

# AAPALM's Newsletter ©

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## Medico-forensis Consilium

### Editor's Note



Dear AAPA-LM Member:

This issue of **MFC** marks a milestone for this newsletter: our first anniversary. A membership benefit that we made it easy to access for our readership. We simply gave you access to it by avoiding the need requiring signing-in codes or requiring easily to forget cumbersome passwords.

If you have not done so recently, then you may have missed some great "how to" articles. Also, downloadable from our website, are the other two equally accessible great membership benefits: the two deposition samples.

All compliments of our contributing peer members and AAPA-LM BODs.

Personally, and on behalf of the BODs, I would like to extend our gratitude to these devoted AAPA--LM members.

So do take notice, and enjoy the many benefits that we seek to provide to you as we continue to grow and develop into a great specialty interest group.

And yes, the BOD members look forward to continue delivering this trusted resource to you. Now in our second year of publication, we hope not only to meet your needs, but to improve the quality,

& the relevancy of the bylined articles.

So join me & AAPA-LM BODs in sharing this task. Therefore, your input is sought in order to assure that our editorial content meets & reflects the highest standards of current medico-legal consulting practices for which we, are called to adhere to and practice day by day as professional experts.

In this issue of **MFC**, we have tackled some industry trends that undoubtedly will exert some influences in our dual roles of clinicians & consultants. This changing paradigm of increased clinical accountability, liability reform and patient-centered care movement will be the highlights of this edition.

Obviously, our enlightened healthcare consumers have been demanding more and more corrections of an industry widely plagued with troubles and maladies. All which can no longer be ignored nor minimized or for that matter even afforded. Hence, the new changing paradigm seen already.

I hope these articles will ignite your desire in becoming more informed about these slowly sweeping industry changes already taking place.

So together, let's make this another banner year for AAPA-LM. And let us all be on the "same page" celebrating our newsletter's 1<sup>st</sup> anniversary !!!

*Marcos A. Vargas, MSA, PA-C*  
MFC Editor



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## Health Courts at a Glance...what's the hype?

For decades under The American Tort System, medical malpractice verdicts had been a roller coaster ride for all stakeholders involved—physicians, patients & even 3<sup>rd</sup> party payors for that matter. However, that may not be the case in the not too distant future.

Despite recent past theoretical “quick fixes” over the past two decades, such as HMO’s, Capitation, QA initiatives, & UR efforts, or RM practices, none takes a special relevance & importance as the emergence of “Health Courts” concept. Perhaps, one that by far eclipses the other attempts in fixing our ineffective (Tort) system throughout the so called previous “reform attempts” & med-mal crises “quick-fixes”.

While some of the prior attempted solving methodologies sought to lessen the legal burden while improving quality care & clinical accountability, none of them brought the ( anticipated ) vast array of equally acceptable benefits to all parties involved in the outcome of medical misadventures. Health Courts, as envisioned by its proponents, stand to benefit a very divisive industry, not to mention an inefficient & flawed judicial system in the eyes of many.

Specifically, these courts would seek to curtail runaway verdicts while leveling the field for all stakeholders; much like other more slowly accepted paradigms of systemic healthcare accountability such as Patient Safety & Medical Error Disclosure movements. Despite the slow acceptance of these recent industry initiatives, the American medical consumer is realizing that these *health courts* could truly bring medical malpractice reform by the very premises they are based on.

So what are the salient features of these courts compared to the current American Tort System? Basically these would be some of the superior salient features compared to our current Tort system:

1. Specially trained judges would preside these disputed court cases.
2. Juries would be composed of clinicians (“health experts) instead of lay jurors.
3. Court case hearings will be easily filed & expedited under this new more reliable constant rotating system.
4. Lesser mega-award verdicts derived from on set pre-established compensatory guidelines.
5. Less administrative *direct & indirect* overhead expenses for all litigating parties, taxpayers and insurance companies as well.



Want to know more about this subject, then visit “Common Good” @ <http://www.cgood.org>

Though a great break through the judicial gridlock, clinicians must temper their enthusiasm because as many industry experts are quick to point out, the battle is far from over.

In fact, many legislators & trial attorneys have not been very supportive of this movement. Because the legal lobby has teeth, this concept has barely received any press, much less advancement.

So is no surprise why *health courts* are flying below the radar....but the hype is undeniable given its benefits.

## The Apology Advantage



I’ve always been a firm believer in honest apologies. And for many years, I could not fathom the idea, that one day that concept would become a movement in the healthcare industry. As we all can recall, we were told to deny & defend our position ( at any cost ) even if any wrongdoing of ours led to the alleged adverse outcome experienced by the patient.

Luckily, those days may be fading away from our current medical-legal landscape.

As the medical-legal community tries to resolve the med-mal crisis, *Medical Error Disclosure* has been gaining momentum and acceptance in our industry. Albeit somewhat slowly, but it does appear that reality is finally setting in. This approach is not only less adversarial, but more welcomed by patients than actually thought, as evidenced in many studies over the last decade or so.

Naturally, this movement is not without its detractors. In fact, many remain skeptical that this concept can truly be a “real” solution to the current med-mal crisis.

Yet, this movement continues to make strides. For one thing, the gap seems to be narrowing between the doubters and the supporters. And despite the slow acceptance, many states are enacting “*apology legislative acts*” literally everyday .

As of July of this year, thirty-five states had enacted these *apology laws*. All seeking to increase the comfort level of clinicians dealing with post-adverse clinical outcomes.

Unfortunately they do not grant complete Legal immunity to the clinician, however, they can minimize the stereotyped indifferent poor care service provided to the aggrieved party by the defendant. Often times, the one perception propelling most claims forward in our legal system. In other words, they can lessen the chances of plaintiff attorneys augmenting the evidence from an inflammatory perspective or stance during a trial. More information @:

<http://www.sorryworks.net>

## Secrets of The Master Orators



Sometimes the best way for budding consultants to learn the ropes isn't just by doing—it's by listening to others views & insightful perspectives. In fact, taking heed of famous quotes can give anyone a positive outlook, or better yet, a clearer understanding of their daily business or personal challenges.

Here are the 12 consulting pick-me-up quotes that speaks to how to improve your performance, business relationships, or career satisfaction, etc. All packed with timeless, self-evident truths to be enjoyed & reflected upon when needed.

1. "The Doors of Wisdom are never shut" - --Benjamin Franklin
2. "Failure is only the opportunity to begin anew—just more intelligently" --Henry Ford
3. "The future belongs to those who believe in the beauty of their dream" --Eleanor Roosevelt
4. "Happiness is when what you think, what you say, and what you do are in harmony" -- Mahatma Gandhi
5. "In this life we cannot always do great things; only do small things with great love" -- Mother Teresa
6. "There is no education like adversity" --Benjamin Disraeli
7. "Is never too late to be what you might have been" ---George Elliot
8. "The past does not equal the future" -- Anthony Robins
9. "Do what you can, with what you have, where you are" --Theodore Roosevelt
10. "I get by with a little help from my friends" - John Lennon
11. "If you want the Rainbow, you must put up with the rain" --- Unknown
12. "The time is always right to do the right thing" --- Martin L. King, Ph.D.



## Tort Reform: What does the evidence tell us?

There has been a great deal of recent media attention and coverage on the fact that not only the healthcare industry is in turmoil, but that our current tort system needs reform as well. Why? Because both industries are so interweaved, that fixing one sector is not enough. Therefore, both must be reformed simultaneously if any benefit is to be derived across all sections of society. So why is this so imperative? Because the American healthcare consumer believes the time is now given that:

1. **74 %** believe that high-quality medical care is threatened by high medical liability costs forcing physicians to curtail their provision of medical services in those high risk areas such as OB, Orthopedics and or Neurosurgery.
2. **64 %** believe medical liability lawsuits drives up rising healthcare costs as well.
3. **75 %** of those surveyed wanted their elected officials in Washington to support and pass comprehensive medical liability reform acts.
4. **76 %** believe that "non-economic damages" should be capped with reasonable limits.
5. **67 %** favor limiting personal injury attorneys fees or awards on settled cases.

Those were the results from The National Quorum poll of 1,001 Americans conducted in April 2006 for *The Health Coalition on Liability and Access* by Harris Interactive. For this survey the margin of error was estimated @ +/- 3.1, while confidence levels were estimated @ 95%.

Also, other agencies and organizations ( i.e. The AMA, ACEP, etc) have conducted similar polls through the years. For instance, The American Hospital Association (AHA) in their 2005 survey found the following:

1. **52 %** of the hospitals in "litigation-friendly" states said they lost physicians due to rising liability costs.

Moreover, The AMA in their report ( America's Medical Liability Crisis: A National Review ) listed 21 states including the District of Columbia *in crisis* due to out-of-control litigation.

And it's no surprise that many view the American legal system as nothing more than a high-priced lottery system. The Heritage Foundation, backgrounder No 1908, Jan 17, 2006, determined that plaintiffs in most med-mal cases get paid less than 28 cents out of every dollar spent in the tort system. Thus anyone can see that the share of both, awards and settlements are pocketed primarily by personal injury attorneys for their advocacy & litigation-related administrative fees coverage.

This being the current state of affairs, many industry leaders are calling all parties involved to declare this a national problem requiring a federal solution. Proponents of this movement, explain that "tort reforms" have worked in the past and continues to work for such states as California. Proven enacted reforms under The Medical Injury Compensation Reform Act ( MICRA in 1975 ) is one of those examples, while Proposition 12 under the 2003's constitutional amendment in the State of Texas serves to be another example of successful tort reform measures.

So if preserving access of healthcare, ensuring predictability, & stability to our inconsistent medical liability system is not considered an urgency now...then when?

## Consultancy Endurance

To maintain a sustained consultancy or growth, you will need to continually add value for your customers. It is that plain & simple.

However, deciding *how* to do this may not be that easy. While for some, it may come naturally, for many others it may not.

Yet, regardless of your situation, you must determine which of your consulting services brings the greatest revenues. Whether is reviewing charts or providing expert witnessing services, you should periodically analyze which of those areas is the most requested & least expensive for you to provide. By continually reassessing the market demands, and appraising your competitors services not only enhances your prospects, but also your consulting edge if not longevity.

Remaining flexible as already discussed is not the only element that will keep your consultancy afloat. But you also maintain a “*visible presence*” in their minds.

Visibility can be achieved in many different ways, particularly with the ever increasing marketing techniques available nowadays to you-- the consultant. However, of all of these methods, newsletter writing seems to be regarded as the most effective one. Either as a communication and or a marketing tool, this extension and added value of your services, will keep you connected to your clients past your first assignment.

How?

First, by making this “newsgram” as a one or two page educational tool to your clients. Second by keeping them abreast of new trends, or emerging medical technologies you naturally reaffirm yourself as the inside credible expert that you are.

Not only are you seen as an established expert, but a continuing one too. As a result, giving your consultancy that element of endurance while others have come & gone.

**AAPALM**

The Editor of MFC Newsletter

*Marcos A. Vargas, MSA, PA-C*

## The Web Watch Corner



Are you a die hard “cyber-sleuth”? If you are, then, you may enjoy visiting these two other great websites, briefly discussed below for your enjoyment.

They both are considered reputable repositories of the finest collection of materials and commentaries.

The first one, is known as the American Society of Law, Medicine and Ethics:

🔗 [www.aslme.org](http://www.aslme.org)

The second one, is developed by Saint Louis University & The American Society of Law, Medicine and Ethics under a grant from the Mayday Foundation.

Considered somewhat controversial, since it attempts to objectively report and comment on the uncertain complex legal and regulatory environments impacting the delivery of pain management by clinicians.

This other website’s name is “Pain and The Law”:

🔗 [www.painandthelaw.org](http://www.painandthelaw.org)

Highlighted features of this site include:

- ❖ Breaking news section
- ❖ A free electronic newsletter
- ❖ Links to related resources
- ❖ Controlled substance(s) legislation & much more...



The AAPALM newsletter (MFC) is intended to serve as an information source to our readership. Readers are advised to seek appropriate clinical or legal guidance from authoritative resources prior to acting on the information contained in our newsletters.

Views expressed in this publication do not necessarily reflect the opinion or stance of the AAPA-LM BOD.

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Seeking your 1<sup>st</sup> byline or just wanting to see your name in print? Then submit your “article idea” or an “original outline” or a “draft” for consideration. I/we will try to preserve your voice and ideas. Most likely, publication will occur once your article has been “tweaked” (revised if needed) with your final consent to the editor @ [maravarpac@hotmail.com](mailto:maravarpac@hotmail.com)

Is that simple!!

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The American Association  
of Physician Assistants in  
Legal Medicine



... congratulates its  
newly elected  
Board of Directors  
for the 2008-09 year