



MBA Medicine, Unneeded Amputations & "Fraud"

VOICES OF MEDICINE



By Del Meyer, MD

The academic physician now differs little from his colleague in the community hospital.

SIDNEY GOLDSTEIN, MD, EMERITUS head of cardiovascular medicine at Henry Ford Hospital, in an article in Internal Medicine News, recalls the pundits who predicted that MBA medicine was a phase and that America would focus on healthcare deficiencies, not ambulatory patients with "through-put" efficiencies. How wrong they were. The tidal wave of changes in the last decade has washed away standard practice in a system dedicated to efficiency, and cost containment has emerged from the rubble.

The number of Americans without health insurance now exceeds 40 million. There are deficiencies of healthcare in urban and rural America. Now people want protection from the healthcare system through a Patient Bill of Rights that, if achieved, will do little to improve patient-physician inter-reaction.

The brief pause in escalation of costs championed by HMOs is over, and a rise in cost is resuming. Academic medicine has been gutted by the pressure to increase patient volume, decrease inpatient days and shorten encounter time in the clinic. Teaching has diminished, along with personal guidance in history taking and physical examination. Students have become more interested in discussing the easily collected laboratory data and radiology findings.

Research was a part of the interaction between learning and teaching, and patient care was the crucible within which it all came together. In its quest for economic survival, academic medicine has accepted the ground rules of MBA medicine: teaching adds no efficiency and does not enhance the financial performance of the academic hospital. Medical school faculties are looking to improve patient productivity in order to improve their salaries. The academic physician now differs little from his colleague in the community hospital - both compete for the well-insured patient with little regard to either academic standards or social responsibilities to the community at large.

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Carl Elliott reports in the Atlantic Monthly that Robert Smith, a surgeon at the District Royal Infirmary in Scotland, amputated the legs of two patients at their request and was planning a third amputation when the hospital trust stopped him.

These patients did not need amputation for medical reasons and were considered competent by the psychiatrists who examined them. Elliot outlines many of these instances, including self amputations. He found one list of 1,400 interested subscribers on

the Internet. Psychiatrists and surgeons continue to be baffled by this interest.

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Several physicians discussed their Medicare investigations at a recent Association of American Physicians and Surgeons conference on physician problems in the current healthcare environment. One had finished serving a prison sentence and gave his first speech since addressing a federal judge six years earlier.

Jeff Rutgard, MD, an ophthalmologist in San Diego, had built a flourishing practice with one ophthalmologist employee through hard work and vigorous self-promotion. From 1988 through May 1992, he received \$15.5 million from Medicare. This accounted for 80 percent of his practice. At 6 a.m. on Monday, April 27, 1992, Dr. Rutgard and his family were awakened by armed federal agents who entered his home with a search warrant; he was told other agents were at his two offices.

Dr. Rutgard was soon stripped of his medical license. On March 24, 1994, a federal grand jury returned a 217-count indictment against him, mainly alleging unnecessary cataract surgeries or improper eyelid surgery billings for a small number of patients.

Dr. Rutgard hired a nationally known attorney who stated he would need 3-4 months of full-time preparation and a \$1 million advance. The trial was originally scheduled for June, reset for August and occurred in October. At a pretrial court appearance in mid-September, Dr. Rutgard moved to relieve his lead attorney and obtain a continuance. In supporting affidavits, both the national attorney and a local co-counsel declared that they were unprepared. But the judge denied the motion and proceeded to trial with the same attorneys.

After a five-month trial, Dr. Rutgard was found guilty of a number of acts of mail fraud and false claims involving \$65,000 in Medicare billings. At the prosecution's urging, the trial judge found that Dr. Rutgard's entire practice was permeated by fraud, and extrapolated the \$65,000 - less than 0.1 percent of the practice - to all Medicare proceeds received. As a consequence, he was fined \$16 million and given an 11-year prison sentence. He was denied bail pending his appeal and sent to prison without the courtesy of saying goodbye to his wife and five children.

From prison, it took Dr. Rutgard three years to appeal. The appellate court, after reviewing the trial evidence, reversed many of the counts and found only \$45,000 of billings in question. Importantly, the appellate court threw out the extrapolation to \$16 million, declaring the prosecution had not met its burden of proof. The case was sent back for re-sentencing.

By then, Dr. Rutgard's appellate attorney had evidence to challenge many of the allegations on blepharoplasties, which constituted the major portion of the \$45,000. Included was an affidavit from a UCLA Professor of Ophthalmology that he found nothing below the standard of care. However, the same trial judge did not allow introduction of this evidence that should have been available for the original trial had the defense been prepared. The judge changed the prison term to the five years served and only reduced the fine. He did not require that the defense attorneys return the money advanced.

After the verdict, one juror wrote to the judge that he did not think his guilty vote meant jail time - and if he needed cataract surgery, he would want Dr. Rutgard to do it. Another juror told the San Diego Union that he felt Dr. Rutgard was innocent but voted him guilty because it would require too much government money to allow the doctor a new trial.

The testimony given by Dr. Rutgard's fired office manager and one biller was the basis of the grand jury indictment. Other billers who signed statements disputing the fraud were never allowed to testify. Three years later, the same office manager and assistant biller

were deposed in another trial and testified that Rutgard had not fraudulently billed Medicare.

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