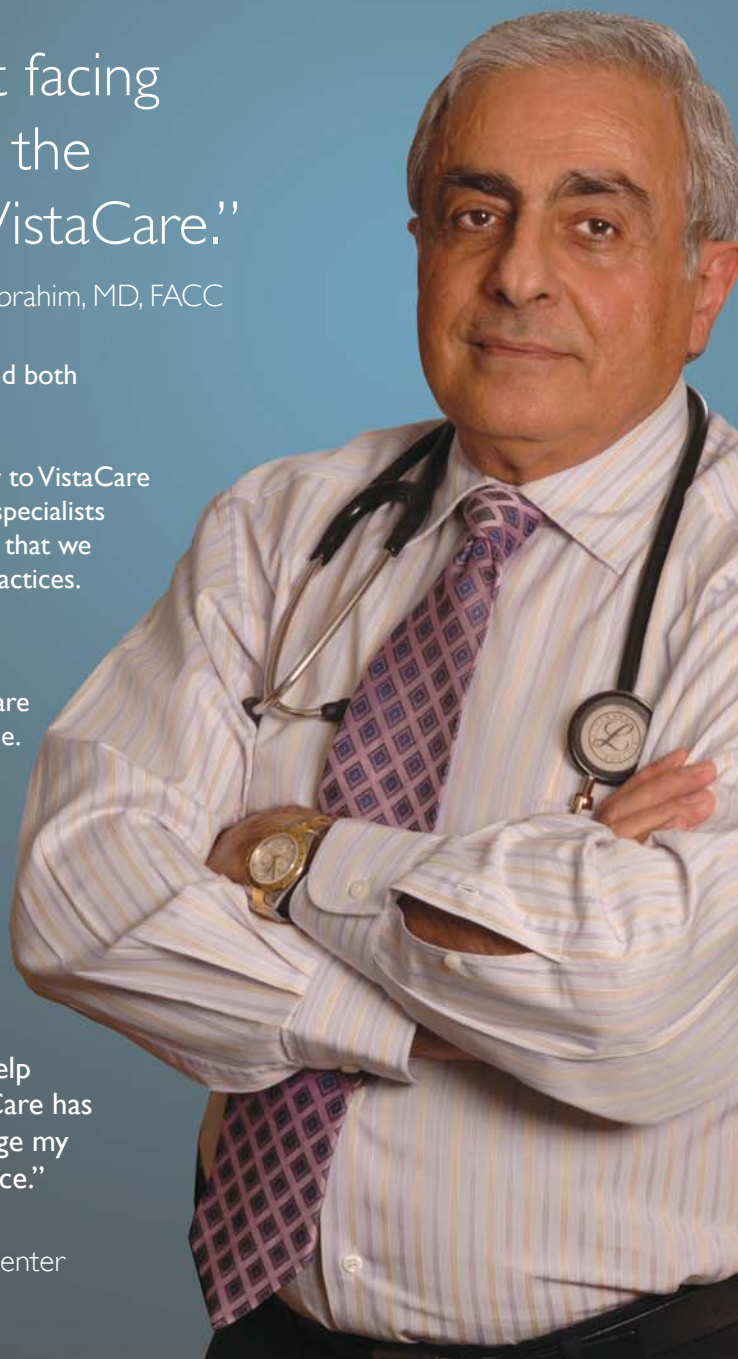
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