LEE COUNTY MEDICAL SOCIETY

Bulletin

THE VOICE OF LEE COUNTY MEDICINE

VOLUME 21, NO. 5

Fort Myers, Florida
Daniel R. Schwartz, M.D.

September, 1997

MAKE RESERVATIONS TODAY
LCMS MEETING
Monday, September 15, 1997
6:30 P.M. Social Time
7:00 p.m. Dinner
Royal Palm Yacht Club
RSVP 936-1645
Speaker:
James T. Howell, M.D., M.P.H.
Secretary, Florida Department of Health
COME, ASK QUESTIONS, LEARN ABOUT THE NEW DEPARTMENTS, GOALS, OBJECTIVES, MISSIONS.
Guest $25.00
Cancellations: By noon Friday before the meeting

MARK YOUR CALENDARS
AND JOIN US FOR OUR MEETINGS
A WAY TO GET TO KNOW OUR MEDICAL COMMUNITY!!

October 20, 1997
6:00 p.m. Social Time
6:30 p.m. Dinner - Cost $15.00
Broadway Palm Dinner Theater
Royal Palm Square Blvd.
8:00 p.m. MURDER MYSTERY
"Politics Can be Murder"
Joint meeting with the Osteopathic Society
Halloween attire appropriate - A FAMILY EVENT

November 17, 1997
6:30 p.m. - Social Time/Dinner
Cost $25.00
Royal Palm Yacht Club - West First Street
Program: HIV/AIDS and Domestic Violence
CME Requirement for Re-licensure applied for.

December 8, 1997
Holiday Party -- 7:00 - 11:00 p.m.
Veranda Restaurant -- Cost $35.00 per person
Charity to be announced

January 19, 1998
Installation of Officers
Speaker: Nancy Dickey, M.D., Chair
AMA Board of Trustees
LCMS & Alliance will hold meeting in same location

In This Issue...

George C. Kalemeris, M.D.

PRESIDENT'S MESSAGE

George C. Kalemeris, M.D.

I have always been impressed with the words of lore by the elders concerning the "off-season!"

According to history, the snowbirds would leave Fort Myers precisely on "tax day" in April. The population would drop in half. So would the need for physician and hospital services. Office activity and hospital census would drop. You could actually see physicians performing the unusual acts of:

1. Going home early from the office,
2. Performing recreational activities, such as fishing, boating and golfing, and
3. The amazing act of going on vacation!

I have been in this community for approximately 12 years, and as best as I can recall, some of these things did occur, but rarely. They have become more stable. The "off-season" has become, for me, two weeks at the end of August when many of us are rushing off to get a few weeks of rest and relaxation before the "season" returns.

The membership of the Lee County Medical Society, for historical reasons, takes a few months off from regular membership meetings. As a member, I sometimes assumed that, maybe; the Medical Society closed down in the "off-season". Maybe the FMA and the AMA close down too.

I can assure the membership that the Medical Society office, staff, committees, and officers continue to serve the membership throughout the year and getting out the information we all need as Society members. The committees continue to approve qualified member applicants for the Society, review improvements in disaster planning. The officers, of course, review all the activities of the Society, plan and develop for the new year and occasionally communicate with the media. Yes, the local Medical Society maintains its activity throughout the year.

But what about the FMA and the AMA? What has it done for us lately?

After the delegate meeting is over and the legislature has gone home it is easy to get the impression that the FMA has gone to sleep and is no longer actively doing the business of medicine. A major portion of our Society dues is paid to the FMA. Are we getting our money's worth?

Well, my opinion is that we are! I had an opportunity to attend the interim meeting of the FMA Board of Governors meeting in July. Dr. Cecil Wilson strongly chaired a very productive meeting outlining the goals of the FMA for the next year. A short summary of major reports is included below:

1. The AMA field representative report on collective bargaining: Nancy Kintzel, the AMA field representative reported that the AMA has developed a method for local and state Medical Societies to assist physicians in collective bargaining positions with employers. There was an interest in possibly assisting the physicians of the LCMS as a pilot project. A primer on the "Can's and Cannot Do's" should be available soon. The AMA legal counsel was instrumental in working with the FMA to deal with the Aetna contract issues.

(continued on page two)

IS YOUR LAND TRUST IN TROUBLE?

Tips From a Physician Who Has Been There
By Stephen Machiz, M.D.

I am now the successor trustee in a number of land trusts. I have always had an interest in business and was an economics major in undergraduate school. I retired from the practice of urology in January 1992 after practicing here in Lee County for 19 years. Little did I know that I was soon to become an expert in land trusts.

Most investors in land trusts felt that they were making a safe investment when they purchased units in land trusts during the 80's and early 90's. Growth in Southwest Florida was booming and land values were escalating. The trusts allowed investors who would not have been able to participate individually to do so collectively. Those who put the deals together made themselves trustees and took on the responsibility to collect funds from the investors and to pay mortgages and taxes annually. The syndicators were usually real estate brokers and they set themselves up as the listing agents for the properties.

When we experienced a recession in the real estate market in the early 90's many of the trustees began having financial problems. Many of them had taken units in these trusts either as commission or in order to fully subscribe the offering. They frequently owned units in many trusts and were unable to make their yearly cash calls when activity in the real estate market literally dried up. Other investors in the trusts continued to make their contributions thinking that the trustees were fulfilling their responsibilities and making mortgage and tax payments in a timely fashion. Unfortunately, this was frequently not the case.

With a shortage of funds, the trustees decided not to pay either the taxes or the mortgage. In some cases, funds were actually diverted from one trust to another in an effort to avoid foreclosures.

They gambled that the market would soon turn around and they would be able to bring everything current. Rather than inform the beneficiaries that they were putting the trust in harm's way, they hoped that their problems would go undetected. As we all know, the downturn was prolonged and investors are now finding out that their investments are in serious financial difficulty.

The lesson to be learned here is that all investors have to be more proactive in managing their investments. Just because we, as physicians, are honest in our interactions with others, we must not be lulled into a false sense of security that those we are entrusting our monies to are acting likewise.

Below you will find some warning signs that your land trust may be in difficulty. Remember that if a trustee has violated his fiduciary responsibility, he will do anything to avoid detection. Letters stating that the taxes are current or that the property has now been paid off may be just additional lies to cover up wrongdoing. Here's what you need to look for:

(continued on page two)

AS I RECALL...

Roger D. Scott, M.D.

"AND YOU WERE THERE"

This early June, as the weather began to get warmer, I was thinking about Polio in summers past and wondering what had happened to our old iron lung at Lee Memorial. Low and behold, within two days the iron lung was on display in the lobby of Lee Memorial. This hadn't been out of its closet for some years, I thought, but a sign attached stated that it was given to the Historical Museum and remained on display there. Finding this lung reinforced my thought to write the following article.

It was a hot summer in June, 1953, when the U.S. Air Force stationed me with my family on TDY (temporary duty) in Montgomery, Alabama. The city was under seige by a Polio epidemic (most commonly called Infantile Paralysis), with eighty-one cases occurring. Throughout the nation in the summers when Polio would begin to appear, public gatherings of children were forbidden and swimming pools, theaters, camps, etc. were closed to try to avoid this dread disease. The National Infantile Paralysis Foundation, working with the U.S. Government, decided to use Gamma Globulin in a mass inoculation trial for the disruption of the epidemic. GG had been used sporadically and apparently had shown beneficial results with exposed cases but never had a mass inoculation program been given. We were asked to volunteer to give the Gamma Globulin, and I had the honor of giving the first injection given in the U.S. for this mass prophylactic. I was really a celebrity, with my face posted all over the front page of newspapers of the country (better there than in the post office!), but the fame was short-lived. Six hundred volunteers (including about 90 physicians, a number of nurses, aides, and clerks) participated in the program, but all injections had to be given by the physicians.

Gamma Globulin is a very viscus fluid and the dosage for each child was calculated based on weight. The dose was quite high for even the smallest of children and injecting this large quantity of viscus liquid yielded a profound number of blisters on all fingers and hands at the end of each day. The Foundation had obtained 67 gallons of GG, most of the total U.S. supply, amounting to approximately 250,000 cc's, which was expected to be given during this epidemic. The first day (the 82nd and 83rd cases appeared and 3 deaths had occurred) 9,216 shots were given with 39,562 cc's being utilized. In four days 31,000 children received GG. *(continued on page two)*

POTLUCK IN PARADISE

The Lee County Medical Society Alliance welcomes the new physicians and their spouses to Lee County. Please join us for a fun evening of sharing good food and making new friends at our "Potluck in Paradise."

Date: Saturday, September 20, 1997
Time: 7:00 - 10:00 p.m.
Place: The home of Kathy & Michael Marchildon
11511 Wellfleet Drive (Gulf Harbour)
R.S.V.P.: Paul Machlin 561-2767 by September 11th

LEE COUNTY MEDICAL SOCIETY BULLETIN
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The Editors welcome contributions from the members. Opinions expressed in the BULLETIN are those of the individual authors and do not necessarily reflect policies of the Society.

CONTINUING MEDICAL EDUCATION REQUIREMENTS (CME) FOR RELICENSURE OF PHYSICIANS IN FLORIDA

Forty hours of continuing medical education are required for physicians during the current relicensure period, February 1, 1996 - January 31, 1998. These should relate to the physician's specialty and include the following mandates requirements:

M.D.'s
- 1 hour AIDS/HIV
- 1 hour Domestic Violence

D.O.'s
- 3 hours AIDS/HIV
- 1 hour Domestic Violence
- 1 hour Risk Management

Relicensure Requirements for Doctors of Osteopathy (D.O.'s) differ slightly from those of M.D.'s:
All D.O.'s must complete 40 hours of continuing education, 20 of which must be AOA Category 1 credit. One (1) hour must deal in risk management (in-person attendance requirement - either AMA or AOA approved). Three (3) must deal in AIDS/HIV, specific to Florida law (either AMA or AOA approved) and one (1) must deal with Domestic Violence (either AMA or ADA approved)

Requirement for Initial Florida Licensure of D.O.'s is three (3) hours HIV/AIDS (AMA or AOA approved, home study courses allowed) and one (1) hour of Domestic Violence (AMA or AOA approved).

Requirements for Initial Licensure of M.D.'s:
The current requirement for initial Florida licensure of physicians is three (3) credit hours of AMA Category I continuing medical education in AIDS/HIV, and (1) credit of AMA Category I continuing medical education in Domestic Violence. One (1) hour of Risk Management is required for M.D.'s in their initial licensure period.

FMA TO OFFER NEW HIV/AIDS HOME STUDY COURSE FOR CME CREDIT

The FMA Department of Education has a new HIV/AIDS course available for one hour of CME credit. This course, which takes approximately one hour to complete, includes the latest information on treatment and new medications to combat HIV/AIDS. This course will meet the state mandate for licensure. It also meets the relicensure requirement that all physicians must meet by January 1, 1998. ◆

LCMS ALLIANCE/FOUNDATION NEWS

Respectfully submitted by Kathy Marchildon, Corresponding Secretary

CHARITY BALL:

The journey to the Nile was well worth the trip ... three hundred and forty guests attended the 14th Annual Charity Ball, A Night on the River Nile on May 24th at the Ritz Carlton, Naples -- and what a party it was! True to Alliance Foundation tradition, this year's Charity Ball was a huge success, raising over $90,000 to benefit Abuse Counseling and Treament, Inc. (ACT) and numerous other local charities through our mini-grant program. Franky Margolin, Nancy Barrow and Maruchi Rodriquez extend a sincere thank you to all the Charity Ball committee chairpersons and members, as well as all the participants, donors, sponsors, underwriters and supporters of LCMSAG. Congratulations Nancy, Franky and Maruchi on a job well done!

WELCOME BRUNCH:

Every year the Lee County Medical Society Alliance and Foundation boards welcome new physician's spouses by hosting a Welcome Brunch. This year's brunch will be held on Wednesday, September 3rd at the home of Jay and Franky Margolin. Plans are well underway for this event which is being chaired by Noreen Kurland, Sue Savage and Maureen Schwartz. If you know of any new physicians in town, please contact Noreen at 481-8820, Sue at 482-3185 or Maureen at 468-1999. If you are a new physician to Lee County please encourage your spouse to attend the Welcome Brunch and become familiar with a very supportive, active and caring community organization.

POTLUCK IN PARADISE:

Our 7th Annual Potluck in Paradise will be held on Saturday, September 20th at 7:00 p.m. at the home of Mike and Kathy Marchildon. All members are encouraged to come and enjoy a fun evening of informal dining. Paula Machlin and Karen Weiss, co-chairs, are already preparing for this event which always proves to be an unforgettable evening of meeting new physicians and their spouses as well as "catching up" with old friends and colleagues. The food is delicious, the dress is casual. Come and enjoy!

(Please note: To contain the cost of hosting this event, we will not be sending out individual invitations to all members.) Therefore make sure to mark your calendar now as follows:

7th Annual Potluck in Paradise
When: Saturday, September 20th, 1997 - 7:00 p.m.
Where: Mike and Kathy Marchildon
11511 Wellfleet Drive • Fort Myers, FL. 33908
RSVP: Paula Machlin: 561-2767 • Karen Weiss: 768-3293

AS I RECALL... *(continued from page one)*

Each day we worked from 8 AM to 8 PM, but in the end all turned out well. The epidemic was stopped. Ironically, my two children were not allowed to receive the shots because we were transients in Montgomery and not residents! The authorities are still looking for the 20 cc's of Gamma Globulin that disappeared from my table.

After leaving Montgomery I was stationed in New Mexico and in 1954 Dr. Jonas Salk's first licensed Polio Vaccine (formalin and heat inactivated virus) was made available for limited use in the country. We were able to obtain this vaccine and give it to the children of our base; however, it was later reported that the Cutter Company who supplied our vaccine had supplied contaminated vaccine, with some active virus. We had one or two cases of Polio on the base but everybody else got by without a problem.

Didn't hear much more about Polio until 1962 when Dr. Albert Sabin produced the attenuated live virus vaccine. The LCMS had three Sabin Polio Sundays with members donating their time to administer this oral vaccine. Type 1 was given on one Sunday, and Type 2 and Type 3 on later Sundays, as three immunizations were required. All together, it was my understanding that 65,000 people, including some adults, in Lee County received this vaccine in 1962. This was free of charge to the public; however, a basket with a sign was placed to ask people to contribute 35 cents if they could to cover the cost of the vaccine. More than enough money was obtained, as some people were very generous, and the excess funds were contributed to ECC Library. There hasn't been a case of Polio in Lee County since the vaccine was given in 1962.

The most famous person to have Infantile Paralysis (Polio) was Franklin D. Roosevelt, the 32nd President of the U.S. He contracted Polio at age 39 and had very little use of his lower extremities, using a wheel chair and crutches. Instead of exposing his disability as I would expect someone to do today, President Roosevelt would hide his disability as much as possible by appearing in a seated position, or if he were standing, by wearing a cape that draped around his crutches. Politically correct in his day, but politically incorrect in our day of persons with disability rising well above their disability. President Roosevelt was the greatest one to ever rise above his disability.

Of note and comic relief is information that Dr. Cox had developed an ineffective vaccine for Polio before Dr. Sabin's. Dr. Cox's vaccine was also orally administered and was mixed into the ingredients of suckers (lolly pops). Each child got a sucker which was comically named in honor of Dr. Cox. If you do not understand the comedy speak to me personally please.

It has been a distinct pleasure to have been present at the beginning of the eradication of a major disease in this country and as best that I have been able to find, the last case of Polio was 1991 in the U.S. It still occurs throughout the world but is diminishing, and it is hoped that by the year 2000 there will be no more Polio.

This article is reminiscent of an old program regarding historical events called "AND YOU WERE THERE". Now you have been there in one disease in history. ◆

PRESIDENT'S MESSAGE... *(continued from page one)*

2. The Council on Legislation's Chairman, Dr. Michael Redmond, is gearing up to address most of the legislative issues passed by the House of Delegates. "Carry-over issues" such as due process for physicians terminated from managed care plans, prohibition against hold harmless clauses in HMO contracts, tort reform and revision of the profiling law to correct "glitches" as well as develop a proposal for funding the cost of operating the profiling program are on the agenda again. Additional activities planned include: expedition of the disciplinary process, noncompete clauses in HMO contracts, restriction of the term "physician" as a description, legal responsibility (liability) of managed care plans in their interference in the practice of medicine, opposition of expansion of roles for allied health professional and many more legislative activities, the space for which would include the entire newsletter.
3. FLAMPAC, under the chairmanship of Dr. Gerold L. Schiebler, continues to develop an aggressive membership recruitment drive for new members of FLAMPAC and the 1000 Club. The vibrancy of these two organization is critical for the fight against those who would debase, discount and attempt to destroy the practice of medicine in our state. These organizations are critical to assuring that our elected officials are friends of medicine.

Many other activities were reported. These are only the highlights. The FMA and FLAMEDCO continue to be financially viable for the time being. As you can see, like the operating system of the computer, organized medicine in the form of the LCMS, FMA, and AMA continue to work in the background for their membership. They are certainly worth the price that we pay for them in membership dues. ◆

LEE HAS THE BEST!

LCMS Alliance wins awards at FMAA Annual Meeting

The Florida Medical Association Alliance held its Awards Luncheon on Saturday, May 31, at the Sheraton Bal Harbor as part of its Annual Meeting festivities. The Lee County Medical Society Alliance and its delegation celebrated a great day as our Alliance received top honors in many categories. Lee County was recognized for the following achievements:

FIRST PLACE: Best Newsletter and Award of Excellence to the LCMSA for its "In Touch" newsletter.

FIRST PLACE: Membership Award to Lee County for Greatest Membership Increase.

FIRST PLACE: FC/PRN Project for Greatest Total Contribution.

CERTIFICATE OF ACHIEVEMENT: Second in State, Membership Development Award for 1996's Welcome Brunch.

CERTIFICATE OF ACHIEVEMENT: Award of Excellence for a County Fund-raiser, 1996 Magical Golden Anniversary Ball.

These awards recognize the hard work of our committee chairs and members as they developed and executed these projects. Congratulations to all of you! Lee County's own Betty Rubenstein received FLAMPAC's Certificate of Achievement for recruiting the greatest number of FLAMPAC members during the 1997 Membership Incentive Campaign. Both Betty and Sherri Zucker were honored with plaques on behalf of the FMA and the FMAA leadership in appreciation for their service and dedication during 1996-97. ◆

McCourt Scholarship Fund

Dear Dr. Zellner and Members of the LCMS:

On behalf of the campers and volunteers who attend Florida's Diabetes Camp, I want to thank you for the donation of $1,200 to sponsor Veronica Borek, Robert Salyers and Ashley Worden to attend camp this summer.

We have found that a youngster's adjustment to the disease has been aided by attendance at camp. The goal of Florida Diabetes Camp is to provide a fun camping experience in a medically supervised environment. In this relaxed atmosphere the children learn diabetes management and receive important psychological support from professionals and especially from their peers. Through this experience, we try to show the youngsters that with proper diabetes management they can accomplish any goal to which they set their minds. Three hundred and ten youngsters ages 7 to 19 attended our three camp session in 1996. It was one of our most successful years ever. All children can attend the camp regardless of their family's ability to pay any fees. However, food, insurance, rental and equipment bills must be paid and therefore sponsorships, donations and volunteer power is what keeps Diabetes Camp going.

We truly appreciate the continued support of the McCourt Scholarship Fund in helping our campers to attend this program. Thank you again.

Rosalie Bandyopadhyay, Adm.

IS YOUR LAND... *(continued from page one)*

- Start with your yearly K-1. Check to verify that there is an expenditure for real estate taxes. If there is no expense for real estate taxes, that means they have not been paid.
- The County Courthouse is the repository for recording all official documents in the county, and all of these recordings are public record. Such items as liens, foreclosures, refinancing, and other official actions can be found by reviewing these records. If you find a number of such filings, there is a good chance that the trustee is having financial problems.
- Ask the trustee or the trust accountant to provide you with a copy of the entire trust tax return. Your K-1 only provides a summary of your pro rata share of the activity for the year. The full tax return also includes asset and liability information which is not detailed on the K-1.
- Talk with other beneficiaries. You should have received a list of the other beneficiaries along with your trust documents. If you don't have one, get one. The trustee is obligated to provide it.
- If you don't have the time to check these things out, hire someone to do it for you. It's your money and you need to take an active interest in all of your land trust investments. The fall-out is far from over. If I can be of any assistance do not hesitate to call me. ◆

NEW MEMBER APPLICANT

Application for Membership

Active members are requested to express to the Committee on Ethical & Judicial Affairs or Board of Governors any information or opinions they may have concerning the eligibility of the applicants.

MICHAEL BAUERSCHMIDT, M.D. - FAMILY PRACTICE/EMERGENCY MEDICINE

Medical School: Ohio State University, Columbus, OH (1976 - 1979)
Internship Program: Moses H. Cone Memorial Hospital, Greensboro, NC (1979 - 1981)
Residency Program: Moses H. Cone Memorial Hospital, Greensboro, NC (1981 - 1982)
Post Graduate Education: University of South Florida, MBA (1991 - 1993)
Board Certification: American Board of Family Practice and American Board of Emergency Medicine. Dr. Bauerschmidt is an associate with Family Practice at Lehigh, 60 Westminster, Lehigh Acres, FL.

ALAN S. GOLDSTEIN, M.D. - PEDIATRICS/EMERGENCY MEDICINE

Medical School: Chicago Medical School, Chicago, IL. (1968 - 1972)
Internship Program: Montefiore Hospital, Einstein Medical School, Bronx, NY (1972 - 1973)
Residency Program: Montefiore Hospital, Einstein Medical School, Bronx, NY (1973 - 1974); Bronx-Lebanon Hospital, Bronx, NY (1974 - 1975)
Board Certification: American Board of Pediatrics and American Board of Emergency Medicine Dr. Goldstein is an Associate of Lee Physician Group at 2776 Cleveland Ave., Fort Myers, FL.

CATHERINE C. LARNED, M.D. - PSYCHIATRY

Medical School: University of Massachusetts, Worcester, MA (1977 - 1981)
Internship Program: University of Massachusetts / Berkshire Medical, Pittsfield, MA (1981 - 1982)
Residency Program: Cambridge Hospital / Harvard Medical School, Cambridge, MA (1982 - 1985)
Board Certification: American Board of Psychiatry and American Board of Neurology. Dr. Larned practices Psychiatry at 1006 Hancock Bridge Parkway, Cape Coral, FL.

MARIO D. MANGIERI, M.D. - RADIOLOGY

Medical School: Bologna University, Italy (1952-1958)
Internship Program: Long Island College Hospital, New York, NY (1958-1959)
Residency Program: Long Island College Hospital, New York, NY (1959-1962)
Board Certification: American College of Radiology, American College of Diagnostic and Therapeutic Radiology, and American Board of Nuclear Medicine. Dr. Mangieri is a retired physician who resides on Sanibel Island.

Oops....A mistake was made in our July Bulletin concerning Dr. Helgemo, here is the correct information...

STEPHEN LEIF HELGEMO, JR., MD - ORTHOPEDIC SURGERY

Medical School: John Hopkins University School of Medicine, Baltimore, MD (1987-1991)
Internship Program: John Hopkins University Department of Surgery, Baltimore, MD (1991-1992)
Residency Program: John Hopkins University Department of Orthopedic Surgery, Baltimore, MD (1992-1996)
Fellowship Hand: Raymond Curtis Hand Center, Union Memorial Hospital, Baltimore, MD (1996-1997)
Board Certification: Board Eligible. Dr. Helgemo is an associate with the Sports Medicine and Orthopedic Specialist at 8550 Riverwalk Park Blvd., S-3, Fort Myers, FL.

TIPS FROM THE OFFICE OF GENERAL COUNSEL / FMA

"Scheduling a Deposition"

QUESTION: I was recently contacted by an attorney concerning the scheduling of a deposition relating to a former patient. After scheduling the deposition over the phone, I received a copy of a subpoena by mail. Later, I received correspondence from a different party, indicating that attending a deposition to discuss the care and treatment rendered to a former patient violated physician-patient confidentiality, unless the subpoena was properly served by a sheriff's deputy or a certified process server. Is this correct?

ANSWER: Technically, yes. A subpoena for deposition is only binding if properly served as provided by statute. Florida law makes no provision for service of subpoena by mail. In addition, a health care provider can only discuss the care and treatment rendered to a patient with a third party if the patient provides written consent or the provider is compelled by subpoena to attend the deposition. Thus, while common practice among defense attorneys is to contact the physician to schedule a deposition and follow-up by mailing the subpoena, to comply with the technical requirements of the law the physician must be properly served with a subpoena before he can divulge patient confidences at deposition. To be properly served, a copy of the subpoena must be delivered to the person to be served or a copy left at that person's usual place of abode with any person residing therein who is 15 years of age or older informing the person of its contents.

MEDICAL RECORDS INFORMATION

John M. Knight, FMA General Counsel

SUBPOENAS AND COURT ORDERS REGARDING MEDICAL RECORDS:

A physician must, unless otherwise prohibited by law, furnish copies of patient medical records upon the issuance of a subpoena and notice to the patient or the patient's legal representative. Section 455.241(2), Florida Statutes. A physician's release of medical records pursuant to a subpoena is absolutely privileged. As a result, the physician cannot be held liable. Kleinschmidt v. Montes, M.D., 551 So.2d514 (Fla. 3d DCA 1989). It is recommended, however, that the physician notify the patient that the physician will produce the records as requested, unless the patient obtains a court order preventing the release.

Physicians commonly see subpoenas issued by a clerk of the court. In the past, the statues authorizing the release of records upon the issuance of a subpoena specified that the subpoenas had to be issued by a court of competent jurisdiction. The Florida Supreme Court, however, recently amended the civil procedure rules to authorize attorneys to issue subpoenas. As a result, subpoenas now may be issued either by the clerk of a court or by an attorney. Physicians must remember that they are now required to comply with a subpoena issued by an attorney, as well as one issued by a court.

A subpoena, however, does not authorize the release of psychiatric, substance abuse or HIV medical records. If any of these types of medical records are requested, the physician should contact the patient and request the patient to issue a specific, written release if the patient does not object to the release of the records. If the patient does not want the records released, the physician must contact the party who issued the subpoena and notify them that Florida law prohibits the release of these records without a specific, written release from the patient, or a court order. ◆

"MANAGED CARE GAG CLAUSES"

We need office staff help to identify managed care problems on the "Gag Clauses"

Last year, a number of county medical societies, including yours, worked with the American Medical Association (AMA) to obtain information concerning health plans practices, such as gag clauses and denials in authorization for care, that posed quality or ethical concerns to patients and physicians. Through your documentation, we were able to establish an invaluable data bank.

Health plans currently contend that plan gag policies that chill the ability of physicians to provide full informed consent to patients are a relic of the past. In 1996, and early 1997, some plans denounced gag policies publicly and took steps to eliminate them. But, clearly, the battle has not been won. The AMA has uncovered continuing examples of serious gag problems, including two recent contract provisions in Colorado and Kentucky. Our efforts to protect a patient's legal right to receive full medical counsel and a physician's ethical and legal duty to provide such council must continue. We ask for your renewed support in forwarding and sharing any information you may obtain with us regarding gag policies or other unethical or clinically inappropriate practices.

If you have contracts, letters, bulletins, or other relevant communication, please share them with us by mail or fax them to us. Please contact AMA attorneys if you wish to discuss these issues or would like more information.

Evamarie Noey, JD - AMA Health Law Division
(312) 464-4835 • (312) 464-5846 FAX
Evamarie Norey@ama-assn.org

Carol O'Brien, JD - AMA Health Law Division
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POSITION OF THE FLORIDA MEDICAL ASSOCIATION ON FLORIDA SUPREME COURT RULING ON PHYSICIAN-ASSISTED SUICIDE

(Krischer vs. McIver -- No. 89,837)

The Florida Medical Association applauds the Supreme Court of Florida for its ruling 7/17/97 in the case of Krischer vs. McIver.

Healing the sick and preserving lives have been the fundamental goals of physicians over the ages. They remain so today.

In order to hold true to these goals, the Florida Medical Association has long held a position in opposition to physician-assisted suicide, and we oppose the legalization of assisted suicide in all forms. At the same time, as physicians, we accept the responsibility of helping our terminally ill patients to the best of our ability by keeping them as pain-free and comfortable as possible during their final days.

The Florida Supreme Court based its decision in part on the state's compelling interest in maintaining the integrity of the medical profession, as well as on the ethical ban on physician-assisted suicide endorsed by the American Medical Association and the Florida Medical Association.

The formal policy statement of the American Medical Association and the Florida Medical Association is as follows: "The AMA opposes the participation of a physician, voluntarily or involuntarily, in the termination of a person's life by the administration of any agent or the use of any means to actively terminate a person's life."

Cecil B. Wilson, M.D. - President
Florida Medical Association - July 17, 1997

WE HAVE A NEAT IDEA BUT WE NEED YOUR HELP!

We could like to start a Partnership Against Drugs and Alcohol modeled after one at the Hillsborough County Medical Society. Physician/Attorney "teams" would be formed to go to the 6th and up grades to speak to the students about the medical and legal ramifications of drugs and alcohol abuse. If you are interested in participating and/or helping with the organizational structure, please call the Medical Society office -- 936-1645. ◆

BUSINESS TIPS:

THE POSITIVE SIDE OF COMPLAINTS

It costs less to keep the customers you have than to find new ones. And one of the best ways to keep them is to treat their complaints as gifts. Here's how:

- Thank customers and explain why you're pleased that they complained. Example: "Thank you. I'm glad that you told me so I can fix this for you and prevent it from happening again."
- Apologize for the problem. Note: This should not be the first step. Your apology will pack more punch if it comes after you've thanked them and explained why you're glad they complained.
- Promise to deal with the problem right away. Hearing you say this relaxes customers because they know you're going to act.
- Collect all the information you need. Ask: "So I can act quickly on this, could you please give me some information?" Or: "What will it take to satisfy you?" Or ask if they'll be satisfied if you do X or Y. Note: Never say "I'll need some information. Otherwise, I can't help you." Correct the mistake -- and do it as quickly as possible. Fast action shows you're serious about service recovery.
- Follow up to make sure customers are satisfied with what you've done. Thank them again for complaining.
- Help prevent similar situations from occurring by letting everyone in your organization know about the problem.

Source: A Complaint is a Gift, by Janelle Barlow and Claus Moller, Berritt-Koehler Publishers, Inc., 155 Montgomery St., San Francisco, CA. 94104.

FINAL MEDICAL TRANSCRIPTION GOOF OF THE WEEK:

"I hope not!"

"The flexible signoidoscope was introduced into the pharynx."

"The rectal exam revealed the thyroid gland was normal."

TOP TEN WAYS A FLORIDA PHYSICIAN CAN AVOID DISCIPLINARY PROBLEMS

1. Before you make that incision, make sure you are operating on the correct site. Do not rely upon others to prep the correct site.
2. No sex with patients. Remember, a prescription creates a physician-patient relationship.
3. Keep medical records on the family members, friends and employees you treat.
4. Don't prescribe controlled substances to yourself.
5. When you renew your license, read the fine print. It is your responsibility, not your office manager's, that you have taken the necessary CME courses and that you have met the necessary financial responsibility requirements. (The CME requirements for this licensing cycle is 40 hours of AMA Category 1 credits. One CME hour must be in HIV/AIDS, and one CME hour must be in Domestic Violence.)
6. Don't hire health care professionals who say they are licensed before first checking with the agency to make sure they are licensed.
7. It is your responsibility to renew your license on time, and it is a criminal offense to practice medicine on an inactive license. (The current license period began on February 1, 1996 and ends on January 31, 1998. If you have any question in your mind about whether you renewed your license in 1996, take a moment and check.)
8. Don't pre-sign blank prescription forms.
9. Before an advertisement of your services is printed or published, read it. You are responsible for the advertisement being accurate and that certain disclaimers are included.
10. When moving, notify the Florida Board of Medicine office of your new address. Without a current address, your renewal notice may never reach you, and practicing without an active license is a criminal offense.

"SLIPPERY SLOPES"

Wayne Lee, M.D., President, Broward Co. Medical Society

Abortion, futile care, negative incentives, cloning, genetic testing, organ donation, gag clauses, fetal research, euthanasia ... just to mention a few issues that will challenge each of us personally and all of us as a profession.

In the Air Force I was introduced to a phenomenon known as "target fixation." Essentially, pilots would become so fixated on eliminating a target that they would fly their planes into the ground. If we look around us, it is not too hard to believe that we, as physicians, could fall victim to "target fixation." The target is economics, and more and more it usurps our time, and threatens the essence of our profession.

Melodramatic? Maybe, but if so why don't all of our hospitals have a Bioethics Committee? Why is it that there are so few bioethical resolutions presented to the FMA House of Delegates this year? When is the last time that you've thoughtfully read the AMA's Principles of Medical Ethics?

It is hard to believe that at any other time in the history of our profession that ethical issues have been so difficult and so abundant. They are very slippery slopes, and it is a sine qua non of medical practice that we participate in their solutions, and that we are conversant with the issues. I believe that as everyday practitioners we may have abandoned an ethical agenda ... not our ethics, but a place and time to address them. Only by participating in the reestablishment of that agenda in our hospitals and other practice sites will we be able to reconcile our personal beliefs with societal change and legal demands.

If there is an "ask" in this article, it is that each of us devote a moment of introspection and reassure ourselves that we are prepared and committed to protecting the ethics of our profession. For your reading ...

THE AMA'S PRINCIPLES OF MEDICAL ETHICS

I. A physician shall be dedicated to providing competent medical service with compassion and respect for human dignity.

II. A physician shall deal honestly with patients and colleagues, and strive to expose those physicians deficient in character or competence, or who engage in fraud or deception.

III. A physician shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient.

IV. A physician shall respect the rights of patients, of colleagues, and of other health professionals, and shall safeguard patient confidences within the constraints of the law.

V. A physician shall continue to study, apply and advance scientific knowledge, make relevant information available to patients, colleagues, and the public, obtain consultation, and use the talents of other health professionals when indicated.

VI. A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical services.

VII. A physician shall recognize a responsibility to participate in activities contributing to an improved community.

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WHAT I LOOK FOR IN A PHYSICIAN

Elaine Fantle Shimberg

For the past 20 years, I have been a published writer of 15 books, many of them on medical subjects for lay readers. Three have been written with physicians as co-authors; all of them with physicians as consulting experts. I have been privileged to witness both sides of a physician-patient encounter, observing the frustrations, courtesy (and lack thereof), and moments when the relationship worked to the benefit and satisfaction of both individuals. This alliance is so vital that the majority of medical schools now have mandatory classes for their students dealing with the doctor-patient relationship.

It's obvious that few physicians or patients are pleased with today's conveyor-belt medicine, in which patients have become products and physicians are assigned to repair what they can before the work-in-progress rapidly moves out of sight and probably on to another conveyor belt as companies change insurance providers. There is no previous knowledge of the individual, no history other than one hurriedly gathered at the moment; and no feedback to the physician that his or her care helped (or hindered) the problem.

Yet, while juggling to overrule (without antagonizing) clerks practicing medicine by phone, treating faceless patients impatient with their shadow status, and keeping up with the daily changes in procedures and medications, there still are many physicians who succeed in creating an atmosphere of trust and mutual respect between doctor and patient.

These are the physicians whose names are passed along by patients like family treasures.

Here's why. It's what I look for in a physician:

- Displays strong clinical skills and is board certified.
- Communicates effectively, which includes active listening as well as the ability to disseminate information clearly. This is especially important when dealing with elderly patients who are not accustomed to being part of their own health care team and younger patients who need to be taught what type of information is important to give to their physicians.
- Welcomes patient as a vital part of the health care team. If a pediatrician, takes parent's input seriously; if dealing with an elderly patient, directs comments to the patient, but listens to adult child as well. Both care givers often recognize changes in the patient's behavior before the physician will notice.
- Stays current in new treatment modalities and offers pros and cons of each to patient.
- Practices preventive medicine by educating patients through articles, video tapes, and reference sources.
- Welcomes, rather than feeling threatened by, the patient requesting a second opinion.
- Requests feedback from patients concerning attitudes of office staff and nursing staff both on the phone and in person.
- Protects privacy and modesty of patients.
- Recognizes the importance of cleanliness in waiting room, bathroom, and examining rooms, understanding that if these areas are dirty or dusty, the perception is that your equipment is as well.
- Accepts the mind/body connection and is open to discussion of alternative medicine, including relaxation techniques, visualization, and biofeedback.
- Prescribes medication and procedures only when deemed necessary, not because he or she assumes the patient expects it.
- Gives the perception of spending time with the patient by sitting down, rather than being a "door hugger" and edging out as quickly as possible.
- Remembers that no question is stupid. If the patient doesn't understand the answer, carefully rephrases it.

Granted, it takes time and effort to achieve the above "hands-on" medicine. But it offers satisfaction for both parties in return. If we -- doctors and patients alike -- don't stand up and shout to big business, "We're mad as hell and we're not going to take it anymore" (as we did with drive-by deliveries and gag rules in federally funded health care plans), then medicine as you dreamed of practicing it while you were in medical school will become not endangered (it already is), but extinct, an exhibit of things past in some dusty and seldom-visited museum.

Author of numerous books including *How to Get Out of the Hospital Alive, Living with Tourette Syndrome, Strokes: What Families Should Know, Relief from IBS: Irritable Bowel Syndrome*, and *Depression: What Families Should Know*. She is the first lay member of the FMA's Council on E & J Affairs and is past president of the Florida Chapter of the American Medical Writers Association.

10 WAYS TO AVOID A HEALTH CARE FRAUD AUDIT

By Marc S. Raspanti, J.D. and Bruce J. Goldstein, J.D.

1. **STAFF TRAINING:** A properly trained staff can avoid or minimize numerous mistakes, most particularly in the area of billing. A health care provider is inviting increased government scrutiny if the provider allows poorly trained employees to handle complex billing issues. Furthermore, the fact that errors were made by the provider's staff will not insulate the provider from liability. The recruitment and training of a qualified staff and the establishment and maintenance of an accurate billing system are prerequisites for compliance with today's changing, increasingly sophisticated regulatory framework.

2. **RECORD-KEEPING PRACTICES:** If a provider's services are questioned in an audit, the provider always bears the burden of proving that the services billed were medically necessary and actually rendered. While accurate medical chart documentation enhances the overall delivery of medical services, it has a secondary benefit in minimizing a health care fraud audit. Detailed (and legible) medical chart documentation is the only appropriate and reliable method to ensure accurate answers to audit inquiries. Auditors live by the axiom of "it is not recorded, it didn't happen."

   For providers who routinely perform the same procedure on multiple patients, the use of form or "cooker cutter" narratives may be viewed as expedient. An auditor, however, may be skeptical in reviewing such boilerplate narratives. Accordingly, it is important that chart documentation not only be accurate but that it include specific details regarding the patient and the services provided.

3. **UNAUTHORIZED USE OF SIGNATURE STAMPS:** In the same vein, careless and unsupervised use of provider signature stamps creates unnecessary problems for thousands of physicians. If you must use a signature stamp in your practice, a well-defined, written protocol should be developed to ensure that your stamp in not used indiscriminately.

4. **BILLING PROFILES:** Utilization reviews, changes in patient billing practices, "upcoding" of billing procedures, rapid changes in patient populations, or the rapid addition or deletion of providers often pique the interest of fraud auditors. Enforcement authorities now rely on sophisticated computer programs to monitor billing practices and to raise "red flags" when a suspicious pattern or activity appears. If your practice undergoes a significant change in frequency or volume, you may wish to provide your carrier with well documented reasons for such changes.

5. **AGGRESSIVE COLLECTION EFFORTS:** While every practitioner deserves to be paid for legitimate services rendered, overly aggressive collection efforts by office managers or accounts receivable clerks may backfire by triggering inquiries by angered claims representatives or patients. Many insurance carriers have organized internal fraud units staffed with former federal and state investigators to review and refer suspected health care fraud to appropriate authorities. Accordingly, it is generally in a provider's best interest to resolve billing disputes quickly, amicably and accurately.

6. **"ROUTINE" MEDICAID/MEDICARE AUDITS:** Medicaid and Medicare increasingly invoke their "walk-in" rights to conduct utilization reviews, document reviews, audits, and evaluations. Many health care providers resent these "intrusions." Such an arrogant attitude, unfortunately, can turn a minor review into a full-scale civil or criminal investigation. The prudent provider should carefully monitor all requests for information from an agency, respond professionally and accurately, and maintain records of all requests and responses.

7. **BEWARE OF THE DISGRUNTLED EMPLOYEE:** Health care fraud investigations are often triggered by a sole disgruntled employee, dissatisfied colleague, or estranged spouse. Furthermore, private causes of action against providers to enforce antifraud statutes are being commenced by private citizens with increasing ease. If these "whistle-blower" or qui tam lawsuits persuade the government that fraudulent practices have occurred, the whistle-blower may be entitled to up to 25 percent of the gross recovery in addition to his or her counsel fees. Given these economic incentives, as well as the financial importance of Medicare and other government insurance programs to many health care providers, the number of whistle-blower suits against health care providers is rising dramatically.

8. **ILLEGAL OR IMPROPER REFERRAL RELATIONSHIPS:** Because of the potential for fraud and abuse, the government has actively discouraged many joint ventures in which physicians have ownership interests or a financial relationship. Physician joint ventures, which were popular and profitable in the 1980s, are now viewed as illegal self-referral relationships. Every physician who refers patients to a facility in which he or she has an ownership or other financial interest should have this arrangement carefully reviewed by a qualified practitioner to make sure that it passes the "Safe Harbor" or "Stark" tests and complies with applicable state laws.

9. **BEDSIDE MANNER:** Many litigation experts believe that the quality of a provider's bedside manner may decrease or increase the likelihood of a malpractice suit by an unhappy patient. Similarly, the manner in which a provider treats it's staff and it's carriers may also influence the chances of a health care fraud audit. A cordial, professional response is always the best approach when resolving a billing dispute, handling employees, or in dealing with the imposition of a "walk-in" review.

10. **LACK OF COMPLIANCE PROGRAM:** Many medical practices do not have any sort of compliance program in place. A well-thought-out and carefully implemented internal compliance program can go a long way toward reducing the risk that your practice, hospital, or health care organization will be subjected to an audit. Designation of a person or department responsible for compliance issues is the best defense against government inquires. Even if an audit occurs, a coherent, carefully implemented compliance program can go a long way toward demonstrating your organization's commitment to abide by federal, state, and private insurer rules and regulations.

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KUDOS FOR YOUR HELP WITH HIGH SCHOOL PHYSICALS

On June 10, 1997, at Lee Memorial Health System/Cleveland Campus, nine physicians and volunteers did 430 free physicals: Drs. Joseph Hobson, Martin Sherman, Bob Arnall, John Ritrosky, Barry Sell, Joseph Salaz, Larry Eisenfeld, Ed Gomez, and Ron Gardner.

On July 22, 1997, at Cape Coral Hospital, eight physicians and volunteers did 301 free physicals:

Drs. Charles Curtis, Harris Bonnette, Anamika Jain, John Ritrosky, Richard Delorio, Donn Fuller, Edward Dupay, Frank Farmer and Mrs. Carmella Koopmeiners, ARNP.

There may be many more physicians in our community who donated time to our children for sports physicals. Thank you to all who help keep our schools' sports activities going. Special recognition and thanks to Tammy Mugavero, Athletic Training Coordinator, and her team, who actually put these programs together. ◆

12 STEPS TO A PERFECT PATIENT RECORD

Reprinted from AMA News

Mag Mutual Insurance Company, an Atlanta-based liability insurer, sees 12 key characteristics in good medical records. Its *Risk Management Handbook for the Medical Office Practice* recommends physicians strive for:

1. **UNIFORMITY:** If all the records use the same tabbed dividers (for x-ray, lab, etc.), information will be easier to find.
2. **SECURE PAGES:** Use fasteners to ensure pages don't fall out or get shuffled to a new position.
3. **ORGANIZATION:** Use a system to make it easier to locate records quickly. You can color-code by last name, by diagnosis or by chronic problems. Any system is OK as long as it's clear to everyone who needs to access records.
4. **TIMELINESS:** Try to make all notes contemporaneously.
5. ***LEGIBLE RECORDS:*** *If you can't write legibly, do not write notes by hand. Use a transcription service.*
6. **DICTATED RECORDS:** Always proof-read transcribed notes. The phrase: "dictated but not read" does not protect the physician from responsibility for what was transcribed.
7. **ACCURATE RECORDS:** The record should include all objective information including diagnosis, prognosis and direct quotes from the patient. It should not include subjective or disparaging remarks about the patient.
8. **CORRECTIONS:** If you have to correct a record, draw a single line through the original note and add the new one along with the date, time and your initials.
9. **JOUSTING:** Never enter derogatory remarks about other providers.
10. **PATIENT TELEPHONE CALLS:** Document all patient phone calls in the record. It's a good idea to carry around a phone call pad for this purpose.
11. **CONVERSATIONS:** Document all conversations with both the patient and the patient's family members.
12. **POTENTIAL COMPLICATIONS:** Document all complications considered. Failure to recognize a potential complication in time to prevent injury is a common basis for a lawsuit. ◆

PRESCRIBING MARIJUANA COULD BE HARMFUL TO PHYSICIANS' HEALTH

On December 30, 1996, Barry R. McCaffey, Director of the Office of National Drug Control Policy, Attorney General Janet Reno, and Donna E. Shalala, Secretary of the Department of Health and Human Services (HHS), announced the Administration's position regarding the recent passage of California Proposition 215 and Arizona Proposition 200 regarding discussing with a patient the risks and alleged benefits of the use of marijuana to relieve pain or alleviate symptoms.

Physicians are encouraged to talk with patients about their concerns and answer inquiries about any procedure, treatment, substance, or device that may affect a patient's health. Physicians are also encouraged to share their knowledge and their professional expertise regarding the risks, benefits and legality of any potential medical treatment or modality. No "gag rule" stops physicians from engaging in these discussions.

Such discussions, however, have their limits. Physicians may not intentionally provide their patients with oral or written statements in order to enable them to obtain controlled substances in violation of federal law. Physicians who do so risk revocation of their DEA prescription authority, criminal prosecution, and exclusion from participation in the Medicare and Medicaid program.

For more information, contact Jonathan Schwartz at the Department of Justice: (202) 514-3475. ◆

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A HEALTHY START

From government officials to business leaders to consumers, people are finally realizing that an important component of reducing healthcare costs and resolving our nation's healthcare crisis is "PREVENTION".

Everyone now agrees it's more desirable -- as well as easier and cheaper -- to *stay well* than to *get well.*

But, while most people's idea of prevention means quitting smoking and losing weight, Governor Lawton Chiles and the State of Florida continue to stride forward by championing a program that ensures a healthier life, starting at birth.

"Healthy Start" is a visionary statewide program designed to help women have healthier babies, reduce infant mortality and improve the overall health and development of children. It pulls together coalitions of healthcare specialists, government, educators, businesses and citizen volunteers to ensure that pregnant women and babies have access to proper prenatal care and first-year pediatric care.

The Healthy Start Coalition of Southwest Florida is one of the 30 coalitions that have formed to serve Florida's 67 counties. Our coalition serves Collier, Glades, Hendry and Lee counties. Based on our most recent data in the previous year, over 7,400 babies were born in our four county radius. Of these births, over 60 of the mothers did not receive <u>any</u> prenatal care and over 300 entered care well into their third trimester.

Healthy Start is a smart investment. Every dollar spent on home visits for high-risk pregnant women can save nearly $6 in obstetrical, neonatal and pediatric costs. One $8 measles immunization can save $5,000 in hospitalization costs. One dollar spent on schoolbased clinics can save $7 in prenatal/delivery costs and AFDC. Preventing one low birth-weight baby with complications can save nearly $500,000 in lifetime custodial care.

Healthy Start can create a new cycle of prevention and wellness, and provide long-range relief to our overburdened healthcare system. Please call the Healthy Start Coalition of Southwest Florida at (941)338-2676.

Join us as we work to improve the chances for all babies in Collier, Glades, Hendry and Lee counties to have the Healthy Start they deserve.

Mary Sue Mercado, Healthy Start Community Liaison • (941)338-2676 ◆

DO YOU KNOW WHY YOU BELONG TO THE FMA?

By Linda E. Barr, FMA West Central Field Office Director

As we all know, membership in the Florida Medical Association and county medical societies is declining. Granted, physician incomes are down and membership fees are pretty hefty, but why can some physicians afford to belong while others claim financial hardship as their reason for dropping membership or not joining in the first place?

I have reviewed a number of surveys completed by physicians who resigned their memberships, and the prevailing theme is that former members don't think they're getting their money's worth from the FMA or the county medical society, but they also either are not aware of or have not utilized the services we provide. In addition, most were not aware that the FMA's legislative advocacy program has saved them countless dollars.

There were 21 surveys completed by former members in my field office area. Of those, 19 former members had never purchased educational materials from or participated in any educational programs sponsored by the FMA. My guess is that they didn't know they could.

Twenty out of the 21 had never utilized the health and policy research services available through the FMA, and once again, they probably were not aware that they could. Eighteen out of 21 had never taken advantage of their county medical society's referral service. None had purchased any goods or services from the FMA Vendor or Choice program.

On the other hand, 17 out of the 21 felt that they were well informed of FMA activities and programs. That fact alone shows me that we are not doing a good job of communicating what benefits of membership exist.

The biggest benefit we can cite is the amount of money organized medicine has saved all Florida physicians through our legislative lobbying. For instance, if not for the FMA and our active members, reimbursement for treating a patient covered by automobile PIP policies would have decreased by 54 percent; Medicaid reimbursement rates would have been reduced by 19.2 percent; and elimination of AHCA's physician office lab inspections, which saves $250 per year starting next year, can be attributed to our lobbying. I don't know the exact savings in dollar amounts of these and other accomplishments, but they are sure to add up to more than the cost of membership.

Anyone who wants to volunteer to speak at hospital staff meetings or with group practices to generate membership, please contact me and I will accompany you to the meetings. I'll even do all of the work preparing materials to leave with prospective members.

My telephone number is (813) 930-9766, at least for the time being. It looks like I will be moving my office into the Hillsborough County Medical Association, which will require a new phone number. I'll keep everyone informed when I get a new phone number and address. ◆

CLOSING THE ERISA LOOPHOLE

Some managed care plans imperiously deny or delay medical treatment as though they are unafraid of ever being held accountable for their actions.

It turns out that they have good reason to think that way. The plans are the beneficiaries of a major, yet little-known, loop-hole in federal law that governs employee health plans. It prevents the plans from being sued for malpractice, despite the fact that health plans are increasingly dictating treatment decisions.

The AMA has made it a top priority to close this dangerous loop-hole. It is contained in the federal Employee Retirement Income Security Act, better known as ERISA, which oversees employee pensions as well as health coverage for 120 million Americans. Now more than 20 years old, ERISA is showing its age with respect to the changes in health care.

Lawmakers enacted ERISA with uniformity in mind, especially for large multistate employers. So they exempted ERISA-covered plans from state laws and regulations, including individual-state mandates of all types. Courts, until recently, have interpreted this to include exemption from malpractice and negligence lawsuits against health plans that contract with employers under ERISA.

ERISA also operates from the understanding that employee-benefit health plans are essentially a contract to provide certain benefits to the patient. So if a plan denies or delays a diagnostic test or referral that it should have provided -- that in retrospect would have saved the patient's life -- that's not considered malpractice, with all the attendant risks to the plan of punitive damages or pain awards. Instead, it's breach of contract, and what's at stake is just the few dollars the test or referral would have cost.

This ERISA loophole is bad public policy on several fronts. It means that patients don't have the right to sue for an injury or death due either to blunder or even outright greed on the plan's part. Nor do they have any realistic potential leverage that would make a plan reconsider its treatment decisions before the damage is done. In the broadest sense, it raises a fundamental and troubling question of how seriously such managed care plans take their obligations when they know they are not accountable.

Of course, there is one individual involved in the treatment of the patient who absolutely can expect to be sued in the event of a bad outcome. It is -- now stop us if you've heard this one before -- the physician. The profound irony, of course, is that a physician operating within the rules set by the health plan can be punished when those rules lead to a bad outcome, while the plan itself goes scot-free.

Fortunately, there have been several court rulings in recent years that have weakened the ERISA exemption. It is a very good trend. Yet until the issue is settled decisively, the very first brief that defense lawyers for health plans will put on the table is one citing the exemption. It is a ploy that often works.

The AMA is taking a three-pronged approach to resolve this serious problem.

One is to share information with the U.S. Dept. Of Labor, which oversees ERISA enforcement, and to explore what can be achieved interms of litigation and regulatory enforcement approaches. Immediate past Labor Secretary Robert B. Reich spoke out against the ERISA exemption and we hope that his successor will continue to oppose it.

Another AMA initiative is to encourage more courtroom precedents against the exemption. The AMA/State Medical Society Litigation Center will soon file a friend-of-the-court brief in a case in Pennsylvania in concert with the state medical society. The case involves a patient who claims a three-hour wait for a transfer to a managed care plan-approved hospital contributed to his quadriplegia from a spine abscess.

The third approach by the AMA is to seek to change ERISA on Capitol Hill. Only a few paragraphs of legalese would be needed to amend ERISA to remove the exemption. However, this approach will likely take time. Expect stiff opposition from the business and managed cared communities.

Whatever the method, it's time managed care plans join the rest of the world and become accountable for the decisions they make.

PHYSICIANS BE ALERT TO WHAT YOU READ ABOUT THIS ORGANIZATION!

ARM (Association for Responsible Medicine)

This organization is backed by the Trial Attorneys and they use it as an advocacy program with a few Florida citizens who feel they have been wronged by the medical community. BELOW IS THEIR 1998 LEGISLATIVE PRIORITIES as printed in 'THE PATIENT ADVOCATE" July issue:

We need input from members about their priorities for new legislation to protect patients. We are considering an omnibus patient information and protection bill for next year that may include some or all of the following issues. Please give us your opinion of the most important issues by returning the following to us with your indication of which are your high, medium or low priorities. You may also E-Mail us at Armxd@Sprynet.com. Our address is ARM, P.O. Box 270986, Tampa, FL 33688.

- Change the makeup of the Board of Medicine to include a greater proportion of consumer members.
- Change the law that now allows hospital mistakes to be kept from the public and the patient.
- Ensure that patients are given adequate information in writing that describes a proposed operation, the risks specific to that operation, including the qualifications of the doctor performing it, and the reasonable alternatives to the operation.
- Make Doctors accountable for the wrongful death of patients who have no spouse or children under 25.
- Make HMO's accountable for failure to provide timely care.
- Require all doctors to have adequate medical malpractice insurance in order to maintain their license.
- Require doctors in all hospitals and medical schools to report their malpractice claims to the Florida Department of Insurance. (The existing law makes malpractice claims a public record, but Board of Regents doctors are now exempt from the law.)
- Revise the Living Will law to ensure that doctors certify in writing that a condition is terminal and obtain the consent of the designated surrogate or proxy before withdrawing treatment. Require a minimum waiting time after the certification before treatment can be withheld or withdrawn.

GET INVOLVED WITH THE LEGISLATIVE PROCESS THROUGH ORGANIZED MEDICINE -- LCMS/FMA/AMA/SPECIAL SOCIETY. SUPPORT GOOD MEN & WOMEN TO ELECTED OFFICE. JOIN FLMPAC AND 1000 CLUB.

MEDICAL SOCIETY MEETINGS 1997-98

October 20, 1997
A MURDER MYSTERY!
"Politics Can Be Murder"
Broadway Palm Dinner Theater

November 17, 1997
HIV/AIDS and Domestic Violence
CME Requirement for re-licensure

December 8, 1997
Holiday Party!
Veranda Restaurant

January 19, 1998
Installation of Officers

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