

LEE COUNTY
MEDICAL
SOCIETY

Bulletin



THE VOICE OF LEE COUNTY MEDICINE

Volume 22, No. 8

Fort Myers, Florida
Mary C. Blue, M.D.

December, 1998

The Lee County Medical Society
Lee County Medical Society Alliance
And
Northern Trust Bank
Invites you to a

HOLIDAY PARTY
Monday, December 7, 1999
The Veranda Restaurant
7:00 - 11:00 p.m.

LCMS Members - No Charge
Guests, Retired Members - \$36.00

RSVP BY 12/4/98
LCMS OFFICE — 936-1645

**HOLIDAY SHARING
CHARITIES**

Two Beautiful Baskets by
Creative Baskets
To be raffled for:
**Guardian Ad Litem Special Needs
Fund**
(Monetary Gifts)
Big Brothers/ Big Sisters of SWFL
(Children's Clothes)

**1999 GENERAL MEMBERSHIP
Lee County Medical Society
MEETING DATES**

Monday, January 18, 1999
Program:
Glenn Bryan, M.D., FMA President
Will Install the LCMS 1999 Officers

March 15, 1999
May 17, 1999
September 20, 1999
October/Joint Alliance
Legislative Meeting
November 15, 1999
December/Holiday Party

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PRESIDENT'S MESSAGE

David M. Reardon, M.D.

THE REWARDS ARE GREAT—AND THERE IS ENOUGH FOR ALL

As the year comes to an end, I have to say that the experience has been an outstanding one for me. I am grateful for the opportunity to have represented you in whatever small way the office afforded me to do so. I will take away more from my year as president than I have given. Through the many meetings I have attended locally, statewide and nationally, I have seen the most dedicated leaders of organized medicine in action, heard from national political figures, been through seminars conducted by political and communication consultants and watched medicine's issues hammered out in caucuses. To say that I have learned and grown from these opportunities does not fully express the impact they have had on me. They have given me the confidence and the background to speak for and represent our great profession and our patients. It has been awesome and I have had fun.

It goes without saying that the president is not the Lee County Medical Society, merely it's spokesman and guardian. But I shall not go without saying it. I am indebted to the very dedicated staff that provide a supporting framework for our society to function and the will and manpower to keep it moving. Ann Wilke is the Energizer bunny: constantly moving, keeping tabs on literally everything so that we know the directions in which we need to work. Cynthia Gonzalez, Marian McGary, and Shirley Bowman provide support and assistance. The Board of Governors, Committee Chairs and Committee members give freely of their time and sit through many

long meetings carrying out our work on your behalf. All of these people as a group have skills and knowledge that they contribute which really makes the president's job easy. It's hard to stray too far from the message with so much guidance.

In January, I wondered aloud where the journey of this year might take us. We are further into managed care; we have a national lawsuit against Aetna initiated by LCMS members, a very successful legislative year in Tallahassee and a test of our disaster preparedness with Georges. One of the unexpected discoveries arose out of our strategic planning effort of this year. A group of past presidents has come together with their cumulative experience and wisdom to address the major items in our strategic plan. From this three committees have been formed: Public Relations, Patient Advocacy/Managed Care and Membership. The committees have begun their work and initial projects include responding to the NewsPress regarding recent coverage of malpractice settlements, addressing reimbursement discrepancies by managed care companies and gathering data from patients and physicians regarding their managed care experiences to be used legislatively and for consumer education.

I would like to thank all of you for helping make this a great year for me. Like Meriwether Lewis, I have tried to go undaunted into the wilderness on your behalf. Unlike him, I do not despair at the end of my journey. I am hopeful. Please consider giving some of your time to the LCMS. The rewards greatly exceed the cost.

PRESCRIPTION DRUG SCAMS HIT MOST PHYSICIANS...

By Barbara Hartly-Golder, M.D., J.D.

Prescription drugs bring a tidy profit on the street, and business is booming.

Unlike traffic in other drugs, this abuse of controlled substances can ensue straightforward and upright physicians fooled by conniving patients. It's an unpleasant fact of medical practice: Nearly every physician will, sooner or later, be the victim of a drug scam at the hands of a patient or his own office staff.

Doctors who regularly prescribe controlled substances in the course of their practice are most often targeted, but no one is immune. Fortunately, a few simple habits can reduce the risk of a successful scam:

**TRACK PATIENT USE OF CONTROLLED
SUBSTANCES**

Incorporate a log into the medical record that indicates the type and amount of medication prescribed, including an expected refill date.

ESTABLISH REFILL POLICIES

Whenever possible, check the medical record for medication overuse before authorizing a refill. It is best to refill medications during business hours and only after conversation with or examination of the patient. And make it clear to your office staff when prescriptions can and cannot be refilled.

BEWARE OF PHONE CONS

A favorite ploy of con artists is to call a physician at night or on weekends, and claiming to be a patient of an unavailable colleague. The "patient" offers a tale of woe about lost medications, dying grandmothers and hurried trips to secure a prescription from the doctor on call, who, too late, discovers the whole thing to be a ruse.

At the very least, take a name, address and phone number and verify identity by returning the call or checking the telephone directory.

Another effective tactic is to describe—inaccurately—the physician whose patient the caller claims to be. If the caller doesn't correct the information, odds are it's a con.

LOCK UP YOUR PRESCRIPTION PADS

Stolen and forged prescription pads are a source of illicitly obtained drugs. And if forged prescriptions make it appear that you are guilty of excessive prescribing, you may face problems with your state licensing board.

Even if you manage to explain the forgery to the licensing board, you may still be at risk for disciplinary actions if the board finds that you were negligent in handling your prescription pads and never pre-sign prescription forms.

KEEP TRACK OF YOUR STAFF

It is not unusual for office staff to forge prescriptions, either in writing or by calling them in. Clear office policy makes it more likely that your staff will alert you if someone is procuring medications illegally.

ESTABLISH RAPPORT WITH PHARMACIES

Although it is increasingly difficult for physicians to predict where their patients will refill prescriptions, it's still worth asking your local pharmacies to contact you if unusual prescriptions are presented in your name.

With the constabulary stepping up enforcement of drug laws and state licensing boards increasingly sensitive to improper prescribing habits, a little attention to narcotics management can keep your house in order—and the cops away from your door.

AS I RECALL...

Roger D. Scott, M.D.

**OVER THE RIVER
AND THROUGH THE WOODS**

The other day I was driving across the Cape Coral Bridge down Cape Coral Parkway and noted the absence of the old Gulf American Building on the NW corner of Del Prado and Cape Coral Parkway. This building had served as headquarters for the Gulf American Land Company for some years. It was approximately 5 or 6 stories tall and was the tallest building in Cape Coral for many years. It is sad to see that this old landmark, so vital to the history of this "new" community, being demolished.

In 1957 across the river from Ft. Myers to the West was a large tract of land that was purchased by Leonard and Jack Rosen (brothers) who formed the Gulf American Company that built Cape Coral. Prior to development, this was all woodland. In 1958 just as I was preparing to move to Ft. Myers the end of June, there was a commercial on TV in Baltimore advertising "beautiful Cape Coral developing near Ft. Myers, FL." Connie Mack Jr. was the advertising gentleman standing in front of a couple of beautiful houses and talking about what a wonderful place Cape Coral was. In mid July 1958 Kenny Schwartz (general manager of Gulf American) moved into the first home in Cape Coral. A few months later Kenny Schwartz brought his maid in for surgery, and we began talking and he invited me to go see "beautiful Cape Coral." It was quite a trick to get over there as one had to go across the old Edison Bridge, down Pine Island Road to Harney Point Road (now known as Del Prado Blvd.) and then south for some distance to reach the only four houses in Cape Coral. I was impressed by the beautiful woods driving down this road and there was not a great deal of land cleared at that time. Subsequently all of the trees, etc. have been stripped out and replaced by canals and pavement. I did not return to Cape Coral again until 1964 when the Cape Coral Bridge was opened, and what an amazing amount of growth had occurred in only 6 years.

Four of our members have been prominent in Cape Coral's recent history.

Harvie J. Stipe, M.D. (GP) owned 10,000 acres of land north of Pine Island Road as his hunting preserve. Harvie was an avid sportsman and also ran cattle on this land. He purchased the 10,000 acres soon after WWII for two dollars and eighty cents per acre (a fact). If you don't know how much 10,000 acres is, I believe this represents 16 square miles of land. To drive around 10,000 acres you have to drive 16 miles all together around a 4 mile, 4 sided square. This is quite a waste of land in anybody's game. The Rosen brothers persistently approached Harvie to buy his land at a great profit. Harvie was quite stubborn because he loved hunting more than money. This land was vital to the future plans of Cape Coral and ultimately the Rosens approached Harvie and told him they had a deal he couldn't refuse. They reportedly produced a check for \$1,000,000 and Harvie accepted. I don't think it was any less and it may have been more. \$1,000,000 was quite a bit of money in the 1950's. Harvie continued to practice medicine for many years thereafter, probably greater than twenty.

Ted David, DDS, M.D. (a well-trained general and oral surgeon) came to Ft. Myers in 1961. He opened an office for General Practice and Surgery in Cape Coral and went to Cape Coral 3 days a week by boat. He kept a boat docked at his house on Whiskey Creek and kept a car near his point of landing directly across the river in the Del Prado area. It was said that you could never tell when Ted was going to get to the office as he fished along the way. He also maintained an office in Ft. Myers for both General Practice and Surgery. Ted was an excellent surgeon; however, had habits overtook him and his hospital privileges were not renewed several years later. Ted succumbed to his bad habits while living in Oklahoma.

Robert Tate, M.D. (GP) was the first full-time physician for CC arriving about 1962-63. Bob did hospitalize patients but had an arduous route in making rounds at the hospital driving all the way from CC up Harney Point Road around the old Edison Bridge back to LMH. It was a bit difficult to take care of sick patients and he was greatly relieved when the bridge opened. A few years later he was joined by Wally Dawson, MD (GP) who is still around somewhere although I haven't seen him in quite some time. Later Tom Hinkle, M.D. (GP) joined the two there. The situation was somewhat relieved for them medically when the CC Hospital opened in July of 1977 with 94 beds.

Merry Christmas and a Happy 1999 to each of you!!

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Ann Wilke, 936-1645

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.

NEW MEMBER APPLICANTS

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



Athan Drimoussis, M.D. - Endocrinology
Medical School: University of Athens, Athens, Greece (1982-88)
Internship: North Shore University Hospital, Manhasset, NY (1993-94)
Residency: New York Medical College, New Rochelle Hospital Med Ctr, New Rochelle, NY (1994-96)
Fellowship: Nassau County Medical Center, New York University, Stony Brook, NY (1996-98)

Board Certification: Board eligible. Dr. Drimoussis is an associate of Lee Physicians Group at 708 Del Prado Blvd., Cape Coral.



Ellen Hoefer-Hopf, M.D. - Internal Medicine
Medical School: Justus-Liebig University, Giessen, Germany (1985)
Internship: St. Vincent Hospital, Indianapolis, IN (1995)
Residency: St Vincent Hospital, Indianapolis, IN (1996-97)
Board Certification: Board eligible. Dr. Hoefer-Hopf is an associate of Lee Physicians Group at 28351 S. Tamiami Trail, Bonita Springs.



Jeffrey Martin, D.O. - Dermatology
Medical School: University of Health Sciences, Kansas City, MO (1987-91)
Internship: Humana Hospital, West Palm Beach, FL (1991-92)
Residency: The University of Medicine & Dentistry of NJ, Stratford, NJ (1992-94)
The Ohio University of Osteo Med Affiliated Hospitals, Cuyahoga Falls, OH (1994-98)

Board Certification: Board eligible in Dermatology. Board Certified by the American Osteopathic Board of Family Practice. Dr. Martin is in private solo practice. His organization name is Island Coast Dermatology at 8380 Riverwalk Park Blvd, S-310, Fort Myers, FL.



John Ritrosky, M.D. - Plastic Surgery
Medical School: University of Florida, Gainesville, FL (1985-89)
Internship: Mayo Clinic Foundation, Rochester, MN (1989-90)
Residency: Mayo Clinic Foundation, Rochester, MN (1990-94)
Fellowship: University of Indiana, Indianapolis, IN (1994-96)

Board Certification: American Board of General Surgery. Dr. Ritrosky is in private solo practice. His organization name is John D. Ritrosky, M.D., P.A. at 12640 World Plaza Lane #71, Fort Myers, FL.



Diana Young, M.D. - Internal Medicine
Medical School: Case Western Reserve University, Cleveland, OH (1992-96)
Internship: University Hospitals of Cleveland, Cleveland, OH (1995-96)
Residency: University Hospitals of Cleveland, Cleveland, OH (1996-98)
Board Certification: Board eligible. Dr. Young is an associate of Primary Health Care Specialists at 9981 HealthPark Circle Ste. 283, Fort Myers.

CAR CRASHES ARE THE
#1 KILLER FOR AMERICANS
1-45 YEARS OLD

Catherine Larned, MD

40% are alcohol, drug, prescription related. 10% are due to medical conditions, which are unstable.

Seizure disorders (if a seizure has occurred within the last two years).

Conditions causing crashes:

- Loss of consciousness, dizzy spells.
- Severe cardiovascular impairments.
- Impairments of memory or judgement.
- Drug and Alcohol Addiction.
- Progressive neurological disorders.
- Severe psychiatric disorders which have required hospitalization or treatment for six months or more.
- Visual impairments.
- Sleep disorders.
- Peripheral neuropathy.
- Severe head injuries with problems related to memory, judgement, ability to maintain attention, or visual field deficits.
- Diabetes (if complications are present).

The Bureau of Driver Improvement helps us monitor our patients driving ability. In Florida, we are authorized, not mandated, to report our patients to the Department of Motor Vehicle. A report is confidential and cannot be used in a lawsuit; we are immune from any legal action for filing a report. A report must include the patient's name, date-of-birth, address and reason for the report—why do you think your patient needs further assistance with driving safely.

The Medical Advisory Board evaluates each patient based on:

- Diagnosis
- Prescribed medications and treatment regimen
- Compliance with treatment
- Level of control of medical condition
- Length of stability
- Strength, coordination, reflexes
- Evidence of memory problems, attention deficits, extremely irrational or inappropriate behaviors and may recommend revocation of license or an extended road test and road sign/rule test or may approve the license.

The Medical Advisory Board uses Guidelines, i.e., Neurological (see below article)

15A-5.004 NEUROLOGICAL GUIDELINES
FOR APPLICANTS WITH SEIZURES

*(The following changes to the seizure guidelines became effective in August 1992 and have been used as policy since that date):

1. Applicants and licensed drivers should be seizure free for a period of two years before being approved for licensing; but if under regular medical supervision, may apply at the end of six months for review by the Medical Advisory Board. "Petit mal" or absence seizures and partial seizures with complex symptomatology will also follow these guidelines. The isolated seizure with a normal electroencephalogram may be reviewed at the end of three months.
2. Applicants and licensed drivers who have been approved after six months seizure free may be required to submit follow-up reports at the end of one year from the date of approval.
3. Applicants and licensed drivers who have had a chronic recurring seizure disorder (or have been treated for such for one year) and medications have been discontinued will not be licensed to drive during the period of drug withdrawal and for a period of three months following complete cessation of treatment. If the patient has seizures during this period, licensing may be considered after a three-month seizure free interval upon return to adequate therapy.
4. If there is a question about the seizure type or the medication the applicant or licensed driver is on, it is the prerogative of the Medical Board to question the treating physician further in an effort to clarify the nature of the seizures.
5. Blood levels below therapeutic levels are to be considered on an individual basis.
6. Applicants and licensed drivers with only chronic nocturnal seizures will be considered on an individual basis.
7. Applicants and licensed drivers with syncopal episodes who have no clear diagnosis established will be considered on an individual basis.

For further information, you may contact the Medical Advisory Board, Nancy Bass, Program Manager, at 1-850-488-8982.

Dr. Larned is a Psychiatrist at the Ruth Cooper Mental Health Center, a LCMS member, and recently appointed to the Medical Advisory Board, Department of Motor Vehicles.

MEMBERSHIP ACTIVITY

New Members

Nuel Celebrado, M.D.
Aeria Chang, M.D.
Joseph Dallesio, M.D.
Victor Gregory, D.O.
Raymond Johnson, M.D.
Michael Jugan, D.O.
Lawrence Kline, D.O.
Chris Marino, M.D.
Joseph Testa, M.D.

ILLNESS IN THE MEDICAL
COMMUNITYThose Who Help Others So Much
Need Our Help

In recent months, there have been several physicians in Lee County who have been diagnosed with serious illnesses or who have died. We should all take some time to keep our colleagues, who may be suffering, in our thoughts. In our quest to care for others we often forget that we too are subject to those same afflictions as our patients and need the same care and compassion. Appreciate each day and those around you.

OPPORTUNITY TO HELP
HURRICANE VICTIMS

You can help out hurricane victims in the following ways:

- Dr. Leonard Furlow and the Alachua County Medical Society are collecting donations for the Ruth Paz Foundation to provide direct medical aid to the people of Honduras. Checks should be written to the Alachua County Medical Society Foundation with a note that it is for the Ruth Paz Foundation, 235 S.W. 2nd Avenue, Gainesville, FL 32601. If you have any questions, please call the ACMS at (352) 376-0715.
- Send donations to the South American Missionary Society, SAMS, P.O. Box 399, Ambridge, PA 15003. Mark your check "Hurricane Relief".
- Call the American Red Cross at 305-644-1200 for additional information about opportunities to contribute to victims through that organization.
- Drop off any donations of clothing or food at all firestations

LEE COUNTY MEDICAL SOCIETY ALLIANCE/FOUNDATION NEWS

Respectfully submitted by Lisa Fleishman (Corresponding Secretary)

Charity Ball News

Preparations for the 1999 Charity Ball, "Last Blast of the Century" are well underway. As many of you know, the major recipient for 70% of the 1999 Charity Ball's proceeds is Big Brothers/ Big Sisters of Southwest Florida, Inc. The proceeds from the ball will be used to help build the "Big's Drop Off Center", a home away from home for the program participants. Thirty percent of the Charity Ball proceeds will be used to fund mini-grants. The mini-grant program provides grants to local deserving health-related charities.

We would like to recognize and thank our generous major underwriters and sponsors:

Lee Memorial Health Systems (Sunday Brunch, Brunch entertainment, Guest photos)
Gulf Coast Hospital/ East Pointe Hospital (Golf Tournament/ Doctor's Day)
Lexus of Fort Myers (Hole in One prize for Golf Tournament)
First Union (Special Effects)
Nations Bank (La Mystique Dancers)
Sun Trust (Invitations, Hold the Date Cards)
Northern Trust Bank (Phantom Valentine's Day Project, Ball Cocktail Hour)
Markham, Norton, Stoemer and Company, PA (Chocolates for Ball)
Atlantic Savings Bank (Silver Sponsor)
Anesthesia Associates (Silver Sponsor)
John B. Fenning M.D. and George Markovich M.D. (Silver Sponsor)
Retina Consultants of SW Florida (Contributing)
ENT Specialists of SW Florida (Contributing)
21st Century Oncology, Inc. (Contributing)
Mark Loren Designs (Major Jeweler displaying jewelry and generous donations)

Sponsorship letters have been mailed. Kindly check with your office managers concerning your tax deductible donations. Remember, sponsorship dollars go directly to the charity!

Last year's ticket price of \$295 per couple will be available to all those who purchase tickets before January 31, 1999. As of February 1, 1999, ticket prices will be \$325 per couple. Hurry and send your checks payable to LCMSAF P.O. Box 6445, Fort Myers, FL 33911. Contact Fran Fenning at 936-8670 or Vivian Lang at 481-6116 for more information.

1998 Holiday Charity Party

Please join the Lee County Medical Society Alliance for the annual Holiday Charity Party to be held at the Veranda on Monday, December 7, at 7:00 p.m. This year the Alliance will be collecting monetary donations to benefit Guardian Ad Litem. Guardian Ad Litem is an organization, which trains volunteers to help represent and protect children's rights in court. The donations will be put into a special needs fund for children that are taken out of their homes because of unsafe conditions. The fund will help pay for medical and health care needs. Please make checks payable to LCMSA and send them to Sue Backstrand at 24 Winewood Ct., Fort Myers, FL 33919.

We will also be collecting new or used children's clothing to contribute to Big Brothers/ Big Sisters of SW Florida, Inc. (Major recipient of this year's Charity Ball proceeds) clothing closet. The clothing closet will be part of the "Big's Drop-Off Center", which we will be sponsoring with Charity Ball proceeds. Please bring items with you the night of the Holiday Party. Please call Michelle Sager at 768-3730 or Sue Backstrand at 278-0088 with any questions.

FC-PRN

The Florida Medical Association needs you to participate in citrus sales. Money raised goes towards the Family Component Program of Physician Resource Network. This program helps families of physician members who have been affected by alcohol, chemical dependency or mental illness. Please support the medical family by remembering friends and relatives this holiday season with delicious Florida citrus. For more information, call Angie Colon at 768-2201.

REPORT FROM FLAMPAC AND 1000 CLUB ON
THE 1998 ELECTIONS

Karl M. Altenburger, M. D., President, FLAMPAC
Steven R. West, M. D. Chairman, LCMS Legislative/FLAMPAC

The Florida Medical Political Action Committee, with the invaluable assistance of the 1000 Club, scored major victories in this General Election. John Ellis Bush scored an impressive victory in the Governor's race with 55% of the vote. His victory was broad based. He won 61 of 67 counties losing only Broward, Palm Beach, Leon, Alachua, Jefferson and Gadsden.

On the Senate side, we were involved in 4 critical races. All four of our supported candidates are victorious. Senator Charlie Bronson retained his seat in Senate District 18 with a 60% margin of victory. We supported the re-election of Senator Buddy Dyer, the Senate Minority Leader representing District 14, and he easily won re-election with 62.7% of the vote. In Senate District 34, Incumbent Republican Senator Al Gutman leads by 292 votes after withstanding a vicious attack by The Trial Bar. A recount is being performed. Finally, and most importantly, Jim Sebesta defeated Representative Mary Brennan in Senate District 20. He won in both Hillsborough and Pinellas Counties and finished with a 3400 vote margin of victory (51.8%). The Senate leadership is ecstatic over these results which maintained the balance of power in the State Senate (R-25; D-15).

On the House side, the 1000 Club was involved in 13 races and won 10 of those. Of particular note is that Dr. Bob Casey won re-election to House District 22 by the largest margin of his career (64.4%). You would think that by now The Trial Bar would grow tired of seeing their candidates being defeated by Dr. Casey. After watching Dr. Casey win prior elections by the smallest of margins, it is a pleasure to see Dr. Casey's landslide victory. Harry Goode won easily in House District 31. He received 1000 Club support which enabled him to win a close primary and he sailed to victory in the General Election with 69.9% of the vote. Pat Patterson squeaked by in a close victory with 1000 Club support in House District 26 winning 50.8% of the vote (a 470 vote margin). Another 1000 Club candidate in that area (Jerry Gardner) in House District 28, failed to unseat the Incumbent garnering 46.4% of the vote. Representative Mike Fasano sailed to victory in House District 45 winning 65.5% of the vote. Although this was not a classic 1000 Club race, he is in line to assume the Chair of the House Health Care Standards and Regulatory Reform Committee and, for this reason, our involvement was critical.

The 1000 Club was involved in three important House races in Hillsborough County. Sandra Murnan was re-elected in a difficult race (HD-56) with 52.6% of the vote. Chris Hart also received 1000 Club's support and was elected to an open seat in House District 57 with 56.9% of the vote. Our failure occurred in House District 58 where Incumbent Deborah Tamargo lost. This was always going to be a close battle. A critical error in the last few days of her campaign resulted in the Tampa Tribune withdrawing their endorsement of her and her defeat followed. Bruce Kyle was elected to House District 73 with 54% of the vote. This is the Keith Arnold open seat and represented a pick-up for the Republicans. Rick Minton (Dem-78) survived an onslaught by The Trial Bar and, with 1000 Club support, won with 56.5% of the vote. Another Trial Bar target was Representative Bill Andrews (Rep-87) and he survived winning 55.9% of the vote. Gus Barreiro survived a vigorous challenge in House District 107 winning 51.2% of the vote.

In other races of interest, Frank Farkes becomes the second Chiropractor to be elected to the State House, defeating the Incumbent Democrat Margo Fisher with 52.7% of the vote. Allen Bense won in House District 6 with 69% of the vote and was another pick-up for the Republicans. Mary Brennan's open seat (House District 51) went to the Republicans when Leslie Waters won by 247 votes (50.5%). In House District 120, the Republicans picked up another seat with Ken Sorensen's victory (52%). Organized medicine (FLAMPAC and the Dade County Medical PAC) were significant contributors to his campaign. The closest race of the night was in House District 46 where the Incumbent Democrat, Debra Prewitt, is 26 votes behind her Republican challenger Heather Fiorentino. 38,640 votes were cast in this election and a recount is underway. Who says your vote is not important?

The end result in the House is that Speaker-Elect John Thrasher will have a working majority of 73 Republicans to 47 Democrats, a 6-vote increase. This will make his life a whole lot easier, not to mention more productive. You are to be congratulated for your help and support, without which none of these accomplishments would have been possible. While we are spending a few days enjoying our successes, there is much work to be done preparing for the term limitation election cycle. This begins today, and you will be hearing more about this soon.

The following Lee County Medical Society Members and Alliance Members participated in the 1000 Club Committee of FLAMPAC to elect legislators supportive of medicine:

Thanks again. You have been great!

David C. Brown, M. D.
Michael J. Carron, M. D.
Ronald D. Gardner, M. D.
Mrs. Elizabeth P. Kagan, RN JD
Ms. Betty Rubenstein
Ms. Ana Gregg
Ms. Robin Liebowitz
Ms. Kathy Marchildon
Ms. Lisa Fleishman
Ms. Susan Lozano
Robert Pascotto, M. D.
Carl Schultz, D. O.
Thomas Teufel, M. D.
Lee Radiology Physicians Group
Lee County Medical PAC
Southwest Florida Heart Group

Robert Brueck, M. D.
Ronald J. Delans, M. D.
Eliot Hoffman, M. D.
George C. Kalemeris, M. D.
Ms. Sherri Zucker
Ms. Juli Bobman
Ms. Tammy Sadighi
Ms. Harriet Lipschutz
Ms. Rachelle Isaacson
Ms. Marlene Price
David M. Reardon, M. D.
Alan D. Siegel, M. D.
Joseph P. Walker, M. D.
Medical Anesthesia & Pain Management Consultants
Drs. Seidenstein, Levine & Associates, Inc.

M. Erick Burton, M. D.
John Fifer, M. D.
F. L. Howington, M. D.
Ms. Linda Chazal
Ms. Nancy Barrow
Ms. Pamela Gross
Ms. Barbara Rodriguez
Ms. Janice Heligman
Ms. Sara Krivsky
Ms. Kathleen Van Sickle
James Rubenstein, M. D.
Michael J. Sweeney, M. D.
Steven R. West, M. D.

CHANGES IN MEDICARE PART B FOR 1999

Participation Agreements will not be mailed Separately

There will be no special mailing of the participation enrollment packages for 1999. Instead, the November/December edition of the Medicare Part B Update will include all participation agreement information, including the agreement form itself. Providers are reminded that the open enrollment period from November 15 through December 31 is the only time that they can change their participation status, unless they are newly practicing providers, or have set up a new location. Providers who do not want to change their status do not need to complete a participation agreement. Providers who want to change their status should be sure to look for the participation information in the November/December edition of Medicare Part B Update.

Hardcopy MEDPARDs Will Not Be Produced

The MEDPARD, Medicare's directory of participating providers, will not be produced in hardcopy version for 1999, but will be loaded on the Medicare Online Bulletin Board System (BBS).

Fee Schedules Will Not Be Routinely Mailed to Providers

The Medicare Fee Schedule will not be automatically mailed to providers for 1999. Providers who want a hard-copy fee schedule can purchase one at cost, or they can access the information on the Medicare Online BBS.

RULE REFRESHER

A Collection of Frequently Referred to Laws, Rules and Recommendations

Am I required to give patients a copy of their medical records?

Yes, in accordance with Florida Statute 455.241, "Any health care practitioner...shall, upon request of such person or the person's legal representative, furnish, in a timely manner, without delays for legal review, copies of all reports and records relating to such examination or treatment, including x-rays and insurance information. However, when a patient's psychiatric...psychological or psychotherapeutic records are requested by the patient or the patient's legal representative, the practitioner may provide a report of examination and treatment in lieu of copies of records. Upon a patient's written request, complete copies of the patient's psychiatric records shall be provided directly to a subsequent treating psychiatrist. The furnishing of such a report or copies shall not be conditioned upon payment of a fee for services rendered."

"A health care practitioner furnishing copies of reports or records pursuant to this section shall charge no more than the actual cost of copying, including reasonable staff time, or the amount specified in administrative rule by the appropriate board."

Can I charge a patient to copy their records?

Yes, when furnishing such copies, a physician may charge the requesting party no more than \$1 per page for the first 25 pages of written material, 25 cents for each additional page, and the actual cost of reproducing non written records, such as x-rays.

—Rule 64B8-10.003, Florida Administrative Code.

How long do I have to keep medical records?

Although Rule 64B8-10.002 of the Florida Administrative Code mandates that a physician retain these records for at least five years, the rule also recognizes that this time frame "may well be less than the length of time necessary for protecting the physician." Under the Statute of Limitations, a claim of malpractice may be brought against a physician up to seven years after "the date the incident giving rise to the incident occurred." (Section 95.11(4)(b), Florida Statutes.) For this reason, it is recommended that physicians retain medical records for at least seven years.

Can I store older records during those seven years?

Some physicians have chosen to microfilm patient records for easier storage. While many courts allow reproduction of medical records to be admitted as evidence, even these courts require that several precautions be taken. First, the physician must have a written policy explaining which types of records are to be microfilmed and this policy must be applied to all records uniformly. Secondly, a custodian of the records must be appointed. Finally, the record must be preserved in its original form; in other words, a handwritten chart may not be reduced to a computer disc as this would not be an "exact reproduction" of the medical records. Overall, extreme care must be taken prior to instituting any microfilming or any other record reproduction/storage system. Therefore, before instituting any document storage conversion, a physician should seek the input of qualified legal counsel.

What if I get a request for patient records that have been provided to me by a previous physician? Do I have to provide the patient a copy of those records?

If a patient requests a copy of his/her medical records, the physician must provide the patient with a complete copy of all the records, even those records obtained from another physician. Moreover, the physician must release copies of the medical record to parties authorized by the patient to see it, and the physician must release copies of the record, even if not authorized to do so by the patient, if the records have been subpoenaed for a deposition, evidentiary hearing, or trial Florida Statutes 455.667(5). Failure to do so may subject the physician to disciplinary action.

Are Workers' Compensation patient records treated any differently?

Current Florida Workers Compensation Manuals state under Chapter 2, IX:

- Health Care providers are entitled to recover a reasonable amount, not to exceed \$1.00 per page, to cover the cost of copying documents, which have been requested by the carrier. Physicians cannot charge for copies for required procedure code descriptors and manual guidelines as required with submission of records and/or reports with the claim form. Documentation submitted by the provider, but not specifically requested by the carrier is not allowed a copy charge.
- Health Care providers must furnish an injured employee or his attorney copies of his records and reports upon request. The copy charge to the employee or his attorney may not exceed \$.50 per page.
- Health care providers may charge the actual direct costs of copying x-rays, microfilm or other non-paper records.

What is the best method to terminate a physician/patient relationship?

Notify the patient by sending him a certified letter advising him that you will no longer be available to treat him. While you need not offer the patient any explanation for your decision, you must provide care for a reasonable amount of time until he obtains the service of another physician. If the patient has a medical condition that needs ongoing treatment, state so in your letter.

To be continued

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SEXUAL HARASSMENT

Recent Supreme Court Rulings Dramatically Change Employer Liability

By Kevin Hubbard

The U.S. Supreme Court recently made three sexual harassment rulings that will dramatically change the rules regarding who can make a claim of harassment and whether an employer is liable for the claim.

The Court first ruled that anyone may make a claim that they were harassed by anyone else, regardless of gender or sexual persuasion. The court then ruled that employers will be liable for hostile work environment harassment created by supervisors regardless of any training, policies or other reasonable preventive steps the employer may have taken. This article will first discuss what those changes are and then make recommendations to help employers minimize their potential liability.

WHAT HAS NOT CHANGED

The Courts have divided sexual harassment into two categories, Quid Pro Quo harassment and Hostile Work Environment harassment. Quid Pro Quo harassment occurs when a supervisor or other person empowered by an employer takes some tangible employment action because of sex, race, color, religion or national origin. A tangible employment action is usually a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities or a decision causing a significant change in benefits. The courts have uniformly found that an employer will be liable for Quid Pro Quo harassment regardless of any preventive measures taken. This is known as vicarious liability and has not changed, although the recommendations offered in this article also apply to Quid Pro Quo harassment.

WHAT HAS CHANGED, PART I—ANYONE MAY BRING A CLAIM AGAINST ANYONE

The second category of harassment is Hostile Work Environment, which occurs when there is no tangible employment action but there is severe and pervasive conduct of a sexual nature in the workplace. Some of the more common examples are male employees constantly requesting dates or sexual relations with female employees or a general "locker-room" atmosphere. Because the conduct must be of a sexual nature, the courts have always been willing to find a valid Hostile Work Environment claim when the alleged harasser and victim were different sexes.

However, when same-gender claims began to arise, the courts began to divide. Some courts found there was no claim because there was no physical sexual nature between employees of the same gender. Others found there could only be a claim if either the harasser or victim was a homosexual (thus adding a sexual component), and a few courts found there was always a claim. In a short decision of less than four pages, the Supreme Court found that there is nothing in the law which excludes same-sex claims of harassment, and therefore such claims can be made the same as any others.

WHAT HAS CHANGED, PART II—PREVENTIVE MEASURES ARE NO LONGER A DEFENSE

While same-sex claims probably will only make up a small percentage of all sexual harassment claims, nearly every one includes a claim of Hostile Work Environment harassment. Prior to June 26 of this year, an employer could avoid liability for most hostile work environment claims if he or she did not know about the environment and had taken reasonable measures to prevent sexual harassment in the workplace. These measures usually were in the form of training and/or a comprehensive anti-harassment policy.

Some courts even went so far as to find that if an employer took quick and effective actions to correct a Hostile Work Environment once aware of it, then that employer would not be liable to the employee. The logic behind such decisions was that the primary purpose of the law was to prevent harassment, not to compensate victims. Therefore not holding employers liable when they took preventative and/or corrective measures would encourage prevention and be consistent with the primary purpose of the law. The Supreme Court recognized and agreed with this primary purpose in its recent decisions, but then undermined that purpose in its ruling.

In companion cases on June 26, the Supreme Court ruled that employers would be vicariously liable for Hostile Work Environment harassment by a supervisor. This means that if there is a Hostile Work Environment, even if the employer did not know about it and had taken extraordinary measures to prevent it, that employer will still be liable. The Supreme Court did include a possible exception, but the effect of the decisions will be that an employer will have no control over his or her potential liability for Hostile Work Environment harassment, no matter how great of preventive measures taken.

The exception outlined by the Supreme Court does bear mentioning but offers little comfort to employers. The court, in its decisions, tried to explain it wants to give credit to employers who take preventive measures, but this credit is easily destroyed by the complaining employee. The exception takes the form of an affirmative defense, which in legal terms means that the employer has the burden of proving the elements of the defense. Those elements are:

- "that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior" and
- "that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise."

While this may at first appear to reward the employer who takes preventive and/or corrective measures, it is mostly illusory. As pointed out by Supreme Court Justice Clarence Thomas, the only thing an employee needs to do to defeat this defense is to either try to take

advantage of the preventive or corrective opportunities or to show that not doing so was reasonable. The end result is that the employee has the power to negate the affirmative defense. Further, in doing so, the employee may actually bolster his or her case.

Consider an example: An employer has a strong anti-harassment policy with a reasonable reporting procedure. The employee reports a case of Hostile Work Environment harassment. At this point, the affirmative defense is no longer available and the employer is already liable if harassment has occurred.

But it gets worse. Following policy, the employer investigates the report and determines there was a Hostile Work Environment. The employer is then faced with a no-win situation. He or she must either take corrective action to stop the harassment, which may be used against it by the employee as an admission there was harassment, or not take action and risk further liability from the continued harassment. The result is that an employer who took all reasonable measures to prevent a Hostile Work Environment and then promptly took action when learning of such an environment is still liable to the employee.

PRACTICAL ADVICE

Prior to these recent cases, the best approach was to have a strong anti-harassment training program supported by policy and, when necessary, a prompt investigation of complaints with appropriate findings and corrective action. The unfortunate result of these legal cases, however, will be to encourage employers to change their focus from training, prevention and correction to preparing for a defense. Here are some recommendations to help avoid potential situations:

1. Investigate and evaluate present and future supervisors to see if they have been harassers in the past or are likely to be harassers in the future. Employers must be more vigilant than ever in their decisions of who to hire or promote to a supervisory position because anti-sexual harassment training will no longer correct a poor hiring or promotion decision.

In theory, such training may still provide a benefit by educating supervisors about what is considered to be sexual harassment and thus prevent such acts. In reality, anyone who has reached the level of supervisor should realize what constitutes sexually inappropriate behavior. If he or she does not, the employer needs to be questioning whether that person is qualified to be a supervisor or even an employee. In an employment-at-will state such as Florida, an employer reduces liability by firing or refusing to hire past harassers or potential harassers.

2. Also note that the rule announced by the court was limited to a Hostile Work Environment created by a supervisor, which implies that liability for a Hostile Work Environment created by a co-worker can still be avoided by prevention and prompt corrective action.
3. Ensure that the employer has a reasonable policy to prevent and correct sexual harassment in the workplace and that every employee has been made aware of it. Although the employee can negate the affirmative defense, there will be occasions when the employee does not take the appropriate actions. For those situations, the employer who can point to a written policy and prove that the employee was aware of it stands a much better chance of proving the affirmative defense. Therefore, draft or update your anti-sexual harassment policy, distribute it to every new and current employee and get a written receipt indicating they received it.

3. When the employer receives a report or complaint of Hostile Work Environment harassment, get a good labor attorney on the case and aggressively investigate the report. Once an employer receives the report, the only manner in which an employer can avoid liability is to prove there was no Hostile Work Environment.

You may be tempted to save a few thousand dollars and handle the investigation yourself or to just fire the alleged harasser. Don't do it. The average sexual harassment verdict is over \$200,000, and attorney's fees may well run at least that much. The few thousand dollars invested in an attorney early in the matter may save tens or hundreds of thousands, because an investigation by a competent attorney can provide the basis for a good defense and "lock-in" witnesses to testimony before memories fade or loyalties change.

Further the attorney should advise the employer of whether or not to take corrective action and the potential liability created by the employer's choice. Is this handball? You bet, but it is also legal and one of the few options left for employers.

THE BOTTOM LINE

The Supreme Court has made it considerably easier for employees to bring and win sexual harassment claims, plus it has taken away a major incentive to prevent and/or correct sexual harassment. Of course it is still in the employer's best interest to have a workplace free of sexual harassment, and to that extent, training and prevention are still encouraged. However, once a report of sexual harassment has been made, the employer's best option to avoid liability is to take aggressive action, assemble a legal team and begin building a defense.

Kevin Hubbard is a practicing labor and employment attorney exclusively representing management with Kevin J. Hubbard & Associates and is also the chief operating officer of HRIS Staff Management. A professional employment organization based in Fort Myers.

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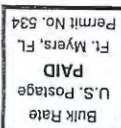
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Michael Polito

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