

Bulletin

Physicians Caring for our Community

Editor: Mary C. Blue, M.D.

Volume 37 Issue 7

September 2013

2013 Meetings & Events

LEE COUNTY MEDICAL SOCIETY
GENERAL MEMBERSHIP MEETING

WINE TASTING September 20, 2013 6:30 p.m.

Robb & Stuckey International 13170 S Cleveland Ave

Fort Myers, FL 33907

Note: Meeting is on Friday

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

ALLIANCE POTLUCK IN PARADISE

October 12th 7-10 PM

Home of Drs. Denise & Andrew Oakes-Lottridge

For more information please visit: www.lcmsalliance.org

November General Membership Meeting

November 21, 2013 FineMark National Bank & Trust

12681 Creekside Lane Fort Myers, FL

INSERTS

September Wine Tasting Flyer CME Requirements

Physicians Alert: Medical Examiner

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About the Cover:

By Stanley Schwartz, M.D.

The flowers are from a plant called Jatropha Integerrima or spicy Jatropha. It is Native to Cuba but is widespread in the tropics. Its sap is toxic and can cause skin irritation. It is a good butterfly and bee attractor. Related species in the euphorbiaceae family have many medicinal uses. This plant was first described by the Austrian Botanist Nikolaus Jacquin in 1760 during a four year trip exploring the plants of the Caribean islands.

The picture was taken near Whiskey Creek in South Fort Myers in January by Stanley Schwartz, M.D.

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

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Ann Wilke, 936-1645

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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.

Membership News

Relocated

Audrey Farahmand, MD Farahmand Plastic Surgery

12411 Brantley Commons Ct.

Fort Myers, FL 33907

Tel: 239-332-2388 Fax: 239-332-2382

Christine Mackie, MD

Excellence Medical Centers

4304 Del Prado Blvd S., Cape Coral, FL 33904 Tel: 239-540-0800 Fax: 239-540-0806

Marshall D'Souza, MD McGregor Clinic

3487 Broadway, Fort Myers, FL 33901

Tel: 239-334-9555 Fax: 239-334-2832

Practice Name Change

Snead Eye Group

Richard M. Davis, MD

Brad Snead, MD & John Snead, MD 4790 Barkley Cir., Bldg C, #103

Fort Myers FL 33907

Tel: 239-936-8686

No Longer Practicing In Area

Richard Weiss, MD

Moved Out of State

Brian McGettigan, MD

Closing Practice

Charles Eby, MD

After 43 years of practice, Dr. Eby will be closing his office effective September 1st, 2013.

NEW APPLICANTS



Thomas P. Jacob, MD - Dr. Jacob received his MBBS degree from Gandhi Medical College, Bhopal, India from 1987-1993. He completed his residency in Psychiatry at Charleston Area Medical Center, Charleston, WV from 2004-2005 and Jackson Memorial Hospital, Miami, FL from 2005-2007 and a fellowship in Geriatric Psychiatry at Johns Hopkins University School of Medicine, University of Maryland, Baltimore, MD from 2011-2013. Dr. Jacob was a Staff Psychiatrist at David Lawrence Center, Naples, FL from 2008-2011.



Denise Drago, MD - Dr. Drago received her MD degree from Penn State University, Hershey, PA in 2007. She completed her training at Penn State Children's Hospital from 2007-2010 and is board certified by the American Board of Pediatrics in Pediatrics. Dr. Drago is in group practice with LPG - Pediatrics, 3501 Health Center Blvd., Bonita Springs, FL 34135 Tel: 239-343-9888.



Lindsey Graham, MD - Dr. Graham received her MD degree from University of Wisconsin, Madison, WI in 2009. She completed her internship and residency at University of South Florida, Tampa, FL from 2009-2012 and is board certified by the American Board of Pediatrics in Pediatrics. Dr. Graham is in group practice with LPG - Pediatrics, 650 Del Prado Blvd., Ste 107, Cape Coral, FL 33990 Tel: 239-343-9888.



Nancy Witham, MD - Dr. Witham received her MD degree from University of Pennsylvania School of Medicine, Philadelphia, PA in 1985. She completed her internship and residency at The Children's Hospital of Philadelphia, Philadelphia, PA from 1985 - 1988 and is board certified by the American Board of Pediatrics in Pediatrics. Dr. Witham is in group practice with LPG - Pediatrics, 260 Beth Stacey Blvd., Ste C., Lehigh Acres, FL 33936 Tel: 239-343-9888.



Harmindar K. Gill, MD - Dr. Gill received her MD degree from West Virginia University, Morgantown, WV in 1993. She completed an internship at University of Florida, Gainesville, FL from 1993-1994 and residency at West Virginia University, Morgantown, WV from 1994-1998. Dr. Gill also completed a fellowship in Thoracic Imaging at Yale University, New Haven CT from 1998-1999 and Breast Imaging at University of Maryland, Baltimore, MD from 1999-2000. She is board certified by the American Board of Radiology. Dr. Gill is in practice at HKG Radiology, LLC, 27160 Bay Landing Drive, Ste 201, Bonita Springs, FL 34135 Tel: 239-390-3339.



Mardelle DeLight, MD - Dr. DeLight received her MD degree from University of Sint Eustatius School of Medicine, Netherland-Antilles in 2005. She completed her internship at University of North Carolina, Chapel Hill, NC 2005-2006 and residency at University of Nebraska, Lincoln, NE 2006-2009. Dr. DeLight was board certified by the American Board of Medicine in 2011. She is in group practice with Physicians Primary Care of SWFL, 1304 SE 8th Terrace, Cape Coral, FL 33990 Tel: 239-574-1988.

President's Message: Lighten Up



Audrey Farahmand, M.D.

Almost a year after the FDA approved the weight loss drug, Belviq, the drug has become available for physicians to prescribe. Within days of the new drug becoming available, the AMA announced its position

that obesity is a disease. This designation, although transparent, would help physicians in being reimbursed for treatment of the condition afflicting the majority of Americans.

The announcement sparked numerous articles from physicians criticizing the AMA for their decision. Opponents of this designation fear this announcement will lead to dependency on pharmacotherapy to manage it rather than lifestyle changes. They also feel that the core issues like making healthy whole foods more affordable and available to poorer populations will be ignored. These opponents would point out that obesity does not necessarily need to be labeled a disease in order for physicians to be reimbursed for treating it. They are also skeptical that by calling obese people "sick," we are ensuring that they will be dependent on the healthcare system as the designation implies that the

individual will need professional help.

But, does this announcement harm efforts to control the epidemic? My opinion is that it does not. I believe our position should be that the designation of obesity as a disease helps to remove the guilt and shame that obese people feel and allows physicians to counsel these patients without finger-wagging or lecturing.

We saw a similar resistance to calling addiction a disease. We feared that it would be too easy for the addict to abandon his personal responsibility toward his condition if he had a disease to blame. However, physicians have become increasingly convinced by treatment successes with pharmacotherapy, psychotherapy, group therapy, and research that addiction is a disease. There are already existing theories that obesity is caused by food addiction (addiction to types of food, large portions, and impulsive eating). So, I am having trouble understanding why calling obesity a disease would trigger such an outcry from members of the medical community. Perhaps they need to "lighten up".

LCMS ALLIANCE WINS 4 AWARDS AT STATE ANNUAL MEETING IN ORLANDO by Mariquita Anderson, President

The Lee County Medical Society Alliance won four awards at the State meeting of the Florida Medical Association Alliance on July 26, 2013 at the Hilton Orlando Bonnet Creek.

- Tied for First Place in Community Service for Best Health Information/Education Program for Tdap for Seventh Graders
- · First Place in Best County Fund-Raiser for Holiday Charity Baskets and Holiday Portraits
- First Place for Membership Development for Highest Percentage of Member Increase, 2012-2013
- Pride in Partnership Award, the Florida Medical Association Alliance's highest award, to Mrs. Mary and Dr. Rich Macchiaroli

The other First Place in Community Service for Best Health Information/Education Program went to Sarasota County Medical Society Alliance for their Prescription Drug Awareness community discussion on Feb 28, 2013.



Mary Macchiaroli, Alliance Recording Secretary Mariquita Anderson, LCMS Alliance President & Brian Kelley, Alliance member.



Mary & Richard Macchiaroli, MD wins award for Pride in Partnership, FMA Alliance's highest award. Jo Terry, AMA Alliance President and LCMS Alliance President Mariquita Anderson was present.



LCMS Alliance President, Mariquita Anderson accepting award for First Place in Best County Fund-Raiser.

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Capital Guardian Wealth Management
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Naples, Florida 34110

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Email: pmontalbano@capitalguardianllc.com

Peter Montalbano joined Capital Guardian LLC as a Director-Wealth Management in June 2012, where he is responsible for interfacing with physicians, corporate executives, CIOs, civic and Not-For-Profit organizations and affluent families to provide comprehensive financial solutions. He brings with him more than 30 years of experience in the wealth management industry, holds his series 6, 7 and 63, life insurance and variable annuity licenses and is also licensed as a Certified Financial Planning Practitioner and Registered Investment Advisor.

Peter began his career at Chemical Bank in New York developing

relationships with corporate executives, physicians, the entertainment industry and affluent families. From 1997 to 2006 Peter worked at Wachovia Wealth Management in Boca Raton, FL as an SVP/Partner, managing over \$250 million in assets for the affluent community. Prior to joining Capital Guardian, Peter was the Director- Wealth Advisor for BMO-Harris Private Bank in Naples, FL.

Peter holds a BS in Business Administration from Adelphi University and is a:

Collier County Medical Society Circle of Friends Member Lee County Medical Society Friends in Medicine Member Children's Home Society Board Member Financial Planning Association Member Estate Planning Council of Naples Member Area Coordinator- National Italian American Foundation



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PROVIDERS PROTEST RULE PUTTING THEM AT FINANCIAL RISK IF PATIENTS DON'T PAY PREMIUMS

By **Jonathan Block**

Provider groups say a CMS rule interpreting the <u>healthcare</u> <u>reform law</u> that gives consumers a grace period for unpaid health insurance premiums will put them at significant risk of delivering services for which they won't get paid.

The *CMS rule (PDF)* gives consumers a 90-day grace period if they don't pay their premiums before their insurer can drop their coverage. The rule applies to people in all states who obtain subsidized coverage through the new *insurance exchanges*. That likely will constitute 80% of insurance subscribers on the exchanges, said Jennifer Kowalski, vice president of the health reform practice at consulting firm Avalere Health.

Under the rule, insurers offering plans on the exchanges must provide a three-month grace period to individuals who have enrolled and who have stopped paying their premiums. In the first 30 days, the insurer must continue to pay incurred claims. But for subscribers who ultimately fail to pay premiums within the 90 days and whose coverage is terminated, payers are not required to pay for claims incurred during the last 60 days of the 90-day period.

Read more: Providers protest rule putting them at financial risk if patients don't pay premiums | Modern Healthcare (http://tinyurl.com/lp7o7kw)

RECENT LEGISLATIVE CHANGES TO FS 382.011

Effective immediately, the definition of an "attended" death in Florida has changed. According to the 2013 FS 382.011, the term "'primary or attending physician' means a physician who treated the decedent through examination, medical advice or medication during the 12 months preceding the date of death." Please see inserted flyer for more information.

Are you a We Care Provider?

The We Care Steering Committee and FineMark National Bank & Trust invite you to



Provider Appreciation & Program Update

October 3, 2013 6:30 pm – 8:30 pm



Cocktails and heavy hors d'oeuvres will be served. Attire is business casual. Please RSVP by September 25th to: Gloria at the United Way 239-433-2000 x 258 or gloria@unitedwaylee.org

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We Care Steering Committee:

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SPLIT-FEE SOUP: A RECIPE FOR DISASTER

By: David W. Hirshfeld, Florida Healthcare Law Firm

When people ask me what I do, I used to say "I'm a transactional health care attorney. I represent health care practitioners in their business deals. I don't do malpractice." That response does little to wipe the blank stare off my questioner's face, and even I have to stifle the urge to yawn. My new and improved response is that "I spend a lot of time advising health care practitioners how they can share fees with people who refer them patients." Now I get invited to all sorts of cocktail parties!!!

Practitioners split fees with one another for a variety of reasons; and they very often do not realize that a particular arrangement involves a split-fee arrangement, or that split-fee arrangements are often illegal in Florida. The purpose of this article is to provide practitioners with a general overview of the concepts underlying the prohibition against split-fee arrangements in Florida, in the context of three common business arrangements.

Source of the Law.

Split-fee arrangements become problematic when the split is such that it constitutes the payment in exchange for the referral of a patient or health care service. Paying for referrals is professional misconduct and a criminal act in Florida. Unfortunately, it is not always easy to recognize that a particular situation constitutes a payment for referrals. The actual laws in this regard are vague. Florida's Board of Medicine has published approximately twenty-five opinions on split-fee arrangements; but those opinions, although informative, only actually bind the parties who were before the Board.

Common Arrangements Involving Split-Fees. Percentage of Collections of the Independent Contractor.

Practices often desire to engage a professional as an independent contractor (i.e. on a 1099 basis), and to pay that contractor a percentage of the collections generated by that contractor. The motivation for this type of arrangement is obvious: the practice wants to incent the contractor to work hard, and the contractor wants to be rewarded for all of his hard work. The problem arises from the fact that when the practice assigns a patient to the contractor, that assignment of the patient constitutes a referral. Once you have a referral by the practice to the contractor, any revenue that flows from the contractor to the practice may constitute a payment for that referral. The decisive analysis is what percentage of the total fee for treating the patient is retained by the practice?

The general rule is that the portion of the fee retained by the practice must be based on the practice's cost of providing items and services to the contractor and the patients (s)he treats, that are necessary for the episodes of care. If and to the extent that practice retains a fee that does not reflect its cost, the practice may be considered to be taking a fee from the contractor in exchange for referring the patient to the contractor.

There is no bright line test with respect to what percentage of a fee the practice can safely retain, but there are certain factors that should be considered. The overhead of the practice is important. If the practice retains a percentage of the fee that far exceeds the practice's overhead, then the arrangement is susceptible to challenge. In addition, if the contractor is to provide services on behalf of the practice both in the practice's office and in hospitals and/or clinics, then the percentages ought to vary depending on the location of service. The practice's costs associated with care rendered in its office are likely different from the costs associated with care rendered outside its office, so the percentage of fees retained from the various settings should likewise be different.

Marketing Arrangements.

Practices often wish to hire companies to market the medical practice. The practice and the consultant understandably prefer for the consultant to be paid based on results; that is, that amount by which the practice has grown since the marketing consultant began work. Since the sole purpose of a marketing arrangement is to generate referrals to the practice, there is a strong prohibition against a medical practice paying a marketing consultant a percentage of the practice's revenue in exchange for marketing the practice.

Marketing arrangements are sometimes part of larger practice management arrangements, but are often stand-alone arrangements with professional consultants. The prohibition against percentage fees for marketing arrangements is so strong in Florida that I often advise my clients to isolate those arrangements from all percentage-based arrangements. I usually suggest that marketing services be specifically excluded from practice management and/or professional service agreements and dealt with separately. I am much more comfortable with a time-based marketing fee, such as an hourly or annual fee, that is owed by the practice regardless of any increase in patient flow. I recognize that a time-based marketing fee does not create direct incentive for the marketing consultant to perform but, depending on the nature of the practice and its marketing goals, there can be other tactics available to assure performance.

Selling Receivables.

Practitioners with a large base of patients whose injuries have been caused by the negligence of others often have large accounts receivable on their books for years. The reason is that these "personal injury patients" sometimes do not have insurance, or do not submit their bills to their insurer. The theory is that patient's medical care will be paid for if and when their negligence lawsuit is resolved, assuming there is enough money from the settlement or verdict to go around to all the health care practitioners and attorneys involved. Practitioners become financially squeezed because the underlying negligence lawsuits often take years to resolve.

Practitioners with a large mix of personal injury patients, and other practitioners, sometimes desire to sell their accounts receivable. The practitioner agrees to accept a fraction of the receivable's face value in exchange for immediate and certain payment. This sort of factoring arrangement is fine and safe unless the factor purchasing the receivables somehow has a hand in referring the underlying patient to the practice. If a factor brings a patient to a practice, purchases the receivable attributable to that patient at a discount, then collects more than it pays for that receivable; the arrangement may be challenged as a split-fee arrangement intended to compensate the factor for the referral.

Split-fee arrangements are very common, and not always easy to recognize. Through this article I hope to develop practitioners' intuitions with respect to prohibited split-fee arrangements in Florida. Practitioners should note that in addition to issues created by Florida law, Federal law also prohibits payments intended to induce referrals of patients or services that are reimbursed by Federal health insurance programs such as Medicare. In my experience, split-fee arrangements that pass muster under Florida law can usually be tweaked to fulfill the requirements of Federal law.

LCMS Volunteers Perform Student Athlete Pre-Participation Physicals

Abbott Kagan II, MD

On Saturday, May 18, 2013, volunteers from Lee County Medical Society donated their time to perform student athlete pre-participation physical examinations for the 2013 – 2014 school term at Bishop Verot High School.

This year we examined 90 student athletes. There were 53 males and 37 females. The exams took about 2 hours to complete, but additional time was required to review the results and make decisions about further referrals. This time requirement does not include set up time for the facility, nor does it include clerical and administrative time.

In all, we cleared 83 student athletes for sports participation, but referred seven (four females, three males) for further evaluation or followup. Referrals were made to:

Orthopedics – one under active care for an existing problem was referred back to the treating physician for clearance.

Six student athletes were referred to cardiology for further testing. One had a positive family history of early cardiac death (<50) which is a risk factor requiring further evaluation. Other referrals included one for symptoms with exercise, one had a murmur felt to require further evaluation with echocardiography, and three had existing cardiac diagnoses requiring verification of athletic clearance.



It's time to nominate a physician, medical professional or staff personnel for the *Annual Medical Service Award.*Visit our website for a downloadable form to name your choices today! www.lcmsfl.org or http://www.leecountymedicalsociety.org/sites/default/files/file-attachments/AMSA-Nomination-Form-2013-SS-1.pdf

We are especially thankful that we have been able to provide eye exams as part of our physicals for many years. This year I would particularly like to thank Drs. Travis Gresham and Lamar Youmans who brought equipment and staff to measure not only visual acuity, but also stereoscopic visual function which is extremely important for athletes who require high levels of hand – eye coordination. Their screening revealed 11 students failed stereoscopic vision testing, and were referred for further eye evaluation.

My most sincere thanks to all the physicians who graciously gave their Saturday morning to help these student athletes. You all are the greatest! Year after year you are there for us! Without your assistance, these examinations would never be possible. Special thanks to Alicia Hall (Athletic Trainer) who coordinated the exams.

Abbott Kagan II MD A Kagan Orthopedics and Sports Medicine 8710 College Parkway Fort Myers, FL 33919

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www.kaganorthopedics.com



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Thank you to our 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.



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Attorney Linda R. Minck, PL provides legal services primarily in the area of health care law and business law, which services include, but are not limited to: formation of entities, agreements among owners, contracts, employment agreements, buy-in/buy-out agreements, separation agreements, stock and asset purchase agreements, and meeting other day-to-day legal needs of small businesses and health care providers as she has done for over 20 years.





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FLORIDA MEDICAL ASSOCIATION INSTALLS W. ALAN HARMON, M.D. AS 137TH FMA PRESIDENT



The Florida Medical Association installed Jacksonville physician W. Alan Harmon, M.D., FACP, as its 137th President during the 2013 FMA Annual Meeting in Orlando. Dr. Harmon is known among his colleagues as a dedicated physician leader who has made many contributions to organized medicine.

Dr. Harmon has served the medical profession at the county, state and national levels.

Board certified in internal medicine and gastroenterology, Dr. Harmon practices with the Borland-Groover Clinic in Jacksonville. He graduated with honors from the University of Florida College of

Medicine in 1976, and he completed his residency in internal medicine and a fellowship in gastroenterology at the University of Alabama in Birmingham.

Dr. Harmon has served on numerous FMA committees as well as the FMA Board of Governors and the FMA PAC Board of Governors.

Dr. Harmon succeeds Vincent DeGennaro, M.D., who served as FMA President from 2012-2013. Other FMA officers for 2013-2014 are: President-Elect Alan Pillersdorf, M.D.; Vice President Ralph J. Nobo Jr., M.D.; Secretary John Katopodis, M.D.; Treasurer Ronald Giffler, M.D.; Speaker David J. Becker, M.D.; and Vice Speaker Corey L. Howard, M.D.

FLORIDA MEDICAL ASSOCIATION ANNUAL MEETING

Larry Hobbs, MD, Chair of Lee Delegation to the FMA

The LCMS would like to thank the following Delegates for representing Lee County at this year's FMA Annual Meeting.

Cy Anderson, MD Valerie Dyke, MD F. Rick Palmon, MD Stuart Bobman, MD Larry Hobbs, MD Shari Skinner, MD Stefanie Colavito, MD Richard Macchiaroli, MD Daniel de la Torre, MD Jeffrey Neale, MD

I had the opportunity to go to the FMA meeting in Orlando for the first time last month. As a physician it seems we are being attacked on all sides at times. The malpractice attorney's have their radio ads on EVERY station. The federal government is constantly threatening to ratchet down medicare reimbursement. The insurance companies are denying claims after your staff has gotten pre-authorization over the phone. You have an office full of patients and the emergency work-in throws the schedule and hour behind. It was nice going to a meeting where the goal is defending physician's rights to practice medicine how they see fit. The question we all have is can organized medicine make a difference. The answer is yes. At this years FMA PAC good government lunch we heard from Governor Scott, Senate President Gaetz, and Speaker Will Weatherford on how effective our legislative team has been. The FMA was instrumental in passing tort reform this year and the Governor recently signed the legislation into law. But this all takes time (years) and money (\$\$\$\$). I would like to see the same success on the national level with the AMA. Hopefully if all physicians in Florida stick together we can make it happen. Rick Palmon



Gov. Rick Scott, Stuart Bobman, MD



Gov. Rick Scott, Shari Skinner, MD & Brian Kelley



Lower West Coast Caucus Chair, Larry Hobbs, MD



Dr. F. Rick Palmon, Moderator Reference Committee IV, Medical Economics



LCMS FMA 2013 Delegates

Pictured: Drs. Palmon, Skinner, Macchiaroli, Hobbs, Neale, Dyke & de la Torre. Not pictured:

Drs. Anderson, Bobman & Colavito

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HIPAA COMPLIANCE GUIDE - PART 2

By First Professionals Insurance Company, Inc./The Doctors Company HIPAA PATIENT EDUCATION

Practices may wish to develop patient education materials, such as a brochure, to help facilitate in forming and educating patients about their rights under HIPAA privacy regulations. Some educational tools include:

- An easy-to-read HIPAA fact sheet or brochure (see sample "What you need to know about: HIPAA Privacy Rule" brochure)
- A "Frequently Asked Questions" sheet (see Frequently Asked Questions)

Be sure to include patient educational materials pertaining to HIPAA Privacy Rules on the practice's web site.

Staff training should also focus on patient education. At a minimum, staff members should be aware of how to contact the practice's Privacy Officer and when they should refer patient questions and other types of issues to the Privacy Officer.

Discussions with patients should include the patient's desire for family members, care givers or others to receive their PHI, as well as the patient's desired communications from the office, such as voice mail confirmation of patient appointments or test results. Advise patients that without the patient's consent, PHI communications with family, caregivers or friends may be restricted. Ask patients to delineate their desires for communications from the practice and to designate persons who may receive their certain PHI from the practice (see sample

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Designation of PHI Recipients form).

Also prepare patients for potential inconveniences that may result from the HIPAA Privacy Rules. For instance, without written authorization, PHI cannot be sent directly to a third party – such as a school, summer camp, or insurer.

HIPAA PRIVACY RULE

The HIPAA "Privacy Rule" is intended to protect a patient's Protected Health Information (PHI), by controlling its use and disclosure, without interfering with access to or the quality of care. The Privacy Rule applies to health care providers, health plans, and health care clearinghouses, referred to as "covered entities," and their business associates. PHI includes any information which relates to the past, present, or future physical or mental health or condition of an individual, to the provision of health care to an individual or to billing and payments made for the provision of health care to an individual. It includes any PHI that may connect the patient to the information, such as the patient's name, address or social security number. The "Privacy Rule" protects patient health information in any format -- written, oral, recorded and electronic.

The Privacy Rule allows a covered entity, such as a physician's practice, to use and disclose PHI for three general purposes without first obtaining the patient's authorization:

1. treatment, 2. payment; and 3. healthcare operations.

There are a few other permitted uses of PHI that do not require the patient's authorization. These include medical examiners and coroners, and for oversight activities, such as audits.

Privacy Rule Provisions

- The Privacy Rule limits the use and disclosure of PHI.
- The Privacy Rule allows covered entities, such as physician's practices, to use and disclose PHI for three general purposes without first obtaining the patient's authorization: treatment, payment, and healthcare operations.
- In most situations, the patient's authorization must be obtained when PHI is used or disclosed to any third party for purposes other than treatment, payment, and operations.
- Disclosures of PHI must be limited to the "minimum necessary" to accomplish a specific function.
- The Privacy Rule allows parents, as personal representatives, to access patient information for their minor children. There are a few exceptions when parents are not permitted access to minor's health information, such as in cases of abuse or neglect, in cases when a minor may consent to health care treatment without parental consent or if the court authorizes someone other than the parent to make treatment decisions.
- The Privacy Rule allows physicians to disclose PHI to their "business associates" if the physicians obtain satisfactory assurances (by implementing a Business Associates Agreement) that the business associate will use the information only for the purposes for which it was engaged, will safeguard the information from misuse, and will help the covered entity comply with the Privacy Rule.

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- The Privacy Rule identifies the rights and responsibilities of the patient and the health care provider or "covered entity." Patients are given the right to access and review their own billing and medical records and to request an amendment of the health information contained in the billing or medical record.
- The Privacy Rule does not replace federal, state, or other laws that grant individuals more stringent privacy protections. Physician practices may adopt more protective privacy policies as long they do not interfere with the patient's rights.

Notice of Privacy Practices

The Privacy Rule requires practices to provide patients with a **Privacy Notice** or **Notice of Privacy Practices (NOPP)** detailing the rights and responsibilities of the patient and the practice in protecting the privacy and confidentiality of PHI.

The Privacy Notice should be shared with patients upon delivery of service, or as soon as feasible in an emergency. It must be available to patients in print, written in clear, understandable language, and be posted at each service site. The Privacy Notice should contain the patient's rights, the practice's duties, and a description of the types of uses and disclosures of PHI. The practice must attempt to obtain the patient's written acknowledgement that the Privacy Notice was provided. Each time the practice's privacy policies change, the Privacy Notice should be revised. Written acknowledgement must be obtained with each Privacy Notice revision. The patient acknowledgement(s) and a copy of the Privacy Notice and each revision must be maintained for at least six years. A written acknowledgement may serve for the entire length of treatment unless the Privacy Notice is revised.

Minimum Necessary

Every practice must make reasonable effort to limit use and disclosure of PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. This means that disclosures of PHI by staff should be limited to the minimum necessary to accomplish their specific job function. Job descriptions for staff members should identify the types of information an employee may access and disclose. Appropriate sanctions for violations of the "minimum necessary" access and disclosure should be implemented.

Authorization

In most situations, the patient's authorization must be obtained when PHI is used or disclosed to any third party for purposes other than for treatment, payment, and operations. For instance, if a product representative requests the names of patients for marketing purposes, the patient's authorization must be obtained and it must specify the purpose of the use or disclosure. The release is only used for the identified purpose and it is time limited.

The Privacy Rule distinguishes between uses and disclosures for payment, treatment, and healthcare operations for which no consent or authorization is required and authorizations where consent is needed, such as marketing, fundraising, and employment determinations. Unless disclosure is for payment, treatment, or healthcare operations or unless an exception applies, PHI cannot be disclosed absent an authorization. If an authorization is required, in order to be valid, several defined provisions must be included in the authorization form and particular procedures must be followed in accordance with the Privacy Rule.

Minors

In general, the scope of a personal representative's authority to act for a minor patient under the Privacy Rule derives from his or her authority under applicable law to make healthcare decisions for such patient. Therefore, the Privacy Rule allows parents, as personal representatives, to access patient information for their minor children. However, there are a few exceptions when parents are not permitted access to a minor's health information, such as to information concerning a health care treatment that a minor may consent to without parental consent, in cases of abuse or neglect, or if the court authorizes someone other than the parent to make treatment decisions.

Incidental Uses

The environment and conditions in which patients receive health care create the potential for patient's health information to be disclosed incidentally. For example, a patient en route to an examination room may overhear a physician's conversation with a nurse or another patient regarding the other patient's care or may glimpse a patient's name on a sign-in sheet. The intent of the Privacy Rule is not to prohibit these customary and essential communications and practices. Compliance with the Privacy Rule does not entail elimination of all possible risks of incidental disclosures as long as there are reasonable safeguards and policies in place to protect the patient's privacy.

Business Associates

Currently, the HIPAA Privacy Rule applies to both covered entities – health plans, health care clearinghouses, and certain health care providers – and business associates. Many physicians do not carry out

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all of their healthcare activities and functions by themselves. Instead, they often use the services of a variety of other persons or businesses. The Privacy Rule allows physicians to disclose PHI to these "business associates" if the providers obtain satisfactory assurances that the business associate will use the information only for the purposes for which it was engaged by the covered entity, will safeguard the information from misuse, and will help the covered entity comply with some of the covered entity's duties under the Privacy Rule. Typical business associate functions include: answering services, independent contractors for transcription, billing and collections, claims processing, and accounting.

Interaction with State Law

The Privacy Rule establishes fundamental federal privacy protections of PHI. The Privacy Rule does not replace federal, state, or other laws that grant individuals even greater privacy protections. Physician practices may even adopt more stringent privacy protection policies or practices. Generally, HIPAA privacy rules supersede state laws, unless the state law is more stringent.

Compliance Measures

Basically, the Privacy Rule requires physician compliance as follows:

- Inform patients of their privacy rights and how their information can be used;
- Adopt and implement privacy procedures for the practice;
- Train employees so that they understand the privacy procedures;
- Designate an individual to be responsible for seeing that privacy procedures are adopted and followed;
- Secure patient records containing PHI so that they are not readily available to those who do not need them; and
- Restrict and condition release of patient information according to federal and state allowances or upon proper authorization.

The Office for Civil Rights oversees HIPAA Privacy Rule compliance. Failure to comply with the provisions of the Privacy Rule may result in civil and criminal penalties; imprisonment, or both for intentional violations. The HIPAA Privacy Rules are the first federal guidelines aimed at regulating the privacy of health information. Most practices are sensitive to their patient's rights for privacy and already take effective measures to protect patient privacy. However, in light of the requirements set forth by the Privacy Rule, the policies and procedures of your practice should be reviewed periodically to ensure proper compliance.

Disclosures to a Patient's Family, Friends, or Others

The Office for Civil Rights continues to revise HIPAA Privacy Rule guidance regarding permissible disclosures of PHI. Although the Privacy Rule is intended to protect patient privacy, providers are permitted, in certain circumstances, to provide limited communications with the patient's family, friends, or others involved in their care or payment for care. Under certain situations, such as urgent hospitalization of a patient, a health care provider is allowed to share a patient's health information with the patient's family members, friends, or others so that a patient's health information is not unnecessarily withheld from these persons.

HIPAA DATA BREACH FINES INCREASE

By: The Doctors Company

The final HIPAA omnibus rule enacted in January 2013 includes revisions to civil monetary penalties for healthcare data breaches. The new rule establishes high penalties for Privacy Rule violations based on degree of culpability. Penalty ranges for each violation include.

- Covered entity did not know and by excerising reasonable diligence would not have know: \$100 to \$50,000.
- Reasonable cause but not willful neglect: \$1000 to \$50,000.
- Willful neglect corrected on a timely basis: \$10,000 to \$50,000.
- Willful neglect not corrected on a timely basis: \$50,000.

In addition, violations of identical provisions in a calendar year are now subject to fines of up to \$1.5 million.

For questions about the final rule, contact The Doctors Company Patient Safety Department at (800) 741-3742, extension 3016, or rm@thedoctors.com.



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FLORIDA DEPARTMENT OF HEALTH CONTINUING EDUCATION INTEGRATION PROJECT

Frequently Asked Questions

www.CEatRenewal.com



The Department of Health, Medical Quality Assurance will verify a practitioner's continuing education record in the electronic tracking system at the time of renewal. Practitioners will

be able to view their course history in the continuing education tracking system free of charge. The course history will show all the courses that have been reported for the practitioner.

If the practitioner's continuing education records are complete, they will be able to renew their license without interruption.

If the practitioner's continuing education records are not complete, they will be prompted to enter their remaining continuing education hours before proceeding with their license renewal.

Why is continuing education being verified at renewal?

Continuing Education is a requirement to renew a professional license.

Section 456.025(7), F.S. requires the Department to implement an electronic continuing education tracking system for each biennial renewal cycle and to integrate such system into the licensure and renewal system. The two systems are now integrated.

Can I create an account in the tracking system <u>prior to being licensed?</u>

No, you will not be able to create an account until you receive a license number from the Department of Health. Students need to be aware of this change in our license renewal process and begin reporting continuing education into the tracking system once they are licensed.

What will happen if I do not have the required continuing education for renewal?

The project will be implemented in two phases. The first phase (optional phase) will prompt practitioners to input required continuing education hours, but will not prevent licensure renewal. The second phase (mandatory) will require reporting of all required continuing education hours in order to proceed with license renewal.

First mandatory phase for Medical Doctors:

Medical Doctors Expiring 1/31 even year		
2/1/12 - 1/31/14	2/1/14 - 1/31/16	

During the mandatory phase you will not be able to renew a license without having your continuing education hours reported into the continuing education tracking system. If you do not have the hours to report, your license will move to a delinquent status at expiration. In order to renew a delinquent license you will be required to complete the continuing education requirements. Additional fees may apply.

Do I have to wait until license renewal to report my continuing education credits to the electronic tracking system?

No, you can report your hours free of charge anytime during the biennium by registering for the Free Basic Account. The Department encourages you to report early to avoid a delay in the license renewal process. For more information please visit www.CEatRenewal.com.

Please note, if you take a course from a Florida Board approved Provider they are required to report on your behalf. If you take a course from a National organization it is your responsibility to report completion. There may be other ways for you to obtain credit towards continuing education required for license renewal. For specific approved methods of obtaining continuing education for your profession please review the Board rules by visiting www.flhealthsource.com.

Do I have to subscribe to the electronic tracking system?

No, subscriptions remain optional. There are a number of services you can receive by subscribing, however, it is optional.

You do however need to report your hours. You can always search for courses, report your hours, and view your course history free of charge by creating a Free Basic Account.

Is the 7 day free trial advertised on CEBroker's homepage the same as the Free Basic Account?

No, the 7 day free trial is a trial period for the paid subscription service to determine if you would like to subscribe. The Free Basic Account is a free account and does not require you to give credit card information. This account allows you to view your course history and report CE hours free of charge during the two year biennium. To create a Free Basic Account you can login to your MQA Services account using your user id and password at www.flhealthsource.com OR you can visit www.CEatRenewal. com and choose option 2.

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How will I know what has been reported?

You are be able to view your course history in the tracking system free of charge. Your course history will show all the courses that have been reported, the completion date and the total number of hours. You can create your basic account or professional account at www.CEatRenewal.com

If I create a free basic account and enter all of my hours, will the system tell me if I have met the continuing education requirements for my Profession?

If you are using the Basic Free Account it will be your responsibility to know the continuing education requirements for your Profession and calculate your compliance using the data listed on your course history.

If you enter your hours prior to renewal in a basic account the system will not generate a compliance status, however, the system will check compliance during your renewal period using the basic account. You will receive a complete or incomplete message at the time of renewal. Profession specific information and copies of the Board rules can be found at www. flhealthsource.com.



What is the difference between viewing my course history using the basic free account or subscribing to the continuing education tracking system?

With a free Basic Account you can view your basic course history, which will list the course name, educational provider name, date of completion and hours reported. It would then be up to you to determine whether all of the courses that have been reported will complete all of your specific continuing education requirements. You can also self-report any continuing education that may be missing.

A Professional Account (paid subscription) provides you with all of the tracking tools that CE Broker offers. Your transcript will display what your specific CE requirements are and will calculate what requirements have been met and what may still be outstanding. A Professional Account is a subscription service and is not a requirement but it can be a useful tool in managing your Florida continuing education requirements should you chose to subscribe.

Do I have to report my continuing education completion into the tracking system or will the Provider report on my behalf?

If you take a course from a Florida approved continuing education provider, the provider is responsible for reporting your course completion. If you take your course from a National organization you will be required to self-report into the tracking system.

How long does a Florida approved Provider have to report my continuing education completion into the tracking system?

Pursuant to Rule 64B - 5.002, F.A.C Providers are allowed up to 90 days to report. However, during the renewal period this process is modified to allow licensees to self report courses taken from a Florida approved Provider to avoid a delay in license renewal.

Where do I go to report my hours?

You can report your hours by logging into MQA Services using your user id and password at www.flhealthsource.com OR you can visit www.CEatRenewal.com Both sites will direct you to the tracking system to create a free basic account.

For more information please visit www.CEatRenewal.com Insert included in this Bulletin.







SUNSHINE STATE ADOPTS MEDICAL LIABILITY REFORM LEGISLATION

Florida Gov. Rick Scott last month signed a broad medical liability reform bill, transforming the state's practice landscape by requiring fairness in the use of medical expert witnesses.

The law, which builds upon medical liability reforms enacted in 2011, supports physicians in their practice of medicine by:

- Requiring an expert medical witness to be in the same specialty as the defendant physician. (Existing law allowed witness to be in a "similar" specialty.)
- Ensuring a physician's constitutional right to counsel. (This right had been made unclear by a 2012 Florida Supreme Court case.)
- Giving parties equal access to medical fact witnesses.

The new law represents many years of lobbying by the Florida Medical Association (FMA). Steven West, MD presented this to our legislator in 2008 when he was our Legislative Chair. The AMA also strongly supported the bill, weighing in publicly with a letter to Sen. Don Gaetz, president of the Florida Senate that encouraged these reforms. The provisions took effect July 1.

Visit http://www.elabs10.com/ct.html?ufl=3&rtr=on&s=x8pbgr,1kjhz,2ke5,ei8f,kajs,5ivg,e2vo to read more in an FMA infographic.

If you have changed locations, added a new physician to your practice, or changed office managers, please call the Medical Society office. It's important to keep us up-to-date so that you receive the patient referrals and office communications for your practice from the Medical Society.



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OUR THANKS TO DR. ALEXANDER LOZANO

The LCMS would like to thank Alexander Lozano, MD for his dedication and time as Chair of the Lee Political Action Committee (LeePac). LeePac was recently eliminated by the government and the remaining funding was donated to Lee County Medical Society Auxiliary Foundation to support medicine in Lee County.

LeePac was formed in 1999. This Board made decisions on contributions in local elections. They worked closely with FLAMPAC in close state elections.

Recruit three new members between August 2013 - August 2014 & your 2015 dues will be free of charge.

Congratulations to Richard Macchiaroli, MD and Randolph Knific, MD for bringing in 6 new members.



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