

2012 Meetings and Events

Save the Dates

August 10, 2012

Lee & Collier County Mixer
 (Details TBA)
 Bass Pro Shops
 6:30-8:00 PM

Note: Meeting is on Friday

September 21, 2012

Wine Tasting Social
 Shoals Restaurant &
 Wine Bar
 17650 San Carlos Blvd.
 Fort Myers, FL 33931
 6:30 PM

Note: Meeting is on Friday

November 15, 2011

General Membership Meeting
 FineMark National Bank & Trust
 6:30 PM Social/7 PM Dinner

RSVP Medical Society Office

LCMS, 13770 Plantation Rd, Ste 1
 Fort Myers, FL 33912
 Tel: 936-1645 Fax: 936-0533

Inserts

Annual Medical Service Award
(AMSA) Nomination Form
State PAC Standings



President's Message

Richard Macchiaroli, MD

The Importance of the FMA-PAC



The Florida Medical Association (FMA) is a state level association representing physicians in the practice of medicine. The FMA has many resources available to help physicians, including assistance with malpractice insurance, compliance with governmental regulations, CME, reimbursement and multiple other areas. Of utmost importance, the FMA lobbies for legislation that is beneficial to the practice of medicine, as well as possibly more importantly defeating anti-medicine legislation. This is done through lobbying efforts, grass roots political work and use of FMA-PAC funds to support pro-medicine political candidates.

Over the past five years, the FMA has had many pro-medicine victories within the Florida legislature which have positively affected our medical practices in Florida. Laws have been passed reducing billing "look back" periods from 30 to 12 months, regulating silent PPOs from taking advantage of doctors, directing payment of benefits to physicians instead of patients, reforming PIP (Personal Injury Protection) to reduce fraud, creating a controlled substance database, preventing mandatory Medicaid participation, reducing medical malpractice premiums, promoting tort reform (especially with regard to expert witness testimony), and defeating numerous scope of practice increases for allied health professionals

On June 8-9, I had the opportunity to attend the FMA-PAC (FMA political action committee) meeting in Coral Gables, Florida. During this two day event, which happens twice per year, Florida physicians give of their personal time to meet and decide where best to direct FMA-PAC funds in ways that are thought to be most favorable to medicine. The idea is to support current and potential future political leaders, both financially and through endorsement by the FMA. With this type of support, we can help get politicians elected who will pursue medicine friendly legislation during their tenure.

Passing such legislation is a very complex political process which begins with having political leaders that are knowledgeable and friendly to our issues.

I was very touched as I watched approximately 60 physicians from around Florida donate their time to coalesce in one room and root through the details of every Florida House and Senate candidate running for election this year to determine who was medicine friendly and how likely they were to be elected. They then gave endorsements and donations to several of the candidates. Also done were recommendations to the AMA for support of federal candidates. The FMA-PAC is a state PAC and cannot make federal donations. The political arena is an aspect of practicing medicine that most of us don't get the opportunity to see, and some may even find distasteful. However, it is one of the most essential functions in our attempt to sway medical law and policy decisions in our favor. I view it like Coke and Pepsi, if one quits advertising; the other is going to win. For the most part, if we are Coke, big insurance, trial attorneys, and allied health professions are our Pepsi.

As you might expect, these efforts come with a price tag. The FMA-PAC is the largest medical political action committee in Florida. FMA-PAC board members, of which Dr. Jim Rubenstein is your local representative, are tasked with raising funds for the PAC. These funds are crucial to our ability to pass legislation in Florida that provides you with the best possible environment in which to practice medicine. You can donate directly to the FMA-PAC with a recommended annual donation of \$250, or better yet, join the MD 1000 club, which represents a donation of \$500/year over 2 years. Please consider donating to the FMA-PAC and helping your Florida medical family continue to better the environment in which we practice. You don't have to be a member to donate. Please contact Ann Wilke (239-936-1645) at the Lee County Medical Society for further information on how and where to donate to the FMA-PAC.

Inside this issue:

President's Message	1
Membership News/ New Applicants	2
As I Recall	3
Why Should I Vote & Where Should I Vote	4
LCMS Volunteers Perform Student Athletic Physicals	5
When is a Patient-Physician Relationship Established	6-7
Alliance News	8
McCourt Scholarship Fund	9
Super Group Doctors Beware of Departure Provisions	10
Medical Society News	11

LEE COUNTY MEDICAL SOCIETY BULLETIN

13770 Plantation Road, Ste 1
Fort Myers, Florida 33912
Phone: (239) 936-1645
Fax: (239) 936-0533
E-Mail: awilke@lcmsfl.org
www.lee-county-medical-society.org

The Lee County Medical Society Bulletin is published monthly with the June and August editions omitted.

CO-EDITORS

Mary C. Blue, M.D.
John W. Snead, M.D.

EDITORIAL BOARD PRESIDENT

Richard Macchiaroli M.D.

PRESIDENT ELECT

Audrey Farahmand M.D.

SECRETARY

Andrew Oakes-Lottridge M.D.

TREASURER

Mary Magno Mouracade M.D.

PAST PRESIDENT

Shahid Sultan M.D.

MEMBERS-AT-LARGE

Jon Burdzy, D.O.
Joanna Carioba, M.D.
Carlos Chavez, M.D.
Daniel De La Torre, M.D.
Valerie Dyke, M.D.
Kuldar Singh, M.D.
Shari Skinner, M.D.

MANAGING EDITOR

Ann Wilke, 936-1645

BULLETIN STAFF

Valerie Stine
Marian McGary

The editors welcome contributions from members. Opinions expressed in the Bulletin are those of the individual authors and do not necessarily reflect policies of the Society. Advertisements do not represent sponsorship or endorsement by the Lee County Medical Society nor necessarily implies the accuracy or reliability of any advertisement displayed in this publication. © 2012 LCMS.

PRINTERS

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

Relocated

Kevin Campbell, MD
Martin Ebenger, MD
Melissa Lee, MD
Cherrie Morris, MD
Women's Healthcare Professionals
15901 Bass Road, Ste 100
Fort Myers, FL 33908 Tel: 343-6100

Dropped Members

Nicasio David, MD
Jeffrey Bisker, MD
Ralph Garramone, MD
Mukund Kini, MD
Chaim Margolin, MD
Mary Stegman, MD
Rodolfo Saludo, MD
Kenneth Galang, MD
Fred Liebowitz, MD
Khalid Sabha, MD
Tasha Wallace, DO

New Members

Matei Andreoiu, MD— Urology
Lea Blackwell, MD— Surgery-Breast
Stacey Gorovoy-Kunc, MD— Ophthalmology
Timothy Kerwin, MD— Radiation Oncology
Suzy Lee, MD— Dermatology
Daron Scherr, M— Sleep Disorders
Michael Smith, MD— Radiation Oncology
Janet Sperry, MD— Radiation Oncology
Jay Wang, MD— Medical Oncology
Jeffrey Willig, MD— Ophthalmology

Reactivations

Jon Prater, DO— Psychiatry



Physicians in the News

JONATHAN S. DAITCH, MD, AWARDED THE PRESIDENT'S AWARD

Jonathan S. Daitch, MD was recently awarded the President's Award by The FLORIDA SOCIETY OF INTERVENTIONAL PAIN PHYSICIANS ("FSIPP"). FL. Dr. Daitch was recognized for his service, research, and contributions to FSIPP. Dr. Daitch is the founder and a practicing physician at ADVANCED PAIN MANAGEMENT & SPINE SPECIALISTS ("APMSS"). The Practice is located at 8255 College Parkway in south Fort Myers and in Cape Coral.

Dr. Daitch started the local chapter of FSIPP to educate providers such as other legitimate pain doctors, nurse practitioners, other health care provide, and pharmacists in southwest Florida on the advances of the care and treatment of chronic and acute pain as well as update providers on the impact of new legislation on medicine. He has been politically active at all levels of government. He has ardently urged all pain physicians and other local physicians and providers to be "pro-active" in supporting pro-medical candidates.

Dr. Daitch lectures, teaches, publishes, and conducts research studies. Daitch has been a proponent of the "anti" Pill Mill legislation in Florida. He even ran a successful PR campaign in southwest Florida to educate the community about pill mills. He is also a consultant for government agencies on the illegal dispensing of prescription drugs, drug abuse, and pill mills.

Dr. Daitch has been practicing medicine in Fort Myers since leaving the US Air Force twenty years ago. Eleven years ago, he opened one of the first pain clinics in the Fort Myers area dedicated to the care and treatment of chronic and acute pain. Daitch is also the concert master of the Gulf Coast Symphony, the community orchestra in Fort Myers, FL.

LOCAL SURGEON CONTRIBUTES TO NATIONAL SURGICAL TEXTBOOK

Bonita Springs, FL – A newly published surgical textbook features a chapter contributed by Bonita Springs Ophthalmic Plastic Surgeon, Dr. Nadia Kazim.

The textbook, "Smith and Nesi's Ophthalmic Plastic and Reconstructive Surgery, Third Edition" features Dr. Kazim as the first author of the chapter entitled "Complications of Blepharoplasty."

Dr. Kazim specializes in blepharoplasty, which is the surgical removal of eyelid skin. When a patient has an excessive amount of upper eyelid skin, it can protrude over the eyelash line and cause a loss of peripheral vision. Blepharoplasty surgery is done to remove the excess skin and restore a normal field of vision.

In addition to restoring vision, blepharoplasty is also used for cosmetic purposes. In Dr. Kazim's chapter, she outlines some of the complications that can arise from the blepharoplasty surgery. She also describes in the chapter ways to avoid these surgical complications.

The surgical textbook provides a resource for medical professionals including ophthalmologists, otolaryngologists, and plastic surgeons across the country.

Dr. Kazim performs blepharoplasty surgery as well as other ophthalmic plastic procedures, including surgeries of the eyelid, treatment of skin cancer around the eye, tearing problems, skin rejuvenation, eyelash lengthening, facial fillers, and Botox®. Her office is conveniently located in the Bonita Community Health Center at 3501 Health Center Blvd., Suite 2170, Bonita Springs, FL. She can be reached at (239) 494-4900. More information can be found at www.KazimEyelidSurgery.com.

New Applicants

Lea Blackwell, MD—Dr. Blackwell received her MD degree from Louisiana State University-Shreveport, LA 1998-2002. She did a residency at Louisiana State University, New Orleans, LA 2002-2007. Dr. Blackwell completed a fellowship at Washington, D.C. 2007-2008. She is in group practice with Associates in General and Vascular Surgery, 21 Barkley Circle, Fort Myers, FL 33907—239-939-2616.



As I Recall...

Roger D. Scott, M.D.

VERY PERSONAL

It is very difficult to know exactly where to begin this story as the early signs of Lupus are often so very vague, but I think it truly began in September 1946. It was necessary to obtain an STS (Serological Test for Syphilis) in order to get a marriage license. Dottie, my wife-to-be had a positive STS which we knew could not be possible. I will not go into reasons why I know that but it was truly impossible. A second STS was performed and further studies revealed it to be a rare false positive. No one could offer an explanation as to why occasional false positives occurred but they did. We got married and in the next year I entered medical school. Our apartment was across the street from the residence of Dr. Harry M. Robinson Sr., the Professor and Head of the Department of Dermatology and Syphilology (The dermatologists were the ones who treated syphilis in those days.) at the University of Maryland School of Medicine. He walked his great big dog along the sidewalk as I walked my little Boston Bull and we talked. I asked him about the false positive serology, and he said that he had noted over the years (and he was an old man) that many of the people with a false positive develop a collagen disease later in life. He also did a workup on her and found a false positive. Over the years she had some vague minor health complaints but remained a steadfast wonderful wife and companion during the years of medical school and residency. She delivered two boys and a girl without any complications. She never developed the typical butterfly facial lesion seen with lupus, but over the years at varying times she had undiagnoseable aches and pains. I don't remember the exact date but I think it was about 1960 here in Fort Myers that Dr. Larry Radkins (OB/GYN) found changes in her urine analysis. He referred her to Dr. Frank M. Bryan (our first board-certified internist). There was no specific test for lupus, but Frank made an assumptive diagnosis of lupus from multiple findings and tests. (Today it is known that 97% of lupus patients have a positive Anti-nuclear Antibodies [ANA] test.). There was and remains today no cure. She was treated with corticosteroids. Dottie gradually developed increasing problems and in October 1961 Frank suggested that she be evaluated by Dr. George Schreiner at Georgetown University. Dr. Schreiner was the "father" of Nephrology, a new subspecialty of internal medicine and had the second artificial kidney machine in the nation for dialysis. He also had pioneered a new technique for kidney biopsy using a needle. Dottie was so ill that she could not withstand a car or commercial air trip to Washington. We only had one flight, maybe two a day out of Fort Myers with several plane changes to get to Washington. Our good friend and neighbor Oscar Corbin (a World War II Air Force pilot stationed at Buckingham Air Force Base in Fort Myers during the war) said he would fly us there in his plane. On October 26, 1961 arrangements were made at Georgetown Hospital for her admission, but Oscar had to be somewhere else that day. He engaged another good pilot to fly us in his (Oscar's) plane. We took out the right front seat so that Dottie could lie on a stretcher and I rode on the left backseat. The flight was six hours long, and a belt broke on one of the parts of the motor so we had to land in a farmer's open field in South Carolina. The pilot got someone to take him to a local airport to get a new belt which he applied and we resumed the flight uneventfully. The pilot's fee was \$60 for the 12 hours (He had a short rest and returned to Ft. Myers).

An ambulance met us at Washington National Airport (now Reagan National Airport) and on to Georgetown University for 14 days in a private room at \$26 per day (total \$364), multiple laboratory studies \$294, pharmacy \$16.20, surgical supplies \$32.35, x-ray \$80, phone 45 cents, EKG \$15 for a grand total of \$802.

On the day that the needle biopsy was to be done Dr. Schreiner and his entourage entered the room. He said he would biopsy the left kidney. I asked him why he didn't do the right side in order to avoid the spleen and he replied boisterously "We never had any trouble with that." I stayed with Dottie during the procedure and almost as soon as they left the room, she went into shock and had severe pain. I started an IV on her and pushed fluids and yelled for the nurses to come in to help. She gradually responded to the fluids & Trendelenberg position. The pathology report was "Normal Spleen" so a second biopsy was suggested but neither she nor I wanted her to undergo a second as she almost died on the first one. She was discharged a few days after the biopsy on September 10th, Dr. Schreiner graciously did not charge for his care as we all practiced free professional care for doctors and their families. I'm pretty sure Oscar was the pilot for the return home. He flew up on October 9 and we left for home on the 10th uneventfully. Oscar charged me his cost of \$203.20 that included "gas, two landing fees for four dollars, and two dollars for parking & tie down" at the airport. I stayed at the prominent Statler Hilton Hotel at \$10.42 per night. I ate breakfast (\$1.43) at the hotel and then stayed with Dottie all day until returning to the hotel in the evening. A few evenings I ate supper at the hotel (\$6 to \$14) but mostly at the hospital. Total hotel bill was \$138.15! The return flight was smooth.

The Scott and Corbin families remained great friends. Oscar died peacefully on 5-8-12 leaving a remarkable family and legacy behind. He was mayor of Fort Myers (1967-76) and got all of the unpaved streets paved. The Lee County Medical Society led by Dr. Tom Wiley had tried repeatedly by referendum to have the water fluoridated without success, but Oscar simply decreed that the water be fluoridated thereby preventing dental problems for many of the minors who are now the majors. He was a great person and mayor. Polly Stephenson, my office nurse, took great care of our three children while we were in Washington. Polly was a wonderful lady, but died a long time ago. While in Washington I became short of cash so I phoned Polly to call Mr. Alex Robertson at the First National Bank to wire me \$100. It arrived the following day. About four months later I stopped to talk to our neighbor and attorney Charles Roberts and he apologetically asked did I ever get the \$100 he wired me. I was terribly embarrassed because Polly had called him instead of banker Robertson to send me the money. I thought the hundred dollars came out of my account at the bank all that time and Charlie was such a gentleman that he did not ask me for the money for months. Such were our neighbors on Shadow Lane.

Gradually the Lupus progressed despite all therapy including high-dose corticosteroids so Dottie was admitted to Lee Memorial Hospital about March 25, 1967 and tragically expired April 6, 1967 at age 41. Our oldest son, Thurber Talmage Scott II died unexpectedly on June 3, 2012 at age 62.

Regretfully this will be my last regular article. It's been a long literary journey of 10 articles a year beginning July 1995 thru July 2012 for an untrained author & one finger typist, but I have enjoyed sharing so many subjects with you.

Why Should I Vote?



Maybe you're asking yourself, "With all the millions of people who vote in any given election, does my vote really count?" Or perhaps you feel like you can't really make a difference, so why bother? The truth is that your vote does count and you do make a difference every time you vote!

Your vote holds your local and national leaders responsible for the decisions they make. Your vote sends a message about the issues you think are important. Your vote affirms our rights as free citizens to elect our government and take part in democracy. Without voting, there could be no democracy.

Maybe you know other people who choose not to vote because they feel like what goes on in the government doesn't affect them. The truth is, it does...in many ways. Elected officials make all sorts of decisions that can directly affect your life. The President and Congress you elect will decide whether to raise or lower taxes, make economic policies that could affect your job and decide when or if to use military force. There are also local elections, which can have an even more immediate and personal effect on you, your lifestyle and your community.

Vote because you care about your community.
Vote because you believe in free government
and want to add your voice. Vote because it
will make you feel good to participate and
have a say.

Vote because it's the right thing to do!



Where Do I Register to Vote?

The headquarters for the Lee County Elections Office is located in Fort Myers in the Constitutional Complex at 2480 Thompson Street (corner of Fowler Street and Dr. Martin Luther King, Jr. Boulevard). Office hours are from 8:30 AM to 5:00 PM Monday through Friday.

Branch offices are located at 1031 SE 9th Pl., Cape Coral, 24951 Old US 41 Suite 10, Bonita Springs, and Lee County Election Center Branch Office at 13180 S. Cleveland Av. Fort Myers 33907 (Across from Bell Tower Shops behind Robb & Stucky). Anyone requiring data on the availability of registration forms may telephone the main office at (239) 533-8683.

Registration closes 29 days before each election and must remain closed until after that election. When the registration books are closed, no registration nor party change shall be accepted for that particular election. Once registered, if you vote at least once every four years, your registration is active and permanent.

Those persons wishing to register to vote can obtain forms for registration at various sites throughout the county in addition to the Fort Myers, Cape Coral and Bonita Springs Election Offices. Some of the sites are public libraries, Chamber of Commerce, Dept of Motor Vehicles, AAA Motor Club, and Fort Myers City Hall.

For additional information on site locations, call (239-533-8683).

All voter registration forms are to be mailed to:

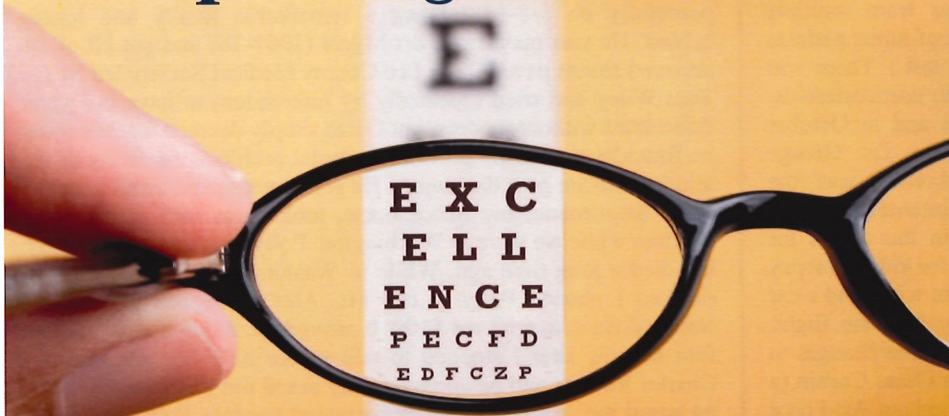
P. O. Box 2545
Ft. Myers, FL 33902

To receive registration forms by mail, [fill in a request form on line.](http://election.dos.state.fl.us/voter-registration/voter-reg.shtml) <http://election.dos.state.fl.us/voter-registration/voter-reg.shtml>



Now accepting EyeMed and VSP Vision Plans!

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.

E|ELMQUIST

eye group

preserving and restoring vision

We appreciate your patient referrals.

239-936-2020

www.Elmquist.com

Cape Coral Office | 2336 Surfside Blvd., Suite 121 | Cape Coral

MONDAY: 1 P.M. TO 5 P.M., | TUESDAY - FRIDAY: 9 A.M. TO 5:30 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.

LCMS Volunteers Perform Student Athlete Pre-Participation Physicals

Abbott Kagan II, MD

On Saturday, May 12, 2012, volunteers from Lee County Medical Society donated their time to perform student athlete pre-participation physical examinations for the 2012 – 2013 school term at Bishop Verot High School. As in previous years, a nominal fee was collected for each athlete by the school and donated to the athletic department.

This year we examined 144 student athletes. There were 93 males and 51 females. The exams took about 3 1/2 hours to complete, but additional time was required to review the results and make decisions about further referrals. This time requirement does not include set up time for the facility, nor does it include clerical and administrative time.

In all, we cleared 138 student athletes for sports participation, but referred six (one female, five males) for further evaluation or followup. Referrals were made to:

Pediatrics – two

Urology -- one

Orthopedics – three who were under active care for existing problems were referred back to their treating physician for clearance.

Five students were referred to the school nurse for further monitoring of high blood pressure noted at exam time.

We are especially thankful that we have been able to provide eye exams as part of our physicals for many years. This year I would particularly like to thank Dr. Tim Underhill who brought equipment and staff to measure not only visual acuity, but also stereoscopic visual function which is extremely important for athletes who require high levels of hand – eye coordination. Their screening revealed 25 students failed stereoscopic vision testing, and were referred for further evaluation.

My most sincere thanks to all the physicians who graciously gave their Saturday morning to help these student athletes, and special thanks to Natasha Johnson (Athletic Trainer) who coordinated these exams.



L to R front row Natasha Johnson, ATC, Dr. Paul Bretton (Urology), Dr. Lynn Einbinder (Cardiology), Dr. Alex Lozano (ENT), Dr. Mark Petrites (Gen Surg), Stu German PAC (Ortho Surg), Pat Mora PAC (Neuro Surg). L to R Back row: Dr. Milt McCurdy (OB GYN), Gina Fair RN (school nurse), Tom Underhill, Dr. Tim Underhill (Optometrist), Dr. Don Moyer (Neuro Surg), Dr. Paul Liccini (Cardiology), Dr. Doug Stevens (ENT), Dr. Ray Kordonowy (Int Med), Dr. Bo Kagan (Ortho Surg).

CARDIOLOGY CONSULTANTS

Of Southwest Florida



Eliot Hoffman MD



Stephen Fedec DO



Richard Davis MD

Your Independent Cardiologists

Accepting New Patients

*Independent Cardiology Practice

*No additional facility fees

*Participating in most insurance plans

*Experienced Board Certified Cardiologists

*Nuclear cardiac stress testing, Holter monitoring, treadmill stress testing, cardiac clearance, echocardiography

*Cardiac catheterization and intervention, pacemaker and ICD implantation

*Hospital privileges at GulfCoast Medical Center and HealthPark Hospital

13411 Parker Commons Blvd, Suite 101 Fort Myers FL 33912
www.cardiologyconsultants-swfl.com
(239)415-4900

Four Pain Emergencies



There are four medical conditions that must be treated as quickly as possible, to dramatically decrease or eliminate the patient's pain.

Shingles, Vertebral Compression Fractures,

Cancer Pain, Spinal Headaches

Consider referring your patients who are suffering with any of these four conditions to us. We are committed to see your patients within 24 hours!

Advanced Pain Management & Spine Specialists

Michael Frey, MD

Jonathan Daitch, MD

Fort Myers • Cape Coral

(239) 437-8000

www.apmss.net



When Is a Patient-Physician Relationship Established?

Valarie Blake, JD, MA

From day one, medical students are taught that their primary obligation is to patients. But defining who their patients are is another matter. Who counts as a patient is a complex legal question that has major implications for determining when a physician has a duty to treat, when a physician can be sued for malpractice, when a physician has “abandoned” a patient, and other serious matters. The legal definition of a patient and the corresponding duties of the physician have been debated in state courts for over a century, and many aspects of the question are still being resolved. This article will explore a number of important legal cases that have helped to define the patient-physician relationship generally, as well as some key exceptions to the general rule.

When Is a Patient-Physician Relationship Established?

Hurley v. Eddingfield. In 1901, the Supreme Court of Indiana heard the tragic case of Charlotte Burk [1]. Dr. Eddingfield was the local general practitioner and Burk’s family physician, but when Burk suffered complications during childbirth, her husband sent a messenger to Dr. Eddingfield, and Dr. Eddingfield refused to treat Burk [1]. She and her unborn child died. Dr. Eddingfield was not considered obligated to provide care for Ms. Burk because “the State does not require, and the [medical] licensee does not engage, that he will practice at all or on other terms than he may choose to accept” [1]. The court distinguished doctors from innkeepers who are required to serve anyone who comes to their door.

Ricks v. Budge. Several decades later in Utah, a patient saw a Dr. Budge for an injury to his hand [2]. When he visited again several days later, the hand had become severely infected, but Dr. Budge refused to treat it because the patient had unpaid bills. Budge told the patient to go to a nearby hospital [2]. The hospital physician immediately operated, but the hand was eventually amputated [2]. In this case, the court decided that a patient-physician relationship had been established when the patient saw Dr. Budge at the first visit because it is “well settled that a physician or surgeon, upon undertaking an operation or other case, is under the duty, in the absence of an agreement limiting the service, of continuing his attention...so long as the case requires attention” [2]. A withdrawal is permitted even where the patient requires additional attention but only if the patient is given “sufficient notice...[to] procure other medical attention” [2].

Childs v. Weis. In this Texas case, the court held that Dr. Weis did not have an established relationship with Daisy Childs, 7 months pregnant, who presented to the emergency room, bleeding and with labor pains [3]. The physician had never seen or treated Daisy Childs. When called by the nurse, Dr. Weis told the patient she needed to go to her own physician in Dallas. During travel, she lost the baby [3]. The court stated that “a physician is not to be held liable for arbitrarily refusing to respond to a call of a person even urgently in need of medical...assistance provided that the relation of physician and patient does not exist” [3].

Mead v. Adler. In Oregon, an on-call neurosurgeon was consulted by an ER doctor who suspected a severe neurological disease was causing a patient’s low back pain [4]. The neurosurgeon examined the patient and recommended that she be admitted but said that surgery was not needed [4]. Four days later it was determined that the patient did require the surgery, following which she was permanently impaired [4]. The patient sued the neurosurgeon who was originally consulted for damages but he defended that he owed her no duty because a patient-physician relationship had not been established. The court held that “in the absence of an express agreement by the physician to treat a patient, a physician’s assent to a physician-patient relationship can be inferred when the physician takes an affirmative action with regard to the care of the patient” [4]. A patient-physician relationship was formed because the physician took an affirmative action in rendering an opinion on the course of the patient’s care.

General Rule

As the cases above demonstrate, states vary in how they define a patient-physician relationship. Physicians should consult with their local medical boards to determine the law for their particular state. As a general rule, physicians are under no obligation to treat a patient unless they choose to. (Exceptions are made when emergency care is needed and when refusal to treat is based on discrimination). However, a patient-physician relationship is generally formed when a physician affirmatively acts in a patient’s case by examining, diagnosing, treating, or agreeing to do so [5]. Once the physician consensually enters into a relationship with a patient in any of these ways, a legal contract is formed in which the physician owes a duty to that patient to continue to treat or properly terminate the relationship.

Special Exceptions

HMOs. In *Hand v. Tavera*, Dr. Tavera was the physician responsible for authorizing admissions when the patient, a member of the Humana HMO, went to the HMO-approved hospital and complained of a 3-day headache, the severity of which fluctuated with blood pressure [6]. The patient was sent home and suffered a stroke several hours later [6]. When Dr. Tavera was sued, he argued there was no established patient-physician relationship because he had never seen the patient [6]. The court held that a relationship did exist because the patient had essentially “paid in advance for the services of the Humana plan doctor on duty that night, who happened to be Tavera” [6]. “When the health care plan’s insured shows up at a participating hospital emergency room, and the plan’s doctor on call is consulted...there is a physician-patient relationship” [6].

On-call physicians. In *Mead*, the on-call physician formed a patient-physician relationship because he took the affirmative act of recommending a course of care [4]. In a similar case in Texas, a physician was held not to have established a patient-physician relationship when he was the on-call doctor supervising residents during an emergency caesarean section [7]. In another case, a patient-physician relationship was held not to be established until a physician sees the patient during rounds [8, 9]. In contrast, a recent Ohio Supreme Court case held that a patient-physician relationship can be established between a physician who “contracts, agrees, undertakes, or otherwise assumes the obligation to provide resident supervision at a teaching hospital and a hospital patient with whom the physician had no direct or indirect contact” [9, 10]. The issue turned on whether and to what extent the physician was expected to take an active role in the care of the patients and whether the physician was considered to be the attending doctor of the patient [9]. The issue is still a developing area in the law, with different state courts coming to different conclusions about the duty of the on-call physician. The safe course of action is for on-call physicians to consider everyone whose care they are supervising a patient.

Consultations for benefit of a third party: curbside consultations. Where a physician provides an evaluation of a patient for the benefit of a third party, or as a professional courtesy for a colleague, a patient-physician relationship is typically not established. In *Mead*, the on-call neurologist was held to have a duty that the court contrasted with “curbside consults,” in which a physician provides a professional courtesy to another physician and no duty to the patient exists [4]. Likewise, examinations conducted at the behest of a third party, such as an exam for an employer, insurance company, or court (independent medical examination) do not typically entail the establishment of a patient-physician relationship because the intent is to inform the third party, not to treat or diagnose the patient [11, 12].

Obligations to third parties. A closely related question asks to what extent physicians owe duties to third parties arising from their patient-physician relationship? In a famous case, a psychiatrist was found to have had a duty to warn a readily identifiable victim who was subsequently murdered by his patient [13]. In another case, a physician who had treated the plaintiff’s father for colorectal cancer was held to have an obligation to warn the patient’s daughter of the risk of genetic transmissibility of the illness [14]. Yet, in a Texas case, a physician was found not to have a duty to third parties, when he wrongly concluded a child patient had been sexually abused by the father, who sued. The court indicated that, in some instances, a duty might exist to third parties (here, the father), depending on the type and foreseeability of risk and the magnitude and consequences for placing that burden on a physician [15].

Cont’d on page 7

July 2012

Cont'd from page 6 - **When is a Patient-Physician Relationship Established?**

Termination and Abandonment

Where a patient-physician relationship is established, the physician has an ethical and legal duty to continue care and not to abandon the patient. A summary of court cases relating to abandonment posits that, in general, abandonment occurs when the relationship between physician and patient is terminated either (1) at an unreasonable time or (2) without affording the patient time to find a qualified replacement [16]. "Absent good cause... where the doctor knows or should know that a condition exists that requires further medical attention to prevent injurious consequences, the doctor must render attention or must see to it that some other competent person does so" [16]. A physician must notify the patient and give him or her time to seek care elsewhere. A physician who does not do so can be ethically and legally responsible for abandoning the patient.

References

- Hurley v Eddingsfield*, 156 Ind 416, 59 NE 1058 (Ind 1901).
Ricks v Budge, 91 Utah 307, 64 P2d 208 (Utah 1937).
Childs v Weis, 440 SW2d 104 (Ct Civ App Tx 1969).
Mead v Adler, 231 Or App 451, 220 P3d 118 (Or 2009).
 Bush S. Formation of the physician-patient relationship: the Oregon Court of Appeals clarifies, but questions remain. *Physician Organizations*. 2010;13(2):11-13. http://www.healthlawyers.org/Members/PracticeGroups/PO/Documents/Newsletters/Physicians_June10.pdf. Accessed March 23, 2012.
Hand v Tavera, 864 SW2d 678 (Tex App—San Antonio 4th Dist 1993).
Reynosa v Huff, 21 SW3d 510 (Tex App—San Antonio 4th Dist 2000).
Wax v Johnson, 42 SW3d 168 (Tex App—Houston 1st Dist 2001).
 Rubinsky M. Ohio Supreme Court expands the physician-patient relationship. University of Houston Law Center. <http://www.law.uh.edu/healthlaw/perspectives/MedicalProfessionals/020715Ohio.html>. Accessed March 23, 2012.
Lownsbury v Van Buren, 762 NE2d 354 (Ohio 2002).
State v Herendeen et al, 279 Ga 323, 613 SE2d 647 (Ga 2005).
 Simon RI, Shuman DW. The doctor-patient relationship. *Focus*. 2007;5:423-431.
Tarasoff v Regents of the University of California, 17 Cal 3d 425, 551 P2d 334 (Cal 1976).
Safer v Estate of Pack, 291 NJ Super 619, 677 A2d 1188 (NJ App 1996).
Byrd v WCW, 868 SW2d 767 (Tex 1994).

Section 218 Physicians, surgeons, and other healers. In: *American Jurisprudence*. 2nd ed. Vol. 61. Eagan, MN: Westlaw/Thomson Reuters; 2008.

Valarie Blake, JD, MA, is a senior research associate for the American Medical Association Council on Ethical and Judicial Affairs in Chicago. Ms. Blake completed the Cleveland Fellowship in Advanced Bioethics, received her law degree with a certificate in health law and concentrations in bioethics and global health from the University of Pittsburgh School of Law, and obtained a master's degree in bioethics from Case Western Reserve University. Her research focuses on ethical and legal issues in assisted reproductive technology and reproductive tissue transplants, as well as regulatory issues in research ethics.

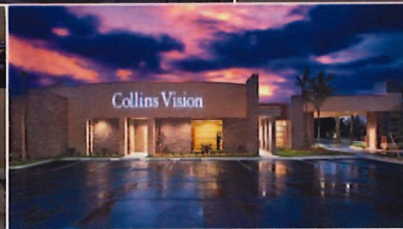
ENVISION. IMPLEMENT. DELIVER.



The facility you have always envisioned—A place where patients feel comfortable while receiving the highest standard of treatment within an efficient and state-of-the-art environment.

The experienced healthcare team of Stevens Construction provides a comprehensive and proven process resulting in a cost-effective and superior project.

Whether an interior renovation or a new free-standing facility; more than 90 Lee County physicians have trusted Stevens Construction to bring their vision to reality.



6208 Whiskey Creek Drive
 Fort Myers, FL 33919
 Telephone: (239) 936-9006
www.stevensconstructioninc.com

Alliance News

Mariquita Anderson, LCMS Alliance President

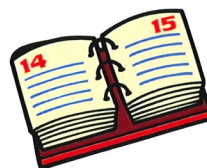
LCMS Alliance Spring Fling

Dr. Brian & Sara Krivisky provided a lovely Spring Fling celebration in their beautiful home on the evening of April 14, 2012. Zack Dobbins provided the entertainment for the evening. *Special* thanks to the following sponsors for their support. Radiology Regional Center, Doctor's Choice Home Care, Inc. Fusion HealthCare and Norman Love Confections. We would also like to thank the Spring Fling committee: Sara Krivisky, Betty Rubenstein and Mariquita Anderson. Also, John Miksa, Jerry Higby, Zack Dobbins, Andi and Bill Horowitz, Yaz Floria.

If you are interested in hosting next year's Spring Fling, please contact Mariquita Anderson at lcmsa@lcmsalliance.org.

Congratulation to the new 2012-2013 Alliance Officers.

President: Mariquita Anderson
Recording Secretary: Lisa South
Corresponding Secretary, Cheri O'Mailia



**LCMS ALLIANCE
SAVE THE DATE
OCTOBER 6TH
POTLUCK IN PARADISE
AT THE HOME OF
BRIAN & MAUREEN SCHWARTZ**



CPR COURIER

*Specializing in Medical,
Professional & Inter Office Correspondence*

(239) 277-1014

www.cprcourier.com
info@cprcourier.com

- Over 20 years industry experience
- Serving all of South Florida
- Live operator & service available 24/7
- Rush, same day & next day service
- HIPPA & OSHA Trained & Compliant
- Uniformed, professional & trustworthy couriers
- Affordable rate with no hidden fees
- Licensed, Bonded & Insured
- Discounted contract rate for scheduled recurring service & routes

We welcome the opportunity to
serve you and exceed your
expectations!



Scan our QR Code to save us in your smart phone contacts

Thomas P. Clark
Board Certified in
Health and Tax Law

Robert S. Forman
LL.M. Taxation
Concentrates in
401K and ERISA

Erin E. Houck-Toll
Board Certified in
Tax Law

Bruce M. Stanley Sr.
Board Certified
Civil Trial Lawyer

Guy E. Whitesman
Board Certified in
Tax Law

Legal Care for Health Care Professionals

- Health Care Law
- Retirement Plans and ERISA
- Mergers and acquisitions
- Administrative hearings and licensing
- Medical malpractice defense



henlaw.com • 239.344.1100
Fort Myers • Bonita Springs • Sanibel



Henderson|Franklin
ATTORNEYS AT LAW

© 2012 Henderson, Franklin, Starnes & Holt, P.A.

McCourt Scholarship Fund

The McCourt Memorial Scholarship Fund was set up by the Medical Society to remember Dr. Jerome McCourt and his family who perished in an airplane crash. The Fund sponsors children to the Florida Camp for Children and Youth with Diabetes. This is such a positive experience for building these lives that we would like to reach all children with diabetes. The scholarships are for new applicants or for children who have attended prior camps. The McCourt Memorial Scholarship Fund was established in 1983 and has to-date sent 104 children to the camp at a cost of \$48,011.85.

We were able to meet expenses this year and send five children to the Florida Camp for Children and Youths with Diabetes. They are attending various camps throughout the summer. Dr. Cayce Jehaimi and Dr. John W. Bartlett have recommended six applicants this year. The Lee County Medical Society would like to thank them and the physicians that have contributed to the McCourt Scholarship Fund. A special thank you to one physician who contributed over \$500 to help send children to camp to educate them on their diabetes.



**2012
FMA Annual Meeting
July 27-29
Boca Raton Resorts
Boca Raton, FL**

**FOR RENT
CAPE CORAL MEDICAL OFFICES
837 SQ FT & 1562 SQ FT,
CAN COMBINE INTO ONE OFFICE
NEARLY NEW FINISHED UNITS
LOCATED IN A BUSY MEDICAL CENTER
NEAR HOSPITAL, \$12/FT PLUS CAM
239-972-8900 OR
CELL 239-851-9367**

Delivering Exquisite Details Every Day...



Be a Part of the Best Private Golf Community Experience in Southwest Florida



Fiddlesticks
COUNTRY CLUB

15391 Canongate Drive, Fort Myers, FL 33912
www.fiddlesticksc.com

**For the First Time, Fiddlesticks is Offering a
Limited Amount of Non-Resident Memberships!**

Full Use of All the Amenities
2 Championship Courses, Only 600 Members
Member Owned and Debt-Free

Call Lisa Rizzio 239-210-2775

SUPER GROUP DOCTORS BEWARE OF DEPARTURE PROVISIONS

By: Jeffrey L. Cohen
The Florida Healthcare Law Firm



Super groups are in vogue as physicians do their best to reduce costs and enhance revenues. A “super group” is essentially a collection of previously separate competitors who have joined a single legal entity in order to achieve certain advantages. Those advantages tend to be (1) reducing overhead expense associated with economies of scale. Buying insurance for a group of 100 doctors should be far less expensive per doctor than a group of three doctors; (2) gaining leverage in managed care contracting. 20 groups of five physicians each cannot contract with a payer with “one voice” due to the antitrust restrictions, but a single group of 100 doctors can; and (3) finding new revenue sources. Small groups and solo practices cannot afford revenue producing services like surgery centers, imaging services and such. When practices combine, they have a greater patient base, which makes the development of new revenue sources feasible.

Physicians join super groups with terrific promise and hope. They are clearly a good idea, especially if they have solid operations. That said, physicians who rush to form them rarely consider the risks associated with a physician departing the group. They need to!

When a doctor joins a super group, she stops billing through her old practice (the “P.A.”) and starts billing through a new group (the “LLC”). The LLC has a tax ID number and a Medicare group number. And the LLC enters into lots of managed care payer agreements. Simply put, the doctor puts all of her eggs in the LLC basket. So what’s the risk?

When physicians depart super groups, they have to confront difficult facts, like

- It will take months to get a new Medicare provider number. If they haven’t billed through their “old entity” for a while, that number is gone. And getting a new number for the departing physician takes time, during which revenues associated with Medicare patients are lost (until the number is obtained);
- It takes even longer to get on insurance plans. If the LLC is contracted (they usually are), how long will it take to get the P.A. fired back up? It can take as long as six months (and sometimes even more)? That means the departed doctor is out of network with all the plans! This exposes her patients to higher costs and may affect referral patterns. This alone can be crippling to a physician who has left the super group.
- Leaving can also mean ending access to patient scheduling and electronic medical records. Many super groups do not ensure access to patient scheduling or billing to enable a departing physician to get back on their feet; and this can be devastating.
- Non-competes can play a big role in how a departing physician gets back on her feet. Ideally she will know that being solo is not as good as being part of a larger practice. But what if the super group imposes a restriction on the departing physician that prevents her from being part of another group? This is common and often very harmful, since some physicians who depart super groups have no effective options but to join other groups.

Super groups exist to benefit physicians. It makes no sense that they would be used to harm them, which is precisely what can happen (and sometimes does happen) if physicians do not pay good attention to the “back end” as well as they do to the “front.” That means things like—

- Making sure that, wherever possible, the departing physician is afforded enough time to get back on her feet professionally. She will need time to get a new practice formed, to get a new Medicare provider number and to get back on insurance plans;
- Ensuring the departing physician has adequate access to medical and scheduling records;
- Carefully considering whether or not non-competes make any sense. Some may say that it is important to protect the new practice (like the old one), but these are different sorts of practices. They are not built from the ground up. They are built because successful competitors who have been in business for years decided essentially to “loan” their practices to the super group in order to obtain certain unique advantages.

Super group arrangements continue to grow. Some of them even develop into fully integrated and sophisticated businesses. Physicians who join them have to consider all “angles,” not just how good it will be or can be when they join.

With over 25 years of healthcare law experience following his experience as legal counsel for the Florida Medical Association, Mr. Cohen is board certified by The Florida Bar as a specialist in healthcare law. Mr. Cohen’s practice immerses him in regulatory, contract, corporate, compliance and employment related matters, including representing many physicians, medical staffs and physician groups. As Founder of The Florida Healthcare Law Firm, he has distinguished himself and his firm for providing legal services with the right pricing, responsiveness and ethics. Online www.floridahealthcarelawfirm.com toll free at 888-455-7702.

Medical Society Monthly News

FMA APPLAUDS APPOINTMENT OF JOHN H. ARMSTRONG, M.D., AS STATE SURGEON GENERAL

Tallahassee—Florida Medical Association (FMA) President Miguel Machado, M.D., released the following statement today regarding Governor Scott's appointment of John H. Armstrong, M.D., for State Surgeon General:

"The Florida Medical Association was pleased to recommend Dr. Armstrong as a candidate for State Surgeon General of Florida, and we are proud that Governor Scott has appointed him to this critical position. "A highly respected member of the FMA, Dr. Armstrong has a distinguished military career and many years of medical practice as a surgeon with unique training and leadership positions in trauma care and emergency management. "Dr. Armstrong's experience in disaster response, emergency preparedness, and public health safety is nationally recognized and widely respected. Florida is extremely fortunate to have such a well-equipped physician leading the Department of Health and serving as our State Surgeon General."

GOVERNOR RICK SCOTT APPOINTS DR. RICHARD SHUGARMAN TO BOARD OF MEDICINE

Tallahassee, Fla. – Today, Governor Rick Scott announced the appointment of Dr. Richard G. Shugarman to the Board of Medicine.

Dr. Shugarman, 72, of West Palm Beach, is an ophthalmologist and has owned RGS Medical Services P.A. since 2006. Previously, he practiced with Palm Beach Eye Center from 2005 to 2006 and owned Palm Beach Eye Associates from 1971 to 2005. His extensive community service includes being a voluntary professor of ophthalmology with the Bascom Palmer Eye Institute at the University of Miami since 1972. He also served on the Fourth District Court of Appeal Judicial Nominating Commission from 1995 to 1999. Dr. Shugarman received a bachelor's degree from Johns Hopkins University and a medical degree from the University of Maryland. He served in the United States Army Reserve from 1965 to 1972, including active duty from 1970 to 1971. He is appointed for a term beginning June 8, 2012, and ending October 31, 2015. The appointment is subject to confirmation by the Florida Senate.

MEMORIAM: SHIRLEY S. BUTLER—MAY 21, 2012

Shirley S. Butler of Fort Myers passed away peacefully at home on May 21, 2012, at the age of 85. She was preceded by her husband, John T. Butler, MD. She took a job as a nurse in Honduras, where she met the love of her life, John T. Butler, MD. Shirley was a nurse and a successful real estate agent for many years. To honor Shirley, donations may be made to Hope Hospice of Fort Myers.

MEMORIAM: BONNIE B. GUTTERY- JUNE 7, 2012

Bonnie B. Guttery of Fort Myers, FL went to be with her Lord on June 7, 2012. She is survived by her husband Ed Guttery, MD, three children R. Todd & Scott Guttery and Julie Younts. She and Dr. Guttery moved to Ft. Myers in 1974 where he practiced Pediatrics for 37 years. In lieu of flowers, donations may be made either to Hope Hospice of Lee County, FL or CaringBridge.

ANNUAL MEDICAL SERVICE AWARDS NOMINATION FORMS HAVE ARRIVED!

Nominate someone who deserves to be recognized for their outstanding contributions to the medical field. Time to fill out your nominations and return them to our office. We will help you obtain the Curriculum Vitae. For assistance or for more information call 239-936-1645. You may download a nomination form by visiting our website at www.lcmsfl.org.

LCMS FRIENDS IN MEDICINE — INTRODUCING OUR NEW VENDOR PROGRAM

This program is open to businesses that can offer member only benefits and discounts. The benefits are mutual to our members and our partners. We encourage our members to patronize these businesses and also let the members know of the benefits and discounts that are available for them and their practices through the LCMS partnership of Friends in Medicine.

LCMS ADDRESS CHANGE: UPDATE YOUR RECORDS ACCORDINGLY

LCMS no longer receives mail via the P.O. Box. Please update your records to reflect our physical mailing address, Lee County Medical Society, 13770 Plantation Road, Ste 1, Fort Myers, FL 33912.

THANK YOU TO MARKHAM NORTON MOSTELLER WRIGHT & COMPANY, P.A. & ALL TRUST INSURANCE

The LCMS would like to thank Markham Norton Mosteller Wright & Company, PA, & All Trust Insurance for the sponsorship of the May 17th, 2012 General Membership Meeting. LCMS members were treated to a wonderful dinner and guest speaker: Jonathan Fleece Esq. Co-author of "The New Health Age". Thank you for the interesting and informative evening.

AMA INAUGURATES DENVER PSYCHIATRIST JEREMY LAZARUS AS PRESIDENT

Chicago - June 19, 2012 - Jeremy A. Lazarus, M.D., A Denver psychiatrist in private practice, was inaugurated as the 167th president of the American Medical Association (AMA), the nation's largest and most influential physician organization.

Dr. Lazarus is a clinical professor of psychiatry at the University of Colorado Denver School of Medicine and a voluntary professor of psychiatry at the University of Miami Leonard M. Miller School. Dr. Lazarus has a distinguished record of service and leadership in organized medicine. He is a former president of the Colorado Medical Society, the Colorado Psychiatric Society and the Arapahoe County Medical Society. He has also served as speaker of the American Psychiatric Association (APA) assembly. First elected to the AMA Board of Trustees in 2003,

Dr. Lazarus served as speaker and vice-speaker of the House of Delegates, the AMA's primary policy-making body. He has chaired several AMA task forces on a wide range of topics, including health system reform.

13770 Plantation Road, Ste 1
Fort Myers, FL 33912

CHANGE SERVICE REQUESTED

Together We Are Stronger

We fight frivolous claims. We smash shady litigants. We over-prepare, and our lawyers do, too. **We defend your good name.** We face every claim like it's the heavyweight championship. We don't give up. We are not just your insurer. We are your legal defense army. **We are The Doctors Company.**

The Doctors Company built its reputation on the aggressive defense of our member physicians' good names and livelihoods. And we do it well: Over 82 percent of all malpractice cases against our members are won without a settlement or trial, and we win 87 percent of the cases that do go to court. So what do you get for your money? More than a fighting chance, for starters. The Doctors Company is exclusively endorsed by the Lee County Medical Society. To learn more about our benefits for LCMS members, call our Jacksonville office at (800) 741-3742 or visit www.thedoctors.com/fpic.



www.thedoctors.com