Seasons Greetings & A Prosperous New Year

LEE COUNTY MEDICAL SOCIETY

Bulletin

THE VOICE OF LEE COUNTY MEDICINE

VOLUME 21, NO. 8

Fort Myers, Florida
Daniel R. Swartz, M.D.

December, 1997

Happy Holidays

Lee County Medical Society
Invites You To
A
Holiday Party

Monday, December 8, 1997
The Veranda Restaurant
2122 Second Street, Fort Myers
7:00 - 11:00 p.m.

Reservations a must
LCMS Physician Members - NC
Retired Members, Spouse or Guest - $36.00
Checks Payable to: Lee County Medical Society
Cash Bar • Piano Music By: Lila

Please RSVP with the Lee County Medical Society at 936-1645 or Fax 936-0533

JANUARY 19, 1998
INSTALLATION OF NEW OFFICERS

Speaker:
Nancy Dickey, M.D., Chair

AMA BOARD OF TRUSTEES
LCMS & ALLIANCE WILL HOLD MEETINGS IN SAME LOCATION

Mark your calendars and join us for our meetings-a way to get to know our medical community!

In This Issue...

PRESIDENT'S MESSAGE

George C. Kalemeris, M.D.

"OUT WITH THE OLD, IN WITH THE NEW"

The Holiday Season is always full of anticipation and joy! Hanukkah, Thanksgiving, and Christmas always bring out the best of mankind with goodwill to all, and child-like anticipation.

It may seem a little odd that all of these holidays occur at the end of the year instead of its beginning. Nevertheless, it is the anticipation (hope) of the arrival of something wonderful or miraculous that is the basis of the celebration, not its arrival.

New Year's Eve, the most celebrated holiday according to national public radio, is one example. It is New Year's Eve that many of us go out to celebrate, not New Year's Day. Father Time exits! The new year arrives!

I, for one, will be celebrating the end of my year as the President of your County Medical Society. The position is always challenging, never dull, and would be impossible without the support of staff, committee chairmen, and the Society membership. It has been fun and exciting, but all good things must end.

It's always hard to know what to say at the end ... you want to sound profound and inspirational, and make some last mark that makes a difference on your way out.

Just a few "marks" from "Father Time" on his way out:

1. We are a society of physicians. As physicians, our chief concern is for our patients and our community, not our individual self-interests. Our actions should pass the "front page of the News-Press" test. If we support our patients and our community, we will have done the right thing and we will all do well.
2. We are a service organization. While there are many of us doing yeoman jobs for the Society, all of us need to do what we can to support the service activities of the Society. Legislative activities get a lot of press. They are crucial activities. Nevertheless, "We Care," the Salvation Army Homeless Clinic, Paint Your Heart Out, the Disaster Planning Committee, and the Sports Medicine Committee (to name a few) provide a tremendous amount of goodwill to the Society which is substantial, but difficult to measure.
3. We are a political organization. Take advantage of your ability to participate in the legislative activities of the Medical Society by:
   - Joining FLAMPAC and/or Lee-Pac
   - Working on the Legislative Committee
   - Going to Tallahassee during the legislative session
   - Having your spouse join the Alliance
   - Joining the 1000 Club
   - Serving as a delegate to the annual FMA meeting
   - Attending legislative fund raisers

   When terms expire there will be a void of historical knowledge in the legislature, filled with danger and opportunity. It is our job to take advantage of it or expect the consequences of apathy.
4. Physicians are challenged by payers and other health care providers. We need to have the ability to bargain collectively. However, we should pursue this resource from within organized medicine.
5. The Society and the Alliance are mutually the greatest resource each has. Our collective muscle must be aimed at the same agenda. Close coordination and communication are essential. Our agendas should be developed collectively.

I'm very optimistic as I see David Reardon preparing to take over the reins. He is very articulate, knowledgeable, energetic, and most of all, committed to the well-being and future of the Medical Society. He has been preparing for this position for several years. He will be an excellent leader for us all, but it won't matter unless we pitch in.

I want to express my deep appreciation and gratitude to all of you, the Committee Chairmen, and especially the Board of Governors. You have given me the support, time and money necessary to maintain and build this house of medicine.

Finally, I want to offer my sincere thanks to the staff of Lee County Medical Society and our Executive Director, Ann Wilke, who without their tireless support, poise, and style, we the Society would not have the strength, stability and community standing we have today.

It has been an honor and a privilege to be your President. Here's the baton, David.

TRUE SPIRIT OF CHRISTMAS

Peter M. Sidell, M.D.

Our family had a special pleasure last Christmas because we adopted a needy family as a way to foster the true spirit of Christmas, the spreading of joy.

Mary Kay, my wife, called HRS and was put in touch with Bob Richmond. She explained that our family wanted to do something nice for a less fortunate family this Christmas. She expressed our desire to help a family in which someone was earning a living. We were told about Fred, a single father who was busy raising four young children, and working as well. We decided to adopt his family in hopes of making this a special Christmas for them.

After our office Christmas party we headed out to Toys-R-Us with our college-age children who were in town for the holidays. Picking out those gifts was an interesting exercise in family diplomacy and cooperation. In the end everyone ended up with a sense of satisfaction. (It was also very interesting to see our children, Kristen and Steve, looking at the toys through the eyes of young adults.) Our children wanted to find a way to help Fred and his children remember this holiday. They suggested getting a disposable camera and a certificate for developing the pictures.

We purchased a nice holiday dinner at Publix, and our children also prepared some special treats they thought the children would especially enjoy.

(continued on page two)

AS I RECALL...

Roger D. Scott, M.D.

"TURKEY DAYS"

Thanksgiving is a very memorable holiday for me. My family used to share Thanksgiving dinners with my Aunt and Uncle's family. One year they would come to have dinner with us in Live Oak, Florida and the next year we would go to their home in Griffin, Georgia (Bob Arnall's home town). This went along well for years and it was truly a nice reunion as we were the closest branches of the family.

Thanksgiving was traditionally the last Thursday in November as proclaimed by President Lincoln in 1852. In 1939, the President of Federated Department Stores convinced President Franklin D. Roosevelt that a longer Christmas shopping season would help the economy, and President Roosevelt issued a proclamation recommending that Thanksgiving be celebrated on the 4th Thursday of November each year.

Well, this kind of caused a little dissension in the family because Daddy was anti-Roosevelt and certainly was against changing the traditional Thanksgiving Day, as were many other families in the United States. It was finally decided that one year on the 4th Thursday we would go to Georgia and the next year on the last Thursday it was held at our home in Florida.

This seemed to work out, but Daddy and Uncle would frequently get into other heated debates regarding President Roosevelt's policies. Daddy was so anti-Roosevelt and New Deal that his little bank in Live Oak was the only bank in the State of Florida that did not close on the Banking Holiday of 1933, when the U.S. went off the gold standard as ordered by the Federal Government. As each Thanksgiving rolls around, I so remember those good turkey days.

Christmas has always been my most favorite holiday. Called to mind is my fifth year on this planet at Christmas. I never had a toy of any sort other than those that were homemade from tin cans and pieces of wood, hammer and nails, mostly made by myself. Mother had ordered a miniature steam engine from Sears-Roebuck for my Christmas. Unfortunately when we unpacked the package, the steam engine was broken, and when Mother wrote for another steam engine there were no more available and so it was replaced with a little metal fire engine that would pump water. Incidentally, I still have that somewhat antiquated toy. It was interesting that Mother ordered me a steam engine, as at the sawmill I played with real, life-sized steam engines and was able to run and ride on full-scale locomotives, but I was still heartbroken that my first Christmas toy wasn't there.

With the development of my own family and children, Christmas assumed more and more importance in my life and truly offers some of the greatest of all memories of love and good times. The early days in practice in Fort Myers were extremely busy, especially with our covering the emergency room every few days. Nurses (no ER Physicians) weren't allowed to treat anyone and each patient had to be seen by a staff physician.

Quill Jones, Sr. was one of the pioneer GP-Surgeons and a truly wonderful gentleman. When

(continued on page two)

LEE COUNTY MEDICAL SOCIETY BULLETIN
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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

NEW MEMBERS
Michael Bauerschmidt, M.D.
Orestes Borrego, M.D.
J. Douglas Gay, M.D.
Catherine Lamed, M.D.
Mary Margaret Magno, M.D.
Cynthia McCurdy, M.D.
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David Lee West, M.D.

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1998 DUES PAYABLE JANUARY 1, 1998

LCMS, FMA, AMA and SPECIALTY SOCIETIES

In today's changing times "you can't afford NOT to belong" to these organizations, each individually and cooperative working on your behalf. Organized medicine (?? a union if you stick together??) is the only VOICE that represents the Physicians.

Pay your dues today - invite a colleague to join. The LCMS has a list of non-members, make a contact for your Association. We need your support, involvement and participation TODAY!

SPIRIT OF CHRISTMAS *(continued from page one)*

Mary Kay and Kristen spent a morning shopping for clothing for the children, and Fred. They had gotten the sizes from Bob.

On Christmas Eve we drove down to the HRS office and Bob introduced us to Fred in the parking lot where we presented him with the gifts. It turned out that the children's mother was there as well, and that she has just recently gotten off drugs and gotten a steady job. Fred told us he had gotten a small tree and that his children were sad because there were no gifts under the tree. The big smile on his face as he drove away was wonderful to see. I couldn't help feeling that perhaps we might make a real difference for that family. I hope that the children and their parents end up believing that compassion can be found in our society. It certainly made us feel more hopeful and Mary Kay and I were gratified to see the pleasure our children experienced participating in the Christmas giving. The personal nature of the giving meant a lot to all of us.

Just recently I learned that both Fred and the children's mother are back at work, and are no longer receiving welfare. Perhaps we made a difference.

LEE COUNTY MEDICAL SOCIETY - 1998 OFFICERS

President		David M. Reardon, M.D.
President Elect		James H. Rubenstein, M.D.
Secretary		Bruce J. Lipschutz, D.O.
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	Joel T. Van Sicker, M.D. (99)	John Bartlett, M.D. (2000)
	Charles A. Bisbee, M.D. (2000)	Robert Gerson, M.D. (2000)
Grievance Committee Chairman		R. Thad Goodwin, M.D.
Committee on Ethical & Judicial Affairs (3 years)		
	Chair/F. Brett Shannon, D.O. (98)	Shahid Sultan, M.D. (98)
	Brian Kurland, M.D. (99)	Michael Raymond, M.D. (99)
	Piedade O. Silva, M.D. (99)	Joseph P. O'Bryan, M.D. (2000)
	Michael Erick Burton, M.D. (2000)	David P. Robertson, M.D. (2000)
		Julio L. Rodriquez, M.D. (2000)
FMA Delegates:		
	Valerie C. Crandall, M.D.	Ralph Gregg, M.D.
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		Joseph P. Walker, M.D.

LCMS ALLIANCE/FOUNDATION NEWS

Kathy Marchildon, Corresponding Secretary

With the season of giving upon us sooner than we are ever prepared, we ask you to open your hearts and wallets to help some people who really need it...

AMA-ERF/Holiday Sharing Card

The American Medical School Association Education and Research Foundation is a national organization sponsored by Medical Society Alliances across the nation. The AMA-ERF provides much needed funding to medical schools and medical students. A flier has been enclosed for your opportunity to participate in our 1997 Holiday Sharing Card to benefit AMA-ERF. You choose whether you want your donation to be used toward your medical school's Excellence Fund or Assistance Fund. The Medical School Fund of your choice receives 100% of all your donated funds. In the last five years, Lee County physicians and their families have given more than $30,000 to the National AMA-ERF Holiday Sharing Card Project. Please make 1997 our best Sharing Card year yet! Make checks out to AMA-ERF and forward them to Cheri O'Mailia at 1806 Monte Vista Avenue, Fort Myers, or call her at 334-3375 for more information.

1997 HOLIDAY PARTY

The Holiday Party will be held on Monday, December 8th, 7 p.m. at the Veranda. In keeping with the AMA Alliance's national commitment to **Stop America's Violence Everywhere (SAVE)**, Holiday Party Co-Chairs Barbara Lutarewych and Jody O'Konski are asking LCMSA members to save **"work" clothes** no longer being worn and donate the clothing to the 1997 Holiday Charity, *Abuse Counseling and Treatment, Inc. or* ACT. The clothing will be distributed by ACT to survivors of domestic violence who must return to work to support their families. Often, these women don't have suitable wardrobes for work and these no longer needed items can give them the confidence to face job interviews and employment. So the next time your spouse says "I have nothing to wear!" and you say "But the closet is full", help her pack the unused clothing and donate it to a very worthy cause on December 8th or call Jody at 489-2082 and Barbara at 466-0999 to arrange for pick up. Monetary donations will be accepted that night. *Stopping violence in America is an ongoing obligation.*

FC-PRN

The Florida Medical Associatinn needs you to participate in citrus sales. Money raised goes towards the Family Component Program of Physician Resource Network. This program helps the families of physicians members who have been effected by alcohol, chemical dependency or mental illness. Please support the medical family by remembering special friends and relatives with the delicious gift of Florida Citrus; what could be better? For more information, call Julie Bobman at 481-3854.

1998 CHARITY BALL NEWS

Preparations for the 1998 Charity Ball, "Moon Over Havana" are well under way. As many of you know, the major recipient for 70% of the 1997 Charity Ball's proceeds is the **Lee County Breast Screening Program** (LCBSP). LCBSP targets over 90,000 Lee County women, ages 40 and over, to ensure them access to screening and follow-up treatment in cases of low-income and medical-indigency.

But the beneficiaries of the Charity Ball are certainly not limited to the major recipient. Just this last year an additional $45,000 was distributed in the form of smaller grants to 13 deserving Lee County charitable organizations.

We would like to recognize and thank our most recent generous major underwriters and sponsors:

Northern Trust Bank, Joe Catti, President -- Band Underwriter
Myerlee Pharmacy -- Contributing Sponsor
Sankyo-Parke Davis -- Contributing Sponsor
Dr. Michael Rosenberg -- Sustaining Sponsor

Sponsorship letters were mailed in October. Kindly check with your office managers concerning your tax deductible donations. The Lee County Breast Screening Program is in dire need of funds. Underwriters aid tremendously, but sponsorship dollars go directly to the charity and this is where you can help. If you would like more information please contact Charity Ball Chairman Barbara Rodriquez at 433-9654.

MEDI-BAGS

Thanks to the hard work of two dedicated alliance chairmen, Nancy Burton and Rachel Isaacson and their staff and contributors, the Medi-Bag Project was big success. Personal hygiene products were kindly donated and packaged for use at area shelters. They would like to thank the following contributors:

Associates in Dermatology	Podiatry Center	Walgreens
Hampton Inn	Publix	Wellesley Inns and Suites
Michael Haiken, M.D.	Residence Inn by Marriott	Winn Dixie
McDonald's	Sanibel Harbour Resort and Spa	
Outrigger Beach Resort	The Children's Center	

THE QUESTION MAN

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

"WILL THE RECENT GOVERNMENT ANTI-TOBACCO STANCE RESULT IN DECREASED SMOKING AND BETTER HEALTH?"

Charles V. Kluka, D.O. Allergist

"Three items, I feel, would help in decreasing the numbers of smokers in our country:

1) A few smokers may decide to quit due to financial concerns if the cost of cigarettes doubled in price, to pay for health care for smoking related disease.

2) A decrease in the number of new smokers would likely result if cigarette availability was more controlled by outlawing of **all** vending machines for cigarettes, and stiffer penalties, i.e., loss of business or liquor license, for sale of cigarettes to minors.

3) Most importantly, the loss or suffering of a loved one due to a smoking related disease is often the only thing that will deter them.

For all the others for whom these measures and circumstances do not affect the habitual, addicted smoker, and who lack the self-motivation, with or without the aid of nicotine substitutes, antidepressants, or family or medical support and counseling, God Bless Them."

Michael E. Lowrey, M.D. Internal Medicine

"I am very skeptical the use of tobacco products will decrease as a result of recent government anti-tobacco legislation. Furthermore, when in the future the results are interpreted, the interpretation will probably be tainted by political bias. We will be unlikely to know with any certainty whether or not there was indeed a positive result."

January's Question:

"WHO SHOULD DETERMINE "AMERICA'S BEST HOSPITALS" (currently US News and World Reports)?"

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

AS I RECALL *(continued from page one)*

his son, Quill, Jr. came to town we covered for each other frequently. Quill, Jr. was an extremely fine surgeon who had to retire early in life because of heart disease. Quill, Jr. was extremely active in state and national politics at a time when physicians were just beginning to get involved. He spent a great deal of his time and money to further the political causes of our profession. It is fortunate that we now have younger men who are also very active politically.

Quill, Jr. was more of a football fan, and I a Santa Claus fan, so each year that we covered for each other, he would take New Years off to attend the Orange Bowl and I would take Christmas off to play Santa. Take time to be with your children before you know it they'll be grown and gone, as are mine.

Well, this has not been a real medical article except to tell you about Quill and the ER, but my aunt was the first person I ever knew who had an operation and also the first person I ever knew to have a colostomy, so I guess this now qualifies as a medical article.

As I Recall articles are of different segments of life and history, and it is hoped that these are pleasing to you. Thanks to those of you who have offered encouraging words.

Best Wishes for the Holidays. Remember, Thanksgiving and Christmas are only once a year, so eat lots of turkey.

NEW MEMBER APPLICANTS

Application for Membership

Active members are requested to express to the Committee on Ethical & Judicial Affairs or Board of Governors any information or opinions they may have concerning the eligibility of the applicants.

JEFFREY E. COLÓN, M.D. - ANESTHESIOLOGIST

Medical School: University of Puerto Rico, San Juan, PR (1984-88)
Internship: University of Puerto Rico, San Juan, PR (1988-89)
Residency: University of Puerto Rico, San Juan, PR (1989-92)
Fellowship: Bowman Gray School of Medicine, Winston-Salem, NC (1995-96), Emory University School of Medicine, Atlanta, GA (1996-97)
Board Certification: American Board of Anesthesiology. Dr. Colón is an associate with Medical Anesthesia and Pain Management Consultants, P.A. at 2472 Congress Street, Fort Myers

JOHN COSSU, D.O. - FAMILY PRACTICE/GERIATRICS

Medical School: Ohio University College of Osteopathic Medicine, Athens, OH (1977-81)
Internship: Doctors Hospital of Stark County, Massillon, OH (1981-82)
Residency:
Fellowship:
Board Certification: American College of Family Practice. Dr. Cossu is an associate with Gulf Coast Family Physicians at 6140 Winkler Road, S-D, Fort Myers

CLARISA E. CUEVAS, M.D. - PEDIATRIC GASTROENTEROLOGY

Medical School: University of Puerto Rico, San Juan, Puerto Rico (1976-80)
Internship: Beth Israel Medical Center, New York, NY (1980-81)
Residency: University of Puerto Rico Medical School, San Juan, Puerto Rico (1981-83)
Fellowship: Baylor College of Medicine, Houston, TX (1988-90)
Board Certification: American Board of Pediatrics and American Board of Pediatric Gastroenterology. Dr. Cuevas is an associate at Nemours Children's Clinic at 9800 HealthPark, S-110, Fort Myers

CHARLES M. HOMOLKA, JR., M.D. - ANESTHESIA

Medical School: University of Illinois College of Medicine, Chicago, IL (1988-92)
Internship: University of South Florida College of Medicine, Tampa, FL (1992-93)
Residency: University of South Florida College of Medicine, Tampa, FL (1993-96)
Fellowship:
Board Certification: Board Eligible. Dr. Homolka is an associate of Anesthesia Associates of SW FL at 3949 Evans Avenue, Fort Myers

STEVEN B. SAGER, D.O. - OBSTETRICS/GYNECOLOGY

Medical School: Southeastern University of the Health Sciences, N. Miami Beach, FL (1984-88)
Internship: Lutheran Medical Center, Brooklyn, NY (1990-91)
Residency: Jersey City Medical Center/Seton Hall University, Jersey City, NJ (1991-95)
Fellowship:
Board Certification: Board Eligible. Dr. Sager is an associate at Every Woman's Health Center at 1530 Lee Blvd., S-2100, Lehigh Acres

DOUGLAS MICHAEL STEVENS, M.D. - OTOLARYNGOLOGY

Medical School: Albany Medical College, Albany, NY (1982-86)
Internship: Bethesda Naval Hospital, Bethesda, MD (1986-87)
Residency: Bethesda Naval Hospital, Bethesda, MD (1991-95)
Fellowship:
Board Certification: American Board of Otolaryngology. Dr. Stevens is an associate of Fort Myers Ear, Nose and Throat Clinic at 2017 Maravilla Lane, Fort Myers

RICHARD JEFFREY WEISS, M.D. - ENDOCRINOLOGY

Medical School: Russ University, Portsmouth (1980-84)
Internship:
Residency: Atlantic City Medical Center, Atlantic City, NJ (1984-87)
Fellowship: Medical College of Pennsylvania, Philadelphia, PA (1987-89)
Board Certification: American Board of Internal Medicine and American Board of Endocrinology. Dr. Weiss is an associate of the Internal Medicine Associates at 2675 Winkler Avenue, S-300, Fort Myers

WAKE UP AND GET IN THE GAME!!! BY STEVEN R. WEST, M.D.

In the year 2000, approximately 75 of the 120 House members in the Florida Legislature will not be returning due to term limits. Similar change will be seen in the Florida Senate. This provides doctors with a unique opportunity to elect a legislature that is pro-patient and pro-doctor; this is a chance for physicians to literally change the course of history in the state of Florida.

The problem with this historical opportunity is that physicians must take advantage of it and we must not let others, who are not patient advocates and who do not value the doctor-patient relationship, to pack the legislature with politicians who will harm the delivery of health care. As physicians, you must wake up and get into the game to take advantage of this historical opportunity.

By joining FLAMPAC for $100 per year, the Lee County Medical Society and its physicians can dramatically influence the results of the year 2000 elections. This year, out of 469 members of the Lee County Medical Society, only 194 joined FLAMPAC, with 30 Alliance members joining as well. We raised only $21,400 out of a potential of over $46,900. If all the Lee County Medical Society members joined FLAMPAC, a substantial fund of money could go towards electing legislators that are pro-doctor and pro-patient. If all the Alliance members would join too, it would be an even greater sum. This money raised by FLAMPAC is used to recruit and help elect candidates that are pro-patient and pro-doctor.

FLAMPAC is a political PAC, and as a PAC it has limits placed on it as to what it can and cannot do. It is only a vehicle that will allow physicians to get into the political game. The real muscle that will allow medicine to make a dramatic impact on the year 2000 election is the 1000 Club. If only we could get more than the 13,000 club members that Lee County currently has, we would truly be a political force.

Let's do the math -- with 469 members at $1,000 each we would have close to half a million dollars to distribute to candidates that are pro-medicine, just from Lee County alone. Okay ...$1,000 each is a lot of money. Let's not be too dreamy here -- instead of buying a single membership, the physicians of Lee County could pair up -- now we are only talking $500 over the course of the election cycle. If you are really hard-pressed for cash, why not find three other people to share a membership with you -- that's only $125 a year. But, doing the math, it would still create a substantial war chest from Lee County alone. Now it is true that many of you feel it is futile to continue the fight. We had great legislative successes last year thanks to the leadership provided by the Florida Medical Association, and the hard core group of your colleagues who refuse to give up and quit, and those who support the 1,000 Club and FLAMPAC. Just this year, the FMA was successful in:

1) Preventing a reduction in PIP fees paid to physicians.
2) Preventing the expansion of the Wrongful Death Statute that would have increased malpractice premiums for every physician.
3) Preventing the expansion of the tail coverage requirements for physicians leaving practice.
4) Preventing disclosure of complaints againt physicians prior to finding a probable cause.
5) Preventing the imposition of risk management reporting requirements on medical offices.
6) Preventing repeal of physicians' rights to self-insure.

A conservative estimate of the savings to each and every medical physician is tens of thousands of dollars, far more than the cost of membership for the Medical Society or in FLAMPAC and the 1000 Club.

Let's wake up ... get into the game, and take active steps to protect our future; return on your investment in FLAMPAC and the 1000 Club is guaranteed. Please call me today at 433-8888 and join the 1000 Club and FLAMPAC -- do not let this historical opportunity slip away.

LCMS 1000 CLUB MEMBERS TO DATE

Robert Brueck, M.D.
Erick Burton, M.D.
Ronald Gardner, M.D.
Eliot Hoffman, M.D.
F. Lee Howington, M.D
John C. Kagan, M.D.
Mrs. Elizabeth P. Kagan
George Kalemeris, M.D.
Steven R. West, M.D.
David M. Reardon, M.D.
Alan Siegel, M.D.
Southwest Florida Heart Group
Lee County Medical Action Political Committee

THE PITFALLS OF MANAGED CARE CONTRACTS

by John Knight, FMA Legal Counsel

The Florida Medical Association (FMA) Office of General Counsel receives considerable questions regarding managed care contracts. On occasion we have also had the opportunity to review and comment on several managed care contracts that have statewide implications, most recently the Aetna/US Healthcare contract, which will be discussed in greater detail below.

The most important advice that we can give any physician is to make sure that you read and fully understand all of the contract before you sign it. Never sign a contract that does not contain all of the relevant information, including all blank spaces filled in, all relevant schedules, and any other document referenced in the contract. Only after you are sure that you understand all of the clauses and conditions in the contract should you sign the contract. If you have any doubts, you can call the Office of the General Counsel. The FMA also provides, as a benefit to members, a managed care contract review by an outside attorney at a special low price.

Before the physician even reviews the contract, he or she must decide whether the MCO is one with which the physician wants to conduct business. Once the physician has determined that the MCO is a company that he or she wants to contract with and that it will be beneficial to contract with the MCO, the next question that must be asked concerns the compensation. Of course, the physician should never enter into an agreement in which the amount of compensation is inadequate. Just as importantly, however, the physician should not enter into an agreement in which the amount of compensation is not specific. For example, some contracts contain language that provide that the MCO may compensate the physician at whatever amounts the MCO determines, or that the MCO may unilaterally change the amount it compensates physicians "from time to time." These provisions amount to the MCO's unilateral right to change the plan without notice or the physician's consent. Many contracts contain provisions requiring mutual agreement of fee changes with appropriate notification and opportunity for discussion.

If the compensation is deemed to be adequate, the physician must then analyze whether the administrative burden of complying with the new contract will unduly burden the office staff. For instance, most contracts state that claims for services must be filed within a specific period of time. If this period is 14 days, and the provider's office works on a 30-day billing cycle, the effort taken to comply with this provision could be overwhelming.

In addition, special attention should be paid to that portion of the contract dealing with malpractice insurance. Many contracts require the physician to maintain malpractice insurance from a carrier, thereby eliminating the possibility of self-insuring, and also require insurance in amounts greater than that required by Florida law. As a result, compliance with this section could create an additional financial burden on the practice.

Another factor which must be examined is the physician's ability to refer patients to other specialists as the physician deems necessary. Many contacts forbid referrals to providers outside the network, even in cases of emergency. In addition, some contracts even punish a physician for referrals within the network, thereby placing the financial risk of adequate patient treatment on the physician.

Having examined the administrative implications on the physician's practice, the physician should then examine the administrative practices of the MCO. For example, many contracts provide that the MCO may have access to the physician's accounting, administrative, and patient medical records at "all reasonable times." Under Florida law, however, access to the patient's medical records may only be provided with the consent of the patient. Many contracts require the physician to obtain such consent, although it may be argued that such a consent more appropriately should be obtained by the MCO.

Another issue which must be examined deals with the rules and regulations of the MCO. Many contracts contain provisions reserving the right of the MCO to modify its rules, procedures or policies without notice or renegotiating of the contract. Such a provision may be subject to legal challenge. Finally, another practice that should be examined deals with the effect that the contract will have on the provider's patients who are not members of the plan., For instance, some contracts claim to be exclusive, forbidding the physician to participate in other plans. Therefore, a physician participating in a number of managed care plans should be reluctant to enter into any exclusive arrangement.

Having determined that the business relationship is one with which the provider would be comfortable the physician must then take into consideration the rights of each party should the relationship sour. For instance, although most contracts are for a term of at least one year, most also provide that the contract may be terminated by one or more parties without cause, with very little notice. Any contract with that type of clause should provide due process protection for the physician.

Even if the contract is not terminated, it may be amended. Many contracts allow the MCO to amend the contract unilaterally, offering the physician no more than a 30-day period in which to reject any amendment. Of course, should the physician exercise the right to reject any amendment, it is likely that the MCO will terminate the existing contract almost immediately. Therefore, the ability to amend the contract should be one which requires the acceptance of both parties.

In the event of legal entanglements, even the best of friends have been known to accuse each other and demand compensation. Many MCO contracts therefore require the physician to indemnify the company for its legal costs resulting from any expenses incurred by the organization as a result of actions taken by the physician. Many of these contracts, however, conspicuously fail to include provisions indemnifying the physician for any action taken by the MCO. As with other unilateral clauses, physicians should be wary of any clauses which provide rights to the MCO but do not provide similar rights to the provider.

Having completed a thorough review of the contract, the physician will be much better equipped to negotiate favorable terms with the MCO. Even if the MCO is unwilling to negotiate on certain of these terms, the physician who completes such a review is unlikely to be taken by surprise when the MCO later invokes a term of the contract of which the physician had not previously been aware.

As mentioned above, the FMA recently reviewed the Aetna/US Healthcare contract offered to physicians in Florida. In response to serious concerns over the provisions contained in the contract, the FMA requested a meeting with Aetna to discuss the concerns and clarify some important matters concerning the contract. Aetna, however, refused to meet with the FMA. As part of the AMA's new Division of Representation, the AMA and the FMA are preparing a joint letter to Aetna setting forth our concerns. We are again requesting a meeting with Aetna to discuss our concerns. In addition to concerns dealing with some of the areas discussed above, the following are the major concerns raised concerning the Aetna/US Healthcare contract.

One of the primary concerns that have been raised concerning the Aetna/US Healthcare contract is its broad applicability. The cover letter states that if the physician signs the agreement, the agreement will apply to all Aetna/US Healthcare products, as well as any future products developed by the company. This means that the physician must accept and provide services to all enrollees for indemnity, PPO, HMO, Medicaid-HMO and Medicare-HMO. As with other companies, the FMA recommends that Aetna/US Healthcare have separate contracts for the different types of plans that are offered. This gives the physician the option of choosing which plan to contract with. The separate contracts should be reflective of the different products, which have different reimbursement structures and outline the physicians obligation.

Another main concern of the FMA deals with the clause that states that "it is understood and agreed that Company, or when applicable, the Payor shall have final authority to determine whether any services provided by Provider are covered services and to adjust or deny payments for services rendered by provider. This clause could be construed to be a method which allows Aetna/US Healthcare to subvert their financial obligation. All services covered in the enrollee's documents should be reimbursable. Aetna/US Healthcare should not be able to unilaterally deny reimbursement, but instead use utilization reviews.

The contract allows Aetna/US Healthcare to modify payments without notice and require the physician to hold the payor harmless against any and all claims for covered services rendered on a capitated basis. This is shifting financial risk to the physician. Many physicians are already concerned that the reimbursement rates offered in the contract will not cover the cost of providing quality services, yet Aetna/US Healthcare would have the authority to further lower reimbursement rates without first obtaining the physician's agreement or consent.

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HOW CONFIDENTIAL IS THE COMMUNICATIONS SUPERHIGHWAY?

AMA News Reprint

Today's explosion of technology, in both clinical areas and telecommunications, has changed the practice of medicine. In hospital board meetings and medical society conferences, technology's impact is obvious.

For example, it's common today for a doctor to be summoned from a board meeting by a silent page from the nursing unit of a local hospital. With a cellular phone, the doctor calls the hospital. The nurse relays an urgent development regarding a patient, and the doctor issues orders to respond.

This may seem like a very efficient way for a physician to take calls and still maintain a normal life. But has this short trip down the communication superhighway breached patient confidentiality?

The patient's right to confidentiality has been called "a fundamental tenet of medical care." And the Hippocratic oath states: "What I see or hear in the course of treatment or even outside of the treatment in regard to the life of men, which on no account one must spread abroad. I will keep to myself holding such things shameful to be spoken about."

Modern medical care, however, may be undermining the concept of confidentiality. Information technology -- fax machines, e-mail, voice-mail, cellular telephones, cordless telephones and worldwide message pages -- may have made the practice of medicine fast and efficient.

But the use of such technology, especially cellular and cordless telephones, increase opportunities for the breach of physician-patient confidentiality. As a result, physicians may be putting themselves at a greater risk of violating their ethical duties to their patients and of subjecting themselves to disciplinary action or liability.

Cellular and cordless telephones differ from traditional land lines or wire telephones because part or all of a conversation is electronically transmitted by radio waves. Cellular telephone calls may be intercepted with commercial scanners, radio receivers that search between preset frequencies and lock in on signals. A cordless telephone transmission may be easily intercepted with the use of a standard AM radio, and conversations even have been intercepted by baby monitoring devices in nearby houses.

There is legal authority that users of cordless and cellular telephones should not expect their conversation to be private. Given that and the legal uncertainty regarding any expectation of privacy during such a conversation, what responsibility do physicians owe their patients when using such a phone?

In most states, the medical board may discipline physicians who willfully violate a confidential communication. Although use of a cordless or cellular telephone poses a risk that a conversation may be intercepted without a physician's knowledge, there would appear to be no breach of any statutory or ethical duty as long as the doctor doesn't willfully or deliberately reveal a confidential communication.

However, the medical board also may impose discipline if a physician engages in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public, including any departure from the AMA's Code of Medical Ethics. Principle IV of the AMA code requires a physician to "safeguard patient confidences within the constraints of the law."

Another component of the code requires that physicians "not reveal confidential communication or information without the consent of the patient, unless provided for by law or by the need to protect the welfare of the individual or the public interest."

Neither the AMA nor state boards have issued any formal opinion regarding the ethical obligations of physicians when using cellular or cordless telephones. But the AMA's Council on Ethical and Judicial Affairs has issued an opinion regarding patient confidentiality in general. It states: "The physician should not reveal confidential communications or information without the express consent of the patient, unless required to do so by law."

What guidelines should a physician follow when using a cordless or cellular telephone? Some guidance can be obtained from the area of attorney ethics, since several state bar associations have considered the issue of how such technology affects attorney-client privilege. These opinions offer several common sense principles that can be applied to medicine:

- Physicians who use cellular or cordless telephones to call patients should inform their patients that the conversations may not be confidential, obtain consent to continue the conversation or offer to discuss the matter at a more secure time and place.
- Although it may be unnecessary to ask patients if they are calling on a cellular or cordless telephone, once the physician discovers this to be true, the patient should be advised that the conversation may not be confidential and given an option to continue or delay the conversation.
- If such a phone is used to contact a third party, physicians should not discuss confidential communications between them and their patients without the patients' consent. Physicians should inform each other when their conversation may not be confidential and offer to discuss it at another time or place.
- Make sure any fax that contains confidential communications is secure. Call before you send the fax and have an appropriate person personally receive it.

Physicians may be sharing information on medication changes or test results or providing a consult. The nature of the topics discussed may dictate the risk of disclosing truly confidential patient information.

One example of a low-risk communication: A hospital call to report to the attending physician the results of the PTT and PT test for a particular patient. The physician responds by changing the dose of the anticoagulant the patient is receiving.

A physician's primary concern when using cellular, cordless or fax technology must be to safeguard patient confidence. This is both a legal and ethical duty. By exercising caution and common sense, the physician should be able to fulfill both easily.

This article originally appeared in American Medical News.

PHYSICIAN TRAINED ASSISTANTS

Many of you might have read recently about an article published by the Board of Medicine, Florida Department of Health on an amendment to Florida Statutes 458.303 on physician trained assistants. Actually what this law now does is put non-licensed office assistants under the Medical Assistant Provision / FS 458.3485. A medical assistant does not have to be certified. But all medical assistants (physician trained assistants) must meet the FL Statutes for a medical assistant as published below:

458.303 PROVISIONS NOT APPLICABLE TO OTHER PRACTITIONERS; EXCEPTION, ETC.

(1) The provisions of ss.458.301, 458.303, 458.305, 458.307, 458.309, 458.311, 458.313, 458.315, 458.317, 458.319, 458.321, 458.327, 458.329, 458.331, 458/337, 458.339, 458.341, 458.343, 458.345, and 458.347 shall have NO application to:

(a) Other duly licensed care practitioners acting within their scope of practice authorized by statute.

(b) Any physicians lawfully licensed in another state or territory or foreign country, when meeting duly licensed physicians of this state in consultation.

(c) Commissioned medical officers of the Armed Forces of the United States and of the Public Health Service of the United States while on active duty and while acting within the scope of their military or public health responsibilities.

(d) Any person while actually serving without salary or professional fees on the resident medical staff of a hospital in this state, subject to the provisions of s.458.321.

(e) Any person furnishing medical assistance in case of an emergency.

(f) The domestic administration of recognized family remedies.

(g) The practice of the religious tenets of any church in this state.

(h) Any person or manufacturer who, without the use of drugs or medicine, mechanically fits or sells lenses, artificial eyes or limbs, or other apparatus or appliances or is engaged in the mechanical examination of eyes for the purpose of constructing or adjusting spectacles, eyeglasses, or lenses.

(2) Nothing in s.458.301, s. 458.303, s. 458.305, s. 458.307, s. 458.309, s. 458.311, s. 458.313, s. 458319, s. 458.321, s. 458.327, s. 458.329, s. 458.331, s. 458.337, s. 458.339, s. 458.341, s. 458.343, s. 458.345, and s. 458.347 shall be construed to prohibit any service rendered by a registered nurse or a licensed practical nurse, if such service is rendered under the direct supervision and control of a licensed physician who provides specific direction for any service to be performed and gives final approval to all services performed. Further, nothing in this or any other chapter shall be construed to prohibit any service rendered by a medical assistant in accordance with the provisions of s.458.3485.

History -- ss. 1, 8, ch. 79-302; s. 290, ch. 81-259; ss. 2,3, ch. 81-318; s. 2, ch. 84-543; s. 1, ch. 84-552; s. 2, ch. 84-553; s. 9, ch. 85-196; s. 1, ch. 85-307; ss. 2, 25, 26, ch. 86-245; s. 15, ch. 88-1; s. 4, ch. 91-429; s. 14, ch. 97-264.

458.3485 MEDICAL ASSISTANT

(1) DEFINITION -- As used in this section, "medical assistant" means a professional multi-skilled person dedicated to assisting in all aspects of medical practice under the direct responsibility of a physician. This practitioner assists with patient care management, executes administrative and clinical procedures, and often performs managerial and supervisory functions. Competence in the field also requires that a medical assistant adhere to ethical and legal standards of professional practice, recognize and respond to emergencies, and demonstrate professional characteristics.

(2) DUTIES -- Under the direct responsibility of a licensed physician the duties of a medical assistant are to:

(a) Perform clinical procedures, to include:

1. Performing aseptic procedures.
2. Taking vital signs.
3. Preparing patients for the physician's care.
4. Venipunctures and nonintravenous injections.
5. Observing and reporting patients' signs or symptoms.

(b) Administering basic first aid.

(c) Assisting with patient examinations or treatments.

(d) Operating office medical equipment.

(e) Collecting routine laboratory specimens as directed by the physician.

(f) Administering medication as directed by the physician.

(g) Performing basic laboratory procedures.

(h) Performing office procedures including all general administrative duties required by the physician.

(i) Perform dialysis procedures, including home dialysis.

(3) CERTIFICATION -- Medical assistants may be certified by the American Association of Medical Assistants or as a Registered Medical Assistant by the American Society of Medical Technologists.

History -- s. 7, ch 84-543; s. 7, ch. 84-563; ss. 21, 26, ch. 88-245; s. 4, ch. 91-429.

PLUNDERING OUR MEDICAL SYSTEM

"What I object to is those few organizations which are plundering our medical system for quick profits without contributing long-term assets to health care," Lukowski wrote in his parting president's column in the society's newsletter. "They are taking advantage of the chaos that currently prevails to grab a quick buck. When they depart, they will leave nothing behind -- no new treatment for disease, no new hospitals or surgery centers, no legacy of a lifetime of care to the people of a community, no new minds trained to care for the sick. Their legacy will be GREED -- totally self-serving and empty."

Michael Lukowski, M.D. ~ Past President, Alachua County Medical Society ~ Quote from Florida Physician, UF College of Medicine

STEEL MAGNOLIAS

John Taylor, M.D., Tallahassee

Seasons change and so does the way we once practiced medicine. Like the falling leaves in these winds of change, traditional medical care too is falling to the wayside. Doctors who once "hung out their shingles" to deliver that kind of personal care they dreamed of as a child now swim upstream against the ever-rising tide of managed care like struggling salmon; their fate and the salmons', the same.

Now sprouting amidst the old trees of this southern forest is new growth. Individual and group practices joining hands to embrace for the first time. Cups of pride being gulped down with gusto at the funeral of competition. Profit motives be damned. The new groupspeak is "economic of scale". Mid-life crisis becomes mid-life survival. Some strike earlier, others later, all hoping to be steel magnolias in this freshly plowed ground.

But more may grow from these branches than leaves. Newfound cooperation may breed new vision. Patient care may improve as a result of individual group utilization management. Shared ideas and techniques could spawn a new age of services and patient conveniences. The possibilities are endless.

Already the gates of restrictive advertising have come crashing down. Billboards, television, balloons, and neon signs herald the birth of "supershops" offering everything from laparoscopic surgery to designer tattoos. Patients wander through "malls" and "pavilions" seeking their favorite "provider" while Jurassic doctors suffer an identity crisis. It's a wild time. Who can survive it? Only Steel Magnolias.

Reprinted with permission from the Newsletter of the Capital Medical Society, "CAPSCAN"

FMA "THE LEGAL DOCTOR" ~ *A Professional Courtesy*

The Florida Medical Association's Legal Affairs Division has done an excellent job in covering the topic of "Professional Courtesy". Because the offering of professional courtesy has been an accepted practice of the medical profession for years and years, many of you may not realize that this good deed could result in serious problems for you. The following was prepared by the FMA legal staff and highlights the areas of concern.

As members of the medical community, physicians are blessed to be part of a profession in which mutual respect and courtesy are the norm. One of the ways in which this collegiality often has been expressed has been through the extension of the professional courtesy by medical providers to others within the profession, as physicians frequently provide professional services without charge or for a greatly reduced fee to other medical professionals.

With the passage of so called "anti-self referral" and "anti-kickback" legislation on both federal and state levels, however, many laboratories and medical practices were forced to reevaluate their extension of professional courtesy. In fact, most large clinical laboratories no longer allow professional courtesy discounts to be provided to physicians, fearing retaliation by the federal government. Until recently, however, it was unclear whether the extension of professional courtesy by a physician to another physician violated those same laws.

The Health Insurance Portability and Accountability Acto (also known as the "Kennedy-Kassebaum Law" or "HIPAA") signed into law on August 21, 1996, resolved this question. The Act amended the federal anti-kickback act to specifically include free services within the definition of "remuneration." Congress' concern was that there is some explicit or implicit agreement that referrals would be provided (or had already been provided) in return for the free services.

Unfortunately, however, it is not always easy to know whether a particular physician was or someday may be in the position of making a referral. Therefore, whenever in doubt, physicians should discontinue the practice of professional courtesy discounts if they wish to avoid potential violations of both the federal anti-kickback legislation and the Florida Patient Self Referral Act.

Of course, these pieces of legislation do allow professional courtesy discounts to be given to those colleagues who have not and will not ever refer patients to the discounting physician. Even in this case, however, the provider of services may not bill the patient's insurance company for the usual cost of such a visit if a professional courtesy is to be given, as such a practice would constitute a fraudulent insurance activity under state law. Moreover, if the extension of professional courtesy is a common practice within the office, the filing of any insurance may be troublesome, as the insurance company properly may argue that any fee requested is not the physician's "usual and customary" fee for a service provided to a physician.

For these reasons, physicians are urged not to extend professional courtesy discounts to other members of the profession. It is indeed a sad reflection of our society when the provision of a courtesy may entitle a benefactor to no more than a series of legal entanglements, but the potential penalties associated with such activity mandate that a prudent physician refrain form such practices.

Written by John Knight, FMA Legal Counsel, Reprinted from "The Legal Doctor".

The "Legal Doctor" can be accessed through MedOne (http://www.medone.org), the online source of information from the Florida Medical Association. Many common legal concerns are addressed in these articles, many of which have been previously published in the legal columns of the Journal of the FMA and the FMA Today. Reprinted from Jacksonville Medicine.

RETIRING/CLOSING/RELOCATING A PRACTICE

When a physician retires, terminates a practice, or is no longer available to patients, Section 455.667(11) Florida Statutes, requires the physician to notify the patients of termination, relocation or unavailability in the following manner:

1. Publish in the newspaper of the greatest general circulation in each county where the physician practices or practiced, a notice containing the date of termination or relocation and an address where the records may be obtained from the physician terminating practice or another licensed physician or

Notify patients in writing of the date of termination or relocation and an address where the records may be obtained from the physician terminating practice or another licensed physician.

2. Both notices must advise patients of their opportunity to obtain a copy of their records.

In addition, Section 455.667(12), Florida Statutes, requires that the physician notify the Florida Board of Medicine and advise the Board who the new record owner is, and where the physician's medical records can be found. The physician should also review all managed care contracts to determine if any notification provisions must be complied with.

CONTINGENCY FEES: ANOTHER NAME FOR CHAMPERTY

In Ireland a few years ago, a dispute over legal fees arose between one Simon Fraser and Denis Buckle, moving all the way up to the Irish Supreme Court. The court's opinion in *Fraser v. Buckle* is a fascinating document that, if it were handed down from our own high court or if its principles were enacted by Congress, would end America's litigation crisis overnight.

Plaintiff Fraser was an attorney in England specializing in locating heirs to estates in which the next of kin were unknown. One day in 1987 Mr. Fraser called Mr. Buckle, an Irish citizen, with some good news: A distant, previously unknown, relative in New Jersey had died, leaving no will but an estate of $764,000. It was Mr. Buckle's for the taking. First, though, he would have to sign a contingency-fee contract under which Mr. Fraser would get a third of the total take. Mr. Buckle agreed, Mr. Fraser revealed the deceased's name, and the case proceeded.

All went well until, with his new fortune safely in hand, Mr. Buckle refused to pay Mr. Fraser a percentage of the money. He would instead pay only for costs incurred and for work performed (at a healthy hourly rate). Trial courts affirmed Mr. Buckle, and poor Mr. Fraser fought for his fees all the way to Dublin.

The high court's opinion is a learned discourse on a venerable old term of law, "champerty." The lower courts, it declared, were quite right to find against Mr. Fraser because his agreement "savored of champerty" and thus "could compromise the proper administration of justice." The principle of champerty is that an attorney who is paid a percentage of total jury awards, fronting the costs of litigation, becomes a party to that suit. He is no longer merely an advocate serving client and law but a self-interested claimant acting under the guise of justice.

The prohibition goes back to feudal times, when champerty was rampant. It was aimed not at citizens with legitimate claims and grievances, but "against those who trafficked in litigation," said the Irish Supreme Court. Contingency-fee payment is still unethical, said the court, because it "has an undue tendency to promote litigation for the benefit of the promoter rather than the litigant or involves an abuse of legal proceedings."

How did a crime under common law become a common practice of modern American law? It began in 1848 with the repeal of New York state's statutes regulating lawyer's fees. Known as the Field Code, this allowed victims of then-common industrial accidents to retain a lawyer. It was, as we still hear the contingency fee described today, "the poor man's key to the courthouse door."

A century and a half later, on almost any given day in America, the newspapers bear witness to the evils that jurists have been warning about for centuries and are still fighting off in the courtrooms of Europe. In Florida, a settlement was just struck in the second-hand-smoke suit against the tobacco industry. This $5 billion class-action case was begun on a contingency-fee basis in 1991 by lawyers Stanley and Susan Rosenblatt, who will get $49 million. Their 60,000 clients, so far as one can tell, will get little or no money.

"Fee litigation," in which lawyers specialize in defending the fees of other lawyers, is now a thriving field. There is even a publication called Mealey's Attorneys Fees to keep tort lawyers up to speed on what other lawyers are getting, lest anyone settle beneath the going rate. At the American Bar Association meeting in August, a packed seminar called "Proving and Defending Attorney Fee Petitions in Employment Litigation" was devoted entirely to instruction in the latest techniques in bill padding for employment lawyers.

Whenever one dares to question the contingency fee, we get an uplifting lecture on mankind's long and ancient struggle for civil liberties. The idea that all this lucre for lawyers is the price we must pay for access to the courts is discredited by the experience of Ireland among other European nations. Never a nation lacking for quarrels, Ireland today has more lawsuits per capita than the U.S. The difference is that lawyers there are expected to press a meritorious case for a fixed, reasonable and agreed-upon rate.

The U.S. contingency-fee system, by contracts, assumes that lawyers will not perform their professional duties absent enormous monetary rewards. It amounts to the statement: "We, the trial lawyers of America, will lead the poor and powerless into the courtroom against the greedy rich and powerful -- but not unless we are compensated with riches and power."

Look at some of the fastest-growing legal practices -- employment law, toxic torts, Superfund litigation, product liability -- and you will find (besides fields that hardly existed 30 or 40 years ago) the highest damage awards and the highest lawyer profits. This in turn has inflated the value of a trial attorney's time, which helps explain why the cost of legal counsel is so far beyond the means of the average citizen. What began as the poor man's key to the courthouse has become the tort lawyer's key to the corporate bank, a glorified extortion racket from which the poor have long since been cut out.

Lawyers are under the ethical supervision of lawmakers. Just as the New York Legislature passed a law to correct a 19th-century form of exploitation, it can withdraw it to correct a 20th-century form of exploitation by lawyers themselves. So can every other state legislature in its oversight of state courts. And so can Congress in its oversight of the federal courts.

For a handy precedent, we need look no further than the tobacco settlement, under which Big Tobacco would pay $350 billion in damages over 20 years, with Big Torts collecting as much as $7 billion in fees. To get their share of the swag, lawyers agreed to a federal limit on contingency-fee litigation against tobacco companies. A Senate hearing found them making a compelling case that Congress has this power. As it turned out, the Senate did them one better, approving a $250-an-hour cap on all future lawyer's fees in tobacco litigation.

Quite a legislative feat, considering the sway of the Trial Lawyers Association. Now Congress should take the next step and apply an hourly cap to all suits filed in federal courts. Far from upsetting some sacred tenet of law, it would rid our courts of a relic of the last century.

The trial lawyers would somehow survive, free to seek fair pay, worthy clients, proportionate damages and justice in the case at hand -- which should be reward enough.

Mr. Scully is a writer in Washington.

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