# Bulletine SEPT/OCT 2019 MEMBER MAGAZINE FOR THE POLK COUNTY MEDICAL SOCIETY



Washington, D.C. Fly-In

Tort Reform in Iowa – A History Lesson

Trial Lawyer Ads – A Public Health Risk?

# SAVE # DATE

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Please join the legislators of the 88<sup>th</sup> Iowa General Assembly for our Annual PCMS

# Legislative Breakfast

Sponsored by the

# Polk County Medical Society

Wednesday, January 29<sup>th</sup>, 2020 7:30 a.m. to 9:00 a.m. Legislative Dining Room Iowa State Capitol

PCMS Members, join your colleagues to support and advocate the 2019 Legislative Priorities. (Talking points will be sent to all Members)

Please RSVP at 288-0172; Email: pcms@pcms.org

Official Publication of the Polk County Medical Society

#### **VOLUME 91 No. 5**

Des Moines, Iowa September/October 2019

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# Bulletin MEMBER MAGAZINE FOR THE POLK COUNTY MEDICAL SOCIETY

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## A MESSAGE to Members

By: Doug Massop, M.D.

Dear PCMS members and concerned citizens of lowa,

In the last PCMS bulletin, I talked about the need for further tort reform. I again want to emphasize how important this is for not only the doctors themselves, but also for the whole future of the Medical Profession in Iowa and the entire population of the State of Iowa.

I believe that all responsible physicians want to be sure that a medical plaintiff will be treated fairly. Traditionally, lowa has been home to "common sense Midwest values" with respect to reasonable plaintiffs and juries AND responsible jurisprudence. Patients who have had unintended consequences should be made whole by coverage of all medical expenses and all wages (both those lost and future).

The fundamental assumption by litigators that a physician defendant has intentionally tried to harm or damage a patient is not reasonable. With that assumption, demands are made in a spirit of punishment of the physician defendant. The recent colossal awards are enough to force practices, clinics and even hospitals to close, worsen the ability to recruit new doctors, and have current practicing physicians either retire early or leave the state and pursue practice elsewhere.

A brief history is important to understand where we have been and would like to go. In 2017, lowa enacted a \$250,000 cap on noneconomic damages consistent with California's successful Medical Injury Compensation Reform Act (MICRA) law. Awards for economic losses, such as medical expenses and lost wages, and punitive damages are uncapped.

But unlike California, lowa's noneconomic damages cap can be set aside. Consequently, the law cannot deliver its intended benefits. The legislature should fix the law by replacing the current "soft cap" with a "hard cap."

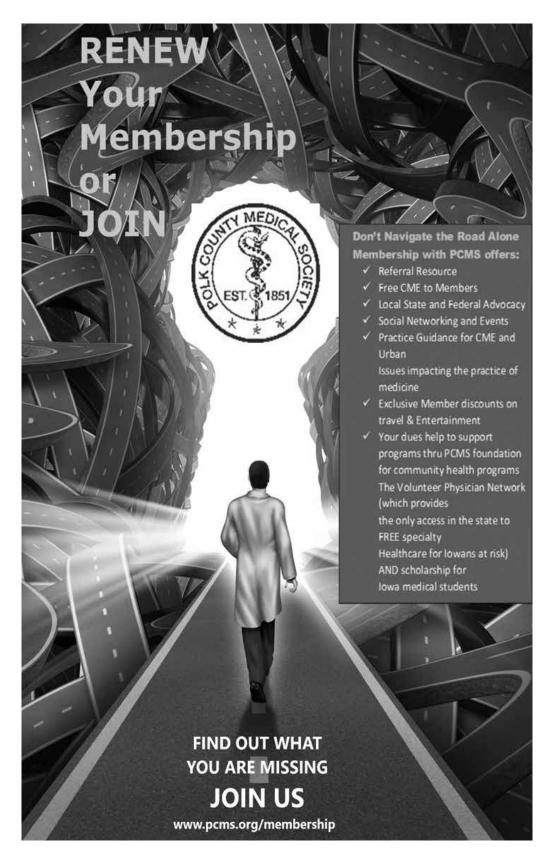
#### Many States Limit Noneconomic Damages, Especially in Medical Liability Actions

- About half of states limit noneconomic damage awards.
- Many states, like lowa, specifically limit noneconomic damages in professional negligence cases against health care providers.
- lowa's \$250,000 cap on noneconomic damages is consistent with California's MICRA (Medical Injury Compensation Reform Act) law.
- California's cap has been effective in reducing and stabilizing medical liability insurance costs, improving access to health care for Californians.
- Data on claim filings indicates that the cap "has not reduced access to the court system for individuals with meritorious claims."
- In 2014, California voters, by a 2 to 1 margin, rejected an initiative that would have raised the limit to \$1.1 million and indexed it to inflation. The proposal failed in every county of the state.

## Iowa's Current "Soft Cap" Does Not Provide Needed Predictability

- In 2017, lowa joined the many states that have limited noneconomic damages in lawsuits against health care providers. Governor Branstad signed the bill in part to "make it easier for [lowa] to attract and retain doctors."
- lowa's \$250,000 limit on noneconomic damages has been called a "soft cap" because jurors can set it aside. Unlimited noneconomic damages are available against health care whenever providers "the determines that there is a substantial or permanent loss or impairment of a bodily function, substantial disfigurement, or death, which warrants a finding that imposition of such a limitation would deprive the plaintiff of just compensation for the injuries sustained."
- Some cases are tried only on noneconomic damages. This shows that some plaintiff attorneys are more interested in hitting a noneconomic damages jackpot than actually compensating for injuries.
- Skilled plaintiffs' lawyers have repeatedly convinced lowa jurors to set aside the cap and award extraordinary noneconomic damages.

continued on page 7



#### Here are some examples:

- \$29.5M verdict all noneconomic damages - in June 2018 (DeJongh v. Sioux Center Community Health Center, Sioux County, death of 40 year old mother of four from anaphylactic reaction to CT contrast dye)<sup>viii</sup>
- \$18.1M verdict \$8.5M in noneconomic damages - in February 2017 (Phillips v. Isles and Flexible Family Care, Washington County, child brain injury)<sup>ix</sup>
- \$14.5M verdict almost \$2.9M in noneconomic damages in January 2019
   (Plowman v. Fort Madison Community Hospital, Lee County, baby born with fetal abnormalities allegedly not communicated to mother during pregnancy)\*
- \$12.25M verdict all noneconomic damages - in April 2019 (Huitt v. The lowa Clinic, Polk County, prostate case with ED and incontinence)xi
- \$10M verdict all noneconomic damages - in September 2017 (Estate of Pellock v. Wieters, Dubuque County, 80-year-old died from aspiration during surgery)<sup>xii</sup>

- The ease with which plaintiffs' lawyers can unscrew the cap and obtain gargantuan awards renders its intended benefits illusory. Premiums must reflect the potential for an uncapped extraordinary award.
- The unpredictability of the cap also exposes physicians' insurers to "legal blackmail." Plaintiffs' lawyers threaten that if their extortionate settlement demands are not paid, and a jury returns an uncapped award that exceeds the policy limits, the insurer will face bad faith-punitive damages liability—in addition to the loss in the underlying case—for not settling the case against the physician for the full amount of his or her policy before trial.
- In addition to threats to their reputation, physicians are routinely threatened with the loss of their personal assets because demands and awards are far in excess of policy limits. This is pushing senior physicians into retirement.

We need your help now – legislative session begins in January. We have a handout with best practices on how to meet with your legislator and establish a relationship so that when you reach out to them during session, they know

# GET YOUR Flu Shot

I don't need the flu shot, I never get sick. I got the flu shot last year so I am fine. Every year, we hear the reasons why people don't think they need a flu shot. Yet every year, individuals are hospitalized and die from the flu.

"The flu does not discriminate," said Helen Eddy, director of Polk County Health Department. "It affects the young, the old, the healthy and the sick. Getting your flu shot is vital to your health."

According to the Centers for Disease Control and Prevention, they estimate from October 1, 2018 through May 4, 2019, there have been: 37.4 million – 42.9 million flu illnesses, 17.3 million – 20.1 million flu medical visits, 531,000 – 647,000 hospitalizations and 36,400 – 61,200 flu deaths. It is difficult to know what this year will bring. Each flu season is unpredictable and can be severe. The best way to stay healthy each flu season is by getting the flu shot.

"Individuals get the flu vaccine not only to keep themselves healthy but to keep others healthy who can't get the flu shot," said Eddy.

The Polk County Health Department will be hosting community flu based clinics to give the community many opportunities to get their vaccine. Visit http://www.polkcountyiowa.gov/health to find the schedule. To speed up the process at the flu clinics, individuals can download the consent form from the Health Department web site and bring the completed consent form to the clinic. Consent forms are in both English and Spanish.

If you cannot attend one of the community-based flu clinics, please visit our walk-in flu clinic located at the Polk County Health Department (1907 Carpenter Ave., Des Moines).

The flu walk-in clinic will be open Monday – Friday from 8:30 AM to 4:00 PM and Tuesdays until 6:00 PM. Individuals

who you are and will be more likely to read and acknowledge your concerns or support of legislation aimed at removing the barrier of a soft cap in lowa statute.

Keep up the good fight and make this issue better for all,

Doug Massop, M.D., PCMS President

William G. Hamm et al., MICRA and Access to Healthcare (Jan. 2014).

iild. at 4.

"Cal. Sec. of State, Ballot Measures by County, Prop. 46 (Dec. 10, 2014) (reporting that 66.8% of voters opposed the initiative).

<sup>iv</sup>O. Kay Henderson, lowa law Caps 'Non-economic' Damages in Medical Malpractice Suits, Radio Iowa, May 5, 2017. <sup>v</sup>Tom Riley & Peter C. Riley, 8 Ia. Prac., Civil Litig. Handbook § 9:25 (Aug. 2018).

wiThe bill did not include the exception when it passed the Senate, but was amended before passage in the House. James Q. Lynch, Soft Cap on Non-Economic Damages in Medical Malpractice Gets Bipartisan Support in Iowa House, The Gazette, April 12, 2017.

viilowa Code § 147.136A.

viiiDeJongh v. Sioux Ctr. Comm'ty Health Ctr., 2018 Jury Verdicts LEXIS 20586 (June 13, 2018) (\$5.5 million to each of four children for loss of parental consortium; \$6 million for loss of spousal consortium; and \$1.5 million for decedent's past pain and suffering).

ix Janet, Janet & Suggs, LLC, lowa Verdict for Brain Injured Child, February 16, 2017.

\*Joe Benedict, Jury Awards \$14 Million in Plowmans v. FMCH, Fort Madison Daily Democrat, January 9, 2019 (mother awarded \$285,000 in past emotional distress and \$1,346,938 in future emotional distress; father awarded \$215, in past emotional distress and \$1,010,203 in future emotional distress).

\*Tony Leys, Wrong Patient Cancer Surgery Costs Iowa Clinic \$12.25 Million in Malpractice Case, Des Moines Register, April 5, 2019.

\*\*iPellock v. Wieters, 2017 Jury Verdicts LEXIS 11884 (September 30, 2017) (\$2 million past loss of spousal consortium; \$5 million future loss of spousal consortium; \$1 million past loss of parental consortium; \$2 million future loss of parental consortium).



# Sustain your community BUY LOCAL

By Paula A. Noonan, CEO

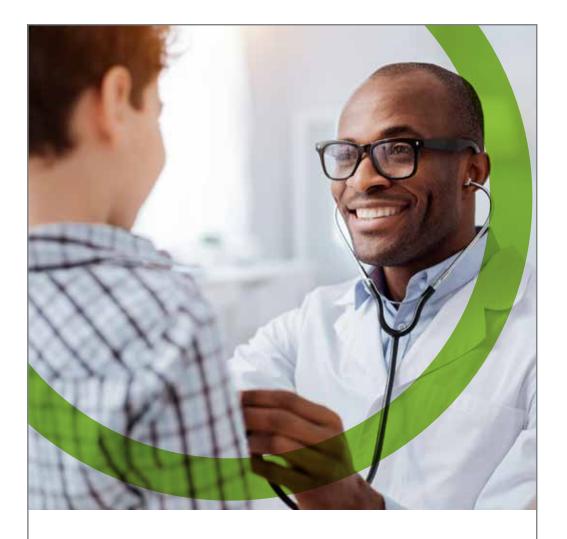
Buy Local. It is a common thread you hear every day, to enhance sustainability and support the region where you live. Well, that adage also applies to supporting your practice of medicine through engaging and being a member of your local medical society. It is your participation in your local medical society that helps to shape, create and sustain a safe healthcare working environment.

We, as your local medical society, are connected to the day-to-day concerns you share at the local urban level. Polk County Medical Society is an advocate for the success of all physicians who practice in Dallas, Polk, Madison and Warren Counties.

Our physicians shape central lowa urban medicine and the continual

improvement of community health. The Polk County Medical Society works with like-minded organizations to elevate the status of the physician, the practice of medicine and the medical profession both locally, and at the federal level.

Yes, we represent the local urban voice of medicine here at home, but our voice is very strong at the federal level and a trusted advisor to our delegation representing us in Washington, D.C. We protect and promote the patient-physician relationship. We seek to increase access to quality medical care for all persons in lowa and also the vulnerable and at risk within our Volunteer Physician Network (VPN) Program.



## The power of one

MercyOne Connect is your one resource for adult, pediatric and neonatal patient transfers. We specialize in facilitating transfers to MercyOne Central lowa by finding an appropriate accepting physician, requesting bed placement for the patient, helping to facilitate transport for patients and taking reports from the sending registered nurse.



The VPN was formed in 2002 by likeminded physicians in the Polk County Medical Society who wanted to make an impact by providing access to specialty healthcare for ALL lowans, delivered through a partnership with local hospitals, clinics and surgery centers in Des Moines. This service is a testament to what a community can do together.

A community of local physicians, through altruism, brought together through membership at Polk County Medical Society, had a vision and created an opportunity together to guide and shape a service into fruition that impacts all in our state through service of self by creating the ONLY ACCESS IN THE STATE OF IOWA TO FREE donated specialty care to any lowan below 200% of the federal poverty guidelines and who are not eligible for any other programs.

The PCMS and physician members have a unified belief that integrity is essential to all relationships, and our Medical Society promotes the highest standards of professionalism, ethics, and patient care.

Our Medical Society brings together all physicians and future physicians at all levels of their careers, beginning with our partnering with medical academic entities locally here in Des Moines (Des Moines University) and the University of Iowa. PCMS offers mentorship and guidance to students through the many avenues of their careers and relationship building with physicians here in our local community. This is so important in the face of national workforce shortages in physicians across America and shortages impacting us right here at home in lowa.

Medical students can meet and begin relationships with senior and renowned experts in his or her specialty of interest. They learn advocacy side-by-side with PCMS members here and in Washington, D.C. Members have the potential to foster powerful mentorship and leadership programs benefiting members in all stages of their careers, during their lifetime in our community.

PCMS members range from affiliate memberships, resident memberships, active practicing physician memberships, to emeritus and life memberships. We are your partners throughout the life of your career and beyond.

Being a physician is a more-thanfull-time job these days. Physicians' workdays are in the unique space of service to others that brims with a primary purpose — caring for patients. Physicians, when asked, would largely agree that they did not seek a career in medicine to chase down reimbursements from payers,

become technologically current in new IT trends for business administration purposes, nor become experts in regulatory compliance law or legislation in healthcare. It's all so daunting and exhausting.

As a physician colleague once voiced, "Self-advocacy feels like a luxury you can't afford . . . where do you even start. I want to practice medicine not run a company. I don't even get to spend the time I would like to spend with my patients anymore. It is becoming a numbers game."

It can make practicing medicine isolative and also lend to burn out and feeling pushed around, overworked, and underpaid. But feeling alone doesn't necessarily mean you are alone. You can find refuge in your peers, and that happens within your local medical society.

"There's safety in numbers," says Ted Epperly, a family physician and president of the American Academy of Family Physicians. "Your local medical association exists because like-minded people with like-minded issues or shared concerns, banded together to support and forward a common cause. We are here to aid and be a kindred spirit amongst your local colleagues and empathize with your reality, helping to find solutions or make a stand to impact your practice by helping shape policy, find business solutions, experts or consultants and make them available to you.

So, when you receive that annual renewal notice in the mail this year, be excited, be motivated, and be engaged. Plan to become part of your local healthcare community outside the boundaries of just your group, entity or practice. Become a resource and partner with your local colleagues and healthcare community.

Remind your colleagues to join if they are not members, encourage them to see what they are missing this year. Come to our, dare I say awesome, social events and functions!

WE NEED YOU. WE NEED EACH OTHER. TOGETHER WE ARE STRONG AND CAN AFFECT CHANGE. That is the basis of where our quality in healthcare comes from here in Des Moines and Central Iowa!

# ADVOCACY ON YOUR BEHALF

## Washington, D.C. Fly-In

The Polk County Medical Society held their annual Washington, D.C. Fly-In September 12th, while both the Senate and House were in session. PCMS Board Members, CEO and staff advocated personally with each of your lowa Congressional Delegation on behalf of PCMS members. 4 main issues were discussed in depth:

- 1. Medicare's Geographic Payment Disparity
- 2. Conrad 30 Extension and Expansion
- 3. Healthcare Workforce and GME
- 4. Surprise Billing

Senator Grassley's staff and PCMS discussed the GAO study on reallocation of the

geographic lines, which PCMS requested to address disparity payment for doctors in lowa. The study was concluded late summer and results are currently being compiled and analyzed and will be made available at a later date. PCMS has advocated aggressively for every year for accuracy of geographic adjustment factors under Medicare for lowa physician payments.

PCMS also discussed great concern for tort reform in lowa and the unforeseen consequences to patients, physicians and access to healthcare services, if legislation is not passed.



L-R: Marty Crowder, Janie Hendricks, D.O., U.S. Senator Joni Ernst, Kate Massop, M.D., Doug Massop, M.D. and Paula Noonan meet in the U.S. Senator Chambers to discuss PCMS Federal Priorities important to PCMS Members.



L-R: Paula Noonan, Janie Hendricks, D.O., Marty Crowder, Congresswoman Cindy Axne, Kate Massop, M.D. and Doug Massop, M.D. collaborated and discussed the issues so important to Central Iowa Physicians on behalf of PCMS Members.



L-R: Congresswoman Cindy Axne, Denise Fleming, Doug Massop, M.D. and Kate Massop, M.D. break bread in the U.S. House Dining Room at the U.S. Capitol to discuss healthcare and the welfare of Central Iowans, such as GPCI and the importance of the Conrad 30 Expansion and Extension.

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# TORT REFORM IN IOWA A History Lesson

By: Craig Mahoney, M.D. and Kevin Ward, CEO, Iowa Ortho

Polk County Medical Society, in collaboration with the Iowa Orthopaedic Society, was instrumental in the creation and passage of the SF 465 tort reform bill signed by Governor Terry Branstad on May 5, 2017. Called a "historic achievement for every physician, resident, and medical student in the state of Iowa," it represents a transformative shift in our state's approach to medical malpractice.

Though lowa has typically been relatively conservative with regard to medical malpractice, the number of medical malpractice cases in the state has increased over the past decade. And though more cases were settled than litigated, the growth in number

of cases has coincided with a general change in case outcome.

Litigations were decided increasingly in favor of the defense, creating extreme win-lose scenarios for all parties involved. In cases that were settled, the settlement values increased based on outside professionals' perspectives – which could be skewed due to their initiation by the plaintiff. That all changed with the signing of the SF 465, which created more equitable balances.

Since the 1970s, there have been numerous attempts to establish precedence and create a malpractice reform bill for the state of lowa. Regardless of which political party was





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L-R: Women in medicine meets women in power when Kate Massop, M.D., Janie Hendricks, D.O. and U.S. Senator Joni Ernst joined together to have a personal meeting at the U.S. Capitol on the issues that matter to physicians, surprise billing and health care workforce shortages



L-R: Janie Hendricks, D.O., Senator Joni Ernst and Doug Massop, M.D. discuss the impact of Tort Reform on the state of healthcare in Iowa and how tort reform has unforeseen consequences in federal legislative issues such as the health care workforce and services shortages, both urban and rural.



L-R: The PCMS Delegation and Mrs. Barbara Grassley in the White House Press Room, post conferences with the U.S. Delegation from Iowa.



with our gracious host, Mrs. Barbara Grassley.

View from the Rotunda of the United States Capitol in Washington, D.C.

#### PCMS Legislative Priorities for 2020

#### Support

- 1. Increase / Maintain Volunteer Physician Network (VPN) funding
- 2. TORT REFORM: Soft cap won, working towards legislation on hard cap
  - a. Since the 1970's, IMS has pushed for enactment of comprehensive traditional medical liability reforms like a cap on noneconomic damages. In 2004, it came close with passage of a cap that was ultimately vetoed. In 2011, it again came close with House passage of Certificate of Merit legislation that the Senate declined to take up. In 2013, a physician-led Tort Reform Task Force issued a recommendation to a dual approach for both short-term and long-term success in the fight for tort reform. These recommendations led to the 2015 passage of lowa's innovative *Candor* statute and culminated this session with the passage of the most sweeping reforms to our state's medical liability system in more than a generation, including:
    - i. \$250,000 Cap on Noneconomic Damages
    - ii. Strengthened Plaintiff Expert Witness Standards
    - iii. Certificate of Merit
    - iv. Expanded Candor Protections
- 3. Regulation of e-cigarettes/vaping for especially for minors.

#### 4. Administrative Burden - Progress Made

a. One of the contributing factors to physician burnout is burdensome insurance regulations that are forcing physicians to spend more time dealing with paperwork and insurance call centers, and less time caring for their patients. To help address this, PCMS supported and pursued two pieces of legislation last session – an ambitious, comprehensive prior authorization reform bill and a targeted piece of legislation to create a prescriber-initiated step therapy override process for commercial insurers. The insurance industry was successful in halting the broader piece of legislation, but PCMS supported legislation prevailed in enacting the step therapy legislation that took effect January 1, 2018. PCMS continues to explore additional avenues for targeting the administrative burdens practices face every day.

#### Monitor

- 1. Medicaid Managed Care
- Pharmacists legislation to be able to prescribe additional drugs, i.e. reproductive prescriptions based on blank IDPH blanket prescription.
- 3. Cannabidiol improvement to state's existing Cannabis laws

#### Oppose - Scope of Practice Legislation

- Optometrists will continue to attempt to expand scope of practice into eye surgery & procedures
- 2. Legislation impacting or limiting the practice of medicine.

in the majority, many local and staterun medical societies like Polk County Medical Society continued to fight for tort reform – a remarkable effort, given the escalating polarization of politics during the time period.

In 2004, the House and Senate agreed to place a cap of \$250,000 on noneconomic damages but failed to enact lasting change due to a veto by then-Governor Vilsack. Following this effort, tort reform was not successfully established until 2019, with the signing of SF 465.

The details in the bill are pertinent for physicians and surgeons in Iowa. It instituted a cap of \$250,000 on noneconomic damages except extreme/egregious cases that impairment of bodily caused function or significant disfigurement strengthened expert standards, created a certificate of merit for all medical liability suits, and expanded candor protections for physicians.

It also put in place governing standards defining the professional qualifications of outside experts, whose opinions may or may not be in-line with local rules of care. Specifically, any outside expert must be licensed in the same or substantially equivalent specialty as the defendant and have been in active practice or in academia in the prior five years to the incident.

To establish substantive merit, the bill additionally requires that an affidavit be filed at or near the start of a liability suit. This has the potential to become a game changer, restoring some degree of balance to the system and reducing or eliminating the number of marginal cases that may have been settled for nuisance values.

With the passage of SF 465, physicians in lowa had hoped to see a significant decrease in the number of malpractice claims and inflated payouts. Our source's anecdotal experience suggests an approximate 30 percent reduction in malpractice premiums.

Furthermore, experts believe that this reduction will be sustained and could further reduce future frivolous cases. With that being said, the required certificate of merit may create a perceived concern in that it may act as a validation of compensable issue. In other words, jurors may be led to believe that the certificate "would not have been issued" had medical malpractice not occurred, irrespective of the facts.

This could precipitate an increase in nuisance suits, in which plaintiff counsel files a certificate based on a fact issue then argues for settlement based on the anticipated or perceived value of litigation and avoidance of that expense.

As it stands today, we wish we could fully prognosticate the entire long-term impact of this tort reform; however, it is certain that it has changed the medico-legal environment in lowa for the foreseeable future.

Going forward, it is our hope that all stakeholders approach medical malpractice as responsible professionals with a common-sense tort reform model. And when reports of medical malpractice inevitably arise, we hope that plaintiffs, juries

and counsel take a reasonable and responsible approach for productive outcomes for all – maintaining focus on the ultimate endgame, which is the best possible healthcare for lowans everywhere.

A version of this article has been previously published in AAOSNow in December 2018.



## Join DMU's obstetrics/gynecology faculty

Des Moines University seeks a part-time (0.5 FTE) obstetrics/gynecology faculty member in its Specialty Medicine Department to provide educational lectures and oversee the OB/GYN curriculum, clerkship rotations and post-rotational exams in the specialty. The position has no assigned clinical responsibilities.

Qualifications for this position include a doctor of osteopathy degree from a COCA-accredited college of osteopathic medicine or an M.D. degree from an LCME-accredited school of allopathic medicine; minimum three years' experience in OB/GYN; possession of a license or license eligibility to practice in Iowa; and current board certification in OB/GYN or appropriate subspecialty. A minimum three years'

teaching experience in undergraduate or graduate medical education is desirable.

Qualified candidates are invited to apply by submitting a CV, cover letter, statement of teaching interest and reference contact information to <code>www.dmu.edu/employment</code>. For a more complete job description, benefit summary or information on Des Moines University and/or its programs, visit <code>www.dmu.edu/employment</code>.

Founded in 1898, Des Moines University offers eight graduate medical/health sciences degrees in its three colleges. An equal opportunity employer, DMU evaluates qualified applicants without regard to race, color, national origin, ethnicity, creed, religion, age, disability, sex, gender, gender identity, sexual orientation, pregnancy, veteran status, genetic information and other characteristics protected by law ("protected class"). Candidates from under-represented groups are encouraged to apply.



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- **Physical Therapy**
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- Spine Center
- Surgical Breast Clinic
- Surgical Oncology
- Transplant Surgery
- Trauma Surgery & Surgical Critical Care
- **Urology**
- Urogynecology/Gynecology
- Vascular Access Center

West Lakes Sleep Center

- Vascular Surgery
- Vein Therapy Center
- West Lakes
- Medical Equipment
- Women's Center

## DOES TRIAL LAWYER ADVERTISING

## Pose a Growing Risk to Public Health?

What would you do if you saw a TV ad about a lawsuit against a drug company over a medication prescribed by your physician that you were currently taking? In 2017, the U.S. Chamber Institute for Legal Reform (ILR) asked that question of 1,335 adults—500 of whom were currently taking or had taken one of 12 prescription drugs frequently targeted by personal injury lawyers.

Nearly half of the survey respondents said they would definitely or probably stop taking the drug immediately after seeing the ad. When shown an actual TV lawsuit ad about a drug they or a household member had taken, more than half said they would reduce the dosage to below the prescribed amount.

Problems with litigation advertising are not new. The ILR study reinforces the findings of an earlier survey commissioned in 2007 by the National Council for Community Behavioral Healthcare. Its poll of 400 psychiatrists found that 97 percent had patients who stopped taking their medications or reduced their dosages. More than half of the respondents believed that their patients had reacted to litigation advertising. Another ILR poll found that,

in 2003, one-third of surveyed physicians had prescribed drugs to patients who then refused to take them because of litigation.

The malignant effects of attorney advertising are significant enough that the American Medical Association (AMA) House of Delegates adopted a policy during its 2016 annual meeting: The AMA would advocate to require warnings in attorney ads, cautioning patients to not stop taking their medicines without discussing it first with their healthcare providers.

Predictably, attorneys have a different view. When interviewed about the AMA's new policy, Philadelphia plaintiffs' lawyer Max Kennerly told Legal Newsline (an ILR publication) that the warnings are unnecessary: "Attorney advertisements are one of the primary ways that the public learns about new dangers of drugs and medical devices." Although Mr. Kennerly lists medical malpractice and drug class actions among his areas of special expertise, he also stated, "I don't know of a single instance of a patient stopping a medication and being hurt because they saw an attorney's advertisement."

Contrary to Mr. Kennerly's statement, ILR's study notes that MedWatch, the U.S. Food and Drug Administration's Safety Information and Adverse Event Reporting Program, received reports that 31 patients quit taking prescribed blood thinners after seeing litigation advertising and then suffered injuries that included stroke, pulmonary embolism, paralysis, and death. These incidents occurred between September 2014 and December 2015.

Another 61 reports through December 2016 described patients who had stopped taking blood thinners in response to attorney ads and suffered injuries that included cardiac arrest, stroke, deep vein thrombosis, transient ischemic attack, and death.

In an informational hearing on the subject in June 2017, the U.S. House of Representatives Judiciary Committee heard from practicing physicians whose patients had been negatively affected by attorney advertising—including one moving example of a patient who died because she stopped taking her prescribed anticoagulant after receiving a pamphlet in the mail from a plaintiffs' attorney targeting the medication.

The committee also heard from a law professor who explained that much of the drug litigation advertising is funded by so-called "aggregators"—law firms

that do not try cases but merely recruit plaintiffs. The aggregators then pass the plaintiffs to other law firms, often in jurisdictions far from the patients and their healthcare providers, where courts and juries are sympathetic to class action plaintiffs. The committee's final witness was a lawyer who counsels other lawyers on their ethical responsibilities. This witness felt that regulation of attorney advertising on drug litigation is unwise and unnecessary.

In Texas, the Senate passed SB 1189, Deceptive Advertising Practices. The bill precludes legal advertising from being presented as a medical alert, health alert, consumer alert, or public service announcement. It also prevents ads from using federal or state government agency logos to suggest an affiliation and prohibit ads from falsely claiming that a product has been recalled or is under investigation by the FDA.

The legislation mandates specific warnings and disclosures—including a warning that patients should consult a physician before stopping a prescribed medication. The governor is expected to sign this bill. Similarly, the California State Assembly passed AB 3217 with bipartisan support, only to see it die in the California State Senate under pressure from the trial attorneys' opposition. Although it will be difficult to enact this kind of important legislation, it is essential that

can visit their doctor to get their flu shot as well.

For updates or changes in the clinic schedule, please call the Polk County FluLine, (515) 286-3609. Most major insurance plans are accepted. Don't forget to bring your insurance card to the clinic.

Fluzone, a flu shot specifically designed for individuals 65 years and older, will be \$50. As individuals age, their immune system weakens over time. Fluzone provides a higher dose of antigen in the vaccine and is supposed to give older people a better immune response, and therefore, better protection against

flu. The cost for regular flu shot for individuals without insurance is \$25.

## About the Polk County Health Department

The Polk County Health Department strives to create the conditions for all people to live healthy lives by engaging residents, reducing health disparities and attending to the needs of our most vulnerable families.

Follow us on Twitter, Facebook and Instagram. For more information about the Polk County Health Department, please visit https://www.polkcountyiowa.gov/health/.



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### Two Finish Lines?

JOE BANTZ, CFP®, AIF®, CKA®, Lead Advisor

In 1992, I ran the Richmond, Virginia, marathon. I was 26, had run distance races since junior high, and worked hard to prepare for the race. I remember the hours of preparation – sore muscles, achy knees, early mornings, and hot, Saturday long runs. I remember race day dawning, standing at the starting line about to embark on the 26.2-mile journey. As the miles rolled under my increasingly sore feet, the thrill faded, replaced by the grind of putting one foot in front of the other. I could only think about the finish line, a magical place in the distant future where I could finally rest from my labors.

When I finally crossed the finish line 3 ½ hours later, I felt the exhilaration of accomplishing a great endeavor and celebrated with my family! Then I woke up the next day wondering what was next. That's when I discovered the cruel truth: It was just the first finish line I'd cross.

Twenty-five years later, I crossed the finish line of the Des Moines half-marathon with my daughter, who had challenged me to do "one more race." This time, as we celebrated together, I knew it was my last big race.

In my sixteen years working with clients pondering retirement, I've found many stories just like this. We often find ourselves seeking the "finish line" where we no longer need to earn more income. But when it arrives, many folks find they have only just begun to impact the world the way they want. It's like there's an initial finish line, which opens the door to more possibilities.

A friend of mine wrote a book about this called, The New Retirementality. The author, Mitch Anthony, talks about the way retirement can be thought about differently. Nearly everybody has a desire to impact their family, community, or world in a positive way, and the skills we gain through our working years may very well be what we use to do that. The first finish line may exist as a starting point. The Richmond was my starting door to future races and gave me experience, skills, and confidence to embark on many other challenges over the next 25 years. Your years in the workplace have prepared you with skills and insight to impact the less fortunate, local non-profits, your place of worship, or someplace around the world. The opportunity to make a huge impact in the "second half" of your life is significant and can provide great meaning and personal fulfillment.

At Foster Group, our vision is to influence thousands of individuals, families, and organizations with wise financial counsel, while encouraging the pursuit of meaningful living and generous giving. You may be working toward the first finish line, cleared the second one, or perhaps are trying to figure out whats next. These are the conversations we love to have, so pick up the phone and call Foster Group at 1-866-853-1623, because we put your interests first. Every time.

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the healthcare community join us in supporting these measures when they are introduced at the state level.

Lawsuit advertising continues to grow. The American Tort Reform Association issues periodic updates on trial lawyer ad spending. While not all of the ads are related to drug litigation, the expenditures are staggering. In the third quarter of 2018, trial lawyers spent \$226 million to air ads on local broadcast networks, up \$50 million from the second quarter of 2018. That figure includes 23,000 ads in New York City alone, at a cost of nearly \$9 million in three months. Those figures do not include local cable, national cable, or national broadcast networks. The ILR estimates that trial lawyer advertising in 2017 amounted to \$1 billion nationwide.

Physician advocates continue to grapple with trial lawyer advertising—including concerns that misleading advertising may affect the objectivity of potential jurors—as evidence mounts that deceptive ads hinder a physician's ability to provide effective treatment. Providers may wish to add the pernicious effects of attorney advertising to the factors influencing when and how to assist patients in following their prescribed therapies.

We will continue to monitor legislative developments and advocate on behalf of our members and the medical profession. Look for updates in future issues of *The Doctor's Advocate*.

#### **Track Legislation in Your State**

Keep up to date on bills and regulations we're tracking in your state. Find our interactive Legislative Activity map at thedoctors.com/advocacy.

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