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RHODE ISLAND MEDICAL NEWS

is the newsletter of the
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SUBSCRIPTION INFORMATION

A one year subscription to
Rhode Island Medical News
costs \$50. The publication is
free to members.

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The Rhode Island Medical Society
was founded in 1812 to promote
the art and science of medicine.
RIMS is the eighth oldest state
medical association in the country.

In cooperation with the Brown
University School of Medicine,
the Rhode Island Department
of Health, and Quality Partners
of Rhode Island, the Society also
publishes a monthly magazine,
Medicine and Health Rhode Island.

FROM PAGE ONE

“Sorry” gets a hearing in the House



On March 22, the House Judiciary Committee of the Rhode Island House of Representatives took up H-5255, a Medical Society initiative that would enable physicians to express sympathy and regret for a patient's disappointing outcome without incurring immediate liability by the simple act of making such natural, human gestures of empathy. The bill was introduced again this year at the Medical Society's request by Representative Joseph McNamara (D-Cranston, Warwick). A companion bill (S-348) has once again been introduced in the Senate at RIMS' request by Senator Rhoda Perry. The legislation makes “benevolent gestures” inadmissible as evidence, in themselves, of liability in a lawsuit alleging medical malpractice.



The Medical Society led off the hearing with coordinated testimony by Dr. Michael Migliori, Dr. Nitin Damle, Dr. Alyn Adrain, Dr. Elaine Jones and Brown medical students Steve Lee, MD '11, and Reshma Ramachandran, MD '13. RIMS was supported by testimony from representatives of the Rhode Island Hospital Association, the NORCAL Mutual Insurance Company, and the professional associations of Rhode Island dentists, podiatrists and pharmacists.

Opposing RIMS' bill again this year is the Rhode Island Association for Justice (formerly known as the Rhode Island Trial Lawyers Association). The RIAJ and some members of the House Judiciary Committee questioned whether the disclosure requirements imposed by The Joint Commission make RIMS' legislation superfluous. Supporters of RIMS' bill explained that, on the contrary, current Rhode Island law puts physicians in an untenable position, because it is inconsistent with Joint Commission rules and leaves physicians open, in effect, to being punished for complying with Joint Commission requirements.

Widely known as “I'm sorry” legislation, the idea of encouraging rather than punishing dialogue between doctors and patients and their families is no longer new. Thirty-five states, including all five other New England states, have already enacted legislation

Congressional committees move medical liability bill

similar to what RIMS has proposed for Rhode Island. In the wake of the abundant publicity surrounding the Michael Woods case and its resolution in 2009, the 2010 General Assembly session seemed ready at last to enact the Medical Society's bill. However, opponents still managed to kill RIMS' bill last year, as in previous years.

Other objections raised by opponents to the bill are that its reference to The Joint Commission impermissibly cedes state authority to an outside organization and that physicians could preempt adverse litigation

By a vote of 18 to 15, the Judiciary Committee of the U.S. House of Representatives approved HR-5, the HEALTH Act, (Help Efficient, Accessible, Low-cost Timely Health Care). The bill would institute a \$250,000 cap on non-economic damages in states without caps. State laws that provide for higher or lower damage caps on non-economic damages would not be preempted.

Committee deliberations became contentious when a minority of Republicans agreed with Democrats that medical liability is traditionally regulated by the states and that the federal government should not pass a bill that allows for the preemption of state law. The bill is currently before the House Committee on Energy & Commerce.

A Senate companion bill, S.218, has been referred to the Judiciary Committee. ❖



simply by proactively apologizing. The preemption argument is easily dismissed: the evidentiary privilege that RIMS' bill would establish is narrow and would exclude from admissibility only the doctor's benevolent gestures in the wake of an unanticipated outcome. Like any other viable case, a meritorious lawsuit against the doctor would still have to be built on substantial evidence.

A hearing in the Senate is expected to take place within the next few weeks. ❖



Members of the House Judiciary Committee are as follows:

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