

Dallas Medical Journal

JULY 2014

VOL. 100, NO. 7



A Vision of Excellence

President's Page

The Sunshine Act: Is it just another attack on the physician's character?

by Todd Pollock, MD



I'm concerned about what is happening to the image of physicians in this country. Throughout history, physicians have enjoyed a stellar reputation as noble, trustworthy and selfless professionals who champion their patients. Although times have changed over the millennia since Hippocrates, I see the embodiment of this spirit in my colleagues every day. Of course, like all human endeavors, we have our share of those who work on the fringe, who use their position and the trust instilled in them to take advantage of the system or the individual. That, too, I have witnessed.

I contend that these make up only a fraction of the profession and truly are outliers; however, several recent instances have spotlighted this fringe element of medicine, painting physicians as a whole in a negative light and trampling our good reputation. These things, initiated by our government, have come in the form of statements, regulations, policies, and laws which, intended or not, all potentially damage the image of the physician by implying our across-the-board complicit dishonesty, greed and abuse of the healthcare system.

I don't know if this is the absolute genesis or just when I began to take note. In the summer of 2009, President Obama was working overtime to drum up support for his signature healthcare reform bill. He traveled across the country speaking multiple times a day to groups large and small. His passion was palpable and he was clearly well-prepared. At a press conference in late July 2009, the president told the press corps: "Right now, doctors — a lot of times — are forced to make decisions based on the fee payment schedule that's out there. Your child has a bad sore throat or repeated sore throats. The doctor may look at the reimbursement system and say to himself, 'You know what? I make a lot more money if I take this kid's tonsils out.'"

What? Did he really just say that? Surely this man, who is basing his legacy on reforming the healthcare system of the United States, knows better. Surely he has competent advisers. He must have misspoken in the heat of the moment. But less than one month later, at a town hall meeting in Portsmouth, NH, the president went in for another jab. After detailing the medical treatment of a diabetic patient, which he states "might reimburse a pittance," he said, "But if that same diabetic ends up getting their foot amputated, that's \$30,000, \$40,000, \$50,000 — immediately the surgeon is reimbursed."

There are so many things wrong with that statement, starting with whether internists are letting diabetics get worse for the financial benefit of their surgical colleagues and progressing through a series of increasingly absurd statements to the side-splitter that "immediately the surgeon is reimbursed." This is from the mouth of the president of the United States, with

all of his resources and all of his advisers and all of his presumed knowledge of this system he is determined to completely redesign. Why would he say something so damaging to the trust between doctor and patient?

This past April, we saw the fed's public release of raw, unverified Medicare physician payment data that showed tens of billions of dollars paid out to physicians. No explanation was given of the work that was done for those payments. This incited a media dog-pile that focused on a tiny fraction of physicians who collect millions of dollars, creating an air of suspicion without justification. Never mind the meager reimbursements for the work we performed or the flawed (SGR) system for determining payments that Congress refuses to permanently fix. Despite the nobly declared intention of rooting out fraud and abuse, this data dump seemed to serve no real purpose other than to paint physicians as greedy and to foster ill will.

Brace yourselves, as the next salvo soon will be cast across the bows of medicine in the form of the Physician Payments Sunshine Act under the National Physician Payment Transparency Program.

The Sunshine Act, a part of the Affordable Care Act, requires manufacturers of pharmaceuticals, medical devices, medical agents, and supplies to report "payments or other transfers of value" greater than \$10 (or \$100 aggregate annually) to the Center for Medicare and Medicaid Services. The payments will be posted on an Open Payments website to let the sun shine on possible conflicts of interest. Those in the medical industry have been required to track these payment and so-called "transfers of value" to physicians since Aug. 1, 2013.

These include consulting fees, honoraria, food, education, research, royalties, grants, and current or prospective ownership to physicians or their relatives. Physicians need not do a thing. Just sit back and take it.

As of January, physicians could begin registering with CMS for the ability to review, in advance of publication, the payments they allegedly have received over the year. There will be a 60-day review period prior to the Sept. 30 publication date. That is 45 days to review the information and 15 days to correct any errors. The physicians must work directly with the manufacturers to correct any inaccuracies. CMS washes its hands of any verification or corrections. If the dispute isn't settled by the publication date, the payment in dispute is published anyway but with an asterisk. Despite being electronic, the data will be revised only once a year — so, whatever goes up on the website, you, the physician, owns for that year.

I tried to register on the CMS website, and I believe that CMS hired the same company that created healthcare.gov. I spent more than an hour trying to find the physician registration after meandering through page after page. Once I found the registration page, it was not a problem. So, for those of you who have stuck with me through this diatribe, here is my gift to you: <https://portal.cms.gov>. It took two attempts and cost me a few handfuls of hair, but I did it. When you register, be sure to have plenty of time and Propecia.

These government actions raise several questions:

What effect will this Sunshine Act have on physicians?

It's hard to say. For a while, we'll think twice before letting a drug rep into the office with a box of donuts. The Act may slow the dissemination of information on new drugs and devices. Front-page newspaper stories will feature physicians who are bringing in big bucks from the medical industry. But in the end, implementation of The Sunshine Act simply will be another waste of taxpayer dollars, another bureaucratic hurdle for manufacturers that will add to the cost of drugs and medical devices, and another sucker-punch to the eye of medicine. A more fruitful effort would be implementation of a Congressional Sunshine Act, but we all know that will never happen.

Why would there be an image campaign against doctors?

The vast majority of physicians are honest, but a small number are not. These certainly are outliers, so must Congress think only of these outliers as it legislates? It is clear that the federal government wants deeper involvement in health care, and some people have suggested that in order for the government to justify involvement in an area not specifically within its duties, it must demonstrate a need, such as protection of the public (see Michael

Crichton's book, "State of Fear"). Perhaps the vilification of physicians is a tactic to gin up public concern and thus support government's deeper involvement in health care. Certainly the complex and ever-changing rules and regulations of Medicare, OSHA, HIPAA, and the looming ICD-10 are making it more difficult for physicians to walk the straight and narrow, and making each of us just one step away from a breach.

How should physicians respond to these actions?

We must continue to keep in contact with our state and federal legislators, and encourage them to press for elimination of those laws and regulations that have little real value and are costly and destructive. We must support the efforts of our physician advocacy groups, such as the TMA. We must do our best to keep up and comply with this ever-changing sea of regulations. We must maintain good relationships with our colleagues because together we stand and apart we will, no doubt, fall. We must continue to practice good and ethical medicine. But most importantly, we must continue to maintain close relationships with our patients so they will know us as we truly are and will see through the smoke-screen. **DMJ**

“These things, initiated by our government, have come in the form of statements, regulations, policies and laws which, intended or not, all potentially damage the image of the physician by implying our across-the-board complicit dishonesty, greed and abuse of the healthcare system.”