Alliance for Patient Safety

All that is necessary for the triumph of evil…
… is for good men to do nothing.
Edmund Burke

November 16, 2007

The Honorable US Senator Tom Coburn
172 Russell Senate Office Building
Washington, DC 20510

Re: **How to Achieve Consumer-Driven Healthcare through Transparency**

Attn: **Stephanie Carlton, Senior Healthcare Legislative Assistant**

Dear Ms. Carlton:

Thank you very much for organizing our conference call today. I am relieved that some legislators are trying to remedy the health care challenges we now face.

While we agree that patients should have access to the highest quality of healthcare at the most competitive price, it is impossible to achieve without transparency.

To give patients an informed choice, they need accurate information regarding hospitals, physicians, pharmacies, etc.

In 1986, the Health Care Quality Improvement Act (**HCQIA**) established the National Practitioners Data Bank (NPDB) to prevent physicians whose licenses have been suspended in one state, from practicing in another.

Regrettably, the Act is ineffective because it relies on corporate hospital executives to report errors and complications that they profit from.

As Dr. Lucien L. Leape, M.D. reported in the Journal of the American Medical Association (JAMA):

> *"In most industries, defects cost money and generate warrantee claims. In health care, perversely… physicians and hospitals can bill for the additional services that are needed when patients are injured by their mistakes."*

http://www.allianceforpatientsafety.org/leape2.pdf

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For example, two physicians in one small facility generated $40 million/year in revenues from patients they subjected to unnecessary cardiac procedures (*Coronary*, Klaidman 2007). This illustrates the failure of the HCQIA because it relied on:

1. **Corporate hospital executives** who profit financially from unnecessary procedures, errors and complications, and;

2. **The physicians** who are responsible for such misconduct.

Examples of failures to fulfill the HCQIA's intent by **corporate hospital executives** were reported by *CBS/60 Minutes*, *TheStreet.com*, the *Pittsburgh Post Gazette*, and the *AMA Voice*:

- *Unhealthy Diagnosis - Health Corp. Accused of Forcing Surgeries To Make Money*: http://www.cbsnews.com/stories/2003/07/17/60minutes/main563755.shtml?CMP=ILC-SearchStories

- *Tenet Tangles with California Blue Cross*: http://www.thestreet.com/_yahoo/stocks/melissadavid/10124365.html

- *The cost of courage: How the tables turn on doctors:* *http://www.post-gazette.com/pg/03299/234499-84.stm*

- *Speak no evil?*: http://www.allianceforpatientsafety.org/babb.pdf

Examples of failures to fulfill the HCQIA's intent **by physicians** are found in *Medical Economics*, *Pittsburgh's Post Gazette*, *Time*, and the *Journal of the American College of Cardiology*:

- *Hospital Peer Review is a Kangaroo Court*: http://www.memag.com/memag/article/articleDetail.jsp?id=122302

- *The Cost of Courage: Doctor says whistleblowers need more protection*: http://www.post-gazette.com/pg/03302/235115.stm

- *Doctors Who Hurt Doctors*: http://www.allianceforpatientsafety.org/chu.pdf

- *Clinical Peer Review or Competitive Hatchet Job*: http://www.allianceforpatientsafety.org/parmley.pdf

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HCQIA's flaws stem from the fundamental conflict of interest between the bill's co-authors, **corporate hospital attorneys** *Horty & Springer*, and the patients they ostensibly protect. Predictably, Horty & Springer rendered HCQIA unenforceable by inserting the following subsection:

42 U.S.C. §11112(b)(3):

> *A professional review body's failure to meet the conditions described in this subsection shall **not**, in itself, constitute failure to meet the standards of subsection (a)(3) of this section*. http://www.allianceforpatientsafety.org/sba.pdf (page 20)

Although small businesses and entrepreneurs have been the driving force behind the growth of the US economy, the US healthcare system has regressed into one that does not permit competition. (*Who Killed Healthcare?* Herzlinger 2007).

In my testimony before the Small Business Administration (SBA) on June 14, 2007, I reported that prominent hospital law firms consider a physician on staff of a hospital, who happens to be a **competitor** of the hospital, as a "**problem physician**."

http://www.allianceforpatientsafety.org/sba-video.php

Horty & Springer's hostility toward independent private physicians is demonstrated throughout their seminars, courses, and audiotapes that can be purchased on their website:

http://www.allianceforpatientsafety.org/hs2.pdf

Corporate hospital attorneys have developed a methodology and vernacular for controlling physicians, patients, and other advocates who report incidents to outside agencies or agree to testify on behalf of patients-victims of medical negligence.

Their preferred strategy is to destroy the messenger by discrediting the individual as disruptive, crazy, impaired, incompetent, imminent danger, etc.

http://allianceforpatientsafety.org/howto.php

Horty & Springer also provides tactics on:

- *How to protect themselves from whistleblowers*
- *How to avoid reporting a physician to the NPDB*
- *How to regain control of the hearing process*

http://www.allianceforpatientsafety.org/hs2.pdf

As the following studies demonstrate, the HCQIA completely failed to protect patients:

HealthGrades reviewed 37 million Medicare patients' medical records, (e.g. patients over 65 years old) and reported that medical errors in hospitals kill 200,000 patients each year. They did not study what happened to patients younger than 65.

http://www.healthgrades.com/media/english/pdf/HG_Patient_Safety_Study_Final.pdf

Harvard economist Kip Viscusi estimates that the value of one human life is somewhere between $4 million and $9 million. If multiplied by *HealthGrade*'s 200,000 patients who die each year, the loss to the US economy can be estimated somewhere between $800 billion and $1.8 trillion, annually.

http://allianceforpatientsafety.org/blackbox.pdf

Based on 152 published peer review articles, the Nutrition Institute of America concludes that medical mistakes kill 784,000 people annually.

http://www.lef.org/magazine/mag2006/aug2006_report_death_01.htm

The Alliance for Patient Safety recommends changes that must extend beyond the HCQIA. Our legal analysis entitled, "How to Protect Physician Whistleblower - Patient Advocates - from Retaliation to Benefit Patients," was recently published by the American Health Lawyers Association (AHLA).

http://www.allianceforpatientsafety.org/protect.pdf
http://www.allianceforpatientsafety.org/protect.php

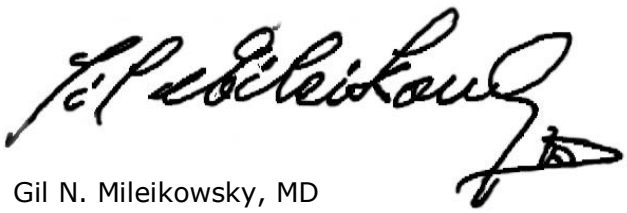
In 2006, the Association of American Physicians and Surgeons (AAPS) unanimously passed resolutions to correct these issues: http://www.aapsonline.org/resolutions/2006-9-11.php

The time for US legislators to correct these mistakes is long overdue. We believe that physician-members of Congress must lead their colleagues, forthwith.

Winston Churchill once observed that Americans *can always be counted on to do the right thing... after they have exhausted all other possibilities*. In this case, America has exhausted all other alternatives.

We look forward to our next conference call.

Wishing you a Happy Thanksgiving,



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Alliance for Patient Safety, Founder

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