



**January**

**2012**

**OUR ADDRESS:**

**SALSA**

**P.O. BOX 367**

**SAN ANTONIO, TX**

**78292**

# ***THE SUMMONS***

**SAN ANTONIO LEGAL SECRETARIES ASSOCIATION**

**Chartered in 1957**

## President's January Newsletter

### *Wine Fun Fact: Celebs on the Bottle*

The celebrity wines are on the rise! From race car driver Jeff Gordon to legendary musician Bob Dylan to ice skater Peggy Fleming, everyone's getting in on the winemaking act. In fact, celebrity wine sales exceeded \$50 million in 2008.



Happy 2012 everyone! We hope that your year is off to a good start! Speaking of the New Year, it will soon be time for the Nominations & Elections committee to line up a slate of officers and committee chairs for the new (fiscal) year. Please consider chairing or co-chairing a committee - Our wonderful association cannot thrive without you. Please contact us, or one of our officers, if you're up for making 2012-2013 a year to remember!

~ Thank you

Christy Coats, PLS & Barbara Perez, PLS  
SALSA Co-Presidents

## 2011 — 2012 Leadership Roster

Office	Name	Email Address
Co-President	Christy Coats, PLS	ccoats@coxsmith.com
Co-President	Barbara Perez, PLS	bperez@coxsmith.com
Recording Secretary	Kim Busch	kbusch@coxsmith.com
Corresponding Secretary	Jane Harrison, PLS	janeharrison30@yahoo.com
Treasurer/Roster	Aurora R. Cavazos, PLS, CLA,CPS	rorycavazos@ymail.com
Director	Janet Brown, PLS	jbrown@kjlawpc.com
Parliamentarian	Cheryl Wenzel, PP, PLS	cwenzel@coxsmith.com
Committee	Chairperson	Email Address
Attendance/Reception/ Reservations	Michele Harmon	mrharmon@satx.rr.com
Bylaws and Standing Rules/Certification/ Legal Education/ Historian	Cheryl A. Wenzel, PP, PLS	cwenzel@coxsmith.com
Employment	Sharon Todd, PLS	salsajobbank@gmail.com
Membership	Bette Tower, PLS	btower@mdtlaw.com
Speakers/ Ways and Means	Barbara Perez, PLS	bperez@coxsmith.com
Summons/Website	Janet Brown, PLS	jbrown@kjlawpc.com

## LEGAL “ED”



By Edward M. Lavin, Attorney  
January 2012

### Medical Liability Claims Since 2003

In 2003, responding to what was by some perceived as a medical malpractice claims crisis, the Texas Legislature enacted sweeping changes to Texas medical liability claims statutes and codified the former Article 4590i, Texas Revised Civil Statutes as Chapter 74, Texas Civil Practice & Remedies Code. The general perception that the changes, rightly or wrongly, made it much more difficult to assert and recover on a medical liability claim is, in my experience, correct.

Those supporting the changes cited a claimed flood of frivolous or grossly inflated claims, rapidly rising medical malpractice insurance premiums, and a worrisome exodus of doctors from Texas claiming to have been priced out of the Texas market and driven to other states with more reasonable laws and insurance premiums. Those opposed expressed concern that legitimate claims would be discouraged and that negligent or even grossly negligent doctors would avoid the consequences of their misconduct and, in some cases, even get away with murder.

Both positions are to some extent accurate and to some extent overstated. However, from my perspective there is no question legitimate claims were discouraged. A few years ago I was unable to find a medical malpractice lawyer willing to take the claim of family members of mine whose husband/father was the victim of a botched tracheostomy procedure which caused his death. Several lawyers cited to me the fact that the difficulties, increased cost and drastic limits on non-economic damages of such claims has made it impractical and unprofitable for them to take many cases that, prior to 2003, they would have gladly accepted.

So what are the post-2003 laws like? Are they as bad as claimed? Let's take a look.

### Medical Tort Liability Statutes - Chapter 74, Civil Practice & Remedies Code

Medical liability claims are regulated by Chapter 74 of the Texas Civil Practice & Remedies Code. Virtually every type of health care provider and type of claim is regulated by this chapter, including contract claims as well as tort claims if they arise out of a doctor's or other health care provider's negligent act or omission during medical treatment.

At least 60 days before filing suit a claimant must send by certified mail to the health care provider a written notice of the claim. The notice must be accompanied by an authorization form for release of protected health information in the form prescribed in Section 74.052

If a lawsuit is filed the pleadings must state the claimant complied with the preceding requirements, and the claimant can be required to furnish proof of compliance before the lawsuit can proceed. Once the required notice is given, it tolls the statute of limitations for 75 days to give the claimant time to file the lawsuit even if the lawsuit was filed close to expiration of the statute.

All parties are entitled to obtain complete and unaltered copies of the patient's medical records from any other party within 45 days from the date of receipt of a written request for such records. The claimant is considered to have complied with this requirement by executing and delivering the medical authorization form required by Section 74.052. The parent, spouse of adult child of a deceased person has authority to request the medical records of the deceased person.

Pleadings in a suit based on a health care liability claim shall not specify an amount of money claimed as damages. The defendant may file a special exception to the pleadings on the ground the suit is not within the court's jurisdiction, in which event the plaintiff shall inform the court and defendant in writing of the total dollar amount claimed. This section does not prevent a party from mentioning the total dollar amount claimed in examining prospective jurors on voir dire or in argument to the court or jury.

In a suit against a physician or health care provider involving a health care liability claim that is based on the failure of the physician or health care provider to disclose or adequately disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or health care provider, the only theory on which recovery may be obtained is that of negligence in failing to disclose the risks or hazards that could have influenced a reasonable person in making a decision to give or withhold consent.

Non-disclosure claims are further regulated by Chapter 74 and by the Texas Medical Disclosure Panel which was created by Chapter 74. The panel is charged with the duty to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure.

The panel is required to prepare lists of those medical treatments and surgical procedures that do and do not require disclosure and, for those treatments and procedures that do require disclosure, shall establish the degree of disclosure required and the form in which the disclosure will be made. Each provision of a disclosure form prepared under this subsection must be made available in English and Spanish.

Before a patient or a person authorized to consent for a patient gives consent to any medical care or surgical procedure that appears on the disclosure panel's list requiring disclosure, the physician or health care provider shall disclose to the patient or person authorized to consent

for the patient the risks and hazards involved in that kind of care or procedure. A physician or health care provider shall be considered to have complied with the requirements of this section if disclosure is made as provided in Chapter 74. The disclosure must be given in writing, signed by the patient or a person authorized to give the consent and by a competent witness, and must specifically state the risks and hazards that are involved in the medical care or surgical procedure in the form and to the degree required by the panel.

In a suit against a physician or health care provider involving a health care liability claim that is based on the negligent failure of the physician or health care provider to disclose or adequately disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or health care provider, the fact of a disclosure as required by Chapter 74, or a failure to disclose as required by Chapter 74, is admissible in evidence to create a rebuttable presumption either that disclosure was properly made or that there was a negligent failure to properly disclose, depending on the circumstances.

There are special disclosure rules concerning hysterectomies. There are also special rules governing medical liability claims under circumstances where the medical care was furnished in an emergency, generally requiring willful or wanton negligence rather than simple negligence.

The statute of limitations for medical liability claims remains two years. However, a statute of repose now exists of 10 years within which to bring all medical liability claims, i.e. if limitations was tolled because the patient could not have discovered the problem within two years, etc.

Among the most significant changes to the law in 2003 was the imposition of a "cap" on non-economic damages such as pain and suffering, mental anguish or disfigurement. A claimant is limited to a \$250,000 maximum recovery against all physicians or other health care providers against whom a claim is made except as to health care institutions such as hospitals and clinics.

In other words, if you sue three doctors and three nurses on the same claim, you can only recover \$250,000 in non-economic damages, total, from all six of them. Not each, all. Different causes of action asserted but based on the same circumstances will not change this rule. The cap is \$500,000 for claims against two or more hospitals or clinics.

Non-economic damages in claims by survivors for the death of a patient are also capped. In a wrongful death or survival action on a health care liability claim where final judgment is rendered against a physician or health care provider, the limit of civil liability for all damages, including exemplary damages, shall be limited to an amount not to exceed \$500,000 for each claimant, regardless of the number of defendant physicians or health care providers against whom the claim is asserted or the number of separate causes of action on which the claim is based.

There are provisions to increase these limits as the cost of living index increases. The limits described above apply only to non-economic damages and not to economic damages such as past, present and future medical expenses and lost income.

Chapter 74 specifies certain instructions that must be given to the jury. The jury is not permitted to speculate on whether there are statutory damages limits and is not permitted to find negligence solely based on evidence of a bad result to the claimant, i.e. there must be other evidence of negligence beyond just a bad result.

Not later than the 120th day after the date a medical liability lawsuit is filed, the claimant must serve on each party or the party's attorney one or more expert reports, with a curriculum vitae of each expert listed in the report for each physician or health care provider against whom a liability claim is asserted. The date for serving the report may be extended by written agreement of the affected parties. Each defendant physician or health care provider whose conduct is implicated in a report must file and serve any objection to the sufficiency of the report not later than the 21st day after the date it was served, failing which all objections are waived.

A failure by a claimant to comply with this requirement may yield serious results, including a requirement that claimant pay the health care provider's attorneys fees and dismissal of the claimant's lawsuit. If an initial report was found deficient the court may grant one, and only one, 30 day extension of the deadline. No discovery is permitted until this expert report requirement is complied with except that the claimant may acquire information and records related to the patient's health care.

Chapter 74 also creates specific discovery rules over and above those found in the Texas Rules of Civil Procedure. An automatic deadline is set of 45 days each for both the claimant and the health care provider to serve responses to the appropriate standard set of interrogatories and to the appropriate standard set of requests for production of documents and things promulgated by the Health Care Liability Discovery Panel.

Except on motion and for good cause shown, no objection may be asserted regarding any standard interrogatory or request for production of documents and things, but no response shall be required where a particular interrogatory or request is clearly inapplicable under the circumstances of the case. Failure to file full and complete answers and responses to standard interrogatories and requests for production of documents and things, or the making of a groundless objection, shall be grounds for sanctions by the court in accordance with the Texas Rules of Civil Procedure on motion of any party.

The time limits may be extended by the court on the motion of a responding party for good cause shown and shall be extended if agreed in writing between the responding party and all opposing parties, but only for up to an additional 30 days. Other discovery in accordance with the Texas Rules of Civil Procedure is still permitted, and the automatic promulgation of the standard interrogatories does not count as one of the two permitted sets of interrogatories under the rules.

Chapter 74 creates explicit required qualifications for expert witnesses in medical liability claims. In suits against physicians the expert must be currently practicing medicine or was practicing medicine at the time the claim arose. Other qualifications are also specified. There are also specific qualifications for experts testifying against other health care providers.

Health care providers may as a condition of treating a patient require the patient to agree to arbitrate a disputed medical liability claim in lieu of a lawsuit. Chapter 74 specifies the requirements the health care provider must comply with in drafting such an agreement.

Chapter 74 also affords the health care provider the right to request the court to order payment of some portions of damages in periodic payments rather than a lump sum. These rules apply to medical, health care, or custodial services awarded in a health care liability claim and to future damages other than medical, health care, or custodial services. The court can require an uninsured health care provider to furnish proof of financial ability to meet the required periodic payments.

### Conclusion

Medical malpractice claims may still be pursued, but as you can see there are a lot of threshold requirements, requirements once suit is filed and limitations on damages awards. It is extremely difficult now to find a lawyer interested in taking a case because of profitability concerns. I know many personal injury lawyers, good ones, who used to handle medical malpractice claims but no longer do so.

As you can see from this article, the key to successfully pursuing such a claim is to start early and not wait until close to the two year statute of limitations. While you have time after filing a lawsuit to get an expert you'd be better off lining up one before you ever consider filing suit.



# Kind words from our 2011 Scholarship Winner Alexis Pala...



Salsa—

Thank you all so much for granting me your scholarship last May! I love Notre Dame and received a 3.9 my first semester. Thank you for helping my dream come true! Hope all is well with your organization, I just wanted to update yall on my success! - Alexis Pala

**TEXAS ALP 57<sup>TH</sup> ANNUAL EDUCATIONAL CONFERENCE**

**San Antonio, Texas ♦ May 4 – 5, 2012**

*Registration Deadline April 3, 2012*

**REGISTRATION FORM**

Name \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Daytime Telephone \_\_\_\_\_

Email \_\_\_\_\_

**Certifications**

- ALS    PLS    PP    CLA    CLA/CP    TSC  
 RP    Other \_\_\_\_\_

Local Chapter \_\_\_\_\_

Current Texas ALP/NALS Position Held \_\_\_\_\_

Current Local Position Held \_\_\_\_\_

Will you be reserving a room at the Drury Inn: YES      NO  

- NALS Life Member  
 Texas ALP Past President  
 This is my first Texas ALP Meeting  
 I want to be a Texas ALP PAL  
 Special dietary request (contact Registration Chair)

**FULL REGISTRATION**

- Texas ALP Member ..... \$135  
 Nonmember ..... \$150  
 Student ..... \$85

**INDIVIDUAL EVENT REGISTRATION FEES**

- Education only, member (meals not included)..... \$55  
 Education only, nonmember (meals not included)..... \$80  
 Education only, student (meals not included)..... \$55  
 Friday Professional Development Luncheon..... \$25  
 Saturday Recognition Luncheon..... \$25  
 President's Reception/Celebration..... \$35

**Late Fee: Postmarked on or after April 4, 2012.....\$25**

**GUEST REGISTRATION**

- Friday Professional Development Luncheon ..... \$25  
 Saturday Recognition Luncheon ..... \$25  
 President's Reception/Celebration ..... \$35

Guest Name: \_\_\_\_\_

**SCHEDULE OF EVENTS**

**Friday, May 4, 2012**

- 9:00 am – 3:00 pm Registration
- 9:00 am – 5:00 pm Vendors
- 9:30 am – 10:30 am Open Forum
- 10:30 am – 11:00 am Committee Meetings/Orientation
- 11:00 am – 12:00 pm CLE
- 12:00 pm – 1:30 pm PD Luncheon
- 1:45 pm – 2:45 pm CLE
- 3:00 pm – 4:00 pm CLE
- 5:30 pm – 7:00 pm Drury Kickback Rooftop Reception

**Saturday, May 5, 2012**

- 9:00 am – 5:00 pm Vendors
- 9:00 am – 10:00 am CLE
- 10:15 am – 11:15 am CLE
- 11:30 am – 1:00 pm Recognition Luncheon
- 1:15 pm – 2:15 pm CLE
- 2:15 pm – 2:30 pm Door Prizes
- 2:45 pm – 4:45 pm Business Meeting
- 6:30 pm – 9:30 pm Presidents' Reception/Celebration  
at Enchanted Springs Ranch

**PAYMENT INFORMATION**

Total Amount Due: \$ \_\_\_\_\_ (Due with registration)  
 Total Due for Texas ALP Chairman: \$85 to be paid by Chairman,  
 and \$50 to be paid by Texas ALP

Please make check Payable to:  
 San Antonio LSA Special Meeting Account  
 (Federal Tax ID No.: 74-6062778)

- A \$30 fee will be assessed for returned checks.
- Refunds requested and confirmed in writing will be made until April 3, 2012 (less a \$25 fee).

Please contact the Conference Co-Chairs with any questions:  
 Christy Coats, PLS, 210-554-5536, [ccoats@coxsmith.com](mailto:ccoats@coxsmith.com)  
 Barbara Perez, PLS, 210-554-5397, [bperez@coxsmith.com](mailto:bperez@coxsmith.com)

Mail Registration Form to:  
 Sharon Todd, PLS  
 8798 Ridge Mile Drive  
 San Antonio, Texas 78239  
[ssfull4250@yahoo.com](mailto:ssfull4250@yahoo.com)

**HOTEL INFORMATION**

Reservations should be made directly with the Drury Inn San Antonio Near La Cantera, 15806 IH-10 West, San Antonio, TX 78249, Telephone: (210)696-0800, Fax: (877)450-3516 - [www.druryhotels.com](http://www.druryhotels.com). Room Rates: \$94.50 (single/double/triple/quad) ~ \$124.50 (Suite Upgrade). Quoted rates are available until April 3, 2012.

**ONLY ATTENDEES BOOKED WITH HOTEL RECEIVE W/ROOM RESERVATION free breakfast buffet (Fri. 6 am–9:30 am & Sat. 7 am–10 am) and free Kickback Meal (Fri. 5:30 pm–7 pm).**

**ATTENDEES NOT BOOKED WITH THE HOTEL will be expected to pay for these meals, separately. Not included in registration fee (Breakfast Buffet \$5.99 (plus tax) and Kickback Meal \$8.99 (plus tax)).**

*Contributions or gifts to Texas ALP are not deductible as charitable contributions for income tax purposes.*

**TEXAS ALP 57<sup>TH</sup> ANNUAL EDUCATIONAL CONFERENCE**  
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at Enchanted Springs Ranch

## NALS Mission Statement

NALS® is dedicated to enhancing the competencies and contributions of members in the legal services profession. It accomplishes its mission and supports the public interest through:

- Continuing legal education and resource materials;
- Networking opportunities at the local, state, regional and national levels;
- Commitment to a Code of Ethics and professional standards;
- Professional certification programs and designations.

## NALS Code of Ethics and Professional Responsibility

Members of NALS are bound by the objectives of this association and the standards of conduct required of the legal profession.

Every member shall:

- Encourage respect for the law and the administration of justice;
- Observe rules governing privileged communication and confidential information;
- Promote and exemplify high standards of loyalty, cooperation and courtesy;
- Perform all duties of the profession with integrity and competence; and
- Pursue a high order of professional attainment.

## NALS Standards of Conduct

Integrity and high standards of conduct are fundamental to the success of our professional association. This Code is promulgated by NALS and accepted by its members to accomplish these ends.

**Canon 1.** Members of this association shall maintain a high degree of competency and integrity through continuing education to better assist the legal profession in fulfilling its duty to provide quality legal services to the public.

**Canon 2.** Members of this association shall maintain a high standard of ethical conduct and shall contribute to the integrity of this association and the legal profession.

**Canon 3.** Members of this association shall avoid a conflict of interest pertaining to a client matter.

**Canon 4.** Members of this association shall preserve and protect the confidences and privileged communications of a client.

**Canon 5.** Members of this association shall exercise care in using independent professional judgment and in determining the extent to which a client may be assisted without the presence of a lawyer and shall not act in matters involving professional legal judgment.

**Canon 6.** Members of this association shall not solicit legal business on behalf of a lawyer.

**Canon 7.** Members of this association, unless permitted by law, shall not perform paralegal functions except under the direct supervision of a lawyer and shall not advertise or contract with members of the general public for the performance of paralegal functions.

**Canon 8.** Members of this association unless permitted by law, shall not perform any of the duties restricted to lawyers or do things which lawyers themselves may not do and shall assist in preventing the unauthorized practice of law.

**Canon 9.** Members of this association not licensed to practice law shall not engage in the practice of law as defined by statutes or court decisions.

**Canon 10.** Members of this association shall do all other things incidental, necessary, or expedient to enhance professional responsibility and participation in the administration of justice and public service in cooperation with the legal profession.

# Calendar

## February

**22** ..... *SALSA CLE Dinner Meeting (6:30 pm)*  
*Luby's Cafeteria (on Main)*

February 7, 2012	<b>Online Study Group: Substantive Law for PP Exam</b>	Cindy Lane Hughes, PP, PLS (VA)	<b>1.5 CLE</b>
February 14, 2012	<b>Online Study Group: ALS Review</b>	Roxann Repasy (MI)	<b>1.5 CLE</b>
February 15, 2012	<b>Litigation/Civil Law</b>		<b>1.0 CLE</b>
February 21, 2012	<b>Online Study Group: PLS Review</b>		<b>1.5 CLE</b>
February 28, 2012	<b>Online Study Group: PP Review</b>		<b>1.5 CLE</b>
February 29, 2012	<b>Online Study Group: Test Taking Tips</b>	Certifying Board	<b>1.5 CLE</b>

## March

**7** ..... *SALSA Board Meeting – 6:15 pm*  
*Cox Smith Matthews, 18th Floor*

**28** ..... *SALSA CLE Luncheon— Noon*  
*Crowne Plaza*