

# Save the Date!

## 119<sup>th</sup> Annual Meeting

of the

## West Virginia Bar Association



### Stonewall Resort

Roanoke, West Virginia

### September 22 - 24, 2005



The West Virginia  
BAR ASSOCIATION

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Huntington, WV 25722

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The West Virginia  
BAR ASSOCIATION

Founded 1886

# The Communiqué

The Official Newsletter of The West Virginia Bar Association

Volume XI No. 1



The West Virginia  
Bar Association

Founded 1886

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## President's Corner

Charles M. Love III  
President

We are off to a great year! Two of our many functions are off to a roaring start. Governor Manchin and the Legislature are considering tort reform and an increase in judicial compensation - major issues in which we have a strong interest. By the time you read this, the Legislative session will have concluded and we will know the outcome.

Judicial selection, another of our strong interests, is about to reach a milestone. Our immediate past president, John F. McCuskey is our representative on the State Bar Judicial Selection Commission. He advises me that the work on changing our judicial selection process is nearing completion and that a final recommendation should be made to the State Bar Board of Governors in July of this year.

**History Project** - As you know, the Senior Lawyer division of the Bar Association has been working for several years on writing and publishing a history of the West Virginia Bar Association (founded in 1886). Through the persistence of Phil Hill, Tom Battle, Jack Bowman, and many others, it is nearing completion! Many lawyers and firms have sponsored the undertakings with, not only money, but also photographs and historical information. We will have the book shortly. The first draft, written by Dr. Kenneth Bailey, Professor of History and formerly Dean of Humanities at WVU Institute of Technology, is complete.

Our social and CLE programs are moving forward under the able guidance of our Executive Director, Pryce Haynes. This year we are sponsoring a series of programs in various sec-

tions of the state. Mark your calendar for the following events:

**WVBA Legal Ease CLE/Reception**  
April 28, 2005 - Purple Iris, Martinsburg

**WVBA LNC Spring Conference**  
May 20, 2005 - Embassy Suites, Charleston

**WVBA Bench & Bar CLE/Reception**  
May 25, 2005 - Marriott, Charleston

**WVBA Annual Meeting**  
September 22 - 24, 2005 - Stonewall Resort, Roanoke, West Virginia

**WVBA Real Estate Conference**  
October 22, 2005 - Glade Springs, Daniels, West Virginia

This is a new venue for us. The annual meeting is at Stonewall on a WVU home football weekend (WVU v. East Carolina) and a Marshall away game (Marshall v. Central Florida). The resort is located about an hour away from Mountaineer Field. This will provide you and your family the opportunity to spend the weekend at Stonewall Jackson, take advantage of the social and CLE programs, play golf and tennis and travel a short distance, if you choose, to attend a WVU football game. All on a wonderful, warm fall weekend, provided at a reasonable cost - much of which, I am told, is tax deductible!

As you can see, this has already been a busy year. Our Executive Council Strategic Planning Retreat is being facilitated by the ABA on April 23, 2005. We anticipate this day long event will assist the Council in providing leadership and direction in the future. Stay tuned and stay active! ■

## Young Lawyer Section News

Ronald S. Rossi, Esquire  
President, Young Lawyer Section



For the Young Lawyers Division, the year 2005 has started out with enthusiasm and promise. When you last heard from me, I spoke of transition within the Executive Council. Well, that transition has been very positive and we have some exciting events upcoming. I would like to personally welcome to the Council and thank for their participation, Melinda Dugas, James Graley, and Jessica Rodecker.

On April 28th, the Young Lawyers Division is hosting a "Legal Ease" combination CLE and social hour at the Purple Iris in Martinsburg. Look for formal invitations in the near future. We will have an hour long CLE geared towards law office management

for the small firm and sole practitioner. Even though it may be geared toward the smaller office, I'm certain the information shared will be helpful to all in the practice. Planning is also underway for "Legal Ease" receptions in other parts of the state.

On May 25th, our focus switches to Kanawha County where, in conjunction with the Kanawha County Bar Association, we will sponsor the annual Bench and Bar Reception. Keep an eye out for your invitations.

The Young Lawyers Division is moving forward and, in that regard, I personally welcome any input from our membership. If you have any suggestions, concerns, or if you just want to share ideas, please email me at [RSRossi@martinandseibert.com](mailto:RSRossi@martinandseibert.com). I look forward to seeing you at the Legal Ease and the Bench and Bar receptions. ■

## Upcoming Events

<b>April 28, 2005</b>	<b>WVBA YLD Legal Ease Seminar and Reception</b> Purple Iris, Martinsburg 5:00 pm - 6:00 pm: CLE 6:00 pm - 7:30 pm: Reception
<b>May 20, 2005</b>	<b>WVBA LNC Spring Conference</b> iEmerging Issues in Litigation Embassy Suites, Charleston (See page 14 for more details)
<b>May 25, 2005</b>	<b>WVBA Bench &amp; Bar Reception</b> Marriott, Charleston 5:00 pm - 6:00 pm: CLE 6:00 pm - 8:00 pm: Reception
<b>September 22-24, 2005</b>	<b>119th Annual Meeting</b> Stonewall Resort - Roanoke, West Virginia
<b>October 22, 2005</b>	<b>WVBA Real Estate Conference</b> Glade Springs - Daniels, West Virginia

Be there!

property. If the underlying assets of a partnership constitute IRA assets, then any transaction with the partnership is treated as a direct transaction with the IRA. Thus, for example, the sale of a building by the partnership to a person who is a disqualified person with respect to the IRA would be a prohibited transaction.

Because few partnerships are publicly traded or registered under the Investment Company Act, if all IRA investors and all other retirement plan investors collectively own a significant interest in a partnership (generally, 25% or more of the profits interest, not considering the general partner's interests or similar interests), then the partnership must be an operating company to prevent its underlying assets from being IRA assets. A real estate partnership is considered an operating company if it qualifies as a "real estate operating company."

A partnership must meet two tests to be a real estate operating company. First, fifty percent of its assets must be invested in real estate which is managed or developed and with respect to which the partnership has the right to substantially participate directly in the management or development activities. Second, the partnership must, in the ordinary course of its business, be engaged directly in real estate management or development activities. The regulations provide specific rules for determining whether a partnership qualifies as a real estate operating company.

### III. The IRA Death Penalty

The IRA death penalty is set forth in Code Section 408(e)(2). This provision generally provides that, if an IRA owner or his or her beneficiary engages in any prohibited transaction with respect to the IRA account, then the account ceases to be an IRA. This would result in a deemed immediate distribution to the IRA owner of all funds in

the IRA and could also result in a penalty for an early distribution. Thus, for example, an IRA owner cannot cause her IRA to purchase her primary residence. Under Code Section 408(e)(4), if the owner uses a traditional IRA or any portion thereof as security for a loan, the portion so used is taxable to the owner.

### IV. Other Matters

There are other issues that should be addressed when investing an IRA in real estate. A detailed discussion of all issues is beyond the scope of this article. The practitioner should at least be aware of issues such as unrelated business taxable income and bankruptcy protection for the IRA assets. ■

*Kevin Wiggins is an ERISA attorney at the law firm of Steptoe & Johnson PLLC in Clarksburg, West Virginia.*

## Webcredenza CLE Seminar Schedule

To sign up for one of these Webcredenza Seminars, please call The WVBA at 1-800-944-9822.

### April

- 5 - Affirmative Action: Developments for Employment and Business Practitioners
- 19 - Secrecy and the Courts: Protective Orders and Access to Court Records
- 27 - Key Elements in Drafting Commercial Leases, Part 1
- 28 - Key Elements in Drafting Commercial Leases, Part 2

### May

- 3 - Asset Protection for the Elderly: Saving the Work of a Lifetime from Depletion
- 10 - Acquisitions of Bankrupt or Financially Distressed Businesses
- 17 - Administration of Family Limited Partnerships
- 24 - Discovery Practice in Employment Litigation
- 26 - Update for Practitioners Advising Health Care Organizations

### June

- 2 - 2005 Insurance Update: Coverage and Litigation
- 7 - Demystifying Employee Retirement Plans: Guidance for the Non-Specialist
- 15 - Environmental Liability in Real Estate Transactions
- 22 - What's New in Estate Planning: Select Developments
- 28 - ABA Model Rules: A Practical Update on Ethics for Practicing Attorneys, Part 1
- 29 - ABA Model Rules: A Practical Update on Ethics for Practicing Attorneys, Part 2

Sign up today!

Kevin A. Wiggins is an attorney in the Clarksburg office of Steptoe & Johnson, PLLC. Mr. Wiggins's practice is devoted exclusively to ERISA, employee benefits, executive compensation, and related areas. He has represented clients before the Department of Labor, the Internal Revenue Service, as well as in ERISA litigation. Mr. Wiggins earned his law degree from Cornell Law School in Ithaca, New York, and received his undergraduate degree from the University of North Florida in Jacksonville, Florida. Mr. Wiggins is admitted to practice in New York and Texas.

## IRA Real Estate Investments

Kevin A. Wiggins, Esquire  
Steptoe & Johnson PLLC

An IRA's real estate investment may be appropriate for the right investor, but such investments are often filled with traps for the unwary. This article briefly discusses: (1) the need to find an IRA custodian that holds non-regular assets; (2) compliance with the prohibited transaction rules of the Internal Revenue Code ("Code"); and (3) the IRA "death penalty."

### I. Finding an IRA Custodian

Not all IRA custodians hold real estate investments. Before committing to closing on a real estate investment through an IRA, IRA investors should consult with their custodian to see if it will hold the real estate investment. If not, then the IRA owner must find a custodian that permits real estate investments.

### II. Prohibited Transactions

Compliance with the Code's prohibited transaction rules constitutes a critical component of any IRA investment, including real estate investments. A prohibited transaction may result in an initial excise tax of 15% of the amount involved and a subsequent tax of up to 100% of the amount involved.

The term "prohibited transaction" is defined to include any direct or indirect (1) sale or exchange, or leasing, of any property; (2) lending of money or other extension of credit; or (3) furnishing of goods, services, or facilities between the IRA and a person who is a disqualified person with respect to the IRA. The term also includes a transfer to, or use by or for the benefit of, a disqualified person of the income or assets of the IRA.

Moreover, the Code prohibits certain acts of self-dealing by IRA fiduciaries. The term "disqualified person" includes any person who is a "fiduciary" of an IRA and other persons who occupy certain positions of trust with respect to the IRA.

The Code provides for certain exemptions from the prohibited transaction rules. First, some exemptions are established by statute, such as an exemption for reasonable fees received by a service provider. Second, the Department of Labor issues class exemptions that any disqualified person may rely upon provided the conditions of the exemption are met. Third, the Department of Labor issues exemptions for individual transactions. For example, an individual who wishes to sell his investment property to his IRA may obtain an exemption that exempts the sale from the application of the prohibited transaction rules.

The prohibited transaction rules apply with respect to the "assets" of an IRA. The plan asset regulations promulgated by the Department of Labor govern what constitutes the assets of an IRA when the IRA invests in an entity such as a real estate partnership. Under these regulations, the IRA's assets include the IRA's partnership interest and the partnership's underlying assets unless (1) the partnership is an operating company, publicly traded on the open market, or registered under the Investment Company Act of 1940 (*e.g.*, a mutual fund) or (2) the equity interests of the partnership owned by all IRAs and all other retirement plan investors (*e.g.*, pension plans, 401(k) plans, and governmental plans) are not significant. Underlying assets of the partnership include the real property owned by the partnership and any developments on the real

## History Project Update

Tom Battle, Esquire  
Chair, Senior Lawyer Division

Phil Hill, the past chair of SLD, was much too charitable in his article last December about my succeeding to the chair of SLD following his two year term in office. Under my leadership, we have gotten off to a slow start organizing our group, but I hope to change that in the coming few months. I have received from Pryce Haynes a list of WVBA members who are also members of SLD and I expect to enlist both Executive Council members and a History Project Review Committee from that list. If called on to help, I hope you will be available.

As reported in the last issue of *The Communiqué*, The WVBA started the history project by engaging Dr. Kenneth Bailey to research and write the story of the Association, beginning with the founding of the organization in 1886. Recent communication with Dr. Bailey allows me to offer the following progress report.

Based on research to date, Dr. Bailey has identified a number of topics for inclusion in the book. These include: (a) the organization and early years of The WVBA; (b) the successful fight to increase educational requirements for admission to practice law; (c) early efforts to improve land law legislation and to secure the appointment of judges; (d) the unique 120 year relationship between The WVBA and the WVU School of Law and how the law school has benefited from that relationship; (e) women in The WVBA and a few biographical sketches of early members; (f) The WVBA drive to establish ethical standards and how that led to its support for the creation of The West Virginia State Bar; (g) how the desire of The WVBA to preserve the legal history of West Virginia impacted the development of a major collection at WVU; (h) a description of the practice of law in the early years of The WVBA and how

that has changed; and (i) a description of and data concerning membership, annual meetings and executive directors of The WVBA. Another section of the work will contain biographical sketches of as many WVBA Presidents for whom biographical information exists. To date, one half of the 120 sketches have been completed.

Dr. Bailey is interested in recommendations for additional sources of historical data, including photographs, that may be filed away in offices or even homes of longtime WVBA members. We are preparing a list of attorneys for Dr. Bailey to personally interview. If you have ideas or suggestions about any of the above topics or sources that should be pursued for completing the historical "picture" of The WVBA, please let us hear from you. ■

### We need your photos!

In order to make our history project a success, we need your help!

In addition to compiling written accounts of our past, Dr. Bailey would like your old photos. Photography is a wonderful source of historical data. If you have any photos of past WVBA members or from past WVBA events, please let us know! We can accept electronic files, or we would be happy to scan in your photos for you and return them promptly.

Email us at: [director@wvbarassociation.org](mailto:director@wvbarassociation.org)

## LNC Section News

Karen J. Huff, BSN, RN, LNCC  
President, LNC Section

Our Spring Conference planning committee has been hard at work developing an interesting program. The conference, "Emerging Issues in Litigation," will be held Friday, May 20, 2005 at the Embassy Suites in Charleston. Many thanks to all who have helped me with this project, especially Libby Bridgeman, Marti Christensen, Anissa Dougherty, Pattie Patterson, Janet Pennington, Trina Randolph, and Michelle Winters.

Several lectures are related to litigation following the removal of Vioxx from the market. Other lectures will provide an update about trends in medical malpractice, as well as ethical and practice issue for LNCs. Two of the speakers, Anissa Dougherty and Debbie Pritts, are LNC Section members. Charlie Love, WVBA President, will give the opening remarks. Mr. Love is also President of the West Virginia State Bar.

Cost for early registration is \$50.00 for LNC Section members. The program is approved for 6.0 continuing education credits for LNCs and attorneys. Additional information can be found on pages 14 - 15 of this issue, or on our website at [www.wvbarassociation.org/lncsection](http://www.wvbarassociation.org/lncsection).

Speakers and topics include: *Vioxx Litigation: Overview & Case Strategies*, Scott S. Segal, Esq.; *Drug Development, Governmental Oversight of Drug Safety, & COX-2 Inhibitors: A system in need of change?*, B. Daniel Lucas, Jr., Pharm D; *Vioxx Litigation: Client Screening & Medical Issues*, Debra A. Pritts, RN; *Current Trends in Medical Malpractice*, Paul K. Reese, Esq.; *Legal Nurse Consulting: How to Avoid Ethical and Practice Pitfalls*, Anissa S. Dougherty, BSN, RN, LNCC.

In other news, I attended The WVBA Executive Council meeting earlier this year to represent the LNC Section. Much of the meeting was devoted to a discussion of strategic planning for The WVBA. An introductory discussion was held with a consultant from the American Bar Association who will provide assistance to The WVBA during the strategic planning process.

In closing, I'd like to encourage members to consider running for a position in this year's elections. As you may recall, the LNC Section Board of Directors serves a 2-year term of office. Our founding Board began their term in July 2003. The next Board will be installed at the 2005 Annual Meeting in September at Stonewall Resort.

There are 3 positions open for a vote by the general membership: LNC Section Secretary and (2) positions for Director-at-Large. Our bylaws also call for a Nominating Committee consisting of 4 members. Per the bylaws, the next LNC Section President will be elected by a Board vote, and I will move into the position of Past-President.

If you are interested in volunteering to run for a position, or for more information, do not hesitate to contact me at [huffk@steptoe-johnson.com](mailto:huffk@steptoe-johnson.com) ■

lying Brooke County circuit court action (Judge Martin C. Gaughan), the plaintiff used the defendants' services to settle a real estate transaction, and then sued the defendants for the unauthorized practice of law. The circuit court, relying on Opinion No. 2003-01, ruled that the non-attorney defendants who had provided settlement services had indeed engaged in the unauthorized practice of law. In its order, the circuit court certified several questions to the West Virginia Supreme Court of Appeals. Questions 1 through 4 related to whether certain actions constituted the unauthorized practice of law.

In *McMahon*, the West Virginia Supreme Court of Appeals addressed what is and is not the unauthorized practice of law in West Virginia, and affirmed that the judiciary must decide what constitutes the practice of law, and when such conduct must be performed by or under the supervision of a licensed West Virginia attorney. The Court discusses the fact that several *amici* had warned that its decision runs "a serious risk of

inadvertently disturbing and disrupting the time-tested procedures and principles of real estate and loan practice that are important to the protection of liberty and property in this State." The Court further states that in determining what is and is not the unauthorized and unlawful practice of law, there should be an adequate factual record upon which a court may properly weigh such considerations as accountability, due care and consistence in the application of legal principles, public safety, etc. The Court found that it did not have such a record,

and hence the Court remanded the case to the circuit court to allow the development of the record. Additionally, the Court stated "[t]he circuit court may allow other stockholders to intervene, if appropriate, to assert their interests..."

By unanimous vote of the Executive Council, The West Virginia Bar Association has decided to intervene in the action, in order to protect the interests of West Virginia real estate attorneys in this important case.

Daniel J. Guida, of Weirton, lead plaintiff's attorney in the *McMahon* case, has informed me that a scheduling conference is set for early April 2005. At that time, Judge Gaughan will enter an order setting forth a time frame for all interested parties to intervene.

I believe it is imperative for all West Virginia attorneys, not only those who practice in the real estate field, to support the Bar Association in its admirable endeavor

to intervene in this important case. If you are not already a member of the Bar Association, I urge you to join now, in order to show your support. If you have any questions about these proceedings, I would be happy to discuss them with you in further detail. ■



O. Gay Elmore, Jr. founded the Charleston law firm of Elmore and Elmore in 1996. He obtained his Bachelor of Arts degree from Virginia Military Institute in 1987, and his Juris Doctor from Washington and Lee University School of Law in 1990. Mr. Elmore maintains a general law practice, although he has traditionally concentrated in the area of real property law. He has taken a leadership role on behalf of West Virginia real estate attorneys with regard to issues pertaining to the unlawful practice of law in West Virginia. Mr. Elmore has served as a Fiduciary Commissioner for the Kanawha County Fiduciary Supervisor's Office since 1992. Mr. Elmore is a member of the American Bar Association, the West Virginia State Bar, and the West Virginia Bar Association. In addition, he is active in the Charleston community with youth sports activities.

## Unauthorized Practices of Law

The WVBA speaks out on the risks of non-attorneys performing real estate closing services

O. Gay Elmore, Jr., Esquire  
Chair, Real Estate Lawyers Division

As Chairman of the Real Estate Lawyers Division of the West Virginia Bar Association, I am anxious to bring your attention to a pressing issue currently facing real estate lawyers in our state. The issue involves the unauthorized practice of law by non-attorneys and lay entities who perform title examinations, insure titles and close real estate transactions. This issue has become more and more problematic in West Virginia in the past five years, and has been, or is now, also an issue in many other states. Many of our state's real estate attorneys have seen their practice suffer as a result of lending institutions turning to non-attorneys to perform services in connection with real estate closings. Obviously this pattern is detrimental to the interests of West Virginia real estate attorneys. More importantly, however, this pattern is also detrimental to consumers in general. In this article, I will not delve into the myriad of problems and potential for harm caused to consumers by this practice. Though many examples are available, it will suffice to say that real estate and mortgage loan closings should be conducted only under the supervision of attorneys, who are the only appropriate parties with the ability to furnish their clients legal advice should the need arise and who fall under the regulatory rules of the West Virginia Supreme Court of Appeals.

In 2003, the West Virginia State Bar Committee on the Unauthorized Practice of Law issued Opinion No. 2003-01. This opinion states that only attorneys licensed to practice law in the State of West Virginia, or persons acting under the supervision of such attorneys, can perform title searches and examinations, provide title reports or opinions, or deliver closing documents (collectively

"settlement services"). This opinion is in accord with the decisions of many other jurisdictions. See, e.g., *State v. Buyers Service Company, Inc.*, 292 S.C. 426, 357 S.E.2d 15 (1987) ("We are convinced that real estate and mortgage loan closings should be conducted only under the supervision of attorneys, who have the ability to furnish their clients legal advice should the need arise and fall under the regulatory rules of this court"); *Beach Abstract & Guar. Co. v. Bar Assn of Ark.*, 230 Ark. 494, 326 S.W.2d 900 (1959) (held that title examination, when done for another, constitutes the practice of law); *Kentucky State Bar Association v. First Federal Savings & Loan Association of Covington*, 342 S.W.2d 397 (Ky. 1960) (held that a building and loan association which had an attorney on staff to pass on the validity of title for mortgages was engaged in the unauthorized practice of law); *Pioneer Title Ins. & Trust Co. v. State Bar of Nevada*, 74 Nev. 186, 326 P.2d 408 (1958) (escrow agents enjoined from preparation of instruments necessary to effectuate real estate transactions); *Virginia State Bar Unauthorized Practice of Law Opinion No. 183* (October, 1996) (handling of a real estate settlement involves the practice of law to such an extent that only a licensed attorney can conduct a real estate closing in Virginia); *In re UPL Advisory Opinion 2003-2*, 277 Ga. 472, 588 S.E.2d 741 (Georgia Supreme Court 2003), (public interest is best protected when a licensed Georgia attorney, trained to recognize the rights at issue during a property conveyance, oversees the entire transaction).

Recently, in *McMahon v. Advanced Title Services Company of West Virginia*, Case No. 31706, 2004 W.V. Lexis 196 (W.Va. December 3, 2004), the West Virginia Supreme Court of Appeals confronted the issue. In the under-

## Medical Views

Informative articles on medical issues of interest provided by our Legal Nurse Consultant Section

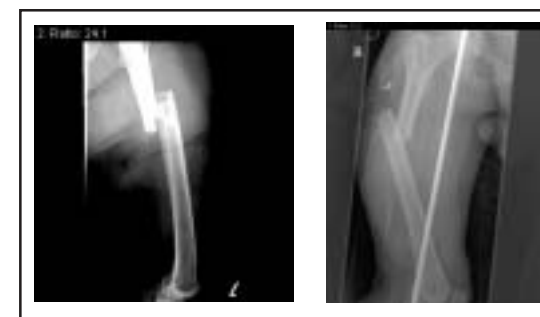


### Open vs. Closed Fractures

Barbara J. Levin, BSN, RN, ONC, LNCC  
Howard B. Yeon, MD, JD

Orthopaedic Surgery is a specialized branch of surgery focusing on disorders of the musculoskeletal system, including bones, joints, muscles, tendons and ligaments. Trauma is the leading killer of Americans under the age of 45 and the fifth leading cause of death. High energy trauma from motor vehicle collisions, workplace machinery and high impact sports are typical in the younger population ages 16-35, and low energy injuries such as simple falls from a standing height are more commonly seen in the older population ages 70-80. Head injuries are the most common cause of traumatic death with pelvic fractures following behind.<sup>1</sup>

Attorneys, legal nurse consultants and others are called upon to review medical records of patients who have sustained various traumatic injuries and this article will address specifically the open v. closed fractures and the multitude of issues which follow.



The initial clinical examination of the musculoskeletal system involves a systemic approach which involves assessment of the axial, skeleton,

pelvis and extremities. Other early observations include overall mental status, noting penetrating injuries and recording of vital signs. A careful examination is performed to ensure there are no breaks in the skin that may represent an "open fracture" - a fracture where there is a direct communication between bone and the outside environment. A "closed fracture" is also known as a "simple fracture" where the fracture fragments do not extend beyond the skin or mucus membranes.

If a fracture is suspected, x-rays are taken from at least 2 perpendicular planes. Please see the following x-rays and note that the first x-ray does not reveal a dislocation as well as the second view.



The purpose of reviewing 2 separate films is to create a three dimensional characterization of the fracture by extrapolating from the fracture's appearance in orthogonal planes.

Continued on p. 6

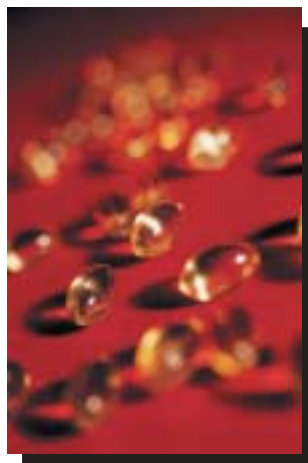
1. NAON Core Curriculum for Orthopaedic Nursing, 2001, p.362.



The West Virginia  
BAR ASSOCIATION

Emerging Issues  
in Litigation

A seminar presented by  
the Legal Nurse Consultant Section  
of The West Virginia Bar Association



Friday, May 20, 2005  
9:00 a.m. - 4:30 p.m.

Embassy Suites  
Charleston, West Virginia

Approved for:  
6.0 CLE contact hours  
The West Virginia Bar Association

6.0 nursing CE contact hours  
WVBRN Provider #WV2002-0414RN

Emerging Issues in Litigation

8:30 a.m. **Registration**  
- 9:00 a.m. Continental Breakfast

9:00 a.m. **Opening Remarks**  
- 9:10 a.m. Charles M. Love, III, Esq.  
WVBA President  
Bowles Rice McDavid Graff & Love LLP

9:10 a.m. **Vioxx Litigation: Overview & Case Strategies**  
- 10:10 a.m. Scott S. Segal, Esq.  
The Segal Law Firm  
Charleston, West Virginia

**Description:** Attorney Segal will provide an overview of Vioxx litigation, including the time line of events that led up to the withdrawal of the drug from the market, current issues and case strategies.

10:10 a.m. **BREAK**  
- 10:30 a.m.

10:30 a.m. **Drug Development, Governmental Oversight of Drug Safety & COX-2 Inhibitors (Vioxx, Bextra and Celebrex): A system in need of change?**  
- 11:30 a.m. B. Daniel Lucas, Jr., Pharm D  
Director, Centers for Clinical Sciences Research  
Charleston Area Medical Center  
Charleston, West Virginia

**Description:** Dr. Lucas will discuss new drug development and governmental oversight of drug safety. He will also provide an overview of the clinical trials suggesting safety concerns for COX-2 inhibitors, including Vioxx, Bextra and Celebrex.

11:30 a.m. **LUNCH** (on your own)  
- 1:00 p.m.

Continued from p. 5

needing or not needing fixation. To define these terms, "reduction" refers to restoring the normal anatomic alignment of the bone or joint. Reduction may be possible in some cases without an operation – "closed reduction," but in other cases, "open reduction," with a skin incision and direct manipulation of the bone ends, is necessary. **Fixation** refers to the use of hardware or specialized devices to hold the reduced bone in its corrected alignment. Fixation can either be "internal," where the hardware is completely under the skin and soft tissues, or "external," where a series of pins and screws are drilled through the skin into the bone and an external apparatus is applied to hold the pins in the appropriate alignment. A popular combination is "open reduction, internal fixation" or "ORIF," referring to an operative procedure where the fracture is reduced through an incision and indwelling hardware is placed on the bone.

Where operative management of orthopaedic trauma is warranted, postoperative care is an important facet of the treatment plan. By far the three most prominent factors determined by the surgeon for the immediate postoperative period is the activity level that the patient will be allowed to attain – for example, the amount of weight the patient is allowed to place on the injured extremity, the duration of antibiotic coverage (depending on wound contamination), and the type and duration of prophylactic anticoagulation. Orthopaedic patients are predisposed to have potentially dangerous deep vein thrombosis (blood clots) for multiple reasons, including the fact that broken bone releases pro-clotting factors and that patients with orthopaedic injuries tend to have impaired mobility and thus have more sluggish venous circulation. Deep vein thrombosis is itself a serious complication leading to lower extremity pain and swelling, but a more life threatening sequella to DVT is the development of pulmonary embolism – where blood clots travel from the peripheral veins to the lungs where they can cause cardiopulmonary collapse. To protect

patients from this potentially dangerous complication, anticoagulant medications ranging from aspirin to Coumadin (warfarin) are prescribed by orthopaedic surgeons to their patients until the patients regain adequate mobility.

Other complications include non-unions, malunions, compartment syndrome, fat emboli and others, which are beyond the scope of this article.

An individual's health history can contribute to the healing process of bones. Diabetes, smoking, steroids, alcohol and drug use can delay the healing process.

Health care providers must be diligent with their neurovascular assessments. These assessments include evaluation of color, sensation, movement and pulses of the extremity. A comparison should be made with both extremities. For example, if there are changes seen in the right leg then there should be a baseline of assessments to include the left leg as well. The medical record should describe the vascular and neurologic integrity as well as pain assessments. Changes in assessments are noted initially by the nursing staff and then are communicated to the appropriate physicians. The nursing process would be followed and this includes assessment, diagnosis, outcome identification, planning, implementation, and evaluation. ■

CASE STUDY

John Smith was a 48 year old man who was involved in a motor vehicle accident and sustained an open grade 3B tibial fracture. Treatment included surgical intervention of several irrigation and debridements, wound care, intravenous antibiotics. His health history included smoking 2 packs per day, alcohol intake of 1 pint whiskey per day, poor dentition, as well as diabetes. After the development of osteomyelitis (bone infection), he returned to the operating room for additional procedures. His bones were not healing well and the final decision included amputating his left leg below the knee.

All surgical and medical measures were taken to "save the leg." Understanding the differences between the open and closed fractures and implications involved will assist you in the review of your medical records.

## In the News . . .

### Huff to Chair National Board

Step toe & Johnson is pleased to announce that **Karen Huff**, a legal nurse consultant in the firm's Charleston office, has been elected to Chair the **American Legal Nurse Consultant Certification Board**. In this position, Huff will lead the national board that administers the Legal Nurse Consultant Certified (LNCC) program, the certification endorsed by the American Association of Legal Nurse Consultants, and accredited by the American Board of Nursing Specialties. Based on an analysis of legal nurse consulting practice, the specialty exam is given twice yearly nationwide.

Huff became certified in 1999. An active member of the legal nurse consulting profession, she is also President of the Legal Nurse Consultant Section of the West Virginia Bar Association. Huff resides in Cross Lanes with husband Tim, and sons Joe and Mike.

Step toe & Johnson PLLC, a multi-practice law firm, has provided customized legal services to business, industry, and public entities in West Virginia and the region for nearly a century. With over 160 lawyers and a support staff of over 200, Step toe & Johnson maintains six offices throughout West Virginia. For more information, visit [www.step-toe-johnson.com](http://www.step-toe-johnson.com)



### Attorney joins Eckert Seamans Cherin and Mellott, LLC

Eckert Seamans Cherin and Mellott, LLC announced that attorney Daniel Oliver has joined its Morgantown office, where he will practice real estate and general business law.

Eckert Seamans Cherin and Mellott, LLC is a national law firm with offices throughout the eastern United States, including Pittsburgh, Harrisburg, Philadelphia, Southpointe and Alcoa Center, Pennsylvania; Wilmington, Delaware; Morgantown, West Virginia; Boston, Massachusetts; and Washington, D.C. The firm's clients represent nearly every facet of the economy, including multinational corporations, mid-size and emerging businesses, nonprofit institutions, municipalities colleges and universities, energy, technology and biotechnology companies, government agencies and individuals. The needs of its national and international clients involve the firm in virtually every area of the law.



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Mr. Downey, an attorney with Robins, Kaplan, Miller & Ciresi L.L.P., is experienced in handling complex nursing home malpractice cases involving patient abuse, bed/pressure sores, serious fractures/falls, unexplained injuries, malnutrition, billing fraud, over medication and other mis-treatment. Mr. Downey is a plaintiff's trial attorney with experience in both defending and prosecuting malpractice cases and welcomes both referrals and associations. He is admitted in the bars of West Virginia, Virginia and D.C.

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Principals, Thomas W. Henderson and Robert A. Creo, have over 60 years experience trying and settling cases.

For more information contact Tomi Lynn Herold, Coordinating Attorney, at 412-441-1153 or [tomiherald@cs.com](mailto:tomiherald@cs.com)

A letter from Chief Justice Joseph P. Albright

## West Virginia Law Day 2005 Legal Information Fair

May 2, 2005, 10:00 a.m. - 2:00 p.m.

Each year, the Supreme Court of Appeals of West Virginia and a number of circuits, family, and magistrate courts throughout the state sponsor various activities to celebrate Law Day. Founded in 1958 by President Eisenhower, Law Day celebrates the American legal system and provides members of the legal system a chance to educate the public about their rights and responsibilities under the law. Law Day is an opportunity for all Americans to celebrate and enjoy our freedoms. The 2005 Law Day theme is *The American Jury: We the People in Action*. This year the Law Day festivities in Charleston will be held on Monday, May 2, 2005 at the State Capitol courtyard. In case of rain, the event will be held in the Lower Rotunda of the Capitol.

In observance of Law Day 2005, the Supreme Court will again sponsor a Legal Information Fair on May 2 from 10:00 a.m. - 2:00 p.m. Last year's Legal Information Fair was a success with over 30 organizations participating. We would like to invite you and your organization to participate as a public service to the people of West Virginia on Law Day.

Other Law Day activities will include educational presentations, entertainment and food vendors, Supreme Court tours, the Liberty Bell Award Ceremony, and the Fourth Annual West Virginia Student Photography Competition winners. The winning photographs will again be on display at the Supreme Court throughout the month of May. We encourage every state agency, legal organization, and their employees to attend and participate in the activities on May 2.

If you have questions or would like to participate as an exhibitor at this event, please contact Julie Palas at 304-558-0145 or email her at: [juliepalas@courtsww.org](mailto:juliepalas@courtsww.org).

For more information about Law Day at the Capitol, visit our website at: [www.state.wv.us/wvsca/lawday/covercss.htm](http://www.state.wv.us/wvsca/lawday/covercss.htm).

Thank you in advance for your cooperation and participation in this positive educational program about our judicial system. ■

## In Remembrance

Carlton Rosencrance  
D.O.B.: 07-19-46  
D.O.D.: 05-15-04  
Elkins

John T. Kay, Jr.  
D.O.B.: 1940  
D.O.D.: 02-10-05  
Charleston

Richard S. Weygandt  
D.O.B.: 03-02-18  
D.O.D.: 02-15-05  
Fairmont

Gary Joe Triplett  
D.O.B.: 05-17-26  
D.O.D.: 03-03-05  
Charleston

Thomas R. Gallagher  
D.O.B.: 01-22-48  
D.O.D.: 01-22-05  
Charleston

Kermit E. Hundley  
D.O.B.: 06-20-25  
D.O.D.: 02-11-05  
Charleston

Christopher P. Bastien  
D.O.B.: 1959  
D.O.D.: 02-24-05  
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