

New Jersey Academy of Otolaryngology-Head & Neck Surgery
New Jersey Academy of Facial Plastic Surgeons

May 2013

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2013 Annual Meeting sponsors!**

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The Hopewell Pharmacy is a professional compounding pharmacy located in Central New Jersey. They are providing a unique, simple option that will treat Chronic Sinusitis with custom compounded antibiotics, anti-fungals and anti inflammatories that are delivered directly into the sinus cavity.

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Medical Society of New Jersey

Founded in 1766, the Medical Society of New Jersey is the oldest professional society in the United States. The organization and its dues-paying members are dedicated to a healthy New Jersey, working to ensure the sanctity of the physician-patient relationship. In representing all medical disciplines, MSNJ advocates for the rights of patients and physicians alike, for the delivery of the highest quality medical care.

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Medtronic Surgical Technologies

Surgical Technologies develops products and procedural solutions for surgical applications that include: neuro/spine, cranial and orthopedics; ear, nose and throat; and surgical oncology. We design, develop, manufacture and support healthcare providers with advanced surgical navigation and imaging solutions, powered surgical tools and systems, intraoperative nerve monitoring devices, advanced energy-based devices for hemostatic sealing and tissue dissection, and implantable devices for hydrocephalus management.

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ZETONNA® (ciclesonide) Nasal Aerosol is a prescription medicine that treats seasonal and year-round allergy symptoms in adults and children 12 years of age and older. It is for use in the nose only. ZETONNA is used 1 time each day, 1 spray per nostril.

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Teva Respiratory is the U.S.-based respiratory subsidiary of Teva Pharmaceutical Industries Ltd. We are committed to providing high-quality, affordable treatment options to people with asthma, chronic obstructive pulmonary disease (COPD), exercise-induced bronchospasm (EIB) and nasal allergy symptoms. Teva Pharmaceutical Industries Ltd. is among the top 15 pharmaceutical companies in the world. We develop, manufacture and market generic and innovative pharmaceuticals and active pharmaceutical ingredients.

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From the Presidents

Annual Meeting Review

We would like to thank our Annual Meeting Speakers for their expertise.

Dr. Jean Anderson Eloy discussed a comprehensive approach to frontal sinus disease. Dr. Diego Saporta provided all the information for starting an allergy program. Dr. Michael Turner presented many years of experience in this relatively new and uncommon procedure. Denise Sanders from Kern Augustine Conroy & Shoppmann, PC discussed HIPPA updates, EMR communication issues, as well as legal pitfalls for physicians. Sigmund L. Sattenspiel presented about reconstruction of facial cancer defects. Finally, Dr. Paul Carniol, provided an up date on radio frequency treatment for facial skin laxity.

PA AND APNS SEEKS to CHANGE SCOPE OF PRACTICE

Two bills have been introduced that seek to change the way in which physicians work with Physician Assistants and Advanced Practice Nurses in New Jersey. New Jersey State Senator Joseph Vitale (D-19), Chair of the Senate Health Committee, has sponsored both bills. Vitale's PA legislation would permit each physician to develop the PA's scope of practice independently, and eliminate the need to sign off on charts within a specified number of days. The APN legislation would allow the allied health providers to practice independently without a collaborative agreement with a supervising physician. APNs cite physician shortages and cost savings. We are reviewing both bills and working with the "house of medicine" on appropriate responses.

DEPARTMENT OF HEALTH TESTIFIES BEFORE BUDGET COMMITTEE

Throughout April, the Assembly and Senate Budget Committees met with various departments throughout New Jersey in order to provide recommendations for the State's budget. Commissioner Mary O'Dowd from the Department of Health testified before the committee to discuss the \$1.9 billion allocated to the department for 2014. The Commissioner highlighted the \$675 million in charity care allotted for the coming year as well as the \$590 million for the Federally Qualified Health Centers. The Department is also investing an additional \$10 million in graduate medical education. The Department is working in conjunction with the Department of Banking and Insurance and the federal government in the rollout of the Health Exchange.

CMS Proposes Changes to Oversight of Accrediting Organizations: The Centers for Medicare & Medicaid Services (CMS) has issued a proposed rule that would revise certain aspects of the survey, certification, and enforcement procedures related to CMS oversight of national accreditation organizations (AOs), including those that accredit surgical facilities. The revisions would implement certain provisions under the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) and are intended to clarify and strengthen CMS oversight of AOs that apply for, and are granted, recognition and approval of an accreditation program. The proposal is available at: <http://www.regulations.gov/#!documentDetail;D=CMS-2013-0063-0001>.

Physicians Cautioned Regarding Online Patient Relations: The American College of Physicians and the Federation of State Medical Boards have issued guidelines for physician Internet activity involving patients, in a policy paper published in the Annals of Internal Medicine. The document discusses the benefits, pitfalls and recommended safeguards related to various online physician activities. View the position paper at: <http://annals.org/article.aspx?articleid=1675927>.

Stark, False Claims and Anti-Kickback Prosecutions Can Arise from

Inattention: The U.S. Department of Justice has announced that Intermountain Health Care, Inc., Utah's largest health system, has agreed to pay the United States \$25.5

million to settle claims that it violated the Stark statute and the False Claims Act by engaging in improper financial relationships with referring physicians. The alleged illegal relationships included employment agreements under which the physicians received bonuses that improperly took into account the value of patient referrals, as well as office leases and compensation arrangements between the health system and its referring physicians that also violated Stark, in part because there were no executed leases or agreements in place for at least some portion of the period covered by the arrangements. Settlements agreed to by a health system or hospital rarely protect all of the involved physicians from future prosecution. Prosecution of kickback and Stark cases involving referring physicians and other providers with which they have a financial relationship is increasing significantly, at both the federal and state level, as enforcement agencies utilize expanded resources to identify and investigate arrangements and as providers choose to disclose non-compliant arrangements. Any financial arrangement involving health care services and referring parties (whether or not federal health care programs are involved) must be carefully structured for regulatory compliance, both initially (including executing the documents) and throughout the life of the arrangement, including attention to the renewal terms of the written agreements.

Federal EHR Donation Exceptions to Continue: The U.S. Dept of Health & Human Services' Office of Inspector General and the Centers for Medicare & Medicaid Services have published rule proposals to extend through December 31, 2016, the Anti-kickback safe harbor and the Stark law exception for donation to physicians of electronic health records (EHR) items and services, which had been scheduled to expire at the end of 2013. The proposed rules also update certain aspects of the electronic health records exceptions to update the provision under which EHR software is deemed interoperable and remove the requirement related to electronic prescribing capability. The agencies solicit public comment on other possible amendments to the exception, including limiting the scope of protected donors, such as excluding ancillary service providers as protected donors, and adding or modifying conditions to limit the risk of data and referral lock-in. Access the rules at www.drlaw.com.

Data Banks to Merge: Effective May 6, 2013, the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB) will merge into one Data Bank: the NPDB. After the merger, the Data Bank will notify all users via email with a link to the new website: <http://www.npdb.hrsa.gov>. Users should save and bookmark the new address. Aside from an immediate cost saving from not having to query two separate data banks, there will be no change to the reporting workflow or requirements, but users' query results may include reports that were not previously available to them. The HIPDB information will be integrated into the NPDB, meaning that users who only queried the NPDB may receive expanded access to Data Bank information. If a user queries both the NPDB and HIPDB currently, their query results after the merger will not change. To see what the merger will mean to users, go to: <http://www.npdb-hipdb.hrsa.gov/resources/npdbMerge.jsp>. To access Data Bank Merger Q&As, go to: <http://www.npdb-hipdb.hrsa.gov/resources/factsheets/MergerQandA.pdf>.

Synthetic Marijuana Statutorily Banned: Governor Christie has signed legislation (S1783) codifying an earlier adopted regulation banning the possession, manufacture or sale of synthetic marijuana, often sold as "K2" or "Spice." Manufacturing or selling

more than one ounce of the substance is a second degree crime punishable by up to 10 years imprisonment, while lesser amounts constitute a third degree crime with a maximum 5-year sentence. Possession of the substance will result in a third or fourth degree crime with up to one and one-half years imprisonment.

For more information on the above items, contact Bob Conroy (conroy@drlaw.com) or Denise Sanders (sanders@drlaw.com) at Kern Augustine Conroy & Schoppmann. Or call KACS at 1-800-445-0954.