



# CANS

## newsletter

### President's Letter

*Deborah C. Henry, CANS 2014 President and Associate Editor*

I have just returned from an excellent meeting of the Western Neurosurgical Society in Sun Valley, Idaho. I took on the job of secretary-treasurer, a two-year commitment, in part because it was outside of my comfort zone. This year I have learned more about the art of negotiation than I did in all of my years in practice. I now also appreciate what the Western's past secretary-treasurers did and what our own Emily Schile does for CANS (as well as her mother Janine previously). The four to five months before the meeting can be very time consuming.

So here we are, just shy of five months before the 42nd Annual CANS Meeting. A lot is coming down the pipe and with prop 46 hanging over our heads, we again face a January that is totally unknown. However, with my newly acquired skill sets, the help of our seasoned board members, and the organizational skills of Emily, we are designing an informative Saturday session to help everyone navigate through these changing waters. The meeting is this coming January 16<sup>th</sup> -18<sup>th</sup> at the Balboa Bay Resort, a four diamond resort that hugs the water in Newport Beach, not far from the peninsula. Friday afternoon is the CANS business meeting where everyone is welcome to come and see your board in action. We will open the meeting officially on Friday night with the traditional reception with the exhibitors, hosted bar, and enough food selection to keep you from getting hungry. We are looking into the option of a harbor cruise for those who would like to traverse the channels of Newport Harbor under the evening stars.

Saturday will start with a synopsis of the business year at CANS followed by a morning and afternoon of talks from the great talents of neurological surgery. We are so blessed to have many great speakers from our own realms. Emphasis will be not only on the changes occurring in the practice of medicine in California but on developing new leaders for our field no matter where they are in practice—from residency to retirement. We are also looking at having community leaders in related medical fields give their input in the shifting landscape of medicine.

Saturday night concludes with a dinner at the Resort overlooking the Newport Harbor.

Sunday will concentrate on the neurosurgical scientific research from across the state. Residents from our many training programs will present their research and compete for the annual CANS Resident Award. You will be done in time to catch the log ride at Splash Mountain or tour the Lego Village at Legoland. Please plan to join your colleagues and support all the neurosurgeons in California by attending the 2015 California Association of Neurological Surgeons on Martin Luther King Weekend. Together we are stronger. ❖

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## Guest Editorial

*(This editorial was requested by the editor after a presentation of the issue at the recent meeting of the Western Neurosurgical Society by Dr. Lederhaus who is President of the Association for Medical Ethics.)*

Currently there is considerable confusion regarding the legality of Physician Owned Distributors (PODs). The Office of Inspector General in their Special Fraud Alert of March 26, 2013 letter of concern deemed PODs to be "inherently suspect," meaning the obvious conflicts of interest, corruption of medical judgment, overutilization and other concerns along with the possibility of violating the Anti-kickback and Stark laws. The healthcare attorney group, Hooper, Lundy, Bookman (HLB), claim that PODs can exist and be considered legal. However, HLB have stated in their published papers that despite following all of their recommendations they cannot guarantee the OIG would consider their POD model legal. Dr. Steinmann, who owns Alliance Surgical Distributors with his POD has been a vocal advocate of the "ethical" POD, but his model has been drafted by HLB with the disclaimer as noted.

More recently, the OIG and the Department of Justice (DOJ) have been investigating Reliance Medical System PODs for violation of the Kickback and Stark laws, not to mention violation of the Medicare Fraud and Abuse. Reliance Medical System consists of 32 spine surgeons in six states who have been members of the Reliance PODs. Mr. John Walter Hoffman who had been the main Reliance Medical Systems sales rep is a defendant in a suit where he and two other defendants are accused of defrauding the United States in connection with the US Army contracts worth millions of dollars. Mr. Hoffman is awaiting trial on charges of conspiracy to commit wire fraud, money laundering and making false statements to US Army authorities. If you are involved in a POD you need to be certain who are the players, what is their reputation and how risky the joint venture might be.

Another risk of POD ownership is that POD owners are subject to product liability lawsuits and FDA reporting. Co-owners of a POD are liable for the activities of the entity (each and every member) with risks of fines, jail time and damage to professional reputation. Is it worth it?

The major push by Dr. Steinmann for physicians and hospitals to be involved in a POD had to do with monetary savings to the hospital while enhancing the income of the physician owners. The OIG, in October of 2013, noted that 1) POD implant costs were not less expensive than non-POD implants and were often more expensive, 2) being involved in a POD increased spinal surgeries 3 fold, and 3) POD hospitals performed 28% more spinal surgery than non-POD hospitals. The potential benefits espoused by Dr. Steinmann were not realized in the POD entities evaluated by the OIG.

California Work Comp, as of January 2012 (AB 378), no longer allows the use of POD implants in their patients. One of the reasons for this decision had to do with the alleged fraud of the Pacific Hospital of Long Beach. This hospital was owned by Mr. Michael Drobot who owned Spinal Solutions, LLC (a spinal implant company). Mr. Drobot initially imported spinal implants from South Korea that were FDA approved but he is further alleged to have convinced Crowder Machine & Tool Shop in Temecula, CA to copy the implants which were then not FDA approved. These counterfeit implants were put into patients at Pacific Hospital of Long Beach, Tri-City Hospital in Hawaiian Gardens, Riverside Community Hospital and St. Bernadine's Hospital. Mr. Drobot reportedly made \$500 million in a 5 year period. He is alleged to have paid spine surgeons \$15,000 to perform a lumbar spinal fusion using his implants and \$10,000 for a cervical spine fusion. There were 35 spine surgeons involved at Pacific Hospital of Long Beach alone, most of them orthopedists.

Dr. Vishal Makker in Portland, Dr. Atiq Durrani in Cincinnati and Dr. Aria Sabit in Ventura are a few of the physicians who have been highlighted in the Wall Street Journal and in the newspapers and television reports. Dr. Makker's notoriety lead the Providence Health & Services 28 hospital system to pull out of the POD business. Other hospitals have also pulled out of the POD business including: Dignity Health (40 hospitals), Scripps in San Diego (4 hospitals), Memorial Care Health in Orange County (6 hospitals), Tenet Health care (77 hospitals), Ascension Health (70 hospitals), Intermountain Healthcare (22 hospitals), Hospital Corporation of America (165 hospitals), Baylor Scott & White Health (43 hospitals) to mention a few.

The American Academy of Orthopedic Surgeons mission statement of 2011, the AMA Mission Statement of 2002 and the AANS Code of Ethics for 2008 all claim that it is unethical for a surgeon to receive compensation from industry and is a conflict of interest to have a financial interest that could influence the surgeon's decision to act in the best interest of the patient. Only the North American Spine Society directly addresses PODs. The NASS does not prevent or restrict their members from participating in PODs, but does require members to disclose their interest in the POD and NASS committee chairs and board members are not allowed POD involvement.

How about predatory pricing? A non-POD physician cannot compete with insurance contracts with the POD physicians. A POD physician could sign contracts for some fraction of usual reimbursement, capture all the business in a given area and make up the difference by the implant reimbursements. This, unfortunately, rewards the POD physicians and may very well violate California fair business laws.

If you are a POD physician and keep your POD involvement a secret, you are hiding your POD ownership and likely covering up the fact that you make money from the implants you put in your patients. POD owners generally do not let their patients or their hospitals know of their POD involvement. In fact, most PODs operate in a stealth manner and seek anonymity. Is that due to embarrassment of their involvement or simply concealing the obvious conflicts of interest?

You be the judge. Are you willing to take the chance to enhance your income and potentially have one surgeon in your POD prompt an OIG and DOJ investigation? Your attempts to be an "ethical" POD might turn into a nightmare.

**Scott Lederhaus, M.D.**

Los Angeles ❖

## **Sunshine Act Challenge Deadline Delayed**

*Randall W. Smith, MD, Editor*

On August 8th the Centers for Medicare and Medicaid Services (CMS) released a statement in which it disclosed that it "will delay publicly launching a new database intended to disclose potential conflicts of interest among physicians." The Open Payments System, which "lists payments from drug and medical device makers to" physicians, "was supposed to have gone public on Sept. 30 after" physicians "had been given a chance to dispute any information on it by Aug. 27."

Then on August 15<sup>th</sup>, CMS announced that the Open Payments system, which had been taken down was once again available for physicians and teaching hospitals to register, review and, as needed, dispute financial payment information received from health care manufacturers. The system was taken offline on August 3 to resolve a technical issue. To account for system down time, CMS is extending the time for physicians and teaching hospitals to review their records to September 8, 2014. The public website will still be available on September 30, 2014.

The American Medical Association as well as 112 other health organizations are pressing the government to delay the launch" of the Open Payments website "until March 31, 2015," citing "an overly complex registration process – made up of more than 20 individual steps that require a doctor to register over a period of several days in order to see their data – as one reason why the government should hold off," as well as "concern that industry groups can unilaterally dismiss

disputes initiated by doctors, and errors in the information." On Aug. 25, in a written statement, AMA president Robert M. Wah, MD, stated, "Physicians need enough time to review and correct any inaccurate data that may be reported."

One cannot have a lot of faith that the Feds will deliver on this issue if they launch on September 30<sup>th</sup>. After the botched ACA Federal Web site to purchase insurance, expecting the Feds to consider my challenge submitted on September 8<sup>th</sup> to be properly addressed by September 30<sup>th</sup> is the height of misplaced optimism. ❖

## CANS MISSION STATEMENT

‘AN ORGANIZATION OF NEUROSURGEONS TO PROMOTE THE PROFESSIONAL EDUCATION AND SCIENTIFIC ACHIEVEMENT OF SURGEONS AND QUALITY CARE FOR CALIFORNIANS’

**DO YOU KNOW A NEUROSURGEON NEW TO CALIFORNIA?**

**TELL THEM ABOUT CANS AND DIRECT THEM TO THE CANS WEBSITE: [WWW.CANS1.ORG](http://WWW.CANS1.ORG)! THERE IS A MEMBERSHIP APPLICATION ON THE SITE!**

### Brain Waves

*Deborah Henry, MD, Associate Editor*

A mom wrote in the *LA Times* (August 27, 2014) that her teenage son, volunteering at a summer camp for children, was instructed not to give out hugs and to make sure a child never sat in his lap. He was taught to turn to his side when a kid approached him looking for an embrace. As texting and emails take over our communication skills and MRIs take over our diagnostic skills, it will not be too long before someone says to us that you need no longer touch a patient least give them a hug. In a field known for the laying on of hands, we may someday be known only for the interpreting of technology. I don't remember too many Star Trek episodes when any of the doctors touched the patient but rather just ran a "tricorder" scanner ten inches from their body.

There are times when I count myself fortunate to be a woman in neurological surgery. I am old enough to have had to admit patients the night before surgery during residency in Syracuse. New York State required all women patients admitted to the hospital to have a breast exam. I could pull the drapes and without worrying about complaints, quickly and unabashedly perform the exam. Not so for all my fellow residents. More than once I picked up a breast tumor doing an exam. My most memorable was during private practice in Pasadena when a seventy-year old

woman arrived in the emergency room with gait unsteadiness. The CT scan showed an enhancing cystic lesion in her cerebellum. Knowing the odds that this would be a metastasis, I did a breast exam and felt a small, non-mobile mass. I admitted her, asked a general surgeon to see her who subsequently ordered a mammogram (technology) that confirmed what I had palpated. I took out the brain tumor, and the surgeon took out the breast mass. The brain tumor turned out to be a cerebellar hemangioblastoma. The breast tumor was cancerous but had not spread to her lymph nodes. A cure for both lesions made possible by touching the patient.

Sometimes doctors are patients. The obstetrician that saw me through my pregnancy complicated with pre-eclampsia and who delivered my son by C-section also performed the dilation and curettage when I lost my second child. As I am laying on the operating table ready to succumb to the anesthesia, he walks over and holds my hand. It is a moment I will never forget and something that I needed terribly at that moment in time. I think of all the times my patients are waiting for anesthesia, and I am in the corner of the operating room efficiently writing orders. Sometimes we all need the laying on of hands. ❖

## Tidbits from the Editor

### UCD has three year plan

As we noted in our January 2014 newsletter, the 3-year med school concept had taken root in three med schools—NYU, Texas Tech and Columbia. Now UC Davis can be added to the list. The UCD deal is an earlier start in the first year, no electives, no summer vacations and no residency search and includes a conditional acceptance into the three-year post MD residencies in family practice or internal medicine which UCD runs in conjunction with the Kaiser system.

Obviously the three year program is not for everyone, particularly since you can't get in if your plan is to be a neurosurgeon, but all rhetoric about needing more and producing more generalists may pale before the \$36,000 in annual tuition (plus living expenses) the 3-year candidate saves by not having that fourth year.

### Another Federal "Whoops!"

The CMA noted the following:

Last fall, the Centers for Medicare and Medicaid Services (CMS) experienced some editing issues with new patient E&M codes that resulted in incorrect claim denials. These problems started in October 2013, and were thought to have been corrected in late January 2014. The California Medical Association learned, however, that some claims continued to be paid incorrectly through July 15, 2014. Noridian, California's Medicare contractor, in January began making mass adjustments and correcting claims subjected to overpayment recovery. Unfortunately, while implementing the corrections, Noridian inadvertently subjected established patient E&M codes to incorrect editing, resulting in incorrect denial of codes 99211-99215.

Noridian has corrected the editing for both the new patient codes and the established patient codes, and claims received by Noridian on and after July 16, 2014, should be processing correctly.

Noridian is now beginning the process of mass adjustments to the incorrectly denied claims. Due to the number of claims involved (~300,000 claims back to October of 2013), this process could take a month or so to complete. Physicians do not need to do anything to have their claims adjusted and they should NOT resubmit the claims. The claims will be automatically adjusted.

### **Resolution Deadline September 6th**

The deadline for submitting resolutions for consideration at the upcoming Council of State Neurosurgical Societies meeting in Boston on October 17-18 is this coming Friday September 6<sup>th</sup>. Any CANS member can submit a resolution directly via the CSNS Web site as follows:

You may submit resolutions on the CSNS website, [www.csnsonline.org](http://www.csnsonline.org).

- After accessing the website, enter your ID and password*
- Select Resolutions*
- Select Resolution Guidelines for correct format.*
- Select Resolution Submission*
- Attach a document with the body of your resolution*

If you don't have a CSNS ID or password you can register for one on the Web site.

### **Concussion in California**

Last month we published an article about AB 2127 which prohibits football teams at public middle and high schools from holding full-contact practices during the off-season and bars them from conducting more than two full-contact practices per week, of 90 minutes each, during the season. The bill also requires an athlete who has sustained a head injury or concussion to complete a supervised return-to-play protocol of at least seven days. As we mentioned, the return-to-play protocol is not defined.

At a recent symposium at the Western Neurosurgical Society annual meeting, the SCAT3 system was felt to be a good one for diagnosing "concussion" and testing for recovery. Although the SCAT3 tests can all be done pre-season to establish a baseline for each player, all normal athletes would be expected to pass all the tests easily so significant findings can be presumed to be the result of the head injury. The free SCAT3 documents are to be found at:

[http://download.lww.com/wolterskluwer\\_vitalstream\\_com/PermaLink/JSM/A/JSM\\_23\\_2\\_2013\\_02\\_14\\_MCCRORYY\\_200872\\_SDC2.pdf](http://download.lww.com/wolterskluwer_vitalstream_com/PermaLink/JSM/A/JSM_23_2_2013_02_14_MCCRORYY_200872_SDC2.pdf)

### **Keeping your ICU Privileges**

For those of you experiencing some difficulty in getting or maintaining your critical care privileges in the face of the "neuro-intensivist" incursion onto our turf, the Society of Neurological Surgeons

("Senior Society") will provide the actively practicing board certified neurosurgeon of any age with a NeuroCritical Care certificate based upon the training we received during residency. One catch is that the application must include "Documentation of extensive experience in neurocritical care and an active hospital appointment in critical care." which could be a problem if your critical care privileges are being challenged. The certificate application is located on the SNS Web site at [www.societyofns.org](http://www.societyofns.org); click on [Subspecialty Training & Fellowships \(CAST\)](#) then on Practice Track Applications for Individuals. The track application fee of \$500 has been waived until October 30, 2014. ❖

### Executive Office News

The 2015 Board of Director & Awards Nominations are requested! It is important for all CANS members to be involved in choosing the 2015 Board of Directors and the nominations for potential recipients of the Pevehouse and Public Service awards. Please see the attachment in the email titled: Nom and Award request 2015!

### Observation for the Month:

As soon as you find a product that you really like, they will stop making it OR the store will stop selling it.

**VOTE NO 46** INCREASED COSTS  
LOSING YOUR DOCTOR  
THREATENING YOUR PRIVACY

A COSTLY THREAT TO YOUR PERSONAL PRIVACY CALIFORNIANS CAN'T AFFORD

[WWW.NOON46.COM](http://WWW.NOON46.COM)

## Meetings of Interest for the next 12 months:

California Neurology Society: Annual Meeting, October 10-12, 2014, Santa Barbara, CA  
 CSNS Meeting, October 17-18, 2014, Boston, MA  
 Congress of Neurological Surgeons: Annual Meeting, October 18 - 22, 2014, Boston, MA  
 North American Spine Society: Annual Meeting, November 12-15, 2014, San Francisco, CA  
 AANS/CNS Joint Pediatric NS Section: Ann. Meeting, December 2-5, 2014, Amelia Island, FL  
 Cervical Spine Research Society: Ann. Meet., Dec 4-6, 2014, Hyatt Regency Grand Cypress, Orlando, FL  
 North American Neuromodulation Society: Ann. meeting, December 11-14, 2014, Las Vegas, NV  
[\*\*CANS Annual Meeting, January 16 – 18, 2015, Balboa Bay Resort, Newport Beach, CA\*\*](#)  
 AANS/CNS Joint Cerebrovascular Section: Annual Meeting, February 8-10, 2015, Nashville, TN  
 Southern Neurosurgical Society: Annual Meeting, March 25-28, 2015, Naples, FL  
 AANS/CNS Joint Spine Section: Annual Meeting, March 4-7, 2015, Phoenix, AZ  
 Neurosurgical. Society of America: Annual Meeting, April 12-15, 2015, Newport Beach, CA  
 CSNS Meeting, May 1-2, 2015, Washington, DC  
 AANS/CNS Joint Pain Section Bi-Annual Meeting, May 1, 2015, Washington, DC  
 AANS: Annual Meeting, May 2-6, 2015, Washington, DC  
 Rocky Mountain Neurosurgical Society: Annual Meeting, 2015, TBA  
 New England Neurosurgical Society: Annual Meeting, 2015, TBA  
 Western Neurosurgical Society: Annual Meeting, September 10-13, 2015, Kauai, HI

Any **CANS** member who is looking for a new associate/partner/PA/NP or who is looking for a position (all California neurosurgery residents are CANS members and get this newsletter) is free to submit a 150 word summary of a position available or of one's qualifications for a two month posting in this newsletter. Submit your text to the CANS office by E-mail ([emily@cans1.org](mailto:emily@cans1.org)) or fax (916-457-8202)—Ed. ❖

The assistance of Emily Schile and Dr. Deborah Henry in the preparation of this newsletter is acknowledged and appreciated.

- [To place a newsletter ad](#), contact the executive office for complete price list and details.
- Comments can be sent to the editor, Randall W. Smith, M.D., at [rw-svopro@sbcglobal.net](mailto:rw-svopro@sbcglobal.net) or to the CANS office [emily@cans1.org](mailto:emily@cans1.org).
- Past newsletter issues are available on the CANS website at [www.cans1.org](http://www.cans1.org).
- If you do not wish to receive this newsletter in the future, please E-mail, phone or fax Emily Schile ([emily@cans1.org](mailto:emily@cans1.org), 916-457-2267 t, 916-457-8202 f) with the word "unsubscribe" in the subject line.

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