

# Bulletin

**Physicians Caring for our Community** 

Editor: John W. Snead, M.D.

Volume 37 Issue 4

April 2013

## 2013 Meetings & Events

LEE COUNTY MEDICAL SOCIETY
General Membership Meeting

MAY 16, 2013

Royal Palm Yacht Club 2360 West First Street Fort Myers, FL 33901 6:30 p.m. Social Time 7:00 p.m. Dinner - Program

**Guests: Local Legislators** 

Topic: Legislators' view on 2013 Session and What's ahead in Medicine.

RSVP Medical Society Office LCMS, 13770 Plantation Road, Ste 1 Fort Myers, FL 33912 Tel: 936-1645 Fax: 936-0533

## SPRING FLING SATURDAY, APRIL 13, 2013 7–10 PM

Brodeur Carvell Fine Apparel Bell Tower Shops

RSVP: Mail to: Mariquita Anderson, Alliance President 17920 Grey Heron Court Fort Myers, Beach, FL 33931

## **INSERTS**

Resolution Form Medical Office Leasing Pictorial Directory:

Physician Advertising Practice Information Update Request

## **Inside This Issue:**

Cover Photo by Dr. Guttery	1
Membership News	2
President's Message	3
FMA Annual Meeting Resolutions	4
Welcome New Friend In Medicine/	
Do You Offer D.O.T. Physicals?	5
10 Physician Practice Trends 2013	6
Medical Record Retention	7
A.F.P.C. Meeting Highlights	8
Physician's Rights v. Patient's Rights	9
Issues Impacting Providers	10
LCMS Calendar Of Events 2013	11



## LEE COUNTY MEDICAL SOCIETY BULLETIN

13770 Plantation Road, Ste 1 Fort Myers, Florida 33912 Phone: (239) 936-1645 Fax: (239) 936-0533 E-Mail: awilke@lcmsfl.org www.leecountymedicalsociety.org

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

#### **CO-EDITORS**

Mary C. Blue, M.D. John W. Snead, M.D.

## EDITORIAL BOARD PRESIDENT

Audrey Farahmand, M.D.

#### PRESIDENT ELECT

Peggy Mouracade, M.D.

#### **SECRETARY**

Shari Skinner, M.D.

#### **TREASURER**

Andrew Oakes-Lottridge, M.D.

#### **PAST PRESIDENT**

Richard Macchiaroli, M.D.

#### **MEMBERS-AT-LARGE**

Jon Burdzy, D.O. Joanna Carioba, M.D. Daniel de la Torre, M.D.

Valerie Dyke, M.D. Trevor Elmquist, D.O.

Paul Makhlouf, M.D.

Viengsouk Phommachanh, M.D. Kultar Singh, M.D.

## MANAGING EDITOR

Ann Wilke, 936-1645

#### **BULLETIN STAFF**

Valerie Stine Marian McGary

The editors welcome contributions from members. Opinions expressed in the Bulletin are those of the individual authors and do not necessarily reflect reflect policies of the Society. Advertisements do not represent sponsorship or endorsement by the Lee County Medical Society nor necessarily implies the accuracy or reliability of any advertisement displayed in this publication. © 2012 LCMS.

## **PRINTERS**

Rapid Print of SWFL

#### Lee County Medical Society Mission Statement & Disclosure Policy

The purpose of the LCMS is to unite the medical profession of Lee County, FL, into one compact organization; extend medical knowledge and advance medical science; elevate the standards of medical education; strive for the enactment, preservation and enforcement of just medical and public health laws; promote friendly relations among doctors of medicine and guard and foster their legitimate interests; enlighten and alert the public, and merit its respect and confidence.

All LCMS Board of Governors and Committee meeting minutes are available for all members to review.



## **About the Cover:**

## Sandhill Cranes at dusk on Crooked Lake (Babson Park)

Florida Sandhill Cranes photographed at Crooked Lake by Ed Guttery, MD. With a standing height of up to 4 feet and a wingspan of 7 feet, they are magnificent birds to both hear and see in the wild.

## MEMBERSHIP NEWS

#### Left Area

Viengsouk Phommachanh, MD

## Resigned

Steven Woodring, D.O.

## **NEW APPLICANTS**



Donald T. Harris, MD – Dr. Harris received his MD degree from University of Connecticut School of Medicine, Farmington, CT 1988-1992. He completed his internship/residency at the Middlesex Hospital, Middletown, CT 1992-1995. He is in group practice with LPG at The Sanctury, 8960 Colonial Center Drive, Fort Myers, FL 33905. Tel: 239-343-9469.

## LCMS ALLIANCE NOMINATIONS

The Lee County Medical Society Alliance is accepting nominations for our 2013-2014 Officers. If you would like to nominate yourself or someone else, please contact Corresponding Secretary Cheri O'Mailia using the contact form at www.lcmsalliance.org. The following positions are available:

- President
- President-Elect
- T
- Recording Secretary
- Corresponding Secretary

• Treasurer

Nominations will be accepted through March 31.

## **LCMS Alliance April Schedule**

April 6	3:00 pm - 6:00 pm	Bling Bash to Smash Slavery
April 13	7:00 pm – 10:00 pm	Spring Fling
April 30	10:00 am – 11:00 am	Alliance Board Meeting



April 22, 2013

## **MEMBERSHIP DUES**

Dues Were Past Due as of January 31st.

Please contact the LCMS office if you will need to make payment arrangements.



LCMS dues have not increased since 1993.

Unpaid memberships will be dropped **April 15th.** 

Recruit three new members & your 2014 dues will be free of charge.



Investment Advisor Representative phone: 239.330.8443 mobile: 904.729.8705 email: LN@NeizvestFRM.com web: www.NeizvestFRM.com

We value your privacy.

All services are completely confidential.

Neizvest FRM Inc. Member, FINRA

# PRESIDENT'S MESSAGE: THE NURSE-DOCTOR

Audrey Farahmand, M.D.



Recently, State Representative Fitzenhagen and Senator Galvano penned HB805 and SB612, respectively. These bills increase the penalty for a nurse to present himself/herself as "doctor" without specifying they are a

doctor of nursing, either verbally or in written form, to a third degree felony. This became relevant as new practice settings such as retail health clinics utilize nurses who have obtained Doctorates of Nurse Practice. In fact, by 2015, only Doctor of Nurse Practice programs will be recognized by the accrediting body of the American Association of Colleges of Nursing.

Under current law, any health care practitioner who fails to identify oneself by type of license – orally or in writing, such as by name badge faces disciplinary hearings from one's state professional board. Another law already in place sets a penalty for those who intentionally mislead the public to believe that they are physicians as a first-degree misdemeanor – punishable by jail time not exceeding one year and/or fine not exceeding \$1,000.

SB 612 sets the penalty for nurses as a third-degree felony punishable by fines up to \$5,000, jail time and loss of professional license for a maximum of 5 years if he/she intentionally misleads the public by presenting himself/herself as "doctor" without specifying that they are a doctor of nursing.

Nurses feel the legislation is oppressive as it is directed only at nurses (not chiropractors, podiatrists, optometrists, etc. who are allowed to use the title "doctor"). Also, they feel this type of legislation will obstruct their quest for autonomy (practice without physician supervision). They cite that according to an assessment by the congressional Office of Technology Assessment, Nurse Practitioners can deliver as much as 80 percent of the health services provided by primary care physicians. They will also point out that there are more than a dozen states that allow DNP's

to practice independent of physician oversight and they will claim that there is no evidence of any significantly greater rate of adverse events or malpractice claims under their care.

Physician groups feel that nurses presenting themselves as "Doctor" would mislead the public, compromise patient safety, and would set the stage for DNP's to request to practice autonomously in Florida. Physician groups like the AMA, AAFP, and ACP oppose DNP's autonomous practice as they feel that the MD's advanced clinical education training is needed to identify that 20 percent of complex diagnoses and to recognize life-threatening presentations and the more acutely sick patient.

Most of the states that have allowed DNP's to practice independently, did so because they have large underserved populations and rural areas that had access to care issues. In Florida, access to a primary care physician has not been as troublesome as in these states. However, if the Sustainable Growth Rate (SGR) physician reimbursement cuts of 26.5% were to occur, many primary care physicians in Florida would be forced to close up shop or stop accepting new Medicare patients. Also, with the Affordable Care Act extending insurance eligibility to an additional 32 million Americans, Floridians would see more problems with access to care. This scenario would then create a need for DNP's to work independently - thus, forcing Florida to put quantity before quality of health care.

As of March 7, 2013, the Florida Senate Health Policy Committee voted 8 to 1 in favor of SB612 although the criminal repercussions might get watered down as the bill is sent through the approval process. It is important that we support and commend Representative Fitzenhagen and Senator Galvano for their leadership on this issue. Please write to them in support of SB 612 at Galvano.bill.web@flsenate.gov, galea.kathy@flsenate.gov, heather.fitzenhagen@myfloridahouse.gov, and Edward.metzger@myfloridahouse.gov.



## LCMS FRIENDS IN MEDICINE

LCMS Friends in Medicine program is open to area businesses that can offer member only benefits and discounts. We encourage our members to patronize these businesses that have been selected by the LCMS for their outstanding services and products.











April 2013 lcmsfl.org

## RESOLUTIONS TO FMA ANNUAL MEETING

FROM: Larry Hobbs, M.D., LCMS Delegation Chair to the

FMA Annual Meeting

SUBJECT: Resolutions to FMA Annual Meeting

Hilton Bonnet Creek

Orlando, FL July 26-28, 2013

We are making preparations for the Annual Florida Medical Association Meeting and need your help.

It is with your ideas, comments and suggestions that we go armed to the FMA to state your case. The Delegation has some of its own concerns but we need to hear from all of you so that we can take the full breadth of experience and concerns to the meeting.

I am requesting that you exercise one of your most important duties as a member of the LCMS and that is to put in writing ideas you have that will help organized medicine represent you in effecting change that will allow you to better serve your patients. In your daily practice you have things that bother you or you see ways in which we as physicians could improve the delivery of health care. Please, write them down and forward them by May 15, 2013 to the Lee County Medical Society, 13770 Plantation Road, Ste 1, Fort Myers, FL 33912 or Fax: 936-0533.

You will find a form for writing your resolution included in the April Bulletin. If you have difficulty expressing your idea in this format don't worry. Simply send your idea for a resolution and we will do the rest.

Thank you for your efforts.

## LEE COUNTY MEDICAL SOCIETY DELEGATION

FMA Annual Meeting – July 26-28, 2013 Hilton Bonnet Creek Orlando, FL

Larry Hobbs, MD, Chair Cy Anderson, MD Stuart Bobman, MD Stefanie Colavito, MD Daniel de la Torre, MD Audrey Farahmand, MD Valerie Dyke, MD F. Rick Palmon, MD Richard Macchiaroli, MD James Rubenstein, MD Shari Skinner, MD Shahid Sultan, MD



We would like to encourage our membership to become active by getting involved and offering your concerns and suggestions and help make a difference in medicine.



## We Appreciate Your Referrals!



From left: Kate Wagner, O.D.; E. Trevor Elmquist, D.O.; Nina Burt, O.D.

When you speak to your patients about their eye health, speak to them about Elmquist Eye Group. We provide superior health care with personalized attention and the convenience of multiple locations, Saturday and same day appointments.

# E ELMQUIST

preserving and restoring vision

(239) 936-2020

www.Elmquist.com

#### **CAPE CORAL OFFICE**

2336 Surfside Blvd., Suite 121, Cape Coral Mon.: 1 p.m. to 5 p.m. / Tues. - Fri.: 9 a.m. to 5:30 p.m. / Sat.: 9 a.m. to 1 p.m.

#### **FORT MYERS OFFICE**

12670 New Brittany Blvd., Suite 102, Fort Myers Mon. - Fri. 8 a.m. to 5 p.m.

## LCMS Welcomes Our Newest "Friend In Medicine"

Markham Norton Mosteller Wright & Company specializes in tax, accounting and business consulting services for Physicians and Health Care providers. Serving Southwest Florida since 1979, our experienced team can improve your profits and sharpen your competitive edge with a variety of services related to practice operations, strategic planning, human resources, tax planning and accounting services.

Karen Mosteller, CPA, CHBC is a Certified Public Accountant and a Certified Health Care Business Consultant. She understands every



aspect of a practice and can work as a part of the management team and provide a wide-range of services geared toward the specific needs of a medical practice. In addition to the traditional tax and accounting services, Karen can also assist with the following:

- · Analyze profitability and overhead.
- Coordinate financing with financial institutions.
- Perform an operational review to ensure proper internal controls are in place to safeguard against theft.
- Review legal documentation such as employment agreements and buy/sell agreements.
- Provide assistance with planning and negotiating EHR system conversions and/or upgrades.
- Provide guidance with succession planning or anticipated sale of practice.
- Act as interim management while you are in transition.
- Recruit and assist in evaluation of personnel.
- Provide human resources guidance for legal compliance as well as best practices and procedures.

To learn more about our firm, visit www.markham-norton.com or call Karen Mosteller at (239) 433-5554.

# Do You Offer D.O.T. Physicals? New Laws For Physicians - CME'S Available

The National Registry of Certified Medical Examiners is a new Federal Motor Carrier Safety Administration (FMCSA) program. It requires all medical examiners that wish to perform physical examinations for interstate commercial motor vehicle (CMV) drivers to be trained and certified in FMCSA physical qualification standards. Medical examiners who have completed the training and successfully passed the test are included in the National Registry.

## NRCME was established to help medical practitioners meet the requirements for the new National Registry of Certified Medical Examiners.

- Section 4116 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) requires the Federal Motor Carrier Safety Administration (FMCSA) to establish a national registry of medical examiners who are qualified to perform examinations and issue medical certificates.
- The FMCSA National Registry of Certified Medical Examiners (NRCME) program requires medical examiners to receive training and pass a certification test before being listed on the Registry – which will be available to commercial motor vehicle (CMV) drivers and motor carriers to identify medical examiners authorized to conduct the CMV driver physical examination.
- Examiners must be certified to appear on the Registry by the May 21, 2014 deadline.

## **NRCME** and Medical Examiner Training Candidates

As a Medical Examiner Candidate, you must:

- Be licensed, certified, or registered in accordance with applicable State laws and regulations to perform physical examinations. The examiner must be an MD, NP, DC, DO, or PA.
- Complete accredited medical examiner training on the FMCSA core curriculum.
- Pass the FMCSA Medical Examiner Certification Test.

#### **NRCME Training**

NRCME training addresses the full range of knowledge, skills and abilities required to perform physical examinations of CMV drivers, per FMCSA core curriculum requirements, including issues specific to CMV drivers and the unique physical and mental demands of their job.

- The NRCME training program includes all topics listed in the National Registry of Certified Medical Examiners Core Curriculum Specifications.
- NRCME is accredited to provide continuing medical education units and is accredited specifically for FMCSA training.

## After Completion of NRCME Training

You will receive certification of training allowing you to register for the Federal exam. After passing the exam, you will be listed as an NRCME examiner in the National FMCSA Registry. 90% of NRCME students achieve a passing grade or better.

You will be listed on the Registry for 10 years.

The Medical Society would like to compile a list of physicians that offer the D.O.T. Physicals. If you provide this service to the community, please give us a call at 936-1645 to be placed on our list for referrals.

April 2013 lcmsfl.org

## 10 Physician Practice Trends To Watch In 2013

## By Debra Beaulieu | FiercePracticeManagement.com

To borrow the words of Lou Goodman, president of the nonprofit Physicians Foundation, "2013 will be a watershed year for the U.S. healthcare system." For physician practices, the upcoming New Year will be a pivotal one, in many cases, making the difference between folding and thriving in a post-health-reform world.

Here, in no particular order, are 10 existing trends we predict will affect your practice in 2013 and beyond.

#### 1. Payment reform

Most of the United States is in the middle of a difficult transition from still-dominant fee-for-service reimbursement to a variety of emerging value-based payment models. With a cost-containment law passed in 2012, Massachusetts continues to be a state to watch as you evaluate options for your own practice going forward. In addition, the American Medical Association has released a how-to manual to help physicians understand and negotiate new payment models.

#### 2. Alternative care models

Original article source: FiercePracticeManagement.com

 $Read\ the\ full\ article\ online:\ http://www.fiercepracticemanagement.com/story/10-physician-practice-trends-watch-2013/2012-12-19$ 

## **MEDICAL RECORD RETENTION**

## Laura A. Dixon, BS, JD, RN, CPHRM, Director Department of Patient Safety, The Doctors Company

Physicians have many responsibilities with respect to retaining medical records. A number of variables affect the length of time a physician should keep a medical record, such as state and federal laws, medical board and association policies, and the type of record (for example, an adult patient versus a pediatric patient record). The following information can guide physicians in developing their medical record retention policies.

## **Basis for Keeping Medical Records**

The most important reason for keeping medical records is to provide information on a patient's care to other health care professionals. Another major rationale is that a medical record that is well documented provides support for the physician's defense in the event of a medical malpractice action. Without the medical record, the physician might not be able to show that the care he or she provided was appropriate and met the standard of care.

#### State and Federal Laws

For the most part, state and federal laws regarding mandatory record retention time frames apply to hospitals or similar facilities rather than to a physician's clinic. The Medicare Conditions of Participation (COP) require hospitals to retain records for five years (six years for critical access hospitals), whereas OSHA requires an employer to retain medical records for 30 years for employees who have been exposed to toxic substances and harmful agents. HIPAA privacy regulations have a six-year retention requirement, which follows the federal statute for limitations for civil penalties.

## Medical Board and Medical Association Policies and Recommendations

When state or federal laws are silent on medical record retention, medical boards may have policies or recommendations on how long a physician should keep records. For example, the Colorado State Board of Medical Examiners Policy 40-07 recommends retaining medical records for a minimum of seven years after the last date of treatment for an adult and for seven years after a minor has reached the age of majority, or age 25.5 The California Medical Association has concluded that while a retention period of at least 10 years may be sufficient, it recommends that all medical records be retained indefinitely or, in the alternative, for 25 years.6

#### Case Law

A decision by the California Court of Appeals<sup>7</sup> challenged the protection traditionally afforded to physicians by the statute of limitations. The court held that when an injury or abnormality did not manifest itself within the statute of limitation or if the patient could not have discovered the problem within the required time frame, the statute of limitations was suspended until the injury became apparent. As such, the time frame for the patient to bring a malpractice action was several years after the care was provided.

#### Recommendations

The Doctors Company recommends that physicians retain medical records for at least 10 years after the last visit for adult patients and up to age 28 for minors, or 10 years after the patient reaches majority. For California physicians, medical records should be retained for 25 years

after the patient's last visit. Some states allow records to be retained in an electronic format. For example, a paper record may be scanned to a computer or kept in another electronic format, such as microfilm. Paper records should be stored with a reputable document storage company.

Such companies may offer alternative methods for document management, such as electronic scanning and storage, which physicians may want to consider. Storing closed or archived records at your residence puts you at risk of damage from fire or flood, loss due to theft, or other unauthorized access. You should also check state statutes and professional licensing agencies for state-specific requirements or recommendations.

#### What Records Should You Retain?

Retain all records that reflect the clinical care provided to a patient, including provider notes, nurses' notes, diagnostic testing, and medication lists. Retain records obtained from another provider for the same length of time as those in your record. This is especially true if you have relied on any of the previous records or information when making current clinical decisions.

As to billing records, physicians should review bills for any reference to care provided. For example, review the bill to determine if it shows a limited examination or an annual physical with diagnostic tests obtained or requested. If the billing document shows that care was provided, it may be in your best interest to keep the bill for as long as you retain the medical record. Otherwise, you need to retain it for the same length of time as other business records and in accordance with federal and state income tax requirements.

The Doctors Company understands that there are financial implications behind these recommendations. However, given the importance of the medical record in defense of a malpractice action, it is vital for the physician to have the record available to defend proper care.

#### References:

- 1. 42 CFR § 482.24(b)(1) and 42 CFR § 485.638(c).
- 2 .29 CFR § 1910.1020(d)(1).
- 3. 45 CFR § 164.530(j)(2).
- 4. 42 CFR Part 1003.
- 5. Colorado State Board of Medical Examiners Policy 40-07.
- 6. Hanson CI, Meghrigian AG, Penney SL, Abrams GM. California Physician's Legal Handbook. Vol. 4. San Francisco: California Medical Association; 2007:27:10.
- 7. Brown v. Bleiberg, 32 Cal. 3rd 426, 186 Cal. Rptr. 228 (1982)

#### About the Author

This article was written by Laura A. Dixon, BS, JD, RN, CPHRM, Director, Department of Patient Safety, Western Region.

The guidelines suggested here are not rules, do not constitute legal advice, and do not ensure a successful outcome. The ultimate decision regarding the appropriateness of any treatment must be made by each health care provider in light of all circumstances prevailing in the individual situation and in accordance with the laws of the jurisdiction in which the care is rendered.

April 2013 | lcmsfl.org

## ADULT FLU AND PNEUMONIA COALITION MEETING HIGHLIGHTS

## By Mariquita Anderson, LCMS Alliance President

Highlights of the meeting include the following:

- There may be a new pertussis (whooping cough) virus strain, which is not protected with the Tdap shot. Florida experienced a 2-3-fold increase in pertussis.
- The high-dose flu shot may have protected better against the flu than the standard flu shot.
- Flu studies recently issued by CDC may not have accounted entirely for efficacy since failure rates are what are used to measure efficacy. Some people who contracted the flu may have had less severe or prolonged symptoms because they received the flu shot compared to those who hadn't.
- A study done in Iowa and Canada showed a correlation between receiving the flu vaccine and a decrease in cardiac events for those with a known history.
- A new Quadrivalent flu vaccine will be debuting for the 2013-2014 season. This vaccine will contain two variations of the A virus and two of the B virus: A H1N1, A H3N2, B

Victoria, and B Yamagata. GlaxoSmithKline is presenting the quadrivalent vaccine in IM injectible form appropriate for ages 3 and up.

- There is an Immunizations Workshop in Sarasota on May 23 from 9 am 3:30 pm. Nurses will receive free 5 Nursing Continuing Education Contact Hours. The group agreed that Keynote Speaker Donna Weaver is very good. More information about the workshop can be found at http://www.lcmsalliance.org/content/5th-annual-sw-florida-immunization-workshop
- Program 17 is intended to serve young adults ages 19 to 26 who do not carry insurance. At this time the DOH has not stocked the 4 vaccines that are covered under this program. As DOH receives the additional needed information, we will notify the Coalition when we have stock and issue all of the particular guidelines. We do know at this time that there will only be a limited supply of these vaccines under Program 17.
- Prevnar 13 has now been approved for children 6-17 years old. For this age group, Prevnar 13 is administered as a one-time dose to patients who have never received Prevnar 13. Chris Olney, the Pfizer representative, also had a very nice video presentation on childhood vaccines that is contained in a very compact display perfect for a pediatric office for the education on the importance of vaccines.
- The next Coalition meeting will be Wed, June 12, from noon to 1PM, Room 207, at the Joseph P. D'Alessandro Office Complex in downtown Fort Myers. Feel free to bring your lunch.



Southwest Florida's Most Sought-After Golf Community
Two Championship Courses, Only 600 Members
Member Owned and Debt Free
New Non-Resident Membership Available
with Full Use of All the Amenities
Call Lisa at 239-210-2775 or visit
www.fiddlestickscc.com

## **Health Education in Lee County**

Did you know that Lee County contributes almost half of all teen pregnancies in the area, which includes Sarasota, and the counties of Charlotte, Collier, De Soto, Glades, Hendry, and Lee? Did you know that less than 3% of all Middle School students in Lee County Public Schools are currently enrolled in a comprehensive Health Education curriculum? If you're interested in participating in a Public Service Announcement to support a Comprehensive K-12 Health Education Curriculum in Lee County, please contact Mariquita Anderson using the contact form on the Alliance's website at www.lcmsalliance.org.

# A Physician's Right To Counsel v. A Patient's Right To Confidentiality

## HAS THE FLORIDA SUPREME COURT GONE TOO FAR?

## Elizabeth P. Kagan, Esquire, BSN, LHRM

On December 20, 2012, the Florida Supreme Court issued an opinion in Hasan v. Garvar, Case No. SC10-1361, which bars physicians who are not defendants in a medical malpractice action from engaging in communications with an attorney, even if those communications have nothing to do with privileged matters between the physician and the patient/ plaintiff. In Hasan, the patient filed a medical malpractice action against his dentist, Dr. Garvar, for failing to diagnose and treat his dental conditions, allegedly resulting in a worsening of his problems, and causing severe and permanent physical and emotional damage. During discovery, the patient learned that the oral and maxillofacial surgeon, Dr. Schaumberg, who had treated him after Dr. Garvar had been provided an attorney by her malpractice carrier (the same insurance company as that of Dr. Garvar) to consult with her and to have a private (ex parte) pre-deposition conference with her. The patient moved for a protective order to prohibit the pre-deposition conference between Dr. Schaumberg and the attorney. The trial court denied the protective order and on appeal, the Fourth District Court of Appeal found that the ex parte conference was permissible because the attorney was not also assigned to Dr. Garvar and would not be discussing privileged medical information pertaining to the patient/plaintiff.

On review of the Fourth District's decision in the Florida Supreme Court, the court held that Florida's patient confidentiality statute, Section 456.057(8), Florida Statutes, creates a broad expansive physician-patient privilege of confidentiality and that the privilege prohibits ex parte meetings between non-party treating physicians and any "outsiders" to the confidential physician-patient relationship.

You may be wondering what impact this court decision has on you! Though not explicitly set forth in the opinion, the dissenting opinion by Justice Polston noted that the majority's holding went far beyond the confidentiality privileges in the statute and noted that the opinion was so broad that it even prohibited a non-party physician from independently hiring and consulting with an attorney prior to testifying at a deposition or at trial, a prohibition that does not apply to any other profession or individual. The decision also appears to prohibit ex parte communications between attorneys for a

hospital or other healthcare entity and an employed provider who has not been sued. Though the *Hasan* case involves a medical malpractice case, the court did not limit the application of its holding to just medical malpractice cases. It appears to apply to any type of litigation in which a patient/plaintiff's personal health information is relevant and germane.

Many physicians are unfamiliar with the legal process and upon receiving a Notice of Deposition, contact their personal attorney to gain a better understanding of the process and what to expect during the deposition. In addition, non-party physicians have a valid concern that they may unwittingly and unknowingly embroil themselves in litigation during discovery depositions as a result of investigative techniques used by some attorneys. Under the broad expansive holding in this case, a non-party physician is effectively prohibited from obtaining any legal counsel to assist him/her in navigating an unfamiliar and often unforgiving process.

The Florida legislature is aware of this case and its holding and is considering legislation to clarify this issue. CS/HB 827 appears to have the most momentum in the legislature at this time. The legislation, which is directly aimed at remedying the *Hasan* decision and proposes other important reforms, would allow privileged patient information to be disclosed to an attorney for a healthcare provider who has been subpoenaed to give a deposition, whether the attorney is hired directly by the practitioner or by his or her insurer. CS/HB 827 was adopted by the Civil Justice Subcommittee of the Florida House of Representatives and was referred to the Judiciary Committee on March 12th.

In the meantime, *Hasan* is the law and an unfortunate reality that healthcare providers and attorneys must navigate around. If you need additional information or clarification on how this case impacts you and your practice, consult with an attorney.

Contact: Liz Kagan Law Firm, 8191 College Parkway, Suite 303, Fort Myers, FL 33919 Tel: 239-466-1161. Email: Liz@kagan-law.com

April 2013 lcmsfl.org

## Information from CMS on Issues Impacting Providers

(Centers for Medicare & Medicaid Services)

Mandatory Payment Reductions in the Medicare Feefor-Service (FFS) Program – "Sequestration"

This is the current information on the sequestration impact on Medicare claims. This will be in effect until changes are made through Federal laws. Medicare Fee-For-Service (FFS) program, Part A and Part B claims with dates-of-service or dates-of-discharge on or after April 1, 2013, will incur a 2 percent reduction in Medicare payment. Claims for durable medical equipment (DME), prosthetics, orthotics, and supplies, including claims under the DME Competitive Bidding Program, will be reduced by 2 percent based upon whether the date-of-service, or the start date for rental equipment or multi-day supplies, is on or after April 1, 2013. Questions about reimbursement should be directed to your Medicare claims administration contractor.

### **Enrollment Date Concerning Ordering and Referrals**

Exchange of health information through ordering and referrals is a big part of the CMS EHR Incentive programs. Please note the following requirement when ordering for or referring your Medicare patients. Effective May 1, 2013, physicians who refer or order services for Medicare patients will be required to be enrolled in Medicare. Claims submitted on or after May 1st

for a physician who referred or ordered services for a Medicare patient but who is not enrolled in Medicare will be denied. Providers should enroll online through the Provider Enrollment, Chain, and Ownership System (PECOS) or can mail enrollment application CMS-8550. Physicians who have a valid opt-out affidavit on file are not required to enroll in Medicare. Visit the CMS web site for more information.

## **Request for Information (RFI)**

On March 7th the Acting Administrator Marilyn Tavenner and the National Coordinator for Health Information Technology Farzad Mostashari, M.D., announced HHS's plan to accelerate health information exchange (HIE) and build a seamless and secure flow of information essential to transforming the health care system and published a Request for Information (RFI). The RFI is titled: Advancing Interoperability and Health Information Exchange and seeks input on a series of potential policy and programmatic changes to accelerate electronic health information exchange across providers, as well as new ideas that would be both effective and feasible to implement. Deadline for comment is 5pm ET, April 22nd, and you can comment online at Regulations.gov.



## **Advertising Specialties**

More businesses are considering imprinted items to keep their name in front of their clients and to distribute at charitable events. Rapid Print has access to thousands of different products and we will coach you through the selection and design to maximize the imprint space available.

For more information go to rapidprintswfl.com

Or, talk to a representative at 239.590.9797

10% Off

On all orders placed by May 31, 2013.

The Lee County Medical Society attended the Landings Wellness & Health Fair on March 4, 2013. The fair attendance was about 330 residents of The Landings Yacht, Golf and Tennis Club. Judy Kay, a resident of the Landings, won our door prize of a Phillips MP3 Player.



## LCMS CALENDAR OF EVENTS

## **APRIL**

**LCMS Alliance - Spring Fling Cocktail Party** 13 7-10PM • Brodeur Carvell Fine Apparel Bell Tower Shops

**LCMS Board of Governors Meeting** 16

26 **HMA - Health Management Association** Meaningful Use Conference 8AM - 12:30 PM Registration 7AM • Pelican Preserve 10571 Veneto Drive, Fort Myers, FL 33913

## **JUNE**

15-19 AMA Annual Meeting Hyatt Regency Chicago Chicago, IL

18 **LCMS Board of Governors Meeting** 

#### AUGUST

**LCMS Board of Governors Meeting** 

#### **MAY**

16 **LCMS General Membership Meeting** Royal Palm Yacht Club 2360 West First Street, Fort Myers, FL 33901 6:30PM Social: 7PM Dinner Speaker: Local Legislators

17-19 FMA Spring Board of Governors & Council Days Hilton Bonnet Creek Orlando, FL

**LCMS Board of Governors Meeting** 

## **JULY**

26-28 FMA Annual Meeting Hilton Bonnet Creek Orlando, FL

#### **SEPTEMBER**

**LCMS Board of Governors Meeting** 

**LCMS General Membership Meeting / Wine Tasting** Location: TBA

Thomas P. Clark Board Certified in Health and Tax Law

Robert S. Forman LL.M. Taxation Concentrates in 401K and ERISA

Erin E. Houck-Toll Board Certified in Tax Law

Board Certified Civil Trial Lawyer

Bruce M. Stanley Sr. Guy E. Whitesman Board Certified in Tax Law

## Legal Care for Health Care **Professionals**

- · Health Care Law
- · Retirement Plans and ERISA
- · Mergers and acquisitions · Administrative hearings
- Medical malpractice

and licensing



henlaw.com • 239.344.1100

Fort Myers • Bonita Springs • Sanibel



© 2012 Henderson, Franklin, Starnes & Holt, P.A.

### **CARDIOLOGY CONSULTANTS** Of Southwest Florida





\*Accepting New Patients\*

Your Independent Cardiologists

\*Independent Cardiology Practice

Eliot Hoffman MD \*No additional facility fees

\*Participating in most insurance plans

\*Experienced Board Certified Cardiologists

\*Nuclear cardiac stress testing, Holter monitoring, treadmill stress testing, cardiac clearance, echocardiography

\*Cardiac catheterization and intervention, pacemaker and ICD implantation

\*Hospital privileges at GulfCoast Medical Center and HealthPark Hospital



Stephen Fedec DO

Richard Davis MD

13411 Parker Commons Blvd, Suite 101 Fort Myers FL 33912 www.cardiologyconsultants-swf.com

(239)415-4900

## **Lee County Medical Society**

13770 Plantation Road, Ste 1 Fort Myers, FL 33912 PRSRT STD US POSTAGE

**PAID** 

FT MYERS, FL PERMIT NO 534

## **CHANGE SERVICE REQUESTED**

## **Together We Are Stronger**

We do what no other medical malpractice insurer does. We reward loyalty at a level that is entirely unmatched. We honor years spent practicing good medicine with the Tribute® Plan. We salute a great career with an unrivaled monetary award. We give a standing ovation. We are your biggest fans. We are The Doctors Company.



We created the Tribute Plan to provide doctors with more than just a little gratitude for a career spent practicing good medicine. Now, the Tribute Plan has reached its five-year anniversary, and over 28,000 member physicians have qualified for a monetary award when they retire from the practice of medicine. More than 1,900 Tribute awards have already been distributed. So if you

want an insurer that's just as committed to honoring your career as it is to relentlessly defending your reputation, request more information today. Call (800) 741-3742 or visit www.thedoctors.com/tribute.

Exclusively endorsed by





www.thedoctors.com

 $Tribute\ Plan\ projections\ are\ not\ a\ forecast\ of\ future\ events\ or\ a\ guarantee\ of\ future\ balance\ amounts.\ For\ additional\ details,\ see\ www.the doctors.com/tribute.$