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# Message from the President



This has been a very business for everyone I have talked to lately. From a FADONA prospective, our March conference was such a great success.

We have some pictures on the FADONA Web site at [www.fadona.org](http://www.fadona.org).

The Anemia Certificate Program, which was made possible by a unrestricted educational grant from AMGEN, was a huge success. It is the first LTC program of its kind in the country.

The program educates nurses and allows for followup in your own

clinical settings to put your newfound tools to work. We have been asked to present this program at the 2007 NADONA Convention in Las Vegas. This is a GREAT honor! The FADONA conference had something for everyone. The speakers were some of the best in their fields and their presentations were sensational!

FADONA was well represented at the St. Louis NADONA Conference. As members of NADONA/FADONA, you need to be extremely proud of our state chapter. We have it ALL as chapters go and have helped NADONA and other state chapters when asked for suggestion on how we do it. It's all about our members...

I am so proud to represent our members. We truly have accomplished a lot over the last several

MESSAGE  
from the  
PRESIDENT



FADONA President Cathy Ates

years. I say this for many reasons, but the reason I say this now is that at the end of my term in February 2007, you will elect a new president. I encourage you all to vote and keep the FADONA mission alive!

February 2007 is our next conference and a cruising we will go. You can't beat the cruise rates, the conference

program, the vendors and trade show. I can't wait! The rooms are going fast so book your cabins now. Your FADONA board promises you the best cruise ever.

The survey climate has changed again. It almost reminds me of hurricane season. Please be prepared, read the new guidance to surveyors, ask questions. FADONA has access to many professionals who can answer your questions. The very best resource are your local chapter meetings. Be prepared!

Remember that God lights our path one step at a time. Thank you for all your hard work in caring for our elderly.

Cathy Ates, RNC, FCDONA  
President

## Front Cover Photo Captions: FADONA's 19<sup>th</sup> Annual Convention

**A:** Levonda Coats from Palm Garden of Ocala (holding certificate), recipient of a \$1,500 FADONA scholarship check, is surrounded, from left, by her grandmother, FADONA President Cathy Ates, former DON Rebecca St. Laurent, her mother, and proud son.

**B:** Survivor tribe members Nancy McCartney (L) and Deborah Grotke from American Finnish Nursing Home, span out through the Trade Show in search of treasure.

**C:** Jenny Futral (right) and other volunteers from the Jacksonville area chapter of FADONA help setup before the Convention officially starts.

**D:** Exhibitors and Fun Night Sponsors representing PharMerica.

**Center:** Evercare's Brenda McKenzie presents Bonnie Cruz, DON at the Manor at Blue Water Bay, with FADONA's 2006 Award for Nursing Administrator of the Year. This is Evercare's fourth year in a row sponsoring this prestigious annual award.



# Regional Reports

**Regional  
REPORTS**



Bonnie Cruz

**REGION I**

hurricane season. Nice break from years past. This has allowed us to focus on caring for our elderly.

Region I continue to have two active chapters: Pensacola and Fort Walton Beach. These two chapters continue to be active monthly with strong vendor sponsorship. As always, we appreciate the strong alliance and support from our vendors.

At this time, I would like to congratulate two Region I FADONA honorees. Tina Snook, RN from Sandy Ridge Nursing Home was recently honored as Nurse Administrator for FHCA. We are proud of you and well deserved. I would also like to congratulate a CNA names Lucille Betts, who works at the Manor at Blue Water Bay for being recognized as Caregiver of the year for FAHA.

**Region I—Northwest**

**1A**—Bay, Escambia, Holmes, Okaloosa, Santa Rosa, Walton, Washington; **1B**—Jefferson, Madison, Calhoun, Leon, Taylor, Franklin, Gadsden, Gulf, Jackson, Liberty, Wakulla

The local chapters continue to meet monthly.

Hello to FADONA chapter members. We are all blessed in Florida this summer with our inactive

Lastly, our monthly meetings continue to support interactive discussions with the survey process. Our trend in Region I shows an increase in citations and a higher number of "G" levels. Together we can help each other and work through the survey process for positive outcomes.

Hope to see you all on the FADONA 20<sup>th</sup> Anniversary cruise in February 2007, an exciting time with an opportunity for networking and learning.

If you have any questions feel free to contact **Shannon Ash, RNC**, at (850) 881-9900, in Pensacola.

As always, feel free to contact me at (850) 897-5592.

**Bonnie Cruz, RN, BSN, MEd**  
**Region I Coordinator**



CaCheryl Polk-Williams

**REGION II**

**Region II—Northeast**

**2A**—Hamilton, Lafayette, Alachua, Marion, Clay, Nassau, Suwannee; **2B**—Dixie, Union, Putnam, Baker, St. Johns, Columbia, Gilchrist; **2C**—Levy, Bradford, Duval, Flagler

Region II currently has two active chapters. The Gainesville, Lake City area meets the 4<sup>th</sup> Thursday of every month in a facility in Gainesville. The Jacksonville, St. Augustine area has suffered from the many changes and added responsibilities that long-term care has faced. They are currently trying to meet on the 3<sup>rd</sup> Wednesday of the month at rotating facilities.

Feel free to contact me at (352) 548-1121, or [cncwilliams@cox.net](mailto:cncwilliams@cox.net).

**Cacheryl Polk-Williams, RN**  
**Region II Coordinator**

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Diane Stover

REGION III

**Region III—Centraleast**

- 3A—Lake, Osceola, Orange, Seminole
- 3B—Volusia, Hardee

Greetings to our nurse executives in Region III.

Like our sister regions, we are excited about FADONA's 20<sup>th</sup> Annual Convention. We await the convention and are excited about being together again to share education, visions, and fun!

Osceola County has been interested in organizing a new chapter. Debbie Sharpe, DON, Palms Park Place, is spear heading the drive.

Lake County directors of nurses are being visited personally to encourage FADONA membership and chapter formation. Many thanks to all the individuals who are joining forces, visiting and calling all our nurses. There is much support offered by FADONA if you are interested in chapter formation.

Five counties are still being focused on: Lake, Osceola, Orange, Seminole, and Volusia.

If you wish to be involved or are interested in serving on any committees, please call us. We are also seeking an assistant regional coordinator.

Please do not hesitate to reach me with any questions, concerns or comments.

I am excited about the possibilities we can achieve together.

Can't wait to see you at convention!

So please, let's energize our region. Contact me today at (407) 697-3061, Fax: (407) 469-5537, or [Distover1934@direcway.com](mailto:Distover1934@direcway.com).

**Diane Stover, RN, BSB, LNC, LHRM, RAC-C, CDONA/LTC**  
**Region III Coordinator**



Jean Nelson

REGION IV

**Region IV—Centralwest**

- 4A—Hillsborough, Pinellas, Highlands, Polk
- 4B—Hernando, Sumter, Citrus, Pasco

Region IV is host its 8<sup>th</sup> Annual Regional Educational Seminar at the Tampa Hotel, formerly the Holiday Inn in Tampa, on Wednesday, Sept. 27. Look for your registration flier in the mail and on page \_ of this *FADONA Focus*.

Some of our guest speakers will be Karen Goldsmith, attorney; Sheila Nicholson, attorney; LuMarie Polivka-West, FHCA; and Sandra Carey, Quality Monitor, from AHCA. There will be approved continuing education hours for licensed nurses and nursing home administrators.

I am sure we have all had busy years in our facilities. But this will be a great opportunity for all of us to get together and network and hear the latest information in our industry.

We are always looking for vendor support and have mailed out letters to a lot of companies. If we missed you please contact Carla Russo at Carrollwood Care Center (813-960-1969) We would be happy to have your support.

Region IV would like to encourage all readers to find out where your local meetings are being held. It is very important for director of nurses and other LTC nurses to be a part of your local association. This is a time to network and share the new "things" in your area. Listed below are the local chapters, their officers and where they meet.

The chapter officers are:

- 1. Hillsborough/Pasco

**Carla Russo**, president, (813) 960-1969, **Jenna Bernard**, treasurer (813) 968-5093



The Hillsborough/ Pasco DONs are meeting monthly on the second Wednesday of the month at Houlihans Restaurant on Dale Mabry Highway.

- 2. Tri-county (Polk, Hardee, Highlands)

**Tammy Lynch**, president, (863) 294-3055 or cell (863) 258-2411

Tri-County meetings are held the 1st Tuesday of every month in Bartow. Please contact Tammy for information.

- 3. Pinellas/Pasco PCFADONA

**Karen Oliver**, president. Contact Bon Secour Maria Manor

**Jeri Reed**, vice-president

**Annabelle Locsing**, secretary

**Joanne Richards**, treasurer

**Ann Da Silva**, ex-officio

**Robin Bleier**, immediate past-president, (727) 786-3032.

**Robbie Williams**, corresponding secretary

PCFADONA meetings are held the second Tuesday of the month at 6 p.m. at Banquet Masters on Park Blvd. Cost is \$20 which includes meal, speaker, and continuing education

You can contact me at (813) 968-5093(w), (813) 949-1579(H), Fax: (813) 264-0476, or e-mail at [jnelsondon@msn.com](mailto:jnelsondon@msn.com), OR [rnelson17@tampabay.rr.com](mailto:rnelson17@tampabay.rr.com).

**Jean Nelson, RNC, BSHCA, DON**  
**Region IV Coordinator**

*Continued on page 6*

**Scholarships Available**

**FADONA currently has scholarship funds available for eligible applications. If interested, please fill out the application form (available online at [www.fadona.org](http://www.fadona.org)); or call the business office at (561) 659-2167.**

**Regional Reports**

*Continued from page 5*



Susie Jensvold

REGION V

**Region V—Southwest**

5A—Manatee, Charlotte, Collier;  
5B—Desoto, Lee, Sarasota

**M**anatee County Chapter meets regularly the third Thursday of the month at 7:30 a.m. for breakfast. Con-

tact **Charlotte Brakcher** at (941) 747-3706, for more information.

Charlotte County is planning to organize a group. Contact **Maureen Vien** at (941) 255-5855, for suggestions and information.

Sarasota County is looking for a coordinator in the area. Please contact me at (941) 773-9284.

We had a great at the 19<sup>th</sup> Annual Convention & Trade Show at the Hyatt Regency Jacksonville-Riverfront. Now it's time to relax and have fun on Carnival's Fun Ship Sensation in February 2007. See you all there.

Call me if you have any suggestions or questions. You can contact me at (941) 773-9284, or (941) 794-8135 (home), E-mail is [SUSIE1RN@aol.com](mailto:SUSIE1RN@aol.com).

**Susie Jensvold, RN, MHSA**  
**Region V Coordinator**



Gilda Osborn

REGION VI

**Region VI—Southeast**

6A—Dade, Monroe, Broward, Palm Beach;  
6B—Brevard, Indian River, St. Lucie, Martin, Okeechobee; 6C—Hendry, Glades

**A**s the "new" Region VI coordinator, I hope to be a resource to my colleagues. I am a founding member of FADONA and have been past president, secretary and a region coordinator. I have also been a DON for more years that I thought had gone by and at my current position for the past 18. It doesn't make me an expert, just older and I hope a little wiser.

I have attempted to make contact with the county presidents and have the following to share:

1. **Indian River County** — **Nancy Henderson** is the new local chapter president. She can be reached at (772) 288-0060. They continue to meet every other month.
2. **Brevard County** — Continues to meet every month. I have a corporate nurse colleague and good friend researching a contact name and will have that for the next issue. In the interim, call the FADONA office at (561) 659-2167.
3. **Palm Beach County** — **Carmen Shell** (561) 687-4709. Continues to have active monthly meetings the third Wednesday of every month at various locations throughout the county. One of their members, and treasurer of the chapter, **Lois Gackenheimer**, was recently presented the distinction of both Nurse Leader and Nurse of the Year. This was announced at the Palm Healthcare Foundation Nursing Celebration at the Breakers Hotel in

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Palm Beach and attended by 700 people from many arenas of nursing.

4. **Broward** — **Margaret Kocekowski** at Sunrise Health & Rehab. I spoke recently spoke with Margaret and she informed me that she was trying to “regroup.” Said that since Hurricane Wilma, the group has had some challenges. They currently meet the 4<sup>th</sup> Wednesday of the month. For more information, contact her at (954) 748-3400.
5. **Dade County**—**Rosemary Szinyava** (305) 258-2222. This chapter meets monthly. Please call Rosemary for the time and location.

Call me if you have any questions or suggestions. I can be reached at (561) 237-3800, Fax: (561) 706-4932, or e-mail: [GOosborn@whitehallboca.com](mailto:GOosborn@whitehallboca.com).

**Gilda Osborn, BS, RN**  
Region VI Coordinator

## Focus Wins 2006 APEX Award



**C**athy Ates, president, is proud to announce that *FADONA Focus* recently won an Award of Excellence in the APEX 2006 — 18<sup>th</sup> Annual Awards for Publication Excellence.

“We are so very excited to have our own statewide newsletter recognized in this manner,” Ates said.

“This is quite an honor, one that we share with the membership and everyone who contributes to this newsletter, including Ian Cordes, who along with Corecare Associates, Inc., publishes *FADONA Focus*,” she added.

The awards are based on excellence in graphic design, editorial content and the ability to achieve overall communications excellence. The 2006 APEX Awards judged close to 5,000 entries in 11 major categories.

The APEX awards are sponsored by Communications Concepts, a company which helps publishing, public relations, and marketing professionals improve publications and communications programs.



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# Dealing With Special Nursing Issues During Construction

By Karen, Goldsmith, JD, FIRM NAME

**W**e have been dealing with several facilities which have received immediate jeopardy level deficiencies because of renovation and construction-associated issues.

Before I begin, let me tell you that in one of those cases, the scope and severity of the tags were lowered to "D."

Another is still in the IDR process. In both cases, I believe that the situation was not threatening to the residents and the tags were inappropriately raised to such a high level. I might also add that I do not agree with all of the facts as cited. Be that as it might, representing these facilities has caused me to think through and even ponder, ways to avoid being cited in the first place. I have learned a lot and want to share some of it with you. After all, prevention is the best medicine.

Before construction or serious renovation begins, the facility should have an infection control plan. Everyone does them. Most likely everyone follows them. But does everyone document what they are doing? Probably not.

Another good idea is to pay attention to the absence of new infections. In your infection control committee minutes, make mention of the fact that there is ongoing construction, you have in place an infection control plan, you are implementing it and it is successful. What a powerful item to present to the surveyors when they are looking at your project.

Masks — everyone has infection control masks on the floor. In one instance the nurses at the facility were wearing these masks. The residents were not. Thus the surveyors concluded that masks were needed and the residents did not have them. How to avoid this assumption? Direct your nurses that if



Karen Goldsmith

they feel they need masks, offer them to everyone else.

Resident safety is one of the citations that occurs in every one of these cases. The mere fact that no one is injured, while good evidence that safety measure were in place, will not convince the survey team that you took appropriate steps. Some ideas you might

want to incorporate into your plan:

- Have daily meetings with the construction supervisor and key staff to discuss the exact location and extent of the work for that day.

- Meet with all floor staff and share this information with them

- Make assignments clear and in writing. For example, you may have extra cna's assigned to that area. Some may be responsible for supervision of residents while others are performing their normal daily routine tasks. Make sure everyone understands what he/she is to do and can answer appropriately if asked by a surveyor.

- Make staff aware of the progress of the construction during the day. The schedule may change from the morning meeting. This enables staff to know what is safe for the residents.


- Make sure all residents are moved to a safe area and family members or other responsible parties know where they will be. Communication with residents and families is crucial.

- If a competent resident refuses to move (and the danger to that resident is minimal) tell the resident why you want him/her to move, document that you have done so and, if he/she still desires to remain in the area get him/her to sign a release. Will this always work? No — but it does demonstrate your concern and efforts with this resident.

- If the resident is in an unsafe area where injury could result, that person may have to move — remember, normally they are not being transferred, just merely going to another area of the nursing home.

Despite the best precautions, residents do take a turn for the worse or sustain injuries. If this is the case, thoroughly investigate whether the situation resulted from the construction process and take whatever action necessary to avoid a similar problem going forward. If there is no relationship to the construction, note on the resident's chart that this is the case. You can assume that the surveyors will assume that, absent documentation to the contrary, the changed condition is tied to the construction.

All of this is common sense. Most of these ideas are already in place in many facilities undergoing construction or renovation. The problem is that we do not have evidence to show our good intentions and plans. We do what is right. No one is harmed. But we do not have the evidence to support our good deeds.

With the hurricane season upon us again, there will, undoubtedly, be facilities which will need repair and renovation. Hopefully this year, that will be limited to a few leaky roofs. Repairs, no matter how minor, impact nursing as much, if not more, than they impact maintenance. We expect that the survey teams will be more diligent in looking for compliance when there are workman in the building. You need to be most diligent in implementing systems to protect your residents and tooting your own horn about what you have done. 

This column is a regular feature of **FADONA Focus**. If you have a subject matter that you would like to see discussed, please e-mail **Karen Goldsmith** at [kgoldsmith@cfl.rr.com](mailto:kgoldsmith@cfl.rr.com).





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1. If you are choking on an ice cube, don't panic. Simply pour a cup of boiling water down your throat and presto. The blockage will be almost instantly removed.

2. Clumsy? Avoid cutting yourself while slicing vegetables by getting someone else to hold them while you chop away.

3. Avoid arguments with the little woman about lifting the toilet seat by simply using the sink.

4. For high blood pressure sufferers: simply cut yourself and bleed for a few minutes, thus reducing the pressure in your veins. Remember to use a timer.

5. A mouse trap, placed on top of your alarm clock, will prevent you from rolling over and going back to sleep after you hit the snooze button.

6. If you have a bad cough, take a large dose of laxatives, then you will be afraid to cough.

7. Have a bad toothache? Smash your thumb with a hammer and you will forget about the toothache.

Sometimes, we just need to remember what the rules of life really are:

You only need two tools: WD-40 and Duct Tape.

If it doesn't move and should, use the WD-40.

If it shouldn't move and does, use the duct tape.

Remember: Everyone seems normal until you get to know them.

Never pass up an opportunity to go to the bathroom.

If you woke up breathing, congratulations! You get another chance.

— Author unknown

## What would you do if you discovered the Golden Egg?

**Visit the CareerCenters at**  
***www.fadona.org, www.fmda.org, and www.fhcswa.net***

***These are the official online CareerCenters of the Florida Association Directors of Nursing Administration, Florida Medical Directors Association, and Florida Health Care Social Workers Association.***

These **CareerCenters** are a **treasured** new online resource designed to connect long-term care industry employers with the largest, most qualified audience of nurses, nurse administrators, directors of nursing, nurse practitioners, medical directors, physicians, physician assistants, social workers, social service designees, and directors of social services in Florida.

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# 8<sup>TH</sup> ANNUAL FADONA REGION IV SEMINAR

FOR LICENSED NURSES. NHA, MDS COORDINATORS, RISK MANAGERS

**WEDNESDAY, SEPTEMBER 27, 2006 • 7:30 a.m.–4:30 p.m.**

**8.0 Nursing Contact Hours provided by FADONA • 6.0 FHCA SPONSORED CEUs for NHAs**

**The TAMPA HOTEL, formerly THE Holiday Inn at 2705 E. Fowler Avenue, Tampa**

## PROGRAM/AGENDA

7:30 AM–8:30 AM	REGISTRATION-MEET WITH SPONSORS COFFEE, JUICE & ROLLS
8:30 AM–9 AM	OPENING OF SEMINAR INTRODUCTION OF SPONSORS, AWARDING OF DOOR PRIZES
9 AM–10:30 AM	ASSET PROTECTION FOR NURSES & NHAs — Karen Goldsmith, JD
10:30 AM–10:45 AM	BREAK
10:45 AM–11:45 AM	F-TAG 315 CARE OF URINARY SYSTEM — Watson Pharmaceuticals
11:45 AM	Set up for lunch BUFFETT (working lunch)
12 PM–1 PM	HOT TOPICS” — LuMarie Polivka-West, FHCA
1 PM–3 PM	LEGAL DOCUMENTATION — SHEILA NICHOLSON, JD
3 PM–3:15 PM	BREAK
3:15PM–4:30 PM	10 MOST COMMON TAGS IN NURSING HOMES — SANDRA CAREY, AHCA
4:30 PM	QUESTIONS & ANSWERS

**\*SPONSORS/VENDORS TBA\***  
**\*SUBJECT TO CHANGE\***

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**FOR HOTEL RESERVATIONS: CALL 1-800-206-2747 for Holiday INN on Fowler Avenue, Tampa. Ask marketing for Fadona Region for special rate.**

**Registration FEE: \$60 per person, prior to Sept. 15, \$75 at the door. Use one registration form per person.**

# Memories from FADONA's 19<sup>th</sup> Annual Convention



Lynette Pease from the Northeast Florida Area Health Education Center introduces the first speaker, Carol Fulton who spoke on domestic violence, one of the three mandatory licensure update sessions.



FADONA President Cathy Ates (left) introduces the expert speakers for the Certificate Program in Anemia Disease Management (from left): Dr. Andres Mencia, Gail Fox-Seaman and Richard Marasco.



FADONA President Cathy Ates (left) presents a \$1,500 scholarship check to Cynthia Brychta-Latgis from Glenmoor Skilled Nursing. She is surrounded by her administrator, Rick Soehner, DON Jenny Futral (second from the right), and others from her facility.



FADONA President Cathy Ates (left) presents the first place CNA award to Wendy Langford (center) with Dawn Ferrari, staff development, Palm Garden of Ocala.



FADONA President Cathy Ates presents Elizabeth Raymond (right), DON, Countryside Healthcare Center, with a FADONA Award of Excellence for Nursing Administration as Phyllis Coleman, Regional Clinical Consultant from Sea Crest Health Care Management, and her nurse consultant, looks on.



FADONA President Cathy Ates (left) presents Carmen Shell (right), VP of Nursing, Joseph L. Morse Geriatric Center, with a FADONA Award of Excellence for Nursing Administration as her DON, Leena Gerva Geevarghese, looks on.



FADONA President Cathy Ates (left) presents the second place CNA award to Julia Ferrera (center) with Dawn Ferrari, staff development, Palm Garden of Ocala.



Annual Awards Luncheon keynote speaker Dr. Susan Acker



FHCA's LuMarie Polivka-West during her presentation on risk management.



FADONA's friends and exhibitors with 1st Choice RX.

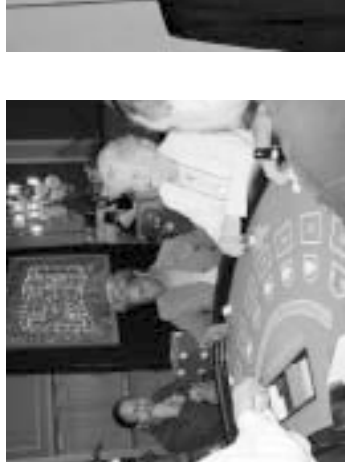


Having a blast at the amazing Casino Fun Night.

Speaker Dan Cannone, DO, CMD



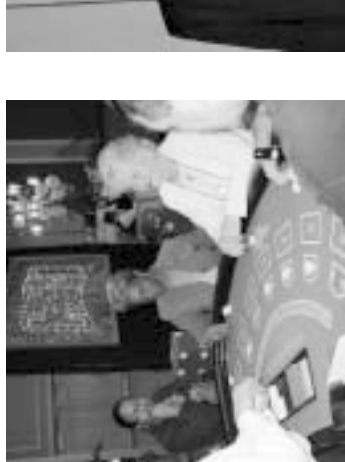
FHCA's Debbie "JMA" Afasano with a new best friend, at the Trade Show



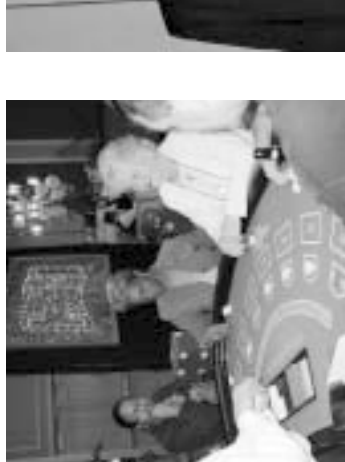
FADONA President Cathy Ates presents outgoing Secretary Susan Campione (R) with a plaque in appreciation of her years of service.



Camouflage tribe member Sonja Reese, Shady Rest Care Pavilion, explores the trade show.



FADONA President Cathy Ates (center) presents third place CNA award to Elizabeth Hamilton (right), Palm Garden of Ocala, with her husband and son present.



Bonnie Cruz, DON at the Manor at Blue Water Bay, and FADONA's 2006 Nurse Administrator of the Year, with her administrator, Dwayne Gallagher



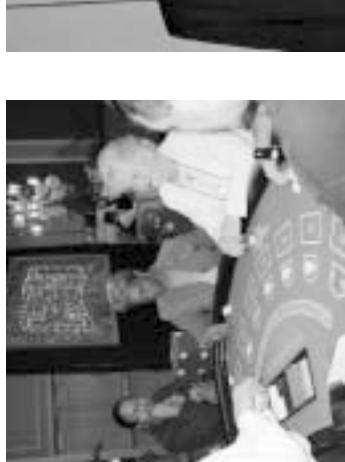
Ben Jelsema and Rick Gillespie with Wings Health Care Solutions



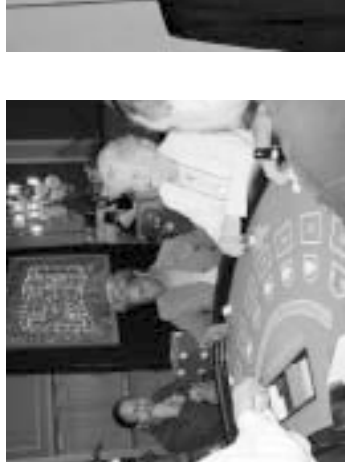
Speaker S. Kwon Lee speaks on wound care.



FADONA 1st VP Kay Trugillo (left) prepares to cut the ribbon and officially open the trade show.



The trade show in full swing



FADONA President Cathy Ates thanks the Fun Night Sponsoring Alliance Council members who planned and hosted the Casino Fun Night.



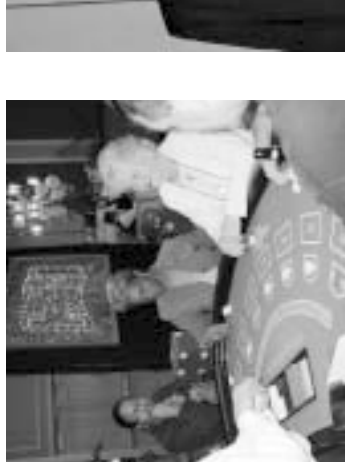
Cathy Ates (from left) with Casino Fun Night team. Alliance Council members Jim Cassidy, Brinn Helton, Alex Roman and Gail Allison



FADONA Treasurer Reuben Bowie hands out cool cash to winner, Patches Bryan.



The entire Casino Fun Night crew with Alliance Council members Jim Cassidy, Gail Allison, Brinn Helton and Alex Roman



FADONA Treasurer Reuben Bowie hands out cool cash to winner, Patches Bryan.



## News Briefs



### Pandemic Preparedness on the Web

The School of Public Health at the University of Albany has created an excellent Web-based continuing education program on preparedness and community response to pandemics. The program is free and open to the public.

Participants who engage in all of the lessons and who successfully complete the exam with an 80 percent or higher within two tries are eligible for 6 hours of continuing medical education credit or 7.2 nursing contact hours at no cost!

Once you register, you have 90 days to complete the course, and the module allows you to log on and log off, and it will remember your location in the program.

For more information and/or to register go to this link:

[www.ualbanycph.org/learning/registration/detail\\_Pandemics.cfm](http://www.ualbanycph.org/learning/registration/detail_Pandemics.cfm)

### CMS Releases CMIT

On July 18, 2006, the Centers for Medicare & Medicaid Services (CMS) released the initial Comprehensive Medicaid Integrity Plan. Under the provisions of the Deficit Reduction Act (DRA) of 2005, Congress provided resources to CMS to establish the Medicaid Integrity Program (MIP). MIP represents the first national strategy to detect and prevent Medicaid fraud and abuse in the program's history.

Under the leadership of the Center

for Medicaid & State Operations (CMSO), the agency will fulfill the mandates of this new program. The Comprehensive Medicaid Integrity Plan will guide CMSO's efforts to fulfill this new obligation.

The Comprehensive Plan can be found on the Web at

[www.cms.hhs.gov/DeficitReductionAct/](http://www.cms.hhs.gov/DeficitReductionAct/).

### Culture Change Tool

The new Artifacts of Culture Change Tool for nursing homes is now available the Agency's Division of Nursing Homes.

The culture change tool is a 79-item self-evaluation questionnaire designed for culture changing nursing homes to measure changes they have made to their policies, resident autonomy, staffing enhancements, and to their buildings.

CMS initially released the tool April 21. The tool and a report that explains it are now available at [siq.air.org/portfolio.asp?RID=179](http://siq.air.org/portfolio.asp?RID=179).

### National Nursing Home Quality Campaign Announced

The Centers for Medicare & Medicaid Services soon will unveil a new national nursing home quality campaign.

The new campaign, Advancing Excellence for America's Nursing Home Residents, will seek to improve nursing home quality of care with a new approach focused on stronger partnerships, according to CMS's Office of Clinical Standards and Quality. CMS plans to make an official announcement in the coming weeks, he said.

The quality campaign will focus on helping nursing facilities achieve eight main goals, including a reduction in the number of patient pressure ulcers, reducing the use of physical restraint, and decreasing the prevalence of pain in both short- and long-stay patients.

In addition, the campaign hopes to

engage nursing homes to address satisfaction of residents and their families, to measure staff turnover, and to achieve consistent assignment of nursing staff for nursing home patients. CMS also set a goal of encouraging 90 percent of nursing homes to set quality improvement targets.

CMS will formally launch the campaign Sept. 29 at a one-day nursing home quality summit at the National Academy of Sciences in Washington, McGann said. Former Sen. Bob Kerrey (D-Neb.) and former House Speaker Newt Gingrich (R-Ga.) will be spokesmen for the campaign and will co-chair a National Commission on Quality Long-Term Care.

The campaign will continue for two years. After that time, CMS will collect and analyze the data gathered and publish the results shortly thereafter.

### Quality-Based Purchasing Initiative

CMS plans to establish a Nursing Home Quality-Based Purchasing demonstration project to test the concept of integrating payment and quality into workable programs, according to CMS's Office of Research, Development, and Information.

Under the demonstration, CMS will assess the performance of participating nursing homes based on selected quality measures. CMS then will make performance payment awards to those nursing homes that achieve a higher standard of quality care.

CMS will hold a public meeting in the next month to announce the demonstration. Key organizations will be notified once the meeting date is scheduled, he said.

The demonstration will take place in five states, which have yet to be determined. Although the demonstration is still in the design phase, a report on the preliminary design is available on the Web at [www.cms.hhs.gov/DemoProjectsEvalRpts/downloads/NHP4P\\_FinalReport.pdf](http://www.cms.hhs.gov/DemoProjectsEvalRpts/downloads/NHP4P_FinalReport.pdf).

Questions on the initiative may be sent to nursinghomeqbp@cms.hhs.gov.

## New Info for Nursing Home Compare

The CMS consumer information Website comparing nursing homes will receive two new facility measures.

Beginning in October 2006, Nursing Home Compare will detail each "sprinkler status" for each nursing home, providing information about each facility's fire extinguishing systems. The Web site also will include information about fire safety at each facility.

## New Medication Therapy Management Certificate Launched

The American Society of Consultant Pharmacists (ASCP) and American Pharmacists Association (APhA) will launch an educational tool to prepare pharmacists to deliver medication therapy management (MTM) services. This ACPE\* accredited certificate program will debut in January 2007.

The Medication Therapy Management Certificate Program is designed to assist pharmacists enhance their knowledge and skills in working with medically-complex patients to identify and resolve medication therapy problems.

Among America's seniors, who take more medications than any other age group, the risks of medication-related problems are greatly magnified. Goals of the educational project are to improve public health through improved medication use, to provide the training necessary for community pharmacists to perform MTM for patients of all ages, and to motivate increased numbers of community pharmacists to establish MTM services in their practices.

Coursework will include self-study and live components. The content will include practical applications and case study, be applicable to working with patients in all age groups, but also

include components tailored for working with senior patients; and provide guidance for practice implementation regardless of payer source.

The American Society of Consultant Pharmacists, is the international professional association that provides leadership, education, advocacy, and resources to advance the practice of senior care pharmacy. ASCPs 8,000 members manage and improve drug therapy and improve the quality of life of geriatric patients and other individuals residing in a variety of environments, including nursing facilities, subacute care and assisted living facilities, psychiatric hospitals, hospice programs, and in-home and community-based care. Visit ASCP's Web site at [www.ascp.com](http://www.ascp.com).

The American Pharmacists Association, founded in 1852 as the American Pharmaceutical Association, represents more than 57,000 practicing pharmacists, pharmaceutical scientists, student pharmacists, pharmacy technicians, and others interested in advancing the profession. APhA, dedicated to helping all pharmacists improve medication use and advance patient care, is the first-established and largest association of pharmacists in the United States. Visit APhA's Website at [www.aphanet.org](http://www.aphanet.org).

\*The Accreditation Council for Pharmacy Education (ACPE) is the national agency for the accreditation of professional degree programs in pharmacy and providers of continuing pharmacy education.

## Nursing Home Complaint Investigations

This report, available at [www.oig.hhs.gov/oei/reports/oei-01-04-00340.pdf](http://www.oig.hhs.gov/oei/reports/oei-01-04-00340.pdf), assesses, (1) whether state agencies investigate nursing home complaints in accordance with program requirements, and (2) CMS's monitoring of state agency performance in investigating nursing home complaints.

OIG found that state agencies did not investigate some of the most serious nursing home complaints

# News Briefs



within the required timeframe, including 7 percent of complaints alleging immediate jeopardy and 27 percent of complaints alleging actual harm (high).

In addition, while the Federal complaint tracking system, ASPEN Complaints/Incidents Tracking System (ACTS), shows potential for managing complaints, state agencies have not taken full advantage of this system. Finally, CMS oversight of nursing home complaint investigations is limited.

OIG found that CMS conducts few Federal Oversight and Support Surveys (FOSS), which allow CMS's regional offices an opportunity to observe a state agency's complaint investigation process. However, CMS guidance states that state agencies should provide CMS with at least two weeks' advance notice of scheduled surveys, thus limiting the use of the FOSS for the most serious nursing home complaints.

OIG recommends that CMS require State agencies to meet the 10-day timeframe for investigating complaints involving actual harm (high), increase oversight of the state agencies, and offer additional ACTS training to its regional offices as well as state agencies. OIG also recommended that CMS remove the 2-week advance notice period for FOSS.

CMS concurred with the first three recommendations, but did not concur that it should eliminate the 2-week advance notice for FOSS.

# Kay's Korner

**C**onvention time is here. Hopefully you're registered and looking forward to this year's experience.

Our conventions are always educational, interesting — a way for professional friends to get together and catch up with each other and the industry.



Kay Trugillo

1<sup>ST</sup> VICE-PRESIDENT

I've led you on our convention journeys for the last five years. Hopefully you have learned and have enjoyed the experiences we have provided you. I have one more convention to plan—our 20<sup>th</sup> Anniversary Convention Cruise and my swan song as 1<sup>st</sup> vice president.

Did I hear you say, "cruise"? The 20<sup>th</sup> Anniversary special! Your FADONA Board and your Alliance Council have an awesome package to present.

Not only will Carnival Cruise Lines be exhibiting at our 19<sup>th</sup> Annual Convention, we have arranged a very special cruise rate and payment plans that will blow you away.

Berths start at only \$269 per person for our 4-night cruise and if you sign up in Jacksonville, you can get two free cabin category upgrades!

If you haven't done a FADONA convention cruise, you haven't cruised. They are a blast! For more details visit Lori and her staff at the Trade Show and see their ad on page \_\_\_\_.

See you soon! Remember to bring your survival gear and be prepared to have a great time in Jacksonville.

*Kay Trugillo*  
**Kay Trugillo, RN, CDONA**  
 1<sup>st</sup> Vice-President

# Bleier Recognized by FHCA and AHCA (No, not the Agency!)

**F**ADONA 2<sup>nd</sup> Vice-President Robin Bleier, was honored recently at Florida Health Care Association's Annual Convention with the Willis J. Gregson Associate Member member of the Year Award. The award (see photo) was presented by Tim Gregson with FMS Group Purchasing.



Robin Bleier (left) with Tim Gregson from FMS Group Purchasing

Robin was also recently appointed to serve a one-year term on the American Health Care Association's (AHCA) Life Safety and Disaster Planning Committee.

FHCA's Disaster Preparedness Committee.

In this capacity, she will be able to support individual committee members, and as well as more than 10,000 long-term care providers in America.

Committee Co-Chairs include **Richard Strub** and **William Phelan**, executive director of the Florida Health Care Association.

In addition to these AHCA duties, Robin is currently the Chair of

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**Online Brochure and Registration:** [www.cme.hsc.usf.edu](http://www.cme.hsc.usf.edu)

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 College of Medicine and the  
 Training Academy on Aging at the Florida Policy Exchange Center on Aging



I just wanted to take a minute to say that we really enjoyed the FADONA conference. I think you and your staff did an excellent job putting on an event that was fun yet educational. I loved the survivor theme you adopted along with all of the military wear showcased. You can count on us participating next year.

— Rosalind McCarthy, Director of Market Development, Vitas Innovative Hospice Care Central Florida  
407-691-4522

Just wanted to drop you a line and thank you for the great FADONA conference you hosted last week in Jacksonville. I enjoyed meeting many of the participants; both attendees and exhibitors. Next time, we'll know all about FUN night, etc. and will be able to join in.

—Terry Suter, Senior Adult Immunization Manager, Merck Vaccine Division



**To Everyone Behind the FADONA Convention:**

First of all — You folks did a wonderful job. From the view point of a convention attendee, everything went smoothly. It is (and was) obvious that great care was given to the planning process. The speakers presented on things pertinent to our industry. I've attended most of the FADONA Conventions in the past 19 years (I think I've missed a total of five), along with most of the Nurse

Leadership meetings, and I think this was the best one ever.

Of course, I like to think the cruise celebrating the 15<sup>th</sup> year was good as I presented that year.

The FADONA Board and others that support FADONA are among the very best in leadership, support, willingness to help all the members, and never seem to get "ruffled."

I wish every nurse in LTC could attend the conventions. It would really make them realize that others share their love for the type of residents we have and that no matter what problem arises, the nurses have someone backing them.

Thanking you once again for the marvelous, informative convention.

Sincerely,  
— Helen James, RN



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# How Prepared Are We for a Disaster?

By Robin A. Bleier, RN, LHRM-FACDONA, 2nd Vice-President, FADONA

**L**ast year I wrote an article about the nurse administrator's role in disaster management. I received much feedback from directors of nursing (DONs) around the state. And one big question was, "What is my job in facility planning?"

In February of this year, Bill Phelan, executive director, and LuMarie Polivka-West, senior director of FHCA, hosted a disaster summit. This included representatives from six states, Agency for Health Care Administration, American Health Care Association, Department of Health, and Department of Health & Human Services, amongst other distinguished guests.

To quote one of the attendees, Tim Graves, executive director of the Texas Health Care Association (THCA), "Experience is something you get after you need it most."

## So Where Do I Start?

Like risk management, disaster management is a process designed to protect the organizations assets. This includes our residents, staff, property, facilities, organizations, and of course us. Effective disaster management incorporates a three step process supporting our being proactive, reactive, and finding new ways to improve outcomes which is much like a sound risk management approach.

## Being Proactive Means. . .

Being proactive means making a plan, so to answer the question posed above by several DONs, I would say, you start with your Administrator and Company asking them how do they see your role and responsibilities. Perhaps you get them in writing so it is clear. Planning for the what if's requires considerations for instance if you plan to move Residents who have Diabetitis, what might I need? Sounds simple but is it? For instance we need blood glucose monitoring devices



Robin Bleier

2<sup>ND</sup>  
VICE-PRESIDENT

which need batteries (and replacement ones), testing solutions to insure the result is accurate. Typically we need lancets, blood collection strips, and alcohol wipes. Additionally you might need Insulin, syringes, bio-hazardous syringe disposal unit and or oral Antihyerglycemic medication. Don't forget Glucagon or other instance glucose in the event of sudden low blood sugar, potentially urine collection cup and urine glucose monitoring strip, the medication administration record (MAR) to write it all down, Glucerna or other Diabetic approved liquid supplement just to name a few more considerations. A total of nine items was listed for the care of Diabetic Residents, each requiring their individualized approaches. My point is that all necessary equipment and supplies should be considered and planned for as especially if you evacuate there may be no going back or a period of time. DONs should consider holding "think tank" sessions with their staff to discuss the significant disease processes and what types of supplies should be on hand for such Residents. Then create a PAR level so there is one to two weeks of such supplies on hand, especially during Hurricane Season, although we should consider that there are many other kinds of disasters, some we do not get notice to prepare for and some we do.

## Being Reactive Means. . .

As critical thinking is a key component of being proactive, it is even more so in this phase. Being able to react accordingly means that the plans you had did not work or there are new factors perhaps not considered or realistic to ponder in the past, yet now present requiring your consideration and response.

## Improving Outcomes Means. . .

To do better today than we did yesterday is what it is all about! Learning from the experiences we get sometimes after we need them and or from others who got them before we did. After Hurricane Katrina, President Bush made a speech in Louisiana and said that there would be a federal review. Frances Fargos Townsend lead this review. In the recently published document, Ms. Townsend said Ian I will email this exact quote to you after I go re read it as it is very powerful and I want to get the words correct. It will go right here please. Disaster planning creates our 'flexibility' to respond to unusual events giving a mental exercise to address the "what ifs" and other uncertainties. Although some of the aspects of planning practiced during the facility Internal and External Disaster Drills (you should have one of each a year), do occur many will probably not; however, like fire drills, they do prepare us to consider emergencies and our responses. Improving outcomes takes each of us to introspectively review the events in a quality improvement setting. Someone leading the meeting with a list of the occurrences and a response what the facility did. Asking the touch questions like did anyone have a change in condition that was preventable....A comparison to the actual disaster plan did we follow the plan...and discussion including if the plan was or was not accurately

# Another Installment of “Just Ask FADONA”

**J**ust Ask FADONA is a members-only benefit which is incorporated into the association’s Web site at [www.fadona.org](http://www.fadona.org).

Here is how it works. Visit our Web site, log in as a member, and go to the “Just Ask FADONA” page. Then, fill out the form online and send it to FADONA.

If you prefer, you may call our business office at (561) 659-2167 with your questions and we will provide you with a response within one week — or sooner. Either way, we’re here to support all of our members today and tomorrow.

Should your need be more emergent, please call us and leave a message indicating the urgency of your call and we will do our best to meet your need.

## Here is a recent inquiry:

**Q:** As the new DON of this facility I need to know whether I can change the behaviour sheets supplied by pharmacy for nurses’ narrative notes per incident and a monthly psych note embracing side effects, alternative methods for control, etc. Would this still meet regulatory compliance standards? Thank you.

**A:** There is no requirement in terms of “how” behavior management is tracked, but the regulations: F 329

(unnecessary drugs) says “General. . . (iii) without adequate monitoring ; or (iv) without adequate indications for its use; in the presence of adverse consequences which indicate the dose should be reduced or discontinued.”

The use of a behavior management flow sheet \* (BMFS) is a choice but there is often few options other than direct narrative notes which many feel are to difficult to enforce completion and challenge QA reviews. I feel that it takes a multi prong approach and that all new medications should have an associated diagnosis along side of it on the MAR making it clear what the diagnosis is to support the use of the medication. I think this should be done at the time ordered, not waiting for the monthly pharmacist review (psych meds or otherwise). Should the Resident not have an appropriate diagnosis to support the medication, perhaps the pharmacy should follow-up to ask facility to obtain one and fax it to them so they add to the next months MAR. During the consultant pharmacy review an aggressive approach to seeking and suggesting elimination of indicators of poly pharmacy are of course very important. This includes gradual dose reduction of psych meds (excluding antidepressants) toward elimination, unless it is clinically contraindicated (with a proper physician or extender

progress note or physician order stating otherwise) so the reader can draw a picture. The daily monitoring by nurses can be done however the facility sees fit. Such as on a BMFS or in a nurses note, or some do a narrative psych medication note stored in the MAR book. I have seen others include social services where each day either nursing or the clinical unit assigned social worker documents narrative on it 6 days a week with the 7th done during the facility psych medication review note in the individual chart. I have also seen facilities with medical social workers (by degree and exp) exclusively do this documentation not the nurses. In F 250 under the guidance to the surveyors it notes on page 93 9th dot point down that part of the social service job is to “provide alternatives to drug therapy or restraints by understanding and communicating to staff why residents act as they do, what they are attempting to communicate, and what the needs the staff must meet”. I think that this is pretty broad but it clearly indicates that psychoactive medication management is a two department (at a minimum) process between nursing and social services which could represent a two prong approach to documentation.

Thank you for your question. The FADONA board appreciates your time to write us and hope we help you. ☒

*Continued from the previous next page*

followed and if there were any outcomes related to that? If we did not follow the plan, questions like were there any factors that prevented following the plan? Most importantly, what can we do to improve the plan making it simpler yet effective, etc.

In summary, this nor any article can prepare you to clinically lead your facility, but the hope is that you have some additional considerations in your planning to ensure the optimum outcome possible. Thanks to all of you

for the outstanding dedication and services witnessed in the past especially during the exceptionally active past two years. Although all of us can and will continue to do better, our State and all of the professionals working in this area really have done an outstanding job! In response to “where do I start” I advised at the top, make a list, and check it twice! FHCA has a Disaster Manual for sale. If interested call (850) 224-3907 and ask for direction to order. Recently at the Governors Hurricane Conference in

Fort Lauderdale, while speaking with several Office of Emergency Management (OEM) staff, I was told that they were shocked to learn how ill many of the long term care population was and totally impressed with the nursing and other leaders. So hold you head up high and continue to strive in your disaster planning! ☒

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# Examining the New Constitutional Amendments How Do They Apply to You?

## — Constitutional Amendment 7 Will Affect Day-to-Day Operations

By J. David Gallagher, JD; Gallagher, Daniel, Keenan, P.A.

**U**nlike Amendments 3 and 8, which primarily deal with litigation or problems that arise after the fact of "malpractice," Amendment 7 will affect the day-to-day practice of all health care providers. Amendment 7, now found in Article X, §25 in the Florida Constitution is titled "Patient's right to know about adverse medical incidents." This provision allows patients (or their attorneys) to have access to reports of "adverse medical incidents" that are "made or received in the course of business" by practitioners and facilities.

Two things to keep in mind about amendment 7: First, the amendment avoids violations of privacy by requiring that the identity of patients involved in the incidents not be disclosed. In addition, federal privacy laws must be met. Thus social security numbers, home addresses, names, and other information that would serve to identify the patient will not be disclosed to other patients. Second, the amendment does not create any new obligation to report incidents. Rather, it allows access only to those records that are made "in the course of business" of the doctor or facility. The scope of this article is too limited to allow for a complete recitation of the multiple reporting requirements found in Florida law; however, in essence, practitioners will not be able to stop reporting adverse incidents to avoid this amendment, because most of the reports are required by law or regulation. Third, the amendment attempts to minimize the interruption



of a practice by allowing several ways to allow "access" to the records. The phrase "have access to any records" allows for copying the report, making the records available for the patient to inspect, or in cases where the reports are available on the internet, giving the patient the website address where the report can be found.

The scope of Amendment 7 is not limited to these required reports; in fact, Amendment 7 is quite broad in both who it applies to, and what incidents are within its scope. The amendment states that the phrases "health care facility" and "health care provider" "have the meaning given in general law related to patient's rights and responsibilities" However, there is no specific law that defines these terms for all purposes. Medical Malpractice law, and cases arising under Chapter 766 utilize a specific limited definition. The Florida Patients' Bill of Rights limits health care facilities to those that are licensed under chapter 395. The title to Chapter 400 states that it governs "nursing homes and related health care facilities." Entities within this chapter include long term skilled nursing facilities, assisted living facilities, and home health agencies.

The "general law related to patient's rights and responsibilities" could include any statutory definition of these terms, as well as any case law interpretation or definition. The intent appears to be broad and inclusive. The definition found in the statute governing advanced directives is very broad and probably a good indication of what entities and persons will be

subject to this amendment. Section 765.101(6) defines "health care facility" to mean "a hospital, nursing home, hospice, home health agency, or health maintenance organization licensed in this state, or any facility subject to part I of chapter 394." The statute also defines "health care provider" to mean "any person licensed, certified, or otherwise authorized by law to administer health care in the ordinary course of business or practice of a profession." Clearly these terms are broad and all inclusive of any person or business entity that provides any type of care related to health.

In addition to applying broadly to the entire spectrum of health care practitioners, Amendment 7 allows access to a diverse number of reports. Though the amendment uses a term "adverse medical incident" which is commonly used in statutes and regulations, the definition of this term in Amendment 7 is substantially broader than the existing definition. In Amendment 7, the phrase "adverse medical incident" means "medical negligence, intentional misconduct, and any other act, neglect, or default of a health care facility or health care

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provider that cause or could have caused injury to or death of a patient including, but not limited to, those incidents that are required by state or federal law to be reported to any governmental agency or body, and incidents that are reported to or reviewed by any health care facility peer review, risk management, quality assurance, credentials, or similar committee, or any representative of any such committees.

One of the most striking differences is that reports included in the scope of Amendment 7 are those reports related to incidents "that could have caused injury." In contrast AHCA reports are required primarily for incidents that caused actual injury and sometimes an injury must be sufficiently severe for a report to be required. For example section 395.0197, governing internal risk management programs at hospitals, limits the term "adverse incident" for which reports to AHCA are required as those resulting in specifically enumerated injuries, such as death, brain or spinal damage, permanent disfigurement, erroneous surgical procedures, injuries that required surgical repair to a patient or procedures to remove unplanned foreign objects remaining from a surgical procedure."

As an illustration of how Amendment 7 may affect practitioners, consider the following hypothetical. A surgeon at the community hospital is scheduled to perform an amputation of the right leg on a patient. Unfortunately, the hospital staff have cleaned, prepped and draped the patient's left leg. The surgeon enters the operating room and completes all pre-operative checks in preparation for the surgery. However, immediately before cutting the patient's left leg, the surgeon, pursuant to a policy & procedure maintained by the hospital, independently verifies that the correct leg is marked. In doing so, the surgeon discovers the error, stops all proceedings, and ensures that the correct leg is appropriately prepped, draped, and amputated. In this


situation, the patient has not experienced any actual injury; however, there "could have been" injury to the patient. The hospital would not be obligated to report this incident to AHCA.

The hospital has very high standards for quality assurance and risk management, however, and strives to go above and beyond what is required by law. As part of their risk management policies, this incident is reported to the Risk Manager at the hospital, who investigates the situation and discovers how the error occurred. An internal report is prepared and filed by the risk manager, identifying the employees and all other persons involved in the incident and documenting what was done to correct the situation to ensure that it did not happen again. Prior to November 2004, this internal report would not have been sent to AHCA and would not have been discoverable in a law suit and would, for all intents and purposes, have remained confidential and unknown to anyone but those persons involved. However, with the adoption of Amendment 7, this report is now accessible, upon request, by any patient for any reason.

As can be seen from this example, the laudatory goal of the hospital, in investigating even "potential" adverse incidents, will now leave them, their employees and the physicians who practice there exposed to the fishing expeditions of curious patients and their lawyers. Since this has the potential to lead to more malpractice claims, it is far more likely that providers and facilities alike will cease their efforts to do more than the law requires. The law had recognized, for many years, that self-scrutiny was good for patients and practitioners, because it served to improve the practice of medicine. However, with the potential consequence of increased litigation, it is far more likely that such scrutiny will no longer be used.

The law also recognized that by keeping risk management investigations confidential, the persons

involved in the incident were more likely to be candid regarding what happened. Thus, the courts and legislature had specifically carved out privileges for these types of materials that would prevent the information from being presented to the jury. Amendment 7 does not explicitly invalidate these privileges, discovery exceptions and evidentiary rules. However, it could be argued that this amendment establishes that patients have the constitutional right to this information. Thus, rules, statutes and other provisions that keep such information out of discovery or trials are likely to be challenged as "unconstitutional."

Practitioners and facilities would be wise to consult their attorneys to determine what modifications should be made to their risk management or quality assurance programs in order to ensure compliance and protection. Amendment 7 is also likely to spawn considerable litigation and legal battles regarding its effect on existing statutes and rules governing discovery and evidence in litigation. 

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