

**CMS Board of Directors: May 17, 2019**  
**CONSENT CALENDAR: Items for Approval**

- Item 1: Minutes from 3-15-19, BOD Meeting; Pages 1-8  
Item 2: Minutes from 3-27-19, COL Meeting; Pages 8-10  
Item 3: Minutes from 4-4-19, CPEA Meeting; Pages 10-11  
Item 4: Minutes from 4-10-19, COL Meeting; Pages 12-14  
Item 5: Minutes from 4-17-19, Executive Committee; Pages 14-17  
Item 6: Minutes from 4-24-19, COL Meeting; Pages 17-19  
Item 7: Report of Committee on Physician Wellbeing; Pages 19-22  
Item 8: Minutes from 4-30-19 BOD Meeting; Pages 22-24

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**Item 1: 3-15-19, BOD Minutes:**

**MEMBERS PRESENT**

President	Deb Parsons, MD
President-elect	David Markenson, MD
Imm. Past President	Robert Yakely, MD
Districts 1 & 2	Hap Young, MD
Districts 3 & 4	Vacant
District 5	Jason Kelly, MD
District 6	Brandi Ring, MD
District 7	Leto Quarles, MD
District 8	Mark Johnson, MD
District 9	Curtis Hagedorn, MD
District 10	Rocky White, MD
District 11	Cory Carroll, MD
District 12	Patrick Pevoto, MD
District 14	Sofiya Diurba, MSC
CPMG	Kim Warner, MD
RFS	Vacant

**MEMBERS ABSENT (EXCUSED)**

District 13	Brad Roberts, MD
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**GUESTS PRESENT**

Judy Ladd, Sara Lipnick, Kathy Lindquist-Kleisser, Mike Ware, Stephen Boucher, Tom Keyse, Dr. Dave Downs, Iris Burgard, Benjamin Kupersmit

**CMS STAFF**

Alfred Gilchrist, Susan Koontz, JD, Chet Seward, Dean Holzkamp, Gene Richer, Dianna Fetter, Krystle Medford, Kate Alfano

I. Introductions of members and guests

CMS President Debra J. Parsons, MD, kicked off the meeting at 1:00pm with introductions and the following comments;

- Announced that there would be one request to suspend the two-week notice rule for an appointment to the Special Work Group on Health Care Cost and Quality during the Consent Calendar; and a second for a Report of the Council on Legislation on out-of-network legislation.

## II. Fiscal Year 2019-2020 Strategic Discussions

Dr. Parsons started the Fiscal Year 2019-20 strategic discussion with a power point presentation to put the importance of these strategic discussions in context of the board's fiduciary duty to approve an Operational Plan in September. During this presentation, Dr. Parsons presented one slide that depicted "guideposts" that were created by the board of directors for the first Operational Plan approved after the House of Delegates repealed itself. Dr. Parsons asked the board whether these "guideposts" still resonated with the board. The following points were made by board members about the guidepost, "Put Members First":

- Healthy selfishness;
- On airline flights, passengers are cautioned in cases of emergencies to put their air masks on first before helping others;
- Empowering physicians to take the best care of patients and communities we serve was offered as a replacement;
- Fulfill our mission: Put patients and physicians first was offered.

A suggestion was also made to include public health.

The power point and Dr. Parsons major points are available upon request.

- Following the power point presentation and discussion, Dr. Parsons made the following points:
- Today begins a series of strategic discussions that will continue over the next two meetings and culminate in approval of a new Operational Plan in September.
- Throughout our strategic discussions today, our executive team will be taking copious notes.
- The new Operational Plan will be administered during the Presidency of Dr. David Markenson.
- Similar to when I was President-elect, David has been very involved in developing today's discussions and will continue to be throughout the process of building out the new Operational Plan.
- Because we are operating a business model in a very competitive market and during a time of great change in health care, the first strategic discussion will begin with a presentation and strategic questions on membership.
- Director of Membership Retention and Recruitment, Krystle Medford, was introduced to lead the discussion. Following Ms. Medford's discussion, the following two questions were posed to the board.
  1. Given this more in-depth look at membership, what areas of concern do you identify?
  2. How should CMS address your concerns?

In response to these questions, board members made the following comments:

- Physician representation versus hospital: How do we thread the needle given legislation? How do we make it easier for docs to join separate from their group? Re-evaluate how to get individual docs to join.
- Success with COPIC was a brilliant strategic move back when. Hospitals need to have options. How can COPIC have a larger part of the market? Many of our colleagues have no clue what we do. There would be consequences if there was no CMS. Let's focus on preventing a catastrophe.
- There are obvious benefit to students; how do we find a COPIC discount equivalent for employed physicians?
- Differing issues between large groups and community-based physicians. Some looking to bottom line. Most docs do not get a charge out of policy and advocacy. Locally, Boulder County Medical Society has picked up the role of the doctors' lounge. Figure out how to communicate in language that can be heard.
- How do we adjust value to changing market? Shared value between employer and doctor. Recruitment may need to include that advocacy is part of the owner. Clearly articulate that there is a benefit to the owners.
- Do we have intangible benefits of our members compared to non-members; e.g., less burnout; better health?

Dr. Parsons thanked Ms. Medford for her presentation (available upon request) and moved to the next strategic discussion by making the following comments:

- Because COPIC is the CMS-endorsed carrier of professional liability insurance and CMS membership at this time is very tied to the COPIC discount, and because COPIC is also in a highly competitive market during times of rapid change in health care, hearing from the new COPIC CEO flows with the previous discussion.
- The new COPIC CEO, Gerald Zarlengo, MD, will discuss (1) Where COPIC is going under his leadership; (2) COPIC's response to the current (soft) professional liability insurance market; and, (3) The CMS-COPIC partnership. Gerald Zarlengo, MD, COPIC President and Board Chairman participated remotely and made the following points:
  - Thanked the board for the opportunity to make comments
  - Stated that he has looked at the CMS-COPIC history and is very aware that COPIC came out of CMS (meaning COPIC's inception);
  - When COPIC was first born: Sold insurance in-state only and only to physicians;
  - This has changed over the past 3 to 7 years;
  - COPIC is state of flux and changing approach
    - Selling insurance in many states;
    - COPIC is number one in the market in Colorado and Nebraska
    - Can now write in 28 states
  - COPIC writes for facilities and mid-levels
  - COPIC is in a soft market; very competitive market;

- Liability insurance is relatively inexpensive creating great competition;
  - Write with low risk and price
  - Worry about someone buying or merging with COPIC
- 1<sup>st</sup> collateral effect
  - RRT- We had to write some groups and gave up the COPIC discount
- Strategize on an ongoing world; 100% foster success and financial success of both organizations; we are grateful for the endorsement
- Bread and water: Lock our teams in a room with bread and water so we can both be successful;
  - Looking internally how we can emphasize the CMS value and continue the 10% discount.
- Re-tell the story of COPIC: We have hired a marketing firm to sell COPIC and we need to add-in CMS in that message
- The third strategic discussion focused on cost and coverage, specifically in the context of a new political environment in Colorado.
- CMS Chief Strategy Officer, Chet Seward, made a brief presentation to begin the conversation. Following his presentation, the following three questions were posed:
  - Given these changes (the new normal), how do you want CMS to show up in the public policy space and with our members over the next three years?
  - What do our members need to know?
  - What is the best way to engage our members on controlling costs while ensuring quality?
- The following comments from board members discussions were recorded:
  - Come up with a way to hear from members
  - The patient as a responsible participant. Pivot the conversation to patient responsibility and key issues. Really need to stop using the word “cost”, instead “value and efficiency.”
  - Think about what helmet laws and seat belt laws have accomplished. We need to tax food that is bad for consumers.
  - We are a sick population. We have to push the envelope on helping lower the disease rate, (food; public health) rather than developing cheaper stents.
  - We should be arguing for public health policy that are measurable over the long-term.
  - We need the cooperation of legislators to make long-term investments in health care system. Incentivize legislators to pay for health. Focus with message to cooperative with payers to take a long-term approach to reducing costs. How do we cooperate?
  - Public policy space. Seen as driving things. Part of our value proposition; help members understand why we make decisions. We make rational decisions, but they don’t communicate as rationale sometimes.
  - Resource management is language we should use.
  - Best value care that prevents expense and improves health.
- The fourth and last strategic discussion focused on physician empowerment.
- Dr. Parsons noted that we want CMS members to feel supported and there are various ways to come at this important aspect of the member experience.
- Mr. Seward kicked off this discussion and posed the following questions:

1. Should CMS create a physician bill of rights?
2. How might that initiative empower members in different practice settings?
3. What benefits would there be for CMS to enable members to create a physician bill of rights?  
What benefits would there be for patients?
4. If there is value in this idea, then what are appropriate next steps?
  - Employed physicians bill of rights; unique issue of employed physicians; pivot and aim to this population
  - The concept of an employed physicians bill of rights is great; AMA already has one; Nobody knows about it; why should we recreate? We should use the AMA BOR. Does it resonate?
  - Bad marketing
  - Agree it is bad marketing. It is important for docs to understand risks of employment
  - Agreed with the idea of a BOR; we should be marketing to physicians

### III. Fiscal Year 2018-2019 Operational Plan

#### 1. Section 1: Public Policy

- a. Professional Review-Liability Climate (**Sense of the board strategic discussion**)
  - i. Member Survey
  - ii. Professional Review-Liability Legislative Realities

Dr. Parsons turned the board's attention to Professional Review and Liability by making the following comments:

Reenactment of the Medical Practices Act and the body of law governing professional review with legal protections is a high priority for CMS. These two bodies of law are the foundation for patient safety in Colorado.

It's very important that the board and the Council on Legislation understand what our members are saying and the latest realities in the Colorado General Assembly. CMS pollster Benjamin Kupersmit was introduced to present the latest member survey data and data from a survey CMS commissioned of Florida Medical Association members. The CMS and Florida survey data are available upon request. Board members were unanimous in the opinion that the data should be used to demonstrate what CMS is doing for them. The CMS and Florida survey data are available upon request

Dr. Parsons asked the board to think about the membership perspective given by Mr. Kupersmit while CMS Director of Government relations, Susan Koontz, JD, reported on the status and the politics around the Sunset bills on professional review, Medical Practices Act and efforts by plaintiff attorneys to expand the value of a lawsuit. A Q and A session followed with M. Koontz following her presentation.

#### b. Anesthesia Supervision Opt-Out (**Information**)

Dr. Parsons turned the board's attention to the issues of the federal Medicare requirement that physicians supervise CRNAs by making the following points: Some of you may recall this issue from the time Governor Ritter was in office. He exercised gubernatorial discretion and ordered a limited opt-out. The House of Delegates agreed that we should join Colorado Society of Anesthesiologists and sue the Governor which we did. Now there is discussion about expanding the Opt-Out statewide. Because of the history behind this issue and the passion that it evokes, it was appropriate that this matter rise to the level of a board update and discussion. CMS CEO, Alfred Gilchrist, gave the board an update on what has transpired since the agenda packet went out on March 1. He reported that CMS was preparing a witness to testify on April 5 before NPATCH, the Nurse-Physician Advisory Task Force for Colorado Healthcare and that the board would be updated as the issue unfolds. The board accepted Mr. Gilchrist's report for information.

## 2. Section 3: Communications

Dr. Parsons directed the board's attention to the OON proposal and asked to suspend the two-week notice rule. The rule was suspended. David Downs, MD, Chair, Special Work Group on Health Care Cost and Quality, provided the board with background on how the report evolved. There were questions and discussion. A motion was made, seconded and approved with two abstentions.

Dr. Parsons turned the board's attention to two Central Line policy proposals. She explained that over 600 physicians were participating on the two central Line proposals.

### a. Central Line Policy Proposals

#### i. Firearm Safety (**Action**)

1. Dr. Parsons made the following comments to start the discussion on the firearm safety proposal:
2. She submitted this proposal on behalf of the board of directors
3. It originated with the CMS Delegation to the AMA
4. She asked comments or questions about the various aspects of the proposal and whether there was any new information from staff. Following these comments and no discussion, a motion was made, seconded and unanimously approved to adopt the Central Line proposal.

#### ii. Abolish ABIM MOC and Support NBPAS (**Action**)

1. Dr. Parsons made the following comments about the second proposal titled Abolish ABIM MOC and Support NBPAS. It was submitted by CMS member James C. Knight, MD. Dr. Knight is a member of Foothills Medical Society. Our membership records show that Dr. Knight finished his Internal Medicine residency in 2011 at University of Louisville and finished his Fellowship in Pulmonary and Critical Care Medicine in 2014 at University of Cincinnati. She asked comments or questions about the various aspects of the proposal and whether there was any new information from staff. Following these comments and no discussion, a motion was made, seconded and unanimously approved to adopt the Central Line proposal. Following these comments and discussion, a motion was made, seconded and unanimously approved to disapprove the Central Line proposal.

The board gave consent to the following message being posted with the vote to disapprove the proposal: "While CMS believes that physicians need to be life-long learners in order to continually

provide high quality care, CMS also recognizes members' legitimate concerns about unduly burdensome maintenance of certification (MOC) requirements. Significant national work is currently underway to address the central question raised by this proposal regarding what the role and activities of a legitimate certifying institution should be. Lack of CMS member consensus on this proposal indicates that more work is needed. CMS will continue to monitor, participate, and encourage members to engage in this work as appropriate in the future."

### 3. Section 4: Organizational Excellence

#### a. Nominating Committee Report **(Action)**

Dr. Parsons introduced CMS board member Mark Johnson, MD., to give the Nominating Committee report. Dr. Johnson presented the following slate of candidates to run for CMS office that was unanimously approved by the board:

- President-elect: There are two candidates running for one open position
  - Sami Diab, MD
  - Patrick Pevoto, MD, MBA
- AMA Delegate/Alternate Delegate: There are four Delegate seats and four Alternate Delegates seats open. There are eight candidates running for the eight positions. The nominees being vetted in alphabetical order are:
  - David Downs, MD: Incumbent AMA Delegation
  - Carolyn Francavilla, MD: Incumbent AMA Delegation
  - Jan Kief, MD: Incumbent AMA Delegation
  - Rachelle Klammer, MD: Incumbent AMA Delegation
  - Tamaan Osbourne-Roberts: Incumbent AMA Delegation
  - Lynn Parry, MD: Incumbent AMA Delegation
  - Brigitta Robinson, MD: Incumbent AMA Delegation
  - Mike Volz, MD: Incumbent AMA Delegation

#### b. Consent Calendar **(Action)**

Dr. Parsons turned the board's attention to the Consent calendar. She noted that the consent calendar contains 6 sets of minutes and one nomination. She asked for a motion to suspend the two-week notice rule so Al Steinmann, MD, could be included in the report for Nomination to the Special Work Group on Health Care Cost and Quality and furthermore noted that this request was posted on the Board's Base camp on March 8. A motion was made and unanimously approved to suspend the two-week rule on the Steinmann appointment.

The Consent Calendar with the inclusion of Dr. Steinmann's appointment was opened for discussion. A motion was made and unanimously approved to adopt the Consent Calendar.

#### b. Finance Committee report

##### 1. Financial summary and statements: December 2018-January 2019 **(Action)**

Dr. Parsons introduced Patrick Pevoto, MD, to give the Finance Committee report. Dr. Pevoto reported that CMS has improved its financial performance by \$61,638 since the end of November 2018 to finish January 2019 with a \$3,885 positive gross variance against its operating budget. Dr. Pevoto expressed optimism that the positive trend will continue so as to overcome the loss of two large physician groups representing almost \$120,000 in dues revenue. The board unanimously approved the Finance Committee report.

#### V. Board Memo Update: Extractions

Dr. Parsons asked for extractions from the Board Memo Update. There were two: (1) Payer Complaint Tool; and, the All-member survey report. Dr. Ring noted that the payer complaint tool should also capture the experience of physicians and asked that this be brought to the attention of Marilyn Rissmiller. Dr. Parsons noted that the mini-Z survey question was not noted in the summary report.

#### VI. Executive Office Reports – No Reports Provided.

- A. President - Deb Parsons, MD
- B. President-elect - David Markenson, MD
- C. Immediate Past President - Robert Yakely, MD
- D. Chief Executive Officer - Alfred Gilchrist

#### VII. Other Business

- A. Next meeting is May 17, 2019, CMS Headquarters, Denver CO

#### VIII. Adjournment

#### IX. Executive Session was held.

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#### **Item 2: 3-27-19 COL Minutes:**

##### **Members Attended**

William Brandon, Kristin Freestone, Stuart Gottesfeld, Nathaniel Hibbs, Jeremy Huff, Shannon Jantz, George Kalousek, Brent Keeler, Alan Kimura, Terry Lakin, Rachel Landin, Steven Lowenstein, Mark Matthews, Jason Mayer, Stacy Parra, Lynn Parry, Deb Parsons, Richard Penaloza, Scott Replogle, Allison Sandberg, Donna Sullivan, Lisa Swanson, Christopher Unrein, Gary VanderArk, Usha Varma, Mary Wang, Bruce Waring, Kim Warner, Anna Weyand, Robert Yakely

##### **Members Excused**

Deborah Archer, Clara Epstein, Mark Johnson, Taj Kattapuram, Fred Miller, Lee Morgan, Todd Mydler, Emily Schneider, Kathleen Traylor,

##### **Guests**

Jack Berry, Patricia Foster, Judy Margolis, Steven Taylor, Anna Weaver Hayes



### **Non-members/staff Attended**

Ryan Biehle, Emily Bishop, Stephen Boucher, Dick Brown, Dave Downs, Suzanne Hamilton, Dean Holzkamp, Dan JAblan, Jerry Johnson, Susan Koontz, Janet McIntyre, Martha Middlemist, Jennifer Souders, Sara Odendahl, Marilyn Rissmiller, Debbie Wagner

### **Members Absent**

Cory Carroll, Enno Heuscher, David Markenson, Carla Murphy, Tamaan Osbourne Roberts, Ian Reynolds, Brandi Ring, Luke Selby, Stephen Sherick, Michael Volz

### **Roll Call, Welcome**

Dr. Warner called the meeting to order and took roll. She asked those on the phone to mute themselves when not speaking and asked for any conflicts of interest. The CU students and Jerry Johnson identified their relationship to HB19-1241.

Dr. Warner then moved to the legislation for action.

### **Legislation for Action**

#### **SB19-193**

Dr. Warner gave Council background on the bill and introduced the potential amendment included in Council's packet. She then handed the floor to Suzanne Hamilton who went into further detail on the amendment, which would give the board authority to suspend a licensee who has been formally charged with a felony. Council discussed whether this amendment honored due process, determined that it did and voted to SUPPORT – strong level (unanimous)

#### **SB19-153**

Dean Holzkamp explained that COS and the podiatrist had met and negotiated an amendment both groups were happy with. Council voted to SUPPORT – low level (unanimous)

#### **HB19-1237**

Dr. Warner introduced the legislation and Dr. Kalousek informed Council CPS is monitoring. After brief discussion, Council voted to MONITOR (unanimous)

#### **HB19-1241**

Dr. Warner asked Jerry Johnson, who represents CU at the Capitol, to discuss the details of this bill with Council. He warned Council there was no guarantee this bill would be funded. Council discussed the importance of adding stability for the rural track at CU and the financial realities of the program. After robust discussion, Council voted to SUPPORT – moderate level (unanimous)

#### **HB19-1216**

Dr. Warner introduced House bill 1216 and informed Council on the points of the bill. Council discussed the balance between government regulation and providing needed services and after robust discussion, voted to MONITOR (1 oppose, 1 abstain)

#### **HB19-1242**

Suzanne Hamilton informed Council this bill was a sunset and the pharm tech certification aspect of the bill had cropped up in several past legislative sessions. She informed Council the bill was a

question of determining pharm tech qualifications. After further discussion, Council raised a question about cost and asked the CMS lobby team to provide further information at the next COL meeting.

#### HB19-1269

Anna Weaver-Hayes presented the bill to Council on behalf of CPS. She explained the bill required private insurers and Medicaid to maintain adequate provider networks and provide annual mental health wellness check ups. Council raised concerns about primary care physicians taking on this responsibility and whether the number of mental health professionals in the state could accommodate the demand for these wellness checks. Network adequacy concerns were also raised. After further discussion, it was pointed out that parity laws already exist but are rarely followed and this bill could offer real consequences and would comply with federal legislation. After further discussion, Council voted to SUPPORT – low level (2 oppose)

#### Updates:

#### CPRA

Dr. Warner updated Council on the recent DORA Report hearing before the Senate Judiciary committee and informed Council the bill would drop soon. Susan asked that Council members let the CMS lobby team know if they wish to be considered for testimony. Dr. Parsons gave a summary from the board and Jerry Johnson gave Council an update on some of CTLA's testimony at the hearing. Council then discussed strategy moving forward.

#### Immunizations

Dr. Parra updated Council on the progress of the immunization legislation. The bill is still under active revision and Sara Odendahl discussed its politics with Council. She explained the coalition is seeking limits on the non-medical exceptions to vaccinations and parents seeking an exception would be required to submit paperwork and see a professional in order to receive a certificate of exemption. Finally, the bill would focus on education and utilizing the vaccination registry.

#### HB19-1208

Dr. Parry informed Council of amendments to HB19-1208 PTs Youth Athletes Head Trauma. This discussion began on Basecamp but Dr. Parry asked Council to take a monitor position in order to show COL's willingness to work with the entire health community. After further discussion, Council voted to MONITOR the amended version of the bill (3 oppose)

Council voted to approve the minutes as written and Dr. Warner reminded the group of the next meeting date and time.

The meeting was then adjourned.

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#### **Item 3: 4-4-19 CPEA Minutes:**

The meeting was called to order at 4:05 p.m.

**Participants:** Joel Dickerman, MD; Jason Tarno, DO, FAOASM; Lynn Parry, MD; Sharisse Arnold-Rehring, MD; Gene Richer (CMS staff)

**Absent:** Patrick Scott Pevoto, MD, MBA; Brenda Bucklin, MD; Kristin Wallick, MD

**February 2019 Minutes** - Dr. Dickerman moved to approve, Dr. Parry seconded, motion carries

### **Accreditation Decision**

Shaw Cancer Center site interview/CME activity observation was completed on 3-19-19 with Dr. Brenda Bucklin as lead surveyor and Gene Richer, CMS staff. The draft decision report is not complete. Dr. Dickerman moved and Dr. Parry seconded a motion to email the draft decision report next week for a vote. Motion carried

### **Pre-application to determine eligibility for Accreditation**

Invision Sally Jobe (network of imaging centers - partnership between Radiology Imaging Associates and HealthOne. Dr. Parry moved and Dr. Dickerman seconded a motion to accept the pre-application and invite Invision Sally Jobe to continue the process for initial accreditation. Motion carried

### **Progress Report Review**

Delta Community Hospital submitted their progress report for C7 SCS1. Dr. Dickerman moved and Dr. Arnold-Rehring seconded a motion to accept this progress report. Motion carried. Delta still needs to submit a progress report for C12 which will be sent by email for a vote.

### **2019 Survey Schedule Update**

Colorado Mental Health Institute at Pueblo 5/31/2019

site interview 4/15/19 Dr. Joel Dickerman, Gene Richer

Cheyenne Regional Medical Center 5/31/2019

site interview 4/19/19 Dr. Lynn Parry, Gene Richer

Montrose Memorial Hospital 8/31/2019

site interview targeted for July

Colorado Permanente Medical Group Education 2/28/2020 (requested Nov 2019 cohort)

Target site interview for 1<sup>st</sup> 2 weeks of November

It was requested that preferred site interview dates are collected 6 months before site interview to better accommodate CPEA member's availability. Gene will post a Doodle poll when preferred dates are received so CPEA members can show availability

### **Committee Member Training/Education**

ACCME Criterion 1-6 - Applying ACCME Markers of Equivalency - tabled until next meeting

### **Educational Opportunities**

April 11 - ACCME Monthly Webinar - C7 (SCS1) and C10

April 29 - May 2 - 2019 ACCME Accreditor Summit

August 8-9, 2019 CACME Annual Conference, Denver, CO

**Accredited Provider Education - table until next meeting.** Gene will create and distribute a survey to accredited providers to determine top educational topics for educational opportunities. Gene will most likely travel to various regions of Colorado this summer to provide education.

**CMS fee schedule - table until next meeting.** Gene will put together financial information related to income and expenses for the CMS accredited provider fee schedule. Goal is to finalize CPEA's recommendation at the October meeting so recommendation can go to the CMS Board in November.

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**Item 4: 4-10-19 COL Minutes:****Members Attended**

Deborah Archer, William Brandon, Kristin Freestone, Stuart Gottesfeld, Nathaniel Hibbs, Mark Johnson, Brent Keeler, Terry Lakin, Rachel Landin, Mark Matthews, Lee Morgan, Carla Murphy, Todd Mydler, Lynn Parry, Deb Parsons, Scott Replogle, Brandi Ring, Emily Schneider, Donna Sullivan, Lisa Swanson, Kathleen Traylor, Christopher Unrein, Usha Varma, Mary Wang, Kim Warner

**Members Excused**

Shannon Jantz, Taj Kattapuram, Alan Kimura, Steven Lowenstein, Jason Mayer, Stacy Parra, Gary VanderArk

**Non-Members/Staff**

Emily Bishop, Dick Brown, Edie Busam, Dave Downs, Suzanne Hamilton, Dean Holzkamp, Dan Jablan, Jerry Johnson, Susan Koontz, Jennifer Souders, Sara Odendahl, Chet Seward

**Members Absent**

Cory Carroll, Clara Epstein, Enno Heuscher, Jeremy Huff, George Kalousek, Fred Miller, Tamaan Osbourne-Roberts, Richard Penaloza, Ian Reynolds, Allison Sandberg, Luke Selby, Steven Sherick, Michael Volz, Bruce Waring, Anna Weyand, Robert Yakely

**Roll Call, Welcome**

Dr. Morgan called the meeting to order and took roll. She asked those on the phone to mute themselves and reminded Council of the reason for the early morning meeting. She then asked for COIs. Hearing none, Dr. Morgan began the meeting.

**Legislation for Action****SB234**

Dr. Morgan introduced the bill and explained it was largely similar to the DORA report released in October. She handed the floor to Susan who explained the trial lawyers are seeking extraction and negligent credentialing files. Susan informed Council that she was meeting with Senator Rodriguez that day to discuss the bill but that the other Senate sponsor, Mike Foote, had asked CMS and CTLA to reach an agreement on the bill. Susan would speak to Senator Rodriguez about the results of that joint CMS-CTLA meeting and next steps. Dr. Parry informed Council there was one line of the bill that was concerningly broad related to reporting and rulemaking. Susan informed Council COPIC was meeting with DORA to discuss this piece of the bill. Finally, it was pointed out that decreased liability protection will negatively impact physician-patient ratios in Colorado, which is ranked 8<sup>th</sup> from the bottom for physician income.

No action was needed on SB234.

#### SB217

Dr. Morgan introduced the next item on the agenda and informed Council legal analysis was included in their packet. Dan Jablan gave Council more background on the bill and current amendments. Discussion ensued and it was pointed out this was a trial lawyer bill rather than being beneficial for consumers. A question was raised regarding leveraging this bill to help in the fight over peer review, however Dan Jablan informed Council SB217 was not a priority for CTLA. Council voted to MONITOR (1 oppose).

#### SB227

Dr. Morgan informed Council this bill was consistent with CMS policy and COL had supported a similar bill last session. Suzanne Hamilton also informed the group CoACEP was in support of the bill, although there was some concern about clean needle exchanges in ERs. Dr. Ring raised a concern regarding the high cost of opiate antagonists and the mandate to supply them anywhere there is an AED. She pointed out the high cost may cause unintended hardship. Council concurred with the concern and after further discussion, voted to SUPPORT – low level (unanimous).

#### SB228

Suzanne Hamilton informed Council this bill perhaps most directly affects physicians of the three opioid bills on the agenda. The section regarding medical examiners was reduced from all coroners having access to the PDMP in a similar bill last session and Suzanne informed Council the HOM considered this a win. After further discussion regarding the fiscal note, Council voted to SUPPORT – low level (Unanimous).

#### HB1287

Dr. Morgan introduced the bill and asked Suzanne Hamilton to say a few words about it. Suzanne informed Council this was the most important opioid bill for ER physicians of the three discussed that morning. Finding timely treatment for individuals with substance use disorder is crucial. This bill would go a long way to make this possible. COL discussed testifying on the bill and after further brief comments, voted to SUPPORT – moderate level (unanimous).

#### SB219

Dr. Morgan introduced Senate bill 219 and explained it was a sunset. After brief discussion, Council determined it did not really effect physicians and voted to MONITOR (unanimous).

#### HB1301

Edie Busam went into detail on this bill and informed Council of its current status. Council discussed what guidelines would be appropriate to cite in the bill and Edie also informed Council the Lt. Governor was in support of this bill and it was backed by sponsors with close ties to breast cancer prevention. After brief discussion, Council voted to SUPPORT – low level (1 oppose).

#### HB1312

Sara Odendahl informed Council the bill would be heard that afternoon, weather permitting, and the introduced bill was the same as the draft discussed at the last COL meeting. A question was raised regarding whether the Governor would sign the bill. Sara explained the Governor's lobby team had indicated they supported the bill as written and Governor Polis would be expected to sign if it passes the legislature. Council voted to support – moderate level (unanimous).

## **Updates**

### **SB193 Hearing**

Suzanne Hamilton informed Council the MPA sunset hearing was a success and the amendment discussed at the last meeting had been added to the bill. She concluded the update by informing Council they were working to get this bill passed quickly in order to focus on Peer Review.

### **HB1168**

Dick Brown gave Council an update on this bill and the amendment that had taken physicians completely out. He went into detail on the financing system and cautioned Council that although physicians were no longer in the bill, there was still concern about market effect if the bill passes and receives the necessary waiver from the federal government.

## **Other Business**

Dr. Morgan asked for the March 27 COL minutes to be approved, which they were with one clarification.

She then reminded Council to check Basecamp and the meeting was adjourned.

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## **Item 5: 4-17-19 Executive Committee Minutes:**

**Background:** Reenactment of the body of law governing professional review under the state's sunset process with legal privileges fully intact is a high priority of CMS based on previous votes of the board of directors. The conference call was initiated because: (1) With 18 days remaining in the Regular Session of the 2019 General Assembly, SB19-234, legislation to reenact this critical body of law and strongly supported by CMS, had not been scheduled for its first hearing; (2) A meeting at the request of the SB19-234 bill sponsors between attorneys representing Colorado Trial Lawyers Association (CTLA), CMS, COPIC and CHA had produced an understanding of CTLA interests in SB19-234 and a proposed offer from COPIC, CMS, and CHA had been drafted and submitted to CTLA with the caveat that CMS had not signed off; and, (3) The President and CEO wanted to be certain that the Executive Committee was involved in any policy offers to CTLA and was up-to-speed on the politics of SB19-234. On Monday, April 15, the following notice was posted on the Base Camps for the Board of Directors and the Expert Panel on Professional Review-Medical Practices Act Sunset:

We are requesting as many BOD members as possible, most particularly Executive Committee members, participate in this conference call to level set and to do a policy update on professional review given discussions with CTLA. Please make every effort to participate. The call will last no longer than one hour, hopefully less.

**Meeting summary and outcome:** The CMS President, Debra J. Parsons, MD, opened the meeting at 7:00 am with roll call and the following points:

1. An expression of gratitude to all for attending;
2. Statement of call's purpose as follows: To level set and get input from physician leaders on two things relating to professional review sunset:

- a. A policy exchange with Colorado Trial Lawyers Association; and,
  - b. A political prognosis on SB19-24, The Professional Review Sunset bill.
3. The following outline on how the call would be conducted:
- a. We sent to you yesterday a communication from COPIC to CTLA.
    - i. We will have CMS outside legal counsel, John Conklin, JD, discuss this communication with us
    - ii. During John's presentation, please ask questions
    - iii. The idea is for everybody to understand
    - iv. Once everyone understands, I want to know if you believe we are okay with what has been conveyed to CTLA.
  - b. The second part of the call will be a political prognosis on SB19-234. This is important because we are 16 days from adjournment of the Regular session of the 2019 General Assembly and the bill has not had hearing one.

John Conklin, JD, provided an explanation of the offer to proposed offer to CTLA (scroll down to review the offer). There was a thoughtful question and answer session with Mr. Conklin.

**Following discussion, a motion was made, seconded and unanimously approved that CMS sign on with COPIC and CHA on the offer to CTLA.**

Susan Koontz, JD, CMS General Counsel and Sr. Director of Government Relations, provided a political prognosis on SB19-234.

The meeting adjourned at 8:00am

#### Executive Committee Members Attending

Deb Parsons, MD, FACP, President  
 David Markenson, MD, President-elect  
 M. Robert Yakely, MD, Immediate Past President  
 Cory Carroll, MD  
 Patrick Pevoto, MD, Treasurer  
 Kim Warner, MD

#### Other CMS Board of Directors members attending

Curtis Hagedorn, MD  
 Jason Kelly, MD  
 Brad Roberts, MD

#### Expert Panel on Professional review-MPA Sunset Attending

James P. Borgstede, MD, FACR, Vice Chair for Clinical Operations, Quality, and Safety Department of Radiology, CU School of Medicine  
 Keith Scott Dickerson, MD, MS, Senior Faculty at St. Mary's Family Medicine Residency, Associate Director of Family Medicine Teaching Service

Neal O'Connor, MD, FACEP, Emergency Medicine, Chief Medical Officer CarePoint Healthcare  
Lynn Parry, MD, Chair, Council on Ethical and Judicial Affairs  
Jean Martin, MD, JD, COPIC  
Gerald Zarlengo, MD, CEO and President, COPIC Companies

Special invited guest

Alethia Morgan, MD, Chair, Council on Legislation

CMS staff attending

Amy Goodman, JD; Chet Seward; Susan Koontz, JD; Alfred Gilchrist; Emily Bishop; Dean Holzkamp

Draft Offer to CTLA

From: Jean Martin <[jmartin@COPIC.COM](mailto:jmartin@COPIC.COM)>

Date: Apr 15, 2019 5:59 PM

Subject: SB 234 proposed amendments

To: 'Lorraine Parker' <[lorraine@parkerlipman.com](mailto:lorraine@parkerlipman.com)>, 'Lorraine Parker' <[lorraine@parkerlipman.com](mailto:lorraine@parkerlipman.com)>, 'Jim Puga' <[JPuga@leventhal-law.com](mailto:JPuga@leventhal-law.com)>

Cc: John Conklin <[JConklin@ccrlawyers.com](mailto:JConklin@ccrlawyers.com)>

Lorraine, David, and Jim

We've considered your proposed revisions, the CTLA May 2018 memo to DORA, and our discussions April 9<sup>th</sup>. We also worked with an attorney for CHA. We are proposing the attached amendment to address some of your concerns as well as an issue both COPIC and CHA raised with DORA about professional review committee reporting (as opposed to governing board reporting) that was likely a drafting oversight after the 1994 BME Sunset.

Please note, this draft was worked out with the attorneys and has **not** been formally approved by CMS or CHA but we wanted to get you a response in the interests of time.

These were the issues raised in CTLA's memo that we've tried to address, where possible.

- Healthcare Reporting and Improving Delivery "Data reporting requirements are currently not serving any purpose to keep the public safe."

We understand that DORA did not feel the reporting data was particularly useful. People outside the hospital setting don't understand how physicians are reviewed through the ongoing credentialing process, how behavioral issues are addressed, or what we do when educational deficiencies are identified. We are suggesting giving DORA rulemaking authority to require more robust reporting about the outcomes of investigations and what specific steps are taken.

- Factual Transparency



We took some of the original source language from the Pennsylvania and Hawaii statutes cited in the CTLA memo. We agree that the professional review privilege is not intended to “hide facts” from incident reports prepared in the ordinary course of business.

- Free from Conflicts of Interest

We didn’t have any suggestions here because the current language of the statute requires an “objectively reasonable” standard with procedures that are fair to the licensee under CRS 12-36.5-105.

- Public representative

We agree that having a public member or patient representative on peer review committees is beneficial because they add a great perspective. They would be subject to the same confidentiality provisions as every other participant. We didn’t think it would be possible to mandate this for all entities, particularly for physician practices. That might deter them from doing professional review at all, particularly in smaller communities.

Jean

*Jean Martin MD, JD*

Senior Legal Counsel, Legal Department

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Toll Free: 800-421-1834 Ext. 6037

[jmartin@copic.com](mailto:jmartin@copic.com) // [www.callcopic.com](http://www.callcopic.com)

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## **Item 6: 4-24-19 COL Minutes:**

### **Members Attended**

Deborah Archer, William Brandon, Clara Epstein, Kristin Freestone, Enno Heuscher, Nathaniel Hibbs, George Kalousek, Taj Kattapuram, Alan Kimura, Terry Lakin, Mark Matthews, Lee Morgan, Carla Murphy, Todd Mydler, Stacy Parra, Lynn Parry, Deb Parsons, Richard Penaloza, Scott Replogle, Brandi Ring, Emily Schneider, Lisa Swanson, Kathleen Traylor, Gary VanderArk, Usha Varma, Mary Wang, Kim Warner

### **Members Excused**

Stuart Gottesfeld, Shannon Jantz, Steven Lowenstein, Jason Mayer, Luke Selby, Christopher Unrein, Michael Volz

### **Staff/Non-Members Attended**

Emily Bishop, Dick Brown, Dave Downs, Suzanne Hamilton, Dean Holzkamp, Dan Jablan, Jerry Johnson, Taj Kattapuram, Susan Koontz, Martha Middlemist, Marilyn Rissmiller, Chet Seward, Jennifer Souders, Eric Speer, Debbie Wagner

### **Members Absent**

Cory Carroll, Jeremy Huff, Mark Johnson, Brent Keeler, Rachel Landin, David Markenson, Fred Miller, Tamaan Osbourne Roberts, Ian Reynolds, Seve Sherick, Donna Sullivan, Bruce Waring, Anna Weyand, Robert Yakely

### **Legislative Updates**

Dr. Morgan called the meeting to order and roll was called. She reminded those on the phone to mute themselves and asked for any conflicts of interest. One member identified a conflict.

#### **SB234**

Dr. Morgan informed Council the peer review bill would be heard that afternoon. Susan Koontz gave Council an update of the current conversations with the trial lawyers and Jerry Johnson gave Council a political update. After a brief Q&A, Council moved on to the next agenda item.

#### **SB193**

Dr. Morgan updated Council on the current status of the bill and Suzanne Hamilton gave a political update, explaining to Council they expected it to travel to the Governors' desk without issue.

#### **Out-of-network**

Dr. Morgan asked the lobby team to give an update on the hearing for HB1174 April 23<sup>rd</sup>. Jerry Johnson informed Council the committee had voted not to include an amendment to the MBS. Jerry and Dan Jablan spoke on the testimony during the hearing and their impression of the committee members' votes. After further discussion and clarification, Council moved to the next agenda item.

#### **HB1211**

Dr. Morgan and Marilyn Rissmiller informed Council the bill was on its way to the Governor's office. There was no further discussion.

#### **SB228**

Dr. Morgan gave Council an update on the mandatory CME amendment, explaining that the amendment sponsors had taken into consideration some of CMS' positions. Susan Koontz also informed Council that more changes may be forthcoming including a 5 year sunset and several language changes. Council raised a concern about PDMP system usage still being included in the amendment.

### **Legislation for Action**

#### **SB218**

Debbie Wagner gave Council a summary on the points of the bill and informed them of CPS and AAP's work on the bill so far. She asked for CMS support on an amendment to link recommending physicians and a patient's primary care provider. Council discussed, raising concern about the precedent this would set and possible clarifying conditions. Council took a vote to support however it was very close and after further discussion, COL voted to take no position.

### **Other Business**

Council voted to approve the April 10<sup>th</sup> minutes. Dr. Morgan reminded them that while this was the last meeting, session did not adjourn until May 3<sup>rd</sup>. She asked Council to continue to check Basecamp regularly. A request was raised to include response deadlines on Basecamp posts going forward.

Council thanked the lobbyists for their work during this difficult session and Dr. Morgan for her work at Chair.

The meeting was then adjourned.

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## Item 7: 4-29-19 Report of Committee on Physician Wellbeing

**What the board will be voting on:** A set of recommendations from the CMS Committee on Physician Wellbeing that CMS:

1. **Hold a wellbeing/professional satisfaction convening:** Sponsor a day-long convening, in conjunction with other appropriate organizations, for physicians from different systems and practices who are responsible within their system or practice for assessing burnout and enhancing physician wellbeing and professional satisfaction. The convening will occur in the 2019-2020 CMS fiscal year;
2. **Implement a sustained, virtual learning collaborative:** Keep the convening participants connected virtually for a 12-month period for the purpose of an on-going learning and sharing collaborative. Contract with a qualified expert in the field of wellbeing to monitor and moderate the virtual platform;
3. **Evaluate outcomes:** Conduct a thorough evaluation at the end of the period detailing lessons learned, impacts, spread, value to CMS and other partners, and opportunities for the future.
4. **Seek additional funding:** In addition to general CMS support, pursue funding from other sponsors and a grant from the Physician Foundation for this initiative.

**Background:** The board of directors' 2018-2019 operational plan designated physician wellbeing as one of three overriding themes. It calls on the Committee on Wellbeing to highlight, emphasize and promote solutions to enhance physician wellbeing and enhance joy in the practice of medicine by enthusiastically promoting practical things organizations and physicians can do to ensure optimal wellbeing.

Earlier in the fiscal year, the committee started discussing the idea of a daylong convening of physicians from different systems and practices who are responsible within their system or practice for assessing burnout and putting measures in place to increase physician wellbeing. In this regard, the committee discussed:

- What could be accomplished with such a convening?
- What would the day look like in terms of learning and interaction?
- How could lessons learned and shared be shared more broadly in the Colorado medical community?
- Would there be value in keeping this group connected? Expanding the group?

The first committee discussion ended with the following wrap up:

(1) There is interest in the concept of a convening; (2) A number of possible programs were identified; (3) It would be best to have such a convening sponsored by a number of

organizations; (4) There is no clearly articulated goal for a convening; and (5) More exploration is needed.

Committee Chair Martina Schulte, MD, and CMS President Deb Parsons, MD, concluded that the most important step forward should be “more exploration.” In the spirit of more exploration, CMS reached out to 25 of the largest groups in the CMS database for the purpose of conducting phone interviews, 50% of which represented specialists, 28% multi-specialty groups and 27% primary care. The phone survey interviews included a short battery of questions. Interviewers asked to speak with the group’s top wellness officer, if there is one, or the CMO. A narrative for the interviewers was developed and utilized by each of four interviewers (see exhibit 1). Interviewers provided assurances to interviewees that their group name or their personal name would be kept confidential and that only aggregated data would be included in the report. All interviewees were mailed a hand-written thank you note and a \$10 Starbucks card to demonstrate appreciation.

### **Executive summary of physician group interviews desire for summit**

Interviews of 25 of the largest physician groups that belong to CMS revealed significant awareness of physician wellbeing as a priority with 88% reporting some sort of individual practice program in place or planning to be in place in the next year. There was significant variability in the structure of the programs, many of which seemed to evolve to meet the distinct needs of each practice.

A near-unanimous super majority of 96% of the groups interviewed would like to participate in a wellness summit. Those who elaborated on their answer showed great interest in learning and sharing ways to improve each other’s programs. Several specifically praised CMS for suggested the idea including one that said, “I commend CMS for taking the bull by the horns. The more we explore together the better course we can set.”

**For board members who are interested, 16 pages of detailed interview notes are available upon request.**

On Monday, April 29, the Committee on Wellbeing met and discussed the phone survey data and concluded that CMS should proceed with a day-long wellbeing summit.

## **Exhibit 1: Phone interview Questions and summary of replies**

### **Topline summary of interview questions and answers**

The following is a topline summary of replies based on the set of questions posed in the interviews. Please refer to Attachment 1 to see the individual responses which are particularly illuminating due to the significant variance and detailed information given in many of the answers.

#### **1. Has the board of directors of your practice made physician wellbeing a priority?**

As might have been expected, answers to this question vary and reflect the different understanding of what is meant by physician wellbeing for each practice. Keeping this in mind: (This question had 25 responses)

- a) Twelve (48%) of the practices answered a definite yes and have a program.
- b) Five (20%) answered a definite no.
- c) Five (20%) reported a version of “sort of” and reported having partial programs.

d) Three (12%) reported not now but they have plans to start a program in the next year.

## 2. What percentage of the wellbeing activities in your practice are related to?

*Note: For most of those interviewed, this question did not lend itself well to a percentage answer for any of the three categories. Instead the discussion centered around whether each category was part of their overall program how those categories might interact and overlap with each other.*

**a) Personal wellness:** Rather than report what percentage of their overall program is devoted to personal wellness, interviewees shared whether there is a personal wellness element at all in their practice. (This question had 24 responses)

- Sixteen (64%) report that their practice does have some sort of personal wellness program. This number includes both practice-sponsored wellness programs and individual employee-sponsored activities.
- Nine (36%) report that their practice does not have a personal wellness program.

**b) Organizational measures to reduce burnout (listening to physicians and addressing their concerns, such as with work flow or clinical support):** (This question had 23 responses)

- Nineteen (83%) report that their practice does have some sort of organizational wellness program. Most center around administrative simplification, help with technology and systems flow. Some answered this question interchangeably with the question on third party interference.
- Four (17%) report that their practice does not have an organizational wellness program.

**c) Third party interference, such as dealing with health plan prior authorization programs or other third-party interference whether from the commercial or governmental side?** (This question had 21 responses)

- Ten (48%) report that their practice does have some sort of wellness program that addresses third-party interference.
- Eleven (52%) report that their practice does not have a wellness program that addresses third-party interference.

3. CMS is having discussions about holding a one-day summit on physician wellbeing. The summit would primarily include individuals who are responsible for addressing physician burnout and promoting wellbeing at the practice or system level. If CMS held this summit:

**a) What topics and issues would be helpful to you and your group?**

Answers were generally grouped around the following topics that represent more than one suggestion from those interviewed: (This question had 29 responses)

- Personal wellness: Eight (27.5%)
- Physician burnout: Four (14%)
- Organizational wellness: Seven (24%)
- Third-party issues: Four (14%)
- General: Six (20.5%)

**b) Would you find it helpful to learn what other practices are doing to address physician burnout and to enhance professional satisfaction?** (This question had 24 responses)

- Yes: Twenty-two (92%)
- No: One (4%)
- Maybe: One (4%)

**c) Would it be helpful to you to be connected to a network of physicians in Colorado who are responsible within their system or practice for assessing burnout and putting measures in place to increase physician wellbeing?** (This question had 24 responses)

- Yes: Sixteen (66.7%)
- Probably or maybe: Eight (33.3%)
- No: Zero (0.0%)

The notable subtext behind most of “probably or maybe” answers centered around the quality of the content and the amount of time it would take.

**d) Is there anything else you would like to tell us, either about the idea of a wellbeing summit or advice to the CMS Committee on Wellbeing?**

Those who answered this open-ended question shared the distinction of not providing one duplicate answer. Additional ideas given include inviting rank and file physicians; addressing culture change; reducing governmental administrative burden; providing usable tools for small practice; addressing documentation overload; sharing real stories; suicide prevention; addressing dysfunctional behavior; addressing distrust between facilities and physicians; including a job description for a wellness officer; including CHA and being able to use A/V tools.

**4. What is the likelihood that you would attend a wellbeing summit for physicians in Colorado who are responsible for wellness in their group?** (This question had 24 responses)

- Yes: Twenty-three (96%) reported they or someone from their practice would attend.
- No: One (4%) reported that nobody from their practice would

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#### **Item 8: 4-30-19 Board of Directors Meeting Minutes:**

##### **Members Present:**

Debra Parsons, MD, President  
David Markenson, MD, President-elect  
Mark Johnson, MD  
Patrick Pevoto, MD  
Brandi Ring, MD  
Brad Roberts, MD  
Leto Quarles, MD  
Kim Warner, MD

##### **Members Absent:**

Cory Carroll, MD

Ms. Sofiya Diurba  
Curtis Hagedorn, MD  
Jason Kelly, MD  
Robert Yakely, MD  
Rocky White, MD  
Hap Young, MD

**CMS staff and guests:**

Kate Alfano  
John Conklin, JD  
Alfred Gilchrist  
Susan Koontz, JD  
Amy Goodman, JD  
Dean Holzkamp  
Chet Seward  
Gerald Zarlengo, MD

CMS President Debra Parsons, MD, started the meeting noting the board was one short of a quorum. She started the meeting with the following points

1. Appreciation for attendance;
2. We are convened this morning so that our advocates have a clear understanding of their authority to speak for CMS in meetings with CTLA, and subsequently with legislators and the media if needed.
3. Susan and John can fill in the gaps but here is the situation:
  - a. First, there are 4 days left in the legislative session and the professional review sunset bill, SB234, is pending third reading on the floor of the Senate.
  - b. Second, After the hearing on the bill last week in the Senate Judiciary Committee, the House Majority Leader, my State Representative, Alec Garnett, summoned CMS, COPIC, CHA and CTLA into negotiations.
  - c. Third, there was an in-person meeting with the parties on either Thursday or Friday, that concluded with the understanding that our side would come back with a proposal Monday, meaning yesterday.
  - d. Fourth, the lawyers for our side worked over the weekend and developed the offer that Alfred posted on our Base Camp Sunday. It is important that you understand this proposal!!! John will explain it.
  - e. Fifth, this offer was presented to CTLA and discussed yesterday in two different in-person meetings with Representative Garnett and all of the parties, along with the caveat that neither CMS nor CHA had signed off.
  - f. Six, CTLA rejected the proposal and countered with a final offer. It is important that you understand CTLA's final offer!!! John will explain it.
  - g. Seven, Representative Garnet contacted our side and told us to counter with something. You will hear this morning that it is important for us to counter and for several different reasons.

- h. Eight, you are going to have two counter offers presented to you this morning, both posted by Alfred on Base camp last night and neither one breaches the professional review privileges. John will explain them.
- 4. With this background, John Conklin was introduced.

Mr. Conklin explain in detail:

The proposal offered to CTLA on Monday by CMS, COPIC and CHA that PR entities prepare and make available to plaintiff a list of original source documents (documents not protected by PR privilege) if the information could not be acquired by plaintiff through original source; (it was noted in the Monday meeting with CTLA that neither CMS or CHA had signed off on the proposal);

2. The final offer from CTLA, that a professional review privilege log be produced that would be a formal legal document requiring highly specific descriptions of each PR document and the negative consequences of requiring professional review entities to produce such a log (the board members agreed with this assessment);

3. The following two options that CMS-COPIC and CHA could make as a final offer based on the invitation of the House Majority Leader:

- a. Number 1 above plus certification by the professional review entity that the list of non-protected information is accurate; and-or,
- b. A proposal to authorize the CMB to make random and confidential audits of professional review entities to assess processes, documentation, and outcomes.

There was a thoughtful discussion and Q and A.

A motion was made seconded and approved that CMS counter as a final offer that the certification by the professional review entity that the list of original source documents is complete. This could close a deal and perhaps lead to passage of the bill this year with the professional review privileges intact.

Less than one hour after the call, BOD member Curtis Hagedorn posted on the board's Base Camp that he voted for the recommendation; Robert Yakely, MD made a similar post.