



# Bulletin

Editor: John W. Snead, M.D.

## Lee County Medical Society September General Meeting

"LAWS & RULES OF THE  
FLORIDA BOARD OF MEDICINE  
& LEGISLATIVE UPDATE 2006"  
Larry McPherson, Jr., J.D.  
Exec Dir, Florida Board of Medicine

1.5 Hours CME Credit

September 21, 2006

Royal Palm Yacht Club  
2360 West First Street  
Downtown Fort Myers  
6:00 p.m.—Social Time  
6:30 p.m.—Dinner/Meeting

**Accreditation /Designation Statement**  
This activity has been planned and implemented in accordance with the Essential Areas and Policies of the Accreditation Council for Continuing Medical Education through the joint sponsorship of the Florida Medical Association and the Lee County Medical Society. The Florida Medical Association is accredited by the Accreditation Council for Continuing Medical Education to provide continuing medical education for physicians.

The Florida Medical Association designates this educational activity for a maximum of 2 category 1 credits toward the AMA Physician's Recognition Award. Each physician should claim only those credits that he/she actually spent in the activity.

## Inserts

- General Meeting Notice
- Legal/Medical Golf Tournament
- SW FOMA 31st Annual Seminar
- Potluck in Paradise

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## President's Message

### Health Savings Accounts Julio Rodriguez, M.D.



Consumer-driven health care is here and is quickly becoming a more affordable means by which employers can offer healthcare benefits to their employees. It is estimated that by the year 2010, some type of consumer-driven healthcare will compose 24% of the market. It is important for us to understand consumer-driven plans and make sure they are done correctly. Remember that we were voiceless in the 80's when managed care came about.

Currently the most popular plan gaining attention is the Health Savings Account (HSA) combined with a high deductible health insurance policy. Created in January 2004 as part of the Medicare Modernization Act, they are tax-advantaged savings accounts that individuals can use to pay for "qualified medical expenses." Individuals and their employers can deposit tax-free money into the account and at age 65 the individuals can withdraw any dollars not used, although the amount withdrawn will then be subject to income tax. Those under age 65 can also withdraw money for non-health expenses, but amount withdrawn would be subject to income taxes plus a 10% penalty. Individuals would pay for medical expenses out of their HSA's until they have met their deductibles. After meeting the yearly deductible the health plan would provide full coverage. This year the individual minimal deductible is \$1,050 and family is \$2,100. The higher the deductible, the lower the monthly payment would be.

In 2004, medical spending in the US reached \$1.9 trillion, up from the previous year by 7.9%. The idea of offering HSA's is catching on at a rapid pace through out the nation. Money in HSA's grows tax deferred, can be invested and can be rolled over year-to-year. One in every eight organizations that offer job-based health coverage today would seriously consider terminating job-based coverage this year if upcoming premium hikes

were similar to those in 2005.

One of the most promising features of HSA's is giving individuals more control over how their healthcare dollars are spent. This translates into more individual responsibility, which could make a measurable difference in containing healthcare cost. Patients are currently disconnected from the cost of their care; their lifestyle choices contribute to medical inflation and poor health outcome. Many advocates of consumer-driven health care believe that until there is a moral hazard built into health insurance most patients won't pay attention to their doctors' advice or work with them to make effective decisions or become partners in a better healthcare system for everyone.

The data on the effectiveness of consumer-driven healthcare is just beginning to come in, but so far the evidence looks promising. One study done by Consumer- Directed Health Plan Report found that individuals with Health Reimbursement Arrangements (HRA) were 25% more likely to engage in healthy behaviors and 30% more likely to have annual checkups. These patients were also 20% more likely to follow treatment regimens for chronic disease care.

Critics of HSA's claim that these plans benefit only healthy patients and other patients will wait too long before seeing a doctor and refuse expensive test. That is where we as patient advocates come in. In my opinion, it will be easier to encourage a patient to have proper medical care rather than convincing them there is no medical reason to have expensive tests simply because they feel "entitled to them". Whatever your opinion is on HSA's keep in mind that we must understand how this concept fully works and be hands-on, now. We won't be able to complain later about how the system works like we do with managed care.

**Together We Are Stronger.**



# LEE COUNTY MEDICAL SOCIETY BULLETIN

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## PRINTERS

Distinct Impressions

## New Location

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**DO YOU have news/  
information about you or  
your practice?** Let us know  
and we will be happy to print  
under our Membership Activity  
section.

# Membership Activity

**Brian A. Harris, M.D.**, of Harris Dermatology, has been named one of *America's Top Doctors* by Castle Connolly Medical Ltd., a nationally recognized healthcare survey and research firm. The results of the annual survey are released in the guide, *America's Top Doctor*. The honor recognizes "outstanding physicians who are among the very best in their specialties and in their communities," and is aimed at helping consumers.

**James Orr, Jr., M.D.** was elected President of Florida OB/GYN Society. Dr. Orr is a gynecologic oncologist from Fort Myers, Florida and has practiced medicine in Florida since 1985. He currently serves as Medical Director of Florida Gynecologic Oncology and Lee Cancer Care in Fort Myers.



**Larry Hobbs, M.D., Thomas Johnson, M.D., Dwight Phelps, M.D. and Walter Simmons, D.O.** have opened the Urgent Care Center of Southwest Florida located on the first floor of the Estero Medical Center, at the intersection of Three Oaks Parkway and Corkscrew Road in Estero.

It is staffed solely by emergency medicine-trained doctors and nurses. It will have digital x-ray, in-house lab and pharmacy. It is open 8A-8P Monday through Friday, 9A-5P Saturday and 12N-4P on Sunday. The phone number is 333-CARE (2273) and address is 10201 Arcos Ave., Suite 105, Estero, FL 33928. The center would be available to see your over-flow patients or patients that need to be seen after hours or on the weekends. Feel free to call or stop by for a tour.

# New Member Applicants

**ARIEL FIGUEREDO, M.D.** – Dr. Figueredo attended the Institut Superior de Ciencias Medical in Camaguey, Cuba where he obtained his M.D. degree in 1991. He completed his internship at Hospital Provincial Ciego de Avila, Ciego de Avila, Cuba in 1994. He did training in Obstetrics and Gynecology at Mount Sinai School of Medicine in Jersey City, NJ from 2002-05 and Marshall University School of Medicine, Huntington, WV from 2005-06. Dr. Figueredo is affiliated with Physicians Primary Care of SWFL at 1265 Viscaya Parkway, Cape Coral, FL 33990.



**DANIEL J. KRAUSS, M.D.** – Dr. Krauss attended Michigan State University, East Lansing, MI/Wayne State University, Detroit, MI. He obtained his medical degree in 2001. He completed his internship/residency at the University of Rochester, Rochester, NY in 2005. He is certified by the American Board of Anesthesiology. Dr. Krauss is with Medical Anesthesia and Pain Management Consultants, PA at 4048 Evans Ave, Fort Myers, FL 33901.



**SILVIA A. ROMERO, M.D.** – Dr. Romero attended the University Peruana Cayetano Heredia in Lima, Peru and obtained her M.D. degree in 1994. She completed her internship/residency at Henry Ford Hospital in Detroit, MI in 1998 and a fellowship at H. Lee Moffitt Cancer Center in Tampa, FL in 2005. Dr. Romero is with Florida Cancer Specialists at 811 Del Prado Blvd., Cape Coral, FL 33990.



**TINERFE TEJERA, M.D.** – Dr. Tejera attended University of North Carolina, Chapel Hill, NC and obtained his medical degree in 1996. He completed his Internship/Residency at the University of North Carolina, Chapel Hill, NC in 2000. He completed fellowship training at Carolina Surgical Arts, P.A. in 2001. Dr. Tejera is with SWFL Oral & Facial Surgery at 5285 Summerlin Road Ste 101, Fort Myers, FL 33919.





## As I Recall...

Roger D. Scott, M.D.

# Urological Florida - Part I

The search for information about John Clifford Vinson, M.D. (the first urologist in Ft. Myers) has revealed some interesting findings, not only regarding Dr. Vinson but other Florida urologists as well.

Although Florida only became a state in 1845, urological information surprisingly appeared as early as 1877 as I discovered in reading the book "HISTORY OF UROLOGY IN FLORIDA". This fascinating book was prepared by the "FLORIDA UROLOGICAL ASSOCIATION 1948-1999" & edited by Ernest Costantino, Jr. M.D. of Ft. Lauderdale. Much of the information in this article is derived from this book and quotes are in double quotation marks & direct quotes of the original source are in single quotation marks. (Of course you will recognize some special original comments of mine!)

Remember that in the very early days there were no specialists as we recognize today. Let's go back to 1877 when E.T. Sabal, M.D. read a paper to the **Duval County Medical Society** (Jacksonville 4/19/1877) that was subsequently published in the **Proceedings of the Florida Medical Association** in 1879. The paper ('Congenital Phimosis as the Cause of Impotence') "reported four cases in which he succeeded in promoting a grateful cure by the performance of circumcision." (*Four joyous men!*) In 1899 Edward Liell, M.D. of Jacksonville presented to the FMA an article regarding cystoscopy in the female and stated 'the illumination is derived from an electric lamp with a head reflector.'

... "Physicians, urologists, and surgeons of the VD Century (*The editor, Dr. Constano, has used "VD" for Venereal Disease & not Roman numerals.*), between 1850 and 1950 were much concerned with the social diseases." (*The social diseases were primarily syphilis & gonorrhea that were still frequently seen in my early years of medicine; however, the urologists became smart and transferred the care of syphilis to dermatologists! Now the Infectious Disease physicians get the social diseases, but perhaps it sounds better to say treat instead of get!*) **The Florida Medical and Surgical Journal**, January 1886 editorial stated 'There is no subject so vexing to the practitioner as the treatment of urethral inflammation. There is nothing that anyone knows more about as gonorrhea.' Many supposed cures had previously been reported, but 'We have heard of these all of our lives and yet the urethra still weeps over its transgressions and does penance in the same old way.'

Dr. "J.C." Vinson was born in Georgia in 1884 and attended the Atlanta Medical School. After interning in 1907, he moved to Tampa in 1908 (*roughly 60,000 people in Hillsborough County*) to become the first urologist there & one of the first in the state (*I can't find any documentation*

*that he had any specialized training in urology, and I doubt that any was available*) He did further his knowledge by performing considerable urological research over the years.

A most interesting event occurred when Dr. Vinson was presenting a paper ("Cystitis a Symptom") to the 1914 meeting of the **Florida State Medical Association** in Orlando. Dr. McMurray of Bartow Florida called Dr. Vinson out as a liar saying it was not possible for anyone to look into the bladder. Dr. Vinson offered to go to Bartow and demonstrate the procedure to him so about two months later the Bartow Courthouse was set up as a make shift operating room. With an audience of physicians in attendance, Dr. Vinson performed a routine cystoscopy and his coup de grace (*Bet you didn't know I knew French!*) occurred with the finding of a small stone in the bladder that was shown to those physicians present. Seeing is believing and the value of the cystoscope was well recognized that day. (*I wonder if Dr. McMurray ever apologized to Dr. Vinson?*) **What a fabulous epic of medicine!**

As "Head of the Section of Urology & Dermatology, Division of Surgery, Bayside Hospital" in Tampa, Dr. Vinson published in the October 1920 **Journal of the Florida Medical Association** an article ("Hematuria") describing the etiologies in his ninety-eight cases.

Dr. Vinson presented a paper ("The Use of the Cautery in Acute Epididymitis") to the 1921 meeting of the **Southern Medical Association** (*Indeed a prestigious group in the South, probably more so than the AMA.*) and at that meeting he was instrumental in forming a Urological Section for the S.M.A. He continued his urological practice in Tampa for many years, but the time of retirement is not stated. This concludes information obtained from the **History of Urology in Florida**. From this point on all of the information is from the unpublished "Scott Book of Knowledge". Dr. Vinson was probably "grand fathered" into The American Board of Urology when it was incorporated in 1935. He was the first board (non-residency trained) urologist in Fort Myers & practiced urology out of his home/office at 1919 Manuels Drive from about 1948-50 till his death in 1957.

John Gadd, Lee Memorial Hospital Administrator in 1955, states that he doesn't think Dr. Vinson ever had hospital privileges. **Carey N. Barry, M.D.** was the second (but first residency trained) board certified urologist to come to Ft. Myers (1953). He states that J.C. was board certified & did have privileges, but referred all of his hospital and surgical patients to him (Carey). Next month will be a continuation of this same topic with something you don't want to miss (If the censors- I mean editors let it pass.). Keep it flowin'.

**NEVER EVER FORGET 911! THANK & PRAY FOR ALL THOSE WHO SERVE TO PROTECT & RESCUE US.**



## Medicare Physician Payment Reform

If Congress fails to act before they adjourn in October, Medicare will cut physician payments by about 5 percent on Jan. 1, 2007, with cuts totaling as much as 37 percent through 2015. And while physician payments plummet, practice costs during the same period are expected to increase 22 percent. These cuts make no sense as millions of Baby Boomers begin to retire.

Congress recently passed legislation reversing the physician payment cut of 4.4 percent that went into effect on Jan. 1, 2006, and setting the Medicare conversion factor at its 2005 level. Although payment rates for some localities and services are higher or lower than in 2005 due to geographic adjustments and other payment policies outlined in the 2006 Medicare physician

payment schedule final rule, the legislation reversed the across-the-board cut due to the fatally flawed payment update formula.

The 2006 Medicare Trustees report forecasts a cut of about 5 percent in 2007 and cumulative cuts of more than a third by 2015. Clearly, the Medicare physician payment update system needs to be reformed. If it is not, Medicare payment rates in 2007 will have fallen 20 percent below increases in physicians' costs since 2001.

Physician payment updates are driven by a flawed formula called the Sustainable Growth Rate, or SGR. Instead of the SGR, payment updates should be based on annual increases in practice costs, as

recommended by the Medicare Payment Advisory Commission.

Other Medicare providers are not subject to the SGR. In fact, hospital payments are slated to continue to rise by more than 3 percent a year under current law and payments to Medicare Advantage plans are estimated to increase by 7.1 percent in 2007.

Results of a recent American Medical Association Member Connect Survey (2006 AMA Medicare Physician Payment Survey) indicate that Medicare payment cuts to physicians will hurt access to care for America's seniors. The results show that 45 percent of physicians will either stop accepting or decrease the number of new Medicare patients they accept if Medicare payments are cut in 2007.

## Hold On Medicare Payments

Medicare will put a hold on Medicare payments for ALL claims (e.g., initial claims, adjustment claims, and Medicare Secondary Payer (MSP) claims) for the last nine days of the Federal fiscal year, i.e., Sept 22 - 30, 2006. Providers need to be aware of these payment delays, which are mandated by section 5203 of the Deficit Reduction Act (DRA) of 2006. Accelerated payments using normal procedures will be considered. No interest will be accrued or paid, and no late penalty will be paid to an entity or individual for any delay in a payment by reason of this one-time hold on payments. All claims held as a result of this one-time policy that would have otherwise been paid on one of these nine days will be paid on Oct. 2.

This policy applies only to claims subject to payment. It does not apply to full denials and no-pay claims. It also does not apply to periodic interim payments, home health request for anticipated payments, cost reports settlements, and other non-claim payments.

Additionally, Medicare contractors will continue to apply the fourteen day electronic claim payment floor and the 29-day paper claim payment floor. On a case-by-case basis, Medicare FIs, RHHs or carriers may make adjustments, after Oct. 1, for extenuating circumstances raised by a provider. Payments will not be staggered, and no advance payments during the nine-day hold will be allowed.

CR5047 is the official instruction issued to your carrier regarding changes mentioned in this article. CR5047 may be found by going to [www.cms.hhs.gov/Transmittals/downloads/R944CP.pdf](http://www.cms.hhs.gov/Transmittals/downloads/R944CP.pdf).

Please refer to your local carrier if you have questions about this issue.

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## Sovereign Immunity Am I Really Immune

Sandra Strickland, RN, MSN, LHRM, CPHRM and Joseph Putz, LHRM  
*Risk Management Consultants, First Professionals Insurance Company – FPIC*

Sovereign immunity is a complex issue. Some physicians may have the mistaken notion that they are sovereign agents if they become involved in a medical malpractice case, when, in actuality they may be at increased risk.

The doctrine of sovereign immunity grew out of England's court system, which held that the king could do no wrong, and hence, could not be sued. Our judicial system adopted the same doctrine and substituted governmental entities for the king, thereby providing government agencies with immunity from claims. Subsequent court decisions have eroded some of the immunities first granted to sovereigns.

The evolution of sovereign immunity ultimately resulted in the creation of Florida Statute 768.28, which waives sovereign immunity in tort actions, but limits the liability of the sovereign. Although a claim may be brought against a government agency, damages are limited to \$100,000 per claimant and \$200,000 per incident. The statute of limitations is also decreased to three years. In egregious cases and cases where economic damages far exceed the limits set by FS 768.28, the plaintiff may seek higher limits by filing a claims bill with the legislature.

Sovereign immunity may apply in medical malpractice claims. Physicians actually employed by federal, state, and local government agencies may enjoy sovereign immunity. Some settings where physician employment may provide sovereign immunity include: county hospitals, county jails, state supported medical universities, county health departments, as well as federal, state, or local government funded healthcare facilities.

Physicians working in these situations are not always protected by sovereign immunity. There are, in fact, agency issues that may complicate the application of sovereign immunity. This is especially true in those situations where a physician is not actually employed by the governmental body, but still works there, usually under contract. One issue is the sovereign agency's control over the physician. Even though language in an employment contract may describe the physician as an agent, if the physician is not under the direct control of the sovereign, the physician may be denied sovereign immunity in a malpractice case.

For example, if a physician is employed by a professional association to provide anesthesia or specialty services in a municipal hospital, the hospital may not have direct control over the physician and, as such, the physician may not be entitled to immunity. Decisions regarding control are generally based on employment practices rather than mere labels in a contract, according to defense attorney William Zei. "By determining who is responsible for making employment decisions, providing compensation to the physician, and preparing the physician's assignments and schedules, the sovereign agency's control of the physician can be established and may be used to determine the application of sovereign immunity."

Therefore, physicians practicing independently in a government facility with employed physicians may actually find themselves at greater risk of liability exposure. Because the damages to the sovereign agent are capped, other physicians involved in a malpractice case may be targeted as a "deep pocket" in terms of the plaintiff's theory of liability and thus have greater exposure. In a Broward County case (1), the parents of a young girl born with spina bifida settled with the South Broward Hospital District for \$100,000 because of the sovereign immunity liability limits granted to the hospital district. However, a non-employee radiologist also named in the action, but not entitled to sovereign immunity, was held liable for \$412,500.

Sovereign immunity for physicians involved in malpractice cases has become a complicated issue. According to Laura Archer, Vice President of Underwriting for FPIC, "The relationship that exists between a sovereign agency and a physician is a very complex issue and each contractual arrangement can be unique. Given the fact that these relationships are subject to interpretation, there is no data to support the application of a premium discount."

It is important to carefully evaluate your role as a sovereign agent before making any assumptions about your immunity. To better understand your risks and protections, it is recommended that you carefully examine your relationship with government agencies in the context of professional services rendered. From a risk management standpoint, it is wise to review any contract with your personal attorney in order to determine exactly what provisions (and exclusions) it contains relative to your entitlement, if any, to sovereign immunity. The impact of sovereign immunity in medical malpractice cases may actually increase your liability exposure.

(1) Santuchi vs. South Broward Hospital District et al.  
"Preventive Action" newsletter (Quarter 4, 2003)  
Risk Management Newsletter for policyholders of FPIC.



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## Governor Bush Names Christa Calamas Secretary of the Florida Agency for Health Care Administration

Michelle E. Jacquis, Florida Medical Association

Governor Jeb Bush today named Christa Calamas as Secretary of the Florida Agency for Health Care Administration (AHCA). Calamas most recently served as the General Counsel for AHCA. The appointment is effective July 8. Previously, she served as Assistant General Counsel to Governor Bush from 2002 to 2005. Calamas replaces Secretary Alan Levine who recently was selected as the new CEO of the North Broward Hospital District.

"Christa's extensive experience in health care policy continues to be a great asset to my administration," said Governor Bush. "I am confident Christa will continue the good work done by Secretary Levine as Florida implements landmark Medicaid reform, leads the nation in public reporting of hospital information and begins the process of creating networks for electronic medical records. All three of these priorities will fundamentally improve the way health care is delivered in our state."

July 1<sup>st</sup> marked the beginning of implementation of Florida's groundbreaking Medicaid transformation plan. Florida's reform program will improve quality of care and provide predictability in spending for Medicaid, the state-federal partnership charged with providing healthcare to more than 2.2 million vulnerable, disabled and elderly Floridians. Through the [www.FloridaCompareCare.gov](http://www.FloridaCompareCare.gov) website, Florida is the first state in the nation to give consumers tools to compare outcomes and prices between health care providers and medical services leading to improved care and reduced costs. Additionally, the state has begun to help build the networks required so that every citizen will have an electronic medical record within the next 10 years.

"I am honored Governor Bush has asked me to serve the state in this new capacity," said Calamas. "AHCA remains committed to seeing through the incredible reforms and initiatives we have embarked on to make a difference in the lives of those we serve." Prior to serving as Assistant General Counsel to Governor Bush, Calamas served as Assistant General Counsel at AHCA, providing legal counsel for the Florida Medicaid Program. She graduated from the University of Florida College of Law with honors and received her Bachelor of Arts degree from Eckerd College in St. Petersburg. Additionally, Calamas received a Master of Philosophy degree in public policy from Dundee University in Scotland.

Working to improve access to affordable, quality health care to all Floridians, the Agency for Health Care Administration directs Florida's \$16 billion Medicaid program, licenses and regulates more than 32,000 health care facilities and 30 health maintenance organizations and publishes health care data and statistics.

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## 2006 Candidates Running for Political Office

We urge each of you to get politically involved in anyway that you feel would benefit the candidate of your choice.

### United States Senate

LeRoy Collins, Jr. (Rep)  
Floyd Ray Frazier (NPA)  
Katherine Harris (Rep)  
William "Will" McBride (Rep)  
Peter Monroe (Rep)  
Brian Moore (NPA)  
Bill Nelson (DEM)  
Belinda Noah (NPA)  
Lawrence Scott (WRI)  
Bernard Senter (WRI)  
Roy Tanner (NPA)

### United States Representative

Richard Grayson (WRI)  
Connie Mack (Rep)  
Robert M. Neeld (Dem)

### State Representatives

#### **District 71**

Michael J. Grant (Rep)  
Richard Santos (Rep)

#### **District 72**

Paige Kreegel (Rep) - Elected

#### **District 73**

John Albion (Rep)  
Pete Burkert (Dem)  
Nick Thompson (Rep)

#### **District 74**

Jeff Kottkamp (Rep) - Elected

#### **District 75**

Trudi Williams (Rep) - Elected

### Governors Race (Top candidates)

Charlie Crist (Rep)  
Jim Davis (Dem)  
Tom Gallagher (Rep)  
Rod Smith (Dem)

### Other races

Attorney General, Chief Financial Officer, School Board, County Judges Circuit Judges, Supreme Court

### Elections

- Primary is Tuesday, September 5th.
- General is Tuesday, November 7th.

To view all candidates including a complete list of Gubernatorial candidates or to request an absentee ballot please go online to [www.leeelections.com](http://www.leeelections.com).

## Revenue Guarantees Are Great If You Know What You're Doing

Jeffrey Cohen, Esq.

One of the ways hospitals attract physicians to their communities is to promise that the doctor will earn a certain amount of money each month. This sort of "revenue guarantee" can be a great opportunity, but you have to watch your step.

### Why?

Why do Hospitals put their money on the line for new practices? Simple. They do it to get the physicians they want and need to know they can make a living in the community in order to uproot their lives and work to establish themselves. Simply put, revenue guarantees help new or relocating doctors get started financially.

### How Does it Work?

It's pretty simple. You and the hospital jointly determine what your monthly practice expenses will be over the period of the guarantee. You will need an experienced advocate to go through the process with you. Once the figure is arrived at, documents are signed that essentially state that you will earn at least \$X each month. If you earn less than that amount, the hospital will pay you the difference. Though it is simple in concept, the tricky parts are (1) figuring out how much the guarantee should be, and (2) negotiating the other parts of the deal that are negotiable.

### How Much?

If you are new in practice, new to a community or new to a medical staff, it will seem like guesswork to determine how much the revenue guarantee should be. It is essential to work with qualified experts who aid physicians in knowing what those numbers should be, since failing to do that could leave you going into debt each month. In other words, you have to know your anticipated expenses in order to ensure that the hospital's guarantee will be enough to cover you financially.

### What's included?

Since the hospital's obligation to pay you the guaranteed amount is triggered only when your collections do not hit the amount guaranteed by the hospital, the hospital will want to look closely at your financial books and records to see what you are earning from practicing medicine. Generally, the hospital will count all amounts you receive from practicing medicine, since this reduces the amount it has to pay you. In some cases, however, that does not make sense.

If, for instance, you are a hospital-based medical practice receiving a revenue guarantee, it generally makes no sense for non-hospital revenues to be counted by the hospital. Why? Because the basis for the guarantee for a hospital-based doctor is to ensure that the doctor's practice at the hospital can support the doctor financially. The fact that the doctor earns money from practicing in another county or hospital, or that he or she

owns a Burger King franchise is irrelevant to the issue of whether the doctor is making a living working at the hospital that gave him or her a revenue guarantee.

The issue is a little different with a doctor who is not hospital-based, since the link between the hospital and the doctor's income is usually weak. Doctors in a community typically derive revenue from many sources. As such, all revenues of non-hospital-based doctors will be considered in a revenue guarantee situation.

### How Long?

Most hospital revenue guarantees last a year, though they can run longer. The guarantee is especially important in the early part of the guarantee period, when revenues are at their lowest.

### What Does It Cost?

Nothing is free, and revenue guarantees do have costs. But, if things go well, you can end up getting the hospital's assistance and not have to repay the hospital. If you are a new doctor in a community or a medical practice hiring a new doctor under a hospital revenue guarantee program, here are some of the costs:

First, you will have to spend the next two to three years practicing medicine in the hospital's community. If you move away during that two- to three-year period, you will owe the hospital some or all of the money it paid you. The issue of how long you have to remain in the community is often negotiable.

Second, if you are a medical practice who has recruited a doctor under a hospital revenue guarantee program, you cannot restrict the doctor from practicing medicine if he or she leaves your practice. That means no noncompete, for instance. Why? That's what the Stark II regulations require. For that reason alone, it may make sense for the medical practice to bite the bullet and get bank financing to bring in a new doctor.

Third, though not a dollar cost, you will have to allow the hospital to see your corporate financial records. Since the hospital's financial support is based in part on how much money is collected from the services you provide, it has to be able to verify your collections each month.

Mr. Cohen is a partner with the Delray Beach/Ft. Lauderdale law firm of STRAWN, MONAGHAN & COHEN, P.A. He is Board Certified by the Florida Bar as a Specialist in Health Law. He may be reached at (561) 278-9400.

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## Dividends & Discounts

Jim Tollerton, President, Professional Benefits, Inc.

Professional Benefits is pleased to announce another **24.8% dividend** has been declared for participating member physician offices and practices by the CompOptions **Worker Compensation** program in association with the **Lee County Medical Society**. Dividends are declared retrospectively. In a world of increasing costs for medical practices, it is a pleasure to refund a dividend, especially on a mandated government program. Liza Battaglia and I will be visiting client offices to deliver the dividend checks.

CompOptions has paid a dividend back to client offices the past five years averaging over 20% based on a favorable performance of the worker compensation coverage offered client participants. Only **LCMS** members may participate in the pool, providing another powerful advantage for **LCMS** membership.

Since worker compensation rates are regulated by the State and there is no pricing difference among carriers, programs such as these offered by CompOptions through recommendation of the medical society provides it's members an attractive way to minimize costs.

Professional liability coverage with FPIC offers a 5% discount for **LCMS/FMA** members. Please advise us if you would like a review of current or proposed coverage for professional liability.

Professional Benefits Inc also announced another attractive offer for **LCMS & FMA** members to provide up to \$12,500/month of **specialty definition group long-term disability (LTD)** for members groups with 10+ employees at very attractive rates. In addition to providing a specialty definition of disability, the coverage is *non-integrated* with any existing, in-force personal disability coverage.

In addition PBI/LCMS announced a **10% discount on individual disability coverage** this past spring to new applicants.

Members may request preliminary proposals through the LCMS offices a 936-1645 or directly with Liza Battaglia, MBA at Professional Benefits Inc, 957-1310 or 800/741-5170 (Fax 941/366-5160) or e-mail: [Jim@ProfessionalBenefits.org](mailto:Jim@ProfessionalBenefits.org)

Jim Tollerton, CLU ChFC RHU, President of Professional Benefits Inc. serves as Broker of Record of several LCMS sponsored programs and is a regular presenter to LCMS programs on insurance and benefit planning issues.

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## Book Review

### Another Day in the Frontal Lobe

Paul H. Rockey, M.D., MPH, Director  
AMA Division of Graduate Medical Education

In her recent book, *Another Day in the Frontal Lobe* (Random House, 2006), Katrina Firlik describes her training as a neurosurgeon. According to the coverleaf, she is "one of only two hundred or so women among the alpha males who dominate this high-pressure, high prestige medical specialty."

The daughter of a surgeon, Dr. Firlik writes that she was attracted to her specialty because of a keen interest in the mind:

"The brain harbors personality and produces thought. If push comes to shove you can use someone else's kidney; there's nothing unique about your own. Your brain, on the other hand, is who you are. So when presented with the menu of options, I knew that something brain-related was required to feed my curiosity over the span of a career." That combined with her desire to do something with "a real manual component" lead her to neurosurgery.

Dr. Firlik's gifted prose reveals a personality full of insight and wry wit. She lets us watch her gain surgical skills and confidence. She also exposes the wide range of personalities in her specialty. And despite her grueling schedule (pre-80 hour work week), she maintains a deeply humane view of the surrounding pathos and tells us stories of her patients with warm empathy.

Atul Gawande, a surgeon and prolific author, praised the book this way: "Katrina Firlik's engaging tale gives us all a chance to peer into heads alongside her, and to grasp how it is that ordinary human beings can do this extraordinary work."



## Odds & Ends

### STD/HIV Two Day Update

The Collier and Lee County Health Departments will be co-hosting a two-day STD/HIV Update November 30—December 1, 2006. The event will be held at the Regional Service Center at 2295 Victoria Avenue Room 123, Fort Myers. There is a \$50 registration fee payable to MSSC at the time of registration, also an additional \$35 processing fee for anyone needing CME credits is due at the time of the conference check in. Registration begins at 7:30 a.m.

### 31<sup>st</sup> Annual Seminars In Family Practice

Southwest Florida Osteopathic Medical Society will be holding their 31st Annual Seminar November 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> - Thursday-Sunday at the Sundial Beach Resort, 1451 Middle Gulf Drive GROUP #5503GW, Sanibel Island, FL 33957. Cost is \$400 (22 Credit Hours) Physicians, \$150 (5 Credit Hours, Sunday only) and \$150 Retired Physicians. Please see insert for registration.

### Frontline Alert - Prohibition On Using Internet When Prescribing For A Patient

Many physicians know that the Florida Board of Medicine passed a rule in 2003 that prohibits Internet prescribing. But some don't realize that the rule doesn't just affect doctors who work for Internet pharmacies. The rule requires a physician to complete a history and physical examination on a patient prior to prescribing any drug. The only exceptions are as follows: (1) true emergencies requiring immediate administration of medication, and (2) consults with another physician, or on-call or cross-coverage situations. Although newly available technology might allow a physician to access the patient's records via the Internet or communicate with patients via email, the requirements of the Board of Medicine remain the same. Click here for a copy of the rule. FMA members can email any questions about this rule to [fplendl@medone.org](mailto:fplendl@medone.org).

### New Regulations Outline Health Information Technology Exceptions

Federal regulators released new guidelines last week to support physician adoption of electronic prescribing and electronic health records technology. The directives create new exceptions and safe harbors to two key federal fraud and abuse laws for arrangements involving the donation of certain electronic health information technology services.

One of the regulations, from the Centers for Medicare and Medicaid Services, creates two new exceptions to the physician self-referral law, which generally prohibits a doctor from referring Medicare patients to entities with which the physician has a financial relationship. The other, from the Office of the Inspector General, establishes two new safe harbors under the federal anti-kickback statute.

Under the new rules, physicians may accept donated e-prescribing software and training as well as other health information technology from certain entities. The final rules include a significantly broader definition of donors and recipients than the proposed rule issued last October. Recipients of electronic prescribing technology will be required to pay 15 percent of the cost.

While these new guidelines offer a great deal of opportunity for adoption of health information technology tools, the AMA strongly recommends that physicians secure legal counsel to review any proposed arrangements with technology donors.

### It Pays To Be a Member of the Lee County Medical Society

Florida based First Professionals Insurance Company (FPIC) is the official provider of professional liability insurance for LCMS members.

Members in good standing with the LCMS are eligible for a 5% discount on malpractice premiums. LCMS members may also be eligible for additional claims-free discounts for even greater savings up to 25%.

We Are Florida's Physicians Insurance Company

For more information visit our website at [www.firstprofessionals.com](http://www.firstprofessionals.com) or contact Angie Nykamp, Director of Society Relations, FPIC, 800.741.3742, ext. 3071, or by email at [angie.nykamp@fpic.com](mailto:angie.nykamp@fpic.com)



View <http://www.hhs.gov/news/press/2006pres/20060801.html> for more information about these regulations.

In related news, the AMA is developing Web-based "resources" to assist its members with issues related to health information technology. All physicians are invited to complete a brief online survey to help shape these resources.

Visit <http://www.surveysolutions.com/ama/hitweb2006np.htm> to take the survey.

## Lee County Medical Society Members Perform High School Pre Participation Examinations

By Bo Kagan MD



On Saturday, May 20, 2006, members of the Lee County Medical Society volunteered their time to perform athletic pre-participation physical examinations at Bishop Verot High School. We examined 158 student athletes: 56 females and 102 males. Thirteen were referred for further evaluation before being cleared for sports participation. Two athletes were referred for testicular masses, both of whom had surgery for hydrocoele. Four neurological referrals were made: three for back pain, and one for recurrent brachial plexus neuropraxia ("stingers"). Three athletes required orthopedic referrals for elbow and

hip pain, and one for an ankle fracture. One athlete was referred to his family physician for evaluation and treatment of hypertension. Finally, three student athletes were noted to have heart murmurs, previously evaluated and cleared by cardiology. A minimal charge of fifteen dollars was collected from each student and given to the school for their athletic program.

I would like to again thank Drs. Todd Atkinson, Tom Carrasquillo, Paul Driscoll, Ray Kordonowy, Paul Liccini, Alex Lozano, Dan McKenna, Don Moyer, Julio Rodriquez, Steve West, Optometrist Dr. Travis Gresham, Physician Assistant Stu German, Athletic Trainer Jim Marshall, and Chiropractor Dr. Stephanie Beck for donating their time and expertise in helping these student athletes.

## Lee County Medical Society Alliance & Foundation News

Michele Tyson, President

### Installation of 2006-2007 Officers

The 2006-2007 Lee County Medical Society Alliance and Foundation officers were installed by Rosemary Xavier, Florida Medical Association Alliance President Elect on May 10<sup>th</sup> at the University Grill. Please join us in congratulating our new leadership:

President - Michele Tyson  
President Elect - Jennifer Kim & Mary Macchiaroli  
Vice President - Traci Mehalik  
Treasurer - Nicole Laquis  
Recording Secretary - Anne Wittenborn  
Corresponding Secretary - Alice Manuelidis

**Potluck in Paradise**

**October 7th**

For registration see insert.



### Welcome Newcomers

The Alliance and Foundation welcome new physicians and their spouses to the area this summer. In addition to their spouses becoming regular members, LCMS physicians may join the Alliance as Associate members. If your practice is hiring any new physicians, please provide Ann Wilke with their names, marital status and contact information so that we can send them our award-winning *In Touch* newsletter and invite them to special events.

This year, our annual Welcome Brunch will be held on Wednesday, September 6<sup>th</sup> at the Blue Coyote Business & Social Club in the Caloosa Yacht & Racquet Club. Co-Chairs Nicole Laquis, Anne Wittenborn and Irene Fuchs are planning a fun and relaxing luncheon to greet the newest members of our medical community. Help us to introduce the Alliance and Foundation to our growing Medical Family.



## Lee County Delegation to the FMA Annual Meeting

The Lee County Medical Society is sending 11 physician delegates to the Florida Medical Association Annual Meeting August 31-September 3, 2006. The following physicians will represent Lee County at the FMA Annual Meeting:

Howard Barrow, M.D.  
Stuart Bobman, M.D.  
Valerie Dyke, M.D.  
Ralph Gregg, M.D.  
Larry Hobbs, M.D.  
Eliot Hoffman, M.D.  
Otto Kunst, M.D.  
Richard Murray, M.D.  
Julio Rodriguez, M.D.  
James Rubenstein, M.D.  
Javier Sosa, M.D.  
Douglas Stevens, M.D.  
Dean Traiger, M.D.  
Steven R. West, M.D.

**Congratulations!**  
**Steven R. West, M.D.**  
**is running unopposed**  
**for**  
**FMA Vice President**

The following physicians represented their Specialty Societies at the Annual Meeting:

James Orr, M.D.  
Florida Obstetric/Gynecologic Society

Stephen A. Prendiville, M.D.  
Florida Society of Facial Plastic/Reconstructive Surgery

Kurt Markgraf, M.D.  
Florida Society of Anesthesiologists

Paul R. Bretton, M.D.  
Florida Urological Society

If you have an interest in being a delegate fro 2007, please let the Lee County Medical Society Office hear from you. Please contact the office at 936-1645.

## Revised 1500 Insurance Claim Form Released

If your practice uses the universal paper claim form known as "the 1500" you may need to contact the insurers and others with whom you do business to check about using a new form. The National Uniform Claim Committee (NUCC) has released a revised version of the 1500 Health Insurance Claim Form that accommodates the reporting of the National Provider Identifier (NPI), an identifier that must be used by all entities covered by the Health Insurance Portability and Accountability Act.

There will be a six-month grace period from Oct. 1, 2006, to March 31, 2007, during which physicians and other health care professionals can use either the current or revised version. The transition will be complete April 1, 2007, when the current form is discontinued. The NUCC strongly recommends contacting health plans prior to submitting a claim on the revised form to ensure that the plans are prepared to accept it.

The AMA will have the revised form, in a variety of formats and quantities, available for purchase in September. Bookmark [www.amabookstore.com](http://www.amabookstore.com) or call 800.621.8335 to purchase. Visit [www.nucc.org](http://www.nucc.org) for the 1500 Reference Instruction Manual, as well as other documents related to the revised form. (From the AMA E-Voice)

### The Health Law Group of Henderson Franklin is pleased to announce that Amy Lewis Bergen has joined the Firm.

Amy Lewis Bergen practices Health Care Law, focusing on health care compliance, regulatory and operational matters, contracting and general corporate matters.

Bonita Bay Executive Center I • 3451 Bonita Bay Boulevard, Suite 206

Bonita Springs, FL 34134

Direct Dial 239.344.1388

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[amy.bergen@henlaw.com](mailto:amy.bergen@henlaw.com)



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### *10th ANNUAL LEGAL-MEDICAL CHALLENGE CUP*

**"The battle of the professions"**

ALL PROCEEDS TO BENEFIT  
**ACCELERATED CURE PROJECT FOR MULTIPLE SCLEROSIS**



<b>DATE:</b>	<b>PLACE:</b>	<b>TIME:</b>	<b>Cost:</b>
<b>Saturday</b> <b>October 7, 2006</b>	Pelican Preserve Golf Club 10571 Veneto Drive Fort Myers, FL 33913 (Off Colonial Dr passed I-75)	7:30 AM – Registration 8:30 AM – Start Time	\$220 per team

**Post Play Awards Ceremony:** Buffet Meal • Cash Bar • Raffle/Auction

**Beverages:** Courtesy of Rocky Rager • Omni Financial Services

**Awards:** Low Net – Doctors • Low Net – Lawyers • Longest Drive • Closest to Pin • Putting Contest

**Winning Profession:** The Challenge Cup

**Deadline for Entries:** September 15, 2006 (See insert for registration.)

The tournament format requires an equal number of teams from each profession. For further information call the LCBA office at 334-0047, LCMS at 936-1645, Dr. Bruce Lipschutz at 432-0101, or Ken Jones, Esq. at 337-3850.