LEE COUNTY MEDICAL SOCIETY

Bulletin

THE VOICE OF LEE COUNTY MEDICINE

VOLUME 18, NO. 4 | Fort Myers, Florida | July, 1994
John D. Donaldson, M.D., Editor

PRESIDENT'S MESSAGE

STEVEN R. WEST, M.D.

"Recurring Theme"

In May, I attended the Florida Medical Association's Annual Meeting in Orlando as a member of the Lee County Medical Society's Delegation. The kids went to Disney World and Universal Studios and had a great time in Orlando.

This June I packed the family into the van and we drove to Chicago for the Annual American Medical Association's Meeting. Returning to Fort Myers I was able to participate in a meeting with Congressman Porter Goss, Dr. Cecil Beehler, Dr. Alex Lozano, Dr. David Shapiro, Ann Wilke and, from the FMA, Caryn Craddick.

I would like to share with you three themes which kept recurring throughout these meetings.

The first point is that there is simply no Health Care crisis. The care which Americans receive is excellent. The crisis is, instead, one of cost. The debate is between those who favor more government bureaucracy and control versus a free market approach to control costs. Since the Federal Government became involved in Health Care, costs have skyrocketed. Skyrocketing costs have been experienced by all governments which have been involved in Health Care. This government reform would provide us with more government, bigger insurance companies, skyrocketing costs, decrease in the quality of care, stifling research and innovation and, finally, rationing of care by third parties. This would truly be a medical dark ages. Costs would continue to rise finally resulting in severe economic consequences.

The second theme is the importance of the individual and the patient-physician relationship. Reform can prevent a medical dark ages by safeguarding this patient-physician relationship. The patient-physician relationship is the heart and soul of the healing process. Incentives must be designed to safeguard this relationship. Decisions about a person's health must be left in the hands of the individual patient and his or her own doctor. These personal decisions should not be made by a government bureaucrat or an insurance clerk. Many proposals will limit the right of patients to choose their own physicians, as well as limit their access to their physician.

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IT'S OUR OWN FAULT

Periodically, surveys that purport to report public confidence in various professions appear in the press. The medical profession used to regularly place at or near the top of these lists with clergymen and similar supportive professions. Gradually over the years, we have fallen in the public's eye in the direction of those perennial bottom dwellers, the lawyers and the politicians. We needn't wonder why: it is because we are acting more and more like them.

I feel our fall from public grace parallels the intrusion of government and business into our profession. Everyone knows "government" is just another name for lawyers and politicians; business is what we now practice with medicine.

Our decline began in earnest with the legal ruling that advertising was an acceptable form of communication for physicians and surgeons as well as for lawyers, used car dealers and chiropractors, and it could not be regulated by our organizations. Like the lawyers, physicians can now make wild and unsubstantiated claims to attract the public through "direct marketing" efforts such as the yellow pages, newspaper ads, radio self-promotion shows, mailings or television commercials. Unfortunately, any regulation of truth in the contents of such publicity is suppressed by law suits brought by the objects of any regulation. The public often finds too late that talent and ethics may be inversely related to the advertising budget of the practitioner or hospital.

The emergence of Medicare has harmed our profession in a manner not immediately obvious. As the burgeoning cost of this program demonstrates, we now have the ability to resuscitate each fibroblast on patients that are terminally ill, prolonging their vegetative existence, but not necessarily their dignity, for an extra six months. We do this at astronomical cost in teams of subspecialists, each doctor responsible for an ever diminishing segment of the corpse. We dazzle the crowd with our technology, all the while neglecting our humanity. The only other people in the country with such a self-perpetuating gravy train are the lawyers and the politicians.

The media rarely report on good doctors, but regularly feature "bad doctors". At one time we could discipline or suspend these practitioners, but not any more. Peer review is a joke in this state. Who is going to review a physician's behavior knowing they are liable to end up getting sued for conspiracy and spending years in court, like four of our colleagues did? The state dropped doctors like hot potatoes, and the accused is back injuring women as if nothing happened. The News Press continues to run his advertisements.

The standard joke in most communities was that Thursday was golfing day for doctors. Originally this was a good natured joke, for the population knew that "their doctors" were available for their patients at night and on weekends and they would be patient advocates within the "system". Managed care has changed all that and the joke is now a bitter one.

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FMA ANNUAL MEETING - ORLANDO
May 18 - 22, 1994

Front row: Larry P. Garrett, M.D.; Francis L. Howington, M.D.; David M. Shapiro, M.D.; Robert E. Arnall, M.D.; Back row: Richard G. Kilfoyle, M.D.; James H. Rubenstein, M.D.; Steven R. West, M.D.; Ronald J. Delans, M.D., Chairman; and Cecil C. Beehler, M.D.

Each year our Delegation works with the Lower West Coast Caucus (Charlotte, Collier, Manatee, Sarasota and Lee). We meet to discuss resolutions, develop consensus, candidates for election to the FMA and to share in the development of the house of medicine. The following appointments to FMA Committees show that Lee County is very much involved in the process:

Robert E. Arnall, M.D., Chairman, FMA Council on Hospital Medical Staffs.
Cecil C. Beehler, M.D., FLAMPAC Board, District 14.
Alexander J. Lozano, M.D., FMA Council on Legislation.
Mrs. Elizabeth P. Kagan, Committee on National Legislation.
David M. Shapiro, M.D., Chairman, FMA Committee on Membership and Development/Ad Hoc Committee on Group Practices. ✦

REPORTS FROM YOUR DELEGATES

Reference Committee I - Health, Education & Public Policy
Ronald J. Delans, M.D., Chairman

In May, the Florida Medical Association held its annual meeting in Orlando, Florida. As a first-time attendee, it would be a culture shock. We, as physicians, generally get together for the purpose of educational enlightenment, usually in the form of medical conferences.

Attending a FMA meeting hearkens you back to attending a Republican or Democratic National Convention. In lieu of medical topics, you are exposed to a large podium in a large convention hall. The speeches by politicians, FMA and AMA leaders are flowery. There are nominating speeches for candidates running for office. Likened to a political convention, the physicians are wearing pins supporting their candidates.

Speaking at the meeting can be a bit intimidating as it is unlike most of the situations we, as physicians, find ourselves. However, unlike political conventions, the FMA annual meeting is very much a democratic process. Aside from the speeches, elections and hoopla, much of the content of the meeting had to do with the advancement of medicine in the state of Florida. Lee County had good representation by bringing 7-8 Resolutions out of the total 80-85 Resolutions presented to the FMA.

This year was a very productive year for the Florida Medical Association. We, the physicians in Lee County, will benefit from decisions made. The Lee County Medical Society Delegates brought forth a number of Resolutions on behalf of the Medical Society. The following Resolutions brought forth were supported and endorsed by the FMA - to end HIV and Risk Management CME requirements. The Resolution that was passed also included that any future attempts by the Florida Legislature to impose disease or topic specific CME requirements would be fought by the FMA. Although this does not guarantee that these regulations will be repealed, you now have the full weight of the FMA behind you.

Another area of concern to Lee County physicians is that of Managed Care. We presented a number of Resolutions in the Managed Care area and all were passed through the FMA. The FMA will establish a survey on Managed Care companies. An evaluation consisting of information collected from a variety of sources, including the State Government, will be available to us as physicians on each Managed Care company. Questions such as how beneficial and useful each Managed Care company will be to us will be answered. With this information we, as physicians, can decide which companies we might wish to associate with. Actuarial information will be collected for use in determining and calculating capitated rates should we be asked to do so by any of the Managed Care companies. The FMA will establish a

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LEE COUNTY MEDICAL SOCIETY BULLETIN
3805 Fowler Street
Fort Myers, Florida 33901
Phone (813) 936-1645
The Lee County Medical Society Bulletin is published monthly with the June and August editions omitted.

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The Editors welcome contributions from the members. Opinions expressed in the BULLETIN are those of the individual authors and do not necessarily reflect policies of the Society.

MEMBERSHIP ACTIVITY

STATUS CHANGES:

Non-Members:
Marshall D'Souza, M.D.
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ANTITRUST RELIEF

As of May 6, there were 94 House co-sponsors and five Senate co-sponsors of the Health Care Antitrust Improvements Act (Archer-Hatch-Thurmond). Members of the Florida Congressional Delegation who have signed on include: Tillie Fowler, Clifford B. Stearns, Charles Canady, Porter Goss, John Mica, Earl Hutto, and Peter Deutsch. The Act would allow physicians to develop pro-competitive alternatives to insurance plans. ✦

MAINTENANCE OF MEDICAL RECORDS

Until recently, Florida physicians were required to maintain medical records for a period of two years, although the FMA Legal Affairs Division has always suggested that physicians maintain such records for a period of seven years (the maximum length of time during which a malpractice suit may be brought). Under new regulations implemented this year, however, physicians **must now maintain records for a period of at least five years after the last patient contact.** Questions regarding the new law may be referred to the FMA Headquarters Legal Affairs Division. ✦

REPORTS FROM YOUR DELEGATES... *Continued from Page 1*

grievance procedure for physicians who feel that they have been harmed by a Managed Care company. We feel that the Lee County delegation was very effective in bringing about change in the FMA in the area of assistance with Managed Care companies.

Another big issue that was finally resolved is the location of the FMA headquarters. There has always been a significant concern about the FMA Headquarters being located in Jacksonville, Florida when the majority of the work done by the FMA is in Tallahassee dealing with our legislative branch. After years of debate and a careful study, it was finally agreed upon by the House Floor to move the Headquarters from Jacksonville to Tallahassee. The importance of the move is that by placing the entire staff in Tallahassee, we will be there to lobby legislatures on a full-time basis. By so doing, this would improve our ability to impact more favorably about the future of health care.

The Lee County delegation was very effective at the FMA meeting. We stood up and fought for our Resolutions, prevailing in almost everything we asked for. Lee County made a significant impact on the legislative process of the FMA.

I personally wish to thank all of the delegates who took time away from their practices to attend the annual meeting. I would also like to encourage anyone who is interested in the political process to let us know as, for various reasons, there are times when delegates cannot attend and we need representation from our county. ✦

Reference Committee II - Finance and Administration
Larry P. Garrett, M.D., Delegate

The **big news** from this committee entailed a vigorous floor fight in the House of Delegates, which resulted in a 2 to 1 vote in favor of moving the FMA Headquarters to Tallahassee. This should help in the monitoring of legislation as well as the actions of the regulatory agencies.

The House of Delegates adopted the following policy regarding at risk capitation plans:

"The primary responsibility of the medical profession is to benefit patients. Physicians have an ethical obligation to place the health and well being of their patients before all other concerns.

Physicians must not deny patients access to appropriate medical services based on the promise of personal financial reward, or the avoidance of financial penalties; and further,

Patients must have the necessary information to make informed decisions about their care. Physicians therefore have an ethical obligation to assure the disclosure of medically appropriate treatment alternatives, regardless of cost; and,

Physician must assure that their contractual agreements restricting referral or treatment options are disclosed to patients; and,

Physician must assure disclosure of any financial inducements that may tend to limit the diagnostic or therapeutic alternatives that are offered to patients or that may tend to limit patient's overall access to care; and,

Physicians may satisfy their disclosure obligations by assuring that the managed care plan makes adequate disclosure to patients enrolled in the plan."

These are the two most important actions in Reference Committee II. The Lee County Delegation was extremely successful in passing the resolutions which the LCMS had proposed. ✦

Reference Committee IV and General Meeting Comments
Steven E. Levine, M.D., Delegate

The two most significant items reviewed by Reference Committee IV and passed by the entire house related to managed care:

1. A resolution to improve conditions regarding HMO's obligations to compensate physicians with whom the HMO has no contractual agreement is likely the single most helpful item passed regarding managed care. Currently, physicians cannot bill patients covered by an HMO plan. Therefore, the only recourse is through the HMO. Many physicians are obligated to provide services to HMO patients even though the physicians may not have an active agreement with the HMO.

Examples include emergency care, urgent care, consultations when the patient is in a hospital where no HMO contracted consultant has privileges, hospital based physicians, cross coverage and on-call for emergency room services, out of area services, etc. Currently, it is very difficult for such services to be reimbursed at reasonable rates since this is vaguely defined. It may require extraordinary effort to receive reimbursement at all under these circumstances. The HMOs seem to benefit at the patients' and physicians' expense because most physicians will not refuse to provide services.

The circumstance exists where improved assurances to patients and physicians are needed so services are not delayed, denied or become unavailable. Revision of the current law will close a large loophole that allows HMOs to benefit from gaps in their provider network that puts patients and providers at risk.

An interesting historical note made at the session was that the original, quickly drafted and passed statute was never intended to be used in the fashion that HMOs currently take advantage of this circumstance. The statute allegedly was passed simply to protect existing members of a large south Florida HMO that went bankrupt leaving many former enrollees vulnerable. At the time, limiting physician recourse to the patient seemed helpful. Certainly, this statute is due for revision. Recent efforts to revise the statutes have not been very successful. Your strong support of a revision through letters, specialty societies, and legislative contacts will be very helpful.

2. A resolution to assure supervisory activities of physicians as compensable and that compensation directly to physicians as appropriate was approved. This will be very important as physicians take initiatives to develop cost effective health care delivery systems, the services of which they will remain responsible and liable. ✦

The FMA House of Delegates
Steven R. West, M.D., Delegate

The FMA House of Delegates met in May of 1994. I had the privilege of representing Lee County as a delegate to the meeting as well as serving on Reference Committee for Medical Economics.

The House of Delegates endorsed the concept of medical savings accounts (Medical IRA's). The FMA will seek legislation incorporating the medical savings account by the state of Florida into Health Care Reform. It also asked the Florida Delegation to urge the AMA to support medical savings accounts.

A Resolution was adopted that FMA seek legislation that would support the development of physician director organizations which could act as bargaining agents for physicians on the regional level for reimbursement of physician services and practice related issues such as utilization review and quality improvement and quality insurance.

The FMA was instructed by the House to collect and maintain data on managed care companies and HMO's. This was a Resolution which was brought by the Lee County Delegation to the House. The data bank will be available to members. The information collected will include patient/physician satisfaction with a plan, the level of bureaucratic intrusion, and the quality of care achieved by the plan. This information will be used to help individual physicians determine whether or not they want to join a plan or continue to participate in a particular HMO or Managed Care Organization.

This Resolution also instructed the FMA to develop a grievance procedure possibly through arbitration for physicians who suspect that they have been either professionally or financially harmed by a managed care company or HMO decision.

A new Resolution submitted by Lee County regarding capitation also was adopted. FMA will help educate physicians regarding capitation and obtain available actuarial data to assist its members in evaluating capitation.

The House of Delegates also voted to move the Florida Medical Association's Headquarters to Tallahassee. At our Lee County Medical Society meeting in May there was overwhelming support for the move. It is hoped by moving the headquarters to Tallahassee our lobbying efforts with the legislature and the Agency for Health Care will improve. ✦

THE QUESTION MAN

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

"WHY IS MANAGED CARE THOUGHT TO BE THE SOLUTION TO OUR PROBLEMS?"

Stuart Bobman, M.D. (Radiologist)

Who thinks this? Knowledgeable people realize this is no solution. The President ran on this platform, and he seems to be believed by the electorate who has been made to feel insecure by the publicity of a "crisis".

Steven R. West, M.D. (Cardiologist)

The people who think Managed Care is the solution to the Health Care crisis are the managers, insurance companies and the bureaucrats who know very little about caring for people.

NEXT MONTH'S QUESTION

"WHAT IS THE SIGNIFICANCE OF DR. JACK KEVORKIAN'S ACQUITTAL?"

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

TIDBITS OF INTEREST

Practice Check-Up is needed on a solo physician or a six physician office either quarterly or yearly. It is essential to check the following five key areas: Finances, operation, contracts, human resources and marketing.

FPIC (Florida Physician Insurance Company) has received an initial rating of "A(-) Excellent" from A.M. Best, the industry's leading rating organization. They have also purchased an ownership interest in a reinsurance pool managed by HCIF Management Company out of Minnesota.

FMA's Media and Medicine Conference is set for November 10 and 11 at the Radisson Plaza Hotel in Orlando. The Panels this year will include **Space Medicine, Domestic Violence, Health Care Reform, Environmental Health and Managed Care.** The state news media, other health care communicators, physician leaders and association members will hear the latest on medical issues currently impacting the public. Make plans to attend now. Dr. John Donaldson is one of the invited speakers -- as is Hillary Clinton.

Looking for New Members - The newly organized Advanced Practice Nurses Council of Southwest Florida invites all nurse practitioners, nurse midwives, nurse anesthetists, clinical nurse specialists and mental health nurse specialists to join the newly formed coalition. They will be providing educational programs, community projects, social functions and to acquaint the public and medical community of their role in health care. They meet the first Tuesday of every month at Lee Memorial Hospital, Cleveland Campus. Contact Linda Brown, 549-1398 or Rhoda Ehrreich, 332-2077. ✦

Either we're pulling together or we're pulling apart.

AMA UNVEILS LEGISLATIVE INITIATIVE TO PROTECT PATIENTS

Key Elements of the Patient Protection Act:
Legislation would guarantee:

1. Patients and their physicians - not insurance companies - control the care patients get.
2. Patients are told what restrictions exist on access to medical specialists.
3. Patients are told what is and is not covered, what co-payments are required, and what approval process is needed to get care.
4. Patients have a choice of physicians and at least three different types of health plans:
   - a traditional insurance plan (with co-payments and deductibles)
   - an HMO or PPO
   - a benefit payment schedule plan
5. Patients who choose a plan that restricts access to physicians may purchase a point-of-service option to see any physician outside the plan.
6. No physician would be kicked out of a plan for giving patients the care they need.
7. Practicing physicians would have an essential role in developing criteria and other measures to ensure quality patient care, as well as a strong voice for their patients in medical policy-making.

SPEAK UP NOW!

1. Send a Western Union message to both of your Senators and your Congressional Representative, asking them to support the Patient Protection Act.
- Call 800-354-9292 and the Western Union operator will make sure that *your* elected representatives receive your message.
- Your cost to send all three messages will be $8.25 which can be billed to your phone number, your VISA or MasterCard account.

2. Write your own personal letter in support of the Patient Protection Act. ✦

GET INVOLVED TODAY!

NEW AMA MISSION STATEMENT

The AMA Board of Trustees approved a new Association mission statement:

"We are the voice of the American medical profession.

"We are the partnership of physicians and their professional associations dedicated to promoting the art and science of medicine and the betterment of the public health.

"We serve physicians and their patients by establishing and promoting ethical, educational and clinical standards for the medical profession and by advocating for the highest principle of all -- the integrity of the physician-patient relationship." ✦

UPDATE: SECTION 16, FEE CAPS

On July 1, a state court judge ruled that Section 455.255 F.S. (i.e., Section 16) was unconstitutional to all but radiation therapists, thereby preventing the Agency for Health Care Administration (AHCA) from enforcing the statute against any parties other than radiation therapists.

Radiation therapists wishing to be covered by the current injunction were given a deadline of **Thursday, July 25, 1994,** to intervene in the suit. As a result of this ruling, the judge held that the AHCA may not enforce the statute against those providers of designated health services regardless of whether they are parties to the suit.

Any questions concerning the above should be directed to the FMA Division of Legal Activities at (904) 356-1571. ✦

FLORIDA'S SMOKE FREE CLASS 2000

Poem and Essay Contest: "Know the Facts - Keep Your Power"

Dr. Steven West, LCMS President presented the four winners of the Smoke Free poem or essay contest in Lee County with $50 Savings Bonds: The students are all sixth graders: Erin Orth, Nichol Byrum, Angela Golden and Kim Murphy.

Below are the four award winning entries:

TOBACCO FREE
By: Nichol Byrum

There was a man in my life,
who talked of many things.
His children, home, and his wife,
And all the joy they bring.
Now no more can he speak,
And through his throat comes air.
How about came this feat,
'Twas 'cause he didn't care.
He writes to "speak" everyday,
And now he says to me,
"No longer need I an ashtray,
So don't bring one to me.
Forever more from this day,
"I'm going to be tobacco free."
Nichol Byrum
Grade Six, Gulf Middle School ✦

SMOKE-FREE
By: Erin Orth

There are a lot of reasons that may make smoking seem cool and "in," but smoking can be very harmful to your health. It can even kill you. By the year 2000, 2,490 children will choose to smoke instead of keeping their power. A lot of teenagers, along with children under the age of 12, think smoking is the way to relieve stress and pressure. Although it is true that smoking relieves tension, it also makes you 25% more prone to lung cancer and other deadly diseases.

You've got to keep your power. If you give in to people who pressure you to smoke, you have lost your power, and in 60 years or less, you may even lose your life. If you smoke, you have greatly increased your chances of getting cancer, heart disease, gum disease, emphysema, chronic bronchitis, ulcers, and even allergies.

Smoking can also cause unpleasant changes in the way a smoker looks and feels. A smoker's fingers may get stained along with stained teeth. Eventually, smoker's develop *cigarette face,* which causes wrinkles around the eyes and the mouth. The skin may also turn gray or yellow. Smokers also have a very unpleasant smell on their clothes and their breath. Gum diseases also cause bad breath.

Much of a smoker's money is wasted away on cigarettes and tobacco products. Also, if a smoker gets sick then they usually require more extensive health care than a nonsmoker.

Smokers in the U.S. can very easily prevent their own death. Every cigarette takes about five minutes off a smoker's life. That is 1,200 deaths a day in the U.S. So now you can see why smoking is SO BAD! KEEP YOUR POWER! DON'T START!

Erin Orth
Grade Six, Paul Laurence Dunbar Middle School ✦

CROAK AND CHOKE
By: Angela Golden

It doesn't matter who gives me the smoke,
I know I'll only choke and eventually croak.
I'll just say no,
it makes you grow slow.
You're not my friend, you're a foe.
They might think I'm snobby,
But I really care about my body.
The smoke goes right to your brain,
Then your school work is a strain.
Smoking isn't cool,
Because you could get suspended from school.
Use your health as a tool,
Don't be a smoking FOOL!
Angela Golden
Grade Six, Paul Laurence Dunbar Middle School ✦

IF...
By: Kim Murphy

If you smoke you're not cool,
If you smoke you're a fool.
So don't get pressured into it,
By people who smoke, and just can't quit.
If you smoke, it means you're weak,
Besides the fact you look like a geek!
Destroying your body by inhaling smoke,
Is very serious, It's not a joke.
Don't get hooked, it's a bad thing to do,
Stay healthy, and think about you!
Smoking can make you die,
There's a thousand reasons why.
So if you smoke, it's time to quit!
And if you don't stay away from it.
Kim Murphy
Grade Six, Gulf Middle School ✦

10 COMMONLY ASKED LEGAL QUESTIONS

1. How long am I required to keep medical records?
According to F.A.C. 61F6-26, five years. We recommend seven years. (The maximum statute of limitations for malpractice.)

2. Must I provide copies of medical records upon the request of a patient?
Yes. However, you may charge $1 for each of the first 25 pages and 25 cents for each page thereafter.

3. May I treat a minor without parental consent?
Only if you are treating a minor for sexually transmissible disease, pregnancy, emergency care, mental health or alcohol/drug abuse.

4. How do I terminate the physician/patient relationship?
You should send a certified letter informing the patient you will no longer be available to treat him. You must give the patient a reasonable amount of time to obtain care from another physician and be available to treat patient in the interim. No reason must be given for the termination.

5. Must I comply with a subpoena?
Yes. However, you should inform the patient that you will be releasing their medical records by a certain date, unless they provide a court order. If the subpoena is for "super confidential" records, a court order must be provided.

6. Must I supply an interpreter at the request of a deaf patient?
According to the American with Disabilities Act, yes. However, you may write-off the expense on your taxes.

7. May I charge interest on an unpaid bill?
Yes, but not more than 12% interest per year. The patient should be notified prior to interest being assessed and the AMA ethical guidelines urges exceptions for hardship cases.

8. What should I do when I close my practice?
At least 30 days prior to closing, you must place a sign in your office stating you will be closing and where patients may obtain medical records. You must also publish in the newspaper with the largest circulation in counties where you practiced a notice of termination and where medical records may be obtained.

9. What may I charge for a deposition or expert witness fee?
Generally, there is no set rate. Whatever is reasonable and customary in the area you practice. We suggest you obtain your fee in writing from the attorney and request a portion to be prepaid. For Workers' Compensation, the rate is $200/hour for those physicians who have actually treated the patient, $200 per day for others.

10. Must I sign all progress notes?
Although state law does not explicitly require that physicians sign (or initial) all progress notes, Medicare, Medicaid, and virtually all HMOs require such documentation as a prerequisite to reimbursement.

These are general answers to common legal questions, it is not in any way a substitute for competent legal advice.

For more information call the FMA Legal hot-line at 1-800-356-0056. Prepared by the FMA Legal Affairs Staff. ✦

When finished with this issue . . .

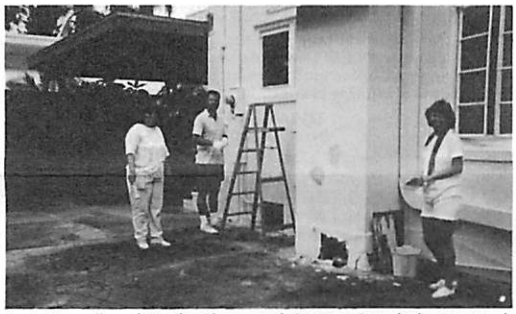
Pass it on to staff!

TO:	INITIALS:

PAINT YOUR HEART OUT TEAM 1994

Dr. F.L. Howington put his previous experience to work on the second floor window.

Paint Your Heart Out Team 1994 with homeowner Mrs. Louise Cameron and Vic's Painters: John Odisso and Mike. (Some members had to leave early.)



Lori Howell and Linda Clayton of Option Care help Dr. Mark DeSantis prepare the house.

Team began preparing the house at 8:30 a.m. in the rain - our friend the "sun" came through for us. We finished about 3:30 p.m.

A special "Thank You" to all who participated.

Mrs. Louise Cameron, homeowner, took very good care of our team supplying us with beverages and cookies.

PRACTICING MEDICINE BEYOND THE SCOPE OF EXPERTISE

M.P. Demos, MD, JD and Ronald F. Giffler, MD, JD, MBA

Physicians are being disciplined by the Florida Department of Business and Professional Regulation (BPR) for practicing in areas of medicine where they are not qualified due to lack of training, experience, and expertise. The Florida Statutes give the physician broad powers when he or she receives a license: *"Practice of medicine means the diagnosis, treatment, operation or prescription for any human disease, pain, injury, deformity, or other physical or mental condition."* This definition allows the physician to use his discretion in treating patients without explicit restrictions. However, chapter 458 penalizes physicians who take this definition too literally: *"Grounds for discipline: practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know he is not competent to perform."* This means that any physicians should not practice beyond the scope of their expertise. In a current review by the authors of 586 consecutive cases of physicians disciplined by the BPR, 16 physicians were primarily accused of practicing medicine beyond the scope of their expertise. See Fig. 1. These cases are discussed to demonstrate how unaware some physicians are of this law and perhaps help physicians avoid this problem. Every effort to provide anonymity has been taken to prevent embarrassment to the physicians involved in these cases. Hopefully, through this educational process, physicians may avoid this problem of praticing beyond the scope of their expertise and practice medicine more appropriately with peace of mind.

While the incidence of medical malpractice lawsuits has remained relatively stable over the last several years, the number of physicians being investigated by the BPR is sharply increasing. Medical board actions against physicians increased in 1993, according to a statistical summary recently released by the Federation of State Medical Boards of the United States. The Florida Board of Medicine reported 241 prejudicial and 109 non-prejudicial actions against physicians in 1993 for a total of 350 - more than any other state. California came next with a total of 274. Unlike a medical malpractice lawsuit where the loss involves money, a professional disciplinary proceeding places the physician's license and entire career in jeopardy. The main thrust of the BPR is to protect the public by encouraging physicians to provide safety for patients. In prosecuting an alleged violation, the BPR does not have to prove that the patient sustained any compensable injury, as in a civil suit. Rather, the BPR need only establish that the physician practiced below the standard of care or violated one of the many provisions of the Medical Practice Act or other statute or regulation. In this manner the BPR is attempting to prevent harm to patients and protect the public.

As health care reform and managed care involves more primary care physicians as gatekeepers, this problem of practicing beyond the scope of the law or competence of the physicians may become more prevalent. The individual licensee cannot practice in any and every specialty that he or she may choose. A risk management technique taught in seminars of the required 5 CMEs for licensure (and relicensure) of physicians in Florida is "do not overdo." The privilege to practice medicine is also limited by medical staff credentialing, Joint Commission of Accreditation of Hospitals and Organizations (JCAHO) standards, malpractice insurance coverage, medical ethics, and common sense. Medical staff credentialing in hospitals and health care facilities have become increasingly specialty and even procedure specific. Physicians are not allowed to practice in areas where they have not been able to demonstrate appropriate training or experience. To do so would breach the standard of care, a very common violation. Of the 586 cases disciplined by the BPR, 289 (49%) contained standard of care violations. It was very common in our series for a physician to be cited for multiple violations arising out of the same event. For example, out of the 289 standard of care violations, 89 also included charges of inadequate medical records, and 56 cases included charges of improper prescribing. All of the 16 cases of practicing beyond the scope of expertise also included a standard of care violation.

Malpractice policy applications require detailed information about the physician's training and experience. The insurance policies cover those delineated practice areas that the insurer believes the physician is competent to perform. This provides a strong financial incentive for the physician not to stray beyond his areas of expertise. One could also make the argument that to practice in an area not covered by his policy would be a violation of financial responsibility. A physician electing to do without malpractice insurance should realize that if he were sued for malpractice, it could be proven he violated the applicable standard of care by practicing in an area in which he did not have adequate training or experience.

Summary of Violations

Type of Violation	Total No.
Inappropriate practice of psychiatry	4
Practice in chemical face peel clinics	3
Office practice beyond expertise	3
Violation of statute or regulation	2
Detoxification of substance abuser	2
Office surgery without hospital backup	2
	16

(Fig. 1)

PRESIDENTS MESSAGE - *Continued from Page 1*

Many managed care plans are designed to prevent patients from seeing their doctor; many reforms create economic incentives that pay the doctor not to see the patient and not to render care. Most of the government proposals such as the Clinton plan rely heavily on measures to restrict access to care. Reform must give the individual patient back the power and the right to make these decisions. With that power and right the individual will be able to make decisions that are in his or her own best interests. The correct reform will also provide the individual economic incentives to contain costs by not over-utilizing the system. Decisions will be based on value and quality. Today, few patients are concerned with what care and diagnostic procedures cost. The system is structured so they think it costs them nothing. This structure, of course, is untrue and has led to the skyrocketing costs of health care.

A true market approach would change the delivery of health care so that there is universal coverage, cost containment, and the patient-physician relationship is protected from intrusion by third parties. The first step toward universal coverage is to enable people to buy affordable, no frills policies to cover only the devastating bills associated with a serious illness. This will require doing away with many state mandated insurance requirements which have doubled the cost of health care insurance in the past 10 years making it unaffordable to many.

A no frills, high deductible policy encourages people to avoid needless tests and waste. Paying out of their own pocket saves money by eliminating administrative costs and profit paid to insurance companies. Paying your doctor directly in some instances can save you 30% on the cost of a small medical bill. For the poor who cannot afford insurance, of course the Federal Government would pay for their insurance and pay for their first dollar coverage. To encourage savings, a medical IRA approach could also be instituted. People could set aside money each year in a tax-free savings account to meet their deductible and out-of-pocket medical expenses. Market driven reforms such as this would place the individual back in charge of his own health and body. The patient and the physician, not the government or large insurance company, would be making the decisions about care and treatment. Because the economic incentives would be correct, the costs of medical care would be brought under control, and everyone could afford insurance, therefore afford universal access.

The final theme is that physicians must become involved in the debate and must become involved in the political process. The American Medical Association has introduced legislation in both the U.S. Senate and the House of Representatives called The Patient Protection Act. I urge you to become familiar with this legislation and to write our congressman and senators urging them to support The Patient Protection Act.

There are five key elements to The Patient Protection Act which I feel are worthy of our support:

1) Patients and their physicians control the care patients get, not insurance companies.
2) Patients have a choice of physician and health plans.
3) Patients have information about what their plan covers; co-payments and prior approval requirements.
4) No physician can be kicked out of a plan for giving patients the care they need.
5) Patients who choose a plan that restricts access to physicians may purchase a point-of-service option to see a physician outside the plan. ✦

AMA MEETING, CHICAGO - JUNE 1994

Steven R. West, M.D.

Two candidates from Florida were able to win their election. Yank Coble was able to be elected to the Board of Trustees of the American Medical Association and Kay Hanley successfully ran for the Council of Medical Services. Many issues were discussed and debated at the AMA House of Delegates Meeting. There was overwhelming support for the Medical Savings Account approach. There was great concern expressed over the power of insurance companies. The importance of physicians becoming involved in Political Action was stressed.

The Patient Protection Act was stressed as a way of safeguarding physicians and patients. In a healthcare marketplace increasingly dominated by large Managed Care Organizations and corporate entities the physician/patient relationship must be protected. The Patient Protection Act would make certain that patients would receive information from their health plan to make personal and family choices about care and coverage. Individual choices would help assure quality medical care. Patients would be provided a list of covered services telling them what the plan pays for. A list of exclusions and what they would have to pay for themselves would also be provided. Directions on whom to call before a physician can treat them would also have to be provided by the plan. Information about how other patients feel about the health plan would be provided to the consumer. Disclosure of financial incentives for health care providers to withhold or limit services or restrict referrals to specialists would also be provided. Patients would be provided with three options of plans including an HMO, a PPO or traditional insurance plan with co-pays and deductibles. For any patient who chooses an HMO plan or any other plan that restricts access to physicians, a point-of-service option must be available for the patient. Meaning patients would be entitled to see any physician outside the plan if it became necessary.

The Managed Care Plan also must allow physicians a voice for the patients and medical policy making. No physician could be kicked out of a plan for giving patients needed or necessary care.

Physicians would have an essential role in developing criteria and other measures to insure quality patient care. Managed Care Plan would have to disclose the criteria and the reviewers to the physicians who were participating in the plan. It is most important that we support the AMA by writing our Congressman and Senators uring them to support the Patient Protection Act. Also, we need to ask our patients to ask for their Senators and Congressman's support. There is a Patient Protection Act brochure that can be obtained for your office by calling 1-800-262-3211. ✦

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.

David Lee West, M.D.

Dr. David West was born in New York. **Medical School:** S.U.N.Y, Downstate Medical Center, College of Medicine, Brooklyn, NY in 1981. **Graduate School:** The University of Miami, School of Public Health, Miami, FL 1989-1992; **Internship:** Internal Medicine, Downstate Medical Center, King's County Hospital, Brooklyn, NY; **Residencies:** Internal Medicine, D.C. General Hospital, Georgetown Medical Service, Washington, D.C.; Emergency Medicine, University of Maryland Hospital, Baltimore, MD; **and,** Public Health - Preventive Medicine, Palm Beach County Health Department, West Palm Beach, FL.

Board Certification: American Board of Internal Medicine and American Association of Medical Review Officers.

Dr. West is practicing occupational medicine at Lee Memorial Hospital. ✦

Donald C. Fletcher, M.D. - Ophthalmology

Dr. Fletcher was born in Edmonton, Alberta, Canada. **Medical School:** University of Alberta Medical School, Edmonton, Canada in 1982; **Internship and Residency:** University of Saskatchewan, Saskatoon, Canada; **Fellowship:** Retinal and Rehabilitation in San Francisco, CA.

Dr. Fletcher is a member of the American Academy of Ophthalmology, American Congress of Rehabilitation Medicine and the American Medical Association.

Dr. Fletcher is an Associate with Retina Consultants at 2668 Winkler Ave., Fort Myers. ✦

Geoffrey Allan Negin, M.D. - Diagnostic Radiology

Dr. Negin was born in Newton, Massachusetts. He graduated from the University of Miami School of Medicine in 1989. **Residency:** University of South Florida College of Medicine, Tampa, FL 1989-1993; **Fellowship:** University of South Florida College of Medicine, Tampa, FL 1993-1994.

Dr. Negin is an Associate of Smith, Hendra and Gerson, M.D., P.A., located at 413 Del Prado Blvd. S., Suite 202, Cape Coral, FL 33990. ✦

Lawrence J. Carley, M.D.

Dr. Carley was born in Ossining, New York. **Medical School, Internship and Residency:** Medical College of Pennsylvania, Philadelphia, PA; **Board Certifications:** American Board of Emergency Medicine. A practicing Emergency Medicine physician in Lee County since 1980, Dr. Carley is affiliated with the Cape Coral Hospital Emergency Room. ✦

HCFA IS MAILING YOU A SURVEY

During July, the Health Care Financing Administration (HCFA) will survey a random selection of approximately 500 physicians in Florida. The survey is voluntary and no physician identifying information is being requested. Medicare carriers will not know which physicians have been selected to participate in the survey.

The purpose of the survey is to measure and evaluate physicians' satisfaction with their Medicare carrier's performance.

Please take approximately 15 minutes to complete the survey which will cover claims processing, telephone service, written inquiries, outreach activities and the appeals process. ✦

IT'S OUR OWN FAULT...*continued from page 1*

Now the traditional ties between patient and doctor are, at best, transient due to the shifting of health insurance contracts where quality is measured only in dollars. Some doctors are reimbursed by how much care they don't render; others are restrained by the "cookbook" approach to care required by the carrier. I was told by some official at Executive Risk Management a few weeks back that "obstructive apnea was not on the list of diagnoses approved to perform a tonsillectomy on a child". She didn't really seem to care if the child couldn't breathe; the diagnosis just was not on the list.

Under managed care, doctors lose contracts for being advocates for their patients. California has passed legislation which blocks companies from discharging physicians for patient advocacy, most other states will be forced to follow. The AMA has tacked on an amendment, the Patient Protection Act, before the Senate Labor and Human Relations Committee in an effort to protect patients from the carriers.

Managed care has begotten "corporate care" which in turn has spawned alliances between parties that have traditionally had diametrically opposed objectives that required the doctor to act as the patient's ally and advocate. Hospitals have begun to buy physicians and their practices. This in itself is no big deal but becomes a major ethical problem when patients are told that the physician is owned by the hospital, or has a financial interest in an institution that returns money on the basis of profitability to the "physician investor" through a medium of non-marketable shares.

I have been examining all the display advertising in the newspaper looking for the part where the patient is told that the advertiser is not really the physician but, rather the doctor's owner, the hospital. I can't even find such an acknowledgement with my glasses on. Pity the poor patient. He goes to the hospital thinking that his doctor is his advocate and will look out for his best interests. Instead, he may find that he will have to take his attorney if he is to be adequately represented in a hospital environment, for his doctor and the hospital are one and the same.

It will get worse before it gets better. Whole medical communities are being cleaved by these such relationships. When physicians are owned or have a profitability relationship with one hospital, competing hospitals will not be able to tolerate those physicians shifting high-cost patients to them while skimming the profitable patients to the hospital with which a financial relationship exists.

In Florida, hospital separation data is public information. Studies are beginning to show that this type of shifting and skimming may be taking place in an organized fashion. Hospitals are examining this data closely; and, we can expect some very public forms of economic credentialling as lawsuits are filed over hospital privileges. We will all look bad, we will look greedy and, we will look like politicians.

This competitive environment stresses some of those within the system. A new breed of medical administrator is emerging, the corporate heavy, an individual devoid of concern for civilized behavior or traditional medical decorum and politeness. This type telephones physicians to convey threats if they disagree with him on matters of quality, loyalty or even personal opinion. Alas, I gave up sitting by my telephone awaiting my call; I guess only women, retirees and shorter physicians are threatened.

This type of behavior can be expected and accepted from hustlers, be they telemarketing swampland, operating a securities boiler room or shuffling money in an S & L. The disappointing aspect of the whole situation is how readily such entrepreneurs are able to surround themselves with subservient physicians and dentists giving public support and lending an unearned legitimacy to these innovative but questionable methods.

As far as I can tell, only one positive result has emerged from all of these changes. Medical school can now be shorter; like the politicians and lawyers we are emulating, we need not study ethics. ✦

John D. Donaldson, M.D.
Editor

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