

# California and National News



## **Med School Applications on the Rise:**

Applications to medical schools in the U.S. rose for the first time since 1996, and women applicants outnumbered men for the first time, according to a report from the Association of American Medical Colleges (AAMC). The number of applicants fell steadily after 1996 until last year, the association says. The number of applicants for 1995-96 was 47,000, and last year the total was 33,625. The total for the next enrollment period of 2003-04 is 35,000.

The number of women applicants increased almost 7%, to 17,672, this year, the group says. Although the number of black applicants rose by almost 5% to 2,736, the number who were accepted and then attended medical school was only 1,056, a decrease of 6%, the report says. The number of Hispanic applicants increased by less than 2% to 2,483 since last year, while Hispanic attendees declined by almost 4%, to 1,089. AAMC President Jordan Cohen says the report shows schools need to work harder to attract minority students. (From *USA Today*, November 6, 2003.)

**Overworked Nurses May Make Errors:** Tired and grumpy nurses forget to wash their hands, give the wrong drugs to patients and waste hours on paperwork, a panel of experts said in an Institute of Medicine report calling for shorter hours and better working conditions for the profession. In order to reduce medical errors and make conditions better for nurses and patients, state regulators should ban nursing staff from working more than 12 hours a day and more than 60 hours a week, the committee says.

“The benefits go beyond saving lives,” says Donald Steinwachs, head of the committee that wrote the report. He added that the changes would make nurses less likely to quit or change jobs, and would save money spent treating patients hurt by costly mistakes. “Every safety-sensitive industry . . . sets some sort of boundary on hours,” said Ada Sue Hinshaw, dean of the University of Michigan school of nursing. The U.S. has 2.2 million registered nurses, 700,000 licensed practical and vocational nurses, and 2.3 million nursing assistants. In 2002, a federal government report forecast a 12% shortage in the U.S. supply of nurses by 2010 and a 20% shortage by 2015. (From *USA Today*, November 6, 2003.)

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**Medical Coalition Sues State Over Cuts in Medi-Cal Reimbursements:** A coalition of medical groups has filed a lawsuit in federal court to reverse a legislatively approved cut in the rates that Medi-Cal pays doctors. The groups say the 5% rate cut approved in this year's budget to save California \$115 million violates the federal Social Security Act. That law, according to the California Medical Assn. and other plaintiffs, requires that Medi-Cal pay rates that will attract enough doctors to serve the program's patients. Medi-Cal, the nation's largest Medicaid program with 6.5 million beneficiaries, reimburses health-care providers who treat the poor and uninsured.

According to the lawsuit, which was filed in U.S. District Court in Sacramento, the rate reduction is making it impossible for many doctors to treat Medi-Cal patients. Courts in the past have been sympathetic to that argument. Health-care advocates filed a similar lawsuit in 1987 after similar cuts in reimbursement rates. In that case, rates were ultimately restored. "The state is greatly injuring the most vulnerable Californians," said Jack Lewin, chief executive of the CMA, which represents 34,000 doctors. He and others said it was already costing doctors money to treat Medi-Cal patients, some of whom must travel miles just to find an office that will accept them. After the cut takes effect in January, internists and family physicians will receive about \$23 from Medi-Cal for a typical office visit.

The lawsuit says the number of primary-care physicians who agree to treat Medi-Cal patients is one-third lower per capita than for the general public. For specialists, it is 50% lower; for surgeons, it is two-thirds lower. But the CMA was unable to provide figures for how much more of a decline—if any—will occur in access to care once the rate reduction takes effect. State officials defended the cut. "In good times the Davis administration increased provider rates," said Hilary McLean, spokeswoman for former Governor Gray Davis. "The very harsh reality is in the last few years California has been buffeted by sharp declines in revenue. We had to make a lot of tough decisions in order to eliminate the budget shortfall."

According to the California Department of Health Services, the defendant in the lawsuit, the reimbursement cut exempted certain types of facilities to lessen the impact on Medi-Cal patients. The rates will not be cut for nursing homes, clinics and for some hospital services. The health-care groups call the cut shortsighted because every dollar the state spends on Medi-Cal is matched

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by the federal government. The state, they say, will lose more than \$115 million in federal money as a result. The provider rate cut was put in the budget to help the state close a \$38-billion budget gap. Former Governor Davis initially had proposed a 15% cut, but legislative leaders scaled it back in the final budget deal. (From the *Los Angeles Times*, November 8, 2003.)

**Ventura Hospital CEO Resigns Post:** In an effort to end a court battle with its medical staff, the board of Community Memorial Hospital (CMH) in Ventura asked for and accepted the resignation of the hospital's long-time executive director, Michael Bakst. Bakst's resignation, announced on September 30, comes after several years of escalating tension that led the medical staff to file a lawsuit against the hospital in April of this year, alleging numerous violations of the medical staff's self-governance rights.

According to the hospital's press release, Bakst's resignation occurred after "significant deliberation, including input from the medical staff" about the future of CMH. The hospital's patient census is reported to have been flagging for several months as a result of the contentious relationship between the administration and the medical staff. Bakst's departure is the first sign that the hospital may be interested in resolving the dispute out of court.

Medical staff leaders and hospital board members are meeting weekly in an effort to resolve their differences. "We would like to see some significant resolution of issues with the Board within a month," says past chief of staff Robert Garrison who has been involved in the talks. "Among other things, the Board has to recognize that John [Hill] is our chief of staff, because that is who the medical staff elected." When the hospital imposed its conflict-of-interest policy on the medical staff earlier this year, it refused to recognize several medical staff officers elected last fall, including Dr. Hill.

Medical staff leaders remain cautious about the future, however. "But even if we settled the litigation tomorrow, this hospital will never be the same," says Hill. "A lot of folks on the medical staff have been really hurt by all this administration has done. Physicians have been vilified, demeaned, and attacked, and the trust we've had in this institution for so many years has been destroyed." It will take a long time, predicts Hill, "for physicians to feel really secure again and feel like they're here to stay."

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The medical staff is grateful for the support and financial assistance it has received through CMA's Legal Defense Fund from many different sources, **including specialty societies such as the California Society of Anesthesiologists**, California Academy of Family Physicians, and medical associations, medical staffs and medical groups from all over the state. For more information on this case, or to make a donation to CMA's Legal Defense Fund, visit <http://www.calphys.org>. (From CMA's *Medical Staff Advocate*, October 2003.)

**Judge Again Rules Ventura Medical Staff Can Proceed with Lawsuit:** In a significant legal victory for the medical staff at Community Memorial Hospital Ventura, Superior Court Judge Henry Walsh rejected for the second time the hospital's effort to throw out the medical staff's lawsuit.

Judge Walsh had ruled in August that California law recognizes the medical staff as an unincorporated association, and therefore its right to sue the hospital. He rejected the hospital's argument that the medical staff is just another hospital department which cannot sue its parent institution.

However, Walsh also had ruled that several of the medical staff's complaints were improper because they were worded as violations of individual physicians' rights. The medical staff in September rewrote the complaint, resubmitting them as issues in which all medical staff members have a direct interest.

This week's ruling means that unless a settlement is reached, the case will go to trial and the hospital will be forced to defend its numerous violations of physician rights. Walsh's ruling had an immediate effect. That same day, the hospital's Board of Trustees authorized its lawyers to begin formal settlement negotiations with the medical staff.

Informal settlement talks had yielded no agreement, despite initial optimism caused by the abrupt resignation a few weeks ago of hospital CEO Michael Bakst. For more information, or to donate to CMA's Legal Defense Fund, contact: CMA's legal information line, (415) 882-5144 or [legalinfo@cmanet.org](mailto:legalinfo@cmanet.org). (From *CMA Alert*, October 30, 2003).

**Patients Have Difficulty Taking AIDS Drugs:** While much of the national debate is focused on how to help more people afford costly

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medicines, there is an increasingly urgent problem of non-adherence for patients already on drug therapies. Earlier this year, the World Health Organization reported that only around 50 percent of people typically follow their doctors' orders when it comes to taking prescribed medicine. And the consequences of non-adherence are significant. Failure to take prescribed drugs contributes to everything from AIDS deaths to avoidable emergency room admissions, and it can undermine the management of chronic conditions.

This phenomenon helps to explain why the promising results of clinical trials are often unmatched when drugs are in the hands of patients. For instance, trials of anti-retroviral therapies have proved effective in suppressing HIV in as many as 95 percent of participating patients. But in routine daily life, the reported rates of HIV suppression drop to the 40-50 percent range. Doctors believe the discrepancy is one important reason why there continue to be so many AIDS-related deaths.

The issue of non-adherence, even when the drugs may prolong or save patients' lives, belies simple explanation or demographics. Rich, highly educated people are just as likely not to take their drugs as poor or less-educated people. Complex regimens, forgetfulness and the increasing cost of drugs all contribute, but the major reason appears to be a fear of side effects. People dislike the way they feel when they take multiple drugs, so they simply stop taking them.

Later this year in Dallas, a second annual conference devoted exclusively to improving adherence to HIV therapies will be held. In addition, WHO is developing a training package for health care and community professionals focused on how to get patients to better adhere to anti-retroviral therapy. And National Institutes of Health currently has over 35 trials studying ways to improve patient adherence to medication for a range of conditions, including depression and other psychiatric disorders. (From *The Wall Street Journal*, October 21, 2003.)

**Federal Judge Approves Aetna Settlement:** A federal judge gave final approval Friday to the settlement reached with Aetna in CMA's RICO lawsuit. CMA and 18 other state medical associations agreed in May to a settlement with Aetna, one of nine HMO defendants in the case being heard in Miami by Federal District Judge Federico Moreno. The suit alleges that

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the for-profit HMO defendants violated federal law by using coercive, unfair, and fraudulent means to control physician-patient relationships.

In his ruling, Judge Moreno called the settlement an “excellent result.” “If this case were to proceed without settlement, the resulting trial and inevitable appeal would be complex, lengthy, and very expensive,” wrote Judge Moreno. “More importantly, the settlement calls for the prospective elimination of billing and payment practices detrimental to physicians.”

Aetna has agreed to make its fee schedules and payment rules available to physicians; adopt a clear “medical necessity” definition to enable physicians to care for their patients without being second-guessed by insurance administrators; abide by fair payment rules; and establish an independent appeals process for physician billing disputes. These changes are expected to speed payments to physicians and lower administrative costs. Aetna also agreed to include in the settlement several commitments that Aetna made to CMA well over a year ago, including the commitment to pay capitation from the date of enrollment and limit to \$1,000 the amount small physician practices have to pay for arbitration.

The settlement also provides \$100 million to be divided among the more than 600,000 physician plaintiffs, about \$150 per physician. If you did not submit a proof-of-claim form by the September 30 deadline, your payment will automatically be donated to the foundation established under the settlement, which will promote physician-directed improvements to the nation’s health care system.

As reported previously in *CMA Alert*, CMA has also reached a settlement with Cigna, another of the RICO HMO defendants. Physicians should have already received settlement notices from the Cigna settlement administrator. As described in the notice, the deadline for physicians to opt out of the settlement is November 20. Judge Moreno granted preliminary approval for the Cigna settlement on September 4, and could decide final approval at the fairness hearing, which is scheduled for December 18. For more information on this settlement, including a copy of Judge Moreno’s ruling, contact: CMA’s legal information line, (415) 882-5144 or [legalinfo@cmanet.org](mailto:legalinfo@cmanet.org). (From *CMA Alert*, October 30, 2003).

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### **CMA Opposes Proposal to Relax Practice Standards for Midwives:**

The Medical Board of California decided last week to place its proposed midwifery regulations on hold indefinitely. CMA and the American College of Obstetricians and Gynecologists (ACOG) had jointly voiced strong opposition to the proposed regulations, which would redefine practice standards and physician supervision requirements for midwives. The regulations would, among other things, allow licensed midwives in California to deliver babies at home without physician supervision.

“The board has exceeded its authority, by redefining what constitutes physician supervision,” said CMA President Ronald Bangasser, M.D., and ACOG District IX Chair James Macer, M.D., in a joint letter to the board. “The proposed regulations remove the need for a licensed midwife to have any type of relationship with the supervising physician.”

Midwives have been licensed to practice in California since 1994, but they have been unable to practice home delivery because of the requirement for both physician supervision and the unavailability of liability insurance for physicians supervising midwives for births outside of hospitals or accredited birthing centers. The proposed regulations would waive the physician supervision requirement, as long as the patient has an ongoing relationship with a physician or an HMO.

CMA also objected to the proposed regulations' vague standard-of-care definition. “The standard of care proposed in these regulations—that of the midwifery community—is entirely without specific content,” the letter said. “Licensed midwives should be held to the same standard of care as other health practitioners who provide perinatal care to women in California. Such a standard should be clearly defined.”

The board acknowledged the serious legal questions raised by CMA and ACOG and requested a published opinion from the state attorney general on the matter. The regulations have been placed on hold pending the attorney general's published opinion. For more details, including a copy of CMA's letter to the medical board on this issue, contact: Sandra Bressler, (415) 882-5171 or [sbressler@cmanet.org](mailto:sbressler@cmanet.org). (From *CMA Alert*, November 13, 2003.)

### **Physicians Must Be Allowed to Sue Health Plans for Unreimbursed ER Claims:** CMA on Friday filed a letter with the California Supreme

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Court, urging it to review yet another appellate court decision that allows health plans to evade payment responsibility for emergency services. In this case, *Chase Dennis Emergency Medical Group Inc. vs. Aetna U.S. Health Care of California*, the 2nd District Court of Appeal in Los Angeles ruled that while California law requires health plans to pay for emergency services, unpaid providers cannot sue health plans to recover payment for services provided to enrollees because neither the language of the statute nor its legislative history “clearly indicates the Legislature intended to create such a right to sue for damages.”

This is just one of three recent cases in which the courts have allowed HMOs to absolve themselves of the very function for which licensure is required under the Knox-Keene Act—to reimburse providers (in this case, for life-saving emergency services)—so long as they contract away that responsibility to failing third parties that are generally unlicensed and not subject to regulatory control.

The appellate court said in its ruling that the responsibility to enforce the Knox-Keene Act lies with the Department of Managed Health Care (DMHC). CMA’s letter to the Supreme Court pointed out that despite literally millions of dollars in unreimbursed physician claims for emergency services, there has not been a single enforcement action brought by DMHC. Nor has DMHC taken any actions taken against HMOs that have failed to ensure the financial viability of their arrangements with contracting intermediaries, as required by law. All of this has occurred while HMOs are enjoying record profits and demonstrates a “profound need” for enforcement action, wrote CMA legal counsel Astrid Meghrihan in the letter. “The [appellate court’s] opinion leaves physicians treating emergency conditions wholly uncompensated for their services and remediless.”

CMA’s letter argues that the appellate court in this case applied an overly mechanical analysis of a prior Supreme Court decision (*Moradi-Shalal vs. Fireman’s Fund Insurance Companies*). The appellate court did not, as it should have, look at the purpose of the law—ensuring that providers get paid so that enrollees can receive continuous, accessible care—to determine whether a private remedy was required to achieve that purpose. For more information, including a copy of CMA’s letter, contact: CMA’s legal information line, (415) 882-5144 or [legalinfo@cmanet.org](mailto:legalinfo@cmanet.org). (From *CMA Alert*, November 13, 2003.)

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### **Board Defines “High Risk” Specialties for Settlement Disclosure:**

The Medical Board of California recently issued proposed regulations specifying which physician specialties would be classified as high risk and low risk under the malpractice settlement disclosure provisions of SB 1950.

SB 1950, signed by the governor last year, allows the board to disclose on its website when a physician in a low-risk specialty has three malpractice settlements above \$30,000 in a 10-year period. For high-risk specialists, disclosure is allowed after four such settlements.

The board’s initial proposal classified only neurosurgeons, plastic surgeons, and orthopedists as high-risk specialties. CMA, the American College of Obstetricians and Gynecologists, and the California Association of Physician Liability Insurers vigorously opposed this limited definition of high risk. CMA submitted to the board a chart of risk classifications, combining data from four malpractice insurance carriers, which indicated that obstetrics and any specialty that encompasses surgical procedures should be classified as high-risk specialties.

After considerable discussion, the board agreed to include obstetrics as a high-risk specialty, but did not add other surgical specialties. The amended proposal will be reissued for a 10-day comment period. For more information, contact: Sandra Bressler, (415) 882-5171 or [sbressler@cmanet.org](mailto:sbressler@cmanet.org). (From *CMA Alert*, November 13, 2003.)

### **California City Becomes First Colon Cancer-free Zone in World:**

Monte Sereno is the first city in the world to declare itself a “Colon Cancer Free Zone.” In a unique effort to reduce or eliminate colon cancer in a community, the City of Monte Sereno Council voted to accept the challenge to become a colon cancer-free zone. The City’s campaign will focus on increasing the awareness of colon cancer in the 1,200 households and encourage all 600 of its citizens who are at risk to have colon cancer screenings. The campaign will include distribution of informational materials describing what colon cancer is and how it can be prevented or detected in its earliest stages by available methods. Information on where citizens may obtain colorectal cancer screening, and physicians who will be participating in the campaign also will be made available.

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Tumor registry data showed that 10 cases of invasive colon cancer in Monte Sereno were diagnosed between 1997-2001. For such a sophisticated suburb of San Jose, this number seems unacceptably high. By demonstrating that this concept can work, Monte Sereno hopes to stimulate other cities to want to follow suite. The Chairperson and initiator for this project is A. Richard Adrouny, M.D., an internist/oncologist from Monte Sereno. (From the Editor's Notes.)

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### **Masking Consciousness**

The CSA thanks the Wood Library-Museum (mask and ether can) and the Arthur E. Guedel Memorial Anesthesia Center ("Quiver and Gourd for Curare Arrows" from the Richard C. Gill Curare collection, 1949) for their kind assistance, and for allowing us to use these images for the 2003 *CSA Bulletin* cover. We also are grateful to Gabrielle Jackson (hand with mask sculpture) for another of her creative contributions. Finally, Jack Johnson of South Bay Software did an innovative design layout.