

# Health Care Insights

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## “Sicko” or “Slicko?”

Michael Moore’s controversial documentary film about America’s health care system levels many an attack on insurance companies and HMOs. As Neil Weinberg comments in the August 13, 2007, issue of *Forbes*, Moore “slams health insurers for being too chintzy in paying claims.”

Mr. Weinberg turns the examination around by citing the shortcomings of many third party administrators (TPAs) who pay claims for companies that self insure for their employees’ medical expenses. Apparently, there is significant litigation around the country against TPAs who mismanage their responsibilities, overpay providers or pay for services not rendered.

Indeed, Mr. Weinberg asserts, “the problem of overcharging such (employer-paid) plans is costing publicly listed companies so dearly that (it has) given birth to a new hedge fund strategy....” The strategy is: certain hedge funds buy into companies with poor medical cost controls. The funds push cost reductions and net earnings increase “simply by cutting the waste.”

For further information, please contact Elliott B. Pollack in our Hartford office at 860-424-4340 or at [epollack@pullcom.com](mailto:epollack@pullcom.com).

## The Business of Medicine

As Hartford’s Saint Francis Hospital and Medical Center seeks to grow its surgical volume, it apparently will do so at the expense of Hartford Hospital.

Saint Francis’ new Connecticut Joint Replacement Institute will be headed by three orthopedists who spent their entire careers at Hartford Hospital and who were recruited by Saint Francis’ “attractive deals for top doctors,” as reported in the April 2, 2007, issue of *Hartford Business Journal*.



**Joint replacement surgery is expected to grow as Connecticut’s elderly population increases.**



While conceding that physicians are business people who have the right to migrate to locations which are most financially favorable for them, a Hartford Hospital spokesperson noted the irony of losing top surgeons “who perfected their skills and made their reputations at Hartford Hospital” to a cross-town rival.

Joint replacement surgery is expected to grow as Connecticut’s elderly population increases. As the *Hartford Business Journal* notes, “joint replacements present a financial opportunity for hospitals struggling with (poor) government reimbursements and increasing numbers of patients unable to pay.”

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## Joining a New Medical Practice

In a recent issue of *Medical Economics*, an anonymous author notes that before he took his first job in private practice, he should have listened to his father, a "seasoned, small-town family physician." According to the author, who still holds the job he laments that he took, his father furnished the following four points for him to observe:

- "Ask to see the books."
- "Know the provisions for buying in and, even more importantly, for buying out."
- "Review your contract with an attorney who understands medical practices."
- "Finding a practice partner is like finding a marriage partner."

One of the interesting and rather sad pieces of information which the anonymous physician-author learned after he joined his current practice was that the practice's compensation formula, not subject to any independent due diligence investigations, required him to absorb an unfair share of the practice's overhead and made a potential bonus almost impossible to achieve.

For further information, please contact Elliott B. Pollack in our Hartford office at 860-424-4340 or at [epollack@pullcom.com](mailto:epollack@pullcom.com).

## Restriction on Physician Ownership of Hospitals Proposed

California Congressman Fortney P. Stark, the author of the "Stark" self-referral prohibitions with which health care providers frequently are required to grapple, has proposed a new rule.

*Health Care Insights* readers will recall the exception in the Medicare/Medicaid law which permits physicians to have ownership interests in hospitals. As a result of this law, many specialists have banded together to open cardiac surgery, orthopedic and other small hospitals at which they can pursue their specialty and derive the financial benefit of ownership.

Representative Stark proposes to eliminate the hospital exception, thereby prohibiting physicians from referring patients to hospitals in which they have *any* ownership interest. Rules are proposed to grandfather existing hospitals opened or acquired prior to the date of this new prohibition which, among other matters, would limit physician ownership to no more than 40 percent of the facility with a maximum of two percent per physician. Since many of these hospitals do not have 24-hour physician coverage, physician-owned hospitals otherwise meeting the new restriction would be required to notify patients if 24-hour coverage is lacking and how their needs will be met when no doctor is present.

*Health Care Insights* will keep its readers posted as to further developments.

For further information, please contact Jennifer N. Willcox in our Bridgeport office at 203-330-2122 or at [jwillcox@pullcom.com](mailto:jwillcox@pullcom.com).

## Orthopedists Require Certificate of Need

In a very important ruling, the Office of Healthcare Access concluded that Connecticut Orthopedic Specialists, PC could not enter into an agreement with a radiologist to provide on-site readings for an MRI unit at its Branford office without obtaining a Certificate of Need. OCHA's reasoning was that since the radiologist was not employed by the

orthopedists but, rather, was an independent contractor to them, the relationship implicated those provisions of the Connecticut General Statutes which require that “central service facilities” (CSF) obtain a certificate of need before commencing operations. This appears to be an expansion of earlier rulings and court decisions which characterized radiology practices that received out of practice referrals as CSFs.

Whether the ability of non-radiologists to provide diagnostic imaging services through independent contractors will achieve the public policy goals of quality, access and cost effectiveness remains to be seen

Certificate of Need Determination, Report Number 06-30881-DTR

For further information, please contact Christine Collyer in our Hartford office at 860-424-4329 or at [ccollyer@pullcom.com](mailto:ccollyer@pullcom.com).

## Pioneering Cardiologist is Deceased

On September 22, 2007, “a cardiologist whose research formed the basis for the modern treatment of heart failure,” according to *The New York Times*, passed away. Dr. Edmund H. Sonnenblick was born in New Haven and lived in Darien, Connecticut. His research into the structure and function of heart muscle cells and the physiology of heart muscle played both a pivotal role in the development by other researchers of ACE inhibitors and the use of beta blockers to treat heart failure. Among his honors was the Distinguished Scientist Award in 1985 granted by the American College of Cardiology and the 2007 Research Achievement Award from the American Heart Association.

## Fertility Services Tax Dodge Rejected

The secretary-treasurer of an organization providing free fertility services to women saw its application for a tax exemption rejected by the IRS.

Some of the reasons for the IRS decision were that the secretary-treasurer donates all of the organization’s financial support, it does not intend to carry out any fundraising activities and the same secretary-treasurer “donated” 88 percent of the total number of sperm gifts received by the organization. Even more problematic was the active role played by the secretary-treasurer in determining which women would receive the free services.

“Taking into account your structure, governance, and operations, your activities result in the provision of more than an incidental level of private benefit,” the IRS drily noted in its determination letter rejecting the exemption application.

For further information, please contact Michael Kurs in our Hartford office at 860-424-4331 or at [mkurs@pullcom.com](mailto:mkurs@pullcom.com).

## Attorney Notes

Pullman & Comley is pleased to announce that Jennifer N. Willcox has become a member of the firm’s Health Care Department. Attorney Willcox has considerable experience in representing health care providers. After graduating from Yale College and Northeastern Law School, she served as law clerk to United States District Judge Janet Bond Arderton. Ms. Willcox then spent six years in the health care department of another Connecticut law firm before joining Pullman & Comley.

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