



Voices of Medicine



By Del Meyer, MD

A solution for the lawyer problem, computerized pizza purchases, HIPAA's leakage.

VITAL SIGNS, the official organ of the Fresno-Madera Medical Society, is a 12-page non-glossy magazine published monthly. It is primarily written by physicians and, thus, a true "Voice of Medicine." Hats off to a medical society whose members still communicate with each other on a monthly basis. We've selected two "Voices" from the last two issues.

Why not Law-Cal?

David Hadden, MD, a Fresno pathologist, was sworn in as President of the Fresno-Madera Medical Society in January 2005. He recently attended a NORCAP meeting where the speaker sported both law and medical degrees.

When the speaker gave forth with the trial attorneys' talking points - the problem with malpractice was poor investments by insurance companies and not outrageous awards - it was easy to see that he had eschewed science for money. He claimed MICRA had nothing to do with California's lower rates.

At that point, Hadden turned him off and resorted to his own musings. What kind of system is it where an attorney can sue beleaguered physicians and make more money in a year or two than the doc will make in a lifetime? What kind of system is it where a lot of money is considered to be the salve for pain and suffering?

What kind of system is it where we cure illness and get Medi-Cal, while the attorneys cure nothing and get contingency fees? Ah, there's the answer. Let's give the attorneys "Law-Cal."

It would start, of course, with the promise of usual and customary fees. These would be scaled back as the system runs out of money. Each attorney would be entitled to a thick book of billing codes. Each person he deposed would be assigned a code based on age, sex, height, prior experience, education and more. Of course, these codes would be regularly denied, forcing appeals - all of them handled by disgruntled, failed paralegals. Need I mention delayed payments? Certainly, any claimant who felt a settlement was unfair could sue the attorney.

This system would work because of a surplus of lawyers. This state supports, with our taxes, a number of law schools. But we have a shortage of nurses. Why not close the law schools and open nursing schools? Would health care improve with more nurses or with more lawsuits? As the conference went into a break, Hadden just wanted to say, "Give me a break."

Will Computers Rule Our Lives?

Merwyn G. Scholten, Executive Director of the Fresno-Madera Medical Society, writes his Mert's Musing column about a penetrating and thoughtful email missive he received in

December from retired cardiologist Lauren Grayson, MD.

The audio-visual email allows the viewer to witness a conversation between an employee and a gentleman ordering two pizzas via his cell phone. Before he identifies himself, the young lady taking his order knows his name, national identification number, address, place of business, etc. When he tries to order two double-meat pizzas, he's told he should be ordering the healthy "sprout submarine combo" with tofu sticks because of his high blood pressure and cholesterol count. She accessed his health record via his health insurer.

She further notes (from her computer) that considering his recent 42-waist trouser purchase, he should be eating the healthy special. When he insists on the double-meat pizzas, he is told there is a \$15 delivery surcharge because he lives in an "orange zone" of criminal activity - a house on his street was recently burgled.

He will have to sign a waiver to absolve the pizza shop of any health liability. She allows how he can afford the now-\$67 order, given a recent purchase of airline tickets to Hawaii, but then reconsiders when she sees he bought a book on how to do Hawaii on the cheap. Finally, she tells him he'll have to pay cash because his credit cards are maxed, but he can save \$3 with an on-line coupon available through a magazine to which his wife subscribes. By now he's relented and ordered the sprout submarine combo, so his total after using the coupon will be only \$19.99.

Although Mert makes an excellent point that we must be on guard to prevent our lives from being taken over by automation, he veers sharply to the left in saying that's why HIPAA regulations make sense. But HIPAA exposes us and our patients to the greatest invasion of our privacy, without consent or even disclosure. It is a fox at the chicken house door.

HIPAA and My Health Information

Before I could purchase my prescriptions recently, I had to sign a HIPAA agreement. It was impossible to read all the fine print standing in line. But there were six Health Information Rights (HIR) concerning my Personal Health Information (PHI). These included: (1) request a restriction, (2) request an amendment, (3) receive an accounting of disclosures that have been made, (4) inspect and receive a copy of my PHI on file, (5) request communication at a specific phone number or place, (6) an assurance that they will accommodate if they think it is reasonable. Implementing any of these HIRs would cause great consternation for the people in line and so my signature was given - under duress, as most government signatures are given.

What is not always apparent is how the pharmacy (or other health providers) can use the PHI without any further notice. My PHI can be used to contact any health care provider deemed necessary; to monitor my performance; inform contract providers, business associates, or anyone involved in my care or that pays for my care; contact me for refill reminders, treatment alternatives or other health-related benefits and services they think may be of interest to me; fulfill any requirements of my insurance or workers' comp carrier. My PHI can be disclosed to my insurer or benefits manager; the FDA; public health or legal authorities charged with preventing or controlling disease, injury, or disability; to oversight activities including audits, investigations, and inspections, as necessary for their licensure. It can be used for law enforcement purposes, or as required by any law; for the government to monitor the health care system, government programs, and compliance with civil rights laws. My PHI can be used in response to any lawful process by someone else involved in the dispute.

The pharmacy is also permitted to use or disclose my PHI under any of the following circumstances: research; coroners, medical examiners, and funeral directors; organ or tissue procurement organizations; notifying a family member, personal representative, or another person for my care; correctional institution; military commanders if in the military; federal officials for intelligence, counterintelligence, and other national security activities authorized by law; protective services to the President, or foreign heads of state or special investigations; to government authorities or social service or protective service

organizations if they suspect that I'm a victim of abuse, neglect, or domestic violence.

I wonder *who* does not have access to my Personal Health Information under HIPAA? HIPAA really opened Pandora's box for wide dissemination of PHI without notice or disclosure. Who was sleeping at the brig when this law was being introduced? Either advocacy does not work, or our organizations were on the wrong side of the debate and failed to protect ours and our patients' interests.

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