

## 2009 Meetings and Events

### LCMS General Meeting

**"Medical Expeditions to the Russian Tundra and Siberia"**  
**William Becknell, MD**

**Thurs, November 19, 2009**  
**6:30 p.m. Social Time**  
**7:00 p.m. Dinner**

**FineMark Bank Community Room**  
**12681 Creekside Lane**  
**Fort Myers, FL 33919**

RSVP Medical Society Office  
 LCMS, PO Box 60041, Ft Myers 33906  
 Tel: 936-1645 Fax: 936-0533

## SAVE THE DATE DECEMBER 7, 2009

**Lee County Medical Society &  
 Alliance Holiday Party**

**Gulf Harbour  
 Golf and Country Club**

## Inserts

- Hill, Barth & King  
 Advertisement
- November Meeting Notice

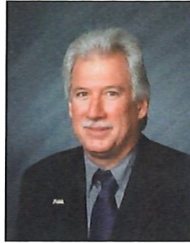
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## President's Message

### ...and the Survey Says...

Larry Hobbs, M.D.



Your Lee County Medical Society sent out a brief survey via mail and email to get your opinion of the health care reform debate. Approximately 8% of the membership responded with some interesting results and comments. I would like to briefly present those results.

Three questions were asked pertaining to building onto the current healthcare system. When asked if members would support preserving the current healthcare delivery via competing private health plans, 78% supported preserving private health care plans. While 84% feel that having a government-operated health care program, like those in Great Britain and Canada, would not be a solution they would support. Several members proposed additional solutions such as; "...government can offer catastrophic insurance (\$10,000 out-of-pocket coverage)," another member stated, "I would support addressing the legal monopoly that the insurance companies hold, (96-100% - AMA's data)," and, "implementing a high deductible catastrophic insurance with HSAs."

Expanding coverage is a topic that has been heavily debated. When asked about mandating individuals to purchase coverage, 48% believed this was a good idea however 50% did not support an employer "pay or play" mandate, and only 18% agreed expanding eligibility for Medicaid was the answer. Creation of a health insurance exchange for small business and uninsured was an idea that 48% agreed would be worth pursuing. Member's solutions for expanded coverage were; "...I believe a co-op to include small businesses is necessary," "replace Medicare/Medicaid with HSAs and high catastrophic insurance," and "allow small groups to band together to increase their risk pools but not in the exchange program as proposed by the government."

Your solutions to regulate the health insurance industry were; "profit should be allocated in this fashion: 50% returned to premium payers, 25% to stockholders, 25% to salaries and bonuses for highly paid insurance workers," "sell across state lines - increased competition," and one member felt that providing "Medicare for all," would be a solution.

82% of surveyors participate in the Medicare Program while 56% participate in the Medicaid Program. When asked what impact an increase in reimbursement would have on your participation in Medicare; 48% felt it would have no impact and 28% would increase their participation in the

program. For those who participate in Medicaid, 34% felt payment reform would have no impact in their participation and 28% would increase their participation with Medicaid payment reform.

Currently 48% of you do not participate in Medicare's PQRI (Physician Quality Reporting Improvement) program however, 30% would be inclined to participate if it established appeals mechanisms to challenge Medicare determinations about entitlement to bonuses for participation. 68% support a process for identifying performance improvement, quality measures and comparative effectiveness research if such processes were based on recognized medical standards and promulgated by qualified physicians and other appropriate medical professionals.

When asked if taxing top income earners to support health care reform was an option to gain revenue, 82% of surveyors disagreed with that statement and 72% disagreed with taxing health care benefits. The following comments are your ideas for funding health care reform; "...tax tobacco, alcohol, guns and fast food," "...increase the Medicare age to 70," and "raising all tax levels to help government costs; healthcare is a personal responsibility." One member stated, "We have plenty of taxes and money for healthcare, we just need reform to spend it on patients and not government bureaucracy, hospitals and insurance companies."

The 'Public Plan' was not something you could support, 56% of you disagreed with this option. When asked if you could support the 'Public Plan' with certain modifications, 36% said no, they could not support the plan and 32% were unsure. The 32% that were unsure if they could support the plan listed their desired modifications: "tort reform," "medical savings accounts," "get the government out," and "I prefer Medicare for all." Those who opposed the 'Public Plan' did so because; "a public option if mandated fails to address basic economic principles," "the public option will not be able to cover its costs from premiums alone since private companies will shift the sick patients to public plan and keep healthy patients in private plans," others felt that, "government run 'anything' does not work."

Support for preserving the right of physicians to own health care facilities was overwhelming at 80%. One reason given for their support was, "Competition is good - markets are good; privately owned facilities consistently provide higher quality and more efficient care."

Two questions were asked around the ideas of promotion, wellness and physician workforce.



**LEE COUNTY MEDICAL  
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Insta Print

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

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

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

## Membership News

### New Members

**James Bynum, MD** - Orthopedic Surgery  
A. Kagan Orthopedics & Sports Medicine

**Charles Camisa, MD** - Dermatology  
Riverchase Dermatology

**Arnaldo De la Vega, MD** - Pediatrics  
De la Vega Pediatrics

**James E. Kursch, MD** - Family Medicine  
Total Senior Mobile Physicians

**Dennis Sagini, MD** - Orthopedic Surgery  
Joint Implant Surgeons of FL

### Reactivated

**Michelle Blair, MD** - Radiology  
Radiology Regional Center  
239-936-2316

### New Office

**Carolyn Langford, DO**  
Specialists in Urology  
6101 Pine Ridge Road - Desk 32  
Naples, FL 34119  
239-434-6300

**2010 Dues have been  
mailed to your office**

**Please contact us if you will need  
to make payment arrangements.**

**LCMS dues have not increased  
since 1993.**

### Classified Ads

*Classified ads are for Lee County Medical Society Members and must be 30 words or less.*

### **GOLF MEMBERSHIP GATEWAY COUNTRY CLUB**

**I no longer play golf and I need to sell  
Priced at 50% discount at \$10,000  
Contact 239-849-0080**

## New Member Applicant

**Daniel Del Torre, MD** - Dr. Del Torre completed his MD degree at University of Illinois, Chicago, IL (2001). He completed his internship/residency at University of Illinois, Chicago, IL (2001-2004). He is certified by the American Board of Internal Medicine (2006). Dr. Del Torre is in practice with Cogent of Fort Myers, 2776 Cleveland Ave Ste 8228, Fort Myers, FL 33901 - Tel: 239-334-5837.

**Deborah M. Gerson, MD** - Dr. Gerson completed her MD degree at Tufts University, Boston, Ma (2004). She completed her internship/residency at Mt. Sinai Medical Center, Miami Beach, FL (2004-2008) and a fellowship at Beth Israel Deaconess Medical Center, Boston, MA (2008-2009). She is certified by the American Board of Pathology in Anatomic and Clinical Pathology (2008). Dr. Gerson is in practice with AmeriPath of SWFL at 1620 Medical Lane Ste 100, Fort Myers, FL 33907 - Tel: 239-275-1164.

**Stephen G. Fedec, DO** - Dr. Fedec completed his DO degree at Philadelphia College of Osteopathic Med, Philadelphia, PA (1984). He completed his internship at Metropolitan Hospital, Springfield, PA (1984-85), residency at Suburban General Hospital, Norristown, PA (1987-1988) and a fellowship at Deborah Heart & Lung Center, Browns Mills, NJ (1993-1997). He is certified by the National Board of Examiners for Osteopathic Physicians & Surgeons in Internal Medicine (1992), Cardiology (2007) and Interventional Cardiology (2006). Dr. Fedec is in practice with Cardiology Consultants of SWFL at 13411 Parker Commons Blvd, Ste 101, Fort Myers, FL 33912 - Tel: 239-415-4900.

**Tasha B. Wallace, DO** - Dr. Wallace completed her DO degree at the University of Medicine and Dentistry of NJ, Stratford, NJ (2000). She completed her internship at St. Barnabas Hospital, New York, NY (2000-2001) and her residency at Broward General Hospital, Ft. Lauderdale, FL (2001-2003). Dr. Wallace is in solo practice Wallace Family Practice, 3400 Lee Blvd Ste 108, Lehigh Acres, FL 33971 - Tel: 239-369-2903.





## As I Recall...

Roger D. Scott, M.D.

## "Blown Away"

I have been requested to write more about hurricanes since we are in the season now so here goes beginning with a little explanation about these vicious storms.

Records back to 1851 (some older ones may have been missed) revealed that only 18 hurricane seasons have passed without a known storm impacting Florida. Records reveal that September is the month of the most storms (160) hitting Florida followed by October (117), August (95), June (50), July (35), November (16), May (9), December (2), April and February each with one.

Initially storms were designated by their latitude and longitude positions and some with the year and the geographical area i.e. "the great 1926 Miami hurricane". During World War II women's names were used until 1950 when storms were named using the Joint Army/Navy phonetic alphabet. (This alphabet uses designated varying words such as "Able, Baker, Charlie" to identify letters for radio transmission.) By 1953 the phonetic names had all been utilized so female names were again utilized until 1978 when the current policy began of "honoring" both male & female names. Severe or unusual storms have their names "retired".

Any counterclockwise circulating wind of 39 mph or more is considered a storm and is named. A storm changes to a hurricane when winds exceed 73 mph. Cat (category) I winds 74-95 mph, Cat II 96-110 mph, Cat III 111-130 mph, Cat IV 131-155 mph, and Cat V greater than 155 mph and are terribly destructive. Category I & II are named for men and III-V for women. That last statement is really not true - just me having some fun. In the 20th Century only two Cat 5, eight Cat 4, and thirteen Cat 3 storms struck Florida

**Hurricane Andrew Cat 5** - (The other Cat 5 was the 1935 Labor Day that I wrote about last month) early had been predicted to come to Ft. Myers or Naples if my memory serves me correctly, but instead it arrived further south on August 24, 1992 hitting Key West and then in South Dade County with a 17-foot surge. It was indeed a relief for us but devastation for Homestead and the surrounding area. The storm crossed the state in four hours and entered the Gulf of Mexico and finally the Louisiana coast as a minimal hurricane. During its period over Florida there was major destruction estimated at 30 billion dollars in property damage making it the most costly hurricane in history through the 20th century and the third most intense to hit the United States. 300,000 people were left homeless but fortunately only 15-25 people died. Aerial views of the affected area looked as though an atomic bomb had leveled the entire area. It is interesting that two weeks ago I was in the beauty parlor (but only getting a haircut) talking to the barber/beautician when the lady in the next chair said she had been through Andrew at Homestead and was one of 100,000 permanent residents of that area that left for good. She further stated that her home and possessions were totally demolished and after the storm for several days it was difficult to obtain food, water, medicines and clothing.

**No Name (NN) Cat 3** made landfall October 6, 1941 in southern Florida near Goulds and caused significant flooding in the Everglades, and I believe two of my photographs show the Italian Renaissance (?) Hendry County (LaBelle) courthouse surrounded by water with a boat approaching the courthouse looking like Venice, Italy, and also a flooded street with US 41 sign in Fort Myers. The storm went into the Gulf and made another landfall near Tallahassee.

In July 1943 The first **Hurricane Hunter** airplane flights into the hurricanes began rendering much better weather surveillance than in the past.

No more Florida hurricanes until **NN Cat 4** September 16, 1945 made landfall near Homestead with 135 mph winds and continued up the peninsula to the Atlantic Ocean with overall 25 deaths and \$60 million damage. Three large blimp hangars exploded and burned at the Naval Air Station south of Miami. Blimps (similar but larger to those you now see over football games, etc.) were used for submarine hunting in the Atlantic in World War II.

**September 17, 1947 NN Cat 4** landed at Fort Lauderdale and went directly across the Everglades and exited around Everglades City-Naples to the Gulf. **October 12, 1947 NN** storm landed at

Cape Sable. The storm caused much flooding in Miami, Dade County, and closed many sections of US #1 before exiting at Pompano Beach.

The thought that hurricanes could be aborted or diminished in intensity by human means had been entertained for some time, and in October 1947 a plane load of dry ice was dropped into an Atlantic hurricane's area off the coast of Georgia. The storm veered rapidly to change course and strike land near Savannah. About 10 years later it was decided that seeding was not responsible for the change in the direction of that storm. No one yet has succeeded at this task.

On October 21, 1948 a **NN Cat 3** struck the Lower Florida Keys and Everglades City and only 14 days later another **NN Cat 3** hit Marathon and Everglades National Park and went across the state to the Gulf leaving behind three deaths and \$12 million damage.

August 27, 1949 brought a **NN Cat 4** storm to Palm Beach Shores and this storm went up the state of Florida causing much damage to the citrus industry and exited at Cedar Key but continued as a bad weather storm up the entire East Coast to New Hampshire.

**King Cat 3** hit Miami on October 18, 1950 causing extensive damage but rapidly dissipated within 18 hours to storm status.

For 10 years we thanked God that there were no storms, but then **Donna Cat 4** (the sixth most intense and the 32nd most lethal hurricane in the US during the 20th Century) came in landing first at Marathon then going up the Gulf for a second landfall between Naples and Fort Myers on September 10, 1960 and then coming up the river to Ft. Myers. The second **AIR** article that I wrote (September 1995) about **Donna** so I will only give you a little about this one. (If you desire a copy of the 1995 article e-mail me at rds30303@aol.com). The East winds actually blew all of the water out of the Caloosahatchee River into the Gulf of Mexico. The very large eye (1 1/2 hours) passed directly over Fort Myers and allowed us to walk out in the mud (no water) to the channel that normally was 8 feet deep but then contained about 2 feet of water. (This has been a FAQ by new residents for many years). There was significant damage to properties especially at Ft. Myers Beach, but I believe we had only one death when a milk truck and driver were blown off the old Edison Bridge (the only bridge across the river at that time). I personally had no damage except for the total stripping of a very large tall virgin pine tree in my backyard and several oak limbs down in the front yard. **Donna** moved slowly across the state to exit at Daytona Beach then entered the Atlantic and made another landfall in North Carolina and continued up into New England with a final landfall over Long Island, New York. **Betsy Cat 3 on September 8, 1965** was headed to South Carolina but reversed course across the Bahamas and then South Florida and the upper Florida Keys. This was a huge 600 mile across hurricane with an up to 40 mile wide eye. A six foot storm surge occurred in Miami and Fort Lauderdale area and then on to the Gulf and Louisiana. **Eloise Cat 3 September 23, 1965** hit the Panhandle and Bay County causing much damage to Eglin Air Force Base and Pensacola Naval Air Station with storm surges 12-16 feet and heavy rainfall up to 15 inches. The very unpredictable **Elena Cat 3 September 2, 1995** traveled up the Gulf Coast without making landfall in Florida. Many people evacuated but it only followed the coastline to cause quite a bit of damage from high winds and tides. It came within 80 miles of Tampa causing some damage, and ultimately made landfall near Biloxi, Mississippi.

Only a few minimal category one and two storms struck Florida from 1996 (although a number of hurricanes did occur) until our "friend" **Cat 4 Charley** aimed right at my house on August 13, 2004. As we watched the TV, the announcer stated it had reached Cat 5 just as it was about to come in my yard. It changed back to a strong Cat 4 and veered north east to devastate Captiva and landfall in the Punta Gorda area with 15 foot storm surge and much devastation. The devastation continued on through Charlotte and DeSoto counties. Personally we were extremely fortunate with our only problems being no electric power for eight days and the loss of our pool cage and some trees. Many people are around from that time and can give you much more personal information. I am truly **blown away** as it has been very difficult to condense so much information in so little space.



## News from the Board of Medicine

# License Renewal

Crystal A. Sanford, CPM, Program Operations Administrator, Florida Board of Medicine

Because renewal is so important and can also be confusing, this article will talk about the various requirements for renewal. As you know, half of our licensees renew in the even years and the other half in the odd years. Your license is valid for two years. That's the easy part.

There are three (3) ways to renew your license:

- Online at [www.FLHealthSource.com](http://www.FLHealthSource.com). The advantage of renewing online is that you can print a temporary certificate.
- Paper renewal (obtained online) from same website
- Walk-in service at 4042 Bald Cypress Way, Tallahassee, FL from 8:00 am – 5:00 pm Monday – Friday

### REQUIREMENTS FOR RENEWAL

First, it is imperative that you maintain your current practice address with the Board. Why? Because in October we send reminder postcards to all physicians whose licenses expire January 31<sup>st</sup> of the following year. If you do not have your current address on file, then you may not get the postcard and you may not renew on time. What is so important about renewing on time?

- Late renewals mean working on a delinquent license
- Working on a delinquent license may mean insurance carriers will not reimburse you for services rendered while your license was delinquent
- Practicing on a delinquent license is a criminal offense

So, you complete the renewal form, whether you do that online, in person or by using the paper option. You pay your fees. You attest that you have completed your CME requirements. You complete the mandatory physician workforce survey. And finally, you update the Board regarding your financial responsibility. Now let's break this down.

Completing the form and paying fees are pretty standard. By renewing you are saying that you have actively practiced two (2) of the immediately preceding four (4) years. This is called the active practice requirement. What does active practice mean? It means you have been practicing medicine, have been on the active teaching faculty of an accredited medical school, or you have been employed by a governmental entity in community or public health or practicing administrative medicine.

CME requirements are audited, so when you attest that you completed all CME requirements, be sure that you have and that you have maintained copies of your certificates in case you are audited. The requirements include:

- First time renewal: 1 hour HIV/AIDS plus 2 hours in the prevention of medical errors
- Second and subsequent renewals: 38 hours general CME plus 2 hours in the prevention of medical errors
- Every third renewal: 36 hours general CME plus 2 hours in the prevention of medical errors and 2 hours in domestic violence

It is very important that you understand the prevention of medical errors course has specific requirements including a study of root cause analysis, error reduction, prevention and patient safety, and the 5 most misdiagnosed medical conditions in Florida during the previous biennium and those conditions are:

- cancer
- cardiac
- acute abdomen
- timely diagnosis of surgical complications
- stroke and related cranial conditions

There are many ways to obtain CME credit including volunteering and attendance at Board Meetings. All of these methods are outlined in Rule 64B8-13.005, Florida Administrative Code. In addition, there is a chart on our web site which assists licensees in determining the third renewal period.

Also at renewal, you are required to select which financial responsibility best fits your situation. If you are not exempt, the options are:

- I do not have staff privileges and I have obtained medical malpractice coverage in an amount not less than \$100,000 per claim with a minimum annual aggregate of not less than \$300,000 *from an authorized insurer.*
- I do have staff privileges and I have medical malpractice coverage in an amount not less than \$250,000 per claim with a minimum aggregate of not less than \$750,000 *from an authorized insurer.*
- I do not have staff privileges and I have established an irrevocable letter of credit or an escrow account in an amount of \$100,000/\$300,000.
- I have staff privileges and I have established an irrevocable letter of credit or an escrow account in an amount of \$300,000/\$750,000.
- I have elected not to carry medical malpractice insurance; however, I agree to satisfy any judgment up to the minimum amounts. This requires the posting of a sign to advise your patients that you are not carrying medical malpractice coverage.



In addition to the selections above, there are 5 exemptions. These exemptions and the form are available for download on our web site. In 2007, the State Legislature required that all physicians complete the Physicians Workforce Survey every renewal. This is a mandatory requirement. The Department of Health will use this information to make regulatory decisions concerning health care in our state. If you forget to do the survey, we will send you a reminder letter. If you still fail to complete the survey, you could be fined. Better to do your part and complete the survey.

Even though you should be making updates to the profile within 15 days of any change, renewal is a good time to review your profile and make sure it remains accurate.

#### **STATUS CHANGES**

At renewal you have a few choices. You can renew active, inactive or retired. If you fail to renew, your license goes delinquent. All of these status' can be reactivated. However, if you fail to renew during the next renewal cycle, your license will go null and void and you will be required to reapply for licensure to practice in Florida.

So, what is the difference between inactive and retired? The table below, created by JoAnne Trexler, Regulatory Supervisor/Consultant in the Board Office, explains the differences:

<b>RETIRED</b>	<b>INACTIVE</b>
<ul style="list-style-type: none"> <li>• Pay a one-time fee of \$55.00 during the renewal period and \$155 outside of the renewal.</li> <li>• The Board will no longer contact you regarding your license.</li> <li>• You cannot practice medicine on any patients, including family members and this includes a prohibition from writing prescriptions</li> </ul>	<ul style="list-style-type: none"> <li>• Renew your license every two years</li> <li>• Pay the \$250.00 annual assessment fee to NICA</li> <li>• You cannot write prescriptions</li> </ul>
<b>REACTIVATION RETIRED LICENSE</b>	<b>REACTIVATING INACTIVE LICENSE</b>
<ul style="list-style-type: none"> <li>• Submit a signed written request to convert your retired status license to an active status.</li> <li>• Pay any renewal fees imposed on an active status license for all biennial licensure periods during which the license was on retired status.</li> <li>• Pay the current reactivation and any applicable licensure fees.</li> <li>• Submit proof of completing 20 hours of CME for each year the license was in the retired status.</li> <li>• Submit a completed Financial Responsibility form.</li> <li>• Account for any activities related to the practice of medicine during the period that the license was on inactive status or not practicing in another jurisdiction.</li> <li>• Establish an absence of malpractice or disciplinary actions pending in any jurisdiction.</li> <li>• Successfully pass the SPEX exam if you have not practiced medicine in another jurisdiction for five or more years.</li> </ul>	<ul style="list-style-type: none"> <li>• Submit a signed written request to convert your inactive status license to an active status.</li> <li>• Pay current reactivation and any applicable licensure fees.</li> <li>• Account for any activities related to the practice of medicine during the period that the license was on the inactive status or not practicing in another jurisdiction.</li> <li>• Establish an absence of malpractice or disciplinary actions pending in any jurisdiction.</li> <li>• Submit proof of completing 20 hours of CME for each year the license was inactive</li> <li>• Submit a completed Financial Responsibility form.</li> <li>• Successfully pass the SPEX exam if you have not practiced medicine in another jurisdiction for 2-years out of the immediate 4-years</li> </ul>

The only other status available, should you decide that you no longer wish to practice in Florida, is to administratively relinquish your license. The only requirement is that you do not have any open pending complaints or disciplinary action on your license. Also, keep in mind if you relinquish in this way, you would be required to reapply for licensure to practice in Florida.

#### **WHERE DO YOU FIND THE LAWS AND RULES?**

Florida Statutes (laws): <http://www.leg.state.fl.us/statutes/index.cfm>

Florida Administrative Code (Rules): <http://www.leg.state.fl.us/statutes/index.cfm>

The Board of Medicine's *Web Board* has changed. The old site is no longer available. For a no-cost, automatic e-mail of every new item put on the Board website, you can subscribe and unsubscribe by going to this web site:  
<http://flems.doh.state.fl.us/mailman/listinfo/boardofmedicine>



## Media Relations Workshop

The Lee County Medical Society held our first Media Relations Workshop on Saturday, September 12, 2009 at Edison State College. The workshop covered all forms of media - print, television and new media.

We would like to thank Priority Marketing for putting this together. We would also like to thank Jim McLaughlin, Former TV Anchorman, Jennifer Booth Reed, Former medical reporter for the News-Press, Charly Caldwell, President of Internet Services Group of Florida and Kara Winton, Marketing and Public Relations Account Manager for Priority Marketing. They all volunteered their time and expertise for our members.



Dr. Jerry Kantor and Mr. Charly Caldwell II



Mr. Jim McLaughlin, Ms. Kara Winton and Dr. Craig Sweet



Ms. Adrienne Negron, Dr. Barry Blitz and Dr. Jon Burdzy

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## General Membership Meeting

The Lee County Medical Society held our General Membership Meeting on September 17, 2009 at FineMark Bank. Dr. James Penuel, LCMS Members and President of Independent Physicians Association of Lee County was our speaker. Dr. Penuel spoke on the topic of "Electronic Medical Records". Handouts from his PowerPoint presentation are available at the Medical Society office.

We would like to thank FineMark Bank and Mike Gavala for an excellent meeting.



Drs. Larry Hobbs and James Penuel answer questions. "Thank you" Dr. Penuel for a very informative program on EMR.



Dr. Dennis Sagini and Dr. Darius Biskup - New physicians, please welcome them to our medical community.



Dr. Allen Jacobs, Mr. Mike Smith and Dr. Jelin Cvik

## Speaking of Vision...



When you speak to your patients about their eye health, speak to them about Elmquist Eye Group. Our experienced team has a visionary approach to patient care. We provide superior health care with personalized attention and the convenience of multiple locations and Saturday appointments.



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

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TUESDAY - FRIDAY: 9 A.M. TO 6 P.M., SATURDAY: 9 A.M. TO 1 P.M.

Fort Myers Office | 12670 New Brittany Blvd., Suite 102 | Fort Myers | MONDAY THRU FRIDAY 8 A.M. TO 5 P.M.



## Recent Challenges to Caps on Non-Economic Damages

Robert E. White Jr, President, First Professionals Insurance Company

The Florida legislature enacted a law in September 2003 to place caps on non-economic damages in medical malpractice cases. For Florida physicians, the success of the passage of this tort reform measure has had positive benefits in the form of lower medical malpractice insurance rates and a reduction in the number and severity of claims.

### Non-Economic Caps

Caps on non-economic damages in all Florida court cases involving injury or death due to medical negligence is \$500,000 - regardless of the number of defendants - in suits against health care practitioner defendants (physicians and surgeons) and \$750,000 per claimant in suits against non-practitioner defendants (hospitals and other non-physicians).

The court can decide to exceed these caps in certain circumstances. In cases of catastrophic injury or negligence which results in a permanent vegetative state or death, a patient may recover up to \$1 million and \$1.5 million, respectively.

For any type of injury resulting from emergency care, the law caps non-economic damages at \$100,000 per claimant, but not to exceed \$300,000 for all claimants, in suits against practitioner defendants and \$750,000 per claimant, but not to exceed \$1.5 million for all claimants, in suits against non-practitioner defendants.

### Benefits of Tort Reform to Florida Physicians and Their Patients

The award limits established by the 2003 tort reform law are advantageous to the quality of health care in this state, because they help control the severity of claims filed against doctors. The caps were set to help ensure accessible, quality health care in Florida for all patients.

Tort reform helps protect qualified doctors from exorbitant judgments that may drive them out of the state, and even out of practice. Specialists are more likely to accept complex cases when the threat of a significant verdict is minimized. Losing good doctors benefits no one.

### Current Court Challenges

Caps on non-economic damages are facing opposition in the Florida court system. Recent cases, including the two mentioned below, have challenged the constitutionality of the tort reform that was enacted in 2003. Based on cases that are pending in the appellate courts, there is a strong likelihood that a decision of the appellate court (for either a plaintiff or defendant) regarding the constitutionality of non-economic damage caps will eventually be appealed to the Florida Supreme Court for their review by the loser.

In Nadine Raphael vs James Shecter & Emergency Physician, etc. the jury returned an award for the plaintiff on August 30, 2007 in the amount of \$783,119 in economic damages and \$9,500,000 in non-economic damages. The total award was \$10,283,119. The lawyer for the physician defendant petitioned the trial judge to apply the non-economic damage cap to the verdict. The plaintiff's lawyer argued to the trial judge that the cap was unconstitutional and not to apply the cap.

On September 14, 2007, the judge ruled that the \$150,000 non-economic damage cap governing emergency room cases was constitutional. The judge entered an order reducing the \$10,283,199 award to a total of \$845,119, which included some adjustment the economic losses that had nothing to do with the application of the non-economic damage cap.

The plaintiff filed an appeal of the ruling regarding the cap on February 4, 2008, to the Fourth District Court of Appeal. The case has been briefed by the parties and is set for oral argument on July 7, 2009. The Fourth District could rule on the constitutionality of the emergency room as early as late summer or in the fall of 2009. Regardless of what happens in the Fourth District, the losing side will appeal the ruling to the Florida Supreme Court.

A ruling from the Florida Supreme Court may take as long as 18 to 24 months after the Fourth District ruling. The end result is that it could be 2011 (or eight years after the cap was passed) before a definitive ruling on the issue.

Another case currently working its way through the Florida courts is Daniel Weingrad, MD vs Kimberly Ann Miles and Jody Haynes. The result of this case was a \$1 million judgment against the defendant after the \$500,000 cap was applied.

On April 7, 2008, a Miami-Dade County jury returned a verdict for the plaintiff in Miles vs. Weingrad for \$16,104 in economic loss and \$1,500,000 in non-economic loss for a total verdict of \$1,516,104. The trial judge reduced the non-economic portion of the loss from \$1,500,000 to \$500,000 making the total judgment entered against the doctor \$516,104. This case was appealed and is in the briefing stages in the Third District Court of Appeal. It will be set for oral argument some time later this year.

### Florida Medical Malpractice Trends

Florida is one of the most litigious states in the country. Knowledge of the medical malpractice industry is critical for physicians in the state. Florida was ranked 42nd in the U.S. Chamber's Institute for Legal Reforms 2008 State Liability Systems Ranking Study and 50th in Pacific Research Institute's 2008 U.S. Tort Liability Index. South Florida was ranked the #1 Judicial Hellhole by the American Tort Reform Foundation. These rankings were awarded during a nearly five-year span of relative malpractice calm which recently came to an abrupt halt in Florida. Since November of 2007, juries in four separate trials returned plaintiff verdicts of over \$30 million each. This is the highest concentration of such large verdicts to ever occur in Florida. Unfortunately, large verdicts like these tend to attract more lawsuits.

With the increase of these substantial plaintiff awards, it is essential that the tort reform package that passed in 2003 survives the expected constitutional challenge. As the largest and longest-serving medical malpractice insurer in Florida, First Professionals Insurance Company is committed to its partnership with Florida physicians. We will continue to support physician organizations in their efforts to protect the progress made almost six years ago with the passage of caps on non-economic damages.

### Summary

The award limits established by the 2003 tort reform law are advantageous to the quality of health care in this state, because they help control the severity of claims filed against doctors. The limits apply only to non-economic or punitive damages, not compensatory damages. It is essential that the caps on non-economic damages survive current and future constitutional challenges provide maximum protection for both patients and physicians.

*The information contained herein does not establish a standard of care, nor is it a substitute for legal advice. The information and suggestions contained here are generalized and may not apply to all practice situations. First Professionals recommends you obtain legal advice from a qualified attorney for a more specific application to your practice. This information should be used as a reference guide only.*



## President's Message Continued

According to our surveyors, prevention and wellness promotion are significant factors in affecting health care costs with 60% agreeing promotion would make a difference. In conjunction, 72% felt that government subsidies of medical education would improve physician supply.

One surveyor summed up health care reform well when he stated the following, "Zero liability reform equals disaster; start with liability." If you are interested in obtaining a detailed copy of the survey results please contact the LCMS office.

### In other news...

The LCMS Alliance will be sponsoring the annual 'Potluck in Paradise (only this one's not a potluck!)' on October 3<sup>rd</sup> at Betty and Jim Rubenstein's home. The event is to welcome new physicians and their spouses to our community. This year will be even more special. Please make every effort to attend. You should have received a flyer via fax from the LCMS office. If not please contact Ann or Cynthia.

And finally, if you know of a physician or partner who is not a member of the LCMS, please encourage them to join. Dues are nominal and haven't been raised since 1993! The benefits of becoming a member are numerous and new members would help vitalize the medical society. To date only about half of the practicing physicians in Lee County are members. Let's encourage all to join and support your society.

## In Memoriam Edward R. Annis, MD

It is with deep sadness that we inform you of the passing of former AMA President Edward R. Annis, MD on September 14, 2009. Dr. Annis served as AMA President in 1963-64, and as a Trustee from 1967-69. Dr. Annis wrote an insightful book "*Code Blue*" *HealthCare in Crisis*.

His legacy in medicine is profound, and his leadership will be greatly missed. We know, however, that he will be even better remembered as a good friend, as a loving husband, father, and grandfather, and as an extraordinarily wise, humorous, gentle, and caring human being.

## Mandatory CME for Re-licensure

**2 hours Prevention of Medical Errors**  
Jerry Williamson, MD

&

**2 hours Domestic Violence**  
Colleen Henderson, ACT

**SATURDAY, NOVEMBER 14, 2009**  
**Cape Coral Hospital Auxiliary Meeting Room**  
7:45 a.m. - 12:15 p.m.

RSVP Breakfast by November 12<sup>th</sup> - 573-5680

or

**SATURDAY, DECEMBER 5, 2009**  
**Lee Memorial Hospital Auditorium**  
7:45 a.m. - 12:15 p.m.

RSVP breakfast by December 3<sup>rd</sup> - 573-5680

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## Membership Survey Results, Spring 2009- Part II

Public Relations Committee: Craig R. Sweet, MD & Barry Blitz, MD

The Lee County Medical Society sent out membership surveys to all our members in April. We would like to thank all those who completed and sent in the survey. Below are a few of the responses of questions regarding the *Bulletin*. We will be posting more results in our next few issues of the *Bulletin* and the completed survey results will be posted on the Medical Society website.

### How valuable do you find your membership with the Lee County Medical Society?

#### Results:

47% found it Very Valuable; 42% Somewhat Valuable and 11% Not Very Valuable

#### Comments:

While it was encouraging that most of the physicians polled (89%) thought that the LCMS was somewhat or very valuable, there was an important 11% that felt we had some work to do. To this end, we have recently accomplished the following:

- Increased education of our members on the ever-changing health care debate.
- Improved interaction between the physicians and the media including a completed Media Training workshop.
- Attempting to improve the quality of the speakers and topics at our dinner meetings.
- Continued interactions with LMHS and the Independent Physicians Association of Lee County (IPALC).
- Increased education of the general public through out new awareness campaigns.
- Updated Web site with easy referral to our member physicians.
- Released our updated 2009 Pictorial Directory.

While the LCMS dues haven't increased in over 16 years, we will continue to try to bring as much value as we can for your membership dollar. More ideas are on the way!

### Please rank the three (3) most valuable benefits of your LCMS membership, with #1 being the most valuable.

#### Results:

Lobbying/Advocacy was chosen most often as the most valuable benefit to membership. To show its importance, this was also the second most valued benefit when members chose a different first. The third most valued benefit was Meeting/Camaraderie. Perhaps broader way to examine the results was to separate which three items were consistently most important (i.e., achieved 1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup> position), which were of medium importance and which were of lesser importance. The following were the results:

Top 3 Benefits	Middle 3 Benefits	Lowest 3 Benefits
<ul style="list-style-type: none"> <li>• Lobbying/Advocacy</li> <li>• Meeting/Camaraderie</li> <li>• <b>Bulletin</b>/Information</li> </ul>	<ul style="list-style-type: none"> <li>• Political Action Committee</li> <li>• Alliance/Social Activities</li> <li>• Medical Malpractice Insurance Discount</li> </ul>	<ul style="list-style-type: none"> <li>• Referrals from the LCMS</li> <li>• Speakers Bureau</li> <li>• LCMS Web site</li> </ul>

#### Comments:

This provided a wealth of information. Clearly, we need to keep our sights on the top six benefits and try to improve on these wherever possible. Nevertheless, even the items listed in the lowest third still were rated high by a small group of members and we mustn't forget their needs either.

### What could the LCMS do to make your membership more valuable to you and your practice?

#### Results & Comments:

The results were quite varied. The only comment that appeared more than once was the concept of protecting the independent physician and opposing LMHS's monopoly. Please understand that our goal is to represent all physicians in the community. While we are working with LMHS, we are also increasing our interaction with the IPALC. Below are a number of other comments and our responses (some are paraphrased):

What Would make LCMS Membership More Valuable?	LCMS Response:
Increase physician interactions.	We are considering more meetings and more social activities for the remainder of this and next year.
Improve visibility of the physicians to the public.	We are well on our way with this goal with the monthly Medical Observances and improved media relations.
Increase community education.	As above.
Consider FineMark Bank for meetings.	We are indeed increasing the number of meetings there.
Provide resources to members.	The staff of the LCMS is always there to answer your questions and if they don't know the answer, they will try to find someone who does.
Provide CME credits information.	A new section in the <b>Bulletin</b> will do just that.
Expand Membership.	We have some interesting ideas but rest assured we are always trying to increase membership! Stay tuned!
Assist in finding staff for physician offices.	The HMA may be the best option for this but the LCMS staff is still a good resource to at least ask if they know of if anyone is available.
Continued political advocacy.	An ongoing battle especially with the current political climate.
Growth statistics for the region with respect to medical needs.	This was covered recently by LMHS, although the data was collected before the local economy changed so dramatically.
Align and obtain more competitive prices on health insurance, paper goods, cell phone service, answering phone service, medical waste as well as office and medical supplies.	This is an interesting concept. The problem is whom we would leave out. In addition, the failure of a vendor to provide adequate goods and services must never reflect poorly on the LCMS. We will consider this idea.
Provide information on EMR's and e-prescribing.	Take a look at our September lecture!
Provide information on the benefits of Medical Marijuana.	We think we will leave this to California and the medical literature to sort out!



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## What the LCMS Does For You...

**Professional Benefits:** Medical Society members are offered discounted rates on malpractice insurance through FPIC and a workers' compensation program through OptaComp that pays you back a yearly dividend. Both these benefits are worth the \$395 a year

**Local Advocacy:**

LCMS President, Dr. Larry Hobbs, addressed need for patient advocacy in the community, which led to talks with Lee Memorial to correct issues. As a result hospitals began process of standardizing and the medical executive committees at each hospital approved improving hospitalist care and a definition of a hospitalist.

Lee County Medical Society leadership regularly meet with legislators to address issues that affect health care. We have also sent out a survey to Medical Society doctors, the survey provided a brief overview of the concepts under consideration for national Health Care Reform and asked for doctor's feedback.

**Bulletin in PDF Format:**

Ten issues of the **Bulletin**, one of the most popular facets of the LCMS, are mailed to all members to keep them up to date on issues affecting the practice of medicine. The Bulletin is now available in pdf format and will also be archived on the LCMS website.

**Pictorial Directory:**

The 2009-2010 Membership Directory contains information for all active members of the LCMS and is a wonderful resource for patients seeking a physician. Copies are flying out our door after placing an announcement in Florida Weekly. We will also distribute through health fairs and other organizations.

**Updated Web Site:**

The new Web site is up and running. If you haven't already visited, please do so (<http://www.lcmsfl.org>). Patients in the community are now able to find our physician members more easily than ever!

**Physician Referrals:**

The LCMS office offers free referrals and background checks for patients.

**Practice Information:**

The LCMS offers free informational packets for physicians who are starting a practice. We also offer packets for physicians who are relocating or retiring. We provide information on how Florida laws/statutes influence physicians' practices.

**Public Relations:**

Each month, the New Member News Releases are sent out to the various media outlets listing the names of our new members. Many of these releases have resulted in publication of the physician's names, practices and specialties.

In order to increase the awareness of numerous health issues, each month we identify approximately four Awareness Days/Weeks or Month topics that we think will be important to our patients. Member physicians are contacted asking them to work with the media to increase the public's awareness of these medical issues. This type of promotional activity would be difficult and expensive for many of our members to prepare individually. We hope that this type of public relations will benefit the community and the physicians involved.

**Physician Volunteerism:**

The McCourt Scholarship fund provides funds for children with diabetes to attend Florida Camp for Children and Youth with Diabetes. We are also supporting the Lee County Volunteer Healthcare Connection program. This program will be administrated by United Way of Lee and proposes to help physicians provide 'pro bono' services to eligible low-income, uninsured adults needing specialty care.

**Meetings and Events:**

Five membership meetings a year bring members the opportunity to network and gain mandatory CME. LCMS offers programs to help with the running of your practice, such as Red Flag Rules Workshop and Media-Training Workshop. We also hold social events in conjunction with the LCMS Alliance. These include meet & greets, new members welcome event, a potluck in paradise dinner, and Doctor's Day events. The women physicians group also meets for special events.

*Thank you for your continuing membership. We look forward to serving you in 2010.*



## Lee County Medical Society

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