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Chair's Message

# Report of Chair, September 2013

by Sherry L. Blumenthal, MD, FACOG



This is my last report as Chair of the PA Section of ACOG. The last three years have been rewarding, educational, and very busy. I had three goals when I became Chair, which I believe have been accomplished. I am very proud of our section and the collaboration that was essential to our achievements.

The first goal was to develop an educational program for ACOG members and physicians-in-training. "The OBesity Project: Part I—The Problem in OB/GYN" was completed in 2012. It involved participation of 10 physicians practicing in Pennsylvania.

The PA Section was given the 2012 Council of District Chairs Service Recognition Award for the project. I have presented it five times at local hospital Grand Rounds, at an annual symposium in Harrisburg, and in Delaware. I am scheduled to present it twice more in the fall and winter. The OBesity Project has become part of District III Rounds, established to bring educational programs to the ACOG members in Pennsylvania, New Jersey, and Delaware.

"Part II—Strategies for Management of the Obese Woman in OB/GYN" is nearing completion and will be presented for the first time in November 2013 at the annual OB/GYN symposium at Winthrop University Hospital in New York.

My second goal was to strengthen our Legislative Program, headed very competently by Lynne Coslett-Charlton. We expanded our relationship with PAMED and its lobbyists, whose partnership helped prevent the

"US-before-abortion" bill from coming to a vote. I have been a member of the PAMED House of Delegates for five years and served on the Specialty Leadership Cabinet for two years. I was succeeded by John Gallagher, who successfully introduced a resolution reinforcing support for universal contraception insurance coverage even before passage of the ACA. He is also pursuing legislation to protect us from liability for provision of Expedited Partner Therapy in cooperation with a national organization advocating for STI prevention and treatment. Our current member of the Cabinet is Kurt Barnhart.

As a result of our concern that PAMED was not always supportive of controversial issues involving women's health, we hired our own lobbyist, John Milliron, in 2012. We are now collaborating with the American College of Emergency Physicians (ACEP) on legislation to require more stringent criteria ("clear and convincing") for bringing

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**Note:** If you have an important announcement of interest to Pennsylvania ob-gyns, send it to Jan Reisinger at the PA Section of ACOG office.

# The Struggle Against Legislative Interference in Patient Care

by Lynne Coslett-Charlton, MD, Legislative Committee Chair



The ACOG State Legislative Roundtable held in Washington, DC this September brought to light the common theme of legislative interference in patient care. Most obvious were the attempts of

legislators to interfere in the reproductive rights of our patients. States such as Texas, Virginia, and Ohio received a large amount of media attention as they fell victim to onerous, obtrusive bills that limit women's reproductive choices. Although many of our elected officials' efforts have centered on interference of care of our female patients, we have observed across all specialties an abundance of overreaching legislation that encroaches on the doctor-patient relationship.

Laws that infringe on patient counseling, manipulate informed consent, and mandate physicians to provide medically-inaccurate scripted information to patients are in direct violation of a physician's oath to care. Physicians across the country are faced with the dilemma of properly caring for a patient versus possible criminal penalties.

Often, our policymakers mean well and unintentionally interfere in medical care. A perfect example of such interference is the breast density legislation positioned to pass in Pennsylvania. Similar legislation has become law across the country, mandating radiology facilities to relay breast density scores directly to patients along with their mammogram results.

Utilization of additional ultrasound and MRI testing will reflexively increase with no data to show a benefit to patient care. The legislation is preceding the science.

PA ACOG has worked to educate lawmakers about unintended consequences of this bill and has favorably negotiated less alarming notification language. We hope that our legislators establish mechanisms to prevent undue financial burden to women who are suggested to have further screening and continue to monitor outcomes regarding the risks and benefits of this type of legislation. Our PA ACOG Section, with the assistance of our lobbyists from Milliron Associates, will continue to educate policymakers and preserve the sanctity of our relationships with our patients.

# Commonwealth Court Rules in Favor of Pennsylvania Physicians

by John Gallagher, MD

The Pennsylvania MCARE fund is a supplemental insurance fund established by the legislature to provide additional malpractice coverage above the \$500,000 provided by our own carriers as required by state law. Unlike the insurance companies, this is a “pay as you go” system that is funded by a surcharge on all physicians’ malpractice premiums based on MCARE payouts in the previous year. As the medical liability climate improved after passage of Act 13 (well, relatively at least), the MCARE fund developed yearly surpluses that were kept by the fund. The Pennsylvania Medical Society (PAMED) argued to the Insurance Commissioner that these surpluses should be used to decrease the surcharge to physicians for the following year. MCARE disagreed and kept the excess separate. In 2009, the legislature raided the fund of \$100 million of physician money in order to balance the state budget. PAMED immediately filed suit against the legislature for raiding the MCARE surplus, a case previously decided in PAMED’s favor by the Commonwealth Court. The legislature appealed the decision to the PA Supreme Court. After a hearing almost two years ago, PAMED is still awaiting a decision by the Supreme Court.

In a new, separate decision by the Commonwealth Court in August, the MCARE Fund was ordered to recalculate the surcharge for 2009 through 2011 based on the Court’s agreement with PAMED’s position that any surplus revenue collected by the fund should be returned to physicians as a credit toward the next year’s surcharge. A separate suit addresses the years 2012 and 2013, but, based on these same facts, is also expected to go in our favor.

Some authorities also believe the Supreme Court was awaiting this decision before ruling on the \$100 million appeal. Final resolution is still some time off as the state considers whether to appeal this new decision. This new ruling is very promising and has the potential to affect every physician in the Commonwealth. PAACOG will continue to update its members as the situation develops, and more information can be obtained through PAMED at [www.pamedsoc.org](http://www.pamedsoc.org).

## A Day in Harrisburg!

Milliron Associates, LLC, by Andy Sandusky

In late September, PA ACOG stormed the state Capitol in Harrisburg to meet with members of the Pennsylvania General Assembly. More than 20 physicians and students participated in the successful half-day event. The specific issues addressed by the congregation were legislation to mandate breast density notification to patients and changing the legal standard to a higher measure for physicians providing emergency care.

### Breast Density Notification

Many state sections of ACOG are battling legislation that would require notification of breast density to patients. Unfortunately, Pennsylvania is one of them. The issue has been packaged as a women’s health issue, and one that will protect them from breast cancer. However, obstetricians/gynecologists have expressed concern to the General Assembly that a notice to all patients,

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Participants in the 2013 PA ACOG Legislative Day gather in front of the Pennsylvania state capitol building

# Remembering 9/11: First Response

by Mark B. Woodland, MS, MD

9/11/2013

As I sit in the GYN Oncology conference on this 12<sup>th</sup> anniversary of 9/11, I realize that in medical education we are so appropriately trained to be first responders, and especially in OBGYN where we are trained uniquely to respond in urgent or emergent situations.

September 11, 2001 was a beautiful morning. I had three cases scheduled in the OR. I was in a great mood since my partner and I had just come back from a long weekend in Seattle where we met with the birth mother of our soon-to-be daughter. Her one condition of our adoption was that one of us had to be there for the delivery. We saw this as no problem in that there are three flights a day direct from Philadelphia to Seattle.

When we started our first case, a LAVH for a huge myomatous uterus, we were all in good spirits. It was our team of nursing, anesthesia, and a senior and junior resident and medical student. We were well into our procedure when we were notified that there was an explosion in New York. By the time we had finished our laparoscopic portion of the procedure we had more information about the World Trade Center and we also realized that our chief resident's father worked in the World Trade Center. We immediately released her from the OR, finished our case, and then went out to assess the situation. My resident was unable to connect with anyone in her family and was in a panic.

Our hospital quickly suspended all elective surgeries and began to set up for emergent procedures and the potential for transport of injured survivors. It was a genuine response and a good initial reaction, however we were all a little naive in the fact that there were not that many injured survivors since those that did not make it out did not survive, and as we know, many Americans died on that day.

As the Pentagon was hit and a plane went down in Pennsylvania, I quickly thought about the safety of my own family. We live about three blocks from Independence Hall and I feared that that might be an iconic site for this type of terrorist activity. I called home and alerted our nanny that we may have her take our then two-year-old son and dogs away from Philadelphia. Later that week, as we celebrated the Jewish holidays, we received a call from Seattle. Our birth mother reported that she thought she was getting close to birth and we needed to get to Seattle. One problem: no planes were flying. After considering driving, buses, and trains, I made a last-ditch call to the airlines and they reported that indeed they were flying out on September 18<sup>th</sup>. I asked if there was any seats on the plane and received a sarcastic response, "Sir, you can have the whole plane, no one is flying."

Ashley, our daughter, was born on September 21, 2001. My partner and his 82-year-old father were present for her birth. Neither of them had witnessed a delivery before. My senior resident's father was at a business breakfast away from the Trade Center and was OK. Now, 12 years later, I realize how important our medical training is to being "first responders" and able to think quick in emergent situations and how privileged we all are in having been trained to have this skill set.

## News From the Chair

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lawsuits as a result of emergency care in the emergency room and delivery room. Our lobbying team is keeping us up-to-date on all bills involving women's health care, and helping us work against the Breast Density Bill. We now have a better mechanism for being proactive to support, fight, or author our own bills.

At the ACOG National Congressional Leadership Conference (CLC) in March 2012, the PA delegation had the honor of presenting the ACOG Public Service Award to U.S. Representative Allyson Schwartz. The PA Section also received the 2012 award for The Most Improved Legislative Program.

My third goal was to increase collaboration with other groups working for the betterment of women's health care. We met with the leaders of the American College of Nurse Midwives (ACNM) to look for common ground and have established a relationship with the Women's Law Project and ACEP. Through PAMED, we have supported a tanning bill important to the PA Academy of Dermatology and Dermatologic Surgery. Through the National ACOG PAC we have contributed to the campaigns of a state senator and a candidate for US Congress from Pennsylvania. We hope to work with the Philadelphia Obstetrical Society to set up a Perinatal Cooperative in the Commonwealth. Amanda Flicker, our incoming Secretary, is working on a model to set up a viable Maternal Mortality Review System in Pennsylvania similar to that in Philadelphia and New Jersey.

I have established ties with media in Pennsylvania, having done numerous interviews with reporters in Philadelphia, Pittsburgh, York, and Harrisburg. I hope this fosters our

voice across the state, and keeps the public educated about the truth, the science, and the important issues in women's health care. I intend to continue to use these media contacts to support this goal. I will also serve as the Obstetric Trustee on the Board of PAMED to further our agenda.

The PA Section started and fostered the relationship with Nate DeNicola, (a new member of the Legislative Committee of the PA Advisory Council), District III, and National ACOG in expediting use of Social Media and establishing the National and District III Facebook pages.

I wish to thank Jan Reisinger, our Executive Administrator, and Kristi Spargo, Jan's assistant, for their valuable support and assistance. I also wish to thank our Executive Committee: Kurt Barnhart, Lynne Coslett-Charlton, and Stephen Smith. I have learned much about "political correctness" from Ann Honebrink and Tony Castle, and appreciate mentoring from Rich Henderson, Owen Montgomery, Peter Schwartz, Ann and Tony.

ACOG is an amazing organization dedicated to fighting for women's health care rights, educating OB/GYN physicians, and advocating for all of its members. I am proud to be part of it and intend to continue being active. I am looking forward to being Past Chair and wish Kurt and our other newly-elected officers Lynne, Steve, and Amanda, good luck!

Respectfully Submitted,



Sherry L. Blumenthal, MD, FACOG  
Chair, Pennsylvania Section ACOG

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## A Day in Harrisburg!

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regardless of their level of breast density, could create undue panic, resulting in more unnecessary testing, increased healthcare costs, and a required standard of care that is not grounded in science. PA ACOG has been successful in making the argument that if mandated notice legislation is enacted in Pennsylvania, the notice language should be carefully crafted so as to mitigate patient panic. We have been successful in authoring alternative notification language that would inform patients that breast density is very common and natural. The legislation is expected to move and be enacted sometime in 2013. We will report any results on this matter in the next newsletter.

## Clear and Convincing

Additionally during the 2013 Legislative Day, PA ACOG advocated for legislation that would provide emergency care physicians more legal liability leeway when providing emergency patient care. This legislation recognizes that the physician may not know the patient's medical history at the time of emergency treatment. House Bill 804 would essentially hold a physician that does not have any medical knowledge of a patient to a different standard of care than a physician who does have existing knowledge of or a relationship with a patient. The current standard of proof for physician medical liability actions is called "preponderance of the evidence" and is applicable regardless of the surrounding circumstances. HB 804 would increase the burden of proof to one of "clear and convincing" in liability actions against a physician providing emergency care. HB 804 is currently in the House Insurance Committee waiting for action.