

The Bulletin

A Publication of the Camden County Medical Society

Summer 2008

Vol. 11 #3

What Physicians Need to Know About Developments in the Practices of Advanced Practice Nurses, Physician Assistants, Physical Therapists and Chiropractors

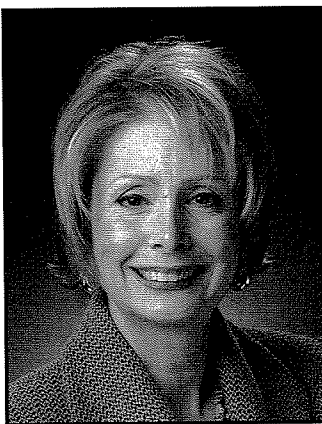
By: Alma L. Saravia, Esq.

Throughout the nation, the numbers of health care providers such as Advanced Practice Nurses, Physician Assistants, Physical Therapists and Chiropractors are increasing. As the cost of healthcare rises, many insurers and patients are relying upon these providers for their treatment. More physicians are working in multi-disciplinary practices, although others are concerned that the expansion of practice for non-physicians will diminish the practice of medicine. Either way, New Jersey's physicians need to be informed about the recent developments affecting the ability of other health care providers to render care in New Jersey.

The following information summarizes the status of current legislative and regulatory initiatives and legal decisions.

Advanced Practice Nurses (APNs): The Board of Nursing adopted the Certification of Advanced Practice Nurses regulations on June 16, 2008, which implement changes in the APN law that were enacted five years ago. An APN is authorized by that law to diagnose and treat a patient. According to a statement issued by the bill's sponsor, Senator Joseph Vitale, an APN is permitted to practice his or her profession without physician supervision. If an APN prescribes or orders medications, then he or she must enter into a joint protocol with a collaborating physician. The joint protocol only requires that the physician and the APN address certain issues in writing concerning the circumstances for prescribing and ordering medications or devices. The new APN regulations also recognize Certified Registered Nurse Anesthetists ("CRNAs") as APNs. Thirty states already recognize CRNAs as APNs. The State's more than 500 CRNAs will have one year to become certified as APNs. CRNAs deliver more than thirty million anesthetics a year in the United States.

Physician Assistants (PAs): The Board of Medical Examiners ("BME")



regulates PAs, who are mandated to work under the supervision of a physician. On March 19, 2008, the BME adopted regulations regarding requirements for issuing prescriptions for medications including Controlled Dangerous Substances ("CDS"). The President of the New Jersey State Society of Physician Assistants commented that "enhanced prescription authority has allowed physician assistants to provide safe and efficient care for New Jersey patients." Under the new regulations, a PA may obtain a Drug Enforcement Number or he or she may continue to prescribe non-CDS medications without one. A PA authorized by the supervising physician may prescribe or order CDS Schedule II, III, IV or V medications to continue, reissue or adjust a prescription and initiate, with prior consultation, or initiate as part of a plan for a patient with a terminal illness, the order or prescription of CDS.

Physical Therapists (PTs): PTs are now obtaining doctorate degrees upon their graduation and they are becoming board certified in a subspecialty. With those developments, PTs are now focusing on direct access to services and payment for those services. The Assembly Financial Institutions and Insurance Committee released a bill from Committee that would increase access to physical therapy services and reform the review, processing and payment of certain health and other

insurance claims related to the provision of those physical therapy services. The bill, A-2123 sponsored by Assemblyman Neil Cohen (D-20), expressly prohibits a payer (insurance carrier) from requiring any manner of prior approval in order for a covered person to access physical therapy services. The legislation also addressed the calculation of reimbursement and requires a payer to respond to a PT's request for prior authorization for physical therapy no later than three days following the request. Finally, the bill provides that a PT must refer a patient to a physician, dentist or chiropractor if he or she determines that physical therapy is contraindicated or that symptoms or conditions are present that require services outside the PT's scope of practice or if the patient fails to demonstrate reasonable progress within 30 days of the date of the initial treatment. This bill passed the Assembly with a 54-18-7 vote and it is pending in the Senate. This bill significantly increases patients' direct access to treatment by PTs.

Chiropractors: The scope of practice of a chiropractor is a major issue in New Jersey following a recent Supreme Court decision and the introduction of S-227, sponsored by Senator Raymond Lesniak (D-20) (and A-2574 sponsored by Assemblyman Upendra Chivukula), which provides that it is within the lawful scope of practice to diagnose, adjust and treat articulations of the spinal column and other joints, articulations, soft tissue structures "clinically related to the spinal column" in order to administer "physical modalities and therapeutic, rehabilitative and strengthening exercises." The bill passed the Senate 35-3 and it is now pending in the Assembly. The expansion of the scope of practice pits chiropractors against PTs as the performance of physical therapy on other areas of the body has been primarily the responsibility of PTs. At the same time, Senator Stephen Sweeney (D-3) has introduced S-565,

What Physicians Need To Know

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and Assemblywoman Bonnie Watson Coleman has sponsored the companion legislation A-2029, which would permit a chiropractor to use any method of a treatment of a patient, except the use of surgical cutting, so long as the methods of treatment of diagnoses or analysis were taught in an approved college or approved by the Board of Chiropractic Examiners. Neither of these two bills has been heard in Committee yet.

Finally, the New Jersey Supreme Court ruled a few weeks ago that chiropractors are not limited to treating the spine. The Court upheld a Board of Medical Examiners' regulation permitting the treatment of a "related structure" – such as a knee – as long as there is a causal nexus between a condition of that structure

and a condition of the spine. The appeal to the Court arose from a no-cause jury verdict in a medical malpractice lawsuit concerning the treatment of a patient's torn meniscus allegedly caused by the chiropractor's adjustments. The Court concluded that the issue in every case is "whether a condition of the extremity manipulated is logically connected, by cause or effect, to a spinal condition." It went on to state that a chiropractor must determine whether the body part to be treated is a "related structure" on a case by case basis. The patient will get a new trial and her attorney stated that she is "confident that the facts are such that [the defendants] don't meet the criteria."

These legislative and regulatory initiatives signal the Legislature's and the licensing boards' recognition that affordable health care must be made available to all New Jersey residents.

The Governor just signed legislation expanding the State's Family Care health care coverage program and in order for that expansion to be successful all of New Jersey's health care providers must be willing to treat those patients. APNs, PAs, PTs and Chiropractors are lower cost providers and it is logical that they will fill the gap that exists in the treatment of those and other patients. The Supreme Court decision is also a major indicator of the trend to allow Chiropractors to treat other parts of the body if they determine that the condition is related to the spine. Physicians who understand the changing environment can plan to "stay ahead of the game."

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