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SPHERE

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Women in Medicine: The Need for Change

PGA73

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President's Message

Embracing Change

DAVID S. BRONHEIM, M.D.

I just returned from the American Society of Anesthesiologists annual meeting in San Francisco. I would like to begin by congratulating Dr. Andy Rosenberg, our own past president as well as a former PGA general chairman and ASA annual meeting chairman, on his election at the 2018 ASA House of Delegates to the position of vice president for scientific affairs. We look forward to working closely with Andy as well as with the entire ASA leadership.

The ASA annual meeting highlighted the rapidly accelerating pace of innovation and change in the art and science of anesthesia. These innovations include the near-term introduction of new medications, incremental improvements in older technologies, the aggressive extension of perioperative monitoring, and the continued migration of analgesic techniques to the early postoperative period. Additionally, we are now beginning to see the earliest attempts to introduce artificial intelligence to the practice of anesthesia to improve both monitoring and decision making.

"Change is inevitable. Change is constant." This quote, ascribed to Benjamin Disraeli, is repeated constantly by government officials, business leaders and opinion makers and is indiscriminately plastered across motivational posters everywhere. Those of us who have practiced anesthesia these last 30 years have indeed seen rapid changes in surgical techniques, hospital usage, choice of anesthetic agents, and monitoring techniques and modalities. These changes have resulted in improvements in patient outcomes and the extension of care to populations previously thought to be too sick or frail to benefit from surgery.

We as a specialty have become highly adept, even comfortable, at mastering these rapid changes in the skill set and knowledge base necessary to practice effectively. However, as William Pollard said, "The arrogance of success is to think that what you did yesterday will be sufficient for tomorrow." The newest paradigms of anesthesia care

will likely involve not only advancements in technology but also changes in the organization and management of anesthetic practices.

Few of us fear the coming advancement in science and technology related to our specialty. The ASA and the NYSSA have largely been successful at seeing to the ongoing education of their members, and we fully expect that to continue into the future. But many of us remain uneasy over how the practice of anesthesia will evolve. Will hospital and surgicenter-based private and academic practice continue? Perhaps large single-specialty anesthesia groups will become the norm. Other possibilities include joining integrated healthcare systems; or perhaps we will reorganize medical practice based upon disease processes, and specialty hospitals will emerge as the new model of care. We must proactively initiate these inevitable changes so that we have a better opportunity to manage them.

While the NYSSA has benefited these past 10 years from the strong management of our executive director, Stuart Hayman, as well as from a highly engaged board of directors, we too expect the rate of change in healthcare to accelerate. To better prepare the NYSSA and our members for the future, the ad hoc committee on strategic planning has formed multiple working subgroups that will address the future of education and the PGA, consider new and more effective approaches to advocacy and professional citizenship, take a fresh look at our governance and organizational structure, and plan for transitions in leadership.

As I stated in my last message, we encourage your participation in any and all aspects of your organization. The NYSSA is only as strong as the quality of its members' participation. We need champions willing to work locally within your practices to serve as liaisons to the NYSSA. We need your participation at the district level, as well as some of your time and money for advocacy. We also need to hear from you about improvements and changes you would like to see, and priorities you wish to be addressed. Finally, we hope you were able to join us for the 2018 PGA, which promised to be the best one ever. Be sure to mark your calendar now for next year's PGA. Come for the educational updates, stay for the chance to connect with old friends and colleagues. ■

Editorial

Recognizing the Challenges Faced by Women in Medicine

SAMIR KENDALE, M.D.

I am grateful to the author of the feature article in this issue for elucidating some of the challenges faced by women in medicine, including women anesthesiologists. For those who have not encountered these exact professional hurdles, it is helpful to gain some insight into what our female colleagues often experience. For those who *have* confronted these types of obstacles, I hope it is helpful to know that you are not alone and that other NYSSA members are aware that these challenges exist. I have personally witnessed women colleagues have their status as physicians misrepresented, be addressed both directly and indirectly in a less respectful tone than their male counterparts, and have their opinions dismissed out of hand. In her article, Dr. Maya Hastie addresses some of the implications of these actions.

We are fortunate that the NYSSA has an increasingly diverse leadership that will continue to represent our diverse population effectively. The publication of this article is only one way the NYSSA Ad Hoc Committee on Women Physicians is advocating for our members. You may be wondering what the other NYSSA committees are up to. In future issues of *Sphere*, we hope to include reports from other committees to inform you about what these committed and hardworking individuals are doing on behalf of the entire community of anesthesiologists in New York.

On a related note, Physician Anesthesiologists Week will be held January 27 through February 2, 2019. The purpose of this event is to educate the public about who anesthesiologists are and what we do. It may not surprise you to hear that many members of the public are not aware that anesthesiologists are well-trained physicians who play a crucial role in their medical care. During this week, I urge you to tell as many people as you can about the job you do as an anesthesiologist, whether you work in an office, the operating room, the ICU, or another practice environment. Just as I suggested last year, there are a number of ways to contribute and demonstrate your pride as an anesthesiologist during

Physician Anesthesiologists Week. You don't need to dig out your old copy of *Sphere*, as I present these suggestions once again:

1. Change your social media graphics to the official Physician Anesthesiologists Week images, available on the ASA website (**http://www.asahq.org**).
2. Share a story or thought about your life as an anesthesiologist.
3. Make sure you have made your PAC donations this year (both NYAPAC and ASAPAC). Physician Anesthesiologists Week is a great reminder, and even the smallest amount helps.
4. View the *Sphere* blog at **http://nyssasphere.weebly.com** and share your favorite articles with friends and family.
5. Follow and share messages from the NYSSA on any social media platform. In the coming year we aim to see growth in the NYSSA's digital presence, which can only happen with your help. This is a free and easy way to support the NYSSA and our specialty.

As always, if you have comments, questions or ideas, or you want to know how to become more involved with the NYSSA, feel free to contact me at samir.kendale@nyulangone.org. ■

From the Executive Director

The Year in Review

STUART A. HAYMAN, M.S.

It is hard to believe that it has been more than a decade since I assumed the position of NYSSA executive director. It has truly been my pleasure to serve the association's members and the specialty. Throughout my career in organized medicine, which spans more than 30 years, the associations I served have been committed to similar missions: improve patient care and practice safety, advance fair reimbursement, provide quality medical education, and work toward sensible regulations and/or legislation. With these objectives in mind, I am once again utilizing this issue of *Sphere* to provide the membership with a synopsis of my annual report, which highlights the NYSSA's progress in these areas.

I am pleased to say that we have come a long way from the organization I joined in 2008. I feel very fortunate to work alongside so many dedicated members who give their time and expertise for the betterment of the profession and this association. In addition to the countless hours donated by the Board of Directors, there are more than 100 members who volunteer time on behalf of their colleagues. These dedicated physicians work on everything from education and the PGA to raising PAC money and support for the NYSSA's legislative agenda. Volunteers coordinate local district meetings and maintain district and organizational bylaws. They contribute in many diverse ways to the tremendous amount of work that goes on behind the scenes. With only seven staff members, the NYSSA's member volunteers are integral to this organization's success.

This year presented new challenges and opportunities for the association. All required experience, insight and patience to ensure the organization remained on the path to success. While some of these events have yet to come to fruition, they all seem to be producing constructive results. Clearly, it will take time to learn the ultimate outcome of each. Collectively, however, they have already helped increase member communication and collaboration while stimulating more individual member involvement. These challenges have made the NYSSA stronger and more cohesive as an organization.

I am pleased to report that the NYSSA remains strong financially and has been debt free since 2011. Additionally, we have solid reserves and sound fiscal policies. The NYSSA continues to be one of the most successful medical associations in New York and is the most accomplished component society within the ASA umbrella.

Below are just a few of our activities this past year. If you have any questions regarding my annual summary, please email me at stuart@nyssa-pga.org.

Advocating for Our Members

We continue to work with MSSNY and other specialty societies to combat aggressive scope expansion bills and to coordinate our efforts with regard to other legislation. This year, the NYSSA faced a unique and unexpected challenge related to the desired expansion of scope of practice for nurse anesthetists. On January 11, Gov. Cuomo delivered his budget proposal, which was more than 3,300 pages. On January 16, the NYSSA's lobbying firm reported that the governor's budget contained a Department of Health proposal to grant nurse anesthetists (NAs) title and certification as CRNAs (New York is one of only two states that does not recognize that title/certification).

This proposal consisted of two sentences that were buried in the budget's healthcare section and called for NAs to be allowed to work to the "full extent" of their training. The section referenced proposed changes to the healthcare code that granted NAs independent practice by eliminating "all" physician supervision and setting up a very liberal collaboration model. Additionally, it provided NAs with unrestricted prescriptive authority.

It is important to note that the New York state commissioner of health is an anesthesiologist and ASA member. The proposal was inserted into the budget under the false claim that it would save New York state $10 million. New York's budget is approximately $160 billion, and this new scheme to expand NA scope presented an unusual challenge for the NYSSA. After the budget is presented, changes should be budget neutral, so the NYSSA's effort had to address this $10 million question. Legislators from both sides of the aisle were fighting much bigger fiscal issues, which put the additional burden on the NYSSA to bring attention back to the NA scope issue.

The NYSSA's physician volunteers and consultants quickly developed and implemented a strategic action plan that consisted of 14 achievable goals.

The NYSSA owes special thanks to Charles Assini, Esq., the association's legislative counsel, and Albany-based lobbyist Bob Reid and his firm, Reid, McNally & Savage. These two firms did an outstanding job of safeguarding the practice of anesthesiology and fighting for safe patient care. Both of these firms were critical to the NYSSA's ultimate success in this battle.

The NYSSA has a core group of volunteer leaders who dedicate an enormous amount of time and effort to the organization's legislative and regulatory goals. I wish to thank Drs. Rose Berkun and Vilma Joseph for testifying before the Legislature and making themselves available for media interviews. These two leaders gave an enormous amount of their personal time on behalf of the NYSSA's members. Additionally, these professionals actively raised PAC funds and educated the membership. Others who deserve special recognition include: NYSSA President Dr. David Bronheim, who was involved in daily phone calls and emails regarding the evolving strategy and worked to optimize organizational resources; and Government and Legal Affairs Committee (GLAC) Chairman Dr. Jonathan Gal, who also found himself barraged with daily communications from consultants and staff. While Dr. Gal began his tenure as GLAC chairman by immediately being thrown into the deep end, he handled the year like a seasoned pro. Special thanks go to outgoing NYAPAC Chair Dr. Mike Simon and outgoing GLAC Chair Dr. David Wlody. Many thanks, also, to the multiple district directors who held emergency meetings and PAC fundraising drives. Additionally, the NYSSA's Executive Committee and the Board of Directors gave significant time to work on behalf of their fellow members, the association, and the profession.

Providing for the Educational Needs of Our Members

The PGA is one of the oldest, largest, and most successful anesthesiology meetings in the world. It accounts for more than half of the staff's time annually. The PGA's continued success is directly attributable to the leadership of General Chair Dr. Audrée Bendo and Scientific Programs Chair Dr. Meg Rosenblatt.

The ACCME reaccreditation, which takes place every six years, is essential to the NYSSA and the PGA program. We had the ACCME interview and review in July. The NYSSA's members and staff owe a debt of gratitude to Dr. Francine Yudkowitz, who personally guided staff through the reaccreditation process and was responsible for the vast majority of the

final product. I also would like to acknowledge staff members Kelly Mancusi, William Burdett and Kathy Felicies, all of whom did a great job on this project.

This year we launched a new NYSSA/PGA corporate supporter program that has already proven successful. We also worked with Merck once again to secure financial support for the 2018 PGA.

The PGA MOCA offerings this year will include credits for multiple educational programs. As in the past, attendees will be eligible for credits for patient safety as well as MOCA part 2. This year we are adding all workshops for MOCA credits for part 4 (via simulation instruction).

Staff continues to work with Dr. Edmond Cohen on the successful thoracic symposiums. The annual program is not part of the Marriott contract and is contingent on the availability of space outside of the Marriott.

In addition to the PGA, we continue to offer the state-mandated infection control CME course on our website and to work with the New York City Department of Health and Mental Hygiene on data collection and education relating to safe injection practices.

Educating the Public

For any medical association, the importance of public outreach cannot be overstated. For the NYSSA specifically, educating members of the public on the important role that physician anesthesiologists play in the delivery of high-quality healthcare is critical to our future advocacy efforts.

I would like to extend a special thank you to Dr. Leroy Phillips, who volunteered his time to educate high school students who were participating in the Brooklyn-Queens-Long Island Area Health Education Center (BQLI-AHEC) Summer Health Internship Program. Members of the NYSSA also continued the joint New York State Fair effort with the Medical Society of the State of New York and the Onondaga County Medical Society. Manning a booth at the fair allows NYSSA members to interact with New Yorkers of all ages.

Advancing Our Mission

2018 was an extremely productive year for the NYSSA in terms of collaborative endeavors. During the legislative session, the NYSSA sponsored multiple letters combating mid-level providers' attempts to practice as physicians, most of which were signed by the leaders of 14 medical associations who were supportive of and contributed to the NYSSA's efforts.

It continues to be my personal priority to develop synergies with other medical associations that make the NYSSA a stronger organization. To that end, I once again collaborated throughout the year with my state, national and international colleagues. I have worked with these other associations on education as well as socioeconomic, policy and marketing issues. Organizations we have worked with include: the ASA, the ESA, the WFSA, the Canadian Anesthesiologists' Society, the Brazilian Society of Anesthesiology, and the Society of Anaesthesiology of Sao Paulo, as well as the ASA's state component societies, the Medical Society of the State of New York, and other New York specialty societies.

Conclusion

This report provides a brief summary of the activities we have engaged in on behalf of all NYSSA members and the specialty of anesthesiology. The report is not intended to be all-inclusive, but, rather, to highlight our major initiatives this past year. This has been another productive and successful year for the organization, and I wish to express my sincere appreciation to the entire membership for your continued support. ■

Congratulations!

NYSSA Past President

Andrew D. Rosenberg, M.D., FASA

on his election to the position of
Vice President for Scientific Affairs and
member of the Administrative Council for
the American Society of Anesthesiologists.

2019 ASA Administrative Council

Women in Medicine: What's Holding Us Back?

MAYA JALBOUT HASTIE, M.D., ED.M.

According to a recent report by the Association of American Medical Colleges (AAMC), women in academic medicine are underrepresented in advanced leadership positions such as deans or chairs. Despite the progress made over the past decade, their career advancement still lags behind their male counterparts.[1-3] Women represent 21 percent of full-time professors, 16 percent of medical school deans, and 15 percent of academic department chairs.[1] The gender gap is even more pronounced in male-dominated specialties such as surgery and radiology. Similarly, women are underrepresented in leadership positions across different sectors in medicine and business.

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The Challenges Women Face

It was originally thought that the underrepresentation of women in advanced leadership positions was caused by a pipeline issue, with fewer women graduating medical schools.[4] However, for the past few decades in the U.S., close to half of medical school students have been women.[1] It is recognized that women still face "disproportionately bigger challenges" in their careers when compared to men.[2] These challenges include a lack of mentorship, the need to hone their negotiation skills, the desire to balance work and family life, and the presence of gender bias in the workplace.

These and other challenges can be grouped into four general categories, all of which were used previously to describe challenges faced by women political activists: environmental, structural, situational and motivational factors.[5]

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Environmental conditions describe the work environment's acceptance and general support of women in leadership positions, including the presence of gender bias. Structural factors refer to the institutional infrastructure needed to achieve advanced leadership positions, such as availability of mentoring, training and workshops, and other resources. Situational factors relate to the need to balance family and career, and to the presence of supportive social and family networks. Finally, motivational factors can explain the presence or lack of women's interest in pursuing or achieving leadership positions in medicine. It is likely that a confluence of several of these factors affects women's career paths.

The most prevalent and most reported challenge for women remains the presence of gender bias in the workplace. Shared experiences of women in academic medicine are affirmed by published surveys and interviews spanning the past 25 years. Women report perceptions of gender bias affecting their career advancement such as biased promotion criteria and fewer professional development opportunities.[6] Even women in leadership positions are not immune to gender-based challenges.[7] A sample of women chairs identified gender bias as one cause of women's underrepresentation in leadership positions,[7] which further hinders women's career development. When biases are present, individuals tend to form judgments and allocate arbitrary weights to the different sides of a complaint.

A group of women in academic medicine shared their experiences with me in a series of in-depth interviews. They described a tendency in the workplace to mishandle gender-based complaints. When women raised concerns about sexist behaviors or comments from their male colleagues, the responses from their leaders ranged from cautious acknowledgment to overt dismissal. In extreme cases, retributions toward those who come forward were described. Gender bias is further compounded by gatekeeping. The theory of gatekeeping, introduced in the mid '40s by Kurt Lewin, was first applied to the fields of marketing and communications.[8] Broadly, it refers to the ability of a small group of individuals to control the flow of information, the access to and management of resources, and the setting of standards.[8,9] The gatekeepers in medicine are those who are in power, those with influence. Because of their positions, the gatekeepers can have the

most impact on a career path. Gatekeepers frequently surround themselves with people with whom they have common attributes and characteristics,[10] further placing minorities and women at a disadvantage.

Situational factors, such as dependent-care responsibilities, are more likely to affect a woman's career than a man's, steering women away from full-time practice, thereby reducing their chances for promotion and positions of leadership.[1,6] It is culturally and socially expected of women to be the primary caregivers for children or elderly parents.

Lack of mentorship is a salient structural challenge for women seeking to advance their careers in medicine. Mentors can guide, advise, and inspire their mentees. Men have been shown to be effective mentors for women and strong advocates on behalf of their mentees.[2] However, in what may be a misguided response to the #MeToo movement, some men are holding back from these valuable collaborations.[11]

Of all the factors described, less is known about women's interest in leadership positions in academic medicine, and their perceptions of what those positions represent and require. Reports suggest that women's ambitions and their interest in leadership are readily replaced by an apprehension of what success would entail.[12,13] This could be partly related to a lack of affirmation and to gender role expectations.[14] However, further exploration of women physicians' perceptions of leadership and personal motivation (or lack of) is needed.

The Need for Change

It is recognized that increasing the number of women in leadership positions is "the right thing to do" and, more importantly, "the smart thing to do."[7] The paucity of women in advanced leadership positions means there are fewer women available to be role models or mentors for the next generation.[15] Without appropriate mentorship, women are less likely to expand their potential, to explore new opportunities or invest in their "social capital,"[3,7] or to manage their professional and personal lives satisfactorily. In addition to the recognized financial advantages of increased women representation in the C-suite, women may favor a different style of leadership, one focused on the "soft" skills that promote collaborative and potentially transformative

environments.[13,16,17] What's more, groups with a diverse makeup are more effective at problem solving than homogeneous teams.

While achieving diversity is laudable, reaching inclusivity is more important. Leadership positions can provide women with the influential platform to include their voices and celebrate their contributions, paving the way slowly but surely for the next generation of women in medicine. ■

Maya Jalbout Hastie, M.D., Ed.M., is an associate professor of anesthesiology, program director of the ACTA fellowship, and co-director of the Faculty Development and Career Advancement Program in the Department of Anesthesiology at Columbia University Irving Medical Center. She is also a doctoral candidate in Adult Learning and Leadership at Teachers College, Columbia University.

This essay is adapted from blog entries previously published on ***womenfaculty.org****.*

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The Anesthesiology Foundation of New York (AFNY) is a 501(c)(3) nonprofit organization whose mission is to improve patient care around the world through education and research.

In keeping with its mission, **AFNY provides PGA-related scholarships** to the most enthusiastic and dedicated anesthesiologists from the developing world who wish to refine their delivery of safe, modern anesthetic care. During the past 25 years, more than 386 anesthesiologists representing 62 countries have enhanced their education and training thanks to the generosity of the NYSSA and its members.

You can **help AFNY fund the education and research that will improve patient care**. Contributions are tax deductible and 100 percent of every donation will be used to fund the programs that fulfill AFNY's mission.

Visit http://nyanesthesiologyfoundation.org and make your donation today.

Physician Anesthesiologists Week

JANUARY 27 – FEBRUARY 2, 2019

Join ASA® and Advocate for Your Specialty and Patient-Centered, Physician-Led Care

The fifth annual Physician Anesthesiologists Week is the ideal opportunity to tell policymakers, the media, your colleagues and the public that when seconds count, physician anesthesiologists save lives.

Each year, the specialty gains momentum in showcasing the importance of patient-centered, physician-led care.

Members are spearheading change and innovation on critical issues through visits with legislators, media interviews, state proclamations, in-hospital activities, member-developed podcasts and videos, advertisements and more.

Get the resources you need to plan for a successful week of advocacy and public outreach in your community. Watch your email and *ASAP* to register for the Physician Anesthesiologists Week 2019 webinar in December.

When Seconds Count...
Physician Anesthesiologists Save Lives.®

American Society of **Anesthesiologists**®

MLMIC Joins Berkshire Hathaway Family of Companies

MLMIC Insurance Company (formerly known as Medical Liability Mutual Insurance Company) ("MLMIC"), has announced the completion of its conversion from a property and casualty mutual insurance company to a property and casualty stock insurance company and its acquisition by National Indemnity Company, a subsidiary of Berkshire Hathaway Inc. ("Berkshire Hathaway"). The conversion and acquisition follow a September 6, 2018, approval by the superintendent of the New York State Department of Financial Services and a September 14, 2018, vote of policyholders of MLMIC with policies in effect on July 14, 2016. The cash consideration resulting from the conversion will be paid out to eligible policyholders (policyholders with policies in effect from July 15, 2013, through July 14, 2016) (or their designees) as promptly as practicable.

As a subsidiary of Berkshire Hathaway, MLMIC will have enhanced capacity and financial strength to continue to serve New York state physicians, hospitals and dentists as it has for over 40 years. MLMIC remains the largest underwriter of medical professional liability insurance in New York and continues to be a New York-focused medical malpractice writer regulated by New York state. It will be operated by the same Board of Directors and staff that have served the market well for several decades.

Per an amended and restated charter, MLMIC has changed its full name from "Medical Liability Mutual Insurance Company" to "MLMIC Insurance Company." However, it will still be known by and referred to using the familiar shorthand: "MLMIC."

Warren Buffett, Berkshire Hathaway's CEO, stated, "MLMIC is a gem of a company that has protected New York's physicians, mid-level providers, hospitals and dentists like no other for over 40 years. We are delighted to add them to the Berkshire Hathaway family and enhance their capacity to serve these and other policyholders for many years to come."

Dr. James Reed, chairman of MLMIC's Board of Directors, said, "We are delighted to partner with such a fine organization. MLMIC has always had strong standing and stability within the challenging New York insurance market, and the alliance with Berkshire Hathaway will bring policyholders further peace of mind, knowing MLMIC will be able to offer them an even higher level of service and financial security."

About MLMIC Insurance Company

MLMIC has been a leader in the medical malpractice insurance industry for over 40 years. Its mission is to provide quality professional liability insurance to healthcare professionals in New York. Today, MLMIC is not only the largest writer of professional liability insurance in the state of New York, but also one of the largest companies of its kind in the nation. MLMIC insures more than 13,000 physicians, 3,000 dentists, dozens of hospitals and thousands of other healthcare professionals and facilities. MLMIC can be found on the Internet at ***www.mlmic.com****.*

About National Indemnity Company

National Indemnity Company is one of the leading property/casualty members of the Berkshire Hathaway group of insurance companies, with the highest possible financial strength rating by A.M. Best. Located in Omaha, Nebraska, and backed by a wealth of experience, National Indemnity Company offers the kind of stability that (re)insureds can depend upon. National Indemnity Company can be found on the Internet at ***www.nationalindemnity.com****.*

MLMIC

MLMIC Insurance Company

a Berkshire Hathaway company

District 7 Meeting

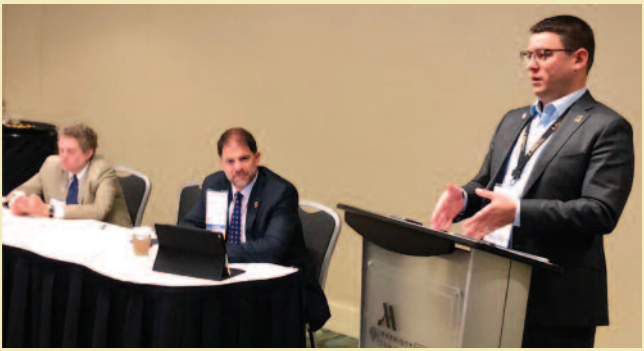
(Left to right) Russell J. Salvatore, a restaurateur and philanthropist; Dr. Rose Berkun, the NYSSA's immediate past president; Mathew Levy, Esq., a partner at Weiss Zarett Brofman Sonnenklar & Levy, P.C., the NYSSA's general counsel; and Wiks Moffat of HealthCare Compliance Network.

Advocating for NYSSA Members

Dr. Chantal Pyram-Vincent, New York Assembly Speaker Carl Heastie, and Dr. Ansara Vaz

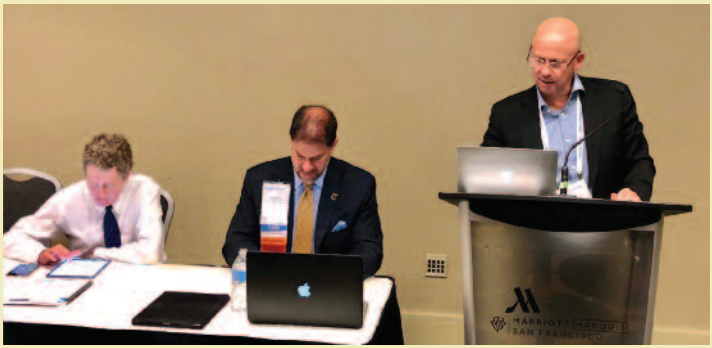
Dr. Richard Wissler (left) and Kathy Wissler attend a reception in support of congressional candidate Joseph Morelle.

Scenes From the 2018 ASA Annual Meeting



Dr. Jonathan Gal addresses the New York Caucus.

Dr. Andrew Rosenberg



Dr. Steven Schulman addresses the New York Caucus.

The New York Caucus

Dr. Vilma Joseph addresses the New York Caucus.

NYSSA's delegation to the American Society of Anesthesiologists

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KEYNOTE SPEAKER

Abraham Verghese, M.D., MACP

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American Society of Anesthesiologists™

Understanding Family Leave Benefits in New York

MATHEW J. LEVY, ESQ., AND STACEY LIPITZ MARDER, ESQ.

Offering paid maternity, paternity and other leave, as well as job security, to individuals who must take time off to care for family members is a great way to differentiate a business from its competition. These benefits can help retain your best talent and avoid the costs associated with losing a valued employee, which can financially devastate a small business. That said, the decision regarding what, if any, benefits to offer is often a difficult one for employers to make.

Until recently, the only protection available for expectant moms and other eligible employees who needed to take time off to care for family members was through the federal Family and Medical Leave Act (FMLA), which provides individuals in companies with 50 or more employees up to 12 weeks of unpaid, job-protected leave per year, and further requires that group health benefits be maintained during the leave. Thanks to a new state law, however, even more employees in New York can breathe a sigh of relief, as now there is protection available for individuals employed by companies with less than 50 employees, including many medical practices.

Effective January 1, 2018, New York began offering publicly funded ***paid*** family leave for nearly all private employees in New York state through the New York State Paid Family Leave Benefits Law (PFBL). Specifically, eligible employees are guaranteed the following:

- paid time off for eight (8) weeks in 2018, increasing to 12 weeks by 2021; however, such amount will be capped at a percentage of the average salary in New York state;
- job protection upon return from paid family leave; and
- continuation of health insurance while out on paid family leave.

Should an employee want to take leave that is foreseeable, the employee is required to give the employer at least 30 days' advance notice. Foreseeable qualifying events include situations such as an expected birth, placement for adoption or foster care, a family member's planned medical treatment, planned medical treatment for a serious injury or illness of a covered service member, or another known military exigency.

Insurance coverage for such benefits generally will be added to an employer's existing disability benefits policy.

While the new law certainly offers many protections for employees, for high earners the new law will not provide fully paid leave. Therefore, it is advisable that employers and higher-paid employees directly negotiate whether any additional paid leave will be offered. For those employees with an employment agreement, the negotiated terms of such leave should be clearly identified in the agreement. Having a good employment agreement in place is critical, especially for professional employees, including, for example, physicians, physician assistants, dentists, chiropractors, and podiatrists, as the employment agreement dictates the terms of employment and often contains protections for both the employee and employer, especially with regard to termination. For instance, an employment agreement may dictate when employment may be terminated (i.e., for cause and without cause upon giving a certain amount of prior written notice); what salary/benefits the employee is entitled to upon termination; and whether the employee is subject to a confidentiality, non-compete or non-solicitation provision following termination that would prohibit the employee from disclosing the employer's confidential information, compete with the employer for a specified amount of time, or solicit employees, referral sources or patients, as applicable.

As a result of the new law, employers should also review their existing employee manuals to ensure that they are up to date and reflect any changes in applicable law, including the PFBL. If an employer does not have an employee manual, this is a good time to implement one. Although some employees may be subject to the terms and conditions of an employment agreement, not all employees have such an agreement. Therefore, having a comprehensive, up-to-date employee manual is critical in order to inform employees — in a positive yet clear manner — what an employer can expect from them (e.g., what their hours are, start time, job duties, and behavior in the office) and what they can expect from the employer (e.g., overtime), as well as the consequences of violating any policies of the employer (i.e., probation or termination).

The employee manual is also a good place to highlight the benefits offered to employees (as well as eligibility), including, for instance,

family leave, health insurance, retirement benefits, life insurance, disability insurance, and paid time off. With respect to paid time off, the employee manual should also specify how many vacation days and sick days employees are entitled to, as well as how employees accumulate such days. The employee manual should also identify the process associated with utilizing such paid time off (i.e., how much notice should be given and if a doctor's note is required), as well as whether employees can "roll over" unused days to the next year or receive compensation for unused days.

If the employer is located in New York City, the employer must also be cognizant of the New York City Earned Safe and Sick Time Act, which requires that employers with five (5) or more employees who work in the city more than 80 hours per calendar year provide paid sick leave to those employees. Employers with one (1) to four (4) employees who work more than 80 hours per calendar year in New York City must provide unpaid sick leave. As per applicable law, employers in New York City are required to provide notice of these rights to their employees, as well as their sick leave policies, which can be incorporated into an employee manual.

In the event an employee is injured on the job, employees should also be made familiar with the employer's policies and procedures with respect to workers' compensation. Although the employer should retain the right to change any such benefits, the employee manual is often a good place to at least address which benefits the employer offers.

Although New York state is an "employment-at-will" state, meaning an employer has the right to discharge an employee at any time for any reason, except with respect to race, creed, national origin, age, handicap, gender, sexual orientation or marital status, it is recommended that the employee manual specify that all employees can be terminated at any time without cause. Upon termination, all employees should have exit interviews, whereby the employer has a discussion with the employee regarding his/her employment. Furthermore, employees should be informed and aware that they cannot disclose any of the employer's confidential information (including HIPAA information if the employer is a professional practice), or disparage the employer in any way.

In conclusion, in light of the new rules and regulations governing employees and employers, it is imperative that employers ensure that

their employment agreements and employee manuals are compliant and up to date. Businesses that understand the applicable rules and regulations governing their employees and have documents in place to protect their interests and comply with applicable law will have taken an enormous step in avoiding labor law disputes in the future. ■

Mathew J. Levy, Esq., is a partner and Stacey Lipitz Marder, Esq., is senior counsel at Weiss Zarett Brofman Sonnenklar & Levy, P.C., the NYSSA's general counsel. Mr. Levy can be reached at 516-926-3320 or mlevy@weisszarett.com. Ms. Marder can be reached at 516-926-3319 or smarder@weisszarett.com. The firm can be found on the Web at weisszarett.com.

Legislative Update

CHARLES J. ASSINI, JR., ESQ.

Governmental Advocacy

The Importance of Presenting Factually Accurate Information

A critical component of government advocacy is presenting factually accurate position papers to legislators, the governor, and government officials outlining the NYSSA's position in support of or in opposition to proposed legislation, regulations, or budget proposals. It is equally important to address any misinformation that the New York State Association of Nurse Anesthetists (NYSANA) circulates among lawmakers and government officials aimed at advancing initiatives that are intended to dismantle the physician-led anesthesia care team (despite NYSANA's statements to the contrary). In fact, over the past several years, NYSANA has supported several bills that would eliminate or seriously undermine the existing, long-standing New York State Health Department's regulations mandating a physician-led anesthesia care team. These bills include:

- CRNA Collaborative Practice/Independent Practice — A.9507/S.7507 Part H (governor's budget bill)
- Nurse Anesthetist Title Bill — S.1385 (Gallivan)/A.0442 (Paulin)
- CRNA Collaborative Practice — S.3501 (Bailey)/A.8007 (Gottfried)
- CRNA Prescription Writing Authority — S.1957 (Latimer)/A.4500 (Gottfried)
- Authorizes Payment by Insurance Companies to Nurse Anesthetists — S.1465-A (Ritchie)/A.0115 (Cahill)

NYSANA has advanced these proposals using arguments and position papers that fall into the following three categories:

- Improvement of quality of care
- Cost
- Access

The NYSSA has refuted, and will continue to refute, these arguments by setting forth factual positions. For the purpose of this article, I would like to focus on statements made by NYSANA about the physician-led

anesthesia care team and how the NYSSA has responded by emphasizing that the preservation of the physician-led care team represents the current, and optimum, standard of anesthesia care.

NYSANA's Written Statement to Joint Legislative Budget Subcommittee on Health in Support of the Governor's Budget Bill (A.9507/S.7507)

In NYSANA's written statement to the Joint Legislative Budget Subcommittee on Health (February 12, 2018) regarding the governor's budget bill (A.9507/S.7507), NYSANA stated the following:

> **"Bottom line: Removing restrictive barriers to practice including outdated, unnecessary supervision requirements translates into greater patient access to more efficient and cost-effective care for our hospitals at a time when they must fully utilize every resource they have."**

The NYSSA's response to NYSANA:

- The current scope of practice for nurse anesthetists is under physician supervision; nurse anesthetists' training and education are based on the physician-led anesthesia care team model. The restrictive barriers characterized as being "outdated" are really a set of protections.
  - ✓ Protection for patient safety.
  - ✓ Protection from liability.
  - ✓ Protection for the surgical team in the OR.
  - ✓ Protection for nurse anesthetists from the undesired consequence of an emergency that would stretch the bounds of their education and training.

- Most, if not all, of the "barriers" suggested are ones New York physician anesthesiologists would agree are true, but for different reasons:
  - ✓ TRUE, nurse anesthetists lack the ability to prescribe medications and to write patient treatment orders — **BECAUSE** they lack the proper medical training to safely perform this important duty.
  - ✓ TRUE, nurse anesthetists lack the ability to conduct patients' physical assessments — **BECAUSE** they lack the medical training to properly evaluate a patient's suitability to withstand surgery.
  - ✓ TRUE, nurse anesthetists are not permitted under existing New

York state Medicaid rules to bill independently — **BECAUSE** state law mandates a physician anesthesiologist medically direct a nurse anesthetist in the administration of anesthesia. This requires the physician to be responsible for the preoperative, intraoperative, and postoperative care of the patient, a duty that requires the discipline of extensive medical training.

NYSANA also stated the following:

"CRNAs practice in every setting where anesthesia is offered, for every type of procedure, including complex procedures like open-heart surgery, and every category of patient, from pediatrics to geriatrics. This includes metropolitan hospitals [in] New York City such as Sloan Kettering, level one trauma centers like Erie County Medical Center, suburban locations such as South Buffalo Mercy, and a majority of the rural healthcare facilities: United Memorial Medical Center in Batavia, Mount St. Mary's Hospital in Lewiston, and Wyoming County Hospital System in Warsaw."

The NYSSA's response to NYSANA:

- The physician-led anesthesia care team is the standard of care in each of the venues listed where the administration of anesthesia occurs. In fact, in January 2017 the Department of Veterans Affairs, after extensive analysis and review of comments, announced that they rejected a collaborative relationship for nurse anesthetists (even after approving collaborative relationships for three other advanced practice nurse specialties) because of significant questions raised about the safety of the "solo" CRNA model of anesthesia. The outcome of this final rule was to maintain physician-led anesthesia care in all VA hospitals.

NYSANA's "Myths and Facts" vs. the NYSSA's Truths

This past session, NYSANA wrote a "Myths and Facts" document in support of the governor's budget bill to permit nurse anesthetists to administer anesthesia under a loosely defined, untested collaborative model.

NYSANA stated the following:

It is a myth that: "Life-threatening medical emergencies require that a physician anesthesiologist be present and immediately available."
It is a fact that: "When seconds count, CRNAs are already there. Life-saving emergencies are routinely managed by CRNAs using

universally accepted standards of anesthesia care with patient outcomes equal to that of anesthesiologists. Anesthesiologists often supervise more than one case simultaneously, meaning they would not be available to directly supervise concurrent emergencies."

The NYSSA's response to this NYSANA "myth and fact":

The TRUTH is:

- Physician anesthesiologists, who have between 12,000 and 16,000 hours of clinical training compared to a nurse anesthetist's 2,500 hours of clinical training, are best able to perform risk-benefit analysis during surgery and have the credibility to tell a surgeon whether future surgery poses a danger to the patient. This advocacy requires the knowledge of a physician.
- In accordance with existing New York state health code standards, the physician anesthesiologist must be immediately available to supervise the nurse anesthetist. Physician anesthesiologists accept legal and medical responsibility for their patients and therefore are duty bound to respond to emergencies that arise during a surgical procedure.

NYSANA further stated:

It is a myth that: "CRNAs are seeking to remove physician supervision from anesthesia care."

It is a fact that: "The Centers for Medicare & Medicaid Services (CMS) requires physician supervision as a condition of participation. Additionally, New York regulations require CRNAs to practice under the supervision of a physician. The governor's proposal would not remove these requirements."

The NYSSA's response to this NYSANA "myth and fact":

The TRUTH is:

- The governor's budget bill (Part H) is explicitly clear that it will remove physician anesthesiologists entirely from the treatment team, including preoperative assessment of the patient, the preparation of the anesthetic plan, and post-anesthesia care. There is no language in the bill that indicates existing New York state health code standards will continue to govern. In fact, the bill is clear that it allows nurse anesthetists to work in a hospital in a collaborative relationship with a hospital-designated staff member,

not even a physician! This indicates a clear intent NOT to preserve New York state health code standards, which mandate physician supervision.

NYSANA further stated:

It is a myth that: "Patient safety is jeopardized with CRNAs."
It is a fact that: "There is no proof that anesthesia care administered by CRNAs is substandard. In fact, several evidence-based studies have shown that CRNAs administer anesthesia care on par with anesthesiologists."

The NYSSA's response to this NYSANA "myth and fact":
The TRUTH is:

- The studies and conclusions cited by NYSANA in their various documents and testimony are studies funded by the American Association of Nurse Anesthetists (AANA). These studies are not based on scientifically sound principles. Consider, instead, an independent study published in the peer-reviewed journal *Anesthesiology* that found that mortality and failure-to-rescue rates were higher for patients who underwent operations without medical direction by a physician anesthesiologist (Silber JH, Kennedy SK, Even-Shoshan O, Chen W, Koziol LF, Showan AM, Longnecker DE: Anesthesiologist direction and patient outcomes. *Anesthesiology* 2000; 93:152-63.).

Be Aware, Be Knowledgeable, Be Active

The foregoing illustrates the arguments NYSANA has expressed (and will likely continue to express) to lawmakers in promoting advanced practice nurse practitioner proposals and elimination of physician-led anesthesia care and the importance for each NYSSA member to be aware of these arguments and prepared to set the record straight. ■

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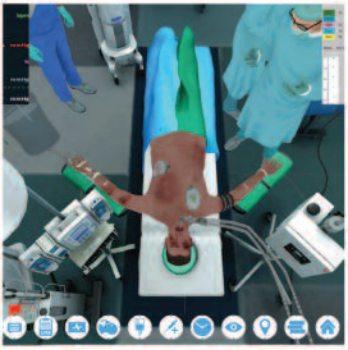
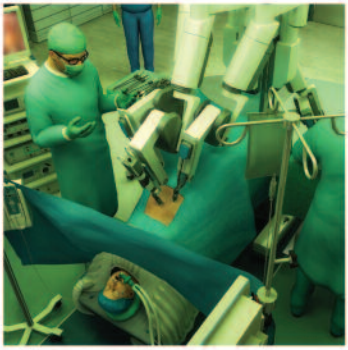

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Annual Anesthesiology Residents' Night at the New York Academy of Medicine

ELIZABETH A. M. FROST, M.D.

The annual Anesthesiology Residents' Night was held at the New York Academy of Medicine on October 1, 2018. Twenty-two participants from residency programs in New York and New Jersey exhibited and defended their presentations to 10 judges, 14 as posters and eight with oral presentations.

The evening began with an excellent food and wine reception for some 70 attendees. The NYSSA was represented by MaryAnn Peck, who answered questions about the residents' section at the PGA.

After consultation with the judges, the winners were announced and monetary prizes were presented by Dr. Farida Gadalla, vice chair of the Section on Anesthesiology at the New York Academy of Medicine.

Winners in the poster category were: First place, Dr. Kaitlyn Hartman representing Montefiore Medical Center for "Factors associated with blood transfusion in pediatric cardiac surgery patients — a single center retrospective study"; second place, Dr. Christina Lee from New York-Presbyterian/Weill Cornell Medical Center for "Improving paravertebral work flow efficiency"; and third place, Dr. Sherica Thomas, also from Montefiore

Residents who contributed to the annual Anesthesiology Residents' Night take time for a photo.

Medical Center, for "A retrospective study evaluating the role of spinal cord implants in the reduction of opioid requirements in patients with chronic back pain."

Prizes for oral presentations were awarded as follows: First place, Dr. Daniel Hart from Zucker School of Medicine at Hofstra/Northwell for "The relationship between transfusion and adverse outcomes in cardiac surgical patients"; second place, Dr. Osato Ogbeifun, also from Zucker School of Medicine at Hofstra/Northwell, for "Cross-sectional study of surgical patient preoperative fasting and experience"; and third place, Dr. Somdatta Gupta, representing Rutgers New Jersey Medical School, for "Financial impact of applying NICE/ASA guidelines for preoperative testing in everyday practice."

The judges, coordinated by Dr. Farida Gadalla, included Drs. Jon Samuels, Bryan Mahoney, Sujatha Ramachandran, Cheryl Gooden, Judith Aronsohn, Elvera Baron, Irene Osborn, Dennis Grech, Andrew Karlin and Alan Sim. They all noted that their decision as to the winners was very difficult, as all the presentations were of high quality. All the residents were presented with certificates from the New York Academy of Medicine acknowledging their work.

The next meeting of the Section on Anesthesiology will be the very popular Jeopardy Night in late spring. Come and support your teams! ■

Elizabeth A. M. Frost, M.D., is the section chair, anesthesiology, for the New York Academy of Medicine.

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Christian Pina, M.D.
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Prashant Rao, M.D.
Aaron Reagan, M.D.
Benjamin Rohrer, M.D.
Yeugeniy Romanenko, M.D.
Lauren Sartor, M.D.
Bhanu Seth, M.D.
Jonathan Shafer, M.D.

New or Reinstated Members
July 1 – September 30, 2018

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Naveen Shetty, M.D.
Mo Shirur, M.D.
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Herman Singh, M.D.
Jordan Smith, M.D.
Kristin Spitz, M.D.
Alex Stewart, M.D.
David Sullivan, M.D.
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Bushra Taha, M.D.
Brian Taussig, M.D.
Carolyn Thai, M.D.
Alexandra Tilocca, M.D.
Darrell Tran, M.D.
Cynthia Twu, M.D.
Amol Utrankar, M.D.
Jonathan Varghese, M.D.
David Verde, M.D.
Kristine Villegas, M.D.
Peggy Vogt, M.D.
Nigel Wilkinson-Maitland, M.D.
Hao Wu, M.D.
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Fanny Yeung, M.D.
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Eric Zhou, M.D.
Max Zhukovsky, M.D.

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Maranatha McLean, M.D.
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Avinash Beeram, M.D.
Donna Bracken, M.D.
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Jimmy Liu, M.D.
Marie Mayer, M.D.
Kelsey Monteith, M.D.
Brett Normandin, M.D.
Karen Ren, M.D.
Youjin Sohn, M.B.B.S.
Alexis Vangellow, D.O.
Zoe Vanorden, M.D.
Shante White, M.D.

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New or Reinstated Members
July 1 – September 30, 2018

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Rashelly Cruz
Jordan Francke
Peter Halibozek
Nicholas Quaranta
Amelia Updegraff

DISTRICT 4
Michael Swerdloff

DISTRICT 5
Cameron Bosinski

DISTRICT 6
Monica Brown-Ramos

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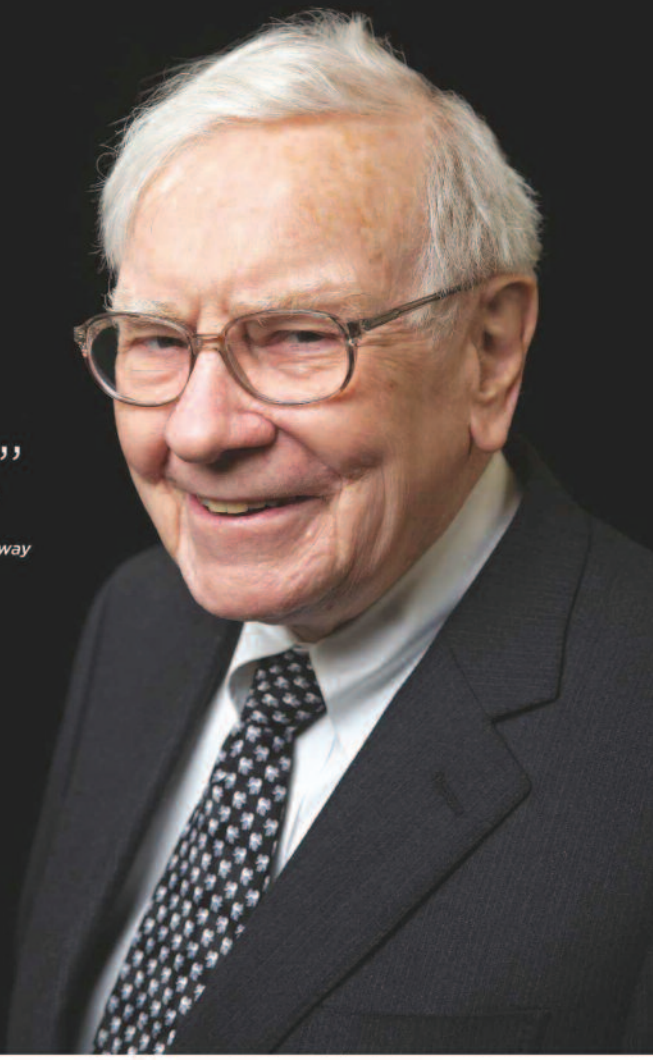

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