

FRS & FRBMA *focus*

WINTER 2006

Florida Radiological Society • Florida Radiology Business Management Association

FRS President's Message *by David H. Epstein, M.D.*



Remarkably, the 2006 Legislative Session is rapidly approaching (the time just flies when you are dodging hurricanes). While it would be incorrect to say that the only function of the FRS is to advance or defeat legislation in Tallahassee, it would be a greater mistake not to recognize that our legislative efforts are among the most important jobs in front of us. If we were all to assess on a year-to-year basis what issues have had the greatest impact on our practices, the answers would vary. For some, local issues predominate, such as the provisions in a hospital contract (or loss of a contract). These are issues which are handled by the individual practice. At the other polar extreme are issues related to the Medicare fee schedule that are dealt with by national entities such as the ACR (with input from counselors and staff at the state level). In between the local and the national, however, are highly significant issues that are up to our representatives in Tallahassee to decide. The legislative decisions made at the state level can have a serious impact on your practice's relations with insurance companies, Medicaid, PIP, malpractice, and encroachment by ancillary staff to name a few.

If we were to look at the box score for the last 10 years in Tallahassee, we would see the following tallies/issues:

1. **1999** — Physician Self-Referral Act—Passed to the detriment of radiologists. Most legislators thought they were helping doctors by passing the legislation. They did not realize the effect the legislation would have on radiologists.
2. **1999** — Tort Reform: Still remains to be seen but appears coupled with the constitutional amendments to be alleviating some of the pressure.
3. **2001** — PMATF Tax Repeal—Successful and many have received money back.
4. **2004** — Mammography: Successful in passing study bill and having it well represented by radiologists. Unsuccessful in 2005 in passing protections. Could not overcome the strength of the trial bar in the Senate.

Continued on Next Page

FRBMA President's Message *by Jeff A. Younger*

The year 2005 ended on a very positive note for the **FRBMA**. We held a one-day conference on issues involving Managed Care/Insurance and had over sixty (60) participants from around the State in attendance. We were very pleased with the turn out and interest shown in networking. FRBMA will continue to develop programs/events that have current interests or constituency in 2006.

On Saturday, January 21st, we held a mid-year meeting entitled "Hot Topics in Radiology". There was an update given relative to the latest in human resource issues by Integrated Employer Resources. Also, Dr. Steven Miles, Radiologist provided valuable information on the work completed by ACR at the national level and the lobbying efforts that have been underway at the State level. He encouraged everyone to have their Radiologists join FRS and contribute to Radiology-PAC, if possible. Significant discussion ensued at this mid-year meeting relative to the recent legislation passed at the Federal level whereby cut backs in reimbursement for Outpatient Imaging Centers were approved. There will be more discussion of this item at the State meeting in July.



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On Monday, March 27th, **FRBMA** will be hosting a Coding Seminar with Mr. Walt Blackham at the Rocky Pointe DoubleTree Hotel, Tampa, Florida. RCCB and AAPC credits will be provided for participants. *I look forward to seeing all of you at our State meeting in July.* ■

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Since 2001 we have had a lobbyist who has been instrumental in developing and maintaining relationships with a significant proportion of the senior and junior legislators in Tallahassee working hard to put a face on “the radiology community.” (For those who think that lobbying by lobbyists is inherently unseemly, I suggest that you leave your busy and hopefully profitable practices and spend six months of every year attending the Leg

Political work is not particularly glamorous, and many would probably be just as happy if the whole deal could just be ignored. However, legislation

We are currently entering a campaign cycle which will be monumental. The citizens of Florida will elect a new Governor, Lt. Governor, Attorney General, Chief Financial Officer, and Agriculture Commissioner. Out of 120 House members, there are 120 open seats, with 19 of them to be filled by non-incumbents. Out of 40 Senators, there are 20 open seats, 8 of which will be filled by non-incumbents. If we act now, we could change the tone of the Florida Senate from being totally controlled by the trial bar to being more friendly to the medical community, including radiologists.

Before I

1. *We (the FRS and radiologists) don't need to deal with the State Legislature because the FMA will take care of us.*

FALSE. When we and the FMA are going the same way on an issue, we can piggyback on the efforts of their legislative team. However, on issues such as self-referral, we are on a collision course with the rest of the physicians in the state and must maintain our own ability to let the state's legislators know our position, and why that is important for the patients in Florida.

2. *We don't have any effect on state legislation or our legislators.*

FALSE. For example, during the 2005 Legislative Session, a doctor from the Daytona area who had built a relationship with a legislator from his area was contacted to seek his opinion before she voted on any issue that might have had an effect on the medical community.

3. *I can't contribute to a Democrat (Republican) because I am a Republican (Democrat).*

FALSE. When you are just writing a check, nobody cares what your party affiliation is, except for the rare occurrence when you seek to be appointed to a state-level position such as the Board of Medicine. To be successful, we as radiologists need to have an open dialog with members of both parties. To win, we need votes. While the Republicans are in the majority now, that could change within a two-year cycle.

4. *Our contributions to a candidate and active participation in the debate on an issue will assure a successful outcome for us.*

FALSE. To some extent, investing money, time and political capital in Tallahassee is a lot more like investing in stock options than it is T-bills. However, in this market, there are no T-bills, only options. If you lose on an issue one year, you regroup, determine the issue's importance, and if nothing else comes to change your mind, you go after it again. It is also unrealistic to expect that even your most supportive elected officials will vote your way on every single issue.

5. *The only time that we need to put a lot of money into lobbying is when we have a specific bill to push.*

FALSE. While pushing a specific bill through the Legislature is important, the time to build support comes much earlier, before there is a hot item on the agenda. Most legislators do not want you to pop up on their radar looking for support only when you have a big problem for them to solve.

6. *The state legislators will vote for the public good, which fortunately is coincident with our positions.*

FALSE. No big surprise here. But in my experience, more often than not the legislators will typically vote for what they perceive as the public good. The problem, however, is that to your typical legislator, whether you or a lawyer, or you or a cardiologist are making more money is not a matter of public interest, it is just a battle between two special interest groups that they will respond to in proportion to the support they receive in their (re)election campaigns.

So, having said all of this, what is our plan?

Central to everything is having the financial resources available to get and maintain the attention of our elected officials. You can call this situation whatever you like, but it is the simple truth. While most of us spend anywhere from \$5,000 to \$10,000 a year on professional dues and memberships, we are being outspent by such groups as the trial attorneys, cardiologists, chiropractors, ob-gyns, ophthalmologists, insurance companies, etc. The only way this imbalance can be corrected is if all radiologists in the state participate on an even basis. A relatively small amount from each of the 1,400 radiologists in the state contributed in part to the FRS PAC, to local campaigns, and sent to larger statewide solicitations would have an enormous impact.

You can help by identifying one or two members of your group to serve as the key contact members with your local legislators, and with Alison Dudley, our lobbyist. Those of you who already have developed relations with legislators, whether state or national, should let us know so that we can coordinate our efforts and get the most results for our time and dollars. Also, let us know who the groups are that practice in your vicinity, so we can develop a more effective directory of practices.

It will only be with the development of a culture accustomed to the necessity of playing in the serious realm of public policy that we will be able to protect our interests in the ever-changing and volatile world of politics.

Please send your checks made payable to Radiology-PAC to 5620 West Sligh Avenue, Tampa, FL 33634. Feel free to contact Alison Dudley at 850-556-6517 or by e-mail at alisondudley@dudleyandassociates.com if you have any questions or concerns.■

Message From The American College of Radiology



The American College of Radiology is a unique resource to its members as it specializes in protecting the radiology profession through work on government relations and socioeconomic issues. Additionally, the ACR offers many valuable services in its Accreditation and Quality & Safety departments.

The ACR's government relations staff works on both federal and state legislative initiatives, as well as regulatory issues, to strengthen the radiology profession, with particular focus on controlling the inappropriate utilization of diagnostic medical imaging modalities, passing meaningful medical liability reform, ensuring appropriate physician reimbursement and protecting scope of practice. The continued growth and influence of RADPAC, the ACR's political action committee, has helped the College with many of its legislative efforts. The ACR's economic department closely monitors the Medicare fee schedule and coding updates that impact members.

Due to the importance of grassroots involvement and the commonality of practice concerns and issues, the American College of Radiology requires its members to be members of their state chapters.

There are many benefits to Chapter membership, including: educational opportunities; giving radiology a political voice in state and local government relations and influencing decisions related to reimbursement, as well as offering professional development and serving as a gateway to ACR Council activities.

Let me know if we can be of further assistance.

Best,
Ted

Ted Burnes
Director, RADPAC
American College of Radiology

The Death of Mammography

by René Jackson, R.N., B.S.N., M.S. and Alberto Righi, M.D.,

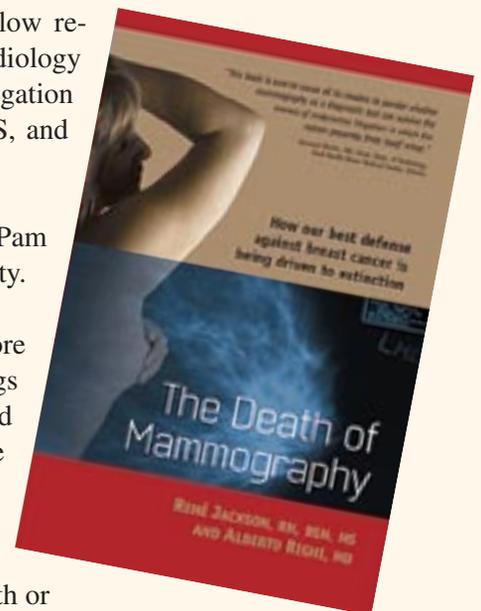
Paperback, \$19.95 ISBN: 0-9745245-3-0 February 2006

Faced with the prospect of litigation, the high cost of malpractice insurance, and low reimbursement, radiologists across the country are refusing to read mammograms, and radiology residents are passing over breast imaging specialization. "The growing malpractice litigation frenzy in this country shows no signs of abating," say René Jackson, RN BSN MS, and Alberto Righi, MD, co-authors of *The Death of Mammography* (Caveat Press, 2006).

"It is an important work addressing a crucial issue in women's health," comments Pam Seay JD, Associate Professor, Division of Justice Studies, Florida Gulf Coast University.

Leonard Berlin, M.D., F.A.C.R. Chairman, Department of Radiology Rush North Shore Medical Center Illinois, says the book is ".....a spellbinding 256-page volume that digs far beneath the surface of the "glossy veneer" typical of many books dealing with, and news media coverage of, breast cancer, mammography, and what the authors call the medical malpractice "lottery."

"Ironically", says John Thomas, President, Chief Development Officer Cirrus Health in Texas, "it is a book I would recommend to any woman who has been diagnosed with or wants to understand more about breast cancer, even though it is a sharp critique of the failures of our medical liability system in the U.S."



Legal Questions and Answers

by Michael M. Raskin, M.D., J.D., FACR

Limited Duty for IME?

Question: I do many independent medical examinations (IME) for employers and insurance companies each month. Can I be sued for missing an important finding, such as cancer?

Answer: In order to proceed with a medical malpractice claim, there must be a duty owed, which is breached, and that breach of duty is the proximate cause of damages. All four elements must be present. A physician-patient relationship establishes that duty. In general, if there is no physician-patient relationship, no basis for a medical malpractice claim exists. However, two recent state Supreme Court decisions may have eroded that veil of protection. This may occur when a physician is dealing with non-medical professionals or entities, or during the performance of an IME.

The Arizona Supreme Court, *Stanley v. McCarver*, 92 P.2d 849 (Ariz. 2004), held that the lack of a formal physician-patient relationship does not remove medical professionals from their responsibility to tell people what an examination reveals. After applying for a job at a day care center, Stanley was sent to McCarver for a pre-employment chest X-ray, to rule out tuberculosis. The chest X-ray was read by McCarver as showing a suspicious mass in the right upper lobe and recommended a CT scan with contrast. The interpretive report was sent to the employer, but Stanley was never informed of the results by either McCarver or her employer. She was diagnosed with lung cancer 10 months later and alleged that McCarver provided negligent and improper medical care by failing to timely and adequately

diagnose and/or communicate the abnormality. The trial court granted a summary judgment to McCarver, finding that he owed no duty. However, the appellate court reversed, holding that he did owe a duty, and was affirmed by the Arizona Supreme Court. Stanley died and the family decided not to pursue their negligence claim against McCarver. However, the issue remains very volatile for physicians who deal with non-medical professionals or entities.

The Michigan Supreme Court, *Dyer v. Trachtman*, 679 N.W.2d 311 (Mich. 2004), established a physician-patient relationship for an IME. Dyer, who was involved in litigation, saw Trachtman for an IME and claims that he was injured during the examination. Dyer had previously been diagnosed by MRI as having a partial rotator cuff tear and claims that Trachtman forcibly abducted his arm, causing the partial tear to become a complete tear. Dyer sued but the case was dismissed with the court stating that the IME does not create a physician-patient relationship, as there was no duty owed to Dyer. However, the Michigan Supreme Court reversed, holding that the IME has a limited duty to exercise professional care. Even though the IME physician does not have the typical physician's responsibility to diagnose, the physician has a duty to perform the examination in a manner that does not harm the patient.

To answer your question, there may be a basis for a medical malpractice action even when a physician-patient relationship does not exist. When dealing with non-medical professionals or entities, the absence of a formal physician-patient relationship does not necessarily



preclude the imposition of a duty of care. But be aware that even though a traditional physician-patient relationship does not exist when performing an IME, the courts may be carving out a limited duty. However, it would be unlikely that you would be sued, unless you live in Arizona or Michigan. ■

Dr. Raskin encourages your legal questions and will choose one to answer in each issue. Please send all questions directly to Dr. Raskin at rask1553@bellsouth.net.

Mark Your Calendar!

2006 FRS/FRBMA Annual Meeting Ponte Vedra Beach, FL • July 28 - 30, 2006

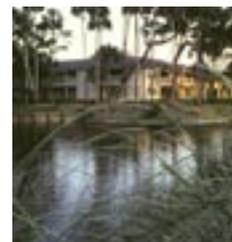


The Sawgrass Marriott Resort & Spa is located on Florida's Atlantic Coast. Surrounded by 99 holes of championship golf, which is home of the PGA Tour and the famous TPC Stadium Course, this resort is just 18 miles from downtown Jacksonville and 22 miles from historic St. Augustine. Set on a lush resort in Ponte Vedra Beach, the Sawgrass Marriott Resort & Spa blends boundless recreation, rich guest service, and extraordinary surroundings.

The Sawgrass Marriott Resort & Spa offers 508 guest rooms, including 324 waterview guest rooms. All guest rooms and suites at this Jacksonville luxury hotel include

- High-speed internet access
- Iron and full-size ironing board
- Standing balconies
- Dataport telephones
- Coffeemaker
- Keyless vingcard entry
- Personalized voicemail
- Refreshment center
- Separate vanity area
- Hair dryer
- Desk lamp with outlets

The Sawgrass Marriott Resort & Spa also offers spacious suites and villas, for exceptional privacy and comfort!



We Look Forward To Seeing You There!

CODES AND COMMITTEES

by David H. Epstein, M.D., Alan Porter, M.D.,
Tim Daniels, M.D., Tracy Sanders



The Medicare Carrier Advisory Committee has been participating in the formulation of several new Local Carrier Determinations (LCD) in addition to several that have come up for revision. The status of all active policies is listed below. Also listed below is a table describing important changes in your Medicare provider number.

CT of the Thorax for coronary artery evaluation is in preliminary stages for the formulation of a new LCD. Meanwhile, the Category III code should be active and reimbursable as of January 1, though each claim will be reviewed individually.

Computed Tomographic Colonography (CTC) 0067T will be payable as of January 1 for the indication of failed diagnostic colonoscopy. We will continue to attempt to gain coverage that will allow performance of CTC for patients that have known obstructing lesions or contraindications to colonoscopy or sedation. Coverage as a primary method for screening the colon for polyps and malignancies will require a specific congressional mandate, as have all other covered screening tests. The following two policies are in final stages, with release expected soon.

Computed Tomography of the Abdomen and Pelvis 72192, will be released as a conjoined policy within the next 2-4 weeks.

The following policies were reviewed at the last CAC meeting, and final versions should be released by April 2006.

76070	Bone Mineral Density Studies	93965	Non-Invasive Evaluation of Extremity Veins
71250	Computed Tomography of the Thorax	93922	Non-Invasive Physiologic Studies of Upper or Lower Extremity Arteries
70450	Computed Tomography Scans [of the Head or Brain]		
93925	Duplex Scan of Lower Extremity Arteries		

As detailed below, Medicare providers will need to convert from existing Medicare provider numbers to the new **National Provider Identification numbers**. This change will be phased in as described.

IMPLEMENTING NPI

TIMEFRAMES

Medicare's implementation involving acceptance and processing of transactions with the NPI will occur in separate stages, as shown in the table below:

May 23, 2005 - January 2, 2006:

Providers should submit Medicare claims using only their existing Medicare numbers. They should not use their NPI numbers during this time period. CMS claims processing systems will reject, as unprocessable, any claim that includes an NPI during this phase.

January 3, 2006 - October 1, 2006:

Medicare systems will accept claims with an NPI, but an existing legacy Medicare number must also be on the claim. Note that CMS claims processing systems will reject, as unprocessable, any claim that includes only an NPI.

Medicare will be capable of sending the NPI as primary provider identifier and legacy identifier as a secondary identifier in outbound claims, claim status response, and eligibility benefit response electronic transactions.

October 2, 2006 - May 22, 2007:

CMS systems will accept an existing legacy Medicare billing number and/or an NPI on claims. If there is any issue with the provider's NPI and no Medicare legacy identifier is submitted, the provider may not be paid for the claim.

Therefore, Medicare strongly recommends that providers, clearinghouses, and billing services continue to submit the Medicare legacy identifier as a secondary identifier.

Medicare will be capable of sending the NPI as primary provider identifier and legacy identifier as a secondary identifier in outbound claim, claim status response, remittance advice (electronic but not paper), and eligibility response electronic transactions.

May 23, 2007 - Forward:

CMS systems will only accept NPI numbers. Small health plans have an additional year to be NPI compliant.

Please refer to the official Florida Medicare Website for further details on the policies and the NPI initiative. (www.floridamedicare.com)

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Tribute to Miss Carrie

Miss Carrie was black. She had been good to me when I was a kid. She was a credit to her race. The human race. She had a better character and was more forgiving than most of us. She loved the South and she loved Pedro.

I waited in the church yard until everybody had gone into the church. I didn't want anybody to see me if I cried, so I sat down on the last pew. I'd git emotional at funerals, especially if it was somebody who had been good to me when I was a kid.

She always wore a bandana around her head and most of the time her apron pocket kept her snuff and some goodies for us younguns. She cared for my youngest sister when Mama got sick. One time she held my hand when I fell down and cried.

She didn't have a husband or any close kin and was nearly 85. Living alone was hard for a black lady growing up in the South. All her life she lived in the country. Picking cotton in the hot summer months, tending her garden, milking her cow, feeding her chickens, churning and cooking. She loved to cook and she loved to eat and she loved her collard greens. Her country ham with red eye gravy was the best.

The upper part of her arms were four times bigger than the lower part of her arms and they shook when she laughed and she laughed at Pedro's stories.

Her house was always clean as a whistle. Dirty rags never spent a night in Miss Carrie's house. One time a neighbor said, "Miss Carrie, yore house shore is clean and I don't know how you do that." The neighbor was right. She didn't know how Miss Carrie did that.

She always found time to wash clothes and boil them in a black wash pot on the outside. She sang hymns as she did her chores around the house. She also found time for us younguns.

She kept some dogs which were mixed breeds like most dogs in the South and when she called they came running with their tails up in the air. They loved Miss Carrie.

The preacher came in and my mind came back to the little white country church. My eyes noticed the casket. It was silver with white handles. She was dressed in a beautiful blue dress which was her favorite color. Her hair was as gray as an aluminum cooking pot and she seemed to be smiling. The preacher then said, "Now let us pray."

The silver headed preacher said something about finding comfort and strength in the hope that there is life beyond what we know. He said something else about a home on the other side of the river and a home where the streets are paved with gold.

Some friends then carried her through the church doors and we made our way through the church yard to a tent that stood over an open grave. As I looked at the hole in the ground, I was reminded that life is only temporary. We know this early in life, but somehow we keep it to one side of our brains.

We then sang when the role is called up yonder, I'll be there and the preacher said a final prayer. I felt a tear when the dirt made a loud thug on her casket.

All the people and all the cars left and I walked slowly to mine. The sun was setting behind the pine trees. I heard a noise and noticed two dogs running out of the corn fields with



their tails up in the air. They headed straight to the fresh dirt and I shivered as the sun went down.

Miss Carrie, a new grave, Pedro and two lonely dogs. The chapter closed on another wonderful life in South Georgia. She held my hand for a little while but she'll hold my heart forever. ■

by Charles D. Williams, M.D., FACR



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I would like to make a one time contribution to the FRS PAC in the amount of:

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THE RESIDENT AND FELLOW SECTION: *An Invitation to Submit Papers*

by Lori Deitte, M.D.

The FLORIDA RADIOLOGICAL SOCIETY is committed to promoting an increased level of involvement in the Resident and Fellow Section.

As part of this ongoing effort, we would like to extend an invitation to all residents and fellows in Florida radiology training programs to submit a paper for publication in the FRS & FRBMA *focus*, a quarterly publication of the FRS & FRBMA. It is anticipated that one paper will be published in each FRS & FRBMA *focus* edition.

The guidelines are as follows:

- Manuscripts, figures and tables should be submitted on-line to lori.deitte@jax.ufl.edu.
- A title page should be submitted including the first and last names of the authors, academic degrees, and institutional affiliation. An address, phone number, fax number and e-mail address for the author responsible for correspondence should be included.
- The format is flexible and may include Introduction, Methods, Results and Discussion sections. Figures and tables should be numbered.
- The total manuscript length is flexible but generally should not exceed 3-4 pages (1000 – 1500 words).
- Original illustrations and figures are encouraged. Written permission to reprint in print and electronic media should be submitted for use of all previously published illustrations or figures.
- Suggested topics: practical practice related topics/clinical observations, case reports, evaluations of new technology, commentaries.

We are enthusiastic about developing the Resident and Fellow Section of the FRS & FRBMA *focus* and welcome your comments, suggestions and/or feedback via e-mail to lori.deitte@jax.ufl.edu.

WE LOOK FORWARD TO HEARING FROM YOU!

FLORIDA RADIOLOGICAL SOCIETY

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**2006 FRS/FRBMA
Annual Meeting**

**Sawgrass Marriott
Resort & Spa**

**Ponte Vedra Beach, FL
July 28 - 30, 2006**

See You There!