



RHODE ISLAND

# MEDICAL NEWS

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## Employment contracting: A Primer for Physicians

### *What you should know before you sign*

In Rhode Island as elsewhere, hospitals and physician groups are acquiring medical practices at a pace reminiscent of trends in the 1990s. Physicians who contemplate the transition from independent practice to employment must pay close attention to the documents they are signing and make sure they have clear answers to key questions. How exactly will compensation work? What happens when the initial contract expires – or is terminated prematurely? And what about “non-compete” clauses and “restrictive covenants”?

Below are a few things you should bear in mind before you sign any employment contract or affiliation agreement. These pointers are just a basic orientation, so you will want to consult an attorney who is knowledgeable in Rhode Island law and Rhode Island health care before entering into any employment relationship.

### The Basics

The purpose of any contract is to describe clearly the rights and obligations of two or more parties entering into a business relationship. Thus, every contract should clearly explain how the physician is expected to perform and should spell out the expectations and duties, both clinical and administrative.

The contract should also address the types of business activities, if any, that will be permitted outside of the employment agreement. For example: Is the relationship exclusive or non-exclusive? Will you be permitted to moonlight, seeing patients in a second job? If you are permitted to moonlight, are there restrictions on the location of your other job or on the scope of services you can provide there?

The agreement should include language that protects what you bargained for so that you do not find yourself being assigned significantly new or altered job duties without

your consent. If you were hired by a hospital to perform inpatient intensivist services, be sure you understand what other services the hospital may expect you to perform. Even if you feel confident about the situation you are getting into, take the trouble to be sure that the contract clearly states the scope of work required of you.

### Compensation

How is compensation structured and determined? Is it based on straight productivity, straight salary, equal share of receipts, salary plus discretionary bonuses, salary plus productivity bonuses, or some other combination? Bear in mind that physician compensation is often tied to external regulations that will influence how pay is structured and the amount of money that will be considered reasonable.

Compensation structures typically are reviewed by attorneys to assure that they do not violate federal anti-kickback and Stark laws, which generally prohibit compensation in exchange for referrals or tied to the volume of referrals. Factors that influence compensation include market demand for physician services, geographic location, specific job duties and the type of employer or company that is seeking the service.

In addition to direct compensation, physicians should clearly understand which other benefits will or will not be included in the compensation package, such as paid time off, health benefits, leave policies, disability insurance, medical liability insurance, professional dues, continuing medical education expenses, travel, moving expenses and retirement benefits. (*See box on page 10.*)

Physicians can obtain benchmark compensation information from sources like the Medical Group Management Association, Medscape and various consulting firms and recruiting agencies. *continued page 10*



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The Rhode Island Medical Society  
was founded in 1812 to promote  
the art and science of medicine.  
RIMS is the eighth oldest state  
medical association in the country.

The Medical Society also  
publishes a monthly magazine,  
*Rhode Island Medical Journal*.  
Current and archived issues are  
available at [www.rimed.org](http://www.rimed.org).

## LETTER FROM THE PRESIDENT



ALYN L. ADRAIN, MD  
PRESIDENT

### Call Joe's Prior Auth Service

I hope everybody saw Joe Friedman's annual April Fool column in this month's issue of the *Rhode Island Medical Journal*. Joe wrote a timely satire on "prior authorization" that's quite entertaining. (His send-up features "Joe's Prior Auth Service," which, we read, proudly

employs only the hearing and speech impaired.)

I enjoy Joe's clever columns every month and appreciate the fact that they now come to me electronically, along with the rest of the *Rhode Island Medical Journal*. Judging from the surprising volume of laudatory feedback we have received, the community has adjusted quickly and easily to the *Journal's* new electronic format. The enriched content broadens its appeal, and it is now a veritable feast for the eye with lots of crisp color and engaging photographs. It's amazing what good design can do! Our stalwart Editor-in-Chief, Dr. Joe Friedman; our new Managing Editor, Mary Korr; and our new designer, Marianne Migliori, deserve huge credit for the successful transformation of the Medical Society's venerable *Journal*. You'll want to be in the habit of giving it a gander every month, if you don't already.

Of course, we all know that the prior authorization nuisance that Joe pillories so delightfully in his April column mushroomed into a major menace for Rhode Island doctors and patients in January when Catamaran, of Lisle, Illinois, replaced CVS Caremark as Blue Cross' pharmacy benefits manager (PBM). As virtually every Rhode Island doctor and thousands of patients know, the transition did not go smoothly.

Catamaran pitches itself to health plans and self-insured employers as a new breed of money-saver, but the company still has to be considered something of an unknown quantity. It was only formed last July through the merger of Catalyst Health Solutions and SXC Health Solutions, both of which were in the PBM business previously, too. Though Catamaran is now physically located in SXC's former headquarters about 20 miles west of Chicago, only time will tell whose DNA is dominant in the merged entity and what kind of impact Catamaran is going to have on Rhode Island patients. Interestingly, Catamaran's CEO and at least one of their VPs used to work for CVS Caremark, so that DNA is mixed in there too. But Catamaran touts itself as a departure from the old ways and "a force for change." Boasted their CEO soon after the merger, "We've emerged as a disruptive new model." Perhaps Rhode Island is Exhibit A for "disruption"? One thing is sure: the Blue Cross brass cannot have been happy with the mess Catamaran created out of the box in January. Some of the issues should have been anticipated and could have been averted before they became problems for so many Rhode Island doctors and patients.

To be fair, a couple of things coincided with the switch to Catamaran that made things worse than they had to be. Some municipalities moved their employees to a more restrictive formulary at the same time, and then CMS piled on with new prior authorization requirements for Medicare Advantage plans.

The whole prior auth phenomenon has consumed enormous resources from the Rhode Island Medical Society for more than a dozen years now, second only

to the resources invested in the perennial quest for liability reform. The original focus of prior auth many years ago, starting in Dr. Yul Ejnes' Presidency, was high-end imaging. Yul worked hard to get all the payers, including United and Neighborhood, to cooperate with the affected specialties in a uniform educational approach that focused on outliers. We made some promising headway and held off the imposition of prior auth for about seven years, which was an accomplishment in itself. But by then most of the rest of the country was doing it, and the technique was spreading to all sorts of other services and to pharmaceuticals. Obviously, American health plans and employers have concluded that prior authorization is effective in bending the cost curve. How does it do it? Basically, it's rationing by hassle.

But hassle drives up costs too. More precisely, it shifts costs – mainly to physicians. That isn't fair, and that's why I am happy to be serving as the Medical Society's representative on the state's Administrative Simplification Task Force right now. The Task Force was called into being by a new law that the Hospital Association and the Medical Society championed together and succeeded in pushing through the General Assembly last year. The Office of the Health Insurance Commissioner is charged with supporting the Task Force in its work.

We have an ambitious work plan for the Task Force. One thing we tackled early on was the problem of patients' eligibility, which can whip-lash practices when patients lose coverage or change employers. The scourge of prior authorization is coming up next on the list, and I am looking forward to seeing what reasonable, fair-minded people can come up with in that department.

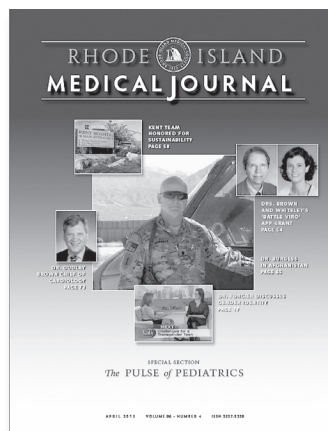
On a parallel track we have also, through the intercession of Dr. Gus Manocchia at Blue Cross, facilitated direct contact between technicians working deep within BCBSRI and certain technical experts at the AMA who have found a way to automate and accelerate prior authorization processes by exploiting certain existing features of HIPAA. I can't begin to explain how it works, but it's another example of constructive engagement by your Rhode Island Medical Society, as we try to work every angle to improve things for doctors and patients.

Granted, there are not a lot of slam-dunk victories in these never-ending games. Everything has its trade-offs and nuances. As for prior authorization, it is not going away anytime soon. But neither is RIMS going away, thank goodness, and the daily work of the Society definitely makes a difference for the better in a host of arenas where new challenges pop up like Whac-a-Moles every day.

Between the whacks we deliver we still need to permit ourselves a wry laugh once in a while, like the one Joe Friedman gave us again this month.

Thanks, Joe. I needed that. ❖

## The Rhode Island Medical Journal: A study in transformation and continuity



The beloved monthly commentaries of Dr. Stan Aronson and Dr. Joe Friedman are still there. So are the high-quality, peer-reviewed clinical articles by local authors reflecting local conditions, and often highlighting Rhode Island resources that deserve to be better known within the medical community as well as by the public.

But overnight (or at least over-month, namely from

December 2012 to January 2013, without missing a beat), the *Rhode Island Medical Journal* became a much more expansive, interesting and visually attractive publication. Credit the vision, energy and teamwork of the *Journal's* new Managing Editor, Mary Korr, its new designer, Marianne Migliori, as well as Editor-in-chief Joseph Friedman's ready embrace of new ideas and new ways (as long as they are good).

Part of the new goodness benefits the environment. The Medical Society's monthly journal is now an e-journal whose appearance is announced by email on the first business day of each month and is instantly available in full color on mobile devices and computers of all kinds everywhere in the world. Its page count has more than doubled with the addition of new features that are of timely human and professional interest to members of the health care community in Rhode Island.

*Rhode Island Medical Journal* is the original name of the publication RIMS launched in 1917 and has published monthly ever since, with only a couple of hiccups early on caused by World War I and a 1920s labor dispute in the printing industry. For a while in the 1990s it was known as *Rhode Island Medicine*, and most recently it was *Medicine @ Health Rhode Island*. With the observance of the Society's bicentennial in 2012 and the rebirth of the journal itself with new form and content, it seemed fitting to return to the original graceful and descriptive name. ❖

RIMS thanks Pfizer for supporting the transformation of the 96 year-old *Rhode Island Medical Journal* into a 21st century vehicle to serve the health care community in Rhode Island. A grant from Pfizer enabled the Rhode Island Medical Society to redesign the *Journal* for electronic distribution to a much wider audience, endowing it with an attractive new design and more diverse content, while making more efficient use of RIMS' resources and sparing the environment. Thank you, Pfizer!



## Dr. Jose Polanco is RIMS' new Treasurer

The Rhode Island Medical Society Council elected Jose R. Polanco, MD, to serve as Treasurer of RIMS, effective April 8, 2013.

Dr. Polanco succeeds Dr. Jerry Fingerut, who served as RIMS' Treasurer since 2008 and had asked to be relieved of his duties in anticipation of retirement from active practice later this year.

Dr. Polanco is a general internist, formerly in private practice. Last year he was named assistant medical director and chief medical information officer at Blackstone Valley Community Health Care in Pawtucket. He has been a participant in the interdisciplinary model of care delivery known as Rhode Island PACE (Program of All-inclusive Care for the Elderly).

A native Rhode Islander, Dr. Polanco received his medical degree at the SUNY College of Medicine in Brooklyn in 1998.

In electing Dr. Polanco, the RIMS Council also voted its thanks to Dr. Fingerut and presented him with a framed certificate, which noted in part that Dr. Fingerut's "incisive commentary, authentic wisdom and gentle humor will be missed" on the RIMS Council and Executive Committee. ❖



*RIMS Treasurer, Jose Polanco, MD*

### BRIEFLY NOTED

The Rhode Island Psychiatric Society has installed officers. **JAMES SULLIVAN, MD**, is President. **ARNALDO BERGES, MD**, is President-Elect. **EMILY MURPHY, MD**, is Secretary-Treasurer. Councilors are **ALICE LEE VESTNER, MD**; **KAZI SALAHUDDIN, MD**; **JAMEY INGRAHAM, MD**; and **LISA FRAPPIER, DO**. Representative and Deputy Representative to the American Psychiatric Society are **PAUL LIEBERMAN, MD**, and **RUSSELL PET, MD**, respectively. **ANDREA MERNAN, MD**, represents RIPS on the Rhode Island Medical Society Council.

The Rhode Island Academy of Family Physicians has installed officers. **ROANNE OSBORNE, MD** is President. **THOMAS GUTTMACHER, MD**, is Vice President. **SARAH FESSLER, MD**, is Treasurer. **DAVID ASHLEY, MD**, is Immediate Past President and Chair of the Board.

**TIMOTHY J. BABINEAU, MD**, has been elected to the governing board of the University Health System Consortium, an alliance of 118 non-profit academic medical centers, including 283 affiliated hospitals. Dr. Babineau is President and CEO of Lifespan.

**LUCY P. BUCKLEY, MD**, and **PATRICIA A. ROMPF, MD**, will each be recognized by the Rhode Island Medical Women's Association

as Woman Physician of the Year in the context of RIMWA's annual meeting on May 13, 2013, at the Providence Marriott. The event begins at 6:30 p.m.

**FREDERICK BURGESS, MD**, is the author of a "Report from a Remote Combat Outpost in Afghanistan" published (along with several U.S. Army security-screened photos and illustrations provided to RIMS by Dr. Burgess) in the April edition of the *Rhode Island Medical Journal*. Dr. Burgess is an anesthesiologist at the Providence VA Medical Center and an Army Reservist. He is currently serving his second tour of duty in Afghanistan.

**STEVEN R. DETOY**, Director of Government Relations and Public Affairs for the Medical Society, was recognized by the Rhode Island Academy of Physician Assistants for his "numerous contributions to the physician assistant profession" and bestowed with the title Honorary Physician Assistant. (Mr. DeToy also currently chairs the Advocacy Resource Center, the state legislative arm of the American Medical Association.)

**JENNIFER FRIEDMAN, MD, PhD**, was honored by Lifespan with the Judge Bruce M. Selya Award for Excellence in Research.

Dr. Friedman is a researcher at Hasbro Children's Hospital and directs clinical studies at the International Health Research Center at Rhode Island Hospital.

**CAROLE JENNY, MD**, received the Bertram Yaffe Award of the Rhode Island Public Health Association. Dr. Jenny directs the Lawrence Aubin Child Protection Center at Hasbro Children's Hospital.

**PETER KARZMAR, MD**, was named the Charles C.J. Carpenter, MD, Outstanding Physician of the Year by The Miriam Hospital medical staff. Dr. Karczmar was President of The Miriam Hospital Medical Staff Association 2010-2012 and is currently President-Elect of the Rhode Island Medical Society.

**GUS MANOCCHIA, MD**, received the 2012 Founder's Award given by the Rhode Island Free Clinic. (Dr. Manocchia's acceptance remarks are reprinted on page 14 in this edition of *Rhode Island Medical News*.)

**CHARLES MCDONALD, MD**, was inducted into the Rhode Island Heritage Hall of Fame on April 19, 2013. The founding chair of the Department of Dermatology at Brown University, Dr. McDonald was honored as a physician, researcher and leader, and

## Kathleen Boyd, MSW, LICSW is RIMS' new director of Physician Health

RIMS' staff welcomed an important new colleague in January. She is Kathleen Boyd, MSW, LICSW, the new Director of RIMS' Physician Health Program. As Director she provides indispensable support for the work of the Physician Health Committee and supervises two part-time assistants.

Ms. Boyd earned her undergraduate degree at California State University East Bay in Hayward, CA, and her master's at the Smith College School for Social Work in Northampton, Massachusetts. Ms. Boyd has been a respected member of Rhode Island's community of mental health professionals for more than twenty years, appreciated for her strong organizational skills as well as exceptional therapeutic skills.

Ms. Boyd succeeds Rosemary Maher, LICSW, who was Director for twelve years. Ms. Boyd is the third health professional to direct RIMS' Physician Health Program. The first was the late William Moclair, RN.

The Physician Health Committee is made up of volunteers who represent every hospital medical staff in the state as well as each of the four professions served by the Program: medicine, dentistry, podiatry and physician assistants.

Dr. Herbert Rakatansky has chaired the Committee since its inception in 1979. Vice Chairs are Martin Kerzer, DO, and Robert Crausman, MD. More information on the Program is available at [www.rimed.org](http://www.rimed.org). Kathleen Boyd can be reached at 401-528-3287. ❖

recognized as a pivotal figure in the emergence of a nationally significant academic medical establishment in Rhode Island.

**ELIZABETH NESTOR, MD**, received the 2012 Milton Hamolsky Outstanding Physician Award from the Rhode Island Hospital medical staff. The award is named for the Hospital's distinguished, long-serving Physician-in Chief, who later became the first Chief Administrative Officer of the current Board of Medical Licensure and Discipline. Dr. Hamolsky served as Secretary of the Rhode Island Medical Society 1982–1987.

**EDWARD AKELMAN, MD**, is President of the American Society for Surgery of the Hand.

**GARY BUBLY, MD; JOSIAH D. RICH, MD, MPH;** and **PETER SIMON, MD, MPH**, were named Public Health Heroes by the Association of State and Territorial Health Officials at the end of 2012. ASTHO is the national organization for public health professionals. The three were nominated for the honor by the Rhode Island Department of Health. (Dr. Bubly was President of the Rhode Island Medical Society in 2010–11. Dr. Rich received the Medical Society's Charles L. Hill Award in 1998. Dr. Simon's father, Stanley D. Simon, MD, was President of the Medical Society in 1969–70.)

**CHARLES C. J. CARPENTER, MD**, received the Lifetime of Leadership Award from the International Antiviral Society-USA. The award was presented on November 8, 2012, in San Francisco.

**DONALD R. COUSTAN, MD**, is President-Elect of the American Gynecological and Obstetrics Society. He will assume the Presidency on September 13, 2013. (Dr. Coustan was President of the Rhode Island Medical Society in 1989–90.)

**PENELOPE DENNEHY, MD**, has received the Distinguished Service Award of the Pediatric Infectious Disease Society. She is director of pediatric infectious diseases at Hasbro Children's Hospital.

**GARY N. FRISHMAN, MD**, is President of the national Council of Gynecologic Endoscopy, which is part of the American Association of Gynecologic Laparoscopists. Dr. Frishman is a reproductive endocrinologist associated with Women & Infants Hospital.

**EMILY C. HARRISON, MD, MPH**, received the 2012 Humanitarian of the Year Award from the American Academy of Family Physicians.

**ANTHONY TESTA, MD**, has been honored for excellence in service by the medical staff of St. Joseph Health Systems/Fatima Hospital.

**MICHAEL E. MIGLIORI, MD**, is the 45th President of the American Society of Ophthalmic Plastic and Reconstructive Surgery. He is Ophthalmologist-in-Chief at Rhode Island Hospital. (Dr. Migliori is also a member of the board of directors of the American Medical Political Action Committee, represents Rhode Island as a Delegate to the AMA House of Delegates, and chairs the Rhode Island Medical Society's Public Laws Committee. He was President of RIMS in 1997–98 and received RIMS' Charles L. Hill Award in 2009.)

**MARTIN A. WEINSTOCK, MD, PhD**, has been recognized by the American Academy of Dermatology with the Academy's highest scientific honor, the Lila and Murray Gruber Cancer Research Award. Dr. Weinstock is chief of dermatology at the VA Medical Center in Providence.

**ED MARTIN, MD**, was honored by Home & Hospice Care of Rhode Island on March 28 for his 25 years of service as the organization's medical director. Dr. Martin was also the subject of a special tribute by *Providence Journal* columnist Bob Kerr in an article that appeared in the Sunday, April 7, edition of the *Journal*.

## RIMS leadership hosts legislators

On January 15, members of RIMPAC and RIMS' Executive and Public Laws committees hosted a reception for the General Assembly leadership and welcomed newly-elected legislators



## Does RIMS have your email address?

If not, you could be missing out on timely information. RIMS uses broadcast email judiciously to communicate concise and timely information of broad interest that most physicians are unlikely to receive as quickly from other sources.

It's easy to keep RIMS apprised of your email address. Just please alert Megan Turcotte by email ([mturcotte@rimed.org](mailto:mturcotte@rimed.org)) to any changes. You can also update and manage all your contact information and profile from the home page of [www.rimed.org](http://www.rimed.org). Just go to the bottom of the left-hand column and click on "Update your contact info." RIMS never shares members' email addresses with third parties.



## RIMS Insurance Brokerage Corporation: Full service with a difference

From the day it opened its doors in 1988, the RIMS Insurance Brokerage Corporation has been a business with a unique philosophy. Its approach to sales and service is different from that of any other brokerage in Rhode Island. Moreover, the RIMS-IBC requires its business partners to adhere to the same unique standards of service when dealing with physicians. Sales are based strictly on information and on the best interests of the physician and his or her medical practice.

These special qualities have taken on new meaning with the RIMS-IBC's new co-brokerage agreement with Butler & Messier Insurance Agency of Pawtucket and its even newer relationship with Coverys (formerly ProMutual/ProSelect, headquartered in Boston).

The RIMS-IBC's primary focus has always been medical professional liability insurance, where information, education and service are of paramount importance to doctors. Medical liability entails high stakes for every physician's financial security and professional reputation. At the same time, medical liability is a notoriously labile and treacherous line of business that is subject to severe market shocks, as Rhode Island doctors know only too well. Its uniquely "long tail" and variety of formats ("occurrence" and "claims made" offered by "risk retention groups," "trusts," "captives," etc.) make medical liability the most confusing kind of insurance there is.

The staff of the RIMS-IBC knows how to help practices understand their options and make wise choices. The

RIMS-IBC places business with two of the strongest and most respected companies in the business: NORCAL Mutual of San Francisco and Coverys of Boston. Both are rated "A" by A.M. Best, and both have the physician-friendly DNA of physician-owned and physician-directed

mutual insurance companies in their family trees. It also places business with the Rhode Island JUA, a quasi-public entity that is not rated by Best but is structured to be extremely safe and stable.

In Butler & Messier, the RIMS-IBC has an independent, experienced, 110 year-old partner that represents over 30 major insurance companies and thus can match the individual insurance needs of physicians and their families for auto, home, business, etc. Butler & Messier's expertise and capacity complement those of the RIMS-IBC and enable the RIMS-IBC to offer all physicians one-stop shopping with the assurance of quality products and superior service.

In addition to the new relationships with Coverys and Butler & Messier, the Medical Society and the RIMS-IBC continue to partner with Good Neighbor Alliance Corporation to deliver life, health and disability benefits to individuals and groups.

More information is available through the RIMS website ([www.rimed.org](http://www.rimed.org), click on RIMS-IBC). The staff of the RIMS-IBC can be reached at 401-272-1050. ❖



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## Call for applications: RI "medical home" project looks to enroll 20 more practices in 2013, 100 by 2018


In a strong demonstration of their growing faith in the Patient-Centered Medical Home model, stakeholders announced on April 5 that they have ambitious plans to expand the program. Rhode Island's unusual multi-payer pilot project, known as CSI (for "Chronic Care Sustainability Initiative," launched in October 2008), currently serves about 10% of Rhode Island patients. Planners now aim to involve 20% of the population within a year and 50% in five years.

Their confidence in the model is based not only on faith. With four and a half years of experience under their belts, the CSI proponents believe they reduced hospital admissions by 19% from 2010 to 2011, and by 8.1% in the second quarter of 2011 alone, compared with non-

participating practices. They also claim to have achieved "impressive results on quality measures for chronic conditions" such as diabetes, hypertension and depression.

Expansion plans call for enrolling twenty more practices in CSI during 2013 and 20 more in each of the following four years.

Interested practices should act quickly. Letters of intent are due by April 26 to [csi-ri@umassmed.edu](mailto:csi-ri@umassmed.edu). Full applications are available at [http://www.pcmhri.org/2013\\_CSRI\\_expansion\\_app](http://www.pcmhri.org/2013_CSRI_expansion_app) and will be due May 10. Notifications to successful and unsuccessful applicants are scheduled to go out July 12. Questions can be directed to Catherine Sampson, CSI-RI Project Manager, at [catherine.sampson@umassmed.edu](mailto:catherine.sampson@umassmed.edu) or 508-421-5919. ❖



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## What EVERY Physician's Employment Contract Should Spell Out

- Basic terms of employment
- Job description
- Is the position full-time or part-time?
- What are the on-call coverage obligations?
- Is the employment agreement exclusive or non-exclusive?
- How are other business endeavors affected, both related and unrelated to the business of medicine?

**Compensation** If compensation is affected by costs allocated to the physician, the physician should have a say in significant purchasing and cost decisions.

**Professional expenses** Does the employer offer assistance with paying for professional dues, CME, licensure or other professional expenses?

**Billing/Compliance** Who is responsible? Is a compliance plan in place? How will change in employment status affect current managed care contracts?

**Paid time off** What is provided with respect to vacation, paid holidays, sick time, personal time, family leave, etc.?

**Employee benefits** What is offered or included? Health insurance, retirement benefits, life insurance, long term care insurance, etc.?

**Facilities** Are the facilities clean, well maintained and easily accessible to patients? Will you have an office? Are facilities well equipped with what you need to practice?

**Support staff** Is staffing adequate? Is the staff professional, efficient and competent? Is there good communication between physicians and support staff?

**Professional liability insurance** What level of policy limits is required/provided? Is the coverage in "occurrence" or "claims-made" format? Who pays the premiums? What type of entity provides the coverage? (Is the entity licensed and admitted in Rhode Island? Does it participate in the Rhode Island insolvency fund? Does it have adequate reserves? Is it rated by A. M. Best? ) What are the "tail" provisions of the policy? Prior acts provisions? Do defendant physicians have a say in who defends them?

(Since their professional reputations are at stake, physicians should have a voice in the selection of their liability coverage. Medical professional liability insurance is a uniquely complex, high-stakes and long-tail form of risk transfer. It is entirely fair and accurate to say that the most knowledgeable and physician-biased liability advisors in Rhode Island work for the Medical Society's own Insurance Brokerage Corporation, a full-service brokerage that has specialized in professional liability and physician-friendly service for a quarter century.)

**Termination clause** How can you get out of the relationship? What rights do you have if you are fired?

**Access to medical records** Who owns the records? How will you access records if necessary after you leave the relationship?

A simple Google search for "physician compensation benchmarks" can provide a start.

## Termination Provisions

So what happens when the contract ends?

All contracts should include basic provisions that address how the agreement is terminated, whether by the employee or the employer. The agreement should enumerate events that will trigger automatic cancellation of the contract and may include events that can result in immediate termination, such as breaking the law, loss of medical license or breach of privacy or security rules.

When the decision to terminate is mutual or otherwise without cause or without a breach of the terms of the agreement, the agreement should state how the parties give notice and how much time is required for notice of termination.

Related to termination is a statement of what the physician may take from the relationship if the physician decides to leave. The contract might include how assets, including equipment and personnel, will be divided. If there are assets that a physician brings to the relationship that the physician expects to take upon leaving the relationship, those items should be enumerated and their disposition upon termination should be stated.

## Ownership and Use of Medical Records after Termination

Who has the right to medical records that a physician has created once an employment contract is terminated? The generally understood rule is that the medical records are the property of the physician who creates the record, unless an agreement states otherwise. Employment contracts and affiliation agreements should clearly spell out who owns and retains medical records.

Agreements should also spell out the circumstances under which a physician has access to records that are not otherwise under the physician's control when special circumstances arise, like the need to respond to a professional liability suit or patient requests to transfer care.

Note that Rhode Island law (§5-37-30) requires a physician leaving a practice to give public notice at least 90 days in advance in a "newspaper of statewide circulation" (i.e. the *Providence Journal*), citing the date of departure and providing instructions on how patients can access their records both before and after the physician departs. Physicians are also legally required to notify both the Rhode Island Medical Society and the Rhode Island Department of Health regarding the disposition of their medical records. Certain provisions of HIPAA also apply.

## Non-Compete and Non-Solicitation Provisions – What is allowed when parties split

Many physician employment contracts include "restrictive covenants" or non-compete provisions that prevent

the physician who is leaving the arrangement from practicing within a specified geographic area and for a specified period of time. The clause will also likely prohibit ownership or interests in other entities that exist to provide the same or similar services within the stated restrictions.

The legality and enforceability of non-compete clauses can vary with circumstances and can be open to challenge, but they are generally enforceable in Rhode Island, provided the restrictions are deemed reasonable. Courts will weigh the physician's right to earn a living against the employer's right to protect its business interests, including the time and effort it has invested in supporting the departing physician. One- or two-year time restrictions are usually found to be reasonable, but the defensibility of geographic restrictions can vary based on a variety of circumstances. For example, a clause indicating that a physician is precluded from practicing within a 25-mile radius of any facility owned by the company could encompass the entire state of Rhode Island and more, and might therefore be deemed excessive and unenforceable.

Non-compete clauses may also include a buy-out provision that allows the departing physician to exempt himself or herself from any non-compete restrictions by compensating the employer in advance for the presumed damage that the departure causes to the existing business. The terms of the buy-out should be set in advance in the contract. Non-compete clauses can also be written to allow the departing physician to practice in a competing location as long as the physician does not solicit patients or personnel from the employer or company.

Physicians should carefully review non-compete and non-solicitation provisions and understand their ramifications. These clauses tend to be enforceable, and courts will assume that the physician knowingly agreed to the limits that they impose on the physician's practice options.

## Resources

Physicians should always seek the advice of legal counsel with questions related to employment or affiliation contracts. Physicians also have ready access to generic resources that can be very helpful. RIMS encourages all physicians to take advantage of the AMA Employment Guidance provided by the American Medical Association at [www.ama-assn.org/go/employment](http://www.ama-assn.org/go/employment).

*RIMS is indebted to the Ohio State Medical Association for most of the text of this article, which was originally written by Nancy Gillette, Chief Legal Counsel for the OSMA, and appears in the current issue of Ohio Medicine. RIMS thanks Ms. Gillette and Mr. Brent Mulgrew, JD, Executive Vice President of the OSMA, for permission to adapt this article for Rhode Island Medical News.* ❖

## Johnson & Wales PA Program

The Center for Physician Assistant Studies at Johnson & Wales University will house Rhode Island's first physician assistant program. Pending accreditation, the first class of 24 students is slated to start their training in June 2014.

**We are seeking clinical training sites for our students.** We will offer 5-week clinical rotations in: outpatient adult or general primary care, inpatient adult internal medicine, pediatrics, women's medicine, behavioral health, emergency medicine, general surgery and electives in all areas of medicine.

We offer a financial honorarium for all rotations. The preceptor can be a physician, physician assistant, nurse practitioner or other trained health professional. To learn more about the program, please see our website [www.jwu.edu/PA](http://www.jwu.edu/PA).

If you are interested in discussing this clinical training opportunity, please contact the Program Director, George S. Bottomley, DVM, PA-C at 401-598-4960 or email him at [gbottomley@jwu.edu](mailto:gbottomley@jwu.edu).

## RI Medicaid payment increase for primary care: The long awaited "attestation portal" is now open

**Subspecialists may also qualify for a raise on specified E&M and vaccination codes**

**Submit by June 9 for retroactive payment to January 1**

Eligible physicians can now go to [www.dhs.ri.gov](http://www.dhs.ri.gov), scroll down to "What's New in Medicaid," and then click on "Primary Care Provider Payment Increase" to submit their online attestation of eligibility to Rhode Island Medicaid to earn enhanced payment rates for certain E&M services and vaccinations during 2013 and 2014. Physicians can also attest to the eligibility of PAs or NPs for whom they are responsible.

The payment enhancements bring Medicaid fees up to Medicare levels for all Medicaid programs in Rhode Island, including RIte Care, Rhody Health Partners and Medicaid fee-for-service. State Medicaid authorities estimate that the rate increase will amount to approximately \$17 million over the next two years in Rhode Island. ❖

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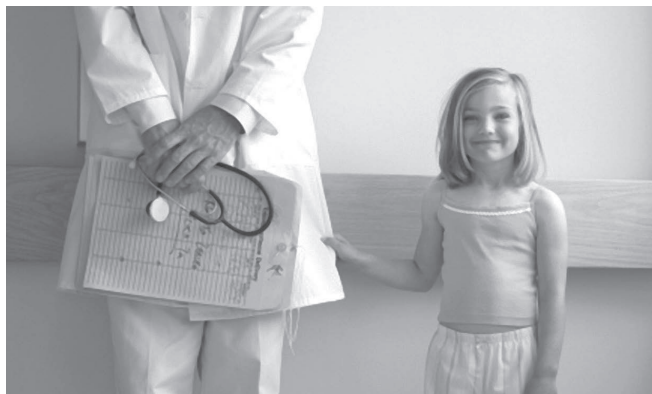
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**[ama-assn.org/go/memberadvocate](http://ama-assn.org/go/memberadvocate)**



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The AMA thanks Steven R. DeToy, RIMS Director of Public and Government Affairs (and chair of the AMA ARC Executive Committee) for working together with the AMA to ensure the best outcomes for patients and physicians.

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## The Rhode Island Free Clinic honors Dr. Gus Manocchia

*Dr. Gus Manocchia was the recipient of the 2012 Founder's Award from the Rhode Island Free Clinic. The award was presented at the Clinic's annual Founder's Reception, which was held at the Providence Art Club on October 10, 2012. In accepting the award, Dr. Manocchia offered the following personal reflections.*

Wow! Thank you all so much – I am absolutely overwhelmed with this recognition award tonight.

I have to admit that when I first heard back in the spring that I was being considered for this award, I was truly shocked. I really could not understand why I was selected.

First, I'm really only there [at the Free Clinic] once or twice a month, volunteering maybe a total of four to five hours a month.

Second, I don't think I'm any better a clinician than any of the other people who volunteer their time there, and while I try to keep up as much as I can with the latest developments in medicine, my skills are a little rusty compared to those who do clinical work every day.

And third, and most important, the last recipient was Dr. Charles Carpenter – the eminent and distinguished clinical Professor of Medicine, Dr. Charles Carpenter! This man is a *legend*, both locally and nationally, as one of the world's experts in AIDS.

So who am I? Ok, so I am the *son* of a "carpenter," and my wife will tell you that I like to listen to "The Carpenters" at Christmas time. But I grew up in an Italian neighborhood in North Providence, where all the kids were named Vinny, or Tony, or Frankie or Joey – it was like "Jersey Boys" – and instead of singing as a group, we spent the weeknights playing whiffle ball or touch football in the street (after our requisite family pasta dinner of course) and weekends building stone walls or cement driveways, or a new shed in the backyard with our fathers and the rest of our family – we were all very blue collar.

My family is here tonight, in fact, all of whom still live in Rhode Island. My older brother's name is Liberato, and my younger brother's name is Mark Anthony. I'm Augustine, or "Augie" when I was young. Can you get more Italian than that?

My father was Gus, Sr. He was a great man and truly one of the "Greatest Generation" – second generation Italian-American (both his parents came over on the boat) with 13 siblings, growing up during the Depression, a World War II US Army veteran along with three of his brothers. All four went to war, and all four made it back. And with his brothers, all of whom had an incredible work ethic, he started and ran a family construction business for over forty years. His family meant everything to him, and like most folks at the time, all he and my mom really wanted was for us to have a better life than they had had. I could go on and on.

Unfortunately, he passed away a few years ago, but his legacy lives on in his children and grandchildren. Two of the many wonderful things he passed down to us were a passion for work – "whatever it is you do, do it well" – and a sense of compassion for those less fortunate, because although we never really had much money growing up, we were still blessed in many other ways.

And that brings me to the Rhode Island Free Clinic and why I'm involved there.

I am a primary care doctor, and I had a very busy internal medicine general practice in Rhode Island as part of a group for ten years. In 1999, I had about 2,500 patients, and I think

if you asked other doctors who knew me at the time or many of the patients I cared for what they thought of me, I think that most would have a positive opinion of my skills as a doctor. And so that always leads to the next question: "Why the heck would you leave a nice medical practice to take a job at a 'health plan'?"

Well, I never considered myself much of an idealist, but I did see many things in my small part of the health care world that disturbed me, and so I left because I wanted to do something that would have an impact on a much larger population of patients. In fact, I wanted to do something that would have an impact on both the cost and quality of health care in the entire state of Rhode Island.

The fact is that with the exception of my time away at college, Rhode Island has always been my home, and I really do care about what goes on here. We are a very small state, everyone knows everyone else – and I thought: we can and should be able to do better, on so many fronts. So I left my practice without a job to go to, but quickly found a position at BCBSRI (thanks to the help of Dr. Peter Hollmann), and after 12 years moving up the ranks in the organization as a medical director, I hope that I've been something of a positive force for change in Rhode Island. All of us in this room who are working closely together to bring about much needed delivery system reform certainly have our work cut out for us, but I do believe that we are moving in the right direction, albeit slowly. And I have to say that I really love my work at BCBSRI.

That said, after a few years away



from practice, I knew that something was missing for me at BCBSRI, and that missing piece was the relationships I had had with my patients – many of whom had become friends of mine over the years – and those one-on-one, face-to-face encounters with someone desperately in need of your clinical skills and forever grateful for any help you can offer.

I found that, and more, volunteering at the Rhode Island Free Clinic.

I always prided myself on my ability to listen to a patient's complaint and make a diagnosis based solely on their story, without lab tests or x-rays or another opinion from a specialist. But doing that requires time, which is something in very short supply in most PCP offices these days. And nowhere is the skill of listening and history taking more important than at the Free Clinic. Because of the "uninsured" status, these patients often have had less than optimal interactions with the health care system in the past, if they've been seen at all. As a result, they are very appreciative of *anything* you do for them, and so grateful just to have someone, *anyone*, who is willing to hear their concerns. By the way, something this is poorly understood: many of the patients of the Rhode Island Free Clinic actually have jobs, they just low paying jobs of part-time positions where the employers cannot afford health insurance.

I have had so many excellent experiences in my time at the Clinic. To note just a few:

1) A 30 year-old woman with profound chronic fatigue. After noting her marked pallor and her elevated heart rate after minimal exertion, I asked her if she had any inclinations to chew on unusual objects. She admitted chewing on ice cubes – pica! It was all related to severe iron deficiency anemia from heavy menstrual periods, and it was easily corrected with oral iron replacement.

2) A 40 year-old male with a severe chemical burn of his lower leg with a secondary infection. I probably should

have admitted him to the hospital for his condition, but he was concerned about the possibility of huge bills that he would not be able to repay, so I told him I'd put him on antibiotics and topical therapies and would see him every day for two weeks if he promised to keep his appointments. He kept his end of the bargain and I kept mine, and his wound healed completely with minimal scarring.

3) The case that I will never forget, though, is a 35-year-old male from South America, French Guiana to be exact, with a very remote history of diabetes. He had just started a part-time job several weeks earlier and he was so proud of that. But then he started to cry, and told me that he had just been fired because he had been falling asleep at work. It turns out that he had been getting very poor sleep at night, due to the constant need to urinate up to ten times per night, and that was related to his diabetes being completely uncontrolled.

So, after a few weeks of aggressive management of his diabetes with insulin and lifestyle changes, and treatment of his depression with medicine, he dramatically improved. A team of Clinic staff (not just me) saw him multiple times over that course, as did a volunteer endocrinologist who also comes to the clinic. Three months later, he was re-hired by the same employer, and there was no happier and more appreciative guy on the planet than this man.

So, why else do I continue to work there? Well, you cannot miss the fact that the people who work there truly care about the people they serve. Remember, most of the folks who work there are volunteers, from the clinicians to the clerical staff. In addition, it has been an eye opening experience for me as a health plan executive, on many levels.

For example:

1) Some Rhode Island residents and Blue Cross subscribers sometimes take their insurance coverage for granted and occasionally have

completely unrealistic expectations of what their Blue Cross card should provide for them, in contrast to many Rhode Island residents with no health care coverage at all.

2) When you're a physician caring for an uninsured patient who may not be able to afford much in terms of testing or treatments, you have to be ever so judicious in what and how you order medical services with your physician's pen. Do I really need that MRI of the brain? Do I really need to order this panel of blood tests? Can I get by in this patient with one of the older and much less expensive antibiotics? There's an old expression in Managed Care: "The most expensive tool in modern medicine is the physician's pen." We all need to think about how we can be more careful stewards of our increasingly limited health care resources.

And remember also that through the new health care law many of these patients will soon have coverage. So doesn't it make sense to address their illnesses and conditions now rather than two years from now when those conditions are that much worse overall and much more costly to treat?

So if any of you here tonight have considered a donation of either your time or your money, however small that gift may be, to the Rhode Island Free Clinic, do it – do it now, and do it often. I can guarantee that you will not regret it. ♦

*Anyone interested in volunteering for the Rhode Island Free Clinic is invited to visit <http://rifreeclinic.org> and call Em Perry at 401-274-6347 extension 327 or email [eperry@rifreeclinic.org](mailto:eperry@rifreeclinic.org).*

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## New HIT and EHR support for specialists and subspecialists

Rhode Island recently became one of the few places in the country where physicians of all specialties can look to their Regional Extension Center (Rhode Island Quality Partners) for substantial help in making the move from paper to electronic health records (EHRs). The new support available to specialists is confirmation of the strong commitment and noteworthy success of both the Rhode Island Quality Institute and Healthcentric Advisors in working with physicians to put Rhode Island on the forefront of EHR adoption nationally. (Healthcentric Advisors was originally founded by RIMS in 1995 as Rhode Island Quality Partners.)

**Incentive payments are at stake.** In the beginning, only primary care professionals could take advantage of the many forms of assistance available through the Quality Institute to earn as much as \$44,000 in CMS incentive payments over five years and as much as \$67,750 over six years.

That changed as of February 2013. The Quality Institute (which serves as Rhode Island's "Regional Extension Center," or REC under the federal HITECH Act of 2009) has announced that it now has capacity to help physicians in every specialty and subspecialty of medicine (as well as dentists, podiatrists, optometrists, chiropractors, nurse practitioners and certified nurse midwives). Meanwhile, most of the nation's other 61 RECs still limit their services to primary care practices.

Over the past two years, the Quality Institute has already succeeded in helping more than 1,000 Rhode Island primary care professionals earn over \$3 million in incentive payments on their journey to "meaningful use."

"Meaningful use" of EHRs is, of course, the object of the game. Three levels or "stages" of "meaningful use" are defined – and monetarily incented – by CMS through the year 2016. Besides access to money, the Rhode Island Quality Institute offers physicians a host of unbiased, vendor-neutral, practical services to help practices make sound choices and implement EHRs successfully.

**To enroll in the REC's Specialist Program or get more information, visit [DocEHRTalk.org](http://DocEHRTalk.org) or call 888-924-4156.**

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The faculty and panel members—Christina Cassidy, RN, BSN, Frank Connor, Esq., and Angela Carr, Esq.—have no relevant financial relationships to disclose. Planners from NORCAL include Dustin Shaver (VP, Risk Management), Lynn White (Business Development and Risk Management Account Executive), and Jo Townson (Supervisor, CME)—all of whom have no relevant financial interests to disclose. The planner from Rhode Island Medical Society—Newell Warde, Ph.D. (Executive Director)—has no relevant financial interests to disclose. ❖