



THE FORUM

March/April 2013 ♦ Volume 12, No. 2 THE OFFICIAL MAGAZINE OF THE COLLIER COUNTY MEDICAL SOCIETY



Living *Now*

ALSO INSIDE:

A NEW APPROACH TO PREVENTABLE INJURIES / UNDERSTANDING SPLIT-FEE OPINIONS

MEMBER NEWS

Irina Gershin-Stevens, D.O. has a new Ft. Myers address: 15901 Bass Road, Ste 102, Ft. Myers, FL 33908, The Naples office remains the same

Janice N. Young, M.D., FACOG moved her practice, Woman to Woman GYN of Naples, PA, to the Royal Palm Medical Building at 1660 Medical Blvd., Suite #100, Naples, Fl 34110

Shardul Nanavati, M.D., Advanced Gastroenterology of Naples, PA and **Prathima Moorthy, M.D.**, Pain Management Center of Naples, PA announce the opening of their new location in Bonita Springs, 9410 Fountain Medical Court #201, Bonita Springs, FL 34135 ph: 593-0064. They will continue to provide care to patients at their Naples office

NEW PRACTICE

Rebecca Smith, M.D. has joined Avow Palliative Medicine, 1205 Whippoorwill Lane, Naples, FL 34105, ph: 304-1600 fax: 280-5998

Julie Southmayd, M.D. has joined the NCH Healthcare Group, 2450 Goodlette Road N., Ste. 101, Naples, FL 34103, ph: 643-8750, fax: 643-1489

Janet Polito, D.O. has a new address: Alliance Care South, 9240 Bonita Beach Road, Bonita Springs, FL 34135

Roland Werres, M.D. new office locations: 400 8th Street N., Naples, FL 34102 ph: 263-6037 fax: 263-6231 and 977 Collier Blvd., Marco Island, FL 34145 ph: 394-4475 fax: 394-4477

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Views and opinions expressed in *The Forum* are those of the authors and are not necessarily those of the Collier County Medical Society's Board of Directors, staff or advertisers. Copy deadline for editorial and advertising submission is the 15th of the month preceding publication. The editorial staff of *The Forum* reserves the right to edit or reject any submission.



CIRCLE OF FRIENDS NEWS

Attorney **Linda Minck**, formerly with Porter Wright Morris & Arthur, has opened her own private practice, **Linda R. Minck, PL** at 5633 Strand Boulevard, Suite 314, Naples, FL 34110, ph: 260-5827, fax: 260-5829
www.Minck-Law.com, linda@Minck-Law.com

CALENDAR OF EVENTS

Register for these events at (239) 435-7727 or info@ccmsonline.org

THURSDAY, MARCH 21ST
Physician Asset Protection Planning Seminar

5:30pm-7:00pm

Wine tasting and hors d'oeuvres

Presented by:

Meridian Financial Group

Waldorf Astoria

475 Seagate Drive

Naples FL 34103

SATURDAY, MAY 4TH

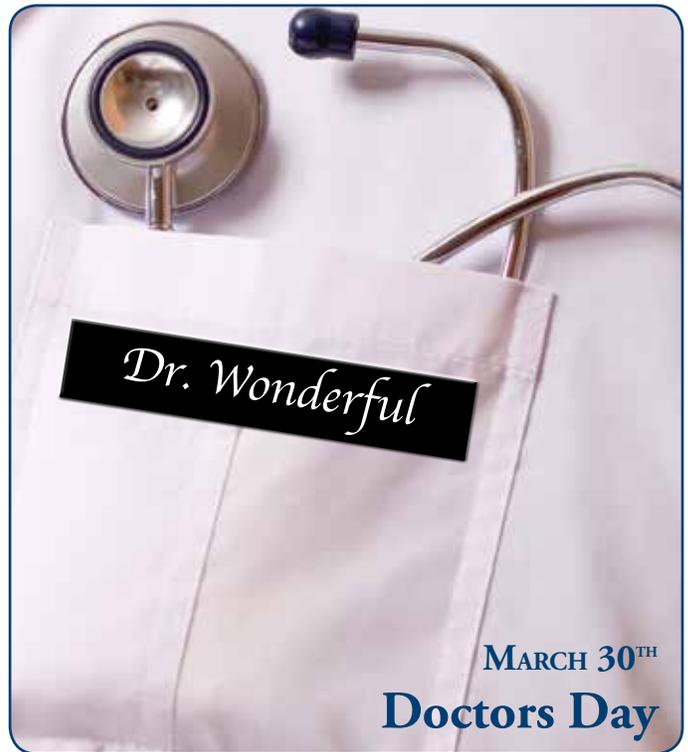
6:30pm-9:00pm

Annual Meeting & Installation of Officers
and a Celebration of PLAN's 10th Anniversary

Grey Oaks Country Club

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MARCH 30TH

Doctors Day

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Naples Police Department
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 Mon.-Fri., 8am-5pm

Naples Recycling Center
 (no controlled substances)
 2640 Enterprise Avenue
 Tues.-Sat., 8:30am-4:30pm

Collier County Medical Examiner
 3838 Domestic Avenue
 Mon.-Fri., 9am-4pm

MARCO ISLAND

Marco Island Police
 Drop-Off Box
 51 Bald Eagle Drive
 Mon.-Fri., 8am-5pm

Marco Island
 Recycling Center
 (no controlled substances)
 990 Chalmers Drive
 Tues.-Sat., 8:30am-4:30pm

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 102 Copeland Avenue
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A MESSAGE FROM THE CCMS NOMINATING COMMITTEE

The nominating committee is pleased to present to the membership the following slate of officers for 2013-2014:

Dr. Richard Pagliara	President
Dr. Mitchell Zeitler	Vice President
Dr. Eric Hochman	Treasurer
Dr. Rafael Haciski	Secretary
Dr. Catherine Kowal	Officer/Member at Large

The Slate of Officers will be presented to the membership, for a vote, at the annual meeting on May 4, 2013. Nominations from the floor are accepted from a member in good standing and with the consent of the nominee.

I would like to thank the 2013 nominating committee for their participation.

Sincerely,

Joseph Gauta

Nominating Committee:

Dr. Joseph Gauta, chair, Dr. Mitchell Zeitler, Dr. Richard Pagliara, Dr. James Talano, Dr. Brett Stanaland

A MESSAGE FROM THE PRESIDENT

LEAVING A LEGACY

by Rolando Rivera, M.D., President, Collier County Medical Society, Chair, CCMS Foundation



Last May I had great pleasure in being installed as the 54th President of CCMS. I knew the year would be a challenge: juggling my professional career, maintaining a happy family life, playing a few rounds of golf while carrying out my duties as President. Not an easy task keeping everyone happy. But what could I do that would keep CCMS engaged with its members and maintain the bridges that we have built over the last 56 years with the community.



The solution was to pursue an idea that I had been thinking about for some time that would be manageable and also leave a legacy for myself and CCMS. At the first Board meeting in May 2012 I found I had the support of all the officers in pursuing the creation of a Foundation, that was the easy part but now for the hard work.

With the help of our Executive Director, Margaret Eadington, we plowed through the 1023 application for the creation of a 501c3 non-profit, tax exempt organization.

On November 7, 2012, we received confirmation of our corporate registration with the state, we were in business. Meetings were held to pass bylaws, organizational details, etc. in preparation for the 1023 application. By January we reached a point where we were ready to submit our paper work. I would like to thank attorney Lorna Scharlacken of Harter, Secrest, and Emery for compiling the application and her invaluable help and also to Mollie Page for her design and business writing skills. I would also like to thank Dr. Karen Henrichsen who stepped into the role of Treasurer and Secretary.

So now the hard work begins. We have two events scheduled to mark our inaugural year: a dinner for Foundation donors and a golf tournament. Our goal is to initially raise funds from our CCMS members by asking you to **commit to becoming a “Founding member of the Foundation”, “A friend of the Foundation” or a “Supporter of the Foundation”**. Those who step up to one of these categories will be recognized at our inaugural dinner event in June.

We hope that the generosity of our CCMS medical family will allow the Foundation to reach out to future doctors and allied health professionals by funding scholarships in the community, supporting programs that provide the safety net for low income uninsured patients in our county and programs that promote community health education.

With your support, The Foundation will become the charitable arm of CCMS. We look forward to your participation. It has been an honor to serve the members of CCMS during the past year and I offer my best wishes to the Board for 2013-2014.



MISSION:

To provide support and leadership to programs that address access to healthcare, promote health education and serve the community's public health needs.

Foundation Board

Dr. Rolando Rivera, Chair
Dr. Karen Henrichsen, Treasurer/Secretary
Dr. Reisha Brown
Dr. Peter Boyd
Dr. Richard Pagliara
Jeremy Darstek
Bob DiPesa
Margaret Eadington

www.ccmsfoundation.org

NEW MEMBERS



BRIAN T. CANNON, M.D.
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Naples, FL 34119
431-6464 Fax: 594-5637



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Lado Healing Institute
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IPC The Hospitalist Company
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Board Certified: Internal Medicine



LAURA M. ISLEY, M.D.
Radiology Regional Center
700 Goodlette Road N.
Naples, FL 34102
430-1400 Fax: 430-1401
Board Certified: Diagnostic Radiology



CCMS Circle of Friends

CCMS Circle of Friends program is open to businesses that can offer member only benefits and discounts. We encourage our members to patronize these businesses that have been selected by CCMS for their outstanding services and products.



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PHYSICIAN LEADERSHIP IS KEY TO NATIONAL QUALITY COLLABORATIVE

by James Palermo, MD, MSMM, FACS, Physician Consultant, Florida Hospital Association, Hospital Engagement Network

In April of last year, the Department of Health and Human Services (HHS) launched the National Partnership for Patients (PfP) initiative to make healthcare safer and less costly by targeting and reducing the thousands of preventable injuries and complications that occur from healthcare acquired conditions (HAC).

The PfP, under the direction of the U.S. Center for Medicare and Medicaid (CMS) Innovation, then launched a nationwide public-private collaboration called the Hospital Engagement Network (HEN), which has brought together leaders of major hospitals, employers, physicians, nurses and patient advocates along with state and federal governments in a shared effort to identify and create innovative solutions designed to reduce patient harm and improve care coordination.

The PfP established two specific goals for the HENs:

- Reduce hospital acquired conditions by 40%, and
- Reduce preventable hospital readmissions by 20% by 2013

Having been in the clinical trenches and involved in multiple “quality initiatives” over the past several years, you may have a tendency to cast a jaundiced eye toward what may at first-blush seem to be another “administrative program du jour.”

However, the HEN approach to reducing HACs and readmissions is not just a database of process measures and outcomes, but is structured as a true national “collaborative.” The focus is on aligning and accelerating the work by affording participating clinical improvement teams direct interaction with their network counterparts through national, regional and state conferences, as well as online communication where content experts, many of whom are physicians, share successful approaches to system improvement, leadership commitment, physician and staff engagement, teamwork development and culture transformation.

In December of 2011 CMS awarded two-year HEN contracts to 26 national, regional, state, and hospital system organizations. There are several organizations under contract as HENs in Florida, including both NCH Downtown and NCH North Naples Hospitals. The Florida Hospital Association HEN has by far the largest number of participating hospitals in the state with 77.

Since May of 2012, participating HEN hospitals have been engaged in a wide array of initiatives and activities to spread established, effective interventions and rapidly improve patient safety in hospitals. They are focused on more efficient and effective care in 10 core areas that include: adverse drug events; catheter-associated urinary tract infections (UTI); central line-associated blood stream infections; injuries from falls; adverse obstetrical events; pressure ulcers; surgical site infections; ventilator-associated pneumonia; venous thromboembolism; and preventable hospital readmissions.

As a front-line physician you may already be familiar with the HEN initiatives in your hospital and be actively involved in the evidence-based clinical strategies unique to your domain that contribute to preventing HACs. In fact, it is clear that front-line physician involvement is imperative to identify system defects and establish solutions that improve quality and mitigate safety risks.



There are, of course, different clinical focal points, such as hand hygiene, which have an impact on several HEN core areas. Physician ownership of other practices such as strict evidence-based inclusion criteria and consistent full-barrier precautions when placing a central line, and meticulous medication reconciliation also have a profound impact on reducing and preventing HACs.

However, no matter which HEN core area or other clinical domain you may be focused on, to ensure the highest level of excellence and productivity, your clinical team requires your knowledge and understanding of the initiatives, your awareness of the aims and data, and a clear expectation set by you that all members of the team take ownership of the clinical process and its outcome.

In fact, it is the example you set in establishing a high performing team culture that will motivate, inspire and energize, and have the greatest impact on clinical and operational outcomes and the reduction of HACs.

The Health Research and Educational Trust (HRET), the educational arm of the American Hospital Association, has partnered with the Florida Hospital Association in administering their HEN. Information on upcoming HRET-HEN events can be found at www.hret-hen.org, and presentations related to all 10 topics from previous events are available at www.hret-hen.org/resources.

The FHA HEN is also in the progress of developing online on-demand physician educational/training programs focused on evidence-based practice and your role as an effective team leader in the HEN improvement initiatives. These programs are free to all staff at FHA HEN hospitals, and upon completion, CMEs will be available.

For more information related to the FHA HEN, please contact Kim Streit, FHA VP of Healthcare Research and Information, at 407.841.6230 or kims@fha.org.





February 15th Women Physicians Lunch at Seasons 52

- 1) *Dr. Caroline Cederquist, Dr. Lindita Hobdari, and Dr. Nena Korunda*
- 2) *Dr. Tami Kuhlman and Dr. Laura Isley*
- 3) *Dr. Marilyn Varcoe and Dr. Rebecca Smith*
- 4) *Dr. Karen Henrichsen and Dr. Holly Miller with her new baby*
- 5) *Dr. Rebecca Kosloff and Dr. Joanna Chon*

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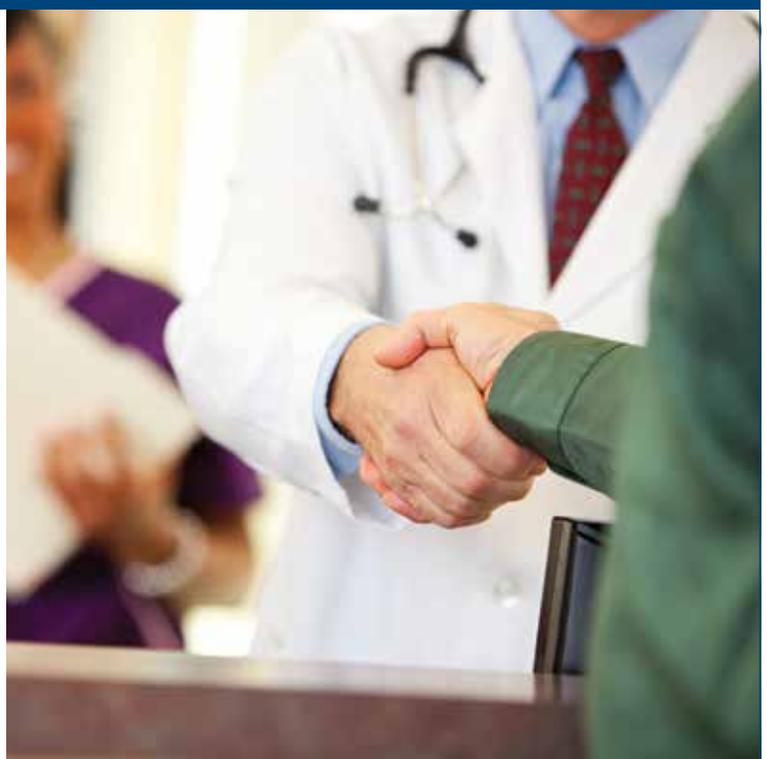
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For Better and Forever

by Mollie Page

He was a young medical student at Case Western Medical School who concocted a scheme to meet a girl. She was studying at neighboring Ohio College of Podiatric Medicine and reluctantly accepted a date with an over-confident boy.

“I tricked her into letting me watch an Ohio State basketball game in her dorm room,” said Dr. Alan Galbut, a Board Certified internist who grew up in Miami and has worked at Naples Medical Center for the last 27 years on how he met his wife, Dr. Debbie Heil. “I didn’t know anything about basketball, I just had to meet this girl.”

What happened next differs depending on who you ask: she says she felt sorry for him when his car was stolen after their first date and agreed to drive him around; and he says the stolen car wasn’t the reason they kept dating, it was his charm. Either way, 35 years later they both agree it was fate.

Yet fate has a funny way of testing a marriage. Ten years after they met, both doctors had thriving medical careers and a beautiful three-year old daughter. Then Debbie lost her sight while performing surgery one day. It took a few years until doctors would eventually diagnose her with Multiple Sclerosis.

“It changed everything,” says Debbie, who had to retire from practice and admits there were times when she was certain her marriage to Alan was near the end.

But fate didn’t damage this couple’s devotion. Instead of running scared, Alan purchased the property next to their home so Debbie could host social events for residents and their families living with MS and provide educational seminars to local medical students.

Since 2000, Debbie and her friend Lisa Luthringer, who also lives with MS, have provided over 2,000 individuals with support and resources. In 2007, the duo started the Heil Luthringer Foundation which focuses on education and support.

More recently, the Foundation has been giving out annual scholarships to children of parents living with MS.



Alan, who likes to spend his weekends on the greens, has his own set of challenges with healthcare.

When asked what he thinks has changed most since he began practicing medicine at Naples Medical Center 27 years ago, Alan says, “the amount of time I spend on patient education.”

Alan goes on to explain: “On one hand, people are living longer because of medical advancements which is good, but this is also creating a real challenge for doctors like myself whose patient demographic is now much older. What this means is that we must spend more time educating patients, who can be in their 90s, on their treatment plan because they may have up to 10 medical conditions. Couple this with the fact that as they age patients begin to experience dementia and our mission gets even more difficult.”

Alan says the advent of hospitalists is also a change that demands additional work from independent physicians as it’s creating a different dynamic for the physician community and all patients.

When asked what hasn’t changed since he began practicing medicine, Alan says, “my office chair. It’s one of the only pieces of advice my mother gave me when I started my career. She said ‘Get a good chair,’ and I did and have never regretted it.”



Debbie dedicates most of her time to clients of the Heil Luthringer Foundation

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Mammography

Doctors recommend that all women over 40 have an annual mammogram as a preventative measure.

Osteoporosis Screening

Screening for osteoporosis is much easier than trying to reverse bone loss once it has occurred.

PET/CT

Two scanners act as one medical imaging system creating images of sections called planes, unlike regular x-rays in which bone can block the view.

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9-5-2-1-0 Let's Go!

A Tool to Help Your Patients

by Deb Millsap, M.Ed., RD., LD/N, Director of Nutrition & Health Educations,
Collier County Health Department

Motivating patients to eat better, exercise more and generally make healthier lifestyle choices, can be exasperating! In today's healthcare practice, time with each patient is extremely limited; hence whatever education practitioners can provide must be concise, memorable and practical.

In an attempt to help, partners; including physicians, dietitians, nurses and fitness experts; in the **Safe & Healthy Children's Coalition of Collier County** are trying to simplify some sound recommendations that you can use in guiding your patients and their families toward a healthy lifestyle. The Coalition recommends "9-5-2-1-0, Let's Go!" To learn what this tool means, see below:

9 = Get 7-9 hours of sleep each day.

5 = Eat this many servings of fruits and vegetables daily.

2 = Limit "screen" (television, internet, video games) time to 2 hours or less daily.

1 = Get at least 1 hour of physical activity each day.

0 = Eliminate sugary beverages (avoid soda, juice, energy drinks, etc.) and tobacco!

Let's Go!

Patients can be encouraged to post this message on their refrigerator, near televisions and computers and wherever else it will be seen and serve as a frequent reminder! Challenge parents and grandparents to set goals with their children/ grandchildren and participate with them. Ask them to lead by example. With the obesity and inactivity epidemics propagating younger generations who are at significantly greater risk of chronic disease beginning in their pre-puberty and adolescent years, this is a problem that requires all of us to work together.

During the month of March, National Nutrition Month, we are reaching out to healthcare practitioners, schools, daycare centers, faith-based organizations, communities, businesses and employees, as well as the local media, to help spread this important public health message. We are asking for your help in working this simple message into your practice, in any way possible. Although, we are launching the message in March, we hope as the months pass, you will continue to reinforce "9-5-2-1-0, Let's Go!" with your patients.

Research confirms accountability often aids patients in successfully adopting healthier habits.

Patients can log on to www.safehealthychildren.org and click on the 9-5-2-1-0 button where they will learn more details about 95210, as well as be able to track their progress toward meeting the recommendations. Families, co-workers and groups of friends can plan a way (i.e. movie night, a trip to the beach or zoo) to reward themselves when they all practice "9-5-2-1-0, Let's Go" for a month, or more. They can make it a friendly household, workplace, civic group, bridge club, or golfing or tennis buddies, etc., competition and cheer each other on to success! We are asking them to spread the message to friends, neighbors and co-workers and challenge everyone they know to get involved. We all win with "9-5-2-1-0, Let's Go"! What is the prize? Feeling more energetic, alive and good about ourselves and knowing we are guiding our children and grandchildren to become healthy, productive adults! What are we waiting for?... "Let's Go"!

If you would like informational flyers or posters for your office, you can go to www.safehealthychildren.org and print them. Pre-printed options are available by emailing info@safehealthychildren.org. The flyers and posters will all have a QR code which practitioners and patients can scan with their smart phones to learn helpful hints for success and to track their progress.



Dr. Cesar DeLeon with Dr. Rafael Haciski at the Feb. 28th First Citizens Bank networking social at Bond Restaurant and Lounge.



Dr. Eric Hochman with Margaret Eadington and Dr. Richard Pagliara enjoy the casual atmosphere at Bond Restaurant and Lounge.



Dr. Daniel and Angela Stingl at Bond Restaurant and Lounge.

We want to thank our event sponsors & physician member presenters for their help!

Take Charge of your **Health**
 Saturday
 March 9, 2013



- | | |
|---------------------------|------------------------|
| Kurtis Biggs, D.O. | Rafael Haciski, M.D. |
| Caroline Cederquist, M.D. | Catherine Kowal, M.D. |
| Joanna Chon, M.D. | Gerald Kumin, M.D. |
| Chaundre Cross, M.D. | Andrew Lipman, M.D. |
| Daniel Deutschman, M.D. | Prathima Moorthy, M.D. |
| Samantha Fisher, M.D. | Margaret Taha, M.D. |
| Michael Gloth, M.D. | James Talano, M.D. |
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Hodges University Adult-Centered Higher Education

By Dr. Carlene Harrison, Dean, School of Allied Health

Hodges University is an independent, nonprofit, co-educational university with campuses in Naples and Ft. Myers. It is accredited by the Southern Association of Colleges and Schools (SACS). As a teaching institution we emphasize the practical application and advancement of knowledge in career oriented programs.

The School of Allied Health has four associate level degrees and two bachelor's level programs. Our primary focus is on the needs of the adult learner. Most of our courses are offered in the evening, as well as during the day. Several programs have both in class and online offerings.

ASSOCIATE DEGREE PROGRAMS

Health Information Management is an associate degree program that prepares students to support the information needs of the healthcare industry. HIM professionals play a critical role in maintaining, collecting, and analyzing the data that doctors, nurses and other healthcare providers rely on to deliver quality healthcare. Graduates of our HIM Program are eligible to take the AHIMA national qualifying examination for certification as a Registered Health Information Technician (RHIT). Our HIM program is accredited by the Commission on Accreditation for Health Informatics and Information Management Education (CAHIIM).



Medical Assisting is one of the fastest growing careers in healthcare. In as little as twenty months students can acquire the skills necessary to work in the physician office. Graduates are eligible to take the Certified Medical Assistant (CMA-AAMA) exam offered by the American Association of Medical Assistants. Our AMA program is accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP).

The primary objective of the Associate in Science in Health Administration degree is to prepare students for entry level business positions in healthcare settings and to provide the students with a firm foundation for the Bachelor of Science in Health Administration Program. The program emphasizes

fundamental knowledge of the health sciences along with the administrative knowledge to begin their administrative careers in healthcare. This course of study is offered in both the traditional and online delivery format.

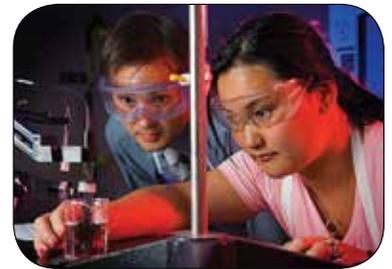
The Associate in Science in Physical Therapist Assistant degree is designed to provide students with entry-level skills and knowledge to work under the supervision of a licensed physical therapist as a PTA in the rehabilitation of patients with musculoskeletal and/or neuromuscular deficits, disease or disorders. This new program started in January 2013 and has been granted Candidate for Accreditation status by the Commission on Accreditation in Physical Therapy Education of the American Physical Therapy Association.

BACHELOR'S DEGREES

The Health Studies Program is designed to prepare students for entry-level positions in the health professions or to matriculate into more advanced clinical programs. The basic science, liberal arts, and general health studies requirements provide the student with a strong foundation to continue advanced studies that can lead to becoming an allied healthcare provider. Hodges University currently has an articulation agreement with Nova Southeastern University (NSU) for potential consideration in NSU's bachelor in nursing program.

The purpose of the Bachelor of Science in Health Administration is to provide interested students a quality undergraduate program in health management through an innovative curriculum.

The program strives to offer an outstanding experience for adult learners to engage in active learning to enhance their knowledge of the business of healthcare in today's society. Graduates of the program will be prepared to fulfill management and leadership roles and responsibilities in a variety of healthcare fields. This program is offered in the online format as well as an accelerated format in the classroom.



For more information, contact Admissions at 239-513-1122 or call Dean Harrison at 239-598-6179, or by email charrison@hodges.edu.



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Split-Fee Soup: A Recipe for Disaster

By David W. Hirshfeld, Esq., The Florida Healthcare Law Firm

When people ask me what I do, I used to say “I’m a transactional health care attorney. I represent health care practitioners in their business deals. I don’t do malpractice.” That response does little to wipe the blank stare off my questioner’s face, and even I have to stifle the urge to yawn. My new and improved response is that “I spend a lot of time advising health care practitioners on how they can share fees with people who refer them patients.” Now, I get invited to all sorts of cocktail parties!

Practitioners split fees with one another for a variety of reasons; and they very often do not realize that a particular arrangement involves a split-fee arrangement, or that split-fee arrangements are often illegal in Florida. The purpose of this article is to provide practitioners with a general overview of the concepts underlying the prohibition against split-fee arrangements in Florida, in the context of three common business arrangements.

EVERYONE HAS AN OPINION

Split-fee arrangements become problematic when the split is such that it constitutes the payment in exchange for the referral of a patient or health care service. Paying for referrals is professional misconduct and a criminal act in Florida. Unfortunately, it is not always easy to recognize that a particular situation constitutes a payment for referrals. The actual laws in this regard are vague. Florida’s Board of Medicine has published approximately twenty-five opinions on split-fee arrangements; but those opinions, although informative, only actually bind the parties who were before the Board.

COMMON ARRANGEMENTS INVOLVING SPLIT-FEES

Percentage of Collections of the Independent Contractor: Practices often desire to engage a professional as an independent contractor (i.e., on a 1099 basis), and to pay that contractor a percentage of the collections generated by that contractor. The motivation for this type of arrangement is obvious: *the practice wants to incent the contractor to work hard, and the contractor wants to be rewarded for all of his hard work.* The problem arises from the fact that when the practice assigns a patient to the contractor, that assignment of the patient constitutes a referral. Once you have a referral by the practice to the contractor, any revenue that flows from the contractor to the practice may constitute a payment for that referral. The decisive analysis is what percentage of the total fee for treating the patient is retained by the practice?

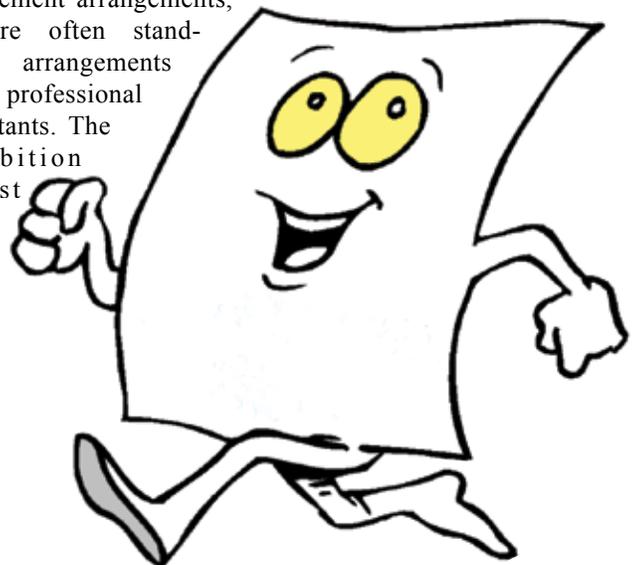
The general rule is that the portion of the fee retained by the practice must be based on the practice’s cost of providing items

and services to the contractor and the patients (s)he treats, that are necessary for the episodes of care. If and to the extent that practice retains a fee that does not reflect its cost, the practice may be considered to be taking a fee from the contractor in exchange for referring the patient to the contractor.

There is no bright line test with respect to what percentage of a fee the practice can safely retain, but there are certain factors that should be considered. The overhead of the practice is important. If the practice retains a percentage of the fee that far exceeds the practice’s overhead, then the arrangement is susceptible to challenge. In addition, if the contractor is to provide services on behalf of the practice both in the practice’s office and in hospitals and/or clinics, then the percentages ought to vary depending on the location of service. The practice’s costs associated with care rendered in its office are likely different from the costs associated with care rendered outside its office, so the percentage of fees retained from the various settings should likewise be different.

Marketing Arrangements: Practices often wish to hire companies to market the medical practice. The practice and the consultant understandably prefer for the consultant to be paid based on results; that is, that amount by which the practice has grown since the marketing consultant began work. Since the sole purpose of a marketing arrangement is to generate referrals to the practice, there is a strong prohibition against a medical practice paying a marketing consultant a percentage of the practice’s revenue in exchange for marketing the practice.

Marketing arrangements are sometimes part of larger practice management arrangements, but are often stand-alone arrangements with professional consultants. The prohibition against



percentage fees for marketing arrangements is so strong in Florida that I often advise my clients to isolate those arrangements from all percentage-based arrangements. I usually suggest that marketing services be specifically excluded from practice management and/or professional service agreements and dealt with separately. I am much more comfortable with a time-based marketing fee, such as an hourly or annual fee, that is owed by the practice regardless of any increase in patient flow. I recognize that a time-based marketing fee does not create direct incentive for the marketing consultant to perform but, depending on the nature of the practice and its marketing goals, there can be other tactics available to assure performance.

Selling Receivables: Practitioners with a large base of patients whose injuries have been caused by the negligence of others often have large accounts receivable on their books for years. The reason is that these “personal injury patients” sometimes do not have insurance, or do not submit their bills to their insurer. The theory is that patient’s medical care will be paid for if and when their negligence lawsuit is resolved, assuming there is enough money from the settlement or verdict to go around to all the health care practitioners and attorneys involved. Practitioners become financially squeezed because the underlying negligence lawsuits often take years to resolve.

Practitioners with a large mix of personal injury patients, and other practitioners, sometimes desire to sell their accounts receivable. The practitioner agrees to accept a fraction of the receivable’s face value in exchange for immediate and certain

payment. This sort of factoring arrangement is fine and safe unless the factor purchasing the receivables somehow has a hand in referring the underlying patient to the practice. If a factor brings a patient to a practice, purchases the receivable attributable to that patient at a discount, then collects more than it pays for that receivable; the arrangement may be challenged as a split-fee arrangement intended to compensate the factor for the referral.

Split-fee arrangements are very common, and not always easy to recognize. Through this article I hope to develop practitioners’ intuitions with respect to prohibited split-fee arrangements in Florida. Practitioners should note that in addition to issues created by Florida law, Federal law also prohibits payments intended to induce referrals of patients or services that are reimbursed by Federal health insurance programs such as Medicare. In my experience, split-fee arrangements that pass muster under Florida law can usually be tweaked to fulfill the requirements of Federal law.

Mr. Hirshfeld has dedicated the majority of his 18 year legal career to a strong focus on the healthcare industry and has an exceptional reputation as a corporate attorney. He has structured, negotiated and documented many business transactions which include a variety of issues involving compliance, control and operational issues; and the impact of state and Federal legislation including anti-self-referral (e.g. “Stark”), anti-kickback and corporate practice of medicine laws; professional misconduct; managed care contracting guidelines; Medicare; HIPAA and tax laws. He can be reached at david@floridahealthcarelawfirm.com or by calling toll-free at (888) 455-7702

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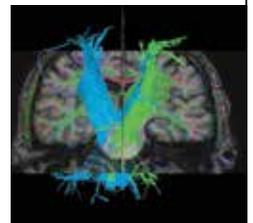
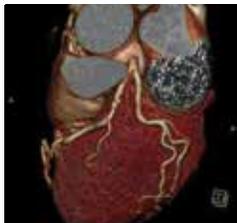
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