

# California and National News

## **Surgery Centers Fail Infection Control Inspection:**

Little is known about the quality of care at ambulatory surgical centers. Most elements intended to monitor regulatory compliance have been primarily the responsibility of individual states (often by inspectors not trained in infection control), and direct observation has not been federally mandated. “Reporting mechanisms are disjointed and extant quality-related data are sparse, particularly in the realm of postoperative infection.” (Barrie editorial) Furthermore, the incidence of surgical site infection does not appear to be as low as might be predicted, given the relatively “clean” site surgeries performed at ASCs. The published results for ASC infections are “mixed,” but the incidence is likely underreported, especially in light of the poor compliance with voluntary reporting by surgeons of infections, events that usually are diagnosed far beyond the reach of the postoperative time in which ASCs remain in contact with patients. Prompted by the largest reported outbreak of healthcare-associated infections caused by hepatitis C in U.S. history in two now-closed Las Vegas ASCs (as many as 63,000 patients may have been exposed to blood borne pathogens), a recent investigation by the Centers for Disease Control and Prevention’s trained surveyors found exceedingly high rates of breaches of infection control in ASCs in North Carolina, Oklahoma and Maryland. These lapses in infection control included hand washing, wearing surgical gloves, unclean surfaces in patient care areas, unclean handling of glucose meters, reuses of devices intended for single patient use only, and use of single dose vials of medications for multiple patients. Sixty-seven percent of centers had at least one lapse in infection control, and 57 percent were cited for deficiencies. These shockingly unacceptable high figures occurred despite the fact that the healthcare workers in the centers knew that they were being observed by the inspectors! There currently exist 5,200 outpatient centers that perform more than six million procedures and collect \$3+ billion per year just from Medicare. Sixty-one percent of ASCs are physician owned and 96 percent are for profit. Moreover, there are many more surgeries performed in physician offices, about which there is even less data than about ASCs. (Summarized from both Shaefer M, Jhung M, Dahl M, et al, *JAMA* 303: 2273-2279, 2010, and Barrie P, (editorial) *JAMA* 303:2295-2297, 2010.)



## **U.S. Department Of Justice (USDJ) Declares War On Physicians:**

In a strikingly aggressive action against a group of Idaho orthopedists, the USDJ has declared that refusal to accept government price controls for workers compensation (WC) patients is a form of illegal price fixing. The USJD, along with the Idaho Attorney General, also has forced those physicians to accept certain HMO contracts as well as WC fees as part of a settlement. It was alleged that the orthopedists had, through a series of meetings and other communications, agreed to avoid treating most WC patients, and this “boycott” forced the Idaho

Industrial Commission to increase their WC reimbursement rates. In a parallel action, the same “conspiring” group threatened to terminate their contracts with Blue Cross of Idaho if their reimbursement rates did not increase. The Idaho Orthopedic Society and those orthopedists now will *not* be permitted to agree on fees and contract terms, *nor* will they collectively be able to deny care to patients, refuse to deal with any payer, or threaten to terminate their contracts with those payers! The key in this case, and what should be frightening to physicians, is that the USDJ has civil and criminal jurisdiction, whereas the Federal Trade Commission, which until now has prosecuted such cases, only has civil and administrative jurisdiction. As the Sherman Antitrust Act does not distinguish between civil and criminal “price fixing,” it becomes the choice of the USDJ as to whether to charge violators with a civil or criminal offense. Assuredly, in this case, the USDJ clearly stated its position that refusal to accept governmental prices controls was tantamount to “price fixing.” Of even more concern to physicians is that the USDJ has *linked* the governmental WC decrees with a refusal to accept a non-governmental insurance company’s contract offer! It is important to appreciate that this settlement was done under the threat of criminal prosecution by the USDJ, and is not a court ruling with general precedent beyond the facts of this case. See further the articles by Barbara Baldwin, CEO, (p. 15) and Phillip Goldberg, Esq. (p. 18) .(Summarized from article by Harez Ghanbari, *Christian Science Monitor*, May 31, 2010.)

**Open Primary Initiative—Proposition 14:** California voters approved Proposition 14, which allows voters to choose any candidate in a primary election, regardless of party affiliation, the two top vote-getters facing each other in the general election. This gave Governor Schwarzenegger a rare victory in his stormy seven years in office. Prop. 14 was over the opposition of powerful political opposition from both the Democratic and Republican parties, Congressional Speaker Pelosi, the California Teachers Association and public employee labor groups! The end result hopefully would force contenders to seek votes from all parties, resulting in the election of candidates with broader appeal, and then, a less hyper-partisan legislature. In theory, moderate politicians would gain an advantage because all candidates would have to appeal to voters across a wide spectrum, and therein be more representative of the district as a whole, in contrast to many current races where legislators are elected with less than 10 percent of the voters, a reflection of the breakdown of the two party system. Abel Maldonado, current Lieutenant Governor was most influential in getting Prop 14 onto the ballot. (Summarized from an article in *Capitol Weekly*, June 8, 2010.)

**Big Pharma (Pharmaceutical Research and Manufacturers of America) Is One of Biggest Winners with Health Care Reform Bill:** Pharma’s lobby was perhaps the biggest winner in the Congressional health care reform battle: The drug industry managed to fend off price controls and other restrictions, while now licking its chops over the newly added 30+ million previously

uninsured Americans to gain health insurance. Although the law also levied taxes and other costs on these companies valued at tens of billions of dollars, they still anticipate a trajectory of major profits in the future. Importantly, they must provide 50 percent discounts to Medicare beneficiaries who have entered the “doughnut hole” gap in drug coverage, but those discounts plus gradually increasing federal subsidies will equate to more of the elderly purchasing more drugs. Amazingly, Pharma lobbyists *defeated* proposals to mandate that Medicare negotiate drug prices with them, to permit importation of low-cost drugs, to bar brand-name manufacturers from paying generic companies to delay marketing of competitor drugs, and to mandate rebates from industry for Medicare and Medicaid beneficiaries! Do note, however, that “discounts” are a potential farce as the drug companies still kept the power to set drug prices themselves! Costly brand-name biotechnology drugs, about 15% of pharmaceutical sales, will now have 12 years of protection against generic competitors. Pharma also avoided the expansion of drug discounts to hospitals serving mainly low-income patients. Of note, Pharma paid tens of millions of dollars for advertisements favoring health care reform, donated \$1.2 million to the Obama presidential campaign, and increasingly has favored Democrat over Republican candidates in recent campaign contributions. (Summarized from article by Alan Fram, *HuffPost Politics*, March 29, 2010.)

**Two California Physicians Win Primaries for State Assembly:** Two of the three physicians running in State Assembly primaries won and could become the only physicians in the State Legislature should they win the general elections. Richard Pan, M.D., a pediatrician, won his primary in the 5th Assembly District (Sacramento). He is well known to CMA and CSA because of his chairing the CMA’s Council on Scientific Affairs. Linda Halderman, M.D., a surgeon, won her race in the 29th AD (Fresno). She, too, is well known to CSA as she has reported on her experiences in American Samoa as a volunteer physician in our *Bulletin*, and has published many other opinion pieces in other media venues. Unfortunately, Don Kurth, M.D., lost his primary race in the 30th AD (Inland Empire). (From *CMA Alert*, June 14, 2010.)

**Georgia Supreme Court Strikes Down Cap on Medical Malpractice Awards:** In a stunning decision, the Georgia Supreme Court unanimously struck down the limits on jury awards in medical malpractice cases, ruling that the \$350,000 cap on noneconomic damages violates the right to a jury trial guaranteed by the Georgia’s State Constitution. The Chief Justice stated that the cap “clearly nullifies the jury’s findings of fact regarding damages and thereby undermines the jury’s basic function.” Any such ruling signals the importance of continued support for CMA’s vigilant efforts to protect MICRA. (From the *Newsletter of the American College of Physician Executives*, March 2010.)