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## Association of Black Physicians

National Medical Association (NMA), Silver Spring, MD - 202-347-1895

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Ladies and Gentlemen, Members of Congress, Congresswoman Christensen,

I would like to thank you for the opportunity to speak to you today.

I am here representing the Association of Black Physicians (ABP). We are a very new organization having been formed approximately 18 months ago with the idea that black physicians were coming under attack much more than their white counterparts and should be held to the same standard as their white counterparts.

Let me point out to you what is common in each of these situations is that these people were successful. In fact, all these individuals were doing very well. They were either solo practice or with one or two other individuals and they came under attack because they were doing well and they were black. Again, they all have the same common theme.

A part of this conference is to talk about getting more people in the pipeline. Which pipeline are we talking about? Because the pipeline that I'm describing to you is a slaughterhouse. It is not a pipeline and that's something that you need to take into account and do something about.

The desire to stop black physicians who are doing well goes very deep and implicated a fellow member of the US Congress. An individual

Benita Long, Director of Diversity

who is from the State of Nevada and whose husband happens to be a competing nephrologist with Doctor Cyril Ovuworie. It is our suspicion and we are not able to fully prove it that it was that individual who spear-headed the drive to get rid of the best-trained nephrologist in the State of Nevada costing him half a million dollars in legal fees which the government now refuses to pay him back even though he won his case. The Judge made a very political decision to deny attorney's fees to Doctor Ovuworie in spite of the fact that the Judge himself said that this was a case that should never have gone to trial. In fact, there have been several attorneys who looked at it who said that a second year law student should know not to take a case like this to trial. Yet, the government did. Why?

1) Because of the administration currently in the White House and; 2) Because the US Attorney's Office has a lot of money and can get away with it.

In our study of this issue, we have found that the attacks come in one of three ways.

#### PEER REVIEW

They will come as Peer Review but it's biased and bad faith peer review. It is something that is taken from the Health Quality Improvement Act of 1986 and they hide behind the so-called immunity clause within that law which says that anybody who gives information not tainted by avarice, greed or bad faith is protected. In these cases, that immunity has got to

be stripped away.

As the economic competition in the practice of medicine has become more formidable, and stakes for survival have become more critical, the credentialing process for physicians has become rigorous, discriminatory and eliminating. Credentialing considerations involve not only quality of care issues, but an intensive "criminal background check" including juvenile behavior issues, traffic violations, as well as domestic and personality issues. If the physician survives the credentialing scrutiny he/she is then subjected to extensive quality of care issues, often concocted by local peer review groups that have a personal interest to eliminate economic competition or a personality issue of vindication and resort to peer review as a means of conflict resolution.

The physicians that have been indicted and prosecuted by the sham peer reviews have increased in large numbers in recent years. Some estimate that as high as one out of every ten physicians will be involved in sham peer review and a disproportionate higher number of black physicians attacked. Consequently, few, if any, claims are

redressed. The physician response to adverse allegations is usually in the form of claims of discrimination, antitrust violations and intentional torts. Unfortunately, the most common and pervasive of the underlying issues in these unjust reviews is discrimination and discrimination is usually protected at the state and federal level by peer review immunity. When

cleverly applied, peer review immunity is a powerful defense for the accusers and the credentialing organizations with almost insurmountable odds to overcome.

Peer Review Immunity's foundation and most formidable legal source is derived from The Health Care Quality Improvement Act of 1986, 42 U.S.C. §§11101-11152 (HCQIA). The apparent intent of this statute was to encourage self policing of the Health Care Industry, in providing a mandate for meaningful review by peers to improve the quality of care provided for consumers. In order to protect the reviewers of meaningful quality care issues and to afford objectivity, immunity became a critical component in the reviews and thus a strong element in the Federal Statute.

Unfortunately and to our detriment, the Quality Improvement Act has become the Quality Punitive Act. Claims by physicians for monetary damages and other considerations for unfair and unjust peer review actions are invariably scrutinized by the courts as to the application of the (HCQIA) statute's immunity. Consequently, few, if any, claims are redressed in the court's jurisdiction.

The ABP strongly supports the drafting and introduction of legislation to set forth amendment(s) to the 1986 (HCQIA) that render a cessation of the Federal Statute's usage as a Punitive Act as opposed to its original intention as an Improvement Act and provide for Judicial review

of these cases.

These cases must be reviewed by the courts and they must be reviewed on the basis of the recent Adkins decision which basically held that in a Civil Rights matter, the good of the public to know and to prevent abuses in terms of civil right outweighs any immunity function the law might provide. We need you to put that into the law so that it is not up to just an individual Appeals Court or the Supreme Court but that it is a matter now of law.

#### MEDICARE FRAUD

The second point of attack on black physicians is to accuse them of Medicare Fraud. This is Doctor Ovuworie's case in Las Vegas. We need you to compel every US Attorney who prosecutes a Medicare fraud case to give you the name, age and race of the defendant. Let us find out if blacks are coming under attack more than whites. I know the answer but this way you will get undeniable proof and then be able to move on from there and put a stop to this. They cannot tell you they don't know. They do and you're in essence their boss.

#### STATE BOARDS OF MEDICINE LICENSURE

The third attack level comes from the state medical boards who often go after black physicians accusing them of malpractice but this will be usually when again the individual is doing well and is a competitive threat.

Physicians are subjected to double jeopardy. Once they have been unjustly sanctioned by peer review, or de-credential by a Managed Care/Hospital Organization, the adverse action becomes reportable to The National Physician Data Bank. Any action reported to the National Physician Data Bank becomes an action item for the State Board of Licensure. Quite often, a physician's license may become restricted (Physician on Probation), suspended, fined or encumbered, the reason need only that a health care reporting agency had an adverse finding against the physician. Due process for black physicians in the majority of cases judged by his/her all white peers at the state licensure board is subject to a farce for justice and a kangaroo court. (In Nevada, there has never been a black doctor on the Board of Medical Examiners.)

The ABP advocates a revisit to the National Data Bank for Physicians, as to what should be relevant entries, who should have access to entries, and a methodology for physicians or their representatives to countermand false entries, (more than the present 16 lines of rebuttal). We recommend penalties for improper use of NDB, and submission of false, vindictive entries.

The original intent of the Data Bank was to prevent incompetent physicians, revealed through malpractice claims, to cross-over state lines and continue incompetent practices on consumers. The NDB has become a repository for everything from contract disagreements, tax filing

problems, personal indebtedness, administrative issues, and domestic relationships. We strongly advocate reform of the Physician's National Data Bank.

I will point out the case of Doctor Ezeanolue in Las Vegas who came under attack by the Nevada State Board of Medical Examiners or as we like to call them the Unholy Inquisition. He had to spend large amounts of money on an attorney to take this to a State Court which basically struck down the ruling of the Nevada State Board of Medical Examiners. The decision was easy in that they simply said that seven doctors who say that Doctor Ezeanolue did nothing wrong and his care was correct and you have one on your side that says it was not. 7 to 1 is not a winning score so you reverse your finding and you pay him the \$7500 fine you imposed on him back.

What is needed then is that you begin to craft legislation that looks at determining who is being disciplined by state boards. A fairly recent article that appeared in of all things, the *Hartford Current* indicated that graduates of Howard, Meharry and Morehouse were more often disciplined by state boards than any other schools except a school in Mexico and one in the Philippines. It turns out that the study was flawed and the study was dead wrong. Meharry actually went back and looked at that study and proved that they were lying but what it points out is how you can use states boards of medical examiners to destroy your

competition. That needs to be fixed by putting these boards under scrutiny.

In conclusion, I would like to thank you again for the opportunity to address you and suggest that this matter needs to be discussed on a much broader and much more detailed scale and would kindly ask that you schedule another meeting which will discuss just the issue of the attack on black physicians. Thank you.

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## Association of Black Physicians

### Summary of Physicians Under Attack

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#### S. A. of TX

- Resident fired by Ohio State University for no reason.
- W. O. Hired successfully after ABP intervention in Louisiana.

#### K.C. of NV

- Bad faith peer review at Sunrise Hospital in Las Vegas.

#### The Chube brothers Craig and David of IN

- Accused of writing prescriptions without seeing the patients.
- A false accusation now on appeal because the judge used a civil standard instead of a criminal standard.

#### D. C. of CA

- Accused of Medicare fraud but nurses' note confirms he saw all the patients he billed for.

#### W. C. of MD

- Accused of Medicare fraud.

#### D.E. of NV

- Attacked by the Unholy Inquisition.

#### A. J. in GA (Resides in Mississippi)

- Complication of surgery reported is known to occur.
- Privileges were revoked but reinstated and damaging NPDB report still issued.

#### O. J. of GA

- Privileges suspended at one hospital because he was doing so well that his competitor decided to remove him. No due process, no ability to face his accusers.

#### Theodore Knatt of LA

- Is on this panel and will be speaking to you.

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**J. P. of Texas**

- Accused of delaying surgery on an 82-year-old diabetic with heart failure. On operation, entire bowel found to be dead.
- Reviewed by a preeminent surgeon, Mark Walker MD, who found no fault in Doctor J.P.'s treatment and no merit to the hosp charges.

**K. W. of Georgia**

- When hosp asked Doctor K.W. to cover emergency room (ER) general surgery call because primary group of white surgeons wanted more money, he did so. When white surgical group decided they wanted back in to the ER call schedule, he was dismissed using bad faith peer review.

**M. G. of NV**

- Privileges suspended at University Medical Center in Las Vegas.
- Intervention of local chapter with national help of ABP resolved situation.

**I. G. in CA (Resides in KS)**

- Falsely accused by California of missing C-spine injury in patient when in fact he is the one who discovered C-spine injury.
- California disregarded their own expert who told them Doctor I.G. was correct.

**A.J. of NC**

- Editor of SNMA news.
- Long time SNMA & NMA member.
- Under attack because of her reporting anesthesia Medicare fraud.
- Defended by ABP.

**H.M. of GA (Resides in FL)**

- Well-known to ABP.
- Cases in question reviewed by Doctors Callender, Organ and Kirton, as well as Doctors Hoover and Weaver.
- No fault found.
- Hospital refuses to reinstate.

**C. M. of NV**

- Las Vegas urologist accused of inappropriate behavior in the emergency room.
- Investigation reveal the charges were brought to prevent him from being named Chief of Urology at one of the sister hospitals.

- Situation resolved locally WITH ABP assistance.

**CYRIL OVUWORIE MD of NV**

- Member of the West-Creer Medical Society and ABP.
- Accused of over billing Medicare.
- Privileges threatened at University Medical Center and there was an attempt to shut down his dialysis clinic.
- Issue reviewed by myself, Attorney Lennox Hinds, Randall Maxey MD and Reverend Al Sharpton.
- No merit to charges.
- Went to trial and won.
- U. S. Congressional Representative now under scrutiny because her husband is in a fiercely competitive rival nephrology group.

**B. R. of HI**

- Kaiser Healthcare Group attempting to renege on its pension and profit sharing plans.
- Accuses him of patient mismanagement. No merit in claims found.

**R. A. in GA (Resides in MI)**

- Urologist
- Post operative bleeding.
- Shifted blame from nursing staff to physician for adverse morbidity not mortality.

**O. K. of NY**

- Attacked as interventional cardiologist simply for economic reasons.

**M. A. of NY**

- License suspended over Ob/Gyn issues.
- Reviewed by Vernon Smith MD; issues do not rise to level of license suspension.

**L. B. of FL**

- Info gathering in process.

**K. M. Of KS**

- Accused of placing an emergency vascular access subclavian catheter in a subclavian artery. This is often done inadvertently but in cases of an emergency is acceptable for a limited amount of time.

G. M. of DC

- Privileges suspended from Washington Hospital Center for three cases.
- The summaries which I have reviewed as a Board Certified surgeon, all of which are examples of Sham Peer Review.

N. N. of MD

- Use of pericardial windows versus aspiration of the pericardial (both are acceptable).

C. P. in NY (Resides in Georgia)

- Radiologist in Kentucky accused of using "boiler plate" dictation technique practices done by every radiologist I am aware of.
- Reviewed by the radiology section of the NMA.
- No fault done.
- ABP involved.

F. W. of CA

- Accused by State of Kentucky of illegally writing controlled substance prescriptions (unverified).
- ABP is only beginning to look into the circumstances.

M.D. in LA

- Most recent, black orthopaedic surgeon in Shreveport LA suspended by hospital (Lane Regional Medical Center). Had to be reinstated because of lack of evidence. Lawsuit in progress but documented by sworn testimony, nurses making racial epithets and plotting to sabotage his surgical cases.
- Just recently referred to the ABP but will be followed up.