

## **Council Comments**

The South Dakota State Medical Association's Council Comments is your connection to the actions of the SDSMA's Policy Council. This issue covers the November 2, 2018 meeting in Pierre. Read past issues at [www.sdsma.org](http://www.sdsma.org).

## **President's Report**

### *Board of Directors Update*

Christopher T. Dietrich, MD, SDSMA president, gave the President's Report to the Council. The Board of Directors held its annual retreat July 13-14 at Sutton Bay. The Board discussed financial information, annual meeting format, the MMIC endorsement agreement, two surveys recently conducted regarding scope of practice, and the SDBMOE monitoring program. Advocacy issues for the upcoming legislative session were also discussed. The Board also heard reports from the dean of the University of South Dakota Sanford School of Medical and an update from the South Dakota Foundation for Medical Care.

The Board met with SDAHO leadership November 1. The joint leadership discussed Medicaid expansion, opioid prescribing, legislative issues and collaborative opportunities for the two associations. Also on November 1, the Board met to review the SDSMA's financial and investment activity and next year's budget. While the SDSMA continues to face headwinds, the association has successfully managed through many issues – primarily the losses of revenues including the DAKOTACARE endorsement agreement ending in 2017, reduction in the annual endorsement fee from MMIC beginning in 2017, and the loss of membership due to the decoupling with DAKOTACARE. Membership growth is a significant challenge as the association no longer has a way to identify all of the new physicians coming into the state. The Board and staff are working diligently on membership recruitment but can't do it without the districts and specialty societies.

In 2018, the SDSMA launched the Health Leadership Institute. This pilot cohort will be evaluated upon completion this spring. In 2019, the association will no longer have the endorsement agreement with MMIC; however, we are proposing a new endorsement agreement with COPIC.

### *Opioid Prescribing and Battling Addiction*

Dr. Dietrich reported that the association continues to serve on the Governor's Opioid Task Force. The SDSMA recently received a second grant to further these efforts. The first grant, which was received in 2017, was for \$80,000. The second grant is for \$83,000. In addition to ongoing education, the SDSMA plans to use this funding to research and develop acute pain guidelines and engage IHS providers. Through additional funding the SDSMA will be working with the South Dakota Academy of Family Physicians to offer education and training on medication-assisted treatment.

The SDSMA has developed a letter calling on the payers of our state to remove the pre-authorization barrier to addiction treatment. The SDSMA will seek support by presenting the letter to the Governor's Opioid Task Force.

### *Health Professional Assistance Program*

The SDBMOE announced last year that it will not continue its funding support for the South Dakota Health Professionals Assistance Program and developed its own Medical Board Monitoring Program. Staff are working to prepare a legal brief for members with guidance on participating in wellness-type programs.

### **District Meetings**

Dr. Dietrich told the Council that he has participated in Watertown, Milbank (Whetstone Valley), Aberdeen and Yankton district meetings. The Black Hills meeting is scheduled for November 13. Rosebud, Mobridge and Pierre Districts will meet in January, and the Brookings, Mitchell, Huron and Seventh districts will be scheduled soon. Dr. Dietrich said he has enjoyed district visits and appreciated the involvement in the SDSMA by so many physicians.

He ended his report by reminding members that it has never been more important for physicians to work together to continue to have a strong voice for physicians and our patients.

### **Ad Hoc Committee on Prescription Drug Pricing Report**

Mary S. Carpenter, MD, provided an update on the work of the Ad Hoc Committee on Prescription Drug pricing, which was established earlier this year at the direction of the Policy Council to research the issue of prescription drug pricing. The committee has done the following:

- Reviewed South Dakota statutes and rules related to prescription drugs;
- Reviewed AMA and other organizational policies on the management and pricing of prescription drugs;
- Discussed responsibilities, potential liabilities and ethical aspects of prescription drug management and pricing; and
- Evaluated Initiated Measure 26 – which upon challenge, was removed by a judge from the General Election ballot.

Dr. Carpenter said the members of the committee believe the SDSMA should advocate for policies and initiatives that prohibit price gouging – especially where there are not justifiable factors or data to support price increases. She presented a proposed policy statement on drug costs which calls for support for price transparency and opposition to gag clauses that bar pharmacists from telling consumers about less expensive options for medications. At its upcoming meetings, the committee will review prescription drug management and drug utilization review programs. Dr. Carpenter expects there to be an additional report at the next Council meeting before concluding the work of this committee.

### **Committee on Ethics & Judicial Affairs Report**

Daniel J. Heinemann, MD, CEJA chair, presented proposed bylaws revisions for review and consideration. The proposals would do the following:

1. Grant the Board the authority to review issues and take a position on those that are important to the SDSMA and/or medical profession in situations in which there is not sufficient time to develop policy and/or convene the Policy Council.
2. Provide a definition for SDSMA policies, position papers and resolutions.
3. Remove the SDSMA from the practice of investigating complaints, due to the fact that the association is not a peer review organization and has no authority regarding practice matters.

After discussion, proposals 1 and 2 were referred back to CEJA for further discussion of the language of policy vs. position statements. A final vote will be held at the next Policy Council meeting.

### **Policy Discussions**

#### *MOST*

Dr. Heinemann presented an update on Medical Orders for Scope of Treatment (MOST). He reported that surrounding states have passed similar programs with the name of Physician Orders for Life-

Sustaining Treatment (POLST). MOST is being proposed as a compromise with the South Dakota Catholic Dioceses who expressed concern with some language in POLST. MOST is an approach to end-of-life planning that helps providers obtain, document and honor patient treatment wishes. LifeCircle will be introducing a bill in the upcoming legislative session. Dr. Heinemann told the Council that MOST emphasizes the following:

- Advance care planning conversations between patients, health care professionals and loved ones;
- Shared decision-making between a patient and his/her health care professional about the scope of treatment the patient would like to receive at the end of his/her life;
- Ensuring patient wishes are honored;
- Is voluntary; and
- Is for patients with serious illness or frailty whose health care professional would not be surprised if they died within a year. For these patients, their current health status indicates the need for standing medical orders. Example: patients appropriate for a MOST conversation are those who are most likely to have a medical crisis (predictable based on diagnosis) but who may not want our current standard of care – which is to do everything possible for the purpose of saving and/or prolonging someone’s life. For healthy patients, an advance directive is the appropriate tool for making future end-of-life treatment wishes known.

The Council voted to support the concept of MOST.

#### *SDBMOE Licensure – Mental Health*

Dr. Clarissa Barnes presented scenarios of concern she has encountered with treating physicians with mental health issues and how the SDBMOE verbiage on the licensure renewal form is in need of updating. It was felt that current questions can deter physicians from accessing needed care and contribute to the stigma around mental health care. The AMA provides information on physician licensing has wording for State Boards to consider using.

Currently, the SDBMOE asks on their licensing and renewal applications: Do you have a physical, mental or emotional condition which may adversely affect your practice? And, Have you been treated for or do you have a diagnosis for any mental health condition (If yes, please ask your treating provider to send a status letter to the Board office)?

The AMA encourages state licensing boards to require disclosure of physical or mental health conditions only when a physician is suffering from any condition that currently impairs his or her judgment or that would otherwise adversely affect his or her ability to practice medicine in a competent, ethical, and professional manner, or when the physician presents a public health danger. The AMA advocates for the following wording — recommended by the Federation of State Medical Boards — in instances where state medical boards wish to retain questions about the health of applicants on medical licensing applications: “Are you currently suffering from any condition for which you are not being appropriately treated that impairs your judgment or that would otherwise adversely affect your ability to practice medicine in a competent, ethical and professional manner? (Yes/No).”

The Council voted to support the intent of the AMA language regarding mental health questions on licensure application and direct the SDSMA president and staff to communicate this request to the SDBMOE to change their language similar to AMA.

#### *GME Task Force*

Next, Rob Allison, MD, updated the Council on the GME Taskforce. He reported that due to the expansion of the medical school class size, slots available in South Dakota for residency training should

be increased. Currently, the state has 225 medical students and only 105 residency training slots. Increasing the number of residency training spots will ensure our ability to attract and keep medical students in the state after they graduate.

Working with the South Dakota Chapter American College of Physicians, South Dakota Academy of Family Physicians, and the Sanford School of Medicine, the SDSMA met with Sen. Mike Rounds and staff for Sen. John Thune. They were asked to work with us to fix this problem. Sen. Rounds acknowledged the complexity of this issue and expressed a need to have the AMA and other stakeholders come together on a national level.

#### *Maternal Mortality Review*

Erica Schipper, MD, alternate councilor for ACOG, asked the Policy Council for support of a proposed position statement to address rising maternal mortality in the U.S. The CDC, the American College of Obstetricians and Gynecologists, and the AMA recommend that each state have an active, confidential Maternal Mortality Review Committee (MMRC) that uses standardized, uniform data collection and reporting tools. MMRCs conduct systematic, confidential analysis of the medical and non-medical circumstances of deaths that occur during pregnancy or up to one year thereafter, for the purpose of taking action to reduce the risk of women dying from complications of pregnancy. The committees make specific, data-driven recommendations, identifying gaps in services and systems to prevent future deaths and near-misses as well as strengths in the systems of care that should be supported and expanded. Data obtained through an MMRC would be beneficial in developing public health initiatives designed to lower the maternal mortality rate and reduce maternal morbidity in South Dakota. The Council voted to adopt the position statement.

#### **Advocacy and Upcoming Legislative Session**

Dean Krogman, SDSMA lobbyist, and Mark East, SDSMA vice president, presented an update on advocacy and government relations. They d

#### *Telemedicine*

Similar to the 2018 legislative session, the SDSMA will be introducing two separate pieces of legislation regarding telemedicine:

- The intent of first bill is to ensure that, with certain exceptions, physicians and other health care providers practicing telemedicine are licensed in our state – the place where the patient receives the services.
- This proposed legislation also establishes safeguards and standards to support the appropriate use of telemedicine by:
  - Outlining steps to establish a proper patient-provider relationship;
  - Confirming that treatment and consultation recommendations made in an online setting are held to the same standards of practice as those in traditional, in-person settings; and
  - Ensuring that physicians and other providers using telemedicine provide an appropriate examination prior to diagnosis and treatment; and
- The second piece of legislation:
  - Ensures that insurers provide coverage for the cost of services provided through telemedicine;
  - Prohibits insurers from excluding from coverage a service solely because the service is provided via telemedicine; and
  - Allows parity in reimbursement for telemedicine services as compared to the same provision provided in-person.

### *DUI*

Under the current law, those 21 years of age and above may lawfully operate a motor vehicle after taking a controlled substance that has been obtained pursuant to a valid prescription, provided the person is capable of driving safely. However, that is not the case for those under age 21. As proposed, the legislation will not condone driving under the influence, nor will it prevent law enforcement from protecting the public by removing those from the road who are incapable of driving safely. It simply would allow those under 21 to take their medications and drive – provided they can do so in a safe manner. Visit [sdsma.org](http://sdsma.org) to see the full 2019 SDSMA advocacy agenda.

Members were encouraged to sign up to serve for one day at the State Capitol during the legislative session as a Doctor of the Day volunteer. As Doctor of the Day, physicians have the unique opportunity to interact with legislators on the House and Senate floors and get a firsthand look at the legislative process and how it affects the practice of medicine. Physicians' presence at the Capitol shows legislators not only the expertise of physicians but also shows concern for the health of South Dakotans. Find a full list of dates available at [sdsma.org](http://sdsma.org).