

# THE EXCELSIOR

The News Magazine of The New York Regional Society of Plastic Surgeons

www.plasticsurgeryny.org

FALL 2004



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## President's Message

The past year at the New York Regional Plastic Surgical Society has been highlighted by numerous additions to our website. Direct on-line registration is just one of the many features which have been added. The newly commissioned ad hoc Ethics Committee has reviewed a number of complaints from our members. Committee findings have been forwarded to the National Society. Efforts to expand our membership and include younger members in the executive committee have been ongoing. Our younger members are stepping up and assuming active participation in the Society, which is absolutely necessary for continued success.

Dr. Tracy Pfeifer has admirably edited and continued our newsletter, the Excelsior. Thank you, Tracy. Dr. Alan Matarasso, our president-elect next year, has unselfishly served as our Scientific Program Chairman for more than a decade. This past year Dr. Olivia Hutchinson and Dr. Stephen Wallach have assisted him in this endeavor. The scientific program is the keystone of our society. Thank you, Alan, for your dedication. You are a valuable source of information for our society. I would like to acknowledge and thank all the past presidents who have continued their interest and input in the society through the executive committee. Last, but not least, I want to acknowledge Victoria Morales, our executive secretary. She makes this society run smoothly. Thank you, Vickie.

This year our Residents' Night Competition evening was marked by the highest attendance in years. Dr. Robert Galliano earned the first prize for "The transcriptional up-regulated VEGF in ischemia is impaired by high glucose levels-a possible role in ischemic diabetic complications". The second prize winner was Dr. Sean Boutros for "Closed reduction and

percutaneous stabilization of subcondylar fractures of the mandible". The third prize winner was Dr. David Greenspan for "A technique of brachioplasty". Dr. Mary Tsoi was the honorable mention winner for "A strategy to improve T-cell migration to tumor utilizing a novel receptor gene, which mediates adhesion to dab3 on tumor vasculature". The 2005 Residents' Night competition will be March 7th-the first Monday night in March.

The executive committee meeting discussions have been spirited this year. Although the charge of our society has always been educational, the current economic pressures have raised the possibility of adding political considerations to the society agenda. Up to this time, we have been fortunate to have our past President, Dr. William Rosenblatt, as the President of the New York State Medical Society. Dr. Rosenblatt, as well as Dr. Arthur Wise, have been invaluable in informing the executive committee of upcoming political trends as well as potential problems before they materialize. The active participation of the New Jersey Society of Plastic Surgeons with its

*continue next page...*



Gregory E. Rauscher, MD, FACS

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**Tracy M. Pfeifer, MD**  
*Editor*

## Letter from the Editor

Greetings to all our members. We have seen a lot of activity lately in the legislative arena regarding issues that are important to plastic surgeons. Among the most worrisome, the California State Legislature voted to approve scope of practice legislation that would allow dentists to perform facial cosmetic surgery. Governor Schwarzenegger vetoed the bill. However, this issue will be raised again in California and other states. Your active involvement in state, regional and national societies is extremely important as our leadership continues to protect both our patients' and our interests in these scope of practice issues.

The American College of Surgeons introduced a resolution to the AMA, co-sponsored by ASPS, calling for the AMA to establish a policy that directs all physician expert witnesses in medical malpractice cases to voluntarily sign a statement of adherence to AMA principles governing expert witness testimony. The AMA's House of Delegates adopted this resolution.

The American College of Surgeons has already developed an Expert Witness Affirmation (*see page next page*). Plastic surgeons who are Fellows of the American College of Surgeons should have received a recent communication from the ACS dated April 2004 stating: "the Expert Witness Affirmation.....is intended for voluntary use by Fellows who wish to make explicit their commitment to knowledgeable and ethical expert witness testimony.....During litigation, the document can be used to examine the witness and enhance the qualifications of those who signed it. Conversely, witnesses who chose not sign the affirmation can be cross-examined about their failure to do so."

Your active membership in organized medicine continues to be vital in order to protect the integrity of the medical profession, promote quality health care and foster a positive environment for practicing physicians. Let's hope for tort reform in 2005. As a reminder, the NYRSPS annual member fee is \$200. There is no registration fee for the spring and winter meetings for members.

## President's Message Continued...

President, Dr. Peter Hetzler, attending our executive meetings is a welcomed development. To date, the lobbyists in New York and Connecticut have been successful in ferreting out misguided political attempts to destroy private practice and patients' rights.

Dr. Hetzler has updated our executive committee members on the intrusions of a hostile New Jersey state administration levying a 6% cosmetic surgery tax as well as a punitive triple taxation on all ambulatory surgery centers. We will follow these developments closely. In addition, on occasion the educational programs of the two societies have been concurrent and conflicted. The cooperative efforts of the New Jersey Society of Plastic Surgeons with the New York Regional Society should avoid future scheduling conflicts between our educational programs. The possibility of joint educational programs between these

two societies is being explored as negotiations continue between the two executive committees.

The addition of a post-meeting one-hour workshop targeted to a specific technique or procedure is my final contribution to the Society. Our society has the unique location to attract speakers and comfortable facilities that can foster additional educational opportunities. Pending finalization of plans, we will offer a post-meeting workshop at this year's Winter Meeting. The workshop will be familiarize members with a mid-face fixation device utilizing cadaver demonstration. Future workshops could include injection of facial fillers as well as other specific techniques and devices of interest to our members. I thank you for giving me the opportunity to serve as your President and wish the best to our new President, Dr. Jane Haher, who will begin her tenure January 1, 2005.

Yours truly,

**Gregory E. Rauscher, MD, FACS**

*Professor of Plastic Surgery, University of  
Medicine and Dentistry of New Jersey*

***Expert Witness Affirmation***

*American College of Surgeons*

**As a member of the medical profession and the American College of Surgeons, I affirm my duty, when giving evidence or testifying as an expert witness, to do so solely in accordance with the merits of the case. Furthermore, I declare that I will uphold the following professional principles in providing expert evidence or expert witness testimony.**

1. I will always be truthful.
2. I will conduct a thorough, fair, and impartial review of the facts and medical care provided, not excluding any relevant information.
3. I will provide evidence or testify only in matters in which I have relevant clinical experience and knowledge in the areas of medicine that are the subject of the proceeding.
4. I will evaluate the medical care provided in light of generally accepted standards, neither condemning performance that falls within generally accepted practice standards; nor endorsing or condoning performance that falls below these standards.
5. I will evaluate the medical care provided in light of the generally accepted standards that prevailed at the time of the occurrence.
6. I will provide evidence or testimony that is complete, objective, scientifically based, and helpful to a just resolution of the proceeding.
7. I will make a clear distinction between a departure from accepted practice standards and an untoward outcome.
8. I will make every effort to determine whether there is causal relationship between the alleged substandard practice and the medical outcome.
9. I will submit my testimony to peer review, if requested by a professional organization to which I belong.
10. I will not accept compensation that is contingent upon the outcome of the litigation.

**Name** \_\_\_\_\_

**Signature** \_\_\_\_\_

**Name of Certifying Board** \_\_\_\_\_

**Date Certified** \_\_\_\_\_ **Date Recertified** \_\_\_\_\_



*Alan Matarasso, MD*

### **Alan Matarasso, MD**

NYRSPS Vice President & Scientific Program Chairman

The New York Regional Society of Plastic Surgery in joint sponsorship with the New York Academy of Medicine, Section of Plastic and Reconstructive Surgery continues its biannual scientific meetings. These educational meetings are nationally recognized for the quality of the program and the high caliber of the speakers who present each year.

This past spring we were honored to have Drs. Daniel Marchac and Clinton McCord as our featured guest speakers.

Dr. Marchac spoke about limited incision facelift and his surgical technique. He presented his extensive experience using tissue sealant in facelifting. Dr. Clinton McCord, an oculoplastic surgeon practicing in Atlanta, Georgia lectured on considerations in secondary blepharoplasty and a variety his techniques for surgery in the peri-orbital area.

The spring meeting also featured Dr. Stanley Klatsky as our 8th Master Series surgeon. In 1995 your Regional Society initiated a novel and valuable educational series of lectures known as the Master Series. The Masters of Plastic Surgery lecture is conducted on alternate years, usually at the winter meeting. It is dedicated to providing a forum for a senior, "living legend" of plastic surgery. The purpose is to foster interaction and interchange between our members and these senior plastic surgeons of international repute. Presentations of original work, with anecdotes describing the circumstances which led to the development of their newer concepts, are received by an enthusiastic audience of all ages. For the younger members of our Society, this is a unique opportunity to meet and learn from the "Masters" of our field. Dr. Klasky gave an in-depth presentation on his experiences in aesthetic surgery, including his thoughts on the future of aesthetic surgery.

## **WINTER MEETING**

*Saturday December 11, 2004*

### **"Rhinoplasty"**

#### THE PROGRAM FEATURES

**Bahman Guyuron, MD**

"Cosmetic Rhinoplasty"

**Frederick J. Menick**

"Nasal Repair: Fabricating a Normal Nose"

**Norman Pastorek, MD**

"Primary Rhinoplasty"

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**8:00 am to 1:00 pm**

New York Academy of Medicine  
1216 Fifth Avenue (at 103rd Street)  
New York, New York

This program is certified for three CME credits.

There is no registration fee for members of the NYRSPS and residents. Non-member registration fee is \$200.

**William Rosenblatt, MD**

President, Medical Society State of New York  
Board Member, MSSNYPAC



William Rosenblatt, MD

Many physician members of the State Medical Society have told me time after time that malpractice reform, especially a cap on pain and suffering should be our prime legislative goal. Our legislative program has been tailored around this and we have been striving for help with this perennial problem for many years. At this moment, we seem to have some friends in both Albany and Washington. The Republican majority in the House of Representatives has voted for malpractice reform multiple times. The United States Senate, although controlled by Republicans, is stymied in its pursuit of a cap or other meaningful reform because of the cloture rule which is invoked by the Democrats to block approval. Albany, too, has a cooperative Republican Senate, but our Assembly, overwhelmingly controlled by Democrats, refuses to budge.

We have been successful in beating back the trial lawyer bills that are regressive in nature and which would actually worsen the situation significantly. We have, furthermore, achieved significant tort changes (a reduced statute of limitations, a very restricted date of discovery rule, collateral source offset and many more.) Despite these achievements; however, we are still laboring under a tort system which doesn't work fairly for either plaintiffs or defendants and which costs vast sums of money. In fact, the current system benefits only lawyers. Also, we have effectively doubled physician protection by securing millions of dollars to buy the excess for physicians at a minimal cost to us. Why can't we seem to attain our goal of meaningful tort reform? In my career, two major studies have been done. The McGill commission established by Governor Carey in 1975 and the Harvard Study commissioned by the Department of Health completed in 1989. Both of these studies showed that the current malpractice system is broken and major reform is needed. The system we have today neither protects physicians nor helps injured patients. We are also told that over 70% of the general public is for reform. California enacted MICRA in 1974. Their reforms, which include a cap for pain and suffering, work. Their premiums have stabilized and injured patients have been compensated.

Where is the disconnect? Why do study after study and successful programs go neglected and unrecognized? What makes it possible for liability reform to be successfully enacted in states such as Mississippi and Texas but not in New York or Florida?

I believe that the answer is in the six letter word ACCESS. I talk to legislators and so do many of you. We tell them of the liability problem and may even use the word "crisis." Yet they do not see a crisis. Their constituents, i.e. our patients, can get the services they need. In the minds of many legislators, we have NO access problems in New York State. As expensive as the premiums are, many legislators believe that physicians make enough money to pay for them and they are not pained enough to cause a real crisis as we had in 1974 where there was no insurance at any cost. It is reported that in Mississippi and Texas, lives

were lost due to the unavailability of neurosurgeons and obstetricians and trauma surgeons. We do not see that problem here – no matter how expensive the insurance is, doctors are at their work.

I believe that one of the reforms we got in 1985 has worked both for and against us. This reform is the ability of New York State's insurance commissioner to set liability rates, thus keeping our insurance costs more affordable and avoiding an access problem. Over the past two years, MLMIC and the other liability carriers have asked for double digit increases – last year 25% and this year 22%. These requests were not granted, and thus our liability insurance costs have not dramatically increased. Although the premiums are high, they are not high enough for the majority of physicians who pay premiums below \$20,000 to consider moving or leaving practice or limiting care as their high-end specialists colleagues such as neurosurgeons and obstetricians/gynecologists are now considering. When this happens – and it is coming closer and closer - I think we would have the "crisis" that would finally bring about legislative reform.

How can we get reform before liability insurance rates reach crisis proportions? Why do we have to reach a crisis state before physicians band together to do something about it. Why can't we prospectively work to prevent a crisis before it happens? I am not sure; however, I have established a small select panel of physicians to try to brainstorm and see if we can come up with some novel answers. If you have constructive suggestions relative to how the MSSNY can help our state's physicians prevent such a crisis, please contact me at [wrosenblatt@mssny.org](mailto:wrosenblatt@mssny.org). As physicians, we all know that an ounce of prevention is worth a pound of cure. Let us all band together to prevent medical malpractice from becoming a crisis that affects every medical specialty, not just certain specialties. Let's band together to help our brother and sister physicians in these "high risk" specialties. Their problem is our problem. They deserve our help and we need to stand together, NOW!

## **6 Tax-Saving Ideas for 2004:** *Plan This Year and Save Next April 15th*

**Frank Wong C.F.P. & David B. Mandell, JD, MBA**

As a physician, you work too hard and trained too long not to consider tax planning a priority. That is, of course, unless you like spending 40 to 50% of your time working for the IRS and your state. Still, if you're like most physicians, you don't even dedicate one day per month to see how you could reduce your tax liability. The purpose of this article is to show you five ways to save taxes on 2004 income... and possibly motivate you to spend that day on planning now, before the end of the year. Let's examine them now:

### **1. Get Deductions for Risk Management and Asset Protection Planning**

Closely Held Insurance Companies (CICs) are great for medical practices looking to make annual tax-deductible contributions of \$80,000 to \$175,000 for asset protection and risk management programs. The CIC we are discussing here are very small insurance companies that primarily will insure your practice. These companies enjoy extremely beneficial tax treatment (made even better by an April 2004 law signed by President Bush), allowing the physician owners an opportunity to build tax-favored wealth, as opposed to giving profits up to insurance companies or building wealth subject to income and capital gains taxes. You can use a CIC to insure all, or portions of, your practice's significant risks, such as medical malpractice liability protection, medical malpractice 'defense only' policies, sexual harassment, wrongful termination, HCFA audits, worker's compensation, etc.

### **2. Asset-Protect Your Practice's Most Valuable Asset and Reduce Taxes**

As a physician, you are likely very aware of the malpractice liability crisis presently surrounding the practice of medicine. What you may not realize is that a large judgment against any of your partners will likely threaten ALL of your practice's accounts receivable. Typically, this is a medical practice's most valuable asset. For this reason, many physicians have implemented a strategy for asset-protecting their receivables. While the details of the options go beyond the scope of this article, it should be mentioned here that at least two of these strategies (financing and enhanced factoring) may allow the practice to reduce its income tax burden as well, because of deductions generated by the strategy. Thus, if asset protection is a concern of yours, in addition to tax reduction, we recommend that you investigate your practice's options in this area.

### **3. Use Non Qualified Deferred Compensation Plans (NonQPs)**

Most of you have likely heard of traditional "tax qualified" plans. They go by the names of "pension," "profit-sharing plan," "Keogh," or "401(k)" and tens of millions of people participate in such plans each year. Because they are tax-qualified, these plans are generally 100% deductible and

have strict rules as to how much you can put in, which employees must be able to participate, and when you can get the money out. On the other hand, NonQPs have very few restrictions on how much can be contributed, who can participate, and have no penalties for early or late withdrawal. Unlike qualified plans, very few people participate in NonQPs because they do not know their employer offers them or they have not created one for their own practice. This is a terrible wasted opportunity, as NonQPs can provide tremendous tax and retirement benefits, while allowing maximal flexibility as well.

### **4. Share Income with Lower-Income Family Members**

Family Limited Liability Companies (FLLCs) and Family Limited Partnerships (FLPs) are used primarily for asset protection. However, FLLCs and FLPs can save you thousands of dollars each year in income taxes. This is accomplished by what is called "income sharing". This means spreading the income created by the FLLC or FLP to the limited partners or members who are in lower tax brackets. Since most of our clients are in a 40% tax bracket (state and federal) and many of them have children (over age 14) who are in either a 10% or 15% tax bracket, the FLLC/FLP can save significantly on income earned by FLLC/FLP assets such as mutual funds, rental real estate, stocks, and bonds.

### **5. Gain Tax-Deferral, Asset Protection and Risk Reduction for Your Investment Portfolio**

There are two types of annuities: fixed annuities (which pay you a fixed return over a period of time) and variable annuities (which have an underlying stock market investment). If you have assets that you do not intend to use until retirement, there is no reason not to utilize an annuity to defer income taxes. Under realistic assumptions, a \$500,000 stock portfolio may generate an annual tax liability of \$10,000 to \$25,000. An annuity will let you invest funds that would otherwise go to the government and defer taxes on the earnings until you retire, when you may be in a lower tax bracket. Additionally, some states protect annuities from creditor claims. In the states that do exempt them, annuities are an ideal tool to safeguard wealth.

## 6. Use Charitable Giving To Reduce Income taxes – The Charitable Remainder Trust (CRT)

As a society, Americans cherish the right to give to the charitable institutions of their choice. The problem, many times, is that we do not know how to give or that we assume that our family will suffer as a result of our giving. There are many ways you can make charitable gifts while benefiting your family as well. The most common tool for achieving this “win-win” is the Charitable Remainder Trust (CRT). A CRT is an irrevocable trust that makes annual or more frequent payments to you (or to you and a family member), typically, until you die. What remains in the trust then passes to a qualified charity of your choice. A number of advantages may flow from the CRT.

First, you will obtain a current income tax deduction for the value of the charity’s interest in the trust. The deduction is permitted when the trust is created, even though the charity may have to wait until your death to receive anything. Second, the CRT is a vehicle that can enhance your investment return. Because the CRT pays no income taxes, the CRT can generally sell an appreciated asset without recognizing any gain. This enables the trustee to reinvest the full amount of the proceeds from a sale and generate larger payments to you for your life. Finally, the trust will be eligible for an estate tax deduction if it passes to one or more qualified charities at your death.

### CONCLUSION

Judge Learned Hand said: “There is no reason to pay more taxes than the law would provide – there isn’t even a patriotic duty to do so.” This article gives you a few ideas for how to save taxes for 2004. Feel free to contact either of us if you have any questions regarding the above.

*For a free audiotope on tax and asset protection strategies, please call (800) 554-7233 or email [info@wealthprotectionalliance.com](mailto:info@wealthprotectionalliance.com)*

**David B. Mandell, JD, MBA** is an attorney, lecturer, and author of the book *Wealth Protection: Build and Preserve Your Financial Fortress*. He is also a co-founder of The Wealth Protection Alliance (WPA) – a nationwide network of elite independent financial advisory firms whose goal is to help clients build and preserve their wealth. **Frank Wong** is President of Financial Educators in Manhattan, and provides sophisticated business planning to clientele all over New York state. Frank and Financial Educators is a charter member of the WPA, and can be reached at (800) 554-7233.

## 6% Gross Receipts Tax On Cosmetic Medical Procedures in N.J.

**Dr. Peter Hetzler**

*President, NJ Society of Plastic Surgeons (NJSPS)*

The following are excerpts from a communication dated August 25, 2004 from Dr. Peter Hetzler, Chair of the Coalition of the New Jersey Medical Professions (CNJMP) which was sent to the members of the NJSPS and CNJMP in response to the imposition of a 6% gross receipts tax on cosmetic medical procedures by the New Jersey State Legislature. The full text and attached action recommendations can be obtained by calling CNJMP at 973-597-0938.

“On August 10, 2004 the CNJMP met in its continuing effort to formulate an effective strategy to achieve repeal of the 6% tax on cosmetic surgery.

In summary, the imposed 6% tax on gross receipts from cosmetic medical procedures applies to procedures performed on or after September 1, 2004 and any prepaid before September 1, 2004. Quarterly returns and remittances of the tax collected are due by the 20th of the month following the quarter and the first return is due October 20, 2004.

Despite the fact that this tax is now law and that we must all comply, CNJMP has been working with MSNJ, the affected medical and surgical specialties, and the supporting national societies to ultimately repeal this tax. The coalition has formulated several strategies, one directed at NJHA (New Jersey Hospital Association), which sponsored both the cosmetic surgery tax and the ambulatory surgery center tax. Additionally, in conjunction with MSNJ the coalition is urging individual medical staffs to take appropriate action at their respective hospital systems to force the system CEOs, who sit on the NJHA executive council, to advocate for repeal. Meridian and Virtua are publicly advocating for repeal.

CNJMP and MSNJ have collaborated on a letter to the Division of Taxation containing a lengthy list of questions and issues that must be addressed prior to implementation of this tax, many of which may even preclude its straightforward implementation.

Additionally, a delegation from the CNJMP, which will include representatives of MSNJ and the national societies, will be meeting face-to-face with Senators and Assemblymen/Assemblywomen who voted against these taxes, and have expressed vocal support for their repeal. During these meetings it will be stressed that a significant portion of the \$800 million in charity care performed by New Jersey physicians is indeed performed by physicians directly affected by this tax. It will also be stressed that this tax is essentially discriminatory against women. In fact, the majority of women seeking cosmetic surgery are 50-55 years of age with an average income of \$55,000 per year, and are actively employed and already paying taxes.”

## Highlights



left to right: *Dr. Stanley Klatsky, Dr. William Rosenblatt,  
Dr. Daniel Marchac, Dr. Gregory Rauscher &  
Dr. Clinton McCord*



*Dr Arthur Wise &  
Dr. Jane Haher, President Elect NYRSPS*



left to right: *Dr. Michelle Zweifler, Dr. Scot Glasberg &  
Dr. Fred Lukash*



*Rudy Svezia NYRSPS Webmaster &  
Dr. John Vaccaro, Treasurer NYRSPS*

### *HOLD THIS DATE*

#### ***Residents' Night Competition March 7, 2005***

Abstracts due February 7, 2005. Information on abstract submission will be available through residency program directors by December 1, 2004.

#### ***Spring Meeting April 23, 2005***

*"Male Aesthetic Surgery"*

Check the website for details: [www.plasticsurgeryny.org](http://www.plasticsurgeryny.org)