Independent Emergency Physicians Consortium

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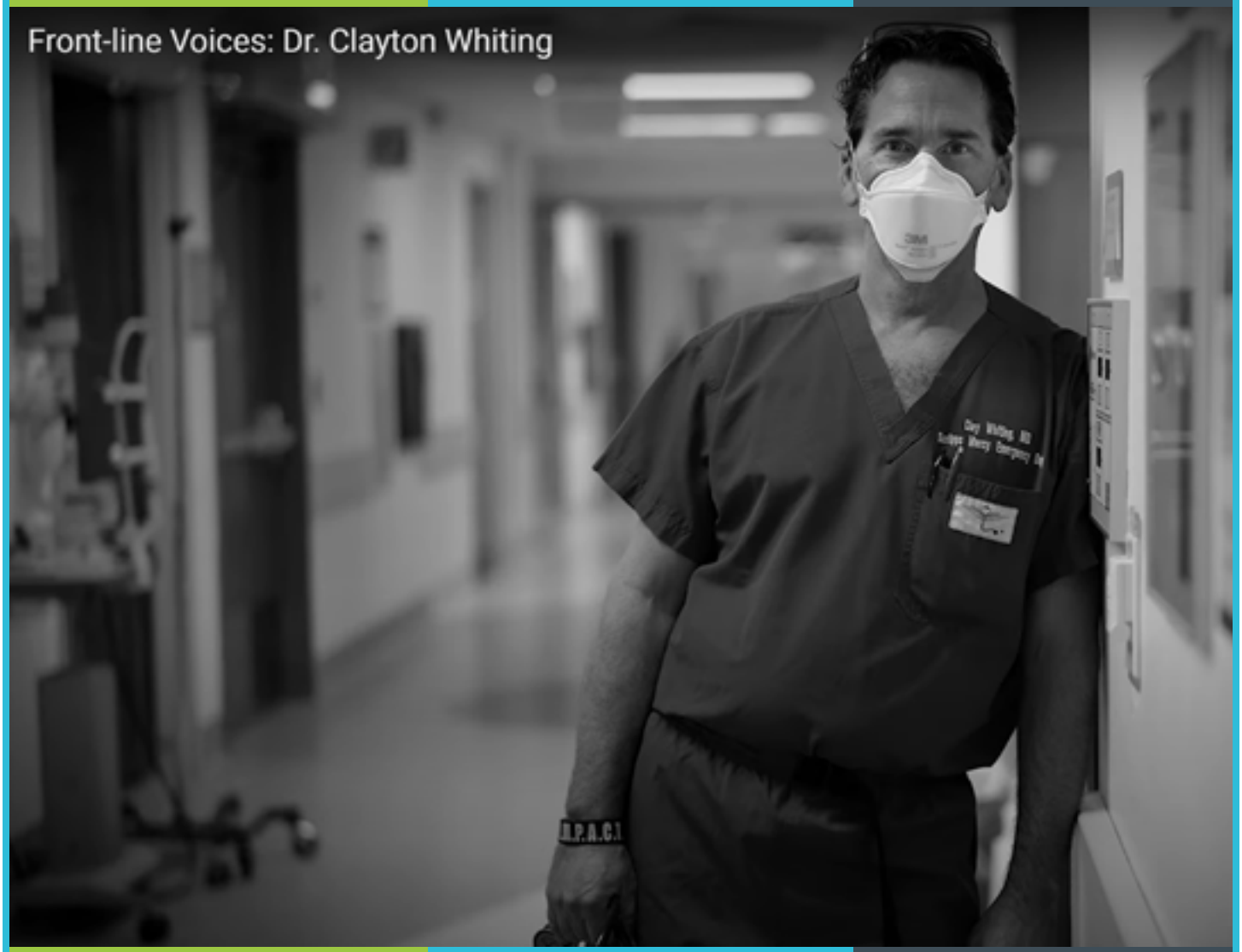

IEPC Newsletter
February 2022

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www.IEPC.org

Front Line Heroes

Originally published by the San Diego Union Tribune on January 23, 2022 By Paul Sisson
Videography By Nelvin C. Cepeda, John Kelley, Sam Hodgson

Dr. Clay Whiting, IEPC member, was featured in Front-Line Voices with the San Diego Union Tribune. Here is an excerpt of the article in the San Diego Union Tribune.

On Dec. 31, Dr, Clayton Whiting was feeling burnt out after battling through the week after Christmas when the pressure on emergency departments grew particularly heavy. Then, on Jan. 2, he started having coronavirus symptoms that ultimately forced him to skip a planned vacation with his family.

That vacation was to provide the decompression he needed to return refreshed. Instead, he got to spend 10 days quarantined at home. Putting on his scrubs on Jan. 10 for his first shift after his non-vacation, Whiting said he happened to spot a shot of himself back in 1994 as a third-year medical student at Creighton University. The smile on his face in that picture, he said, was so full of hope and desire and compassion that he couldn't put it away.

"I decided to bring that with me to the front lines so that at 2 a.m., when I was, you know, bearing witness to the pain and suffering of my fellow humanity, I could remind myself of the importance of treating each individual with that same level of compassion and love and caring that I had when I was a third-year medical student," Whiting said.

Another antidote for 2022? He now starts every shift with a visit to Mercy's chapel, praying for strength.

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SB-864 Tyler's Law

Roneet Lev, MD
Executive Director, IEPC

SB-864 was introduced by Senator Melissa Melendez on January 20, 2022. It is named after Tyler, a boy who went to a California emergency department with his mother after an overdose and was reported to have no opioids in his system. Tyler's mom Juli was assured that he had no fentanyl in his system. She made a point to ask about fentanyl and was given well intentioned, but wrong reassurance. Based on this information Tyler was treated with a lower supervised addiction plan when he overdosed from fentanyl a few days later. Juli turned her grief into action advocating for change. She helped me find an author for this fentanyl testing legislation.

Tyler's Law is advocating for changing the "Federal 5" to the "Federal 6" in California. The drugs included in a standard rapid urine drug screen include the "federal five": Amphetamines, Cocaine, Marijuana, Opiates, and Phencyclidine (PCP). These five categories were established by the Substance Abuse and Mental Health Services Administration's (SAMHSA) Division of Workplace Programs. Synthetic opioids such as fentanyl, oxycodone and methadone do not show up in a standard opiate drug screen and require a separate test. It is time for the "Federal 5" to become the "Federal 6", including fentanyl to key drugs in a panel.

In San Diego we launched a campaign to increase fentanyl testing capability. Within 10 months the number of hospitals that include fentanyl in the urine drug screens went from 4 to 15, making it the community standard of care. The fentanyl reagent costs on average 75 cents per testing, giving little excuse to adding this testing capacity.

The law is not a mandate for testing. If you don't want to order a drug test, don't order it. Fentanyl accounts for 64% of all drug overdoses and is the leading cause of death in age 18 -45, more than COVID. If you are going to get a drug screen that includes PCP and cocaine, why would you not want it to include fentanyl?

How does a positive fentanyl test make a difference?

1. Informs the doctor
2. Informs the patient
3. The patient may inform friends and other users
4. Encourages a prescription for naloxone to the patient, friends, or family
5. Motivates the patient to change
6. Encourages connection to addiction treatment
7. Provides data to MAT clinics and outpatient settings that do not have capacity for rapid fentanyl testing

To learn more, view the Fentanyl Tool Kit on the California ACEP website or on the San Diego Prescription Drug Abuse Web Site which includes a Fact Sheet on SB-864.

Namesake of CA SB-864, Tyler's Law.

Watch Out for Anthem's Latest Ploy

Written by Andy Selesnick
Chair of Health Care Litigation at Buchalter

Health insurance companies spend tremendous amounts of time, energy, and money to create policies that result in them not paying providers. For both in and out-of-network emergency physicians, Anthem's latest is something else.

Over a year ago, Anthem's Special Investigative Unit (SIU) began looking at emergency physician E&M codes and did not like what it saw. Using what some suspect is an algorithm, the SIU began targeting multiple groups who were billing Level 5s (CPT Code 99285), where there was no admission to the hospital, and within a certain subset of diagnosis codes. Anthem's SIU would place the groups on prepayment review, requiring them to send in medical records for every Level 5. Anthem would then have a non-emergency physician coder review the claims, and using a policy that is not entirely known, would "freeze" those Level 5 claims with no admission to the hospital. In the past, if Anthem disagreed with a code, it would simply downcode or deny. But now, Anthem decided to pend the claims, effectively neither denying it nor paying it (or any part of it).

What does this mean for the affected groups? Despite the law that requires Anthem to reimburse emergency services, Anthem has refused to do so. Instead, its position is that the emergency physician has to re-bill the claim at a Level 4 (or Level 3) in order to have the claim, and any ancillary codes, paid. This is despite the fact that the documentation supports a Level 5. With a claim that is frozen, the emergency physician not only is not reimbursed even what Anthem thinks is appropriate, but also can't bill the patient for their co-pay or deductible, because Anthem won't disclose it.

Anthem's policy is being applied both in and out of network and means that Anthem won't reimburse the claim unless it is coded to Anthem's satisfaction, regardless of what the documentation supports. Many groups are now facing claims that are running $30,000-50,000 or more per month in zero payments.

Many people believe that this policy is illegal, and if left unchallenged, will be adopted by other payers who care little about the impact on staffing and the safety net reduced revenue causes. Multiple groups – including some who are in IEPC - have joined together to fight this practice, filing a lawsuit in California Superior Court seeking an injunction to stop the practice, reimbursement of amounts owed, and punitive damages for Anthem's interfering with the right to collect co-pays and deductibles from the patients. If you have been impacted by this policy, please feel free to reach out to Andy Selesnick at aselesnick@buchalter.com.

No Surprises Act

ACEP launched a new website highlighting the No Surprise Act which took effect January 1, 2022. The website includes overview of the law, what it means for emergency physicians, how independent dispute resolution (IDR) works, and more.

AAEMPG VS ENVISION

Written by
Robert McNamara, MD

The AAEM Physician Group suit against Envision (EmCare) is a momentous event for our specialty and our patients. (1) Every EM physician needs to understand this filing and to encourage their colleagues to join in the fight against corporate control. The future of EM is at stake. AAEM is our best hope as no one else in EM has stepped forward on this.
AAEM is asking the courts to invalidate the contractual scheme used by Envision to skirt the patient protections inherent to the prohibition on the Corporate Practice of Medicine (CPOM) as embodied in the CA Business and Professions Code §§ 2400 and 2052. This will be an expensive undertaking but it is the hill we must fight on for the soul of our specialty. Issues at stake include lay influence over the patient-physician relationship, as well as control of the fees charged, prohibited remuneration for referrals and unfair restraint of the practice of a profession. Simply put we are saying profits should not be put over patients.

AAEM has filed suits in the past against corporate interests with favorable results but this litigation is significantly DIFFERENT! In this matter it is AAEM alone that is taking the risk. Unlike the prior cases, we do not have other parties involved who preferred settlement. In this matter we are asking the court to weigh in on the need to protect the public by preventing lay control of medical practice. We are not seeking monetary damages, this is for you and our patients.

A key aspect of this filing is a challenge to Envision's use of a sham professional association owned by a corporate physician executive to skirt the intent of the CPOM prohibition. We plan to argue that it is actually Private Equity (Kravis, Kohlberg and Roberts) that owns and controls the contract and believe the evidence will support that contention. In the recently concluded case of Brovont vs EmCare (2) it was revealed that Dr. Gregory Byrne, a former Texas ACEP President, admitted to holding 275-300 professional entities in 20 states at any given time to enable this scheme. Doctors are allowing their licenses to be used to aid and abet the CPOM. Sadly, other EM physicians have also been complicit in the corporate takeover of our specialty. In fact, EmCare, the forerunner to Envision, was founded by Leonard Riggs, MD the 1980 President of ACEP.

All those who have drank the Koolaid that Private Equity is "good for EM" because they can help us fight the insurers had better look in the mirror. The alignment with PE by major EM organizations has severely tarnished our reputation with the public and Congress. Disturbingly, many now see us as greedy. Furthermore, the insurers via Sound Physicians owned by Optum a subsidiary of United Healthcare already own EM practices. If we don't take up the banner of CPOM just how do the PE apologists propose will we stop Optum/UHC or other insurers from owning us?

Our patients, our specialty. Now is the time for ALL of the bedside doctors to stand up and rally behind the AAEM. Let us not relegate the future of EM to control by Wall Street and the insurance industry. Any EM doc who is not a corporate leader should join AAEM now. Thank you to those who already have.

Reference:

1. https://www.aaemphysiciangroup.com/news-and-updates/aaem-pg-files-suit-envision-healthcare-alleging-the-illegal-corporate-practice-of-medicine
2. https://u.pcloud.link/publink/show?code=BOI

Have an idea for an upcoming IEPC guest speaker or topic? Interested in contributing an article for an upcoming issue of the IEPC newsletter? Email admin@iepc.org

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2022 IEPC SPEAKER SERIES

FREE TO ALL FRIENDS OF IEPC!

Presented by the Independent Emergency Physicians Consortium
Time & Date: 9:00AM - 9:30AM Pacific on the fourth Monday of the month.
Membership in IEPC is not required to attend. Advance registration for the meeting is required. After registering, you will receive a confirmation email containing information on how to join the call.

This free speaker series welcomes leaders in the field to cover timely and engaging topics that are important to independent emergency physicians. The sessions will precede each monthly conference call and are open to all IEPC members and those who may be interested in joining.

- **February 28** - John Holstein, Director of Business Development, Zotec Partners to present Emergency Medicine Practice Revenue Challenges Yesterday and Today with Proposed Solutions for Tomorrow
- **March 28** - Paul Manos, DO, Paradise Valley Hospital to present ED Physician Burnout and Solutions
- **April 25** - James Augustine, MD, FACEP, Clinical Professor of EM at Wright State University to present Managing the ED After the Pandemic
- **May 23** - Sheree Lowe, VP - CA Hospital Association to discuss California Hospital Association Updates
- **June 27** - Elena Lopez-Gusman, Executive Director, California ACEP to give a California ACEP Update
- **July 25** - Andrew Young, MD, MPH, Medical Consultant, CA Dept. of Health Care Services to present Medi-Cal Update: State Initiatives to Improve Quality of Care
- **August 22** - Peter Viccellio, MD, FACEP, Associate CMO, University Hospital to present Making Room for Patients - ED Turnaround Times
- **September 19** - James Keaney, MD MPH FAAEM to discuss Institute for Justice in Emergency Medicine
- **October 24** - Andrew Selesnick to discuss the Anthem Lawsuit
- **November 28** - Elena Lopez-Gusman, Executive Director, California ACEP to give a California ACEP Update

Visit www.IEPC.org
for more information and to register.

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