



### A MESSAGE FROM THE PRESIDENT

*Ilydio Polachini, Jr., M.D.*

Despite unprecedented progress over the last 20 years, the field of Neuroimaging continues to unfold, providing us today with enormous resources to investigate CNS anatomy, pathology, function and regional chemistry. The evolution of CNS imaging was strikingly interdisciplinary but the wealth of information available today is best utilized when integrated with clinical findings by clinicians familiar with neuroimaging techniques. Properly trained and credentialed Neurologists would be in an ideal position to fill this role but on the contrary, our involvement in Neuroimaging has probably reached a nadir.

A recent article published in Radiology indicates that only 2% of neuroimaging in the hospital setting is done by nonradiologist specialists. Yet, close to 80% of neurologists recently surveyed by the American Academy of Neurology support the notion of Neuroimaging done by Neurologists. Numbers for the outpatient setting are difficult to ascertain but have inevitably decreased due to enacted legislation aimed at eliminating self-referral. Ironically, the idea that self-referral in imaging increases health care costs is now in dispute as a follow-up study concluded that costs went up when self-referral was eliminated.

The American Society of Neuroimaging is the only society organization devoted to representing Neurologists' rights in Neuroimaging. We strongly supported the Naples case in which members of our society and practicing neuroimagers had their privileges wrestled away. We are pleased to inform you that an initial adverse decision to our members by the District Court has been reversed by the



Outgoing President  
*John C. Mazziotta, MD, PhD*  
(1996-1997)

Incoming President  
*Ilydio Polachini, Jr., MD*  
(1997-1999)

Appellate Court with a ruling that calls for further proceedings under antitrust legislation. Also, the ASN has begun discussions with Medical Resources, Inc., a major player in the Outpatient Imaging business, as an alternative provider of neuroimaging training and quality assessment for our members interested in credentialing at its centers. Outpatient diagnostic centers provide a readily available setting where properly neuroimaging-trained and credentialed neurologists can practice their trade. Our certifying examinations have been refined and will be offered on a computer platform in the near future under the auspices of the American Board of Neuroimaging. The editorial board of the Journal of Neuroimaging is entering discussions with Lippincott-Raven to

Continued on page three

#### *Ertag, et al. v. Naples Community Hospital*

*The Court's opinion and the summary underscore the point that the Eleventh Circuit's earlier opinion in Todorov v. DCH HealthCare Authority, wherein a neurologist was found not to have standing to challenge a hospital/radiologist exclusive arrangement for neuroimaging, is not a bar to cases such as Ertag, where neurologists allege market foreclosure by exclusive arrangements that harm competition.*

#### **CA 11 OVERTURNS DENIAL OF STANDING TO POTENTIAL COMPETITOR PLAINTIFFS**

A group of neurologists have standing under federal antitrust law to challenge a hospital's decision to allow only radiologists on the hospital's staff to provide official magnetic resonance imaging interpretations required by Florida law, the U.S. Court of Appeals for the Eleventh Circuit ruled Aug. 1 (*Ertag v. Naples Community Hospital Inc.*, (CA 11, No. 95-3134, 8/1/97).

In an unpublished per Curiam reversal, the Eleventh Circuit ruled that the case differed from *Todorov v. DCH Healthcare, Auth.*, 921 F. 2d 1438 (CA 11 1991), in that the plaintiffs are not suing to recover the same monopoly profits being earned by the defendants but, rather, seek to open up a closed antitrust market to competition – all to the

Continued on page three

## 1998 PRELIMINARY MEETING PROGRAM

### Wednesday, February 25, 1998

All day	Committee Meetings
3:00 pm - 7:00 pm	<b>Registration</b>
3:00 pm - 7:00 pm	Exhibitor and Poster Presenter Set-up
7:00 pm	Welcome Reception

### Thursday, February 26, 1998

6:30 am - 6:00 pm	<b>Registration</b>
7:00 am - 8:00 pm	Exhibits and Posters
7:00 am - 8:30 am	Breakfast Seminar- <i>Neuroimaging in Epilepsy</i>
7:00 am - 8:30 am	Breakfast Seminar- <i>Practice Issues in Neurosonology</i>
8:30 am - 5:30 pm	Basic and Advanced MRI Course
8:30 am - 12:30 pm	Review of Physics & Techniques in Neurosonology Course
8:30 am - 12:30 pm	Advanced Techniques in Neurosonology Course
1:30 pm - 5:30 pm	Spencer Intracranial Hemodynamics Symposium
6:00 pm - 8:00 pm	Wine & Cheese Reception (Poster stand-by)

### Friday, February 27, 1998

7:00 am - 8:30 am	Breakfast Seminar- <i>Neuroimaging in Dementia</i>
8:30 am - 12:00 pm	MRI Course ( <i>continued</i> )
8:30 am - 12:00 pm	Interventional Neuroimaging Symposium
8:30 am - 12:00 pm	Neurosonology Hands-on Workshop
12:00 pm - 1:30 pm	ASN Business Meeting Luncheon
1:30 pm - 5:00 pm	Integrated Neuroimaging Symposium
1:30 pm - 5:00 pm	Review of Pediatric Neurosonology Course

### Saturday, February 28, 1998

7:00 am - 8:30 am	Breakfast Seminar- <i>SPECT in Clinical Practice</i>
8:30 am - 12:00 pm	Neuroimaging in Stroke Symposium
7:00 am - 1:00 pm	MRI Examination
1:30 pm - 4:30 pm	Neurosonology Examination

## ASN 21<sup>ST</sup> ANNUAL MEETING

**Hilton at Walt Disney World in Lake Buena Vista, Florida**

February 25-28, 1998

The ASN will be returning to the Hilton at Walt Disney World in Lake Buena Vista, Florida for its 21st Annual Meeting.

The dates for the 1998 meeting are February 25-28. As in the past, the meeting will begin with a Welcome Reception on Wednesday evening. Programming begins on Thursday and ends on Saturday at noon.

Topics include MRI/CT, Neurosonology, SPECT, Practice Issues, Pediatrics, Interventional Techniques, and Neuroimaging in Epilepsy and Stroke. A new addition to the program is the Intracranial Hemodynamics Symposium which is being organized by Drs. Merrill Spencer and Viken Babikian, and will

take place on the afternoon of Thursday, February 26.

The Hilton at Walt Disney World is just 20 minutes from the Orlando Airport. The hotel offers complimentary and continuous transportation to the MAGIC KINGDOM(®) Park, Epcot, and Disney MGM Studios. And it's within footsteps of Pleasure Island, Disney Village Marketplace and Planet Hollywood.

The Preliminary Program/Call for Abstracts has been mailed to all members of the American Society of Neuroimaging and the American Academy of Neurology. If you have not yet received this information, please contact Christine Sadler in the ASN office at (612) 545-6291.

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plaintiffs seek damages consisting of lost profits based “on the number of official MRI interpretations they would have performed without the exclusive license multiplied by the lesser of the competitive fee they would have charged and the Medicare-regulated fee.”

The court of appeals rejected the district court’s view that the plaintiffs should not be permitted to sue either because their interest in the hospital’s conduct was not sufficiently direct or because their damages were too speculative.

Florida law requires that all patients who have an MRI test must have an official MRI interpretation prepared for the patient’s medical records (Fla. Admin. Code Ann. R. 59A-3.160).

Medical practice is for a treating physician to refer a patient to a hospital for an MRI and an interpretation of that MRI. A neurologist often is called in to consult and may perform an unofficial interpretation of an MRI in the course of diagnosing and treating the referred patient. Insurers usually pay for a neurological consultation and the official interpretation of the MRI, but not for the neurologist’s unofficial clinical interpretation of the scan.

### Plaintiffs Sought Privileges

The dispute arose when three qualified neurologists, two of whom are plaintiffs, sought privileges from Naples Hospital to perform official MRI interpretations. The hospital instead opted to adopt a proposal by its own radiologists who had sought the exclusive privilege of performing official MRI interpretations.

The complaint alleged an unlawful tying arrangement, a conspiracy in restraint of trade, and a conspiracy to monopolize in violation of Sherman Act Sections 1 and 2. According to the plaintiffs, the restriction of official MRI interpretations to qualified radiologists unlawfully tied those interpretations to the provision of patient services at the hospital. The hospital’s policy allegedly reflected an illegal agreement among the radiologists and the hospital to

exclude the neurologists from the relevant market. Finally, the defendants allegedly conspired to withhold from the plaintiffs facilities essential to effective competition.

The district court, relying on *Todorov*, concluded that the plaintiffs lacked antitrust standing and entered summary judgment in favor of the hospital.

### Two-Pronged Approach

The Eleventh Circuit, reversing, reiterated its two-pronged approach to determining whether a particular plaintiff is a proper party to pursue an antitrust suit: (1) analysis of the existence of an “antitrust” injury; and (2) determination of whether the plaintiff is an efficient enforcer of antitrust law because his injury was direct.

The neurologist plaintiff in *Todorov*, the court pointed out, sought hospital privileges to share in “supercompetitive profits” being earned by radiologists for the performance of CT scans. This plaintiff’s interests were at odds with the interests of consumers, and he was denied standing.

Here, in contrast, nothing in the prayer for relief suggests that these plaintiffs wish to recover a portion of “supercompetitive” profits allegedly being earned by radiologists, according to the court. In fact, they allege that the hospital’s conduct has “restrained and-or eliminated” their ability to compete in the MRI market and that the result has been “losses of profits they otherwise would have made.”

The Eleventh Circuit rejected the district court’s conclusion that there are several more efficient enforcers of antitrust law – patients, insurers, referring physicians, and the government. While other groups may have been more directly harmed, the Eleventh Circuit acknowledged, they may not have reason to sue. The individual patients, for example, “were hardly in a position to challenge the alleged unlawful restraint since any harm they sustained likely was too diminutive for them to have any incentive to sue.”

In the Eleventh Circuit’s view, the neurologists may be “in a position to vindicate the public interest,” even though they were not “the most direct victims” of the alleged conspiracy.

### Direct Injury

The court next questioned whether the plaintiffs’ alleged injury was in fact indirect, as the district court had found. The effect of the district court’s ruling “is to undermine the ability of competitors to enforce antitrust laws when they seek to compete in an otherwise closed market... No basis exists on this record for the district court’s conclusion that the neurologists as potential competitors will not suffer sufficiently direct injury to make them efficient enforcers of the antitrust laws.”

Finally, the Eleventh Circuit took issue with the district court’s conclusion that the alleged damages were speculative. The plaintiffs’ lost profits measure, the court noted, employed a comparison with an analogous market for CT interpretations where there was competition between the neurologists and the radiologists. “Lost profits are an appropriate measure of damages in an antitrust case, and the damages need not be calculated with exactitude.” Thus, there is “substantial information suggesting that the damages were not speculative.”

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## A MESSAGE FROM THE PRESIDENT

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offer an electronic version as well as Web-based CME credits in Neuroimaging.

Next year’s program planning is well under way to offer an excellent educational meeting as well as a forum to discuss new opportunities for our members. Join us in Orlando next February 25-28 for our 21st annual meeting and review course. Renew your commitment to the ASN!

Ilydio Polachini, Jr., M.D.  
President  
American Society for Neuroimaging



The 21st Annual Meeting of the  
American Society of Neuroimaging  
Orlando, Florida  
February 25 - 28, 1998

MARK YOUR CALENDAR

**CALL FOR PAPERS**  
*Deadline Extended*

Abstract forms have been sent to all members of the ASN and the American Academy of Neurology. Contact the Administrative Office for additional copies. The deadline for receipt of the abstracts is has been extended to

December 1, 1997

## CERTIFICATION EXAMINATIONS

### MRI/CT Exam

The American Society of Neuroimaging (ASN) examination in MRI/CT is designed to assess a physician's ability to apply knowledge, concepts, and principles of neuroimaging that constitute the basis of safe and effective patient care.

It is intended to assess whether the candidate can apply the medical knowledge and understanding of biomedical and clinical sciences considered essential for the unsupervised practice of neuroimaging.

The MRI/CT Examination is based on the assumption that the applicant's skills include facility with MRI/CT physics and the ability to independently interpret MRI/CT images (normal anatomy, pathologic conditions and artifacts). The MRI/CT Examination is not derived from MRI courses, platform presentations, seminars, technical exhibits or scientific posters presented at the Annual Meeting of the ASN.

### Neurosonology Examination

The American Society of Neuroimaging examination in Neurosonology is

designed to assess a physician's ability to apply knowledge, concepts and principles of neuroimaging that constitute the basis of safe and effective patient care.

It is intended to assess whether the candidate can apply the medical knowledge and understanding of biomedical and clinical sciences considered essential for the unsupervised practice of neuroimaging.

The Neurosonology Examination is offered to assess proficiency in Neurosonology. The examination is intended for physicians who, through several years of training and experience in this neuroimaging modality, have acquired enough of a foundation in the basic principles and clinical interpretation of neurosonology to be able to interpret these studies independently.

### Eligibility

To be eligible for either examination, a candidate must meet the following criteria:

- Be a Board Certified or Board Eligible physician;

- Hold a valid medical license (or Institutional training license for residents);

For MRI/CT: Have completed a neurology/neurosurgery/radiology/pediatrics residency which has met guidelines of adequate training in MRI/CT interpretation as verified by a letter from program director; or

- If such verification letter cannot be obtained, verification of 40 CME hours in MRI/CT and verified supervised interpretation of 400 MRI/CT cases during the past 3 years

For Neurosonology: Have completed a residency training program which has met guidelines of adequate training in neurosonology as verified by a letter from program director; or

- If such verification letter cannot be obtained, verification of completion of at least 40 hours of Category 1 CME in neurosonology covering the above topics during the past three years and verification of interpretation of at least 100 neurosonology studies under supervision.