

## **STAT LAW June 2010**

### **HEALTH REFORM LITIGATION**

A total of twenty states have joined the lawsuit originally filed by Florida Attorney General Bill McCollum against the health reform legislation. The lawsuit alleges the health reform legislation violates the constitution by requiring all citizens to obtain health care coverage or pay a tax penalty. The lawsuit also alleges the legislation places onerous burdens on the state Medicaid programs. Numerous physician groups oppose the health reform legislation despite the AMA's endorsement.

### **PROPOSED AMENDMENT TO FLORIDA CONSTITUTION**

In November there will be a proposed amendment to the Florida Constitution on the ballot. The proposed amendment would prohibit any laws or rules that compel the purchase of health insurance or participation in any healthcare system.

### **COURT OF APPEAL REVERSES DISMISSAL OF CLAIMS FOR OUTRAGE**

The Florida Second District Court of Appeal reversed a trial court's dismissal of a plaintiff's claim of outrage against a hospital in a malpractice case. The case involved a death following hip surgery due to cardiac arrest. According to the plaintiff, the patient received an overdose of Esmolol, which actually caused the death, but a physician and two nurses agreed to conceal the true cause of death. The medical examiner did not do a full autopsy because the death was attributed to natural causes by the doctor and nurses. The plaintiff also alleged that the medical examiner and hospital attorney called during the funeral to demand the return of the patient's body after learning the actual cause of death. The court of appeals said the false statements that led to the interruption of the funeral so that a second autopsy could be performed were atrocious and intolerable behavior sufficient to support a claim for outrage.

### **FLORIDA LEGISLATURE PASSED NEW PAIN MANAGEMENT LEGISLATION**

The Florida Legislature passed tougher legislation for pain-management clinics. The new law would prohibit any business from operating as a pain-management clinic unless it is fully owned by licensed physicians, or licensed as a health care clinic under Chapter 400, Florida Statutes. The new law also requires the Department of Health to revoke the license of any pain-management clinic that is owned or employs a physician whose DEA registration has been revoked, whose application to prescribe, dispense or administer controlled substances has been denied by any jurisdiction, or who has been convicted, pleaded guilty or nolo contendere to any felony concerning controlled substances. The physicians and other persons in control of a pain-management clinic that has its license revoked are prohibited from licensing another pain-management clinic for five (5) years under the new law. The new law has yet to be signed by Governor Crist.