



NEWSLETTER

Florida Chapter of the American Academy of Emergency Medicine

Fall 2014

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FLAAEM Fall 2014 Quarterly Newsletter

Welcome to the first issue of the new Florida AAEM newsletter! The newsletter will bring chapter members periodic updates on the practice of emergency medicine in our state and will highlight the benefits of membership. We at FLAAEM are working hard to represent our members' interests! Let us know any issues you are experiencing so we can bring light to the situation. Email the editor at flaaembod@list.aaem.org with any questions or concerns.

Board of Directors Meeting – August 2014

The FLAAEM board of directors had their quarterly meeting in August where the planning for the next Scientific Assembly in Miami was started. The dates of April 25-26, 2015, were chosen and the hotel site for the conference will be announced soon. We hope to have another year with an excellent lineup of speakers and topics. Unquestionably, we will continue to have the immensely popular LLSA Review course on Sunday afternoon, April 26.

The board has recognized the need to increase our membership and improve recruitment efforts. We will be reaching out to those national AAEM members in the state who are not state chapter members. Member discounts and other benefits were discussed and the board will continue to look for ways to save money for members. Increased membership will allow us to intensify lobbying efforts and more effectively represent the interests of our members.

Florida's Lack of Medical Malpractice Crisis?

Mark Foppe, DO FAAEM FACOEP, Past President FLAAEM

On March 13, 2014, the Florida Supreme Court struck down the noneconomic limit on wrongful death damages, which for medical malpractice cases was \$1,000,000. In 2003, then Governor Jeb Bush and a bipartisan Republican legislature, with the purpose of trying to stabilize the medical malpractice environment, enacted this law limiting damages. At the time, the patients in Florida could not find the care, especially specialized care, they needed because the specialists were in short supply. Doctors were leaving the state in droves. Why practice in a litigious environment without any sort of protection? The case that brought this 2003 law into question was the Michelle McCall case, an Air Force dependent who bled out and died after a series of complications during an OB case at a Fort Walton Beach Medical Center.

The Florida Supreme Court stated in 2014 that "The statutory cap on wrongful death non-economic damages does not bear a rational relationship to the stated purpose that the cap is purported to address, the alleged medical malpractice insurance crisis in Florida."

Point blank: the Florida Supreme Court denies any existence of any medical malpractice crisis, either in the recent past or fears for one in the future.

Justice Fred Lewis, writing for the 5-2 majority, detailed statistics about insurance rates and claims and said that **"even if there had been a medical malpractice crisis in Florida at the turn of the century, the current data reflects that it has subsided."** He added, **"No rational basis exist (if it ever existed) between the cap imposed and any legitimate state purpose,"** totally ignoring the fact that the caps were in place for eight of those years.

If Justice Lewis had spoken to any community emergency medicine physician, he would have gotten a very different opinion regarding the lack of a medical malpractice crisis in Florida in the new century. Remember the hours the emergency department, especially the emergency physician, spent trying to find a neurosurgeon, OB doctor, maxilla-facial surgeon, hand surgeon, ENT, ophthalmology, or any pediatric specialist to accept their transfers. This delay in definitive care was the result of a lack of a specialist. At the time, specialists were leaving our state and choosing to practice in more legal friendly environments. The 2003 law is credited with keeping thousands of doctors from fleeing the state.

Does the Florida Supreme Court not remember that there were other amendments that also became law in 2003-2004? Included with the law limiting non-economic damages were the **"Patient's Right to Know About Adverse Medical Incidents"** (Amendment 7) and the **"Three strikes and you are out"** law (Amendment 8), which stated that after losing three medical malpractice cases you lose your right to practice medicine in the state of Florida.



2015 FLAAEM Membership Renewal

- Online at www.aaem.org/renewaaem
- By phone at (800) 884-2236

Member Benefits

- Discounted ACLS/PALS recertification through Advanced Medical Certification
 - <http://www.advmed-cert.com> (enter code FLAAEM35 for 35% discount)
- Free *Western Journal of Emergency Medicine* (WestJEM)
 - Free to all Full Voting FLAAEM Members
- Free Annual Florida Chapter of AAEM (FLAAEM) Scientific Assembly
 - Mark your calendars: We're going back to Miami on April 25-26, 2015!!

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The physicians took it on the chin, **to reference a prize fight**, but the one reconciliation we received in return for not fighting the other legislation back then was that we had a cap on noneconomic damages. The Florida Supreme Court just took away the cap. They took the good and left the bad!

In the appeal to the U.S. 11th District Court of Appeals in Atlanta, the judges ruled that the caps don't violate the U.S. constitution, however they asked the Florida Supreme Court to decide if the law violated the Florida constitution on four grounds. The Florida Supreme Court did find the 2003 law violated the state constitution on those four grounds and the law was struck down.

Do you think the events that have occurred do not frighten our leadership?

Jeff Scott, legal counsel for the Florida Medical Association, stated "One of my biggest fears if the Supreme Court strikes it, is that Florida is going to cement its reputation as one of the least friendly states in the union to practice medicine." It is hard to doubt what he says when Florida has some of the highest malpractice rates in the country; very low Medicaid payments for treating low-income patients; not to mention those constitutional laws that strip doctors of their license

to practice medicine if they lose three malpractice insurance claims; and the one which all peer review becomes public for any lawyer to go through.

As one who lost a lot of shoe leather in 2003 and 2004 in Tallahassee, Jeff Scott lobbied hard, along with many others in FMA and FOMA to pass/fight those reforms in 2003-2004. But was the deal worth it once the nugget we were offered is taken away now? This is what Jeff had to say, "All combined, it's difficult to attract physicians to Florida, and if we lose the cap, it's going to make it that much harder."

Make note that many considered this volley to be fired by EM physicians. The Florida Cap 2003 law, which made for one of the best malpractice environments for emergency medicine physicians, is often cited. Florida became the first state to establish a noneconomic cap of \$150,000, in jury awarded damages against emergency medicine providers; and it was solely for emergency medicine providers. The rest of the House of Medicine had a \$500,000.00 cap. It was seen by many of us in EM as ground breaking, but it was also seen by some in Florida's legal community as a threat. It became a war. "It was a war, very much a war," said Dr. Rick Slevenski, after reviewing a letter by a resident

SAVE THE DATE!

**4th Annual Florida Chapter of
AAEM (FLAAEM)
Scientific Assembly**

April 25-26, 2015
Grand Beach Hotel-Surfside
Surfside (Miami), Florida

Join us next April in sunny Southern Florida!

More information coming soon: www.flaaem.org

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in emergency medicine bowing out of his Match selection at the emergency medicine program at Florida Hospital. The reason cited was the three strikes and you are out law. "It is trial lawyers fighting physicians," states Dr. David Siegel, MD JD Past President FCEP.

I am actually surprised we got eight years of caps. Consider that less than four months after the Florida Supreme Court ruled that wrongful **death** damage caps were unconstitutional; they will now hear a case regarding the constitutionality of wrongful **injury** noneconomic damage caps. The Miles case revolves around her suit against Dr. Daniel Wiengrad. In 2006, the plaintive claims she had unnecessary surgery on her leg to remove remaining malignant melanoma. The Supreme Court will now be faced with a similar decision that they faced with the wrongful death claim, but also in deciding whether damage limits should apply to injuries suffered before the law took effect, a concept known as "retroactivity." Supposedly the legislature accounted for "retroactivity" in the 2003 law, because at that time they stated, "we are dealing with a medical malpractice crisis," which the law was enacted to maleate. However, since this court has already ruled about damages that resulted from death, little hope exists that they will not rule wrongful injury is unconstitutional as well. **First the left, now the right... the fighter is reeling.**

Implications? Previously we have seen the Georgia Supreme Court rule in 2010 that non-economic damages are unconstitutional. Not another good moment for emergency medicine: physicians in our specialty provided the plaintiff's expert testimony in a Georgia malpractice case Johnson v. Omondi. It is really questionable if the actions of the defendant physician really met the grounds of "malicious action." **Body blow, Body blow.**

On the ballot this year in California is Prop 46, which seeks to increase the medical malpractice damages limit X4. It is predicted to cost additional hundreds of millions. Already, the cost to the U.S. for medical care in 2010 was over two trillion dollars. It is predicted that defensive medicine is 20% of that total. Two hundred billion dollars. **Right Hook.**

It is safe to say that as a result of the Florida Supreme Court decision, and most likely the future decision, we will see a disproportionate amount of that in Florida. The Florida Supreme Court is being shortsighted in stating that there is no crisis in providing medical care to our patients in Florida. The resultant liability costs will ensure our **patients are once again down for the count.**