

Stark County Medical Society News

CELEBRATING 150 YEARS!

Winter 2017

President's Message

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INSIDE THIS ISSUE:

Mycobacterium Chimaera 2
Community Harvest 4
When Opportunity Knocks: Open the ${\rm Door}5$
Helping An Acquaintance 6
3rd Annual Mission Possible8
Casino Night at Las Klimo's 8
2017 Board of Trustees 10
SCMSA News 10
Our Preferred Vendors 11
For Immediate Release12
SCMSA Scholarship Charitable Fund 13



Dr. Carl Foster

Foremost in the national news regarding the healthcare system is the prospective implementation of the GOP's oft repeated pledge to "repeal and replace" Obamacare. While there is much speculation and conjecture as to what the outcome of the various machinations of the US Congress might bring, we here in Ohio must deal with some very concrete and immediate government actions. One constant in the maelstrom that is the present-day healthcare environment is the advocacy by the OSMA on behalf of Ohioans, both physicians and their patients.

Late last year some 12,000 letters were distributed to Ohio physicians implying noncompliance with Ohio opioid prescribing regulations. Many of these letters were sent due to flaws in the monitoring system and triggered much consternation

among its recipients. The OSMA has been in continuous discussions with the State Medical Board and the State Pharmacy Board to coordinate a better approach to prescribers who have missed OARRS checks. The physicians will be notified when their patients receive prescriptions without an OARRS check. Letters will be sent only after a threshold of 20 missed OARRS checks has been met. A possible solution to the burden the checks present to medical practices is to modify electronic health record (EHR) software to integrate OARRS data. Such software would perform checks and in doing so 100% user compliance would be achieved. The OSMA is working with EHR providers to

make such software available statewide.

On the legislative front the OSMA along with the Ohio Hospital Association and other organizations have been engaged in discussions with legislators about the new Ohio price transparency law. After participating in a successful lawsuit to block its coming into effect, the above mentioned have been trying to rewrite the law to make compliance more practical. As the law was originally written compliance was very difficult. The law requires disclosure of the outof-pocket costs to patients prior to the performance of any medical procedure or service. The problem arises because the out-of-pocket costs vary according to the particulars of the individual patient's health insurance plan. So it is very difficult to comply with the law as written. While the OSMA agrees that cost transparency is a desirable goal, its implementation must be achieved in a reasonable manner.

continued on page 14

www.starkmedical.org

We have access to the politicians and the state medical association. Together, we have a voice that will be heard!

Contact us at starkmedical@ameritech.net or call 330-492-3333. We look forward to hearing from you!



Opinions expressed by the authors are their own, and not necessarily those of the Stark County Medical Society, Trustees or individual members. SCMS News reserves the right to edit all contributions for clarity and length, as well as to reject any material submitted.



MYCOBACTERIUM CHIMAERA INFECTIONS IN PATIENTS WITH A HISTORY OF OPEN-CHEST CARDIAC PROCEDURES Brought to you by the Stark County R.E.D. Network



Between January of 2010 and August of 2015 there were 32 reports to the Food and Drug Administration of either patient infections associated with heatercooler devices or detection of bacterial contamination of the heater-cooler device itself. Of these reports, 25 were made in 2015 alone. Some reports stated that they involved nontuberculous Mycobacterium infections, but

many did not specify. All of the reports involved healthcare facilities and involved the use of Sorin Group Deutschland GmbH Stöckert 3T Heater-Cooler System used during openchest cardiac procedures. This is a heating and cooling system used to warm or cool a patient during surgery to enable optimal medical care and patient outcomes. This particular system contains three water tanks so it can be utilized in an operating room independent of the ice or water supply to the room.

In August of 2014 contamination of the production line and water supply had been found at the manufacturing facility. The facility had implemented additional cleaning and disinfection procedures in September of 2014, and samples taken June of 2015 showed the production line was cleared of contamination. Currently efforts are being made to determine if infections in U.S. patients are connected to this manufacturing contamination. **Machines in question of contamination causing infection are those purchased and used before September of 2014.**

The U.S. Food and Drug Administration (FDA) released a safety communication in 2015 in regards to cleaning and disinfection of the devices in question and encouraging a quality control program to be implemented for maintenance of the machines. This can be found at: www.fda.gov/ MedicalDevices/Safety/AlertsandNotices/ucm466963.htm. The Centers for Disease Control and Prevention (CDC) also released guidance at this time including heightened surveillance for those that may become ill due to the potential contamination. This can be found at http://www.cdc.gov/HAI/ pdfs/outbreaks/CDC-Notice-Heater-Cooler-Units-final-clean. pdf.

In October of 2016 new guidance was provided by both the FDA and CDC when it was known that Mycobacterium chimaera was the specific type of nontuberculous mycobacterium causing illness in those that underwent cardiac surgery involving 3T heater-cooler systems. New evidence showed aerosolized Mycobacterium chimaera was transmitted from the contaminated water tanks. Therefore, even though the contaminated water may not directly come into contact with the patient, transmission of the bacteria may still occur through the air and the device's exhaust vent into the environment and contact the patient. This guidance can be found at: www.fda. gov/MedicalDevices/Safety/AlertsandNotices/ucm504213. htm and https://emergency.cdc.gov/han/han00397.asp.

Though Mycobacterium chimaera usually does not cause illness, it can lead to nontuberculous mycobacterium lung disease or even death. Symptoms may take months to develop. The most common initial symptoms are cough, fatigue, weight loss, night sweats, and shortness of breath. Clinical manifestations have also included endocarditis, surgical site infection, or abscess and bacteremia. Other clinical manifestations have included hepatitis, renal insufficiency, splenomegaly, pancytopenia, and osteomyelitis. **Physicians should consider consulting with an infectious disease specialist if a patient had an open-chest cardiac procedure and is showing signs of an infection. In addition, cultures for acid fast bacilli should be obtained. Suspected infections should be reported to the local health department.**



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Fast Fact #1: 40% of all food ready for harvest and produced in the United States never gets eaten

Fast Fact #2: Americans waste 96 Billion pounds of food each year

Fast Fact #3: American households waste an average of 25% of the food they prepare

Fast Fact #4: The annual value of lost and unused food in the United States is roughly \$200 billion

Fast Fact #5: Food disposal alone costs the United States \$1 Billion each year

Fast Fact #6: 62% of paper is recycled in the United States vs. only 2% of food waste is composted or otherwise recycled

Fast Fact #7: Food getting tossed in the United States accounts for ¹/₄ of all freshwater use in the country

Fast Fact #8: Nearly 50 Million Americans are currently experiencing food insecurity

Fast Fact #9: 1 in 6 Americans go to bed hungry each night

Fast Fact #10: Over 17% of Stark County's population is considered food insecure

Fast Fact #11: 1 in 4 children in Stark County currently reside in food insecure households

Fast Fact #12: Community Harvest was established in October 1989 and has been serving Stark County for 28 years

Fast Fact #13: Community Harvest was instrumental in passing the Ohio Good Samaritan Food Laws, which protect food donors and volunteers from liability

Fast Fact #14: Community Harvest collects excess prepared perishable food from over 100 different grocery stores, restaurants, and food vendors in Stark County

Fast Fact #15: Community Harvest is the only Hunger Relief Program in NE Ohio to PICK-UP and DELIVER food to participating agencies at NO COST

Fast Fact #16: Community Harvest is executed entirely by volunteers and a paid staff of only ONE

Fast Fact #17: Community Harvest rescued and delivered \$1,575,00 in food during the past year

Fast Fact #18: When food is disposed in a landfill it rots and becomes a significant source of methane - a potent greenhouse gas with 21 times the global warming potential of carbon dioxide

Fast Fact #19: More food reaches landfills and incinerators than any other single material in municipal solid waste (MSW)

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When Opportunity Knocks: OPEN THE DOOR

If you've been around long-time investors, you'll probably hear them say, ruefully, "If only I had gotten in on the ground floor of such-and-such computer or social media company, I'd be rich today." That may be true — but is it really relevant to anyone? Do you have to be an early investor of a spectacular company to achieve investment success?

Not really. Those early investors of the "next big thing" couldn't have fully anticipated the tremendous results enjoyed by those companies. But these

Complimentary Review

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Edward Jones received the highest numerical score among full service brokerage firms in a tie in the proprietary J.D. Power 2015 U.S. Full Service Investor Satisfaction StudySM. Study based on responses from 5,351 investors who used full-service investment institutions. 18 investment firms which received a representative sample of investor opinions were

measured on 7 factors: investment advisor; investment performance; account information; account offerings; commissions and fees; website; and problem resolution. Proprietary study results are based on experiences and perceptions of consumers surveyed in January–February 2015. Your experiences may vary. Rating may not be indicative of future performance and may not be representative of any one client's experience because it reflects an average of experiences of responding clients. Visit jdpower.com.

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investors all had one thing in common: They were ready, willing and able to look for *good opportunities*.

And that's what you need to do, too. Of course, you may never snag the next big thing, but that's not the point. If you're going to be a successful investor, you need to be diligent in your search for new opportunities. And these opportunities don't need to be brand-new to the financial markets - they can just be new to *you*.

For example, when you look at your investment portfolio, do you see the same types of investments? If you own mostly aggressive growth stocks, you have the possibility of gains — but, at the same time, you do risk taking losses, from which it may take years to recover. On the other hand, if you're "overloaded" with certificates of deposit (CDs) and Treasury bills, you may enjoy protection of principal but at the cost of growth potential, because these investments rarely offer much in the way of returns. In fact, they may not even keep up with inflation, which means that if you own too many of them, you will face purchasing-power risk. To avoid these problems, look for opportunities to broaden your holdings beyond just one or two asset classes.

Here's another way to take advantage of opportunities: Don't take a "time out" from investing. When markets are down, people's fears drive them to sell investments whose prices have declined - thereby immediately turning "paper" losses into real ones - rather than holding on to quality investment vehicles and waiting for the market to recover. But successful investors are often rewarded when they not only hold on to investments during declines but also increase their holdings by purchasing investments whose prices have fallen - or adding new shares to existing investments thereby following the first rule of investing: Buy low. When the market rises again, these investors should see the value of their new investments, or the shares of their existing ones, increase in value. (Keep in mind, though, that, when investing in stocks, there are no guarantees; some stocks do lose value and may never recover.)

Instead of looking for that one great "hit" in the form of an early investment in a skyrocketing stock, you're better off by seeking good opportunities in the form of new investments that can broaden your existing portfolio or by adding additional shares, at good prices, to your existing investments. These moves are less glitzy and glamorous than getting in on the ground floor of the next big thing – but, in the long run, they may make you look pretty smart indeed.

> For more information contact Adam Olenick at 330-493-0047

> > 5



HELPING AN ACQUAINTANCE MAY MEAN A TRIP TO COURT

Scott P. Sandrock Brennan, Manna & Diamond, LLC

Physicians, by nature and through their training, have a strong commitment to helping their patients and others. Unfortunately, physicians, from time to time, need to be reminded of the lines drawn under law regarding access to patient records, remembering if it is your patient, and the potential consequences for not paying attention to those rules.

A recent case decided by the Court of Appeals in Franklin County is an unfortunate lesson in several things that physicians need to avoid to prevent becoming embroiled in litigation.

In the case, a patient had presented at the emergency room complaining of pain in his abdomen. The patient had a history of deep vein thrombosis and pulmonary embolism. The patient had previously had a filter installed to catch blood clots. When he came to the hospital, a CT scan was performed. The radiologist reviewed the test and concluded the images were essentially normal. The patient was sent home with an antibiotic for a possible infection. The patient collapsed the following day and later died from a pulmonary embolism.

In most situations, these facts may result in a traditional malpractice suit regarding the standard of care. In fact, the case went to trial with a trial court decision rendered in <u>favor</u> of the physician.

What complicated this case and resulted in the verdict being set aside and a new trial ordered were actions by another physician not involved in the treatment of the patient.

At the calling hours for the patient, the patient's mother was talking to the local golf pro who was a friend of the decedent. She had expressed some questions about why her son died, and the golf pro introduced her to another friend. This acquaintance happened to be another radiologist at the same hospital who, according to the mother, expressed some "concern" about her son's case, who told her he would look at the scans and get back to her. The golf pro testified that the second physician later had a conversation with the golf pro at the golf club, told the golf pro that he thought the scans showed clots and the golf pro testified the second physician stated that "they blew it" and that the patient "should be here today." Apparently another physician who happened to be part of the foursome had overheard the conversation.

Counsel for the plaintiff sought to include the second physician's testimony in the trial of the case, seeking to use that testimony as an admission by another member of the same group that the reading physician had committed malpractice. The second physician in his deposition claimed that while he had looked at the scans, he had only done so briefly and had felt there was nothing unusual about the scans. The physician could not explain while the electronic medical records showed that someone using his identification number had accessed the scans on more than five occasions. He also admitted talking to the golf pro about the case, but claimed he never admitted the treating physician had made a mistake.

The trial court had excluded testimony regarding the second physician, claiming that it was inadmissible hearsay. At the conclusion of the trial, the jury had entered a verdict in <u>favor</u> of the reading radiologist and against the plaintiffs. Plaintiffs appealed.

The Court of Appeals <u>reversed</u> the decision of the trial court and remanded the case for a new trial to include the statements of the second physician, along with the testimony of the golf pro and the physician who overheard the conversation.

In this case, what went horribly wrong? First, the physician at calling hours should have resisted the urge to comment on any matter where the physician was not the treating physician. As soon as the physician said anything other than he was sorry that the patient died, the physician fell outside of the Ohio "I'm Sorry" statutory protection. In a prior article for the Newsletter, I had described that under Ohio Revised Code §2317.45, a physician may make a statement expressing sympathy, condolence or compassion for the injury or death of a patient, and that those expressions of sympathy cannot be used as evidence that the physician admitted liability or expressed an opinion regarding liability for the outcome. The physician in this case had already crossed the line by expressing his "concern" and thereafter reviewing the scans.

Second, while not discussed in the court's decision, the physician had also committed several HIPAA violations. The physician had used physician's access to electronic records to review a record of a patient with whom the physician did not have a professional relationship, and as such, the mere access of the records was a violation. The physician had a second violation by having a conversation with the golf pro regarding his conclusions involving a patient. While the golf pro was aware of the death of the patient and the medical issues, there was no legal basis for the physician to share that information with the golf pro without violating HIPAA.

Third, the physician further complicated his world by expressing a professional opinion regarding the work of another radiologist by stating he believed that the radiologist had misinterpreted the CT scan. You can imagine the discussions among the physicians in the group who now have to undergo a second trial. The matter also raises the issue of whether the insurance carrier will defend a second trial.

In the Columbus case, the unsolicited opinion of the second physician turns a case where a judgment had been rendered in <u>favor</u> of the original physician into a case where the outcome may be the exact opposite.

In short, physicians need to resist the urge to express opinions regarding the treatment by other physicians to acquaintances or the like. If asked, comments should be limited to recommend that the family member obtain a second opinion. If a physician believes inappropriate care has occurred, the physician may express their opinions in the peer review process which remains confidential. A physician who volunteers to independently review records or express an opinion, is likely to become an unpaid expert or a fact witness in a lawsuit.

If you would like a copy of the Opinion or our prior article on the Ohio "1'm Sorry" statute and subsequent cases, please contact Scott Sandrock at 330-253-4367, spsandrock@bmdllc.com.





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SCMS News

Over 160 attendees enjoyed the third annual "Mission Possible," a joint fundraising event hosted by the Stark County Medical Society and the Medical Society Auxiliary. The theme of the event was "Casino Royale," an evening of dining, auctions, and casino-style gaming to raise money for Community Harvest, PAL Mission, K9's for Warriors, and the Medical Auxiliary Scholarship Fund.

One lucky winner, Terry Wilmink, "hit the jackpot" and

walked away with a treasure trove of gift certificates, cash, coins, and lottery tickets valued over \$1000 while the event collectively raised over \$30,000 to be distributed among the four non-profits selected.

Jill Miller of PAL Mission and Faith Barbato of Community Harvest both gave a brief summary of their missions and expressed their gratitude to the sellout crowd. "PAL Mission has been a participating agency of the Community Harvest network for eighteen years," commented Miller during her presentation. "Having Community Harvest and PAL Mission selected together as recipients of proceeds from this event is truly a wonderful blessing that I can't possible express in words."



Jill Miller from PAL Mission with Faith Barbato





SATURDAY, MAY 6TH, 2017 • 6:30PM - 10:00PM At the home of Jerry & Carole Klimo: 8320 Weston Place NW, North Canton, OH 44720 Price Per Person: \$75.00 - Number of Spots Available: 18

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Mark Vogelgesang, MD 2015-2017

¦ SCMSA NEWS

Attention all SCMS members: If your spouse or domestic partner is not already a member of the SCMSA, please sign them up! The group was established as an extension to the SCMS . Our main function is to create fellowship amongst physician's families. We also raise money for our charitable fund, which gives scholarships and also does outreach in the Stark community. The dues are only \$25.00 per year and \$20.00 for the spouse or domestic partner of a resident.

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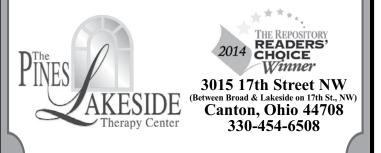


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FOR IMMEDIATE RELEASE

Contact: Adam Olenick • January 30, 2017 • 330-493-0047

Adam Olenick Qualifies for Edward Jones' Financial Advisor Leaders Conference

This conference recognizes financial advisors who are among the leaders in the financial-services firm. The conference also will provide additional training to help them serve more individual investors in their communities.

Olenick was among the only 821 financial advisors who qualified out of the firm's 14,000 financial advisors in the U.S. and Canada.

The 2016 conference will be held in May at the firm's headquarters in St. Louis, Mo.

"Qualifying for this conference shows a tremendous amount of discipline, commitment and work ethic," says Alan Kindsvater, an Edward Jones partner responsible for Advanced Branch Training, and host of the conference.

Edward Jones, a Fortune 500 company, provides financial services for individual investors in the United States and, through its affiliate, in Canada. Every aspect of the firm's business, from the types of investment options offered to the location of branch offices, is designed to cater to individual investors in the communities in which they live and work. The firm's 14,000-plus financial advisors work directly with more than 7 million clients. Edward Jones, which ranked No. 10 on FORTUNE magazine's 100 Best Companies to Work For in 2016, is headquartered in St. Louis. The Edward Jones website is located at www.edwardjones.com, and its recruiting website is www.careers.edwardjones.com. Member SIPC.





SCMSA SCHOLARSHIP CHARITABLE FUND

SCMSA Scholarship Charitable Fund is taking applications for the 2017-2018 academic school year. Students, who have graduated from a Stark County High School and are attending an accredited medical school, nursing school, university, college or healthcare program in the state of Ohio are eligible. Applicants must have completed at least their first year of professional study.

For more info or an application go to www.scms-a.org or email scmsascholar@hotmail.com. SCMS family members are eligible to apply.





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June 10, 1929 ~ January 22, 2017

13



President's Message continued

In late January the proposed acquisition of Humana by Aetna was blocked by a federal judge. The \$34 billion merger between the two "health industry giants", would have resulted in the formation of the largest provider of Medicare Advantage Plans and would have virtually eliminated competition in that market. Members of the OSMA were among those interviewed by the Department of Justice.



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Let

And along with 16 other state medical associations assisted in this successful effort. The judgement found that the merger of the head-to-head competitors would be "a clear and present threat to quality, accessibility, and affordability of healthcare for millions of seniors". This is just another recent example of the OSMA's dedication to its mission of patient advocacy.

This year's OSMA Annual Meeting will be held at the Easton Hilton Hotel in Columbus on March 17-19th. As usual, on the first day, education sessions are offered during the Annual Symposium. The General Sessions will be comprised of lectures discussing strategies for building a strong team culture along with updates from Washington as well as from Columbus. The afternoon breakout sessions will include lectures addressing MACRA payment reform, optimization of practice operations, finance and reimbursement, professional development, communications, technology, legal, and compliance. The House of Delegates will convene on the 18th and 19th. The House will consider resolutions that will establish the organization's guiding policies for the coming year. Elections for OSMA physician leadership are conducted during the House of Delegates. These include election of association officers, OSMA Councilors and members of the Ohio Delegation to the American Medical Association. The OSMA Annual Meeting provides members an opportunity to learn more about the priority issues of the OSMA and actively participate in policy discussions of the organization. It should prove to be a very rewarding and enjoyable weekend. I hope to see you there!



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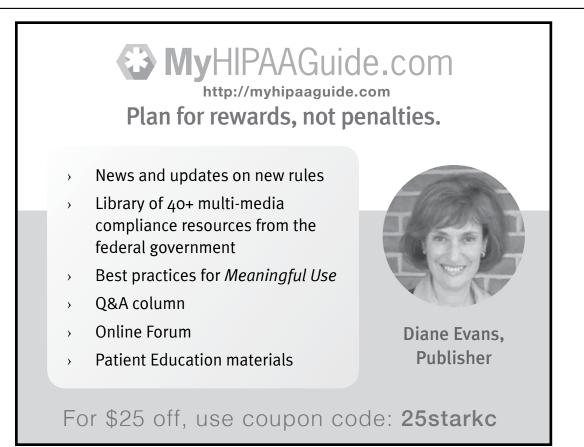


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