

February 10, 2011

To Chair of the Montana House and Business Labor Committee,

This correspondence is in regards to House Bill 396 introduced by Representative. Small. The intention of the bill is to promote a level of "transparency" for the public with regards to the individual who is providing medical care to the public. The Bill will require all individuals providing care to a patient to wear a badge that designates their name and their specialty, especially as it relates to what form of "doctor" they represent. Furthermore, the Bill states that any and all advertising by a healthcare professional should include a component that designates his or her professional title.

The basis of this Bill stems from a limited survey authorized by the American Medical Association and conducted by the Global Strategy Group (GSG) from August 13-18, 2008. GSG surveyed 850 adults nationwide. The results of the survey suggest that individuals seeking medical care may not fully understand which healthcare professionals providing their care are medical doctors (designated with an MD after their name) and those that represent other specialties. Furthermore, the survey seemed to suggest that Americans would prefer that "Medical Doctors" provide their care.

A more careful less biased evaluation of this issue is needed before such legislation is enacted. The need for the public to be informed regarding all aspects of their medical care is not a disputed issue. It is completely reasonable to require both physicians (MD, DO and DPM) as well as non-physicians to provide patients with an understanding as to a medical professional's type and level of expertise. It is relatively commonplace for medical professionals to wear name badges or other placards on their person while providing medical care. This is especially true within formal medical institutions. It is also common to find medical professionals who provide patients with this level of exposure in both large outpatient clinics as well as in smaller private practice situations. In fact, nearly all healthcare providers spend monetary resources to educate the public regarding their credentials and their particular level of expertise. The point here is, medical professionals are already providing the public with the information the AMA states is so necessary. All that being said does a name badge with several acronyms after the name or another designation identifying the individuals' level of training really "protect the public" from potential harm? There is no evidence to support this contention. The AMA is suggesting that if a patient were to know that his or her physician was an MD that he or she would be less likely to sustain a complication or injurious act at the hands of that physician? Both physicians and non-physicians are at risk for making mistakes or performing inappropriate procedures. If that were not true, why would MD's need malpractice insurance? The bottom line is, the potential for misrepresentation and subsequent harm exists for physicians, non-physicians, and other allied healthcare professionals. Name tags with definitions of who that individual is and their level of training or expertise will in fact not protect the public from unskilled medical professionals.

The next issue to be considered is the survey conducted by the Global Strategy Group in 2008. The survey questioned a mere 850 individuals nationwide. Realizing that there are over 300 million people in the United States a study population of 850 individuals is hardly a remarkable

sampling of the population. The real issue here is who was sampled and how were these individuals chosen from the total population? The bottom line here is, the opinions of 850 individuals are hardly representative of the level of understanding of the population as a whole. I would highly advise the reader to review just a sampling of the questions employed in the AMA survey. Many of the questions were leading and directive of a response that the survey was seeking to achieve. For example, a question read as follows: "Only licensed medical doctors should be allowed to use the title "physician". Here is another example: "Should only a medical doctor be allowed to perform the following procedures; or should other health care professionals be allowed to perform this specific activity". The question itself represents a level of bias to an outcome. It is at least conceivable that the AMA survey may not represent the actual level of understanding the American public has regarding the types of physicians and other health care providers that are actively providing medical care.

What about the definition of a physician? According to CMS (Medicare) the term "physician" is not unique to MD's. Both Doctors of Osteopathy (DO) and Podiatrists (DPM) are considered "physicians" according to CMS (Medicare). Specifically, Medicare statute and regulations have a long history of treating podiatric physicians without distinction from allopathic or osteopathic physicians. Since 1968, podiatrists have been included in the definition of physician for the purposes of Medicare:

(r) The term "physician", when used in connection with the performance of any function or action, means ... (3) a doctor of podiatric medicine for the purposes of subsections (k), (m), (p)(1), and (s) of this section and sections 1814(a), 1832(a)(2)(F)(ii), and 1835 but only with respect to functions which he is legally authorized to perform as such by the State in which he performs them.¹

Furthermore, the Center for Medicare and Medicaid Services (CMS) amended The Medicare Hospital Condition of Participations in regard to medical history and physical Examination in 2006 to specifically recognize doctors of podiatric medicine and other Practitioners among the pool of professionals who may perform H&P. *See* 42 CFR § 482.22(c)(5). The CoP requires hospital bylaw to include,

...[A] medical history and physical examination be completed no more than 30 days before or 24 hours after admission for each patient by a **physician (as 1 42 USC 1395x(r) (2008) defined in section 1861(r) of the Act)**, an oromaxillofacial surgeon, or other qualified individual in accordance with State law and hospital policy.

As noted above, a **podiatric physician is a "physician" as defined in §1861(r) of the Social Security Act.**³ Thus, a podiatric physician has the same authority as an allopathic or osteopathic physician to perform H&Ps for in-patient admissions at hospitals that participate in the Medicare program. This is one example of similarity of responsibility and recognition which CMS, for one, accords to podiatric physicians. Based on this information, Podiatrists should be considered physicians not unlike our MD or DO colleagues.

In conclusion, House Bill 396 basically reinforces a process that requires healthcare professionals to identify their area of expertise. Further clarification of a healthcare professional's level of training or expertise would not necessarily protect the public from a licensed practitioner who is providing inappropriate care whether that is within or outside the scope of their expertise. It is clear that physicians, non-physicians as well as other healthcare

providers all have individuals who have made poor choices when providing care to patients. In most cases this is not intentional; nevertheless, the patient can be harmed. Enhancing a patients understanding of who is providing their care would not prevent them from receiving harmful intervention regardless of who provides since all providers can make mistakes. Although the AMA survey regarding truth in advertising and the issue of transparency was well intended the validity of the findings should be scrutinized carefully. The surveyed population was nominal and may not have involved a true randomized sampling of the entire population. Furthermore, many questions were somewhat leading and were not without bias. The reader should use the data from this survey cautiously. Since Podiatrists are considered "physicians" on many levels, but especially as it relates to Medicare, they should be included in the definition of physician along with their MD and DO colleagues.

I appreciate the opportunity to provide my views on this issue.

Sincerely,

Ronald G. Ray, DPM