# LEE COUNTY MEDICAL SOCIFTY





THE VOICE OF LEE COUNTY MEDICINE

VOLUME 21, NO. 9

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

January, 1998

#### GENERAL MEMBERSHIP MEETING



January 19, 1998 Royal Palm Yacht Club 6:30 pm - Social Time 7:00 pm - Dinner 7:45 pm - Program Speaker: Nancy W. Dickey, M.D. President-Elect, AMA

A Board-Certified Family Physician from College Station, Texas, she was elected to the American Medical Association's Board of Trustees in 1989 and has served as: Secretary-Treasurer, Vice Chair of the Board, Chair of the Board and Executive Committee. Elected President of the AMA for 1998-99.

Dr. Dickey's service to the AMA began in 1977, as the resident member of the Council on Medical Service. She has since held several posts, including service as an AMA Commissioner to the JCAH, chair of the AMA Council on Ethical and Judicial Affairs and chair of the board's finance committee. She is a Fellow of the American Academy of Family Physicians and has served as Vice President of the Texas Medical Association.

Dr. Dickey believes the success of the AMA depends on its ability to respond to the needs and concerns of members as they face the uncertainties of continued rapid change in medicine and society. Her active style of leadership, her personal commitment, insight and energy will continue to serve members of organized medicine.

Installation of 1998 Officers and Joint Meeting with the LCMS Alliance

Please bring your spouse/guest, cost of meal is \$25.00 Payable to the Lee County Medical Society, P.O. Box 60041, Fort Myers, Florida 33906. Fax LCMS - 936-0533 OR MAIL YOUR RESERVATIONS.

### UPCOMING MEETINGS

(Contact the Society Office for details) FMA LEADERSHIP CONFERENCE

January 23-25, 1998 Marriott at Sawgrass Resort ~ Ponte Vedra Beach, FL

Special Features: Presentation by Governor Chiles on the state of health care in Florida. Sharpen your skills on legislative visits AMA President, Percy Wootton, M.D.

AMA 1998 NATIONAL LEADERSHIP CONFERENCE March 7-10, 1998 ~ Washington, D.C.

Special Features:

Special Features:

General Colin C. Powell, USA (Ret.)

Honorable Antonin Scala, US Supreme Court

Honorable Newt Gingrich, US House of Representatives

Honorable Nancy-Ann Min DeParle, Administrator, HCFA Leaders of Medicine interacting with Leaders of Government and Business - All members of our Medical Society are invited to attend.

## An This Tesus

	CILLO	222000111
Presider	it's Message	
As I Re	call	1
Correcti	ions	2
The Qu	estion Man	2
Leave a	Legacy	2
Grievan	ce Committe	e3
1998 L	egislative Sess	sion4



PRESIDENT'S MESSAGE David M. Reardon, M.D. "OF COURAGE UNDAUNTED"

Over the past several weeks I have spent many otherwise idle moments reflecting upon what may lie ahead in 1998 for our organization, the Lee County Medical Society. We cannot know with certainty what obstacles lay before us or what unexpected challenges will rise from various issues. Some matters, such as managed care, we might have guessed would harbor difficulties, while other difficulties will present themselves in completely unexpected ways or in areas of our professional lives that would not have been anticipated. From these foggy musings of a daunting journey into uncharted territory, a parallel began to come into focus. I have lately been reading Undaunted Courage, the most recent biography of Meriwether Lewis. It is a wonderful rendition of the entire expedition

exploring the Louisiana Territory by the heroic team of Lewis and Clark.

Thomas Jefferson appointed Lewis to undertake the massive project of exploring our continent, hoping that he would find a waterway to the Pacific. Lewis, a Virginia gentleman, army officer and accomplished frontiersman, spent years becoming educated in celestial navigation, botany, map-making, zoology, and taxidermy among other things. His team was built very carefully as he handpicked those who would have the strength, determination, and single-mindedness to endure a trek that would require several years away from home and family, taking them into a hostile wilderness where potential enemies were waiting to thwart their efforts. Delicate negotiations were required to avert their immediate demise and stave off war. New alliances needed to be forged with peoples that had been either previously unknown to Lewis and Clark or who were considered as threats to their mission. The physical hardships would be constant - wind, weather, thick swarms of mosquitoes, illness, and shortages of food. Critical decisions were not uncommon. Which fork of the river would ultimately lead them to the headwaters of the Missouri, the north branch or the south? For it was finding these headwaters that would provide the critical link in their ultimate goal of charting a transcontinental waterway.

As you know, there was no waterway joining the coasts of this vast continent to be discovered. Lewis worried constantly that Jefferson would consider him a failure. If one measures success strictly by whether the primary goal was achieved, then Lewis and Clark failed. Because of their greater vision and determination, in every adversity and seeming failure they recognized opportunity. Their carefully cataloged information allowed for more accurate mapping of the territory, documented agricultural suitability of the Great Plains and opened up the lucrative fur trading industry to the United States.

Surely you ask, what does this powerful and fascinating story of one of the greatest expeditions ever undertaken have to do with us, the physicians of the Lee County Medical Society?

Lessons abound for us all in this great tale. We are at a critical juncture in the history of medicine. The winds of change buffet the keelboat of medicine, threatening to impede or overturn our mission of patient advocacy. Potentially hostile forces of insurance companies, legislators, and hospitals have their agendas to rechart the territory of medicine. We must be vigilant but visionary, sitting at the table with these factions forging agreements by compromise where possible, while tirelessly protecting the essence of our profession.

Within our own camp, we are often divided. Each special interest group explores tributaries which they believe is the main waterway that will lead us to the headwaters of an ultimate solution to our many challenges. With the skills that we have meticulously cultivated as professionals, we must conscientiously observe seemingly unimportant new species, such as IPA's, medical savings account, and capitated managed care arrangements. It is imperative for us to come together, sharing our insights, successes and failures with the full expedition of medicine.

A recent blind tributary, such as the Doctor's Health Plan, appears to have been a failure. But such opportunities have made the FMA a stronger, more focused organization. New leadership has been elected with the mission of more responsible fiscal management and the goal of being more sensitive to our needs at the local level.

New alliances have been forged. The FMA now works closely with the Florida Osteopathic Medical Association. Fifteen years ago this would not have seemed possible. Other ententes await us. The FAM and FPA are actively pursuing options for physicians to engage in collective bargaining. Discussions with unions such as AFL-ClO may seem pointless or counterproductive. In fact, such unions share many of our sentiments in regard to patient choice, preserving access to quality medical care and providing comprehensive, affordable insurance products to their members. As partners with unions, insurance companies would be more likely to listen to our concerns.

Better cooperation with our own medical society Alliance, a resource familiar to us all, should be cultivated. The Alliance members are in places we cannot be, have relationships we do not have time to develop and can be our scouts through much of our challenging terrain.

Lewis and Clark were not always recognized for their great achievements. They began, much as we are today, in anonymity, often beleaguered and surrounded by uncertainty. But, like all great endeavors, we must leave our minds open to new possibilities that arise in circumstances viewed as difficult at best. We are being asked to fundamentally change the way we practice medicine. Where this will take us we cannot know for certain. With optimism, vision, and Lewis-like single-mindness, we too will find the undaunted courage to work together as a team, improving the profession of medicine and protecting the interests of our patients

I look forward to working with all of you this year. This is our organization. Let us use it together with wisdom for our common advantage. I value your participation and input and thank you for your help.

#### AS I RECALL...

Roger D. Scott, M.D. "1958~1998"

Happy New Year!! It seems like only yesterday and et, on the other hand, it seems an eternity (actually 14,610 days 2,080 weeks, 480 months, of 40 years) since July 1, 1958 when I opened my practice in Ft. Myers. There was a world of difference in the medical practice and in the community compared to today. Even having lived through the vast changes, they don't seem possible.

As a native Floridian I knew I wanted to practice somewhere south of Orlando (way prior to Disney World and massive Orlando growth) and after visiting many cities, Ft. Myers seemed the most likely spot to locate a surgical practice. The east coast of Florida was most familiar to me but was already in massive growth stages and crowded in all surgical fields for the population present. Ft. Myers was just beginning to grow medically with about six relatively new doctors in town. The old guard physicians had the reputation around the state for literally chasing all new-comer doctors out of town, and everyone around the state advised me that it was crazy to try to go to Ft. Myers. Fortunately, Clarence Zimmennan (an old dentist and family friend) offered me at least introductions etc. in Ft. Myers. The local medical group was not totally hostile and a number of the members were kind to me when I visited them and discussed coming to Ft. Myers. Only a few told me that I would not be able to make it and that I would probably be leaving

The policy here for opening a practice was that one had to move to this area, be physically present, open an office and begin practice before being able to even apply to the hospital (Lee Memorial and Jones Walker) for privileges. This was strictly enforced. A small announcement (about 2x4 inches) was then placed in the Ft. Myers News Press for 7 days and 7 days only. That was the only time one ever adventised and no physicians ever advertised over the years. The hospital board met every three months to consider applications. I had been warned never to go near the hospital until given privileges. I was allowed to hand-carry my application into the hospital but from that time until accepted on the staff, I never came any closer than driving by the hospital. It was felt that one would be "pushy" if he did not have hospital privileges and was seen in the hospital. It was really an anxious time for me not knowing anyone in Ft. Myers and to invest in the future in such a heavy manner! At that time, surgery was all done by all of the members of the medical staff and primarily performed by family doctors. Joseph K. Isley, Jr. (Radiologist) and Clifford E. Vinson (Urologist) applied soon after me and we became the "Class of 1958".

There was a minimum of office space available, only the Richard's Building on Hendry Street (old building) having several doctors offices in it but none available to me. The Medical Arts Building was a new small office complex on the corner of Virginia and McGregor and the one board-trained surgeon in town (Jim Bradley) had his office in that building and did not want another surgeon in the building. There was really no other building except the Cresent Building which was an old school building on the comer of Royal Palm and Second that had been converted into different offices. It was fortunate for me that Jack Warnock (Orthopedist) needed one more year to complete his residency and rented me his practice and office in this building for the last year of his training. This did get me started very nicely and covering the ER for those who did not wish to be on call for surgery was also helpful.

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#### THE BULLETIN OF THE LEE COUNTY MEDICAL SOCIETY

#### LEE COUNTY MEDICAL SOCIETY BULLETIN

P.O. BOX 60041 Fort Myers, Florida 33906-0041 Phone (941) 936-1645 FAX (941) 936-0533 E-MAIL: lcms1@ibm.net

The Lee County Medical Society Bulletin is published monthly with the June and August Editions omitted.

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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

#### SENIOR AND RETIRED PHYSICIANS ASSOCIATION ~ SARPA

Dear Doctors.

When you encounter retired physicians in your practice, would you please mention to them the availability of membership in SARPA, an organization designed to encourage socialization with colleagues and their spouses, as well as offering volunteer opportunities, continuing medical education and community outreach for those who may be interested. You will be doing them a favor!

They can be directed to SARPA for further information by calling the Lee County Medical Society at 936-1645.

Thank you for your cooperation. James Dougherty, M.D. President

#### CORRECTION CORNER

Our Apologies!

The December Bulletin had the incorrect spelling of the Editor's name. We are "sorry" Dr. Daniel R. Schwartz!

Also, in one of our advertisments, Shaffer & Associates, the name was spelled incorrectly.

#### ON THE LIGHTER SIDE ....



#### **DUE TO BUDGET CUTBACKS**

THE LIGHT AT THE END OF THE TUNNEL HAS BEEN TURNED OFF.





FMA Office of General Coursel "ADVERTISING"

The Florida Board of Medicine has established criteria for physician advertising. We are publishing these again because of recent advertisements containing Board Certifications. You must list Board's name when using "Board Certified in....".

Board Rules of Advertising

According to Section 64B8-11,081 of the Florida Administrative Code, the Florida Board of Medicine prohibits advertising which is false, deceptive or misleading. The Board of Medicine considers any advertisement which contains the following to be false, deceptive or misleading:

- A misrepresentation of fact, or a partial disclosure of relevant facts:
- 2. False or unjustified expectations of beneficial assistance;
- 3. Any representation or claim which the physician does not expect to perform;
- 4. Statement or implication that the physician has received formal recognition as a specialist in an aspect of medical practice, unless the recognition has been received, and the recognized agency is approved by the
- 5. Representation that services can and will be competently performed for a stated fee when this is not case;
- Representation of fees for professional services that do not disclose all variables affecting the fees that will be charved:
- The impression the physician possesses qualifications, skills or other attributes that are superior to other physicians, other than a simple listing of earned professional postdoctoral or other professional achievements recognized by the Board of Medicine;
- Failure to conspicuously identify the physician's name in the advertisement;
- 9. Any representation that contains only partial disclosure of relevant facts;
- 10. Includes reference to specialty certification without identifying the name of the specialty board that has awarded specialty certification;
- 11. Implies specialty or sub-specialty for which the physician has not received specialty recognition.

Section 458.3312 Florida Statues provides that an allopathic physician "may not hold himself or herself out as a board-certified specialist unless the physician has received formal recognition as a specialist from a specialty board of the American Board of Medical Specialties or other recognizing agency approved by the Board. However, a physician may indicate the services offered and may state that his or her practice is limited to one or more types of services when this accurately reflects the scope of practice of the physician."

However, 64B8-11.001, F.A.C. provides that a physician may advertise a specialty received from a recognizing agency not approved by the Board only if the letterhead or advertising contains the following statement in the same print size or volume: "The specialty recognition identified herein has been received from a private organization not affiliated with or recognized by the Board of Medicine."

For information on medical specialties approved by the American Board of Medical Specialties, call 1-800-776-2378. As of 12/4/97, the only specialty board not approved by ABMS but approved by the Florida Board of Medicine is the American Board of Facial Plastic and Reconstructive Surgery.

It is the physician's responsibility to maintain an exact copy of an audio or videotaped advertisement for a period of at least six months from the date that the actual advertisement is aired or shown.

Physicians who solicit patients personally or through an agent are responsible for any advertising used. A physician who advertises through referral services is likewise responsible and such advertisements are required to contain the following:

- 1. A statement that the advertisement is for a medical referral service and is in the behalf of the physician member of the service
- 2. A statement that the referral service refers only to those physicians who have paid or been selected for membership in the referral service.
- 3. A statement that membership in the referral service is limited by the referral agency.
- 4. A statement that physicians who receive referrals from the service charge no more than their usual and customary fees.
- 5. These required statements shall be present in reasonably recognizable print or volume equivalent to the size or volume of other information in the advertisement.

In any advertisement for free, discounted or reduced fee services, examination or treatment, Section 455.664, Florida Statues, requires the following statement must appear in capital letters in a manner which is clearly distinguishable from the rest of the text:

THE PATIENT AND ANY OTHER PERSON RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE TO PAY, CANCEL PAYMENT, OR BE REIMBURSED FOR PAYMENT OF ANY SERVICE, EXAMINATION, OR TREATMENT WHICH IS PREFORMED AS A RESULT OF THE ADVERTISEMENT AND WITHIN 72 HOURS OF RESPONDING TO THE ADVERTISEMENT FOR THE FREE, DISCOUNTED OR REDUCED FEE SERVICE, EXAMINATION OR TREATMENT.

#### LEAVE A LEGACY Francis "Lee" Howington, M.D., FACOG

On January 5, 1998, more than 100 kids at the Michigan Links housing project in Fort Myers will sit down for breakfast. They'll eat a free breakfast of cereal and milk every school day morning through June. The cost: Less than \$7,000, or about a buck a breakfast.

Big Deal? It is if you don't have a breakfast. Big deal for me, as a physician?

You bet. Because I'm on the Board of Southwest Florida Community Foundation, the organization that funded it and helped put the deal together.

Sure, we're busy. Certainly, our schedules are hectic. But we doctors don't live in a vacuum. Our practices, as difficult as they may be on some days, depend on people in our community. And they depend on us. For years, physicians have been active in helping community charities in Southwest Florida.

CARDIOLOGISTS have served with the American Heart Association.

ORTHOPEDIC specialists have assisted with school and youth league teams.

SURGEONS have helped with the American Cancer Society.

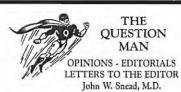
Dr. Robin Brown and I are trustees at the Southwest Florida Community Foundation. How can you help?

FIRST, volunteer whatever your time permits. Your talents can be used for an hour or longer, and most charities can adapt their volunteer time to a doctor's schedule.

SECOND, support community-wide charitable funds. A Founder's Society membership in the Southwest Florida Community Foundation costs just \$150, (\$250 for a practice) and all of it is given away. United Way donations can be corporate or individual.

THIRD, share the treasures you have received from Southwest Florida with the broader community that has helped you obtain them. Pick a charity that appeals to you and include them in your annual giving or your will.

LEAVE A LEGACY to the community that has given so much to you.



"WHO SHOULD DETERMINE "AMERICA'S BEST HOSPITALS?" (currently US News & World report)"



"American hospitals currently undergo voluntary scritiny by the Joint Commission on Hospital Accreditation which involves an extensive evaluation of all the aspects of hospital care. Although Jane L. Simenson, M.D.
Family Practice

Hospitals", their evaluation certainly gives the most broad-based evaluation. I

suspect that the media reports on best hospitals are geared more toward high profile procedures or, perhaps, people who are newsworthy. This makes for good headlines, but not necessarily good patient care.'



Educard Steinmetz, M.D. Neurology

"I think the most accurate determination of the "best medical hospital facilities" in this country would occur through the work/findings of the AMA Joint Accreditation of Hospitals. There is significant difference between public opinion and perception of the "best hospitals"

and the conclusions of professional accreditation teams that actually go into hospitals and review the technical capabilities, mortality statistics and results of common surgical procedures. I doubt that US News & World Report would be the most accurate in determining America's Best Hospitals.

Locally, the public in Lee County are blessed with two hospitals that have been chosen as being in the top 100 best hospitals in the United States. Although hospitals in Lee County are not medically research oriented, they certainly have been accredited by the Joint Commission and statistically compare favorably to the likes of the Cleveland Clinic and the Mayo Clinic institutions."



Kein M. Fleishman M.D.

"Physicians and hospital administrators would probably be the best judges of a hospital's performance. A consortium could be developed containing prominent physicians from each of the respective medical specialty organizations, as well

OB/GYN as some active hospital administrators from around the country. Certainly, they should know more about the quality of hospitals than large national magazines."

#### February 1998 Question:

"WHAT WILL IT TAKE TO MAKE THE AMERICAN VOTER REJECT MANAGED CARE?"

Send your comments to the Medical Society. Bulletin deadline is the 15th of each month...we want to see you in the print media!

#### AS I RECALL... (continued on page two)

The hospital supplied an office for its employed Pathologist (Newt Larkum), the Radiologist (Joe Isley) and the Nurse anesthetists (no anesthesiologist).

Most patients did not have health insurance as this was the early days of private health insurance. No one knew what managed care, HMO, PPO, etc. were. Workers Compensation was present. Most patients were self-pay, and there were a number of patients in this area who were not financially responsible.

Part II next month. Can you believe it's 1998!!!!

#### THE BULLETIN OF THE LEE COUNTY MEDICAL SOCIETY

#### LCMS NEW POLICY: AFFILIATE MEMBERSHIP

The Lee County Medical Society has established an "affiliate" listing for physicians with satellite offices in Lee County. These physicians must be members (in good standing) of the FMA and a component medical society, and they must have staff privileges at a local hospital.

#### Background

Formerly, physicians in this situation have remained detached from the local society. At the same time, the society office has been unable to identify, credential or refer to these non-member physicians. (This is confusing to patients who have been referred to a "local" doctor and cannot check his/her background, certification, etc. through the county medical society.)

#### Process

Applications for affiliate listings will be screened by the Committee on Ethical and Judicial Affairs and the Board of Governors. Physicians who are approved will be included in the LCMS directory, referral service and membership mailings. They will be welcome to attend meetings and serve on society committees. However, they will not have voting privilege or be considered in the determination of FMA delegates. Affiliate dues are \$395 per year, or the regular dues as set by membership which will include meals at our regular meetings.

#### If you have any questions, please call the Society office at 936-1645.

#### BLUE CROSS/BLUE SHIELD OF FLORIDA

Third Party Administrator for State of Florida Employee's Health Insurance.

#### Unisys Claims Submission

- The run-out period for paying claims with dates of service 1996-97 is October 31, 1998. Given that it takes approximately 30 days for Unisys to process claims, it is critical that claims with dates of service of 1996 and 1997 are submitted as soon as possible before September 30, 1998 to ensure payment.
- Claims should be mailed to:

Unisys Processing Center

P.O. Box 13500

Tallahassee, Florida 32317-3500

 If you have any questions about claims with dates of service 1996 and 1997, the Unisys customer service number is 1-800-767-7829. Written inquires regarding claims submitted to Unisys should be sent to: Unisys Customer Service P.O. Box 13600

Tallahassee, Florida 32317-3600

#### Blue Cross & Blue Shield of Florida Claims Submission

- Blue Cross & Blue Shield of Florida will assume third party administration of the state's self-insured health plan beginning January 1, 1998.
- Submit claims with dates of service January 1, 1998 and after to Blue Cross & Blue Shield of Florida.
  Blue Cross & Blue Shield of Florida does not have the capability to assist you with issues or questions
- arising from claims that have dates of service 1996-97 when Unisys was administrator. Unisys' customer service number is 1-800-767-7829 to assist you with claims that have dates of service of 1996-97. If you have the capability, please submit claims with dates of service beginning January 1, 1998 to
- BCBSF electronically.

  If you do not possess electronic capability, submit paper claims with dates of service of 1998 and after to:

  Blue Cross & Blue Shield of Florida

State Account Operations P.O. Box 2896

Jacksonville, Florida 32232-0079

Effective 12/15/97, questions about the state employees health plan should be directed to BCBSF customer service at 1-800-825-2583.

### **COMINGS AND GOINGS**

Society Needs Laptop Computer
If any member of our Society has upgraded their laptop and does not have a recipient of the old one, please consider donating your old one to us.

#### FMA Has New EVP

Donald F. Foy, Sr. been has named Executive Vice President of the Florida Medical Association effective December 3, 1997. He has been a Consultant since 1993 and in administrative leadership at both the Indiana Medical Association and the Medical Society of the State of New York. We welcome him to our medical family and ask each member to give him your full support in the challenges we face in medicine.

### **GRIEVANCE COMMITTEE**

# R. Thad Goodwin, Chair - LCMS Grievance Committee "BEDSIDE MANNER"

The Grievance Committee of the LCMS is asked to review many complaints in the course of a year. Many of the complaints are unique. Through others there are recurring themes. We wanted to share with you some of these recurring themes, in the hope that you will be able to learn as much from them as we, the Committee Members, learn each time we review complaints. This column concerns communication with patients and family.

with patients and family. In one case recently reviewed by the Committee, a young woman was being seen for tendonitis. She was placed in a cast, which she felt worsened her problem. She asked her physician to remove the cast, the physician did so, then recommended she see a podiatrist for a molded shoe insert. The patient interpreted this as being summarily discharged from the physician's care, and she felt the physician was "rude and unprofessional" in doing so. She filed a greivance with the LCMS, complaining not about her medical treatment, but about the physician's attitude. about the physician's attitude.

In the second case, a woman was in the hospital dying with a protracted terminal illness. Her family was very inquisitive about her condition. On one occasion the

husband confronted his wife's physician at the nurses' station to ask about his wife, while the physician was making chart notes. According to the husband, the physician then "very pompously and unprofessionally" told him not to bother him while he was making chart notes. The husband filed a grievance with the LCMS, not about his wife's treatment, but about the physician's

These two cases emphasize the point that it is often not the medical treatment rendered to a patient that prompts complaints. It is sometimes what the physician says and how he or she says it that prompts the complaints. When confronted with a "difficult" patient or family member, remember that those are the cases where communication is most apt to break down. Those are the cases where it may be necessary to step back, detach emotionally from the situation, and spend the extra few minutes to deal with the situation, difficult as that may be. The hazards of not recognizing there is a problem in communication right then and spending the extra few minutes, is a potential complaint about your "bedside manner" to the LCMS or another regulatory agency.

#### CME CREDIT FOR JOURNAL READING: HOW IT WORKS

Beginning with the Nov. 5 issue of the Journal of American Medicine Assn., physicians can earn continuing medical education Category 1 credit for reading articles.

Seven or eight articles from each issue will be designated as available for CME credit activity.

- Physicians will read three articles of their choice and then answer questions asked on a designated page in the JAMA.
- The questions will focus on topics such as whether the physicians learned something of value, whether their attitudes changed on particular issues and if they plan to discuss the writings with their colleagues. The answer page is then faxed to JAMA, and the physician receives one hour of Category 1
- CME credit.

#### FMA'S "LEGAL HOTLINE"

FMA's Office of General Counsel

#### New Interpretation on Balance Billing HMO Patients Provided by DOI

The FMA has received a lot of questions this year concerning the legality of non-contracted physician billing and HMO patients for both covered and non-covered services. At issue is the correct interpretation of 641.314, Florida Statues, which provides, in part, as follows:

- 1) Whenever a contract exist between a health maintenance organization and a provider and the organization fails to meet its obligations to pay fees for services already rendered to a subscriber, the health maintenance organization shall be liable for such fee or fees rather than the subscriber, and the contract
- 2) No subscriber of an HMO shall be liable to any provider of health care services for any services covered by the HMO.
- 3) No provider of services or any representative of such provider shall collect or attempt to collect from an HMO subscriber any money for services covered by an HMO, and no provider or representative of such provider may maintain any action at law against a subscriber of an HMO to collect money owed to such provider by an HMO.

Health Maintenance Organizations have consistently interpreted the above statue to provide that a physician may not balance bill an HMO patient under any circumstance, regardless of whether the physician has contracted with the HMO or not. Accordingly, several HMO's have refused to pay non-contracting physicians for services rendered to HMO subscribers (or have only paid minimal amounts), and then have sent threatening letters to the physician after the physician attempted to obtain payment directly from the patient. As support for their position, the HMO's have circulated letters from the Department of Insurance which state that balance billing is illegal.

In response, the FMA has aggressively advanced the contrary interpretation that the prohibition on balance billing applies only to physicians who have contracted with the HMO to provide covered services. In response, the Department agreed that, contrary to its earlier position and the representations by the HMO industry, physicians can balance bill HMO patients in certain situations. The DOI letter makes clear the following

- If an HMO patient knowingly goes out of network in a non-emergency situation to a non-contracted physician, for services not covered by the HMO, the physician can bill the patient directly for all charges, and does not have to submit a claim to the HMO. The patient in this situation is responsible for payment.
- · Even if the HMO patient knowingly goes out of network in a non-emergency situation to a noncontracted physician for services that are covered by the HMO, the physician can still bill the patient directly for all charges, as in the example above.
- If an HMO patient knowingly goes out of network in a non-emergency situation to a non-contracted physician for services covered by the HMO, and the physician elects to file a claim with the HMO which the HMO only offers partially pay, the physician can directly bill the patient for the balance.
- If an HMO authorizes a patient to see a non-contracted physician for a covered service and the physician accepts the authorization, the physician cannot balance bill the subscriber but is entitled to fair compensation from HMO for services rendered.

#### Is Doctor Required to Sign Death Certificate?

- Q. A patient I treated approximately five years ago recently died of reasons unrelated to the treatment I provided. After the patient's death, I was contacted by the medical examiner and asked to sign the death certificate. I had not seen the patient since the one visit five years ago and do not feel comfortable signing the death certificate. However, the medical examiner stated that I was required to sign the death certificate by law. Is this true?
- A. Given the facts presented here, the medical examiner himself should sign the death certificate. Florida Statute 382.008 provides that "within 72 hours after receipt of a death or fetal death certificate from a funeral director, the medical certification shall be completed, signed, and made available to the funeral director by the physician in charge of the decedent's care for the illness or condition which resulted in death, or the physician in attendance at the time of death or fetal death or immediately before or after such death or fetal death, who shall certify over his or her signature the cause of death to his or her best knowledge or belief; except the provisions of Section 382.011 apply when the death or fetal death requires investigation pursuant to Section 406.11 or the death or fetal death occurred without medical attendance. Since you were not the physician in attendance at the time of death and had not treated the decedent immediately prior to death, Florida law provides that the medical examiner is the responsible party for signing the death certificate.

These questions were handled through the FMA's "Legal Hotline," a service available to all FMA members through the FMA's Of General Counsel, 1-800-762-0233. All questions regarding legal issues and the practice of medicine will be addressed.

## New Solutions

IN PROFESSIONAL LIABILITY COVERAGE

"There are 79 reasons why over 6,000 bealthcare providers trust FPIC with their insurance coverage:

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- nable rates. • excellent customer service...

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#### AMA CALLS AETNA/U.S. HEALTHCARE CONTRACT UNFAIR TO PATIENTS

The American Medical Association (AMA), in conjunction with the Florida Medical Association (FMA), has contacted Aetna/U.S. Healthcare to express concerns about physician contracts that the AMA and FMA allege give Aetna/U.S. Healthcare the right to unilaterally change patient care procedures and policies. The contract with Florida physicians allows the nation's second largest managed care company to override a physician's decisions about what is medically necessary without providing any avenue of appeal, according to the AMA and

The FMA and the AMA also believed the contract contains a gag clause that may violate Florida state law. Gag clauses are provisions in physician contracts with health plans that interfere with the physician's legal duty to provide full informed consent and counsel to patients. The AMA, in conjunction with other patient and medical groups, campaigned strenuously to eliminate health plan gag practices in 1996. The contract also compromises patient privacy by requiring physicians to disclose confidential medical records without a patient's

Florida physicians asked the AMA to review the contract after Aetna/U.S. Healthcare refused to discuss the contract with the Florida Medical Association, citing antitrust laws. The AMA has received similar complaints about Aetna/U.S. Healthcare contracts in effect in five other states. The AMA has not yet received a response

"We believe these contracts clearly are not in the patient's best interest," said D. Ted Lewers, MD, a member of the AMA Board of Trustees. "These provisions completely blur the line between services that are medically necessary and services that the plan simply does not want to cover."

"Perhaps most troubling," Dr. Lewers said, "is the shroud of secrecy that surrounds the existence and impact of these provisions. Patients as well as physicians are kept in the dark," he said. "Patients need to be vigilant these days about asking questions of their physicians and of their managed care plans. Yet many patients still don't know what questions to ask. They don't see hidden dangers until too late.

The Aetna/U.S. Healthcare contract is representative of others in the industry. According to Dr. Lewers, "there is a trend developing in which managed care companies with large market shares offer one-sided contracts on a "take-it-or-leave-it" basis. The companies refuse to allow negotiation, yet physicians who sign these contracts are virtually signing away their ability to properly advise their patients and provide the care they believe is clinically indicated - - the very service they entered into the contract to provide," he said. Attorneys who represent physicians also have underscored these concerns to the AMA.

The inclusion of an apparent gag clause in the Florida contract is particularly surprising, given U.S. Healthcare's public assurances in February of 1996, prior to its merger with Aetna, that it was eliminating all gag clauses from its contracts. In 1997, Florida became one of 35 states to pass laws banning the use of gag clauses in managed care

To help physicians better understand their contracts, the AMA will unveil a model managed care contract December 6th during its Interim Meeting in Dallas. "The model contract is designed to be commercially reasonable while protecting patients' access to quality care," Dr. Lewers explained.

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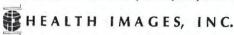
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