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LAMMICO  
&  
Social Media

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Be on the lookout for a  
new policyholder survey to  
determine which social  
networking programs our  
policyholders use the most



Dr. Thomas H. Grimstad  
President / Chief Executive Officer

provide you with even better service. For most of this year, we have been working to introduce a new computer software system that will improve processes and data used by our Underwriting, Claims, Finance and Risk Management departments. This new system, called **OASIS**, will offer improved functionality in the core system areas which are vital to ensuring all facets of your professional liability insurance needs are met. Numerous other medical professional liability insurance companies have been successful in using this technology and we anticipate the

## Rates Hold Steady for 2010

*No Overall Rate Increase  
for Fifth Consecutive Year*

I am pleased to announce that effective with January 1, 2010 renewals, rates will remain unchanged for all LAMMICO policyholders. 2010 will be the fifth straight year LAMMICO policyholders have not experienced an overall rate increase. Our 2010 rate analysis follows several announcements over the last few years of overall rate decreases. LAMMICO has also filed to revise the part-time practice discount which will result in a marginal increase in premium for part-time practitioners. You can rest assured that we continue to work diligently to control your rates.

I also want to announce that we will soon implement a new information system that will enable LAMMICO staff to

same for LAMMICO. You can read more about this exciting new development on **page 4**.

These and other innovations will further strengthen our partnership and make us an even better company. Consistent with LAMMICO's mission, we continue to strive to develop creative solutions to meet the needs of you, our policyholders. ✦

Thomas H. Grimstad, M.D.  
President / Chief Executive Officer

Special Prescriptive Period for Medical  
Malpractice Cases Upheld by Supreme Court

By Jennifer J. Thomas, Esquire, Attorney: Law Firm of Kean Miller – Baton Rouge, Louisiana – [www.keanmiller.com](http://www.keanmiller.com)

On June 26, 2009 the Louisiana Supreme Court rendered an opinion in the case of *Warren v. LAMMICO, et al.*, 2007-cc-0492, on rehearing, where the issue before the court was whether or not a plaintiff, who had not participated in the Medical Review Panel or filed a lawsuit within either the one and three year prescriptive periods required by La. R.S. 9:5628, could file a wrongful death and survival claim that would “relate back” to the original, timely filed claims of her mother and sister. In this case, a wife and daughter timely

filed a complaint with the Louisiana Patients' Compensation Fund, completed the Medical Review Panel process, and subsequently filed a lawsuit. A second daughter intentionally chose not to participate in any of the proceedings as a party until four (4) years after the dates of the alleged malpractice and death of her father.

Under La. R.S. 9:5628, a claim for medical malpractice must be brought within one (1) year from the date of the alleged act, omission, or neglect, or within one (1) year from the date of discovery of the alleged act; however, no

*continued on page 6*

## Beyond Informed Consent: Improving Patient Compliance

By Katy Caraway, Esquire; Law Offices of Caraway LeBlanc / New Orleans / [www.carawayleblanc.com](http://www.carawayleblanc.com)

**Editor's Note:** "Informed Consent" is a topic LAMMICO policyholders frequently request more information about. To obtain a list of risks to be disclosed for specific procedures, please access the DHH Procedural Risk Data Base (<http://www.dhh.la.gov/offices/apps/apps-99/MDP/selectcode.asp>) or contact the Louisiana Department of Health and Hospitals at 225/342.6401. LAMMICO also offers additional information about Informed Consent. Please read a complete listing of company resources at the end of this article.

### WHY GO "BEYOND" INFORMED CONSENT?

Not surprising in our litigious environment, many physicians view "informed consent" as a mere tool their lawyers insist they use to prevent medical malpractice cases. While Informed Consent forms are essential

to your practice, you should not view them simply as "waivers of liability." Instead, they should be integrated into an educational process that will not only help stave off malpractice claims, but more importantly, provide an opportunity for you to improve your relationships with your patients and increase their compliance.

### THE BASICS OF LOUISIANA "INFORMED CONSENT LAW:"

In Louisiana, those who perform surgery or other invasive procedures (typically physicians) must obtain consent from their patients for the treatment. The key areas that should be discussed with the patient and documented are: the nature of the patient's condition; the nature and purpose of the proposed treatment/surgery; common risks of the proposed treatment/surgery; reasonable therapeutic alternatives; and the risks to the

*continued on page 4*

## Corporate Coverage: Protecting Against the Worst Case Scenario

By Richard S. Crisler, Esquire; Partner: Law Offices of Bradley, Murchison, Kelly & Shea, New Orleans / [www.bradleyfirm.com](http://www.bradleyfirm.com)

As they enter private practice, many of today's physicians quickly transition into business owners. Whether this happens by choice or necessity; or whether it results from a need to deal with complicated insurance and managed care rules, government regulations, billing codes or patient follow-up, an increasingly large portion of physicians' practices focus as much on management as it does on medicine. This article is for those physicians who have a professional medical corporation, partnership, or other legal entity.

Most physicians inherently understand both the practicality and value of professional medical liability insurance. Imperfect outcomes and unsatisfied patients are unfortunate and all too often unavoidable elements of medical treatment. Such coverage gives a physician both peace of mind and protection from economic loss in the event that a claim is filed.

What many physicians **do not** realize is that their individual professional medical liability policies may not protect them in the event that a claim is asserted against their professional corporations or medical partnerships as a result of the action or inaction of an employee of the corporation or group. Louisiana's law on an employer's vicarious liability for an employee's error is too complex to address here. Suffice it to say, however, that under many scenarios an individual physician—as the owner of the medical corporation or as a partner in the medical partnership—may be held legally responsible for damages caused by employee error. In certain cases, that error may be something as simple as failing to deliver a phone message or failing to schedule a follow-up appointment as requested.

If you have a professional medical corporation, partnership, or other

legal entity, it's possible that a claim may be filed against this entity. This entity must be listed as an additional insured on your medical professional liability policy in order for coverage to be provided. Check with your medical professional liability carrier in order to ensure that you have appropriate coverage and determine if your entity can be added to your policy.

Corporate coverage should also protect the insured physician from the vicarious liability that can occur when corporation employees are deemed negligent in patient care decisions including denial of care, inadequate follow-up, unnecessary delay and failure to diagnose and treat. It is important to note that the Louisiana Patient's Compensation Fund (LAPCF) requires that all shareholders, partners and professional employees are enrolled and qualified with the LAPCF (having paid the applicable LAPCF surcharge in accordance with the LAPCF rate manual, which can be found at [www.lapcf.state.la.us](http://www.lapcf.state.la.us)) in order for the corporation/entity to be qualified without an additional charge. Without LAPCF qualification, a claim against the corporation/entity could fall outside of the Medical Malpractice Act and be an "uncapped" claim.

As a concrete example of the risks posed to individual physicians under these scenarios, allow me to share two examples that our firm is currently working through. First, we represent a physician who has been sued for an alleged failure to properly oversee treatment provided by his nurse employee. The nurse had a personal professional liability policy whose limits had been paid, but those limits were not sufficient to cover plaintiff's alleged damages. As a result, the plaintiff has turned to the physician, who did not have a corporate policy in place. He is paying for his own defense and will be personally responsible for any judgment.

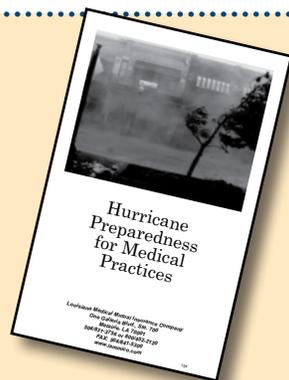
The second example is of a pediatric clinic/group named in an action by the deceased minor patient's mother and alleged to be responsible for the error in diagnosis of a nurse practitioner. Like the first example, the nurse practitioner had in place a professional liability policy, but plaintiff alleges damages in excess of the policy limits. Because the group involved had corporate coverage under their policy that insured the clinic as a whole and its employees, those alleged errors and corresponding excess damages are covered; and the defense of the corporate claim is being underwritten by LAMMICO.

To those physicians for whom these scenarios strike close to home, I encourage you to investigate whether corporate professional liability coverage is right for you.

Richard Crisler can be reached at [rcrisler@bradleyfirm.com](mailto:rcrisler@bradleyfirm.com). ♣

### Hurricane Guides Available

This special publication is available for all policyholders in either print form or on CD. Please contact LAMMICO's Risk Management Department at 800/452.2120.



## Marketing Update – Agents Advisory Committee Meeting

On June 30, representatives from our largest agencies in Louisiana & Arkansas attended the 3rd annual Agents Advisory Committee meeting in Baton Rouge. Representatives from LAMMICO's Business Development, Administration & Underwriting Departments exchanged information about market trends and conducted a teamwork exercise to discuss ways to enhance the products and services we provide to LAMMICO policyholders.

A primary objective of the meeting was to strengthen LAMMICO's partnership with our agents and to obtain their input and advice on our current and future marketing strategy. Approximately 20 percent of LAMMICO insureds work with our appointed agencies to obtain their medical professional liability insurance.

A larger meeting is scheduled on October 26. The upcoming fall meeting will include the principals and staff from each of our licensed agencies and LAMMICO staff members from each of our Insurance Operations Departments.



*Displaying a plaque to John Thompson of National Advantage are several members of the Agents Advisory Committee who attended the June meeting in Baton Rouge (from left-to-right): Mark Dufour (Harry Kelleher & Company); Bill Birch & Tom Hesselbein (Ramsey, Krug, Farrell & Lensing); Thomas H. Grimstad, M.D., (LAMMICO President/CEO); Joe Calloway (Risk Services of Louisiana) and Agents Advisory Committee Chair Louis M. Todd (Arthur J. Gallagher of Louisiana)*

### Did you know that LAMMICO has its own in-house Agency?

For those who insure directly with LAMMICO, we provide an opportunity for you to obtain other types of insurance.

**LAMMICO Insurance Agency, Inc.** provides LAMMICO policyholders with affordable access to insurance products and services including:

- Life Insurance
- Health Plans
- Disability Coverage
- Fidelity and Fiduciary Coverage
- Commercial General Liability Insurance Coverage and Property Package Policy (BOP)
- Workers Compensation Insurance
- Employment Practices Liability Insurance
- Umbrella Liability Insurance or Excess Liability Insurance
- Directors and Officers Insurance
- Flood Insurance
- Wind and Hail

For more information about products and services offered through the LAMMICO Insurance Agency, Inc., please contact Linda Berggren at 504/841.5255, or lberggren@lammico.com. ♣

## LAMMICO Medical School Scholarship Students Named

As the physician-owned insurer of choice for Louisiana's providers, LAMMICO is invested in the future of health care in our state. Each year, LAMMICO awards merit scholarships to first-year students from each of the state's three medical schools and the LSU Dental School in New Orleans.

LAMMICO has awarded the scholarships for the past nine years to help defray tuition and other expenses associated with students enrolling at: **Louisiana State University (New Orleans & Shreveport)**; **LSU School of Dentistry-New Orleans** and **Tulane University**. Incoming first-year medical students receive the scholarships for one year. The respective institutions award the scholarships based upon merit criteria established at each medical school. We proudly support our medical and dental schools, and congratulate the recipients of the 2009 scholarships:



• **LSU Medical School: New Orleans**  
*Renford Cindass, Jr.* of Baton Rouge graduated *Summa Cum Laude* in May 2009 from Louisiana State University, where he majored in biological sciences. He was on the LSU Chancellor's List for academic excellence

throughout his undergraduate career. Cindass recently enlisted in the United States Army with a current grade of second lieutenant. His goal is to continue a career in the military, where he would like to serve as an Army surgeon.



• **LSU Medical School: Shreveport**  
*Emily McIntosh* of Farmerville, LA, earned an undergraduate degree in neuroscience from Tulane University in May 2009. McIntosh is a member of the William Wallace Peery Society at Tulane, which awards membership to the top 10 students of the graduating class. She is a 2005 graduate of the Cedar Creek School in Ruston.



• **LSU School of Dentistry - New Orleans**  
*James M. Sitz* is a graduate of DeRidder High School (2005) and Louisiana Tech University in Ruston (2009). He received his bachelors degree in biology, graduating with a 4.0 grade point average from Louisiana Tech.

## New Technology for LAMMICO

### *Future OASIS Conversion Will Improve Policyholder Service*

Throughout 2009, LAMMICO has been working to replace its core insurance system software with a new system called **OASIS**.

In addition to several advantages enabling LAMMICO staff to provide even better service to our policyholders, OASIS provides improved software integration, faster and more efficient disaster recovery, regular upgrades and responsive support services. As an industry-leading insurance product, OASIS is used by many other medical professional liability insurance companies.

#### **The new OASIS system is built on technology that will allow the following:**

- Better integration between it and many of LAMMICO's other software applications such as external databases, document imaging systems, e-mail and accounting software. The future installation of a Customer Relationship Management (CRM)

solution at LAMMICO is dependent on having a core system in place that allows easy integration of other applications.

- The OASIS system will also aid LAMMICO and its policyholders by simplifying the disaster recovery efforts necessary to bring the core system back on - line and return the company to normal operations following any sort of business interruption. OASIS software runs on common operating system platforms which allow for a more efficient and speedy recovery solution following business disruption.

Our new computer software system will improve data management used by the company's Underwriting, Claims, Finance and Risk Management Departments.

Please continue to check future editions of *the Letter* and our website ([www.lammico.com](http://www.lammico.com)) for updates about OASIS. ♣

#### *continued from Beyond Informed Consent: Improved Patient Compliance*

patient should he or she refuse the proposed treatment/surgery.

To successfully sue a physician for failing to obtain informed consent, the patient must prove: (1) the existence of a material risk the physician should disclose; (2) the failure of a physician to inform the patient of a material risk; (3) the realization of the material risk; and (4) a causal connection between the failure to inform the patient of the material risk and realization of the risk. Generally, a risk is "material" if a reasonable patient in his or her position would likely attach significance to it in deciding to go forward with the proposed therapy. Expert testimony is required to establish the existence of the risk and the likelihood of its occurrence. It is up to the jury to decide whether a person in the patient's position would attach significance to a particular risk.

In Louisiana, the healthcare provider actually performing the procedure must be the person who actually presents the information to the patient, answers the patient's questions, and obtains the patient's consent. That healthcare provider—again, typically the physician—signs the Informed Consent form indicating that the information was exchanged and that the patient understood the information provided. This is not a procedure that can be delegated to nurses or office staff. The buck stops with the physician.

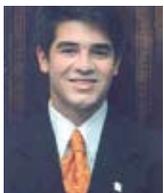
#### **MAKING THE PROCESS MORE THAN JUST A WAIVER OF LIABILITY**

Recent research indicates that a properly obtained consent can have many unexpected benefits for both the physician and patient. In an article published in *Clinical Orthopedics and Related Research*,<sup>1</sup> the authors suggest that focusing on the educational aspects of the consent process will result in patients developing a greater sense of control, becoming more compliant, and potentially having better clinical outcomes. The authors raise the following interesting points:

- (1) Do not view the informed consent forms as the end of the story. The forms should be just part of a larger educational process and not merely "waivers of liability." The latter approach detaches the process from natural communication in a clinical setting. Further, since many forms contain medical terms the typical patient does not understand, the forms appear purely legalistic in nature and may not help the patient gain a true understanding of the reason for their procedure or whether they wish to move forward with it. In other words, without true communication between the physician and the patient, the forms do not help the patient's medical understanding and may, in fact, add to the patient's confusion. It goes without saying that a confused, uninformed patient is more likely to sue his physician if there is a bad outcome.

*continued on page 5*

#### *continued from LAMMICO Medical School Scholarship Students Named*



#### • **Tulane University Medical School**

**Jared A. Breaux**, originally from Alexandria, LA, is a graduate of Bolton High School and Louisiana State University in Baton Rouge.

Breaux spent this past summer working in free health clinics in Belize. While in Central

America, Breaux learned the basics of providing health care. ♣

## AFCO purchases Cananwill

AFCO Credit Corporation has acquired the domestic operations and assets of premium finance business of Cananwill. Founded in 1937, Cananwill provides premium financing for commercial property and casualty policies. AFCO is the primary insurance premium finance subsidiary of Branch Banking and Trust Company, the principal subsidiary of the BB&T Corporation. LAMMICO policyholders have used Cananwill to help finance their LAMMICO/PCF premiums. All policyholders will notice the company name change to continue using AFCO in their January 1, 2010 renewal letters. ♣

## M.D. with Louisiana Ties Tapped to be Next Surgeon General

By David L. Bowser, Corporate Communications Specialist



Recently nominated *Regina Benjamin, M.D.*  
The position of surgeon general requires  
Senate confirmation.

In the middle of the ongoing debate in Washington over the reform of America's health care system, President Barack Obama nominated a physician with deep Louisiana ties to become the next surgeon general of the United States.

**Regina Benjamin, M.D.**, a graduate of Xavier and Tulane Universities in New Orleans, was introduced at a Rose Garden press conference July 13. Originally from Mobile, Dr. Benjamin is the founder and CEO of the Bayou La Batre Rural Health Clinic ([www.bayouclinic.org](http://www.bayouclinic.org)) in Bayou La Batre, Alabama. Since 1990, the clinic has served the small town in Mobile County that is home to a diverse population of 2,500 people who are drawn to the shrimp and fishing industry.

"When Hurricane Katrina destroyed her clinic and left most of her town homeless in 2005, Dr. Benjamin mortgaged her house and maxed out her own credit cards to rebuild," President Obama said. "She tended to those who had suffered in the storm, and when folks needed medicine, she asked the pharmacists to send the bill her way."

Benjamin received her medical degree from the University of Alabama at Birmingham after earning a Bachelor of Science

degree in 1979 from Xavier. "She was always very, very concerned with people and I always thought that she would be the kind of doctor I would want to go to," said Xavier professor J.W.

Carmichael, who was Benjamin's pre-med advisor at Xavier. After receiving an MBA from Tulane, Dr. Benjamin converted her solo practice to a rural health clinic.

Dr. Benjamin, 52, is the current President of Alabama's State Medical Association. At the White House ceremony, she said, "Public health issues are very personal to me. My father died with diabetes and hypertension. My older brother, and only sibling, died at age 44 of HIV-related illness. My mother died of lung cancer, because as a young girl, she wanted to smoke just like her twin brother could.

"While I cannot change my family's past, I can be a voice in the movement to improve our nation's health care and our nation's health for our future." ♣



**Dr. Regina Benjamin founded a rural health clinic in Mobile County, Alabama in 1990.**

**The majority of Bayou La Batre's population is from Vietnam; and most do not carry health insurance.**

*continued from Beyond Informed Consent: Improved Patient Compliance*

(2) Proper informed consent—consent derived through meaningful and frank discussions between a patient and his or her doctor—directly impacts the quality of healthcare services. It has been found that patients who are well informed of the risks of their procedures may develop "psychological immunity" to the stressful effects of surgery because they are more realistically prepared for the possibility of complications. A patient who is well-informed of the risks may not be as overwhelmed by a bad outcome.

(3) Research has found that patients who were educated about the physical sensations they might feel post-operatively as well as instructed on post-operative relaxation exercises needed fewer narcotics for pain management and were discharged sooner than patients without such instructions. Research has also found that the well-informed patient has a greater sense of control and is more likely to be a compliant patient.

(4) The physician should be cognizant of risks that are specifically of concern to this individual patient. For example, the complications of knee surgery may be more material to a dancer than the average patient.

(5) Physicians would benefit from explaining to patients what to expect during and after surgery. This is not required under the law, but research has found that aligning patients' expectations with reality results in fewer disappointed patients. Fewer disappointed patients, of course, means fewer medical malpractice lawsuits.

(6) Physicians who foster a paternalistic approach with their patients do so at their own risk. Studies have found that physicians who come across as "all knowing healers" are more likely to be blamed by their patients who experience complications, because the patients often conclude the

physicians must have made mistakes (even when no negligence occurred). Instead, consider showing empathy for your patients' fears and acknowledge the uncertainty that inherently accompanies the proposed treatment. Ideally, the physician and patient form an "alliance," in which neither is ashamed to express emotions that result from the patient's outcome. In the event of complications, the physician and patient will be better able to deal realistically with the outcome.

(7) Don't ignore the medical chart. If you have had a meaningful discussion with your patient about the risks of a procedure, in addition to having the patient execute the Informed Consent forms, note in your chart that the discussions transpired and that your patient voiced his or her concerns and agreed to the proposed treatment.

### FOR MORE INFORMATION

- Louisiana Risk Management Reference Manual, section on Informed Consent, available on request. **Call LAMMICO Risk Management Department at 504 841-05211 or 800 452-2120**
- LAMMICO Risk Management CME education activity "Informed Consent, the Pre Procedure Process" available to members at [www.lammico.com](http://www.lammico.com)
- **Future resource tools:** "Beyond Informed Consent: Partnering with the Patient", an updated CME activity due later this year at [www.lammico.com](http://www.lammico.com); as well as "Informed Consent for the Office Staff" ♣

<sup>1</sup> Brenner L., Brenner A., Horowitz D. Beyond Informed Consent, Educating the Patient. *Clin Orthop Relat Res.* 2009; 467:348-351.

## Change for Occurrence Form: Policyholders

As part of our commitment to building enduring partnerships, we have made changes to LAMMICO's **Physicians & Surgeons Occurrence** policy form. For policyholders written on an occurrence form, these changes will apply beginning with December 2009 renewals.

Under the "*Physicians & Surgeons Medical Practice Professional Liability Insurance*" form, the limits of liability provisions specify that insureds (other than the named insured) all share in the limits of liability, unless an insured has paid a separate premium. If a separate premium has been paid, then that insured is given a separate set of limits.

Any policyholder who has a question about the new policy form should contact **LAMMICO's Underwriting Department, at 800/452.2120**. This summary letter is not intended as a substitute for the actual policy provisions and is not a part of your policy. ♣

*continued from Special Prescriptive Period for Medical Malpractice Cases Upheld by Supreme Court*

action shall be filed beyond three (3) years from the date of the alleged act, omission, or neglect.

The Supreme Court had originally ruled that an amended petition adding a new plaintiff's otherwise prescribed medical malpractice claims related back to the timely filing of an original petition pursuant to Louisiana Code of Civil Procedure Article 1153 and the analysis set forth in *Giroir v. La. Med. Ctr., Div. of Hospitals*. This was before the Supreme Court had issued its opinion on rehearing in *Borel*. On rehearing in *Warren*, the Supreme Court held that the new plaintiff's claims were prescribed under the specific provisions of the Medical Malpractice Act, La. R.S. 40:1299.41 et seq., and La. R.S. 9:5628, and that any general code article that conflicts with the operation of prescription under these specific provisions cannot be applied in a medical malpractice case.

The Court followed this same line of reasoning it used when it addressed the issue of a late-added defendant in the *Borel v. Young*

decision. In *Borel*, the plaintiffs attempted to file suit against a defendant after the prescriptive period had already run by arguing that the defendant was jointly liable with the original defendants and prescription was interrupted under the general Louisiana Civil Code article 2324. The *Borel* decision held that the more specific provisions of the Medical Malpractice Act regarding prescription apply to the exclusion of the general code article on the interruption of prescription against joint tortfeasors found in La. C.C. Art. 2324.

The Supreme Court has now held that for both late-added plaintiffs and late-added defendants, the more specific provisions of the Medical Malpractice Act and La. R.S. 9:5628 regarding prescription apply to the exclusion of any general code articles on the interruption or suspension of prescription in medical malpractice cases. The *Warren* decision is favorable to Louisiana health care provider defendants and will help provide more certainty and definiteness of exactly what must be defended in a medical malpractice case. ♣

### HOW TO REACH US:

POLICYHOLDER SERVICE  
800/452.2120 (TOLL-FREE)  
504/831.3756

WWW.LAMMICO.COM

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LAMMICO provides  
information in *the Letter* as  
information, not legal advice.

If legal advice is required,  
please contact an attorney.