

# The Florida Society

# NEWS

## of Thoracic & Cardiovascular Surgeons

Volume No. 29

Winter 2008



### President's Message

Edward G. Izzo, Jr., M.D.

Dear Friends and Colleagues,

Hope you've enjoyed a wonderful holiday season and wish you all a happy and successful New Year. Please

remember to mark your calendars with the dates of the 42nd FSTCS Annual Meeting, July 9-12, 2009 at the exquisite Ocean Reef Club Resort in Key Largo, Florida.

This year marks a transition from our usual February scientific gathering to a single lengthened meeting in July. The Society has decided that a focused single conference is more in tune with our members' economic concerns and time availability. We hope this change will lead to improved attendance and help to strengthen our membership.

As a long time member, I can state unequivocally the many benefits the society has provided our specialty, particularly in regard to its leadership in representing our interests in Washington and Tallahassee. We have collectively benefited from the selfless work of past and current members who have donated time, money and influence to improve our standing.

This year's meeting is a chance to demonstrate our solidarity, learn from the best and brightest, and enjoy all the amenities of a 5 star resort. There's no downside.

We plan a three day agenda with topics including current surgical treatments for lung cancer as well as current oncologic therapies. Robotic cardiac surgery, percutaneous valve surgery, the Florida Sleeve for the Ascending Aorta, and advances in Destination Therapy, both continuing our involvement with the

training programs in Gainesville and Miami. Our Sunday morning socioeconomic meeting provides a forum for members to speak to national decision makers on topics regarding reimbursement, out comes reporting and changes to specialty training. As always a guest speaker will entertain during our Saturday evening dinner. Despite all that, our agenda leaves time for plenty of family fun, whether snorkeling, fishing, golf or poolside pina coladas. I look forward to seeing you all at our most successful meeting ever.

Edward G. Izzo, Jr., M.D.

### WEB SITES OF INTEREST

Florida Society of Thoracic & Cardiovascular Surgeons

[www.fstcs.org](http://www.fstcs.org)



Society of Thoracic Surgeons  
[www.sts.org](http://www.sts.org)

American College of Surgeons  
[www.facs.org](http://www.facs.org)

The Cardiothoracic Surgery Network  
[www.ctsnet.org](http://www.ctsnet.org)

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Thoracic Cardiovascular Surgeons  
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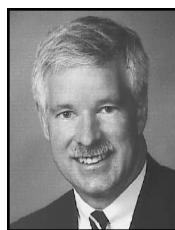
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Legislative Report

Christopher L. Nuland, Esq.  
FSTCS General Counsel

ANTI-MARKUP LAW GOES INTO EFFECT ON  
JANUARY 1, 2009

On January 1, 2009, CMS will begin enforcing its new Anti-Markup Rule. Under this rule, physicians may not bill any federal payor for any component (i.e., professional or technical) of any diagnostic testing that was not performed in the physician's office by an employee of the practice, nor may the physician bill the federal payor globally for any such service.

This new rule does not change the existing Stark regulations regarding the use of in-office ancillaries under which designated health services must be performed in the "same building," but not necessarily in the "same office" as the physician group. Under the Anti-Markup Rule, "same building" relationships will still be legal under the "in-office ancillary exception" to the Stark Law, but Medicare will no longer pay for such services unless they are provided in office space in which members of the physician group provide substantially the full range of their physician services.

As a result of this new law, many lease arrangements will have to be restructured, and independent contractors performing any component of a diagnostic testing service should be made practice employees if the practice wishes to bill globally for such services. Moreover, each component of any such service must be performed in the physician's office space.

Questions regarding the above may be referred to the author at [nulandlaw@aol.com](mailto:nulandlaw@aol.com).

You Can Help Save Lives!



100% of the funds raised from the Stop Heart Disease license plate are legislatively mandated to support heart disease research, education and prevention programs throughout Florida. Twenty-

five dollars from registration fees of every plate sold and renewed will go to the Florida Heart Research Foundation where it will be used for heart disease:

Objective of the Plate:

- To raise funds for heart disease research, education and prevention programs in Florida.
- To increase awareness that heart disease is the leading cause of death and disability in our state.
- To educate Floridians that heart disease can be prevented, stopped, and even reversed if corrective steps are taken.

February = National Heart Month.

In support of our effort, Governor Charlie Crist has proclaimed the second week of February to be Stop Heart Disease Week.

Buy a Plate T

he first time you order a specialty license plate, the cost is an additional \$37.00 over your regular renewal fee (\$12 to the state, and \$25 to the Foundation). Each subsequent year, the cost is \$27 over the regular renewal fee (\$2 to the state, and \$25 to the Foundation). You do not have to wait for your renewal period to purchase a new plate.

\$25 of the specialty license plate fee may be a tax deductible donation to the Florida Heart Research Foundation. Please consult your tax advisor.

You can purchase your **Stop Heart Disease** license plate:

- At your local Tax Collectors office or Tag Agency
- At their website [www.heartplate.org](http://www.heartplate.org)
- By calling (866) HRT-TAGS



## Florida Society of Thoracic & Cardiovascular Surgeons 42nd Annual Meeting

July 9 – 12, 2009

Ocean Reef Club, Key Largo, FL

Please make plans to attend the 42nd Annual Scientific Meeting, July 9 – 12, 2009.

The FSTCS Executive Council recognizes that travel and attendance at meeting is becoming more difficult in these tough economic times, therefore, FSTCS will only be holding one meeting a year. Due to the popularity of the location and dates of the summer meeting – the new “Annual Meeting” will be held in July at the Ocean Reef Club in beautiful Key Largo, Florida.

As you can see from the tentative agenda below, we will be providing current scientific and socioeconomic content and the ability to earn CME credits in an informal relaxed family-friendly location.

**Mark your calendars now and plan to bring your family to the 2009 FSTCS Annual Meeting!**

### Tentative Agenda Topics:

#### Thoracic Topics:

- Use of Cyberknife on Thoracic & Pulmonary Tumors S. Gandhi, M.D.
- Lung Cancer Robert Cerfolio, M.D.
- Oncology Overview TBA

#### Cardiovascular Topics:

- Robotic Cardiac Surgery Clifton Lewis, M.D.
- Anastomatic Device TBA
- The Florida Sleeve: A New Technique for Aortic Root Remodeling With Preservation of the Aortic Valve and Sinuses Tomas Martin, M.D.
- Valve Update TBA
- Destination Therapy Charles Klodell, M.D.
- Percutaneous Aortic Valve TBA
- New Technology Papers UF and UM Fellows

#### Socioeconomic/Regulatory Topics:

- The Future of Government Assisted Healthcare TBA
- Status of NY Reported Data Josh Burack, M.D.
- Prevention of Medical Errors Chris Nuland, Esq & Cliff Rapp, FPIC

## ***Ocean Reef Club – Simply Unequaled*** Location of the FSTCS 2009 Annual Meeting



From its infancy over 50 years ago, Ocean Reef Club originated with simplicity and escape in mind. From its start as a small fishing village tucked amongst the mangroves and serenity of the Florida Keys' aqua-blue waters, Ocean Reef today is as private and special as it began. Members join us for the distinct opportunity to access a retreat from the world, while cherishing important family values and a world of recreational and relaxation pastimes.

The tropical haven is private and secure. With water on three sides and controlled access through the Front Gate on the fourth, entry to Ocean Reef Club by land, sea or air is strictly monitored and only members and their guests are admitted. The U.S. Secret Service has called Ocean Reef Club one of the most secure communities in the country.

In addition to the fabulous array of recreational activities, you'll have every amenity close at hand, including a private airport and world-class marina with secure dockage, a modern medical center with doctors on call 24 hours a day, an excellent private school, and a public safety department. The gracious Florida lifestyle at Ocean Reef Club is enhanced by a cultural center with a library and theater, a dozen excellent restaurants and lounges, beautiful residences and a selection of specialty services, shops and boutiques.

Sharing good times with family and friends is life's greatest pleasure, and Key Largo's Ocean Reef Club invites vacation fun and relaxation with almost 50 different activities. Located near the Gulf Stream, beside North America's only living coral reef and close to the Everglades, this is one of the world's few places with superior deep-sea, reef, flats and back-country fishing, all from one spot. These warm Florida waters also offer great diving, snorkeling, sea kayaking and windsurfing.

Ocean Reef Club's two 18-hole championship golf courses are complemented by fine club amenities. Additional leisure choices include Har-Tru tennis courts, most lighted for night play, croquet courts and a fitness center.

Treat yourself to the ultimate journey of relaxation and renewal at the Salon & Spa at Ocean Reef Club. Browse the colorful collection of boutiques and shops in our charming Fishing Village. Indulge your passion for fine food at the Ocean Reef Club Cooking School where world-renowned chefs create amazing dishes for you to sample with perfectly paired wines.

Buccaneer Island's refreshing recreation choices make it The Reef's coolest spot for family vacation activity. And just for the youngsters, Reef Kids Club entertains with high-energy programs that include tennis, golf, swimming and crafts.

## Changes to Bankruptcy Laws Could Put Physicians' Assets at Greater Risk

*Editor's note: Because our readers are primarily physicians, in most instances in this article we have used the words "physician" or "doctor" instead of "debtor." The law does however apply to all debtors.*

For those with some ability to pay all or a portion of their debts – like physicians – the *Bankruptcy Abuse Prevention and Consumer Protection Act of 2005* (Law or Code) will force them to do so. The Law took effect October 17, 2005, and its intended focus was individuals with consumer debt. However, one unintended consequence for physicians is that the Law could thwart their attempts to discharge excess medical malpractice judgments. According to Rob Wortelboer, First Professionals' Vice President and General Counsel, the Law is complex and important parts are ambiguous.

"We expect clarifications of the Law through court decisions or legislative 'fixes.' They may take some time to work through the court system, and Congress can be slow to move or may not move at all," he said. "Reaching settled, consistent and controlling law is further complicated by the fact that bankruptcy courts are not obligated to follow other bankruptcy courts' rulings, nor are they necessarily required to follow the rulings of (non-bankruptcy) federal district courts."

### Chapter 7 Revisited

Chapter 7 bankruptcy, often referred to as "straight" or "liquidation" bankruptcy, is historically the most common type of bankruptcy filing. In Chapter 7, all of the doctor's non-exempt assets (assets susceptible to creditors) are turned over to a bankruptcy trustee for liquidation, and distribution is then made to creditors based on certain priorities. A Chapter 7 bankruptcy is typically used to eliminate unsecured debts such as credit cards and medical bills. For some physicians it was also used to eliminate excess medical malpractice judgments, although the Law may restrict that, explained Wortelboer.

Under the amended Code, a Chapter 7 case can be dismissed for abuse if the physician has primarily consumer debts.

- **Primarily** means more than half of a physician's debts are consumer debts.
- **Consumer debts** are those incurred for personal, family or household purposes. For example, mortgages for the family home, auto loans, credit card debts and domestic support obligations can be considered "consumer debt." A medical malpractice judgment would not be considered a consumer debt.

### The "Means Test"

Despite the Law's definition of abuse, bankruptcy courts have rarely found that allowing a debtor with primarily consumer debts to file Chapter 7 constituted the abuse required to dismiss the case. Debtors with primarily consumer debt will be required under the Law to satisfy a "means test." Bankruptcy attorneys use computer programs to calculate the complicated "means test." The means test looks at income and expense (for the past six months) and allows for food, clothing, personal care, transportation, housing, and entertainment.

The guidelines are similar to those used by the IRS to determine a doctor's ability to repay delinquent taxes. These guidelines provide for allowances based upon local or regional data, and any income left after these items are paid is presumed to be available for debt repayment.

Physicians who seek bankruptcy relief will most likely fail the means test. Their incomes would usually be greater than the median in their communities, and would meet the requisite threshold of disposable income under the Code to pay back a portion of the debt.

"If a physician fails the means test, abuse is presumed," Wortelboer said. "Unless it's rebutted by extraordinary circumstances, a Chapter 7 case could be dismissed – with potential fees and costs associated with dismissal charged to the doctor. More likely it would force the doctor into a Chapter 13 or Chapter 11 bankruptcy."

### Impact on Lifestyle

Many physicians would not qualify for Chapter 13 due to debt limit requirements. Chapter 11 is a more likely scenario for physicians who do not qualify for Chapter 7, but still want bankruptcy protection and relief.

Chapter 11 is typically more expensive than Chapter 13 due to the associated fees and costs. Additionally physicians must propose a plan that meets stringent requirements in order to be confirmed by a bankruptcy court and be binding on physicians' creditors.

Whether in Chapter 11 or Chapter 13, creditors will likely seek to have physicians fund their Chapter 11 or Chapter 13 plans with disposable income. Failure to make plan payments could result in dismissal of a bankruptcy case and subject physicians to debt collection remedies that would involve court appearances and depositions which could prove to be disruptive to physicians' practices.

### Impact on Homestead Exemption

Even if a physician qualifies for Chapter 7, the Law has amended the applicability of the important homestead exemption. Under the Florida Constitution, state residents have an unlimited exemption for their personal residences except for taxes, past due mortgage payments, debts secured by the property, or bills from home improvement contractors. Under the Law, the full exemption applies only if the doctor has resided within one or more Florida homes for 1,215 days (approximately 40 months).

If the doctor has not reached the 1,215 day threshold, the most he or she can protect is \$125,000 (or \$250,000 if married and jointly filing bankruptcy). It is also important to note that even if the physician has been in a Florida residence for 1,215 days there is a danger that the homestead exemption could be significantly limited.

Wortelboer said, "Taking actions such as paying down the mortgage or building a home addition, to inject cash, a non-exempt asset, into the home, may not be exempt even if the investment was made within 1,215 days prior or if you purchased the home 1,215 days prior to filing."

*(continued on next page)*

## Changes to Bankruptcy Laws *(continued)*

### Ten-Year Look-Back

The Code also added a new 10-year look-back provision. It allows the bankruptcy trustee to seek recovery of a transfer by a doctor to a "self-settled trust or similar device" of which the doctor is the beneficiary that was made with the intent to hinder, delay or defraud creditors, if made during the 10 years prior to filing a bankruptcy petition. This provision also applies to the value of the homestead exemption by the amount of equity traceable to proceeds of non-exempt property if the conversion was made within 10 years of filing and was made with the intent to hinder, delay or defraud creditors.

For example, a physician could not take \$100,000 in cash eight years before filing bankruptcy and use it to pay down a mortgage on a homestead, if it was done with the intention of hindering, delaying or defrauding creditors. This provision applies even if the doctor has met the 1,215 day homestead exemption requirement. This makes long-range bankruptcy planning substantially more difficult for physicians.

### Time Means Money

With the implementation of the "means test" it is expected that more doctors will be forced out of Chapter 7 and into Chapter 11 or Chapter 13 bankruptcy relief. In such an event, the cost of litigating the bankruptcy will be far more expensive and time consuming. In fact, with aggressive creditors, a bankruptcy proceeding in Chapter 11 or 13 could cost as much money and time as the medical malpractice case that drove the physician into bankruptcy in the first place.

Robert (Bob) E. White Jr., President of First Professionals, said, "The new bankruptcy laws, and uncertainty in their application, make planning for the protection of a doctor's assets more difficult and limit the doctor's ability to discharge debts. Purchasing insurance is a prudent option to guard against a physician's risk of professional liability exposure."

For additional information regarding bankruptcy issues, please contact Rob Wortelboer, First Professionals' General Counsel and Vice President at (800) 741-3742 ext. 3281 or at [wortelboer@fpic.com](mailto:wortelboer@fpic.com).

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

*First Professionals Insurance Company is Florida's Physicians Insurance Company<sup>SM</sup> and the endorsed carrier for professional liability insurance by 22 county medical societies, 15 specialty societies, and three statewide associations in Florida.*

## FSTCS Membership Invitation

You are invited to apply for membership in the Florida Society of Thoracic & Cardiovascular Surgeons (FSTCS). This organization has been one of the few tools in our profession which has demonstrated a positive effect on the present and our future. The FSTCS provides first-rate accredited CME programs during its Annual Meeting at the renowned Ocean Reef Resort each year, providing a unique opportunity to spend some time with your local state colleagues, catch up on some very instructive and personal CMEs, and still spend a considerable amount of time with your family in a wonderful resort setting. The FSTCS is also your voice in Tallahassee, where recent victories have directly increased your insurance options and your ability to practice open heart surgery in the state.

Application forms may be obtained by contacting Bridget Anderson in the Society office; (904) 683-8200 or [fstcs@comcast.net](mailto:fstcs@comcast.net), or on the Society's website [www.fstcs.org](http://www.fstcs.org).

Please send your application and a copy of your CV with the \$50.00 application fee to:

Membership Committee Chairman  
Florida Society of Thoracic & Cardiovascular Surgeons  
5101 Ortega Boulevard  
Jacksonville, FL 32210

Application deadline is May 1, 2009. Applicants for active and associate membership will be presented for consideration to the council at the 2009 Annual Meeting; July 9 – 12, 2009. Dues are payable upon notification of acceptance.

### ACTIVE MEMBERS

#### Qualifications:

1. Certification by the American Board of Thoracic Surgery
2. Established in the practice of thoracic and cardiovascular surgery for a minimum of two (2) years in the state of Florida.
3. Provide names of 2 current FSTCS Members outside your own group practice as references.

**Dues:** Annual Dues will be \$250.00 per Active Member

### ASSOCIATE MEMBERS

#### Qualifications:

1. Have completed training in an approved thoracic and cardiovascular residency program
2. Are in the process of acquiring certification
3. Are licensed to practice in the State of Florida.
4. Provide names of 2 Current FSTCS Members outside their own group practice as references.

**Dues:** Annual Dues will be \$200.00 per Associate Member

### ASSOCIATE MEMBERS

#### Qualifications:


1. Any allied health professional that is employed in the field of cardiovascular and thoracic surgery in the State of Florida (i.e. – Administrators, Billing Managers, P.A.'s and Nurses.)
2. Nomination by an Active member of the Society.

#### Dues:

Annual Dues will be \$50.00 per AHP Member

# First Professionals Insurance Company

*Florida's Physicians Insurance Company<sup>SM</sup>*



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## The Florida Society of Thoracic and Cardiovascular Surgeons News

*The Florida Society of Thoracic and Cardiovascular Surgeons newsletter is published periodically and mailed to members of the Society.*

**Edward G. Izzo, Jr., M.D., President**  
**Gary D. Dworkin., M.D., Secretary/Treasurer**  
**Bridget H. Anderson, Administrator**

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**Website: [www.fstcs.org](http://www.fstcs.org)**

### Mark Your Calendar with these FSTCS Meeting Dates:

#### **2009 FSTCS Annual Meeting**

**July 9 - 12, 2009**  
**Ocean Reef – Key Largo, FL**

#### **Other Meetings of Interest**

**STS 45th Annual Meeting**  
**Jan 24 - 28, 2009**  
**San Francisco, CA**

**FL Valve Symposium 2009**  
**Feb 29 - Mar 1, 2009**  
**St Pete, FL**

**Florida Chapter, American College of Surgeons**  
**May 21 – 24, 2009**  
**Ginn Hammock Beach Resort**  
**Palm Coast, FL**

**Southern Thoracic Surgical Association**  
**November 4-7, 2009**  
**Marriott Marco Island**  
**Golf Club and Spa**  
**Marco Island, FL**

**FSTCS**  
**5101 Ortega Blvd.**  
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