Revised Position Paper
3/18/80

Resolution

Whereas, The Division of Medical Assistance and Health Services "Medicaid" was established to provide Medical Services for the poor.

30:4D-2 Declaration of purpose
It is the intent of the Legislature to make statutory provision which will enable the State of New Jersey to provide medical assistance, insofar as practicable, on behalf of persons whose resources are determined to be inadequate to enable them to secure quality medical care at their own expense, and to enable the State, within the limits of funds available for any fiscal year for such purposes to obtain all benefits for medical assistance provided by the Federal Social Security Act I as it now reads or as it may hereafter be amended, or by any other Federal act now in effect or which may hereafter be enacted; and

Whereas, It was anticipated that a large number of Physicians in the State would render services: A patient could go to any doctor and receive quality medical care. i.e., Every physician in the State has an IMP number which acknowledges that it was anticipated that he handle Medicaid patients; and

Whereas, It has developed that those Physicians who serve the Medicaid patients, have been subjected to abuse and harassment by the Division of Medical and Health Services. The public advocate's office now has a representative at the Joint Committee meeting of the Medical Society officers and Medicaid officers; and

Whereas, This has resulted in denial of medical services for many medicaid recipients. They are forced to go to local hospitals, the emergency rooms and outpatient clinics for services where the cost to the State of New Jersey for services is higher than if they went to private physicians; and

Whereas, This has placed an undue burden on physicians who accept Medicaid patients, and

Whereas, Some Medicaid recipients are in effect being denied access to quality medical care because of the low fee scale; now therefore be it

Resolved, That we, on behalf of our members, herein petition the State to increase Medicaid fees in order to attract more physicians to the Program; and be it further

Resolved, That we enlist the help of the State of New Jersey to enjoin from harassing and abusing physicians who participate in the Medicaid Program.

Division of Medical Assistance discussing prescriptions said that "Only the terms 'Brand Necessary' or 'Medically Necessary' are valid for establishing Medical Certification. No other terminology is acceptable." Since the generic drug law in New Jersey states that the wording on a prescription blank must be Substitution Permissible or Do Not Substitute, this Medicaid ruling could cause confusion with physicians and pharmacists. Dr. Harvey Shwed, Chairman of the MSNJ Medicaid Committee, stated that he would take this matter up with Medicaid officials at their next meeting.

2) A letter was received from one of our members, Charles P. Yablonsky, M.D., protesting the release by Medicaid of privileged information. The Council suggested in this instance that there might be a difference in what is legally confidential and what is confidential from the aspect of Medical ethics. Dr. Harvey Shwed stated that he would also bring this matter up to Medicaid officials through our State Society Committee.

3) Jonathan C. Gibbs, Jr., M.D., of Jersey City submitted the following Resolution:

RESOLUTION

Whereas,

The Division of Medical Assistance and Health Services "Medicaid" was established to provide Medical Services for the ~~POOR;~~ (sic)

30:4D-2 Declaration of purpose

It is the intent of the Legislature to make statutory provision which will enable the State of New Jersey to provide medical assistance, insofar as practicable, on behalf of persons whose resources are determined to be inadequate to enable them to secure quality medical care at their own expense, and to enable the State, within the limits of funds available for any fiscal year for such purposes, to obtain all benefits for medical assistance provided by the Federal Social Security Act I as it now reads or as it may hereafter be amended, or by any other Federal act now in effect or which may hereafter be enacted; and

Whereas,

It was anticipated that a large number of Physicians in the State would render services: A patient could go to any Doctor and receive quality medical care. i.e., Every physician in the State has an IMP number which acknowledges that it was anticipated that he handle Medicaid patients; and

Whereas,

It has developed that only a small percentage of Physicians accept Medicaid patients; and

Whereas,

Many Physicians accepting Medicaid patients only do so as a "favor to the patient," and

Whereas,

It has developed that those Physicians who serve the ~~POOR; (sic~~, Medicaid patients, have been subjected to abuse and harassment by the Division of Medical and Health Services ~~and the Contractor: The Prudential Insurance Company;~~ i.e., The public advocate's office now has a representative at the Joint Committee meeting of the Medical Society officers and Medicaid officers; and

Whereas,

This has resulted in denial of medical services for ~~large segments of the POOR~~ in that ~~they cannot go to their own Doctor and they must ask Doctors if they accept Medicaid;~~ and

Whereas,

They are forced to go to local hospitals, the emergency rooms and out-

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ESSEX COUNTY MEDICAL SOCIETY

The Essex County Medical Society Council at its March 1980 meeting decided to work out a resolution for presentation to our Essex County Medical Society caucus as a "Position Paper" so that our delegates will represent our views at the MSNJ Reference Committee which will discuss the many resolutions suggested on medicaid.

patient clinics for services where the cost to the State of New Jersey for services is higher than if they went to private physicians; and

Whereas,

This has placed an undue burden on Physicians who accept Medicaid patients, and done medicaid recipients

Whereas,

The POOR are in effect being denied access to quality medical care because of the ~~limited number of Physicians who treat them because of the~~ low fee scale; now therefore be it

Resolved,

That we, on behalf of our members, herein petition the State to increase Medicaid fees in order to attract more Physicians to the Program; and be it further

Resolved,

That we enlist the help of the State of New Jersey to enjoin ~~the Contractor~~ from harassing and abusing Physicians who participate in the Medicaid Program.

Following discussion, it was moved, seconded and carried that we support the basic tenets of this Resolution.

Proposed Budget for ECMS year ending April 30, 1981

ESTIMATED INCOME AT SAME DUES AS LAST YEAR: ($85)

Membership dues (1,455)	$123,675
Application fees	350
Phone service fee	600
Interest and/or MSNJ Commissions	3,500
Fee for collection of AMA dues	3,600
	$131,725

Estimated total income.....$131,725

ESTIMATED EXPENSES:

Meetings and Dinners	$ 5,000
Conventions and Conferences	6,000
Public Relations	2,500
Bulletins	7,000
Future Physicians Club	600
Compensation of Staff	77,000
Pension Plan	15,000
Rent	17,500
Legal & accounting	2,500
Postage	5,500
Stationery and Printing	5,000
Telephone	1,500
Payroll taxes	3,000
Hospitalization Insurance	2,500
Affiliation Expense	400
Miscellaneous Expenses	700
Furniture & Machines	1,000
	$152,700

Estimated total expenses.....$152,700

Estimated Expenses over income.....$20,975.00
General Fund Reserve..... 34,745.03

Council Actions

JOHN R. TOBEY, M.D., Secretary

Minutes of the Council Meetings are printed below so that every member of the Society will have an opportunity to read and consider recommendations and actions of the Council before the next regular meeting of the Council. No action of the Council is final until the minutes are approved and actions of the Council are endorsed by the membership at the next regular meeting.

JANUARY 15, 1980

Medicaid

Three items were discussed as follows:

1) Mr. Arthur Ellenberger noted that a recent Newsletter from the New Jersey Division of Medical Assistance discussing prescriptions said that "Only the terms 'Brand Necessary' or 'Medically Necessary' are valid for establishing Medical Certification. No other terminology is acceptable." Since the generic drug law in New Jersey states that the wording on a prescription blank must be Substitution Permissible or Do Not Substitute, this Medicaid ruling could cause confusion with physicians and pharmacists. Dr. Harvey Shwed, Chairman of the MSNJ Medicaid Committee, stated that he would take this matter up with Medicaid officials at their next meeting.

2) A letter was received from one of our members, Charles P. Yablonsky, M.D., protesting the release by Medicaid of privileged information. The Council suggested in this instance that there might be a difference in what is legally confidential and what is confidential from the aspect of Medical ethics. Dr. Harvey Shwed stated that he would also bring this matter up to Medicaid officials through our State Society Committee.

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Whereas,

It has developed that only a small percentage of Physicians accept Medicaid patients; and

Whereas,

Many Physicians accepting Medicaid patients only do so as a "favor to the patient," and

Whereas,

It has developed that those Physicians who serve the POOR, (i.e., Medicaid patients), have been subjected to abuse and harassment by the Division of Medical and Health Services and the Contractor: The Prudential Insurance Company. i.e., The public advocate's office now has a representative at the Joint Committee meeting of the Medical Society officers and Medicaid officers; and

Whereas,

This has resulted in denial of medical services for large segments of the POOR in that they cannot go to their own Doctor and they must ask Doctors if they accept Medicaid; and

Whereas,

They are forced to go to local hospitals, the emergency rooms and out-patient clinics for services where the cost to the State of New Jersey for services is higher than if they went to private physicians; and

Whereas,

This has placed an undue burden on Physicians who accept Medicaid patients, and

Whereas,

The POOR are in effect being denied access to quality medical care because of the limited number of Physicians who treat them because of the low fee scale; now therefore be it

Resolved,

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Resolved,

That we enlist the help of the State of New Jersey to enjoin the Contractor from harassing and abusing Physicians who participate in the Medicaid Program.

Following discussion, it was moved, seconded and carried that we support the basic tenets of this Resolution.

Drs Lorello
Tobey
Cl. Oreshore

The Prudential Insurance Company of America
Drawer 471, Millville, New Jersey 08332

James E. D. Gardam, M.D.
Vice President, Medical Services
Governmental Health Programs Office

February 27, 1980

Robert J. Lorello, M.D., F.A.C.S.
President, Essex County Medical Society
144 South Harrison Street
East Orange, New Jersey

Dear Doctor Lorello:

I have just received my copy of the Bulletin of the Essex County Medical Society (#432, February, 1980) and have read with dismay the action of the Council in supporting "the basic tenets of this Resolution" submitted by Dr. Jonathan Gibbs of Hudson County.

This Resolution contains errors, misrepresentations and unsubstantiated allegations. Continued support of this Resolution in its present form could be detrimental to our Society and not accomplish the desired and necessary objective of the Society. Current Medicaid reimbursement is not consistent with current charges and change may well be required. However, the current Resolution, as published, requires that, in fairness, the Council receive correct information from us. We respectfully request that the Council provide representatives of the Prudential Insurance Company an opportunity to present the correct facts to the Society at its next meeting.

Yours very truly,

James E. D. Gardam MD

James E. D. Gardam, M.D.
Vice President, Medical Services

JEDG:ms

ECMS Council Agenda - Tuesday evening, March 18, 1980 at 8:00 P.M.

1- Call to order at ECMS office - Robert J. Lorello, M.D., President

2- Requests for Emeritus Membership were received from Anthony J. Biunno, M.D. of Short Hills (formerly of Newark), and Harrison R. Wesson, M.D. of Glen Ridge. Both are completely retired and have been members for over 20 years.

3- Credentials Committee - James J. Stovin, M.D., and David H. Dreizin, M.D., Co-Chairmen

4- Discuss Medicaid Resolution - James E.D. Gardam, M.D.

5- A letter was received from a member inquiring whether or not an insurance cc has the right to audit a physician's medical record and charges, prior to consideration of payment of physician's bill.

6- Revisions to Medical-Legal Cooperation Agreement between Essex County Bar Association and ECMS.

7- A request was received from Dan Smiley, President of the American Medical Student Association for assistance in the form of a $50.00 contribution to help defray cost of a student delegation to the AMSA National Convention in Philadelphia.

8- MSNJ Judicial Council Opinion re: Ethical Procedures in Second Surgical Opinions.

9- A member desires a new membership category in the MSNJ Constitution and By-Laws which would take into consideration a leave of absence due to illness.

10- Prudential Insurance Company revising its regulations governing their Pension Plan and the ECMS has the group plan with Pru.

11- ECMS Representative to Health Manpower Committee of Regional Health Planning Council.

12- Call for all Resolutions for MSNJ.

13- Report on MSNJ Board of Trustees
   a) Committee on Long Range Planning recommendation:
   b) New Jersey Bell Telephone directory listings
   c) County Society problems submitted as they arise
   d) Chapter Change - representation of specialty societies.

ANNOUNCEMENTS: 1) ECMS Annual Meeting will be held on Thursday evening May 8, 1980.

2) MSNJ Annual Convention at Meadowlands Hilton
House of Delegates meets in Hilton Ballroom

Saturday afternoon, May 10, 1980 at 2:00 P.M.
Sunday afternoon, May 11, 1980 at 3:00 P.M.
Monday afternoon, May 12, 1980 at 3:00 P.M.
Tuesday morning, May 12, 1980 at 9:00 A.M.

ESSEX COUNTY
MEDICAL SOCIETY

EXECUTIVE OFFICE
144 South Harrison Street
East Orange, New Jersey 07018
Area Code (201) 672-1816

March 18, 1980

S. William Kalb, M.D.
377 South Harrison Street
East Orange, New Jersey 07018

Dear Doctor Kalb:

This is to confirm your reappointment as Essex County Medical Society's representative to the Health Manpower Reviewing Goals Committee of the Regional Health Planning Council.

You have been doing a fine job. Please send us a report on your activities for our Council and/or publication in our Bulletin. We are particularly interested in what is happening with the Physicians' Assistant problem, and nursing and nursing education in New Jersey.

Sincerely yours,

Robert J. Lorello, M.D.
President

RJL/as

FOR YOUR INFORMATION

ATTACHMENT # 12

State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD MEDICAL EXAMINERS
28 WEST STATE STREET
TRENTON, N.J. 08608

John J. Degnan
ATTORNEY GENERAL

Adam K. Levin
DIRECTOR

February 5, 1980

Arthur Bernstein, M.D.
Medical Society of New Jersey
Two Princess Road
Lawrenceville, New Jersey 08648

Dear Dr. Bernstein:

I am forwarding your letter of February 1, 1980 to Board President Dr. Albano for his review and any additional advice that he may have.

I would like to provide you with my recollection of the Board's determination relative to Specialty Listings in the Yellow Pages of the telephone directories. In view of the fact that a license issued by this Board is a plenary license to practice medicine and surgery in all of its branches, it was the Board's opinion that as long as a physician specialized in a particular branch of medicine he could list accordingly and would not have to be Board eligible or Board certified. In this regard, it was the Board's opinion that any listing could not be false or misleading but must be truthful and he must, in fact, specialize or he would be in violation of N.J.A.C. 13:35-6.13, "Provision of Information to the Public Rule."

Very truly yours,

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

Alfred J. Schuster
Executive Secretary

AJS/ded

JRT's
copy

"5th Channel" = students who come from foreign schools who are not given any degree.

FOR YOUR INFORMATION

STATE BOARD OF MEDICAL EXAMINERS OF NEW JERSEY

January 9, 1980

Since 1977 Guadalajara has been issuing MD degrees. Problem appears to be resolved for now. (CMDNJ has not given these people any degree)

The meeting of the State Board of Medical Examiners of New Jersey was held on Wednesday, January 9, 1980 at the Treadway Inn, Route #1, Princeton, New Jersey. The meeting was called to order at9:00 a.m., by Doctor Edwin H. Albano, M.D., President of the Board.

Present at the meeting were Board Members, Albano, Belfatto, Burke, Ball Calluori, Cianciulli, DeCecio, DePersia, Lev, Plain, Riggs, Sidoti, Stefanacci and Ware. Absent: Theodore Simkin and Edward Hollander, Ph.

Also present were Deputy Attorneys General Anthony F. LaBue, Marc Arnold, Joan D. Gelber, Stephen F. Bonora, Chief, Enforcement Bureau, Alfred J. Schuster, Executive Secretary and Charles A. Janousek, Assista Executive Secretary, Doctor Lawrence Rosenberg, D.C., Chiropractic Assistant to the Board, William Cirino, D.C., Chiropractic Assistant to the Board, Martin Johnson, Director, Public Affairs and Medical Educatio Medical Society of New Jersey, Augustus L. Baker, Jr., M.D., Official Laison to the Board of Medical Examiners, Frank Watson, M.D., Medical Society Representative, and Irving Locke, D.O., Osteopathic Society Representative. Also present was Attorney General John J. Degnan, Judith Yaskin, First Assistant Attorney General and August T. Lembo, Deputy Director, Division of Consumer Affairs.

STATEMENT CONCERNING ANNUAL
NOTICE OF REGULAR BOARD MEETINGS

The notice requirements provided for in the "Open Public Meetings Act" have been satisfied. Notice of this meeting was properly given in the Annual Notice adopted by the New Jersey State Board of Medical Examiners on November 14, 1979 which was transmitted to the NEWARK STAR LEDGER, CAMDEN COURIER POST, and the TRENTON TIMES, filed with the Secretary of State, and posted in the State House, all on the 30th day of November 19

MINUTES

THE BOARD, UPON MOTION MADE, DULY SECONDED AND CARRIED, APPROVED THE DECEMBER 19, 1979 MEETING MINUTES AS SUBMITTED.

APPEARANCES

No Appearances were scheduled for the public part of the meeting.

HEARINGS

No Hearings were scheduled for the public part of the meeting.

OLD BUSINESS

1. Requirements for approval of a chiropractic college - Proposal in the possession of Board Members from the November 14, 1979 meeting. Tabled at the December meeting for discussion at the January meeting of the Board.

   THE BOARD REVIEWED THE PROPOSED RULE AND MADE EXTENSIVE AMENDMENTS TO PAGE #5 AND UPON MOTION MADE AND DULY SECONDED MOVED TO APPROVE THI

(cont...)

OLD BUSINESS

1. Requirements for approval of a chiropractic college - (cont.)

FORM OF THE PROPOSED RULE AND AUTHORIZED THAT COMMENTS BE SOLICITED BY PUBLICATION OF THE PROPOSED RULE IN THE NEW JERSEY REGISTER.

2. New Jersey Bell Telephone - Telephone Directory Listings - The Board reviewed Mr. O'Brien's letter and further reviewed the Board's current policy concerning telephone directory listings.

THE BOARD UPON MOTION MADE AND DULY SECONDED MOVED TO MODIFY THEIR SEPTEMBER 12, 1979 RESOLUTION IN THAT ALL PHYSICIANS LICENSED TO PRACTICE MEDICINE AND SURGERY WHEN LISTING IN THE TELEPHONE DIRECTORY MUST DISPLAY THE DEGREE DESIGNATION THAT THEY EARNED, AND THAT THE LISTING OF A DEGREE DESIGNATION IS NOT OPTIONAL AS INDICATED IN THE SEPTEMBER 12, 1979 RESOLUTION.

3. Assembly Bill #84 - Licensing of Respiratory Therapists and Respiratory Therapy Technicians

Doctor Edwin H. Albano, M.D., President of the Board indicated to the Board that Joanne Finley, M.D., Commissioner, New Jersey State Department of Health was not in favor of licensing Respiratory Therapists and Respiratory Therapist Technicians, but rather that if the legislation was adopted, it should provide for certification instead of licensing.

THE BOARD, UPON MOTION MADE AND DULY SECONDED SUPPORTED JOANNE FINLEY'S POSITION.

NEW BUSINESS

1. 5th and 6th Semester Programs for Foreign Medical Students

The Board held an indepth discussion on 5th and 6th Semester programs that had commenced with students of St. George's University in Grenada, West Indies engaged in unapproved clinical programs in certain New Jersey Hospitals.

The Board, in conjunction with this problem discussed N.J.A.C. 13:35-6.2 the Board's formal rule titled "Guidelines for an Externship Program", as it is apparent that many hospitals feel that this rule provided authorization for 5th and 6th semester programs.

THE BOARD, TO CLARIFY THIS SITUATION, UPON MOTION MADE AND DULY SECONDED VERIFIED THAT THE RULE GOVERNING EXTERNS IS RECOGNIZED BY THE BOARD AS BEING AN EXTRACURRICULAR PROGRAM ONLY AND IS NOT PART OF A CURRICULUM OF STUDY OF A MEDICAL SCHOOL. THE BOARD HAS NOT APPROVED AND DOES NOT INTEND TO APPROVE 5TH AND 6TH SEMESTER PROGRAMS. THE BOARD FURTHER RULED THAT IT HAS ONLY, AT THIS TIME, RECOGNIZED CERTAIN SPECIFIC 7TH AND 8TH SEMESTER PROGRAMS THAT WERE APPROVED BY THE BOARD ON A CASE BY CASE BASIS UPON ADVANCE WRITTEN APPLICATION TO THE BOARD.

JRT's copy

NEW BUSINESS continued

2. Attorney General John J. Degnan - Meeting with the Board.

The Attorney General met with the Board to discuss matters of mutual concern. A discussion was held concerning the relationship between the Board of Medical Examiners and the Board of Nursing especially as it relates to situations that involve interpretations of the practice of medicine.

The Attorney General recommended to the Board that a Committee of four members be appointed from each of the two Boards, with one member from each Board being a public member and that Deputy Director, Division of Consumer Affairs, August Lembo, be a member of the Committee and act as Chairman.

The Attorney General recommended that the Committee be an Advisory Committee only and the Committee would attempt for a period of (6) six months to establish statutory authority in specific matters where there is a question as to what is and what is not the practice of medicine. He further recommended that the Committee devise general guidelines concerning what is the practice of medicine and what is the practice of Nursing and these guidelines could be used to help decide cases in question. He further indicated that cases could be submitted to the Advisory Committee for determinations.

The Attorney General further indicated that after a period of (6) six months, if the workings of the Committee did not prove satisfactory that he would then make the required determinations of matters in question.

THE BOARD, UPON MOTION MADE AND DULY SECONDED APPROVED THE ATTORNEY GENERAL'S RECOMMENDATIONS AND DOCTOR EDWIN H. ALBANO, M.D., PRESIDENT OF THE BOARD APPOINTED THE FOLLOWING BOARD MEMBERS TO THE COMMITTEE:

Edwin H. Albano, M.D.
Jordan D. Burke, M.D.
Thomas DeCecio, M.D.
Ruth Ballou, Public Member
Enio Calluori, M.D. (alternate member)

Board Members Riggs and Ware not present for discussion or vote.

Nurses association will appoint a similar group

(1)

adopted

PLEASE NOTE that last year the Medical Society passed a resolution stating any candidate for a driver's license should not be permitted to pass visual requirements for operating a motor vehicle by the use of any telescopic device.

Dr Fonda will

REPORT OF THE AD HOC COMMITTEE ON THE PRINCIPLES OF MEDICAL ETHICS

(A-79)

Subject: Final Report with Recommendations

Presented by: James S. Todd, M. D., Chairman

Referred to: Reference Committee on Amendments to Constitution and Bylaws (William P. Arentzen, M. D., Chairman)

INTRODUCTION

During the 1977 Interim Meeting of the House of Delegates, the Judicial Council introduced Report A, "American Medical Association Principles of Medical Ethics," which offered revised Principles for consideration. The stated intent of the revision was to clarify and update the language, to reach a proper stance between professional principles and contemporary society and to eliminate any reference to gender. First adopted in 1847, Principles were revised during the 40's and most lately in 1957. The latest publication of the "Opinions and Reports" of the Judicial Council was issued in 1977, the first such revision since 1966.

Following debate in the Reference Committee on Amendments to Constitution and Bylaws and on the floor of the House, the House deferred action on the Revised Principles and approved the Judicial Council Report A (A-78) recommending "that a special committee of the House be appointed to consider the revision of the Principles further. To assure that this special committee is broad-based, the Council recommends that it consist of appropriate representatives from the House of Delegates and the Board of Trustees, and that it meet with the Judicial Council to study this matter further."

The Speakers of the House appointed the following to serve as an Ad Hoc Committee:

James S. Todd, M. D., Chairman
H. Thomas Ballantine, Jr., M. D.
Amos P. Bratrude, M. D.
John J. Coury, Jr., M. D.
Jean F. Crum, M. D.
Henrietta Herbolsheimer, M. D.
Joseph T. Painter, M. D.
Carroll L. Witten, M. D.

This Ad Hoc Committee presented an initial report to the House of Delegates at the 1978 Interim Meeting. In that report the Committee detailed its activities and indicated that while the emphasis of its charge was on the review of the current Principles of Medical Ethics and the revision proposed by the Judicial Council (I-77), the Committee believed that such a review warranted a more comprehensive study of the evolution of ethics in society, the role of ethics for a profession and the consequences of ethical statements vis a vis society and law.

principles were drafted. A final meeting was held on June 24 to finalize this report. The goal of these deliberations was to develop a new version of the Principles of Medical Ethics which, while addressing classical areas of ethical responsibility, would also be contemporary enough to preserve the position of medicine among the professions.

ETHICAL PHILOSOPHY

As a consequence of its study, the Ad Hoc Committee has concluded that moral principles are standards of conduct applicable to all segments of society, while ethical principles are standards of conduct in accord with the moral standards of a society, but particularly applicable to a special segment of that society. Medical ethics are, therefore, a specific application of the universal norms of moral behavior. It should not be assumed that there is a special type of ethics appropriate solely to our own profession. Ethics for a profession depend upon the role of that profession, and, as in medicine, when the role expands, ambiguity and uncertainty appear. Traditionally, ethics evolve from human experience and define what one ought to do. As human experience expands and changes, so does the need for study of ethical behavior.

A code of ethics sets the limits beyond which behavior will be unacceptable, and in general addresses areas not defined by law. In many instances ethics will establish standards of greater virtue than law, and while ethical behavior requires conformance to law, it also mandates lawfully conducted action to change those provisions felt to be morally inferior or detrimental. If only an appeal to individual conscience were allowed, chaos would result. The professional must work within the constraints and expectations set by those who commission his work.

The shifting sands of society preclude long-standing adherence to ethical principles without reevaluation and restatement into forms appropriate to the times. No professional organization has adhered immutably to unchanging codes, and the American Medical Association is no exception. Ethical changes cannot be settled solely by rational discussions, but rather as a result of the realistic evaluation of human experience.

Ethics were never intended to be laws, but rather standards by which one may be measured. Ethics are broad and lofty ideals which permit individual discretion counterbalanced by individual accountability. Rules, on the other hand, restrict individual discretion, and by close adherence, reduce accountability. In a profession where the individual is dominant, as in medicine, latitude for individual discretion and accountability must be provided. A hallmark of a professional is the willingness of the individual to assume personal responsibility for professional activities.

Any restatement of ethical principles should not be looked upon as a change in policy or a lowering of standards, but rather as a refinement of those principles to a level where they have greater contemporary meaning. Ethical behavior is behavior that is appropriate and fitting in particular circumstances guided by more universal norms. The specific mandate does not change, but its application does. Physicians will be in an increasingly awkward position if they hold to the traditional commitment that their only concern is to the patient. Society is demanding more and the need for change should not be ignored. Ethics as statements of virtuous conduct have been evolutionary in development, and that evolution inevitably will continue as new problems and attitudes develop. Professionals must distinguish between a profession and a function. The function truly may be eternal, but a profession is temporal and must respond to change if it is to survive. The profession does not exist for itself, it exists for a purpose, and increasingly that purpose will be defined by society. Failing this accommodation, the profession will wither as external pressures mount.

> "Opinions and Reports of the Judicial Council remains a basic compilation of interpretations, opinions and statements of the American Medical Association Judicial Council which may be expanded, contracted, or modified from time to time to meet changing conditions of medical practice."

As was done in the Substitute Resolution for Resolutions 16, 50 and 106 (I-78), the House may, however, request the Judicial Council to reconsider their opinions.

2. With the emergence of bioethical issues such as the technology of genetic control, recombinant DNA, and controlled fertility along with the changes in society's moral position, the medical profession can expect to face many ethical problems in the future. The Ad Hoc Committee believes a mechanism should be developed for monitoring, periodically reviewing and anticipating the ethical stances to be taken by the profession.

3. In order to establish clearly the House of Delegates as the body which generates the Principles of Medical Ethics, the Bylaws need to be amended by deleting "the establishment of principles and" from Chapter XIII, Section 4A, 2d. (6.4011 decimalized version).

4. Extensive testimony was heard regarding a perceived change in American Medical Association policy regarding chiropractic. In 1966 (C-66), the House of Delegates approved Report E of the Board of Trustees which spoke directly to the status of chiropractic. Although modifying statements have been adopted, no subsequent action has been found which would clearly change that position. In the opinion of the Ad Hoc Committee, the current position of the Association relative to chiropractic needs to be clarified.

5. During the discussion of physician responsibility to patients, it soon became apparent that there was a subtle difference in the doctor-patient relationship between the physician acting in a purely diagnostic role, and the physician who provides continuing care. The latter physician has an ongoing relationship and responsibility to the patient for as long as the therapy or its effects continue. The physician serving only a diagnostic role appears to have discharged responsibility to the patient once a competent report is returned to the referring entity.

   The Ad Hoc Committee feels that these apparently differing responsibilities should be studied and a report submitted to the House on the appropriate role of the primarily diagnostic and the therapeutic physician.

CONCLUSIONS AND RECOMMENDATIONS

The Committee is of the firm opinion that the Association should have a strong, broad set of Ethical Principles, maximizing individual discretion and accountability while at the same time informing the public to an uncompromising attitude toward honorable behavior within the profession. While primarily for the benefit and protection of patients, such

ANNOTATIONS TO THE PRINCIPLES OF MEDICAL ETHICS

(not to be an integral part of the Principles)

The preamble and seven principles were developed after a thorough assessment of the prime areas of physician concern within society and the profession. They represent a logical continuum beginning with a presumption of broad responsibility, with subsequent specific statements regarding discipline, society, due process, implementation of function, reserved rights, and independent responsibility as a citizen. No one Principle can stand alone or be individually applied to a situation. In all instances, it is the conglomerate intent and influence of the Principles which shall measure ethical behavior for the physician. Interpretation and application of these Principles are the prerogatives of the Judicial Council.

Preamble: This language establishes broad areas of responsibilities for all physicians, and reaffirms the belief that ethical standards are for the benefit of the patient. To allow for maximal individual discretion and accountability, these statements are clearly guidelines open to interpretation and universal application.

I. A concise statement of mission emphasizing the magnitude of a physician's commitment, and how it shall be met.

II. This wording is a clear mandate for self-discipline, calling on the precepts of fairness and honesty toward all. The deceitful are to be exposed, the impaired helped, and the unscientific educated.

III. Society should expect obedience to laws properly enacted, but the dedication of a physician requires lawful disagreement and attempts at modification of those laws inimical to sound patient care or contrary to accepted moral behavior.

IV. Due process is constitutionally guaranteed. No one has, or should have, the ability to abridge the legally given rights of another. Similarly the professional relationship is predicated on trust, and the confidentiality of this relationship, within the constraints of the law, must be assured.

V. Effective implementation of a physician's mission depends upon the application of sound scientific concepts, the ability of the public to make intelligent health choices, both as to procedure and person, and the liberal use of consultation with other health professions as may be indicated.

VI. Within the framework of these Principles, the physician is entitled to certain rights which should not be denied if individual talents are to be developed to the fullest. Freedom of choice both by physician and patient is essential.

VII. Citizens should participate in community and societal affairs. By virtue of special training, a physician, as a citizen, may have additional value and should recognize that possibility. Whether to exercise that citizen's responsibility always has been and should remain an individual decision.

The Hospital Center at Orange
188 South Essex Avenue / Orange, New Jersey 07051 / 201—678-1100

Orange Memorial Hospital Unit
New Jersey Orthopaedic Hospital Unit

March 13,1980

Robert G. Lorello, M.D, President
Essex County Medical Society
144 So. Harrison Street
East Orange, New Jersey 07018

Dear Dr. Lorello:

Enclosed are two resolutions I have offered to be presented before the House of Delegates of the Medical Society of New Jersey at its annual meeting in May of this year.

In keeping with the By-Laws of the Medical Society these resolutions are reaching you prior to the cuf-off date for publication and introduction before the House of Delegates.

Sincerely yours,

HERMAN M. ROBINSON, M.D.

HMR:pc

Enclosure -

no action (5)

RESOLUTION TO REJECT THE PROPOSED REVISION OF THE CODE OF MEDICAL ETHICS OF THE AMA

Herman M. Robinson, M. D., Essex County

Whereas, the proposed revision of the Code of Medical Ethics of the AMA is too broad and philosophical to enable the medical community to uniformly adhere to a standard of professional behavior, and

Whereas, Society has a right to expect clear and understandable bounds of ethical behavior, and

Whereas, previous judicial counsel decisions have refined the meaning of the Code of Ethics, and

Whereas, the present Code of Ethics has been tested and modified and found acceptable to a majority of physicians, and

Whereas, the largest Medical Society in the United States, the California Medical Association has rejected the revised Code of Ethics:

Be it resolved, that the House of Delegates of the Medical Society of New Jersey reject the proposed revision of the Code of Medical Ethics of the AMA except for deletion of gender.

3 adopted

ESSEX COUNTY MEDICAL SOCIETY

RESOLUTION

NATIONAL HEALTH INSURANCE AND
CASTASTROPHIC HEALTH INSURANCE

Whereas, Policy on modifications to our present health care system has been outlined at a recent AMA House of Delegates meeting, be it

Resolved, The Medical Society of New Jersey adopt in principle these concepts and policies on National Health Insurance and Catastrophic Health Insurance espoused by the AMA House of Delegates as follows:

1. Requiring minimum standards of adequate benefits in all health insurance policies sold in the United States with appropriate deductible and co-insurance.
2. A simple system of uniform benefits provided by the federal, state, and local governments for those individuals who are unfortunate enough (through no fault of their own, i.g., age, disability, financial hardship, etc.) not to be able to provide for their own medical care.
3. A nationwide program by the private industry of America (and government if necessary for reinsurance) to make available catastrophic insurance coverage for those illnesses and individuals where the economic impact of a catastrophic illness could be tragic. All catastrophic coverage should have an appropriate deductible and co-insurance to make it economically feasible and to avoid abuse.
4. A program developed pursuant to these principles should be administered at the state level with national standardization through federal guidelines.

March 18, 1980

WHEREAS Visual Impairment is a potential cause of driving accidents,

and

WHEREAS current driving standards do not address all important Visual Function,

and

WHEREAS visual abilities vary with significant change in light,

and

WHEREAS drivers are required to have periodic eye tests which may effect the license of many individuals and especially the elderly,

THEREFORE, be it further RESOLVED that the Medical Society of New Jersey endorse the position already taken by the Eye Section of the M.S.N.J. at their Annual Meeting in May 1978 which voted unanimously to adopt the following requirements for operating a motor vehicle.

THEREFORE, be it further RESOLVED that the following requirements for operating a motor vehicle be adopted by the Medical Society of New Jersey:

1. Minimum visual acuity of 20/50 in better eye uncorrected or with best spectacle or contact lens correction.
2. Peripheral vision should be tested.
3. No color vision test indicated.
4. No telescopic, hemianoptic or field expanding devices are sanctioned.
5. Minimum visual field should be 140 degrees when tested with 3mm. white test object at 330mms. or equivalent. And also with,
6. Limited licensure for applicants with vision of 20/50 to 20/70 in either or both eyes, but with the horizontal field of vision should not be less than 140 degrees. (E.g., limited licensure only in daylight.)

not adopted

SAMPLE RESOLUTION

Whereas, physicians have always provided dedicated, scientific and personal care to all patients regardless of race, creed, sex, national origin or economic status, and

Whereas, there is clear statistical evidence that almost every New Jersey physician participates in the provision of care to Medicaid recipients and

Whereas, the payment schedule of the New Jersey Medicaid has not been increased nor reviewed by the State Government or the Legislature over a period of many years despite inflation, the increased costs of medical practice and the increases granted to the eligible recipients themselves,

Therefore be it resolved, that MSNJ request the Governor, the Legislature and the Department of Human Resources to review the Medicaid program payments to physicians for their continuing care of these patients.

August 24, 1979

Frank J. Malta, M.D.
President
New Jersey Society of Internal Medicine
P. O. Box 8292
Trenton, New Jersey 08650

Dear Doctor Malta:

I have carefully reviewed the ASIM protocol regarding audits and I have the following comments or observations which may be of assistance to you and the members of ASIM in regard to the subject now and in the future.

The Prudential Insurance Company acts as a carrier and fiscal intermediary for three governmental health programs in New Jersey. They are Part A & B of Medicare and the Medicaid program. In the administration of these programs, we must assiduously comply with law and regulation but in the implementation of these mandates, we endeavor to exercise the same courtesy, consideration and fairness that has characterized Prudential's growth as a commercial insuror over the past one hundred years. Further, the Governmental Health Programs Office here in Millville, and its staff, considers that it has maintained consistent and extraordinarily fine relations with professional organizations and with ASIM in particular. Therefore, we are distressed that the Society has a perceived need to develop a protocol for future audits without consultation with us since our office probably performs the large majority of them. We are distressed further that ASIM did not consult with us prior to this development to determine what actually has occurred in audits, the authority for the audits, the criteria utilized to determine the necessity for audits and the statutory protection and relief measures afforded to all citizens which guard their rights.

We suspect that this entire issue derives from a single allegation of abuse which did not involve Prudential and which may eventually be determined to be not only an inaccurate representation but one detrimental to the profession itself. We are not, however, privy to the

development of this issue by ASDM. Had we been involved, we might have been able to allay fears and obviate the necessity for time-consuming and unnecessary efforts in this area.

For the record, permit us to tell you about our professional relations program, which includes claim development, reviews, audits, and rarely "investigations"; first, in respect to Medicare then in respect to the Medicaid program. We have, in New Jersey, seven representatives traveling in specific areas of the State. These are mature, trained, usually long-term employees of rank equivalent to Manager or Associate Manager which, in Prudential, is an attainment of a significant business stature. More than fifty percent of their visits to patients or physicians are to help one or the other in some fashion and may not, in any way, be construed as audits, reviews or investigations of any kind. These are various types of "educational" contacts.

Since more than 50% of claims are unassigned and submitted by elderly, sick patients, these unassigned claims often require development on behalf of the patient. This often requires visits to the physician's office to obtain details to permit payment. Such visits are due to lack of information from physicians and a lack of response to inquiries. An additional 25% or more of the time of our professional relations staff is devoted to this activity. It is spread over all providers such as ambulance service, durable medical equipment suppliers, hospitals, dentists, podiatrists, etc., and is not limited to the physician population. Thus, it is concluded that only a very small amount of time is devoted to reviews, confirmation of service, audits or investigations or even educational efforts to control utilization.

If a patient forwards a complaint about professional bills, the law and regulations require that the complaint be investigated by on-site interviews. We are pleased to report that more frequently than not we inform the beneficiary and the government that the allegation is unfounded. This activity thus protects the physician. We consider that we actually avert one malpractice suit per quarter by this activity. The development of these allegations is time-consuming and these efforts should not be construed as audits or reviews.

All of the above activities require the cooperation of physicians, are non-threatening, and must not be considered "audits" requiring guidelines such as those published. Such protocols may actually hamper the resolution of patient and physician problems. Fourteen thousand providers, 861,000 Medicare beneficiaries and 629,000 Medicaid recipients, 3-5 million dollars a day dispensed may produce problems. Seven problem solvers contacting physicians to resolve problems should be an asset, not constitute a threat, and cannot confirm an allegation of audits. Actually, the number of actual audits is very, very small. A percentage of activity does consist in utilization review and the control of abuse by non-punitive, educational efforts. Our professional representatives do not handle fraud. Fraud is a crime and any problems of this nature by law are under the jurisdiction of the Federal Government and not within the competence of the Prudential. We cannot investigate fraud!

Prior to any interview with physician, there has been a careful evaluation of claims or statistical information in our office. In almost every instance, there is also professional medical evaluation prior to and subsequent to the interview. There are some mandated criteria for utilization review which are not within the carrier's discretion but we apply these criteria with great care. We make appointments for all reviews. Sample claims development visits may occasionally be performed by a representative who is making a number of area visits and needs only to see the secretary, nurse, or physician momentarily. Our representatives carry identification; they always endeavor to visit at the physician's convenience in his office; they have never engendered a complaint about poor manners, discourtesy or other non-professional conduct on their part.

We do not set forth our request to visit an office in writing since this has never appeared necessary nor has it been requested. If a physician demanded this, we would accommodate him in this regard.

We do not routinely accede to a demand that the contact be made by a physician for this activity since all reports and clinical records are reviewed by medical staff and our medical staff responds by telephone and letter to physician inquiries usually within twenty-four hours. Quite frankly, medical staff in the office is available for all

physicians who require that level of assistance. A personal visit from a Prudential physician usually is reserved for very serious problems where other action such as Peer Review, etc., may be contemplated or anticipated.

If the conclusions of a review or audit or any contact is unfavorable to a provider, it should be emphasized that the provider may request a reconsideration (Informal Review) or a Fair Hearing. There is professional medical input into both of these procedures by Prudential medical staff. The physician may submit any additional information and may provide any witnesses, authorities, representation, et cetera, as he desires at a Fair Hearing or at any other conference or meeting required.

In one area there does exist mutual concern. We are occasionally mandated to interview patients. Such interviews are the result of a substantial need or significant reason which demand such interviews. The interviews are performed by the same skilled professional interviewers as are the physician interviews. Every effort is made to protect the reputation of the providers and no accusations whatever are made. It must be noted that these health programs are patient-oriented programs and this is one of the controlling factors in the review process.

In regard to confidential or sensitive material, Prudential adheres strictly to the AMA and APA policies in this regard. A physician may forward such confidential or sensitive information directly to the Medical Director and our representatives are aware of this policy.

In regard to the Medicaid program, Prudential provides the same services described above up to a point. This state-operated program does maintain its own utilization monitoring unit and its own technicians and medical staff as authorized by law. Actual audits, reviews, investigations or confrontations may occur and may involve only State officials. These may be separate and distinct, original or supplemental, to Prudential actions and with or without Prudential knowledge. Some aspects of the Medicaid program differ from Medicare and a different set of State laws and policies apply. In addition, Medicaid has different problems and issues than does Medicare. However, as a matter of personal knowledge, we can aver that State employees at

all levels involved in the Medicaid program are as concerned, considerate, knowledgeable and possess equal integrity, pride, and professionalism as our people who work with and for them.

The reason for this entire essay is to indicate the following:

> The review systems need engender no fear for the professional.
>
> The review system is probably as good as humans can make it.
>
> Allegations of misbehaviour in the review system are probably rare and exaggerated and, finally,
>
> We must always maintain a dialogue to prevent the escalation of issues beyond their true significance.

I will be most pleased to dilate further on this subject if the Council desires.

I have endeavored to cover a very complex subject by letter, and my response may be incomplete.

Yours very truly,

James E. D. Gardam, M.D.
Vice President, Medical Services

JEDG:jkb

P.S. We will be pleased to describe for the Council any other aspect of 'Care or 'Caid claims processing procedures.

NEW JERSEY SOCIETY OF INTERNAL MEDICINE
A COMPONENT OF THE AMERICAN SOCIETY OF INTERNAL MEDICINE
P. O. BOX 8292 TRENTON, N. J. 08650

August 8, 1979

Dr. James E. D. Gardam,
Vice-President Medical Services
Prudential Insurance Company
Post Office Box 471
Millville, New Jersey 08332

Dear Jim:

Enclosed is a copy of Guidelines for an Audit which was sent to our membership. It was developed with the assistance of Mr. Vincent Maressa, Executive Director of Medical Society of New Jersey.

Please send us any comments you may feel appropriate.

Very truly yours,

Frank

Frank J. Malta, M.D.
President

FJM:llg

NEW JERSEY SOCIETY OF INTERNAL MEDICINE
A COMPONENT OF THE AMERICAN SOCIETY OF INTERNAL MEDICINE
P. O. BOX 8292 TRENTON, N. J. 08650

July 17, 1979

Dear Member:

At the NJSIM Council meeting of June 20, 1979 it was recommended that the Medical Society of New Jersey be contacted for guidelines to be followed in the event of any Medicare and Medicaid audit. The following guidelines have been recommended:

1. Absent a court order, auditor(s) may not barge into an office unannounced and disrupt office routine.

2. They must be conducted during regular business hours, unless other arrangements have been mutually accepted.

3. The audit would normally be in the physician's office, unless otherwise agreed upon.

4. The physician should request that the audit be in writing, and that the time and location be set forth, that the place of audit be established, and that the names of the auditor(s) be listed.

5. Upon receipt of the foregoing, the physician may verify the foregoing via telephone, with the central office that is sending out the auditor(s). When appearing at the doctor's office, personal identification (i.e. driver's license or social security card) should be requested and this compared with the names previously supplied by letter and verified via telephone.

6. If anyone wishes to tape record the audit interview, the consent of the auditor(s) should be secured. If they refuse, that fact should be noted on a file memorandum.

7. Witnesses and photographs would interject a circus atmosphere and they are never employed in any auditing procedure as a rule.

8. The physician who may be audited may request and insist that one of the individuals be a physician.

9. Patient records may be reviewed by the auditor(s) and copies made of any part of the records. Should there be some highly confidential information in some part of the patient's chart, then the physician may request that the information is confidential and that it remain confidential. Ordinarily, the actual record(s) should not leave the physician's office. If a record(s) is allowed out of the office, a receipt should be obtained from the auditor(s).

10. Try to remain poised during the audit, offering whatever cooperation may expedite the audit, as well as avoiding over-reacting that might generate a hostile atmosphere.

Should any member wish to comment on these guidelines or add a personal experience of an audit that would be of benefit to the Society, please contact NJSIM, P. O. Box 8292, Trenton, New Jersey 08650.

Very truly yours,

Frank J. Malta, M.D.

Frank J. Malta, M.D.
President

FJM:llg

√ FOR BOARD ACTION ATTACHMENT # 3

EXECUTIVE COMMITTEE

February 6, 1980

REPORT TO: Board of Trustees

MEETING: March 16, 1980

FROM: Executive Committee/
Alfred A. Alessi, M.D., President

RE: Resolution of Committee on Medicaid Regarding Investigations by the Division of Medical Assistance

The Executive Committee considered this Resolution at a meeting on February 6, 1980. A copy is attached. After discussion we voted unanimously to submit the following substitute resolution:

Whereas, the Division of Medical Assistance and Health Services has an investigative branch which is empowered to review the files of providers and interview patients; and

Whereas, these reviews and interviews should be done in a positive and constructive fashion; now therefore be it

RESOLVED, that the Board of Trustees direct staff to suggest that the Division establish a protocol for those assigned to conduct investigations and interviews that will foster a positive environment; and be it further

RESOLVED, that the Committee on Medicaid continue to monitor the activities of the Division of Medical Assistance and submit regular reports thereon to the County Medical Societies.

ECMS Council Agenda - Tuesday evening, March 18, 1980 at 8:00 P.M.

1- Call to order at ECMS office - Robert J. Lorello, M.D., President

2- Requests for Emeritus Membership were received from Anthony J. Biunno, M.D. of Short Hills (formerly of Newark), and Harrison R. Wesson, M.D. of Glen Ridge. Both are completely retired and have been members for over 20 years.

3- Credentials Committee - James J. Stovin, M.D., and David H. Dreizin, M.D., Co-Chairmen

4- Discuss Medicaid Resolution - James E.D. Gardam, M.D.

5- A letter was received from a member inquiring whether or not an insurance has the right to audit a physician's medical record and charges, prior to consideration of payment of physician's bill.

6- Revisions to Medical-Legal Cooperation Agreement between Essex County Bar Association and ECMS.

7- A request was received from Dan Smiley, President of the American Medical Student Association for assistance in the form of a $50.00 contribution to help defray cost of a student delegation to the AMSA National Convention in Philadelphia.

8- MSNJ Judicial Council Opinion re: Ethical Procedures in Second Surgical Opinions.

9- A member desires a new membership category in the MSNJ Constitution and By-Laws which would take into consideration a leave of absence due to illness.

10- Prudential Insurance Company revising its regulations governing their Pension Plan and the ECMS has the group plan with Pru.

11- ECMS Representative to Health Manpower Committee of Regional Health Planning Council.

12- Call for all Resolutions for MSNJ.

13- Report on MSNJ Board of Trustees
   a) Committee on Long Range Planning recommendation:
   b) New Jersey Bell Telephone directory listings
   c) County Society problems submitted as they arise
   d) Chapter Change - representation of specialty societies.

ANNOUNCEMENTS:
1) ECMS Annual Meeting will be held on Thursday evening May 8, 1980.

2) MSNJ Annual Convention at Meadowlands Hilton
House of Delegates meets in Hilton Ballroom

Saturday afternoon, May 10, 1980 at 2:00 P.M.
Sunday afternoon, May 11, 1980 at 3:00 P.M.
Monday afternoon, May 12, 1980 at 3:00 P.M.
Tuesday morning, May 12, 1980 at 9:00 A.M.

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