

Medicine and the Law

AMA'S SECRET PACT WITH HCFA

(Editor's note: This article reprinted with permission from the Medical Sentinel, which is the official, peer-reviewed journal of the Association of American Physicians and Surgeons (AAPS). The Medical Sentinel is "committed to publishing scholarly articles in defense of the practice of private medicine, the tenets and principles set forth in the Oath of Hippocrates, individually-based medical ethics, and the sanctity of the patient-doctor relationship.")

On April 27th, the AMA hosted a self-described "fly-in" for physicians to express their comments and outrage about the new E & M Documentation Guidelines (the "Guidelines") due to go into effect on July 1st. As Dr. Nino Camardese discovered when he flew to this event, however, the AMA denied entrance even to its own longstanding members, unless handpicked beforehand. In fact, the AMA limited attendance and discussion to a predetermined set of physicians and administrators.

By coincidence, Dr. Jane Orient, executive director of AAPS, qualified for admission by virtue of her leadership position in her county medical society. After an initial delay in conceding that Dr. Orient may attend, the AMA ultimately allowed her to participate.

At the meeting, numerous physicians expressed their genuine outrage at the AMA for developing these onerous Guidelines. Many of the questions were insightful, and the AMA failed to answer many of them in a satisfactory manner. Among dozens of questions, however, none were as revealing as one simple question presented by Dr. Orient.

Like a scene from Alfred Hitchcock's famous movie *The 39 Steps*, Dr. Orient asked the AMA the following question: "Does the AMA have a contract with the federal government, and when will they release the details of the contract to [the AMA] membership?"¹ The AMA had apparently never informed its members - or physicians-at-large - about the details of its secret pact with the government. Meeting attendees seemed taken aback by this startling question from Dr. Orient.

And as in the movie classic, chairman Reardon of the AMA had no alternative but to admit the existence of such a contract. But chairman Reardon then ducked the second half of the question, and tacitly refused to disclose the contents of the contract - even for AMA members.²

AAPS is not so easily thwarted, however. After all, it was AAPS that sued the Clinton administration to stop the complete government takeover of medicine, and it was AAPS that won both politically and legally. AAPS's judgment of \$285,864.78 against the government was issued by Judge Royce Lamberth in December 1997.³ AAPS also took its case to the American public, which rendered an analogous verdict in repudiating Clinton's health care plans in the 1994 congressional elections.

Upon the foregoing confirmation that the AMA does have a pact with the government, AAPS proceeded to ferret out the details. Requests of HCFA for the contract and related materials were greeted with bureaucratic stalling. Numerous letters to the AMA from one of its own distinguished members were met by stonewalling. The refusal by the AMA to turn over these essential documents - even though the AMA directors call themselves "Trustees" - raises serious questions whether

there is a continuing breach of their legal duty of trust here.⁴

Undeterred, AAPS obtained a copy of the secret AMA/HCFA contract from a source independent of both the AMA and HCFA. Here is its very first contractual requirement:

1. HCFA shall adopt and use [the AMA's] CPT-4 in connection with HCPCS, for the purpose of reporting physicians' services under Medicare and Medicaid. HCFA agrees not to use any other system of procedure nomenclature in HCPCS for reporting physicians' services.⁵

Under this initial provision, the AMA thereby grabs a monopoly over the government-imposed coding standards for physicians. Yet in its response to the recent outrage about the Guidelines, the AMA repeatedly implied that HCFA was the perpetrator.⁶ The AMA thereby conducted a charade by which it was the supposed defender of physicians against government requirements.⁷ For example, the AMA president responded to the outrage by declaring: "Everywhere I go these days, physicians ask me about HCFA's 1997 Revised Documentation Guidelines for Evaluation and Management Services. Since then, we've been meeting with HCFA face to face to voice your concerns."⁸ One attendee at the "fly-in" even asked whether the AMA could take its name off of the Guidelines, apparently unaware that the AMA-controlled CPT editorial panel was the perpetrator.

The above-quoted contractual obligation mandates that HCFA must enforce the coding systems developed by the AMA. The AMA thereby imposes requirements on physicians through the name of HCFA, by virtue of this secret pact between the AMA and HCFA. This contract has been in effect since 1983.⁹

The second clause of the contract eliminates any doubt about HCFA's contractual obligation to enforce the AMA's codings:

2. HCFA shall: (a) publicly endorse the use of CPT-4 based HCPCS for the purpose set forth in paragraph 1; (b) where permitted by HCFA's statutory authority and budgetary constraints, require the use of CPT-4 based HCPCS in programs administered by HCFA by its agents and other entities participating in those programs; and (c) encourage the voluntary use of CPT-4 based HCPCS by others.¹⁰

There it is: The AMA imposes its onerous coding regulations on physicians in the name of HCFA.

Virtually every crime has a motive, and the motive here is money; lots of it. The AMA declares on its website that the AMA "generates approximately two-thirds of its annual \$200 million operating budget from non-dues sources."¹¹

Of that \$133 million in non-dues revenue, the AMA's publication revenue, including sales of those expensive CPT code books, is its most prominent source.¹² The victims of these endlessly complicated revisions to codings are physicians rendering private medical care. Each year physicians pay substantial costs and expend precious hours trying to keep up with the rules imposed by the AMA's CPT money-making machine. The time and money lost by physicians due to the AMA could be far better spent in the service of patients.

Recently, a 3-judge federal panel in the 9th Circuit had the following to say about this contract between the AMA and HCFA: "On the undisputed facts in the record before us, we conclude the AMA misused its copyright by licensing the CPT to HCFA in exchange for HCFA's agreement not to

use a competing coding system. ...[T]he plain language of the AMA's licensing agreement requires HCFA to use the AMA's copyrighted coding system and prohibits HCFA from using any other....The controlling fact is that HCFA is prohibited from using any other coding system by virtue of the binding commitment it made to the AMA to use the AMA's copyrighted material exclusively. ...Conditioning the license on HCFA's promise not to use competitors' products constituted a misuse of the copyright by the AMA."¹³ Harsh language indeed by the federal judges in unanimously condemning the AMA's conduct.

Unlike "The 39 Steps," however, the AMA's scheme does not end simply with Dr. Orient's asking of the question. To the contrary, the AMA website now boldly declares that "[t]he Association is developing a next-generation CPT, called CPT-5, to be launched this spring."¹⁴ And who will pay for the additional regulatory burden imposed by the AMA? Private physicians, of course - unless AAPS can end the scheme first.

Physicians must and will take back their esteemed profession from this money-making machine of AMA-generated regulation. While the AMA, in its own words, is a "successful business entity" that includes "for-profit subsidiaries," medical practice must remain an ethical profession focused on providing quality care to patients.¹⁵

References

1. Transcript of the tape recording of the meeting, AAPS files, Tucson, Arizona.
2. Ibid.
3. *AAPS v. Clinton*, Order by Judge Royce C. Lamberth dated 12/18/97, granting motion for attorney fees, costs and sanctions against Leon Panetta; Alice Rivlin; Hillary Rodham Clinton; Ronald Brown; Robert Reich; Donna Shalala; Lloyd Bentsen; Les Aspin; Jesse Brown; Carol Rasco; Ira Magaziner, Pres. Task Force; Judith Feder by plaintiff and directing the defendants to pay to the American Association of Physicians and Surgeons, Inc., the sum of \$285,864.78.
4. *Bingham v. Ditzler*, 309 Ill. App. 581, 33 N.E.2d 939 (1941).
5. Agreement, The Department of Health and Human Services Health Care Financing Administration and American Medical Association, signed February 1, 1983 by James Sammons, MD, executive vice president of the AMA, and Richard Schweiker, Secretary of HHS. Readers are invited to review this agreement as posted on the AAPS website at <http://www.aapsonline.org> under Departments, Medicare, E&M.
6. Getting the Facts About E&M. *American Medical News* 1998;41(12):1A-4A.
7. Ibid.
8. Ibid, p.4A
9. Agreement, op. cit.
10. Ibid.
11. AMA website, <http://www.ama-assn.org/employ/workplac/affil.htm>.
12. Ibid.
13. *Practice Management Information Corp. v. The American Medical Ass'n*. 121 F.3d 516, 520-21 (9th Cir. 1997), modified on reconsid. 133 F.3d 1140 (9th Cir. 1998).
14. AMA website: http://www.ama-assn.org/sci-pubs/amnews/pick_98/pick0525.htm
15. AMA website: <http://www.ama-assn.org/employ/workplac/affil.htm>.

Andrew Schlafly, Esq., is general counsel for AAPS. He is a graduate of Harvard Law School and has served as an adjunct professor at Seton Hall Law School. He may be reached by e-mail at 73130.616@compuserve.com. Further developments in this matter will be published as they occur in the AAPS News and/or the Medical Sentinel.

Andrew Schlafly, Esq.
New York, New York

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