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Supreme Court Case Tests Outer Time Limits for Bringing Malpractice Suits – AMCNO Files Amicus Brief

By Ray Krncevic, Esq., and Elisa Arko, Esq., Tucker Ellis LLP

How long is too long to wait before suing a doctor? The Ohio Supreme Court is presently weighing that very question. Depending on the outcome, healthcare providers could find themselves defending malpractice suits involving care they rendered more than a decade beforehand.

The dispute before the Court centers on Dr. Abubakar Durrani, a Cincinnati-area spine surgeon indicted on healthcare fraud charges for allegedly performing medically-unnecessary surgeries. Durrani fled the country before his criminal trial, but was sued for malpractice by more than 500 patients, relating to surgeries performed as far back as 2009. Many filed their lawsuits in Hamilton County, Ohio, but some filed in neighboring Butler County. The latter group included two plaintiffs who had undergone surgeries by Durrani in April 2010 and April 2011, respectively. Both filed cases in 2013, before the statute of limitations expired.

While these two cases were pending, four separate trials involving other Durrani patients were tried in Butler County. All four resulted in defense verdicts. Shortly thereafter, in November and December 2015, these two plaintiffs voluntarily dismissed their claims in Butler County and refiled them several days later in Hamilton County. This voluntary dismissal is considered a dismissal "without prejudice," and under Ohio's savings statute (Revised Code section 2305.19), a case dismissed without prejudice can be refiled within one year of the dismissal, even if refiling occurs past the statute of limitations. Presumably, these

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CliniSync: Looking Back and Looking Ahead

By Anthony E. Bacevice, Jr., MD, AMCNO Past President

Since our last review, the CliniSync Advisory Council (CAC) has had three meetings—in October 2019, January 2020 and again in April 2020. At these meetings, the administrative staff shared information about CliniSync's operation with representatives from multiple stakeholders who make use of CliniSync for exchanging information to facilitate healthcare delivery across most of Ohio. The AMCNO has participated in the CAC since its inception.

Like every other aspect of health care, and life in general, these last few months have changed us dramatically. As SARS-CoV-2 (Coronavirus) has spread through the area, challenges to the delivery of patient care have increased. Fortunately, the efforts of the state government have helped Ohio avoid a significant peak in the number of cases that presented to hospitals for care. CliniSync has made a contribution to the state's efforts in managing the Coronavirus pandemic. Cooperating with the Ohio Department of Health (ODH), CliniSync has been providing aggregated data for analysis. Viral spread and "hotspots" could be more easily identified and modeling could be refined.

Going forward, the ODH has requested additional support from CliniSync in providing aggregated data for developing models that would assist in planning to reopen segments of Ohio's economy. Policy changes were implemented that would allow CliniSync to provide data for various public health activities to support these initiatives. Although the pandemic is not yet a thing of the past, some reopening of the economy has begun. Data provided by healthcare entities and exchanged through CliniSync provides

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plaintiffs thought their refiled cases were valid under the savings statute, seeing as they had waited only a handful of days before refiling. But the Hamilton County trial court felt otherwise.

Juxtaposed against the savings statute are two Ohio laws dealing with filing deadlines for medical claims: the statute of limitations and the statute of repose. Both laws, codified at section 2305.113 of the Revised Code, were passed as part of tort reform in 2003. Generally, the statute of limitations gives claimants one year to file a medical malpractice claim, but the clock does not start running until the claimant knew or should have known of the existence of the claim. For example, the clock might not start running on a claim for failure to diagnose cancer until the claimant discovered that a film was misread, which might be several years later. The statute of repose, however, states that a claim must be brought within four years after the allegedly negligent conduct, regardless of whether it could have been discovered. Using the prior example, the claim would be barred if brought more than four years after the film was misread, even if the claimant had not yet become aware of the mistake. Put another way, the statute of limitations focuses on when a claimant should be aware of a claim; the statute of repose focuses on when the event in question occurred.

Although the savings statute allows a case dismissed without prejudice to be refiled within one year notwithstanding the statute of limitations, it says nothing about the statute of repose. Noting this distinction, the trial court dismissed the two refiled cases because the refiling date of December 2015 was more than four years past the dates of these plaintiffs' respective surgeries (April 2010 and April 2011). However, the First District Court of Appeals reinstated the lawsuits, holding that the savings statute and statute of repose were in apparent conflict, and the only way to harmoniously read them together was to allow refiling within one year of dismissal, even if it was beyond the four-year time bar. The First District noted that other Ohio trial courts had reached the same conclusion in similar cases, and that the defendants could not claim any unfair surprise, given that the cases had been litigated for years and only a few days had lapsed between the dismissal and refile. An appeal to the Ohio Supreme Court ensued.

The defendants focused their Supreme Court argument on the plain statutory language: the savings statute makes no reference as applying to the statute of repose, and the statute of repose contains no exception for the savings statute, even though it contains other carve-outs (such as for suits involving minors and retained foreign objects). They further argued that applying the savings statute to the statute of repose would contravene the General Assembly's intent—namely, that a four-year absolute deadline should apply for filing medical claims. Finally, they noted that gamesmanship might have been at play, speculating that the plaintiffs refiled in Hamilton County thinking they would draw a better jury, given the adverse verdicts in Butler County. **AMCNO filed a friend-of-the-court brief in support of the defendants.**

The plaintiffs in turn reiterated the First District's reasoning. They noted that the savings statute also had several carve-outs, but none applied to the statute of repose; that applying the savings statute to the statute of repose advances the legislative intent to decide cases on the merits rather than on technicalities; and that other states such as Tennessee, Kansas, and Illinois have adopted this same approach. Interestingly, they also argued that Durrani's absence from Ohio since 2013 froze the clock, and thus the statute of repose period had not yet expired.

Broadly speaking, a ruling in favor of the defendants would mean certainty for healthcare providers: no malpractice suit (exceptions aside) could be brought more than four years after the event in question, and doctors could rest easy knowing that they would not be abruptly sued for something that happened in the distant past. Such a ruling would also affirm the 2003 tort reform legislation, a key impetus of which was stemming the tide of physicians leaving the state due to prohibitively expensive insurance coverage. Seventeen years later, insurance costs have been reduced substantially in the state, ensuring that Ohioans have an ample number of physicians in all specialties who can deliver quality care without being priced out of the state.

Conversely, a ruling for the plaintiffs would not only undermine these duly-enacted policies, but might actually impede the goal of deciding cases on the merits. As time passes, memories fade and are less reliable; records may be discarded or difficult to locate; providers move away or retire; and the march of technology and progress may cause a jury to take a dim view of practices that were acceptable at the time but may seem antiquated by today's standards. Trying cases while hindered by such circumstances would not advance the cause of arriving at the truth.

The cases are *Wilson v. Durrani, et al.* and *Sand, et al. v. Durrani, et al.,* Case No. 2019-1560. A decision is expected by year's end. ■

Editor's Note: *Mr. Krncevic is a member of the AMCNO Medical Legal Liaison Committee.*

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CliniSync: Looking Back and Looking Ahead

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for a more granular analysis of areas of concern and validation that the gradual return to normality will not result in a significant second peak of virus activity.

Well before the onset of significant pandemic activity, CliniSync shared its operational summary with the CAC. At the January 2020 meeting, CliniSync's management team presented summary statistics for 2019 operations. Message delivery exceeded 12 million. The number of providers to whom messages were delivered grew throughout the year. Fourth-quarter data revealed that messages were delivered to 7,800 providers. Views into CliniSync patient records also grew steadily through each quarter. During the first quarter, 1.9 million views into records were documented. By the fourth quarter, that number grew to 2.7 million. Patient searches also grew throughout the year, resulting in 1.8 million patient searches in the fourth quarter. Growth in the number of patients whose data was accessed increased from 268,000 in the first quarter to 373,000 by the fourth quarter. The number of organizations that accessed CliniSync data exceeded 2,500 by the fourth quarter. Overall, CliniSync has become integrated into most electronic medical records (EMR) in use throughout the state. The strength of the EMR that most of us use in our daily practice resides in its interconnectivity, allowing patient information to easily move from one healthcare entity to another, providing nearly instantaneous information to providers as they manage their patients.

Yet, even the most optimally operated system is vulnerable. In September 2019, CliniSync experienced an outage that resulted in a standstill of information flow. After the problem was resolved, a root cause analysis was conducted.

Several opportunities were identified to prevent such a recurrence in the future. As a result, robust backup processes were placed into service. Such a strategy will allow for a more rapid recovery and return to normal operation. In addition, regular auditing of the CliniSync hardware system and datacenter would be implemented to ensure stability and security of the servers and the database. The CliniSync Board of Directors approved the formation of a Technical Advisory Committee, structured similarly to the CAC. Its purpose would be to provide advice on operational details affecting CliniSync's database and its data center operations.

The CliniSync CAC continues to provide strategic suggestions to the CliniSync leadership team regarding areas of future development. Besides the continuous focus on data exchange, CliniSync continues to look at ways to improve the service that is rendered in response to identified needs of its stakeholders. Population health continues to be an important focus of future development. The recent Coronavirus pandemic provides a good example of how looking at large amounts of data regarding the status of individuals in a population can be aided by the exchange of information through CliniSync. Areas of interest include, but are not limited to, immunization tracking, surveillance for potential epidemics, well-care visit frequency among population groups (children, adolescents, adults and the elderly) and tracking specific disease states such as hypertension, diabetes, behavioral health and obesity.

Other areas of consideration include CliniSync's role in the delivery of care via telehealth. During the pandemic, remote and virtual healthcare delivery addressed the needs of patients while providing safety through minimization of potential exposure to the spreading virus. It is not clear yet if this will become the new normal as we emerge from social isolation. If nothing else, telehealth will at least be an available option for future healthcare interactions that would otherwise be limited by decreased patient mobility and geographical limitation.

The future of data interchange must also give some thought to data integrity and privacy as biologic monitoring becomes individualized. Embedded monitoring of cardiac function, glucose control and blood pressure, to name a few, will require that information be transmitted to healthcare providers for ongoing assessment of the patient. Exchanges such as CliniSync can ensure the integrity, security and availability of that information as it moves from the patient to the EMR to the provider. The emerging concepts of today will become standards of care tomorrow.

CliniSync leadership will continue to work with the ODH and other relevant stakeholders as it responds to their needs. It will also look at continued opportunities for utilizing the data with which it is entrusted to improve the health care of a population and the individual. The CAC will provide advisory support as the future state becomes the current state. We will continue to provide information to the AMCNO membership as this evolution progresses. ■

AMCNO ADVOCACY ACTIVITIES

AMCNO Advocacy - Legislative and Administration Update

AMCNO Supports City Council Resolution Declaring Racism a Public Health Crisis

The Academy of Medicine of Cleveland & Northern Ohio (AMCNO) completely supports the City of Cleveland and the leadership role they have taken to declare racism a public health crisis.

The AMCNO and our physician members are committed to providing quality health care to any member of our community, regardless of race or ethnicity. There is no place for racism in our community, and we remain strongly committed to work with other stakeholders in the region to address this critically important issue impacting the health and wellness of Greater Cleveland.

The AMCNO has reached out to the City of Cleveland to let them know that our organization stands ready to assist them in any way we can with this important initiative.

AMCNO Sends Letter to Governor DeWine Thanking Dr. Amy Acton for Her Service

The AMCNO informed Gov. Mike DeWine in a letter that we were saddened to hear of the resignation of Dr. Amy Acton, Director of the Ohio Department of Health. Dr. Acton's application of the science of epidemiology to the growing threat of the SARS-CoV-2 virus has resulted in a significantly lower number of citizens that required acute care within the state. Together with the support and leadership of Gov. DeWine, the state was able to minimize the projected peak of acutely infected patients presenting to Ohio hospitals for care.

Physicians, hospital administrators and hospital systems administrators have seen the benefits of the highly effective, albeit unpopular, social distancing and sequestration in place. This has been evidenced by fewer than anticipated admissions to hospitals, lower demands for ventilator support and lower mortality than previously anticipated.

We thank Dr. Acton for her foresight and strength of conviction as she and the governor moved forward with the measures that were put in place in Ohio. That leadership resulted in fewer deaths and fewer severely affected patients than could have been experienced.

We thank Dr. Acton for her leadership and her care for the citizens of Ohio. And, we stand ready to work with her in her new role as chief health adviser to the governor.

Legislation Under Review

Immunity Bills

In May, Senator Matt Huffman (R-Lima) introduced Senate Bill 308, regarding liability of service providers (including medical professionals) during an emergency. This has been a major priority for organized medicine throughout the COVID-19 pandemic, and has been on the radar of the entire medical community, including the AMCNO.

This bill expands the tort action immunity granted to certain healthcare providers and emergency medical technicians who provide health care or emergency services during a declared disaster.

Additionally, the bill extends the immunity to professional discipline and other civil actions. The immunity does not apply to actions, omissions, decisions, or compliance that constitute willful or wanton misconduct.

The AMCNO, along with many other medical associations, submitted written testimony in favor of this legislation for review in the Senate Judiciary Committee. The bill has now been passed by the Senate and is in the Ohio House, but there have been no hearings on the bill.

The AMCNO is also supporting a House bill concerning liability introduced by Rep. Diane Grendell (R-Chesterland). The bill, HB 606, would grant a person providing services for "essential businesses and operations" civil immunity for injury, death, or loss to person or property caused by the transmission of COVID-19, provided that such services are not conducted in a wanton or reckless manner. Similar to SB 308, it also includes liability coverage specific to physicians. The AMCNO submitted written testimony to the House Civil Justice Committee as well as the Senate Judiciary Committee voicing our support for this legislation. At press time, the bill had been voted out of the Senate with some amendments and was back over in the House for further discussion. The AMCNO is hopeful that there will be quick action taken by the Ohio House to concur with the Senate amendments to HB 606 and provide physicians with the protections they need in response to the pandemic.

The AMCNO will provide more information to our members on the status of this legislation as it becomes available.

Surprise Billing

Surprise billing has been a priority for the Ohio State Medical Association (OSMA), the AMCNO and the entire House of Medicine, and, although our members are supportive of eliminating the surprise billing burden on patients, we have been emphasizing to lawmakers that any measure put in place must not disrupt the contracting process between insurers and physicians. The OSMA provided detailed testimony on this bill, and, as part of their testimony, OSMA submitted a letter to the House Finance Committee that included dozens of logos from the organizations and others that signed on to the letter, including the AMCNO, county medical societies, medical specialty organizations, and individual physician practices from all over the state. This letter showed the committee that their physician constituents, while wanting to work to remove patients from the middle of billing disputes, have grave concerns with what is contained in HB 388.

A substitute version of HB 388 was developed by insurers and medical providers to end surprise bills for care from out-of-network providers at in-network hospitals. The new compromise language includes a provision that states when a patient sees an out-of-network provider at an in-network facility, the provider will send the patient's health plan a bill. The insurer can then propose a different reimbursement rate—the greatest of their normal in-network rate, their out-of-network rate or the Medicare rate.

The provider can either accept the offered rate or begin a period of negotiation. If that fails to produce an agreement, they can go to arbitration in which each side can submit information on four factors: what the provider is receiving from other plans; what the plans are paying others for the same service; whether the provider was in-network in the past six years; and the results of any previous arbitration.

The winner of arbitration will pay 30% of the fees of the arbitrator, with the losing party paying the other 70%. Arbitration is only available on claims of more than $750, although providers can bundle up to 15 claims to meet that threshold.

The bill passed in the House 95-0 and now heads to the Senate for what is hoped to be a swift passage. The AMCNO will keep our members informed on the progress of this

legislation. We believe there needs to be a solution to surprise billing; however, we want to be sure that the solution will not adversely impact physicians while protecting Ohioans from the burden of out-of-network surprise bills.

SB 97 – Health Care Price Transparency

The AMCNO continues to support SB 97 – a bill that would make healthcare pricing more transparent for patients. We noted in our proponent testimony that in order for medical price transparency efforts to be successful, patients must be provided with meaningful information that will help them evaluate the value of their healthcare services. At this time, physicians and other healthcare providers do not have the tools necessary to give their patients an accurate estimate for the cost of their medical care, so it is imperative that providers and payers work collaboratively to come up with a process that works for all concerned. The process for providing cost estimates to patients has to be workable for all providers to avoid any issues that could impact the delivery of quality health care.

The AMCNO believes this legislation has the potential to help Ohio citizens make informed decisions about their health care, while providing them information that can help them plan for the costs that will be associated with the care they receive. This bill has already passed in the Senate and is now under review in the House. The AMCNO will continue to monitor its progress in the coming weeks.

Telehealth

In response to COVID-19, many requirements and restrictions on telehealth have been relaxed by regulatory bodies at both the federal and state levels. In Ohio, many physicians have taken the opportunity to safely provide care via telehealth during this period. As a longtime advocate for increased access to telehealth, the AMCNO supports pursuing legislation that would keep those requirements relaxed, even after the pandemic is over. A bill that would do just that has already passed in the Ohio House and is now under review in the Ohio Senate – Sub. HB 679, a bill that would increase access to telehealth services.

The AMCNO has long advocated on the importance of telehealth and the need for increased access to telehealth. Increased access to telehealth would provide an avenue to expand service delivery for providers and decrease economic barriers to accessing primary care, particularly for patients who find travel difficult, reside in an institution, or live in medically underserved areas. In addition, during the COVID-19 pandemic physicians have seen a huge increase in the use of telehealth services and how this key innovation in support of healthcare delivery reform can be utilized to improve access to care, care coordination and quality, as well as reduce the rate of growth in healthcare spending.

The appropriate use of telehealth can greatly improve access to quality care, strengthen the patient-physician relationship and improve access for patients with chronic conditions who may have limited access to care.

This bill is of utmost importance to our patients and to our members, and the AMCNO strongly supports Sub. HB 679.

Health Insurer Cost-Sharing Practices

The AMCNO has voiced our support for HB 469 – a bill that would protect Ohioans from discriminatory practices that increase patient costs for medication.

As physicians, we have seen firsthand how our patients are impacted by the unpredictable health plan practices that can increase out-of-pocket costs for prescriptions. Health plans continue to shift the cost burden to patients through high deductibles, co-insurance and multi-tiered drug formularies. Many drug manufacturers, as well as health foundations and charities, help patients with assistance programs that cover additional costs patients are required to pay. Co-pay assistance programs include funding that patients can use to cover these out-of-pocket costs.

The problem is that insurance companies are refusing to count co-pay assistance payments toward patients' deductibles. These co-pay accumulator adjustment policies make it very difficult for our patients to afford their medications. HB 469 would require insurers to apply all payments made by either the patient or on the patient's behalf by one of these assistance programs to their cost-sharing obligation. HB 469 will not interfere with health insurance plans requiring the use of generic medications.

The AMCNO believes that these insurer co-pay accumulator adjustment policies make it very difficult for our patients to afford their medications. If patients cannot afford their prescription drugs, they may skip doses or stop taking their medication altogether, which can lead to higher medical costs. The AMCNO believes that HB 469 is of utmost importance to our patients, and we support HB 469.

Fireworks Legalization

The AMCNO has voiced our opposition to HB 253 – a bill that would legalize the discharge of consumer grade fireworks, including bottle rockets, firecrackers and missiles, with only minimal safety restrictions in place. As an organization whose primary focus is advocacy on behalf of Ohio children, veterans, healthcare providers, and animals, we believe these efforts pose a serious risk to the health and safety of all Ohioans.

The AMCNO informed legislators that we know that legalization of fireworks correlates with increases in fireworks-related injuries. A statewide prohibition sends a strong message that fireworks discharge is a dangerous activity and should be avoided. If Ohioans want to see fireworks and celebrate our nation's independence, they should do so at a professional display.

This bill passed in the Ohio House and now moves to the Senate for additional debate. Gov. Mike DeWine said he would not support the bill, given the medical and public safety communities' insistence that loosening restrictions on fireworks would likely result in more injuries. The AMCNO will continue to voice our concerns with this legislation.

AMCNO Applauds the Passage of HB 11

HB 11 passed through both the Ohio House and Ohio Senate. It has been signed by the governor and will become effective 90 days post-signature. The AMCNO applauds the Ohio legislature for passing this bill that includes important efforts to improve health outcomes tied to infant mortality rates in Ohio including pre-natal health-smoking cessation, dental hygiene, lead education, and group pre-natal care.

The AMCNO has been working together with First Year Cleveland and other organizations to reduce infant mortality rates in the Cleveland area and we believe this legislation has the potential to definitively improve health outcomes in our community and across the state of Ohio. The AMCNO strongly supported this legislation. ■

Provider Relief Fund Compliance: A Checklist for Healthcare Providers

By Kate Hickner, Esq., Partner, Kohrman, Jackson & Krantz LLP

The CARES Act Provider Relief Fund

Healthcare providers across the country have received substantial amounts from the federal government as part of the Public Health and Social Services Emergency Fund (the "Provider Relief Fund") established under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") to support healthcare providers in their fight against COVID-19. Broadly summarized, there are two key parts of the Provider Relief Fund: (1) $50 billion for general distribution (the "General Distribution"), and (2) additional monies for targeted distribution to providers treating uninsured individuals and for COVID-19 high impact areas, rural providers, the Indian Health Service and others (the "Targeted Distribution").

$50 Billion General Distribution

The first $30 Billion traunch of the General Distribution was distributed to providers beginning April 10th through direct deposits or via check based upon their 2019 Medicare fee-for-service revenue. The second $20 Billion traunch of the General Distribution is being distributed to providers beginning April 24th based upon cost report or other financial data.

Unlike the SBA Paycheck Protection Program ("SBA PPP") loans or advances through the CMS Accelerated and Advance Payment Program, each of which are completely separate from the Provider Relief Fund, General Distribution amounts do not need to be repaid unless a provider is unable to comply with the required Terms and Conditions. They are grants and not loans. Further, note that the General Distribution payments were not on a first come first serve basis. However, the deadline for providers to submit revenue information for the second traunch was June 3, 2020.

The goal is that, once all $50 Billion is distributed, providers will have received a share that is proportional to their share of net patient revenue. The federal government has issued helpful FAQs to provide further guidance regarding the General Distribution.

The General Distribution was intended to provide fast and meaningful financial relief to providers who have been negatively impacted by the COVID-19 pandemic. However, the funds are subject to important conditions and compliance requirements. In the event that providers retain such funds without complying with the required conditions, they may be subject to substantial civil, administrative or criminal repercussions, depending upon the circumstances.

General Distribution Compliance Checklist

During this extraordinary time when providers are rightly focused on taking care of their patients, protecting their employees and ensuring the survival of their organizations, it's easy for providers to overlook important Provider Relief Fund compliance requirements. Here is a compliance checklist with respect to the General Distribution that may be helpful for your leadership team:

✓ **Review and understand the required Terms and Conditions.** All providers who retain General Distribution funds must agree to certain standard Terms and Conditions. Briefly summarized, these Terms and Conditions include, for example, the following:

- **2019 Medicare Billings.** The recipient certifies that it billed Medicare in 2019.
- **Patients Treated After January 31, 2020.** The recipient provides or provided after January 31, 2020 diagnoses, testing, or care for individuals with possible or actual cases of COVID-19. The government has interpreted this requirement broadly by considering every patient as a possible COVID-19 patient.
- **No Program Exclusion.** The recipient is not currently terminated from participation in Medicare or precluded from receiving payment through Medicare Advantage or Part D; is not currently excluded from participation in Medicare, Medicaid, and other Federal health care programs; and does not currently have Medicare billing privileges revoked.
- **Permissible Use of Funds.** The recipient certifies that the payment will only be used to prevent, prepare for, and respond to coronavirus, and that the payment shall reimburse the recipient only for healthcare-related expenses or lost revenues that are attributable to coronavirus.
- **No Double Dipping.** The recipient certifies that it will not use the payment to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse.
- **Documentation and Audit Trail.** Recipients must maintain appropriate records and other information required to substantiate that the amounts were used for permissible purposes. The Recipient shall promptly submit copies of such records upon the request of the Secretary of the U.S. Department of Health and Human Services (the "Secretary") and pursuant to audits by the federal government.
- **No Balance Billing.** For all care for a presumptive or actual case of COVID-19, recipient certifies that it will not seek to collect from the patient out-of-pocket expenses in an amount greater than what the patient would have otherwise been required to pay if the care had been provided by an in-network provider.
- **Miscellaneous Conditions.** In addition, numerous statutory provisions apply that prohibit the funds to be used for certain executive pay, to advocate or promote gun control, for certain lobbying, for any abortion, for human embryo research, for the promotion of the legalization of medical marijuana, human trafficking and numerous other uses.

✓ **Complete the required attestation process within 90 days.** Within 90 days of receiving the payments, providers must sign an attestation confirming receipt of the funds and agreeing to the Terms and Conditions of payment. As discussed above, it's imperative that recipients understand the Terms and Conditions before signing the attestation. The federal government has clarified that it will engage in significant auditing and anti-fraud activity related to the Provider Relief Fund. Depending upon the circumstances, non-compliance may result in the Secretary recouping the

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Provider Relief Fund Compliance: A Checklist for Healthcare Providers

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payments or in criminal, civil, or administrative penalties, including but not limited to revocation of Medicare billing privileges, the exclusion from federal healthcare programs, the imposition of fines or imprisonment. In the event that a recipient is unable to agree to the Terms and Conditions, the recipient should complete the attestation to so indicate. Not returning the payment within 90 days of receipt will be viewed as acceptance of the Terms and Conditions.

✓ **Document compliance with each of the Terms and Conditions.** As discussed above, recipients are required in the Terms and Conditions to maintain appropriate records to substantiate compliance with the Provider Relief Fund requirements. Providers should assume that their receipt and use of the funds will be subject to governmental scrutiny and should be prepared to defend their actions. For that reason, it's advisable to prepare such documentation thoughtfully and thoroughly with advice from legal counsel and under attorney-client privilege. The records must be sufficient to permit the tracing of funds to confirm that the funds have been used according to the federal laws and regulations. For example, records may include receipts for personal protective equipment and other COVID-19 related expenses and may describe decreases in revenue month over month or compared to the budget. It's also often advisable for providers to utilize separate bank accounts or cost centers for these funds. Many accounting firms and practice management companies have developed tracking tools to assist providers in accounting for and documenting the Provider Relief Funds as well as other relief such as the SBA PPP loans.

✓ **If you received more than $150,000 in funds, submit quarterly reports.** Any recipient that is an entity that receives more than $150,000 total in funds under the federal COVID-19 stimulus bills or certain other federal laws primarily making appropriations for the coronavirus response and related activities shall submit a report to the Secretary and the Pandemic Response Accountability Committee. Such reports are required to include: (a) the total amount of funds received under such federal laws, (b) the amounts expended or obligated for each project or activity, (c) a detailed list of all projects or activities for which large covered funds were expended or obligated (including the name and description of the project or activity, and the estimated number of jobs created or retained by the project or activity, where applicable), and (d) detailed information on any level of sub-contracts or subgrants awarded by the recipient or its subcontractors or subgrantees (including the information required to comply with the Federal Funding Accountability and Transparency Act of 2006 allowing aggregate reporting on awards below $50,000 or to individuals, as prescribed by the Director of the Office of Management and Budget). Although the initial quarterly reports would have been due by July 10, 2020, HHS has delayed the quarterly reporting requirement. Further guidance should be issued soon.

It's imperative for healthcare organizations to be cognizant of and adhere to regulatory compliance obligations, especially during this time when the state and federal laws and guidance are rapidly evolving. If you have any questions regarding the Provider Relief Fund or other challenging issues during the coronavirus pandemic, please contact Kate Hickner at kehickner@bmdllc.com or 216.417.0844. ■

RALI Ohio is Addressing Increased Opioid Cases from Home

As previously reported, the AMCNO is a partner of the Rx Abuse Leadership Initiative (RALI) of Ohio. As the COVID-19 crisis continues, isolation, anxiety, and lack of access to treatment have played a role in an increased number of opioid cases. RALI is working to address this issue from home environments, through its various partners.

During a recent Zoom meeting, Gen. Barrye Price, from Community Anti-Drug Coalitions of America (CADCA), discussed how the Deterra Drug Deactivation Kits—disposable bags for unused medications—are a critical component right now in reducing the misuse of prescription medications. People can use these kits at any time, instead of having to wait for the National Drug Take-Back Day.

Another RALI partner, McKinley Hall in Clark County, has put together bags containing numerous resources for those who line up to receive goods at a local food pantry. These bags include the Deterra bags and Quit Line and Keep Kids Safe information. People can also receive narcan training through their partnership with Project DAWN, once they leave the food line.

And the grassroots partner, Families of Addicts, holds lawn-chair meetings at a recovery center, to assist the families of addicts, educating them on how they can help reduce the stigma of addiction and how they can help in the recovery process for their loved one.

Many of these partners also hold virtual events to reach out to communities.

For more information, visit https://www.ralioh.org.

AMEF GOLF OUTING

Please join us on August 10, 2020, at Sand Ridge Golf Club, in support of the 17th Annual Marissa Rose Biddlestone Memorial Golf Outing.

Proceeds help fund local educational programs, particularly medical school scholarships.

Visit the AMCNO website, www.amcno.org, and click on the "AMEF Golf Outing" under the "AMEF" tab.

Please note: We will be following Sand Ridge Golf Club's safety measure guidelines that may remain in place at the time of our outing in August.

President's Corner – Thomas E. Collins, MD

2020-2021 AMCNO President

Thomas E. Collins, MD

"The greatest reward for doing is the opportunity to do more."
Dr. Jonas Salk

It was early in high school when I came across this quote, written on the back of a Robins Reader (patient information pamphlet distributed by the A.H. Robins pharmaceutical company). For some reason, this quote struck a chord with me and has been a repetitive theme in my personal and professional development throughout my life. It has helped motivate me in attempts to be a positive influence on others, through direct patient care, teaching and mentoring, or operational and strategic planning. I have been incredibly fortunate to be given a wide variety of opportunities to "do more." Please know that, as President of the Academy of Medicine of Cleveland & Northern Ohio (AMCNO), I am truly grateful for this additional opportunity to do more.

At no time in recent memory has our entire medical community been challenged to do more. Not since physicians united in response to the polio epidemic have we come together against such a threat to our community. Daily, across all aspects of the Cleveland medical landscape, your colleagues are providing care, training and equipping themselves in response to this coronavirus pandemic. Every component of our health systems has pivoted to fulfill the obligations to our community. Representing more than 5,000 physicians, the AMCNO continues to be a foundation of support for the health of Greater Cleveland as this crisis evolves.

We are experiencing conformational change in medicine right now. The current pandemic, coupled with the influences of technology and the continued desire for value in health care, is redefining how the relationship between the physician and patient occurs. It is likely that the practice of medicine will never quite look the same again.

What role does the AMCNO play in all of this? It has always been a part of the response structure during crisis in northern Ohio. Since many physicians now are employed members of large health systems, the AMCNO brings forward the key perspective of the physician-patient relationship without the necessary untoward effects of the hyper-competitive healthcare market that exists.

The AMCNO serves all of you and the community in many ways, including advocacy, education, mentoring, and communication. A few key examples include First Year Cleveland, the Northeast Ohio Hospital Opioid Consortium, the Mini-Internship program and the Academy of Medicine Education Foundation (which, among other supportive efforts, offers scholarships for local medical students). Take time to read the information that you receive from the AMCNO and see how you can become involved and what is important to your practice and life.

This will be a pivotal year in the AMCNO's history, for many reasons. Our esteemed Executive Vice President and CEO, Elayne Biddlestone, has announced her retirement after 40 years of dedicated and selfless service to the physicians of northern Ohio. We will be embarking on a search for her replacement with current and past members of the AMCNO's leadership team. We will also be transitioning the staff to a new office space, which should be completed by the end of the year.

It is certainly easy to be overwhelmed by all this change. But it is equally important to have perspective and remember what grounds you. Since 1824, throughout its many iterations, your AMCNO has kept at its core the importance of supporting physicians and advocating for our patients. Our 200th anniversary is right around the corner, and we are all looking forward to celebrating the AMCNO's many, many accomplishments. ■

Question-and-Answer Session with Dr. Thomas Collins

TELL US ABOUT YOURSELF AND YOUR PRACTICE

I have had the privilege of practicing Emergency Medicine at MetroHealth since I finished my residency here in 1996. We have a truly incredible staff of dedicated nurses, medics, techs, and other talented support staff. We are an academic Emergency Department, with 39 emergency medicine residents, and I am an Associate Professor of Emergency Medicine at Case Western Reserve University School of Medicine. Part of my practice also includes patient care that is given outside of the hospital by the paramedics, EMTs, firefighters, and even police in the City of Cleveland, all of whom are members of Cleveland's Department of Public Safety. When I am not involved in clinical care or academics, I spend time serving as Medical Director for the Office of Professional Affairs, focusing on medical staff credentialing, privileges, and faculty development.

WHAT GOT YOU INTERESTED IN MEDICINE?

I had early exposure to medicine through my father who was a cardiologist. Although I went to college intending to be a chemist, it was my experience as a firefighter and paramedic that diverted my trajectory and led to my pursuit of medicine. All in all, I spent seven years in the fire service and still rely on many of the EMS and fire service habits that I have carried with me into medicine.

WHAT ACCOMPLISHMENTS ARE YOU MOST PROUD OF?

I am most proud of my family, of course. Katherine and I have five kids; two in college, two out of college and one in high school. Professionally, I am incredibly proud of the men and women of Cleveland EMS and Cleveland Fire. I have had the privilege of being their medical director for 22 years, and it has been a wonderful journey. In 2018, we started an ACGME-accredited EMS fellowship and are currently training our second fellow.

WHAT ARE YOUR HOBBIES AND INTERESTS?

Spending time with family, moving kids in and out of college, and traveling to warmer climates.

WHAT ARE YOUR GOALS AND PRIORITIES FOR AMCNO THIS YEAR?

I think my main priority will be helping the board leadership identify a successor to Executive Vice President and CEO Elayne Biddlestone, who has announced her retirement. We have had the great fortune of having such a knowledgeable and steadfast leader for the last 40 years. Additionally, we will need to have a strong voice with our legislators to help guide them through rapid change related to the coronavirus pandemic.

WHAT ARE YOUR CONCERNS ABOUT THE FUTURE OF HEALTH CARE?

I think we're having intensive change in health care right now, with the current pandemic rapidly modifying how patients and physicians interact. We need to have intentional focus on rules, laws, regulations, and reimbursement guidelines that are rapidly changing in response to the pandemic and how that relates to the overall delivery of health care and our relationship with our patients.

HOW WOULD YOU ASK PHYSICIANS TO SUPPORT THE AMCNO?

This is your organization. I guarantee that every one of you could find an aspect of the AMCNO's activities that resonate in one of your own core personal values. Get involved and support what you believe in. You don't have to get involved in everything, but pick one thing and contribute your talent. ■

2020 - 2021 Academy of Medicine of Cleveland & Northern Ohio (AMCNO) Board of Directors and Officers

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Executive Committee Appointee

Meet the New AMCNO Board Members

John E. Hanicak, MD | *At-Large*

John Hanicak, MD, is a family medicine physician at Cleveland Clinic Fairview Hospital, where he has been practicing since completing his residency in 2002. Dr. Hanicak earned his medical degree from Wright State University School of Medicine.

He currently serves on the Fairview Hospital Performance Improvement Committee (a position he has held since 2002) and the Fairview Hospital Credentialing Committee (since 2019). He is also a faculty member in the Family Medicine residency program at the Cleveland Clinic.

Dr. Hanicak says: "The opportunity to serve our community as a member of the AMCNO Board is truly an honor. I hope to follow in the footsteps of previous and current members as we pave the future of medicine in Ohio in these unprecedented times. I am excited to draw on my years of experience and share current ideas as we plan and transform health care into what it was meant to be."

Joseph F. Styron, MD | *District III*

Joe Styron, MD, PhD, primarily grew up in Northern Virginia as an Army brat, but moved to Cleveland to attend Case Western Reserve University. During his 11 years at CWRU, Dr. Styron earned his bachelor's degree, doctorate degree, and medical degree. After he completed his orthopaedic surgery residency at Cleveland Clinic, Dr. Styron pursued two fellowships to hone his subspecialty training. He completed a fellowship in hand and upper extremity surgery at the University of Pittsburgh Medical Center, then completed a second fellowship in Congenital & Pediatric Hand Surgery at the Shriner's Hospital for Children in Philadelphia. After completing his advanced training, Dr. Styron returned to the Cleveland Clinic as a staff surgeon.

Dr. Styron is actively involved with research, teaching and a busy orthopaedic surgery practice. His PhD is in Health Services Research & Policy, and his ongoing research focuses on optimizing patient experiences and outcomes. He particularly values education and is routinely involved with teaching medical students, residents, and fellows. Dr. Styron's clinical specialty interests include surgery of the hand and upper extremity in individuals from infants to the elderly, but finds treating children with congenital hand differences the most rewarding. ■

The AMCNO Celebrates Its Members Who Have Been Practicing Medicine for 50 Years

The Academy of Medicine of Cleveland & Northern Ohio (AMCNO) would like to congratulate our physician members who have been practicing medicine for 50 years.

These following members have continued to be active participants in the healing process, contributing to humanity through each of their medical specialties, and reaching out tens of thousands of times to their patients, families and colleagues.

To recognize this extraordinary milestone in their careers, the AMCNO presented each physician with an award certificate, thanking them for their dedication.

We are thankful that these physicians have chosen to be included in our organization, and we sincerely appreciate the care they have provided to Northern Ohio residents for the last five decades.

CONGRATULATIONS!

Linda L. Alston, MD
Ashok W. Argekar, MD
Amir Seyed Baghery, MD
John Ely Barb, Jr., DO
Dieter Bloser, MD
Charles Alton Brown, MD
Ernesto C. Bunye, MD
Matthew W. Collings, MD
Charles A. Davis, MD
Dorr G. Dearborn, MD, PhD
Glenn E. Deboer, MD
Seth W. Eisengart, MD
Jiunn S. Huang, MD
Tikhon Kim, MD
Richard John Leigh, MD
Howard L. Levine, MD
Roger Alan Mansnerus, MD
Floro D. Miraldi, MD
Stuart C. Morrison, MD
Saroj A. Pagedar, MD
James F. Rambasek, MD
John G. Secrist, MD
Khalid R. Siddiqui, MD
Helen Skvaza, MD
Shailaja Sundaresh, MD
Luay Susan, MD
Vladimir Zelitsky, MD

AMCNO HIGHLIGHTS AND RECENT ACTIVITIES

The Academy of Medicine of Cleveland & Northern Ohio
THE VOICE OF NE OHIO PHYSICIANS FOR 196 YEARS
AMCNO Working on Behalf of Our Members and Their Patients
AMCNO Highlights and Recent Activities

LEGISLATIVE/ADVOCACY ACTIVITIES

- Reviewed and took positions on bills that would impact physicians under review at the state legislature, making our position known to the legislative sponsors and committee chairman; and worked with local healthcare institutions and statewide coalitions to address legislative matters;
- Provided testimony, letters and presentations on bills—supporting changes to the practice of surprise billing, opposing psychologist prescribing, opposing fireworks legalization, supporting telehealth legislation, voicing our support for legislation to address infant mortality issues, supporting legislation to protect patients from insurer discriminatory practices, supporting legislation to prohibit sunlamp tanning to individuals under 18, supporting mental health parity legislation, and expressing concern about certified nurse anesthetist and advanced practice nurse scope independent practice;
- Participated in advocacy events to address changes in Medicaid managed care procedures, tobacco cessation issues, opioid issues, and immunization concerns;
- Worked with a statewide medical coalition on issues related to the State Medical Board of Ohio.

PRACTICE MANAGEMENT

- Participated in a Region V State Medical Society meeting with Centers for Medicare & Medicaid Services (CMS);
- Participated as an active member of the CGS Provider Outreach and Education Group and provided updates to our members on tools and practice management information available to their practice;
- Worked with local law firms and other organizations to provide timely information to our members on topics such as the physician-patient relationship and professional liability, The SECURE Act, Merit-based Incentive Payment System (MIPS) eligibility and the Quality Payment Program, federal opioid legislation, and cybersecurity issues;
- Provided our members with information on the retention and appropriate charges for medical records.

COMMUNITY/PUBLIC HEALTH EFFORTS

- Posted and sent critical information and resources to our members and the public about COVID-19;
- Provided representation to the Center for Health Affairs Board of Trustees;
- Hosted the 30th Annual Mini-Internship program that allows community members to shadow AMCNO physicians in their practice setting—the longest continuous program of its kind in the country;
- Continued as a participant in the Rx Abuse Leadership Initiative (RALI) and participated in the launch of their statewide tour of the RALI CARES (Code 3) educational trailer;
- Continued as an active participant in Better Health Partnership;
- Participated in the Greater Cleveland/Cuyahoga Community-Wide Heroin/Opiate Task Force;
- Continued as a member of the CliniSync Physician Advisory Group and provided timely articles about the work of CliniSync in our magazine and on our website;
- Continued as a community partner in First Year Cleveland—an initiative addressing infant mortality in our region, and including work on structural racism, safe sleep, advocacy and public policy and centering pregnancy; also provided timely articles on this issue in our magazine and on our website;
- Continued as a member of the U.S. Attorney Heroin and Opioid Task Force;
- Continued our partnership with the Northeast Ohio Hospital Opioid Consortium.

PUBLIC RELATIONS

- Continued to meet with Ohio state agency administrators to provide key information about the AMCNO and physician concerns in Northern Ohio;
- Entered the 58th year of operation for the AMCNO Pollen Line, garnering extensive media attention for the service; utilized social media to provide information on the pollen counts to the community;
- Provided media interviews regarding the importance of physician wellness and highlighted the work of the AMCNO as part of the Ohio Physician Wellness Coalition;
- Sent news releases and utilized social media to reach the community, our members and the media;
- Provided videos on our website for our members on legislative advocacy, foundation sponsorships and AMCNO activities.
- Met with the Surgeon General as part of the Northeast Ohio Hospital Opioid Consortium to discuss opioid issues of importance to our members.

FOUNDATION SCHOLARSHIP AND SPONSORSHIP ACTIVITIES

- The Academy of Medicine Education Foundation (AMEF) awarded eight $5,000 scholarships to local third- and fourth-year medical school students;
- Sponsored a statewide immunization conference that included a keynote from the Ohio Department of Health;
- Supported and sponsored the work of the Ohio Physicians Health Program (OPHP) – an organization focused on physician well-being;
- Co-sponsored an Opioid Epidemic Seminar in partnership with the Siegel Lifelong Learning Program at Case Western Reserve University;
- Partnered with the Cuyahoga County Alcohol, Drug Addiction, and Mental Health Services (ADAMHS) board to co-sponsor First Responder Appreciation Week;
- Offered sponsorship opportunities for educational seminars and events and promoted this opportunity to hospitals, medical schools and community associations;
- Bestowed the AMEF $1,000 award to a graduating student who has shown outstanding commitment to the Northern Ohio community;
- Sponsored the AMEF annual golf event, which has now brought in nearly $500,000 to the foundation—funds that are utilized for medical student scholarships;
- Sponsored the Case Western Reserve University (CWRU) School of Medicine "Doc Opera."

AMCNO AND AMEF YOUNG PHYSICIAN ENGAGEMENT

- Provided membership information to residents and new medical students across the region to garner their support and AMCNO membership;
- Partnered with CWRU School of Medicine to co-host a two-day mentoring program for first-year medical students;
- Partnered with the William E. Lower Fund to present a seminar on "Understanding the Legal and Financial Aspects of Practicing Medicine"—a program launched in Northern Ohio by the AMCNO and designed for resident members and their spouses;
- Presented information about the AMCNO and sent physician leadership to a Meet and Greet event for first-year medical students and recruited students for AMCNO membership.

Benefits of Membership in the AMCNO

Physician Referral Service

Representation at the Statehouse

Informative Seminars

Speaker's Bureau Opportunities

Insurance/Financial Services

Weekly, quarterly and bimonthly publications offering healthcare news and practice guidance

Community Resource Guide

Lawyer Referral Brochure

Member Discounts including Worker's Comp, Practice Management Classes and so much more!

PHYSICIAN EDUCATION OPPORTUNITIES

- Collaborated with the AMEF and CWRU School of Medicine to provide opioid prescribing education courses for physicians;
- Hosted a networking reception and policy update meeting in partnership with the Ohio State Medical Association;
- Offered CME videos and topics on issues related to physician well-being, mental health and burnout through our partnership with the Ohio Physicians Health Program (OPHP) and the Ohio Physician Wellness Coalition (OPWC).

BOARD INITIATIVES/ADVOCACY

- Continued to work with First Year Cleveland (FYC) to focus on accurate data collection to identify and resolve issues contributing to infant deaths;
- Supported the AMCNO becoming a partner in the Cleveland Healthy Kids' Meals Campaign–an initiative led by the American Heart Association that includes removing sugary drinks as the default beverage in kids' restaurant meals;
- Met with two Ohio Supreme Court (OSC) justices to learn more about the role of the court and how AMCNO amicus briefs can have an impact;
- Agreed to submit four (4) amicus briefs to the OSC in cases that would have an impact on physicians. The board approved filing a brief in the following cases:

  - ***Madora Jones v. Cleveland Clinic*** **– this case deals with the integrity of a jury's verdict and whether a certain rule of evidence applies to juror's communications.**
  - ***Malieka Evans v. Akron General Hospital*** **– this case reviews whether a claim for negligent hiring is actionable if there is no actionable claim for the underlying conduct giving rise to the negligent-hiring claim.**
  - ***Menorah Park Center for Senior Living v. Rolston*** **– this case deals with what constitutes an unauthorized disclosure of protected health information in the context of collecting a medical debt.**
  - ***Durrani v. Sand and Durrani v. Wilson*** **– this case deals with how long after the fact a physician can be sued for his or her treatment of a patient. Depending on how the Supreme Court decides the case, the answer could be either four years, or decades.**

- Agreed to submit comments to the OSC on three rules under review by the OSC–opposing rules that would have changed the Ohio rule of evidence known as the "learned treatise," opposing rules that would have shortened the time for parties to seek an extension to file a brief with the OSC, and supporting rules that would add a proportionality requirement to the OSC rule to put the rule in line with the federal rule;
- Agreed to send a detailed survey reply to the Ohio Department of Medicaid in response to their request for information regarding Medicaid Managed Care plans;
- Agreed to send comments to the State Medical Board of Ohio (SMBO) voicing our concern with the SMBO's determination that certain podiatric procedures were within a podiatrist's scope of practice;
- Agreed to work with the Ohio Department of Health (ODH) to promote tobacco cessation treatment options that are available to the public and promote the Ohio Tobacco Quit Line;
- Supported the SMBO position statement that the term "nurse anesthesiologist" should not be used by a non-physician;
- Agreed to support the federal Mainstreaming Addiction Treatment (MAT) Act, which would eliminate burdens and barriers for opioid treatment;
- Approved to support the Centers for Medicare & Medicaid (CMS) consideration of acupuncture as a Medicare-covered treatment option for patients with chronic low back pain;
- Agreed to support an initiative to address the co-pay accumulator issues—regarding discriminatory health plan practices that drive up costs of patients;
- Continued to work with the Ohio Physician Wellness Coalition (OPWC) and with the Ohio Physicians Health Program (OPHP) to provide physician well-being education and information.

Is YOUR Voice Being Heard?

Already an AMCNO member? Now is the time to renew your commitment to organized medicine that makes a real difference in your practice and our region. Please look for a 2021 dues billing in your mail soon!

Not yet a member? Now more than ever is the time to join the only regional medical association tirelessly working in the best interest of you — the NE Ohio physician. Call our membership department at (216) 520-1000, ext. 101, for details on all the benefits and services available exclusively to our members.