Dr. Gillian Schmitz Part 2: Fighting for Doctors Transcript

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Episode Introduction and Heartline Mission

Welcome to a special Heartline Echoes episode where we revisit some of the most impactful conversations from Heartline changemaking in healthcare. This rerun isn't just a replay.

It's an opportunity to reflect, reconnect, and reignite the ideas that continue to shape the future of healthcare. Whether you're hearing this for the first time or returning for some fresh insights, let's dive back into this powerful discussion.

Enjoy. Welcome to Heartline, Changemaking in Healthcare. I'm your host, Dr. Andrea Austin, a board-certified emergency physician, physician development coach, and educator.

After years on the front lines, I've learned that real change in healthcare starts within. Each episode invites you to explore the inner work that unlocks clarity and bold leadership, because healing systems through changemaking begins with following our heartlines.

Welcome back to part two of my interview with Dr. Jillian Schmitz, the immediate past president of the American College of Emergency Physicians. If you missed part one, I'd recommend you go back and listen to that first.

Part two, we start off talking about surprise billing, and then we get into a lot of the other exciting policy initiatives. So I want to come back to surprise billing.

Revisiting Part Two with Dr. Jillian Schmitz

And maybe a little bit embarrassingly, even though I've been involved with ASAP for years and I've read about surprise billing and I've listened to you speak on it before, it's still a bit confusing.

So let's start with the basics. What is surprise billing? So that is a great question and it can be a very complex topic, but I'm going to try and keep it very high level, as simple as I can to help people understand because this is actually a very important topic for our specialty.

So as the emergency physician, your group is either in network or out of network. That is a decision that you're probably not making, but your group who contracts with the insurance company decides how they are going to get paid.

Everyone generally wants to be a network.

Surprise Billing Explained

If you're a network, you said with an insurance company, we are going to agree on a set price if I take care of your patients that I'm going to get paid this amount.

And if you're a network, it's already kind of approved on both ends. You get paid expeditiously. Everybody's happy. The problem is that insurance companies are now sort of pushing us out of network.

So for example, they will say, Andrea, you just saw a patient with chest pain and you think that's worth $100. And the insurance company comes back and says, nope, we're going to pay you $10. And you say, gosh, for $10, I can't even afford to keep my lights on.

I can't hire the radiologist. I can't staff my nurses. This isn't going to work. And they say, Nope, take it or leave it. That's our best offer. If you want to be in network, we're going to give you $10 for every chest pain.

And so you kind of shrug your shoulders and you're like, okay, well, I guess I'll be out of network then. So what happens when a patient comes to the emergency department and their hospital is in network?

They assume the physician is also in network, but now you're not. What happens is you make that bill now for $100 and the insurance company says, well, our in network rate is $10. So we're only going to pay 10 is there's a balance between what you expect to be paid and what the insurance company is willing to offer you.

And historically that balance of $90 would go to the patient. And the patient is surprised because they thought they had insurance coverage. They didn't realize they were going to have to pay anything or they might expect a small deductible.

Now, if you use real figures of what emergency visits and hospital visits can cost to understand that difference can put people into medical bankruptcy.

And it caught a lot of news of looking at how do we find a solution to this. And really, emergency medicine is the only specialty where 75% of our patients do not pay the cost of care.

Just let that sink in for a minute. What other business could you do where 75% of your customers just got free stuff and didn't pay the cost of care? The only way to make that work is you become very dependent on that remaining 25% to pay their costs and to pay them quickly so that you can stay in business.

And any delay or down coding that happens on that end threatens the viability of that system. And so this law, with no surprises, the government said, look, we got to stop this.

Patients are not doing well. Patient advocacy groups are really upset. We have to take the patients out of the middle. And we have to find a better way to define what is, quote, fair payment that both the insurance companies and the physician groups can decide on.

And so that was the law, essentially that was passed and it had many of the things that ASAP advocated for it. And we were very excited about the fact that the patients were taken out of the middle.

There is no more balanced billing, but there has to be a dispute process and there should be a negotiation process where hopefully we can come to an agreement of what is fair payment.

So instead of $10, maybe we can agree to $65 or something that's reasonable in order to make it worth our time that we're not hemorrhaging money by taking care of patients.

The problem, though, has been sort of the execution or the implementation of a law that was passed. And there are a number of issues with it. But to keep it sort of simple, a lot of it comes down for the fact that the plans are really not enforcing what the regulations state.

So for instance, if you are the insurance company and you and I are fighting about what is fair payment, the law says there has to be an independent dispute process.

So we would bring in essentially a third party who would look at what you're charging, it would look what I'm asking to be paid, and they would make a determination of which one of those is really a fair market value.

And so both groups are incentivized to come up with something realistic, right? If I asked for a million dollars for a fingernail cut, nobody's going to pay me anything.

But if both groups come to the table with a reasonable offer, hopefully that comes to a way to settle this out of court where the patient's taken out of the middle and that would It ideally worked well, but because none of the rules are being enforced, we're seeing the insurance companies manipulate almost every step of that dispute process.

So for instance, when they receive a claim, they're supposed to notify the group right away, whether they are

accepting it or not and declaring how they came to that determination.

They're not doing that. Then there's supposed to be an open negotiation period where the two groups can come to a table and decide if they can come up with a fair kind of interim payment.

They're not even showing up. They're not even acknowledging the negotiation process to begin with. when it goes all the way to arbitration. So now we've brought in that third party to really look at what was done and make a determination of who was closer to fair market value.

Is it the physician or is it the insurance company? The insurance companies are not even paying their arbitration fee. And so the arbiter is not even giving their decision because they haven't been paid for their job.

So they are unnecessarily stalling the entire process. And then the law said that once that a termination is made, they're supposed to make a payment within 30 days.

And that's not happening. We're hearing of groups that are going like six months without getting paid. And none of those processes are being enforced by the departments of HHS and Labor and Treasury.

And so as long as they're not being enforced, the insurance companies say, hey, let's see what else we can get away with. So we're seeing quite a bit of frustration from emergency physicians right now on how this law is being implemented and how we can really give it more teeth to ensure that particularly small groups can stay in business.

On top of that, we've seen the fees for arbitration have gone way up. So there's a non-refundable fee every time you want to try and fight the insurance company.

How the No Surprises Act Is Failing in Practice

And it went up 600% this year, 600%. So instead of 50 bucks, it's now $350 for every time you want to go to arbitration. And the companies, the ones who do the IDR, got approved to increase their rates by 40%. So if you think about every time you have a claim that you want to dispute, like for small groups, this is going to potentially really put them into bankruptcy.

they can't afford to keep fighting these. but they can't afford not to either because they're getting paid pennies on the dollar for what their charges are.

So it is a multifactorial process that we are trying desperately to resolve. And it has great concepts if it was actually implemented the way that it was supposed to, but we really need the departments to start enforcing the rules that are in place and to recognize that insurance companies are making literally billions of dollars in profits and many emergency physician groups and hospitals have such a razor thin margin, but many of them are starting to fail and close and the system as it's designed is fundamentally flawed.

So that sounds pretty bleak. It's getting me like heartburn listening to it. What could a listener do right now? That would be helpful on like, let's go with somebody that's like, you know, I don't have a lot of time.

You know, what would be a very small step that they could do? That would be helpful. So if you don't have a lot of time, the best thing you can do is send your money and help to contribute to those of us who are doing this every day and going up to DC and meeting with legislators to be able to make this impact.

There are currently a number of lawsuits that are going on. ASAP is taking a major lead in that as is the Texas medical association and the radiologists and anesthesiologists.

That the easiest way is to contribute to your pack, which is the political action committee or to become a member of one of those national organizations, because they're the ones that are really fighting for you.

And I get that, you know, when I was starting my career, I didn't have time, nor did I really understand the issues.

And the last thing I wanted was to meet with my legislator without fully understanding it.

But those people that do this every day and are invested in it can really help fight for all of us. And that's where those membership dues really become fundamental in helping us have the ability to continue to fight this and to really push through with our lawsuits and to really represent emergency physicians in this process.

For those people who have a little bit more time getting involved with your state chapter of ASAP or with the AMA is really helpful because it gives you a voice.

It gives you an opportunity to learn more about the issues and to see really what is being done. And the third thing people can do is tell us your stories, right?

That's the most impactful part is like a small group calling me and saying, Hey, the law says I'm supposed to get paid in 30 days. It's been four and a half months and I'm not going to make my rent next month if I don't get paid.

But the insurance company won't return my phone calls and they are dragging this out for months, if not a year. And this is unacceptable. That's a story that I can directly take to our legislatures, to the departments that when they say, why is it broken?

I can give them concrete examples about what we're seeing on the ground. of how this is being manipulated. And just last week ASAP actually had a meeting with the HHS and the Departments of Labor and Treasury to do exactly that and a number of changes that at least verbally they said are occurring because they were unaware of how this was impacting emergency physicians in our practices.

So those stories are really helpful in our advocacy efforts. I think that's such a powerful message. And I can't wait to have you back on the podcast.

But as we're wrapping up, my question was, what's your message to somebody that says, you know what, I'm not getting involved in organized medicine. I'm not joining ASAP, AEM, insert the organization.

It's all a waste of time and money. And I'd rather use that insert dollar figure for something for me. And I know you hear this message a lot and we're seeing across the board, it's not just ASAP, professional membership is down.

So when somebody's seeing that bill come across their email and they're citing, well, what does this organization do for me anyway? Why should they maybe pay their dues this year?

I think this is such a pivotal year to have emergency physicians really advocating for the specialty and we can't do it in isolation. When I go to Congress and say that we represent 40,000 members that opens doors.

If you only represent 3000, it's hard to get those meetings. It's hard to have any impact because you have such a small voice, but there's power in numbers.

And I think now between scope of practice, reimbursement, you know, growth of emergency medicine residency programs. Consolidation and increasing kind of corporate involvement in medicine.

There's so many things that are impacting us that we need to have a voice and we need to make sure that we're being represented and having that impact to drive change.

And I will say that, you know, I think we've all had that burnout right we're talking about earlier and almost that learned helplessness of our environment.

I think for me, what makes it so rewarding is that I have the ability to make change. I got to meet with the Federal Trade Commission this year and discuss with them our concerns about consolidation in medicine and the impact of private equity and corporatization on medicine.

We got to help advocate that they got rid of the non-compete causes in contracts that have been so harmful to many of my colleagues. These are the direct changes that we see because we have a voice.

And so rather than getting frustrated and just learning that you can't do quote anything, get involved, have an opportunity to really share those stories and to fight for what you believe in.

If anything is a cure for burnout, you know, it's that it's being able to have more control over your environment and to fight for the things that you believe in.

And so I've chosen, rather than getting frustrated by the day-to-day things, I find those two or three things that drive me nuts on shift, and then I start finding solutions of how do I fix them.

Ways to Support Advocacy and Organized Medicine

And ASEP is really the platform and the vehicle that has given me those opportunities to start driving change and to really have a voice to represent my colleagues across the specialty.

So I would encourage everyone to get involved, to find whatever organization it is that represents your interests, to really find a way to fight burnout by having a voice, having a role, having a direct impact in the future of our specialty.

We need you now more than ever. Should I ask this question or not ask it? I'm going to ask it. I get asked it all the time and it drives me nuts. And I think you get asked it too.

And it's kind of like usually off to the side and I'm going to say it into a microphone. The criticism that I hear over and over again of Andrea, I can't believe you belong to ASAP.

They're in bed with corporate groups and they're part of the reason that everything's going to hell in a hand basket. And you and I do not think that's the case.

How do you respond to that criticism that just doesn't seem to ever go away? So one, I want to empower people with facts. So our board of directors is made up of 13 people.

98% of us work for small democratic groups, academic groups, and the military. We have one person out of 13 who currently works for a large group. And I will tell you that one person has been the most vocal about issues involving private equity and corporate practice of medicine and being a champion for emergency physicians.

And because of him and his ability to work within his group, we've had a lot of success in improving transparency and billing within that group and having relationships to say, hey, this is what we're hearing from members.

We want this to change. And that change happens. So that perception that quote unquote ASAP is in bed with private equity is just not true in any way, shape or form.

If you look at the composition of our board, almost everyone works for small groups. Everyone is independent and military and academic, but we represent the really diversity of our specialty.

And I think it makes us stronger to have people who work in different practice environments to better understand What are the challenges? What are the pros?

What are the cons and how do we fight these common themes that really impact all of us, no matter what practice environment you're working in. Furthermore, look at what ASAP is actually doing.

So ASAP put out a statement last year on the private equity and corporatization of medicine. We wrote an amicus brief in favor of a lawsuit advocating for change and transparency in our practice patterns to ensure that it's the physician.

Right. And not shell group or a different structure that is really making medical decisions and really taking care of patients and really driving medical care.

There's an entire website and I'll get you the link for it. That really shows everything ASAP has done over the past several years. to advocate and fight for the individual physician and to really look at fair market practices and values to help us protect our practices.

And I think we do that more effectively and more impactfully than anybody else. So I want to end kind of on a really big question that we probably don't have time to get into, but it's kind of the elephant in the room.

And you mentioned it earlier. So if only 25% of the patients that check in for an emergency department visit, truly pay the cost of that visit and 75% don't.

Where are we going?

Why Membership and Collective Voice Matter

So maybe if Jillian had her magic wand today and she could retool, reimagine, reinvent reimbursement that would actually work and be sustainable because We're twisting our way through a system that's not working very well.

What's this going to look like in 25 or 50 years if things go in the right direction? How would we actually have care paid for and not be relying on this 25% to cover us?

So I think it could still function, even if only 25% are paid by insurers, if you hold them responsible, if you hold them accountable and they actually do what they're supposed to do by paying that fair market value of emergency care.

If the insurance companies did what they were supposed to, we would have enough to pay for all that uncompensated care that we provided. But I think fundamentally there may be a shift in the future.

And I personally think it's inevitable that we're going to have to change the way we pay for health care in this country. More and more patients are on Medicare.

Medicare is projected to go bankrupt in the next decade. Medicaid pays pennies on the dollar. We have a number of patients who don't have any funding.

And we need to figure out a better way to pay for that healthcare safety net. And I think to make it almost a public service, much like we pay for a police system or a fire system, that this is a public right, that we should be able to have some sort of compensation, at least at a public level, as an option to ensure that we have a long-term plan of how we're going to pay for healthcare in this country.

And that may look a number of different ways, but starting to talk about what universal care and universal access means and figuring out how we pay for it is going to be difficult politically in the system with our two houses so divided and unwilling to negotiate or compromise.

But at some point, the system may force them into a decision because what we're doing is simply not sustainable and something we'll likely have to change over the next 10 to 20 years in order to maintain our system of being able to provide care 24-7, 365 to every American in this country.

Very interesting. I think that's the conclusion I've come to as well. I think you and I have traveled quite a bit. I've been to countries in which if you don't produce a form of payment, if your family member does not go out and buy the antibiotic that I've written in your ED chart, you do not receive it.

And I don't think anybody in this country thinks that's okay. Absolutely not. I think that's one of the privileges is we don't ask patients what insurance they have.

We're proud to take care of anyone, anywhere, anytime, but there has to be a mechanism in place to help offload the cost of that uncompensated care that we provide and making sure that even Medicare rates keep up with inflation, which it has not even done that much less paid the cost of care.

The government needs to step in and they need to figure out a way to pay for this and we need to find a way to hold insurance companies accountable. I think it is ridiculous that they're making billions in profit while people are suffering and not getting medical care in our country and figuring out a way to hold them accountable to ensure that they're paying their fair share is going to be incredibly important going forward.

So we got into some incredibly heavy things this episode to end on a lighter note. What are you excited about? What has you optimistic in 2023? Related to work in ASAP, one thing I'm very excited about is accreditation.

Much like American College of Surgery accredits level one, level two trauma centers, that enabled them to get cooler CTs, right? To have a neurosurgery on staff.

It allowed them to set the bar of what trauma care should look like. ACIP is exploring accrediting all emergency departments.

Responding to Criticism of ASAP and Corporate Influence

And I think that's really cool and probably one of the best things to improve our practice environments for us to say, what does emergency medicine think that an emergency department should have?

Who should be seeing patients? How should we be supervising care, particularly of PAs and nurse practitioners? What kind of resources do we need? What kind of social work do we need around the clock in the emergency department?

about not only just the clinical part, but also our practice patterns, due process, transparency and billing, ensuring that our professional lives are taken care of.

If ASAP were the ones to help really enforce and set those standards, and we could find a way to get hospitals to buy into this, that would incentivize everyone to raise the bar.

I think that would have, in my mind, the highest way of improving our practice environments and ensuring fair market practices for emergency physicians and improving the clinical standards to ensure the highest quality for patients across the United States.

So I'm very excited to see this potentially be put into place. We just are about to discuss this at our next board meeting. But for all the people who complain that they don't like their EMR or they don't have enough social work or they're in a group that doesn't have a fair contract or that they don't have due process.

It's very difficult to fight all those things, right, because of the growing consolidation. But this is where I think the power of ASET more than any other organization has to change those practices is that we know the legal system has not been tremendously helpful and fighting groups individually is expensive, it is time consuming, and it generally has not worked in our favor.

But this is potentially a new strategy that will allow us to define what emergency medicine is, how it should be practiced, how it should be supervised, and what it should look like to protect really the best working environment to ensure we're giving the optimal patient care in every emergency department throughout the United States.

And I'm very optimistic that we could see this be put into place in the next 12 to 18 months, which I think will really make a better work environment for us and better place for our patients to receive emergency care.

I am very excited about that as well. And I'm glad we got to it in this episode because for me, the founding of emergency medicine in the United States, there's a book that was published a few years ago, Bring Them All In.

That is our ethos, right? Bring Them All In is part of our values and our core as an emergency physician that we wanna take care of everyone. And while that is admirable, what we are seeing is because we lack boundaries.

Because we have not explained the resources that we need, and we've had no way of really holding people accountable for providing those resources, we have created a situation that is not sustainable.

The Future of Emergency Care Reimbursement

And it's no longer sustainable for emergency physicians, for nurses. So what's exciting to me about this accreditation process is, like you said, it's putting emergency medicine physicians in control of saying, this is what I need.

Just like a surgeon wouldn't go into an operating room without the proper tools to perform that surgery. How many times have we walked into an ED? And there's no tonal pen.

There's no slit lamp that we can even say something more, you know, really egregious. Maybe there's not appropriate pediatric resuscitation equipped. You know why a pilot would never start a plane.

They won't even take off if they can't go through their checklist and have everything that they need. And so I think we're at this inflection point where the strength of being the MacGyver, we've used all those cards and that is actually now a weakness for us.

I agree. I think it has been because we have not been the one always making the decision, the decision gets made for us, right? And then those resources start disappearing when money becomes tight.

So unless we advocate that these are essential things, our plane can't take off until I have this checklist complete. that a hospital couldn't open an emergency department unless you met these pre-specified standards and really held those standards.

So I'm very hopeful that this will improve care and it really also improve our practice environment. Well, this has been an absolute joy having you on the podcast.

This hour flew by and I want to do this again because I'm going to say something. And again, this is my podcast. I get to be a little bit pointed at times.

It is cheap to write a post. It is cheap to use a megaphone without having been in the arena. And one of my favorite quotes is that Teddy Roosevelt, Bernie Brown talks about it a lot.

By being an emergency physician, you are in the arena. So I respect you for that. You have been in the arena as the president and a board member of ASAP.

So I would just say, you know, before you post something, I would ask you to really engage, read a couple of articles, reach out. I mean, maybe I'm going to blow up your inbox, but When Jillian says you can email her, she 100% means that.

And I don't know how she does it. That's going to be another episode about, you know, does she sleep?

Accrediting Emergency Departments and Raising Standards

Does she answer emails while asleep? I don't know. But any ASAP board member, any ASAP staff member, if you have a question or problem, I would really invite you to ask before you go on a rant.

Thank you for that. You know, I think with social media, the amount of misinformation and antagonism has risen to just crazy levels. And I am one of you guys.

I am an emergency physician. I'm a mom. I'm a friend. I am all the things that I love in my friends that I want to be approachable and to help address those issues.

But it doesn't make it hard when people come out and they attack without first asking. I would encourage you just like, we don't like to be Monday morning quarterback that Leaders and national organizations feel the same way.

We make the best decisions we can with the information we have at the time, but we're always welcoming for input and ideas and ways to grow and get better.

So my email is Jillian with a G and then MD at gmail.com. And yes, please feel free to reach out. I would love to engage and hear from some of our listeners about ways that I can help with questions you may have.

Wow. I mean, that invitation is just so generous on your part. So Jillian, I am so grateful to have this conversation, to have you as my friend, to have you as an ASAP board member.

And thank you from the bottom of my heart and from our listeners for everything that you do. Thank you so much for having me and for doing this podcast.

I can't wait to move out to San Diego to have a colleague in crime with me out there. And thank you again for hosting us today. Thanks for listening to Heartline, Changemaking, and Healthcare.

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