LEE COUNTY MEDICAL SOCIETY

Bulletin

THE VOICE OF LEE COUNTY MEDICINE

VOLUME 16, NO. 5 | Fort Myers, Florida | John D. Donaldson, M.D., Editor | September, 1993

SEPTEMBER GENERAL MEMBERSHIP MEETING

WELCOME BACK

We hope you are rested and had a fun summer. September is the start of many activities in our community. The Medical Society begins our first meeting with our speaker, Joel Mattison, M.D., Plastic Surgeon from Tampa sharing his experience of working in the Hospital du Dr. Schwietzer, Lambarene, Gabon.

In October, we are looking forward to having Mr. Eric Brill, ESO and CEO of the Florida Independent Physicians Association, to speak to us on a Statewide IPA and working with the Florida Medical Association to form a Statewide HMO.

MARK YOUR CALENDARS FOR THESE TWO MEETINGS -- YOU WILL NOT WANT TO MISS THEM... ✦

SEPTEMBER MEDICAL SOCIETY MEETING

Royal Palm Yacht Club

September 20, 1993

Social Time: 6:30 p.m.
Dinner Time: 7:00 p.m.

SPEAKER:
JOEL MATTISON, M.D.

TOPIC:
"Visiting Hours At Lambarene With Dr. Albert Schwietzer"

DINNER BY RESERVATION ONLY

CANCELLATIONS: By Noon, Monday

RISK MANAGEMENT AND HIV-AIDS SEMINARS

MEETING NOTICE
Saturday, Nov. 6, 1993

Risk Management Seminar
(5 Credit Hours)
7:30 a.m. - 1:30 p.m.
Cost:
Member - $100.00
Non Member - $125.00

LUNCH

HIV/AIDS SEMINAR
(2 Credit Hours)
2:00 PM - 4:00 PM
Cost:
Member - $60.00
Non-Member - $90.00

REGISTRATION/BROCHURE ENCLOSED IN BULLETIN

PRESIDENT'S MESSAGE

PHILLIP E. ANDREWS, M.D.

DATELINE - SUMMER OF '93

As you know, there is an awful lot going on. It has been said that "adversity builds character". Before the federal and state governments are through with us we will certainly have an abundance.

I haven't seen anything in the medical news this summer that I like with one exception. Effective 1 January 1994 new physicians will receive the same reimbursement as those who have been in practice for more than 4 years. This is thanks to the lobbying efforts of the FMA, AMA, and the young physicians section.

CHPA (Community Health Purchasing Alliance) is defined as a local, non-profit organization that will pool groups of small businesses, state employees, and medicaid recipients to form large healthcare buying groups. Because of their size and the number of souls involved, they will be able to negotiate contracts with providers in the past only available to very large employers. Can we as individual physicians deal with such an entity? In only a negligible way if at all. The only way to deal is through an organization. The physicians in Alachua county are organizing such a group. This will be a statewide physician directed healthcare plan, an Independent Physician Association (IPA). This effort has received the approval of, but is not sponsored by, the FMA. Steve West, M.D. and Dave Reardon, M.D. have been to several meetings to gain a better understanding of how this organization might function and its feasibility. We feel this is the only plan that gives us any hope of competing. Membership is not mandatory and it will cost dollars to start up such an organization. Other states have similar plans that are working and are profitable. The only way it can work in Florida is for us to make it so. There is not a great deal of time available. This entity needs to be in place by the end of 1993. We will send out more specific information as it is available. ✦

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"LETTER TO MY PATIENTS"

Enclosed in this Bulletin is a letter entitled "A Letter to my Patients". Please read (both sides), sign, and have copies of reverse side of letter made for your patients to read and send to Washington, D.C.

The names and addresses of the Representative and Senators are on the top of the letter to go to Washington. ✦

"DR. JOHN" Pleasant

From day one we were taught to describe a patient succinctly in the opening statement of a physical examination. The language varies with the interest of the physician, but all are generally recognizable.

"The patient is ...

the product of normal gestation and delivery, with none of the classic facies."

ashen white male with diaphoresis."

G IV P III Ab I whose LNMP was..."

O.D. 1.00/+1.25. O.S. 1.00/+1.50 reject from Glasses R Us."

Several years ago I noticed "pleasant" was appearing in these descriptions, thus: "pleasant, ashen white male with diaphoresis." Oh, it was just a trickle at first, but then the levee collapsed and it was everywhere; most reliably, in a report from a consultant.

Frank Bryan noticed this appelation was attached to his patient, who happened to be the most miserable S.O.B. he knew. Frank thought this must be sarcasm; the worst was yet to come.

John Donaldson described my two-week-old granddaughter as pleasant. Babies aren't pleasant, they're just little lumps that always need attention at one end or the other. You may remember something about that.

It had to escalate. If you call unpleasant people pleasant, then how to descibe a truly pleasant person? No problem, this person is "very pleasant." So, if you see me as a patient and describe me as "pleasant, aging male physician," then I'll trash your office, dammit.

My unscientific survey finds the urologist in the vanguard of this attack on medical jargon. Urologists work hard at improving their image. They have to. I mean, do you know what those people do? Don't dwell on it.

I now have several reports from urologists that desribe my patients as extremly pleasant. I'm sorry but I don't even know anyone who is extremely pleasant. Are these urologists making fun of me? Are the patients trying to charm the urologists so they won't do unspeakable things to their personal bodies? I went to a urologist as a patient once, and he, well, oh forget it--you wouldn't believe it anyway.

With extremely, "pleasant" has peaked out, which means a new direction is in order. I can hardly wait, while Frank Bryan is still stuck at the entry level.

How about : "The patient is an obsequious, fawning, bootlicking sycophant carrying a lighted candle." Leave it to a urologist to know what to do with it.

Little do those guys know, but Hillary is on to them.

John R. Agnew, M.D.

Editors Note:
Babies that smile at "my end" are "pleasant". ✦

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HOLDING THE "GATEKEEPER" ACCOUNTABLE

More and more the concept of "managed care" creeps (now gallops) into Lee County, spurred on by Democrats in both Washington and Tallahassee. We now have Medicaid HMOs, PPOs, and a host of other organizations, all claiming to be able to "reduce medical costs". In fact, the prime concern of each is to maximize profit for their stockholders; they do this by limiting access to and quality of care.

To achieve their goals, many have appointed "gatekeepers" or "medical directors" who decide what services will be covered. These may be administrative physicians, nurse practitioners, nurses or merely clerks. They all have one feature in common: they are employed by the carrier to save as much money as possible on patient costs which can then be converted to profit.

Traditionally, the practice of medicine has been both a science and an art. Frequently, when we ran out of science or an individual did not follow an established pattern, the care giver and his patient would agree on a course of therapy on the understanding that it might not always be effective. The more artful the physician, the more likely the outcome was successful.

Now we have moved into canned or cookbook medicine. The gatekeeper, generally an individual devoid of experience in either art or science, has a book of "acceptable" indications into which he or she must slot each patient. If a recommendation falls outside of the recipe in the cookbook, "benefits" are denied. Claims departments do the same thing when they use reviewers to deny claims on the basis of "bundling" and other creative maneuvers, designed to minimize the company's responsibilities.

To deal with these gatekeepers on the basis that they are fair and knowledgeable arbitrators is a mistake. They are functionaries of the company, and they are there to spend as little money as possible, irrespective of the needs of the patient. When you deal with them, you should consider you are talking to the company's attorney.

Continued on page 2

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HEALTH AND MEDICAL FAIR NOVEMBER 4TH AND 5TH, 1993 HARBORSIDE CONVENTION CENTER

If you have not signed up for a booth at the Lee County Medical Society's sponsored Health Fair, please do so soon. Very few spaces are available.

We now have to re-think the way we market our practices with the health care reform taking place. Third party payors are removing loyalty of our patients and interfering with the patient/physician relationship. You need to be giving back to the community you work and live in by showing the public what is new and innovative in health care today. Come and join us as we meet the people of Lee County for two days. CALL 466-6300 ✦

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Fort Myers, Florida 33901
Phone (813) 936-1645
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Holding the "Gatekeeper" Accountable
(cont. from pg. 1)

You must first of all realize that your call is being recorded by the company. I recommend that you place an answering machine on one of your office lines and record any discussion you might have with the gatekeeper. Have them phone back on that line and tell them that the call will be recorded. Before phoning back instruct the clerk to have the "decision maker" on the line and they should have their Florida license number available.

Begin the conversation by asking them to spell their name, give their qualifications and their Florida license number. They will invariably state that they are not practicing medicine and are phoning from North Dakota, New York or some place well over the horizon. At this point, you should tell them that they are entitled to that opinion that by making a pronouncement on a standard of care that purports to apply to their client, they are rendering an opinion to that client as a patient. If necessary, it would be up to a Florida court to decide whether in fact they have a professional liability in this matter.

Invariably, the discussion is short thereafter. Be prepared to state the indication for your recommendation to the "best of your clinical knowledge and judgement derived from discussions and direct examination of the patient". If your recommendation is denied, ask what course of action the company will approve. I doubt you will get a response.

Finally, it may be worth your while to give your patient a little sheet of paper which summarizes with whom they can file a complaint. They have three courses of action: the Department of Insurance, the Department of Professional Regulation or if they are really mad, both. A complaint with the Department of Insurance would be against the company with the cost of the plaintiffs attorney paid by the company. A filing at DPR would be against the individual for practicing medicine without a valid license, practicing solely for the gain of the company or both.

If you want to be really miserable, give them the name of a contemptible, sleazy litigation attorney. This serves two purposes: get even with the company and keep those same lawyers busy with someone other than us.

John D. Donaldson M.D.
Editor ✦

THE BULLETIN DEADLINE IS THE 15TH OF EACH MONTH. PLEASE SEND YOUR COMMENTS OR ARTICLES TO THE MEDICAL SOCIETY.

FLORIDA INDEPENDENT PHYSICIANS ASSOCIATION, INC. (FIPA) AN AHP IN THE MAKING

At the last delegates meeting of the Florida Medical Association, a resolution was enacted for the FMA to explore developing an Accountable Health Partnership. The FMA and Alachua County are developing an HMO/IPA model that will allow all interested physicians to participate in an Accountable Health Partnership. This organization would be owned and operated by the physicians in the State of Florida. The IPA would contract with an HMO. This organization then would hopefully be able to qualify as an AHP and be certified by the state Agency for Health Care Administration.

This would allow physicians to take their future into their own hands by affiliating with a pro-physician management organization that answers the needs and preserves the sanctity of the physician/patient relationship. Hopefully a physician run and directed organization would have an advantage over other organizations that do not have physicians' input and guidance.

On October 18, we have asked Eric J. Brill to come to present the IPA concept to the Lee County Medical Society. Mr. Brill is a Lawyer from Gainesville, Florida. He has been working with the Alachua County Medical Society and the Florida Medical Association in developing the Forida Independent Physicians Association, as well as the IPA/HMO concept.

This concept has been well received in other counties throughout the state. Many physicians have already set up regional chapters of the IPA throughout the state. Mr. Brill can discuss with us how we can participate in Lee County. Hopefully, he can answer any questions that physicians might have regarding the AHP and the HMO/IPA organization.

Steven R. West, M.D. - President-Elect

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INDEPENDENT PRACTICE ASSOCIATIONS (IPAs): THE SECOND WAVE

State and federal health care reform activities have spurred many health care professionals to respond quickly to anticipated changes in health care delivery. Perhaps the most prominent "first wave" of adaptation strategies was the "group practice without walls" -- legally and economically fully integrated but geographically dispersed health care practices. There are many explanations for the response, chief among them, self-referral concerns after federal and state self-referral laws, and anti-trust concerns (particularly after the Southbank IPA case, which is discussed more fully herein). There is, however, a "second wave" of physician adaptation which has begun to swell, the Independent Practice Association ("IPA").

What is an IPA?

An IPA is a corporation whose shareholders are health care professionals. IPAs generally are not fully integrated economically and legally; members usually operate independent practices separate from the IPA. The chief purpose is to provide broader services than members could deliver on their own, creating a "network" which can be attractive to payors and can contract with ancillary service providers and hospitals.

What is the relationship of the IPA members to the IPA?

IPA members typically enter into an agreement with the IPA which requires the IPA member to meet certain qualification requirements, requires compliance with state and federal laws, and ties the member into utilization review, quality assurance and peer review activities. There is a strong need for the members to be accountable to the IPA in order to ensure its attractiveness to payors. Some health care professionals take the typical IPA model a step further by integrating the system into an all inclusive business entity.

Will an IPA be able to become certified as an accountable health partnership (AHP)?

Maybe. An accountable health partnership is defined in section 408.701, F.S. as "an organization that integrates health care providers and facilities and assumes risk." Draft rules from the Agency for Health Care Administration mirror the definition, and further, would require an entity applying to be certified by the agency as an AHP to be a licensed insurance company or health maintenance organization (HMO). Additionally, agency staff has opined that AHPs must be licensed insurers or HMOs. The rules do, however, allow for aspiring AHPs that are not currently licensed insurers or HMOs. In short, the situation is unclear at this time.

What is an IPA model HMO?

Regulated by federal and state law, HMOs typically combine health care service delivery and financing. In an IPA model HMO, services are provided through contracts that the HMO enters into with health care providers who remain in their independent professional practices. Typically, HMO enrollees may receive health care only through the contracted providers.

There are many variations on the HMO theme. For example, a"point of service plan" HMO would allow enrollees to receive care from non contracted providers. This type of open-ended HMO typically provides fully covered services to enrollees who receive care within the HMO system, but subjects enrollees to deductibles and/or co-insurance requirements for care received outside the HMO network. They typically require approval from a primary care physician or the HMO itself as a condition of coverage. A key distinction between an HMO and an IPA is that the HMO is regulated by the Department of Insurance, and in many respects functions as an insurance company. An IPA, on the other hand, does not function as an insurance company, though many bear substantial financial risk through risk-based compensation arrangements, such as capitation.

What are the anti-trust implications of an IPA?

To the Federal Trade Commission ("FTC"), most IPAs tend to be less than fully integrated health care delivery systems. An IPA which the FTC views as not being fully integrated and financially risk-bearing, may be alleged to have violated anti-trust laws (i.e. price fixing or boycotting) because the FTC considers members of typical IPAs as being independent economic units.

The Southbank IPA case of 1991 is particularly instructive. Southbank was formed primarily to negotiate with payors in behalf of its 23 OB/GYN shareholders. The FTC alleged that the Southbank physicians illegally boycotted an HMO by jointly submitting resignation letters. The Complaint further alleged that the IPA's attempt to integrate fully failed because: (1) the financial risk shared by the physicians was insubstantial (even though capitation was involved); and (2) the IPA failed to provide a new or more efficient service. The FTC determined that the Southbank physicians voting on a fee schedule constituted a "per se" violation of the anti-trust laws.

Ultimately, the Southbank physicians settled with the FTC by agreeing, among other things to disband and not be engaged in the conduct alleged in the Complaint. No wrongdoing was admitted. Ironically, the group had disbanded prior to settlement because there was no market for the IPA.

The case is important, first, because it demonstrates that for anyone considering an IPA or other health care delivery model must first assess market feasibility. Southbank ended up fighting for and paying significant legal fees for the right to do business in a form that was not commercially feasible. Second, the case clarifies the FTC's view of most IPAs, and gives some indication of what operational conduct would be viewed by the FTC as permissible.

After the Southbank IPA case, health care attorneys and providers shied away from IPAs, and group practices without walls became increasingly popular. Federal and State self-referral laws were also a significant factor. Many physicians, though interested in group practices without walls, are reluctant to implement the often extensive practice changes (centralization of services, a governing board, merger of pension plans, etc.), and an increasing number are once again looking to IPAs as a palatable alternative. While not for everyone, the IPA certainly tends to offer more flexibility than a group practice without walls, and members can integrate more fully in the future if that becomes desirable. This has to be weighed against the self-referral and anti-trust limitations inherent in most IPAs.

Jeff Cohen Esq.

Mr. Cohen is an Attorney with the Fort Lauderdale law firm of TRIPP, SCOTT CONKLIN & SMITH, where he chairs the firm's health care law section. He is the former Associate General Counsel of the Florida Medical Association. He may be reached at (305) 525-7500, ext. 4917.

THE QUESTION MAN
OPINIONS - EDITORIALS LETTERS TO THE EDITOR
John W. Snead, M. D.

"WHAT IS YOUR BIGGEST FRUSTRATION WITH THE CURRENT CLIMATE OF MEDICINE"?

"RBRVS medicine reimbursement and looming federal and state government intrusion into medicine."

J. Stewart Hagen, III, M.D.
General Vascular Surgeon, CRS

"Government regulation and not knowing the future."

James E. Croley, III
Ophthalmology

"Economic Compensation"

James D. Borden, M.D.
Urology

NEXT MONTH'S QUESTION:
"HOW WILL THE WAY DOCTORS ARE TRAINED BE CHANGED IN THE FUTURE?"

Send your comments to the Medical Society.

Bulletin deadline is the 15th of each month . . . we want to see you in the print media! ✦

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NEW 1993-1995 WALT DISNEY CARDS NOW AVAILABLE

For Society members, families and staff.....

Discount cards to Disney World and Disneyland are available from the Lee County Medical Society. They offer you up to 10% discount on admissions, purchases and select hotel accommodations. With a variety of discounts on other packages by being a member of the Magic Kingdom Club. Call the Medical Society office - 936-1645. ✦

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"The world is moving so fast these days that the man who says it can't be done is generally interrupted by someone doing it."
- Harry Emerson Fosdick

NEW MEMBER APPLICANTS

Application For Membership

Active members are requested to express to the Board of Censors or Board of Governors any information or opinions they may have concerning the eligibility of the applicants.

LAWRENCE B.BERK, M.D.

Dr. Berk graduated from the University of Pittsburgh Medical School in 1988. His internship was at the Mercy Hospital of Pittsburgh and his residency was completed at the University of Pennsylvania in December of 1992.

Dr. Berk specializes in Radiation/Oncology and is an associate of Radiation Therapy Assoc., P.A. Located at 1419 S.E. 8th Terrace, Cape Coral, FL 33990. ✦

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PHYSICIANS IN THE NEWS

James A. Reeves, Jr., M.D. served as President of the Lee County Unit of the American Cancer Society, 1992-1993.

Jonathan M. Frantz, M.D. contributed to a reference book entitled, "Managing and Marketing Your Refractive Surgery Practice, Rx for Success."

James A. Ferguson, M.D. physician with our V.A. Clinic, recently had a letter appear in the publication, "Dis Colon Rectum, April 1993" on a controlled study of several thousand proctologic patients and the crusade against the Fecal Occult Blood Test and against the indiscriminate use of flexible endoscopy in early diagnosis of colon cancer. Many are working to change the guidelines espoused by the American Cancer Society and others.

Walter H. Harvey, D.O. and Janice H. Harvey, P.A.-C. have Published an article with other physicians in the "Journal of Investigational New Drugs." The article is entitled, "Phase II Study of Trimetrexate in Previously Untreated Patients With Hepatocellular Carcinoma." ✦

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LCMS ALLIANCE NEWS

Respectfully submitted by Jackie Sharkey, Corresponding Secretary

CHARITY BALL:

Over 400 guests attended the 10th annual Lee County Medical Society Charity Ball -- Carousel of Dreams. This year's event was held at the Ritz Carlton in Naples on Memorial Day weekend and was a huge success.

Attendees enjoyed an evening of fine food and dancing with colleagues and friends. Evening entertainment was provided by Sea Coast and Le Mystic dance troupe.

The event raised over $65,000. The Imaginarium, an interactive children's museum in Fort Myers, was the main beneficiary of $50,000. The remaining funds will be used to sponsor other area programs.

Special thanks to Elsie Kokal and Debbie Penuel for chairing such a successful and exciting Ball.

The Lee County Medical Society Alliance has selected the Ronald McDonald House as the major recipient ot the 1994 Charity Ball proceeds

WELCOME BRUNCH:

Every year the Lee County Medical Society Alliance and Foundation boards welcome new physicians' spouses by hosting a Welcome Brunch. September 1st marked the date for this year's Welcome Brunch held at the home of Mrs. Ira Zucker. Tables overflowed with fresh flowers and delicious food.

"Welcome Packets" with information on Alliance and community events were distributed to all new guests.

All guests enjoyed a fun-filled morning making new friends and sharing great food. ✦

"THE DOCTOR IS OUT"

It's 1999 and the doctor is **OUT** He is not in Lehigh Acres, he's not in Cape Coral, Bonita Springs, and he's not in Kalamazoo. He's not in the hospital, he's not in surgery, he's not even on his way to surgery. No, the doctor is **no where in sight** but he has seen his 14 patients today, just like the government wanted him to.

Yep, it's 1999 and socialized medicine is here. You see, the doctor works for the government. He has seen his quota today. He certainly isn't going to see any more. Why not? Well, he is going to make $60,000 to $75,000, not the $192,000 that the average surgeon used to make. He's going to make $60,000 to $75,000 and he is going to have to see 14 people a day to do it and once he does that, the Government said **"30 days paid vacation" "call only once every three weeks."**

How do we pay for this doctor? He's not even working that hard! Well, your tax money and mine, that's how we pay for it. We're ALL paying for this doctor. But, again, he only makes $70,000 and there's not that many people applying to medical school anymore.

Yep, it's 1999. Doc told me he went to school for 12 years after high school; I know a guy who went to college for only six years and he's making $125,000. Isn't it great the government is taking **care** of us?

Wouldn't it be nice to just get an appointment? I'd wait two hours for an appointment, just like we occassionally had to in 1994. Recently, I waited three months for an appointment and finally the doctor saw me. He said I needed an MRI scan but I couldn't have one of those for three more months. And when it is my turn, I have to go to Tampa to get the scan! Although I did hear Canada has a few MRI's, maybe I can go there. I guess I'll have to wait three months. I hope whatever it is giving me this headache doesn't get too bad. If I get laid off because of this headache, boy, then what am I going to do? They can't even diagnose it because they have to wait for the scan. If I could only pick up and go to another doctor who would take me, but the problem is they **ALL** work for the government and I've been assigned to Dr. McPherson. Dr. McPherson...the government assigned me to Dr. McPherson! I wish I could go somewhere else, but he is all I got. I think the last time I saw Dr. McPherson he wrote me a presciption. They didn't even have the medication in the pharmacy. They said they ran out last week and they don't get any more until the next fiscal year opens up some new medication money. Huh, this is great. Well, I remember back in 1994 when I used to be able to go to any pharmacy in town and they'd have this stuff. Oh well, one thing you don't want to do in the Year 2000 and that's get sick!

Author Unknown ✦

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MRI UPDATES

Physicians are invited to attend the following series of programs to be held at Southwest Florida Regional Medical Center. All programs begin at 5:30 p.m. and will be held in the private dining area of the hospital cafeteria. Presentations will last approximately one hour.

October 6, 1993

Nuts and Bolts of High and Low Field MRI

Stuart A. Bobman, M.D.

October 7, 1993

Clinically Oriented MRA

Chaim J. Margolin, M.D.

October 12,1993

Urological and Gynecological MRI

Kathryn A. Occhipinti, M.D.

October 13, 1993

Orthopedic MRI

Carey S. Linker, M.D.

Note: four CME hours have been applied for.

For more information, please contact Janice Leone at 939-4333. ✦

LIABILITY AND YOU!!!

Two articles have come to our attention on expanded liability of Hospitals and HMOs for the quality of care rendered by providers of services in these two institutions. Corporate liability has been established in Florida and the U.S.A. This will force re-evaluation of the current peer review policies, disciplinary actions, and utilization review.

GATEKEEPER IS AGENT OF IPA-MODEL HMO

A trial court should not have dismissed wrongful death actions against an HMO for negligence in selecting and retaining a physician who failed to diagnose a patient's cancer, a Pennsylvania Superior Court ruled.

The patient's employer contracted with an HMO for coverage for her and her family.The HMO was a modified IPA model that contracted with private physicians as independent contractors. A primary care physician was assigned to each subscriber.

In October 1985 the patient's primary care physician removed a mole from her back. The patient had told him the mole recently had undergone a marked change in size and color, but the physician discarded it without obtaining a biopsy or other histological examination. The patient's malignant melanoma was not diagnosed or treated, and she died in January 1988.

Her estate filed a suit against the physician and the HMO. It alleged the negligence of the HMO in selecting and retaining the physician contributed to the patients death. It also charged that the HMO was liable for breach of contract and misrepresentation based on the express representation made by it concerning the competency of its primary care physicians and the availability of medical specialists through referrals. The estate alleged the HMO had duty to use reasonable care in selecting and retaining the primary care physician; that it breached the duty; and that the patient was not timely diagnosed or treated and died as a result.

A trial court dismissed the complaint, and the estate appealed.

Reversing the decision, the appellate court said allegations that the primary care physician was *the ostensible agent of the HMO stated a claim in the malpractice suit.* The physician was held out as an agent of the HMO, which represented that its primary care physicians were screened and fully qualified physicians who would render competent medical care. The physician allegedly was not screened properly or evaluated and was not qualified and failed to make a timely referral to a specialist. The court noted that the estate stated claims for intentionally misrepresenting the qualifications of the primary care physician, for punitive damages and for breech of contract.

The court remanded and reinstated the estate's claim against the HMO.

McClellan v. Health Management Organization of Pennsylvania, 604 A.2d 1053 (Pa. Superior Ct., March 10, 1992) ✦

HOSPITAL CORPORATE LIABILITY AND YOU

Florida recently expanded the liability of hospitals for the quality of care rendered by the medical staff. Because of the ruling in *Insingav v. LaBella*, hospitals now face the prospect of corporate liability for medical care rendered to patients. No longer are hospitals merely the "four walls" in which care is rendered by others.

Legally as well as practically, hospitals are now recognized as health care providers with separate obligations to the patient in assuring an adequate standard of practice.

Insingav v. LaBella involved a patient who died as a result of negligent medical care during the course of a hospitalization. The case took on a peculiar twist when it was discovered that the attending physician was a fugitive felon from Canada who had assumed the identity of a deceased physician. As a result of the masquerade, the felon had been licensed by the state and admitted to practice on the hospital staff, where he treated the unfortunate patient.

The lawsuit filed as a result of the death alleged that the hospital had been negligent in not discovering that an unqualified individual had been given hospital privileges.

Ultimately, the Supreme Court agreed in concept, formally establishing corporate liability for hospitals. Hospitals now have an acknowledged duty to exercise reasonable care in determining which individuals will have membership in the medical staff, and in overseeing the quality of care rendered in the hospital.

Many legal experts had tacitly recognized such duty was likely, but this case firmly establishes corporate liability for hospitals in this state.

As a consequence, hospitals can be expected to increase scrutiny of physicians in an attempt to forestall allegations that an incompetent physician has been allowed to practice. Peer review activity may well be stepped up, including utilization review, quality assurance and traditional disciplinary actions. In the current legal environment, including antitrust liability for physicians who participate in disciplinary actions against peers who are competitors, establishing effective peer review can only become more problematic.

Further, because corporate liability opens up a cause of action grounded in negligent pursuit of peer review it may force re-evaluation of current peer review policies and immunities at the state as well as institutional level.

What effect the establishment of a cause of action for plaintiffs which is tied intimately to the peer review actions of a hospital will have on statutory provisions of confidentiality of information and immunity for particapants in peer review remains to be seen. It is sure to be an issue raised by plaintiffs.

Reprinted from the "Citation" To suscribe, call (800) 626-5210

This information is provided for educational purposes only and is not to be construed as legal advice. If legal advice is necessary, the advice and consultation of a competent attorney should be sought. ✦

SEPTEMBER MEDICAL SOCIETY MEETING

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SPEAKER:
JOEL MATTISON, M.D.

TOPIC:
"Visiting Hours At Lambarene With Dr. Albert Schwietzer"

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CANCELLATIONS:
By Noon, Monday

LEE COUNTY MEDICAL SOCIETY
P.O. Box 06041
Fort Myers, Florida 33906-6041

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