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Additional Lyme Disease Research Urged

Pat McClellan of Virginia “became frighteningly, mysteriously ill.” He experienced loss of memory, muscle pain, joint pain and other symptoms over a two year period. An internist made a tentative diagnosis of chronic Lyme disease.

His wife Laurie McClellan, a science writer, was struck by the difficulty her husband experienced in obtaining a diagnosis. Reflecting on the controversy surrounding whether or not chronic Lyme disease even exists, Ms. McClellan expressed frustration at her husband's being given a clinical diagnosis at the same time that the *National Institutes of Health (NIH)* discounted the treatment her husband was receiving and from which he was clearly benefitting.

In her article in the March 2012 issue of *Health Affairs*, she urges NIH to “set up long-term clinical trials of Lyme disease patients (and to) begin funding and organizing Lyme disease research . . .” Observing that Lyme disease remains a relative mystery, she urges that “the power of our labs, researchers and government agencies” should be harnessed to obtain the answers to definitive

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diagnosis and treatment options.

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Revival of Medical Malpractice Action Permitted

When Janice Stimac filed a medical malpractice action against her radiologist, she was required by Connecticut law to attach a written opinion letter from a similar health care provider to her complaint, stating “that there appears to be evidence of medical negligence,” including “a detailed basis for the formation of such opinion.”

For some reason, Ms. Stimac’s attorney attached the opinion of a neurosurgeon to her complaint, rather than that of a radiologist, which resulted in the dismissal of her lawsuit because a neurosurgeon was not deemed to be a provider sufficiently similar to a radiologist to comply with the law.

Undaunted, Ms. Stimac filed a new lawsuit asserting that her first action had failed accidentally and that she was entitled to the benefit of an extension of the applicable statute of limitations which otherwise would have precluded her from suing again.

Superior Court Judge Emmet L. Cosgrove ruled that the applicable statute permitted Ms. Stimac to file the action again because her use of a neurosurgeon’s opinion in the first case was not “egregious conduct.”

Stimac v. Mazzarelli, Superior Court at New London, Docket No. CV-12-6011780 (June 8, 2012).

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PSA Testing Redux

The Medical Letter (TML), the not-for-profit publication which “provides health care professionals with unbiased drug prescribing recommendations” published a brief squib about the use of the PSA (prostate specific antigen) serological testing in its August 6, 2012, issue.

TML discusses the United States Preventive Services Task Force's initial recommendation against PSA screening for men 75 years or older, subsequently updated to recommend against any “PSA-based screening” of men of any age. *TML* also briefly reviews the disagreement expressed in a recent issue of the *Annals of Internal Medicine* by an *ad hoc* group of physicians who pointed out that prostate cancer deaths

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have decreased by 40 percent since “PSA testing began in the early 1990s . . .”

Finally, a randomized, controlled trial entitled “PIVOT” of 731 men 75 years or older “with localized prostate cancer compared radical prostatectomy to observation alone” is also touched upon. The study, authored by Dr. Thomas J. Wilt and others, appeared in the *New England Journal of Medicine* earlier this year. It concluded that among a subset of the men studied with high PSA results, “there were significant (better) differences in outcomes between those treated with radical prostatectomy and those randomized to observation . . .”

TML “suggests” that “PSA screening might be worth worthwhile after all, if limited to the group of patients mentioned above.”

Unfortunately, the hedging words “suggests,” “might” and “if only” in the *TML* review are frustrating and perpetuate the lack of clear guidance for men dealing with prostate cancer.

FDA Approved Gaucher Disease Treatment

Type 1 Gaucher disease results from a genetic deficiency of a particular enzyme which causes the accumulation of a toxic glucose substance in the liver, spleen and bone marrow. A new drug with the brand name Elelyso, manufactured by a major pharmaceutical company, was approved by the FDA to treat this horrible disease. *Health Care Insights* editors note that treatment of a 150 lb patient for one year with Elelyso will cost \$324,870.

Benefits of Medicaid Expansion

Readers will recall that the United States Supreme Court refused to allow Congress to penalize the states if they did not accept the expansion of Medicaid coverage to individuals with incomes above the federal poverty level. An article in the July 25, 2012 issue of *The New England Journal of Medicine* attempted “to predict health benefits from this measure by examining outcomes in three states that have enacted similar Medicaid expansions” prior to the implementation of the Affordable Care Act. As Dr. Abigail Zuger notes in the September 15, 2012 issue of *Journal Watch*, a publication of the *New England Journal of Medicine*, “adjusted all-cause mortality in the Medicaid-expansion states (New York, Arizona, and Maine) declined by 6.1% in the 5 years after expansion . . .” All-cause mortality was studied for the states used as controls in the study.

Dr. Zuger notes that while conventional wisdom sees Medicaid coverage as being associated with poor health outcomes for adults, the referenced study appears to underscore the opposite.

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Against this backdrop, it is difficult to determine why the governors of many states announced their refusal to permit the access of their newly Medicaid eligible citizens to better health care – especially when the federal government will be paying for it during the first several years.

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Not Enough Due Process in the Medicaid System

Mehran Zamani, DDS learned that his Medicaid billings were being audited by an outside contractor. He was also told by the Office of the Commissioner of the Department of Social Services (DSS) that his outstanding bills to DSS would not be paid pending the outcome of the investigation. As a result, a crippling financial blow was leveled on his substantial Medicaid dental practice. The investigation carried on for more than a year without resolution, leaving Dr. Zamani's practice "on the brink of bankruptcy." He brought suit to require the commissioner to release the withheld funds since no proof of fraud had been presented by DSS.

Because Connecticut adheres very strongly to the ancient English doctrine of "sovereign immunity" - meaning the state cannot be sued in most circumstances without the consent of a gubernatorial appointed commissioner - Judge Carl J. Schuman dismissed most of Dr. Zamani's claim. The court allowed him to proceed with the portion of his suit that sought to enjoin the commissioner from withholding future funds. As Judge Schuman noted, "[t]here has been no indication from the commissioner that there is sufficient evidence of fraud or that fraud has been discovered, both of which determinations would bring an end to the suspension of Dr. Zamani's payments." While under the circumstances, he was entitled to maintain his suit for prospective relief against DSS, it is difficult to be very optimistic about Dr. Zamani's financial future.

Zamani v. Commissioner, Department of Social Services, Superior Court Judicial District of Hartford at Hartford, Docket No. CV 12-6028644 (May 16, 2012).

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Attorney Notes

Elliott B. Pollack reviewed the recent decision of the United States Supreme Court upholding the bulk of the Affordable Care Act at a program sponsored by the University of Connecticut Graduate Programs in Public Health entitled "More Than a Mandate: Opportunities Within the Affordable Care Act," on September 10. He also addressed the same topic, on an expanded basis, at programs on health care reform sponsored by the

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University of Connecticut Medical and Dental Schools.

Pullman & Comley attorneys including Alan Sobol and Randall C. Mathieson will present a program on Nursing Home Liability for the American College of Health Care Administrators on Thursday, November 29th in Wallingford. For more information, please email info@pullcom.com

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