



when minutes count

common SENSE

The Newsletter of the American Academy of Emergency Medicine — Volume 12, Issue 2— March /April 2005



PRESIDENT'S MESSAGE

by A. Antoine Kazzi, MD FAAEM

“This will not stand!”

The PhyAmerica Malpractice Insurance Debacle

This is a special issue of *Common Sense* - one that Dr. Blumstein wanted us to dedicate to the malpractice crisis. Ironically, its timing coincides with the emergence of a major corporate travesty - one that directly involves the personal assets, the lives and careers of 170-200 PhyAmerica physicians. These physicians are defendants in at least 170 malpractice lawsuits that had been filed against them and their employer, PhyAmerica, or one of the other staffing companies or groups that were acquired, at one point or another, by PhyAmerica such as Coastal, FPA, Sterling and MedPartners.

When it declared bankruptcy in 2003, PhyAmerica told these physicians not to worry about their malpractice coverage. Concerned physicians contacted PhyAmerica and were provided written reassurance that they remained adequately insured and that their defense was being handled by Western Litigation Specialists (WLS), a firm that had assumed prior to the bankruptcy the liability insurance coverage for these physicians. These physicians felt reassured and went on working with WLS-paid defense lawyers. Their cases were therefore not accounted for by the Bankruptcy court as one of the PhyAmerica liabilities. Written reassurances from PhyAmerica and WLS in hand, these physicians were not worried about their personal liabilities in these malpractice cases since they were being covered even after the PhyAmerica bankruptcy.

By the summer of 2004, the assets of bankrupt PhyAmerica were purchased by Sterling Healthcare, another national Contract Medical Group. In autumn 2004, these PhyAmerica physicians began receiving calls and letters, mainly from their defense lawyers, telling them that the WLS funds were near-exhaustion. WLS was running out of the maximum amount of money that had been allocated to pay for all expenses, settlements and judgments. The PhyAmerica physicians were being told that 1) they needed to personally begin paying for their lawyers, expert witnesses and legal expenses, and 2) their personal assets and future income were now being directly targeted by the Plaintiffs' lawyers as an alternative source of payment for any settlements or judgments against them.

Our colleagues were abandoned and uninformed defendants, left isolated in the dark to figure out on their own what to do, how to respond to pressure from defense and plaintiff lawyers asking them to make quick decisions on whether:

- 1) To individually assume the costs, expenses, settlements and judgments that were associated with the malpractice claims against them.
- 2) To settle - and to settle fast, even if the cases against them were frivolous, and if settling would have them reported to the national malpractice database - leading to blatantly unfair long-term harm to their career and to their current or future employment.

Bewildered and upset, a number of these physicians contacted AAEM. And AAEM responded!

- 1) The AAEM Board established a “PhyAmerica Physicians Defense Working Group” to be the official vehicle and voice representing the interests of the affected PhyAmerica physicians. This group was formed to give the physicians their own structure that they could use to address their needs. Membership in the Working Group was restricted to the physicians affected and to their individual legal representatives. Two of the affected PhyAmerica physicians, Michael Zielinski, DO FAAEM FACEP, and Jill Mabley, MD FAAEM, volunteered to chair this Working Group and to lead its charge - represent to the best of their abilities the interests of their colleagues. AAEM board member Dr. Kevin Rodgers assumed the role of AAEM board liaison to the Working Group.
- 2) Legal counsel and a bankruptcy lawyer were engaged by AAEM and the working group for the working group start-up - to fact find and define short-term strategy, alternatives, priorities, and objectives, the most important being providing official representation of the Working Group and AAEM members who were affected by this debacle at the March 28th Baltimore Bankruptcy Court Hearing where the judge was going to decide whether the personal assets of these physicians were or were not going to be left at the mercy of plaintiffs and their lawyers.
- 3) By the time I was submitting this article, an Amicus Brief was being filed in Court by AAEM on behalf of these physicians, and plans were in place for legal counsel, an AAEM officer and a number of PhyAmerica physicians from the working group to testify in court in Baltimore - to put a non-corporate face on the implications of the judge's decision.
- 4) AAEM staff and board members, as well as substantial AAEM Foundation funds and resources, were allocated to find, mobilize and organize this diverse group of isolated physicians spread all over the USA.
- 5) AAEM established a “PhyAmerica Malpractice Insurance Crisis Taskforce” and appointed two of the affected PhyAmerica physicians, Drs. Zielinski and Mabley, to lead this TF hand-in-hand with 2 AAEM board members (Kevin Rodgers and Howard Blumstein) and the President. The charge of the TF were:
 - a. To establish all the facts, timelines, deadlines and challenges associated with this travesty.
 - b. To execute the complex initiative of organizing the PhyAmerica Physicians Defense Working Group, collecting the myriad details of a very diverse group of physicians and cases, and developing the working groups governance.
 - c. To establish the Working Group initial strategy, its current alternatives and its short-term and long-term objectives.
 - d. To contact all physicians involved.
 - e. To disseminate the information about this travesty to the EM media and to other organizations.

continued on pg 2

- 1 PRESIDENT'S MESSAGE
- 3 EDITOR'S LETTER
- 9 ASSEMBLY PHOTOS
- 18 WASHINGTON WATCH
- 21 JOB BANK

President's Message- continued from pg 1

- 6) AAEM Foundation funds, which you contributed over the last 2 months. were allocated to retain legal counsel David Millstein, Esq., who many of you may recall for his successful representation of AAEM and our members in the Mount Diablo and CHW-Meriten confrontations.
- 7) The AAEM Board voted to volunteer themselves to serve - Free of Charge - as expert witnesses in these malpractice cases to defend all affected EM-board certified or eligible physicians.
- 8) AAEM arranged a number of meetings and conference calls for these physicians who were able to call-in, share facts about their cases and to learn about the challenges, threats and alternatives that they were facing.
- 9) AAEM, the Working Group and Sterling Healthcare began coordinating their separate activities and are currently working together to ensure that the PhyAmerica physicians' interests are protected. At this point in time, it is apparent that the physicians' objectives are aligned with what Sterling is seeking to achieve on March 28th in Baltimore. AAEM, the Working Group and its legal counsel will be there to ensure that any decision by the judge reflect the best interest of the physicians and not the plaintiffs, their lawyers or any corporate executives. For this reason, and with those considerations in mind, we are coordinating with Sterling and held a meeting in La Jolla, with their Executive Vice-President and legal Counsel. This included the Working Group leadership, the AAEM President, Dr. McNamara, and board members (Rodgers and Blumstein). A number of affected PhyAmerica Physicians were able to participate in the meeting confer through a phone line and to ask questions that were answered by the Sterling Executive Vice President and by AAEM.
- 10) In mid-February, the ACEP leadership who attended the AAEM Scientific Assembly was informed through our open board and business meetings. The ACEP President, Dr. Suter, attended our AAEM Foundation dinner and heard from the Taskforce Chair about this debacle. The ACEP President expressed significant interest in this crisis. AAEM responded by officially inviting ACEP to work together with AAEM and to share the leadership of the malpractice insurance crisis taskforce, making it an AAEM-ACEP joint taskforce. We felt this was an outstanding opportunity to begin collaborating constructively with ACEP and that this crisis was so important and the threat to the docs was potentially so devastating that we needed to be united in our stand and activity with that regard.

- 11) A similar invitation was issued to ACOEP. AAEM would again welcome all collaboration in this very important matter and would welcome being able to collaborate with both ACEP and ACOEP on this matter preferably through a joint taskforce with representatives from the 3 organizations.

In summary, at this time, every attempt is being made to “protect the individual physicians involved in pending malpractice cases” that are inadequately covered by the under funded insurance policies. We hope the judge will decide to protect once and for all the physicians from individual liability that compromises their personal assets. This will be decided in Baltimore on March 28th. The judge may choose to continue the temporary restraining order protecting the physician defendants and develop a plan to liquidate the claims, which would then prolong this crisis. In a worse case scenario, the judge may also decide to open the way for malpractice lawyers and plaintiffs to sue all affected physicians for their personal assets.

We hope our rationale and fairness to these affected physicians will prevail. However, if this does not occur, AAEM will continue its effort to represent and support these physicians in their struggle. It will not hesitate from considering any reasonable option that would provide these affected physicians with what they deserve: justice, fairness and peace of mind.

This is nothing less than a terrible tragedy, one that is profoundly unfair to these physicians who were contracted and promised adequate malpractice insurance coverage. This crisis gravely endangers the well-being, personal assets and future of hundreds of emergency physicians. It has far-reaching implications on all our workforce, members and non-members, who work for similar groups, have worked for them, or will work with them in the future.

Our message continues to be clear: our AAEM issues are nothing less than noble, current and core to our practice. Decades of silence on corporate abuses have resulted in this potential devastation looming over the head of our colleagues and members. After serving their groups and toiling at the bedside while profiteers count numbers and profit, emergency physicians simply deserve better. On this issue, AAEM will not rest until justice prevails. This travesty will simply not stand! ❗



Officers

- A. Antoine Kazzi, MD, *President*
- Tom Scaletta MD, *Vice-President*
- William Durkin, Jr. MD, *Secretary-Treasurer*
- Joseph Wood, MD JD, *Immediate Past President*
- Robert McNamara, MD, *Past Presidents Council Representative*

Board Members

- Howard Blumstein, MD
- Tracy Boykin, MD
- Anthony DeMond, MD
- Stephen R. Hayden, MD
- James Li, MD

- Kevin Rodgers, MD
- Ghazala Sharieff, MD
- Richard Shih, MD
- Larry Weiss, MD JD

Resident Representative

Joel Schofer, MD

Common Sense Staff

- Howard Blumstein, MD Editor
- Helen Kopec, Managing Editor
- Miko Walker, Job Bank Coordinator
- Kat Peterson, Art Director

when minutes count

Articles appearing in Common Sense are intended for the individual use of AAEM members. They may not be duplicated or distributed without the explicit permission of AAEM. Permission is granted in some instances in the interest of public education. Requests for reprints should be directed to Helen Kopec, Managing Editor, at: AAEM, 555 East Wells Street, Suite 1100, Milwaukee, WI 53202, Tel: (800) 884-2236, Fax: (414) 276-3349, Email: hkopec@aaem.org.

AAEM Mission Statement

The American Academy of Emergency Medicine (AAEM) is the specialty society of emergency medicine. AAEM is a democratic organization committed to the following principles:

1. Every individual should have unencumbered access to quality emergency care provided by a specialist in emergency medicine.
2. The practice of emergency medicine is best conducted by a specialist in emergency medicine.
3. A specialist in emergency medicine is a physician who has achieved, through personal dedication and sacrifice, certification by either the American Board of Emergency Medicine (ABEM) or the American Osteopathic Board of Emergency Medicine (AOBEM).
4. The personal and professional welfare of the individual specialist in emergency medicine is a primary concern to the AAEM.
5. The Academy supports fair and equitable practice environments necessary to allow the specialist in emergency medicine to deliver the highest quality of patient care. Such an environment includes provisions for due process and the absence of restrictive covenants.
6. The Academy supports residency programs and graduate medical education, which are essential to the continued enrichment of emergency medicine, and to ensure a high quality of care for the patient.
7. The Academy is committed to providing affordable high quality continuing medical education in emergency medicine for its members.

Membership Information

Fellow and Full Voting Member: \$345 (Must be ABEM or AOBEM certified in EM or Pediatric EM)
 Emeritus Member: \$225 (Must be 65 years old and a full voting member in good standing for 3 years)

* Associate membership is limited to graduates of an ACGME or AOA approved Emergency Medicine program.

* Associate Member: \$250 (Non-voting status)
 Resident Member: \$50 (Non-voting status)
 Student Member: \$50 (Non-voting status)

Send check or money order to: AAEM, 555 East Wells Street, Suite 1100, Milwaukee, WI 53202, Tel: (800) 884-2236, Fax: (414) 276-3349, Email: info@aaem.org
 AAEM is a non-profit, professional organization. Our mailing list is private.