

SEPTEMBER 2011

R

RATZAN LAW GROUP

THE  
VERDICT



The PRICE



of BEAUTY

PLASTIC SURGERY AND THE RISK OF MALPRACTICE

ALSO IN THE NEWS

Ratzan Law Group realizes \$5.125 million settlement with Texas hospital  
Stuart N. Ratzan makes presentation at American Association for Justice's 2011 Annual Convention

EVENTS

Ratzan Law Group hosts all day legal CLE seminar: "Sharpening the Saw"  
You're invited to Ratzan Law Group's 4th Annual Big Game Tailgate Party!

Dear Friends,

This issue of *The Verdict* highlights the dangers and some of the legal issues surrounding plastic surgery. For many patients, plastic surgery offers an opportunity to improve self-esteem. But for many other patients, and their doctors, plastic surgery exposes the worst aspects of human nature. From the patient's perspective, the greed for youth and beauty often clouds better judgment regarding what type of surgery, and what type of risks, are acceptable. From the doctor's perspective, the greed for financial reward often clouds better judgment regarding what procedures to perform and how to perform them. The result of mixing greed and surgery, as can happen in the plastic surgery context, can be a catastrophic outcome for the patient, and a damaging medical malpractice case against the surgeon and his or her facility. Several years ago, HBO films produced a documentary titled "*Plastic Disasters*." The film focused on several plastic surgery cases gone awry. One of our firm's clients was featured. It does a great job exposing the grim realities of plastic surgery. You can purchase it at amazon.com, or find it on HBO from time to time.

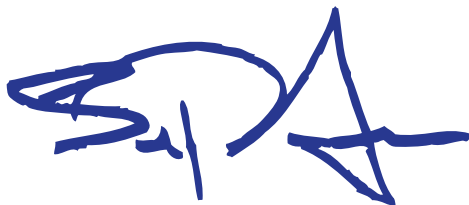
Also in this issue is a brief memorial to my stepfather, Peter Cassileth, M.D. Dr. Cassileth was a brilliant and courageous physician. He was a decorated academician, but he was also outspoken regarding the shortcomings of the medical profession. He rejected the tort reform approach advocated by most doctors. He believed in our justice system's ability to identify medical negligence, but he also recognized its inability to reach many, if not most, instances of medical malpractice. He did not believe in capping damages. He did believe in the system's ability to expose bad medicine. And he believed that bad medicine needed exposure. He was a great man for many reasons, but in the context of this newsletter and our firm's practice, I want to remember him for his courage to confront his colleagues and stand against the grain of tort reform and damage caps. He was a shining light of intelligence and reason in a world inundated with cynicism.

On another note, we are happy to share our new website with you, and we are also thrilled to have participated in, and provided sponsorship for, the Susan G. Komen Ride for the Cure in Aspen, Colorado.

At Ratzan Law Group, with cases in many different states, we are paying close attention to the current legal battles over tort reform and damage caps. Several of these battles, waged in state Supreme Courts, are currently pending in various states. They include Florida, Mississippi, and Louisiana. We remain hopeful that the future will be better for the legal rights of victims of negligence and medical malpractice. Stay tuned to our blog for information on this and many other topics.

Enjoy this issue of *The Verdict*!

Best wishes,



Stuart N. Ratzan



## Ratzan Law Group realizes \$5.125 million settlement with Texas hospital

Ratzan Law Group attorneys Stuart N. Ratzan and G. Scott Vezina reached a \$5.125 million settlement with a Texas-based hospital on behalf of a family where the mother and child suffered permanent injuries during the birthing process. The victims' and defendant's names are being withheld because the case was settled out of court.

The plaintiff's baby was delivered with no heart rate and its umbilical cord wrapped around its neck. Although the child was resuscitated, it suffered hypoxic-ischemic encephalopathy (major permanent brain injury) and permanent respiratory injuries. In its lawsuit, Ratzan Law Group alleged that the hospital was negligent and did not follow proper protocols in its care of both the plaintiff and child.

The plaintiff in this case was admitted to the hospital on January 16, 2008 because she had gone into early labor and her baby was breached. The doctor overseeing the plaintiff did not immediately schedule a Cesarean section, instead ordering medication to prolong the labor and delivery. During this delay, the baby's heart rate was weak, which the hospital's nurses failed to monitor and communicate with the doctor. The plaintiff was eventually scheduled for the C-section at 12:19 a.m. on January 17, more than 11 hours after her admittance. Neither the anesthesiologist nor the neonatologist were notified until the time of her operation, creating further delays. As a result of these delays, the plaintiff was forced to undergo the C-section while awake, with only local anesthetic applied to the skin.

Ratzan and Vezina were assisted on this case by Daniel Weinstock, a partner with Feldman, Shepherd in Philadelphia.

## Open house brings in more than 100 visitors to Ratzan Law Group's offices

Following its first ever all day legal seminar on May 5, Ratzan Law Group hosted an open house to show off its new 6,000 square foot offices on the 26th Floor at 1450 Brickell in Miami.

With the excitement of the seminar still buzzing around the room, more than 100 guests were treated to a great evening of drinks, food and live jazz.

1450 Brickell is a 35 story Class "A" LEED-Certified office building located in the heart of Miami's business district.



*Stuart N. Ratzan and Honorable Pedro P. Echarte*





*Felipe Blanco, Barbara Zambrano and Honorable Stanford Blake*



*Honorable Celeste Hardee Muir and Honorable Victoria Platzer*



*Rolando Diaz, Richard Hoffman, Ilisa Hoffman and Mike Klein*



*Arthur Cholodofsky and David Shulevitz*

“ With the excitement of the seminar still buzzing around the room, more than 100 guests were treated to a great evening of drinks, food and live jazz. ”

## Plastic surgery and the risk of malpractice: The price some are paying for beauty

Recent news reports shining light on plastic surgery deaths at a Ft. Lauderdale outpatient facility puts the question back in the public forum: how safe is plastic surgery? For the most part, plastic surgeons are well trained and skilled at their chosen profession. They provide appropriate pre-operative and post-operative care, and their procedures are safe and beautifying at once.

But danger lurks. The real problem with plastic surgery is that it is lucrative, demand is high, and regulation is scant. Two of the surgeons implicated at the Strax center were colleagues at a prior venture known as Florida Center for Cosmetic Surgery, an entity that filed for bankruptcy when its malpractice claims grew so high that it could not meet expenses. The Florida Center was famous for its “two for one” deals, promising patients a breast augmentation and liposuction in one sitting at a reduced price. Patients flocked to Florida Center, attracted by its catchy jingle, its television advertisements loaded with buxom women in swimming pools and bikinis, and its affordable rates and package deals.

Unfortunately, the Florida Center was run more like a fast food chain than a health care facility and this showed in its results. Malpractice claims mounted, including a claim brought by an active and athletic housewife named Mona Alley. Ms. Alley, who had diabetes, underwent liposuction surgery at Florida Center. Attracted by the modest price point, Alley thought she would reduce her weight burden, help her diabetes, and give new life to her already excellent bowling game.

What she got, instead, was a plastic surgeon who punctured her abdominal wall with the liposuction instrument, and then punctured her internal organs including her intestine. Over the ensuing hours and days, Ms. Alley endured a major internal infection as feces drained out of her intestine into her abdominal cavity. The Florida Center surgeon neglected signs of infection on her post-operative visits, visits that are a business loss for the center as the fee for the surgery includes all postoperative care.

By the time Ms. Alley was admitted to the hospital, over a week after the surgery, her infection was out of control. She endured weeks of inpatient treatment and intravenous antibiotics, at the expense of major inflammatory response in her extremities. Within a few months, she lost both legs to gangrene and amputation above the knees. Mona filed a lawsuit in state court in Ft. Lauderdale, Florida.

Mona Alley was a victim of plastic surgery greed. Allegations surfaced in her case that the Center was using unlicensed physician assistants to enter operating rooms while patients were anesthetized and take over the liposuction, freeing the doctors to do other things, sign up more patients, do more surgeries and make more money. Mona Alley's story was memorialized in an HBO documentary titled “Plastic Disasters.” The film does a good job covering the ills of plastic surgery from all sides. The stories include aspects of patient vanity, but also, as in Mona Alley's case, the consequence of an unregulated profit motive on the part of the doctors or surgery center owners. Mona Alley pursued her legal case for a couple of years until it was settled in 2005. Tragically, she died in 2009 of a heart attack, but her courage

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to step out and confront the Florida Center for Cosmetic Surgery helped put it out of business. With interviews on several major American talk shows, and with the HBO documentary, she also helped shine a bright light on the dangers associated with plastic surgery.

This is serious business in every sense of the word. Patients and doctors need to recognize the problems inherent with this type of medical service and select each other wisely. For patients, beware of the surgeon or outpatient center that emphasizes profits over safety. Medical practitioners, meanwhile, should beware of the overwhelming vanity that affects a segment of the patient population, causing unrealistic expectations and a failure to keep on the lookout for unsafe practices. With a provider group overly tempted by greed, and a patient population so clouded by vanity it is incapable of discerning unsafe practices, the situation is ripe for catastrophic results. Take a page from Mona Alley's book: check up on your doctor and be sure to look into the safety record of the center. For providers, damp down the profit motive a notch or two and invest time and energy into patient safety. It goes without saying that maiming or killing a patient, besides resulting in an expensive lawsuit, will haunt you the rest of your life.



*Mona Alley and Stuart N. Ratzan*



## Ratzen Law Group supports the Susan G. Komen Ride For the Cure

Ratzen Law Group is putting its support behind one of the world's most important causes: the fight against breast cancer.

In addition to representing clients who have suffered the effects of this challenging disease, Stuart N. Ratzen is also honoring Debra Zebersky wife of his close friend, attorney Ed Zebersky. Debra was recently diagnosed with breast cancer and her continuous struggle and daily courage are a constant source of inspiration for Stuart.

On Sunday, August 21, 2011, Team Ratzen Law Group consisting of Stuart N. Ratzen, G. Scott Vezina, Stuart Weissman, Nadean Stone, Leo Ratzen, Ed Zebersky, David Zebersky and Micah Zebersky participated in the Susan G. Komen Aspen/Snowmass 100 mile bike ride and raised much needed funds towards this worthy cause. Donations to this cause may be submitted up to and including September 30, 2011. If you wish to contribute please go to <http://tinyurl.com/ratzen> All donations are sincerely appreciated.



## Anesthesia malpractice

Ratzen Law Group attorneys G. Scott Vezina and Stuart Weissman reached a \$500,000 settlement with the North Broward Hospital District on behalf of a client who sustained permanent brain damage during chemotherapy treatment. The victims' and defendants' names are being withheld because the case was settled out of court.

On September 20, 2004, the plaintiff was admitted to Coral Springs Medical Center to have a port-a-cath inserted for chemotherapy treatment. The defendant made three blind attempts to insert the port-a-cath, failing on the first two tries. Shortly after the guide wire was inserted, the plaintiff's blood pressure and heart rate dropped and she suffered respiratory arrest. The defendants were able to stabilize her by using a chest tube and medications, but after being transferred to a recovery room it was discovered that the plaintiff was unable to move anything on the left side of her body.

Ratzen Law Group alleged that the defendants did not properly evaluate and address the patient's health prior to her surgery. The firm also said that the defendants allowed air to enter her vein which resulted in her brain damage.

The case was settled on July 15, 2011.



*Ed Zebersky and Stuart N. Ratzen*



*RLG Team Komen at the finish line.*



## Stuart N. Ratzan makes Presentation at American Association for Justice's 2011 Annual Convention

Stuart N. Ratzan was a guest presenter at the American Association for Justice's 2011 Annual Convention, which was held July 9-13 at the Hilton New York.

The convention is the premier national education event for plaintiff lawyers and was attended by hundreds of attorneys from across the country.

Stuart's presentation was titled *Post-Trial Motions to Interview Jurors: The Impact of Social Networking and Other Late Discovered Information* and covered how social media has impacted jury selection and misconduct and the use of Facebook and Twitter in evidence discovery.

## Stuart N. Ratzan, G. Scott Vezina recognized in 2011 Florida *Super Lawyers* magazine

Ratzan Law Group announced that Stuart N. Ratzan and G. Scott Vezina were recognized in the 2011 edition of Florida *Super Lawyers* magazine. Ratzan was named a Florida Super Lawyer in the category for personal injury plaintiff: medical malpractice and Vezina was named a Rising Star.

*Super Lawyers* names Florida's top lawyers as chosen by their peers and through the independent research of Law & Politics. Law & Politics performs the polling, research and selection of Super Lawyers in a process designed to identify lawyers who have attained a high degree of peer recognition and professional achievement.

It is a comprehensive and diverse guide to outstanding attorneys, representing a wide range of practice areas, firm sizes and geographic locations. Five percent of the lawyers in Florida are named Super Lawyers.

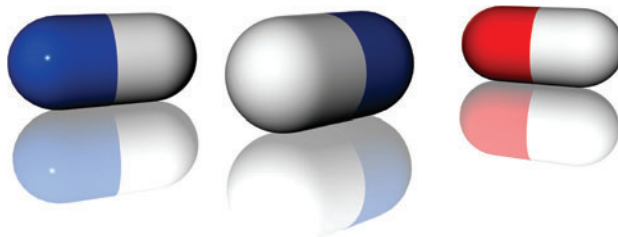
## Hospital negligence

Ratzan Law Group attorneys Stuart N. Ratzan and G. Scott Vezina reached a settlement for \$900,000 with a South Florida hospital and surgeon on behalf of a client who suffered severe permanent gastroenterological injuries and permanent neurologic injuries during various admissions to the hospital. The victim and the defendant's names are being withheld because the confidential settlement was reached out of court.

In March 2005, Jane Doe (a registered nurse at the hospital where the malpractice was committed) came to the hospital complaining of severe stomach pain. She was admitted for observation by the nursing staff where the physician and nurses negligently missed the signs and symptoms that Jane Doe needed immediate surgical intervention. Thirty-nine hours later, her condition was finally diagnosed and she was rushed to surgery. Unfortunately, due to the delay, Jane Doe lost four and a half feet of her bowel leaving her incontinent for life.

There is also a second act of malpractice that has not been resolved. Upon readmission to this same hospital two weeks later, Jane Doe overdosed on an anticoagulant. As a result of the overdose, she developed a bleed that for two days compressed on her sciatic nerve causing her to have permanent sciatic neuropathy. She can now only walk with the assistance of a cane and developed a complex pain syndrome. The case went to trial in April and after 2 weeks of trial, the jury was hung.

The case is scheduled to be re-tried in December 2011.



## Ratzan Law Group hosts all day legal CLE seminar “Sharpening the Saw”

On May 5, 2011, Ratzan Law Group held its first annual ‘Cinco de Mayo’ all day legal seminar at its headquarters on 1450 Brickell Avenue.

“Sharpening the Saw – Trial Practice for the 21st Century” was attended by more than 70 people who were treated to presentations by prominent local and national attorneys, including a closing address by Miami-Dade Circuit Court Judge Pedro P. Echarte.

Speakers and topics included:

•	Stuart N. Ratzan	Jury Selection and Cross Examination: The Trial Lawyer’s Riff
•	Rolando A. Diaz, Kubicki Draper	Direct Examination of the Defendant
•	Herman J. Russomanno, Russomanno & Borrello	The Unspoken Ills of Commercial Arbitration
•	Jesse Faerber, Mediation Inc.	Perspective on Mediation
•	Edward H. Zebersky, Zebersky & Payne	Class Action Trial Practice
•	Kimberly L. Boldt, Boldt Law Firm	The Law of Closing Argument, an Appellate Perspective
•	Honorable Pedro P. Echarte, Dade County Circuit Court Judge	A View from the Bench

For an extended summary of the speakers’ presentations, videos and photos, visit [www.ratzanlawgroup.com/events](http://www.ratzanlawgroup.com/events). Are you interested in being a presenter/speaker at next year’s event? Send an email with a brief proposal to: [info@ratzanlawgroup.com](mailto:info@ratzanlawgroup.com).



*Kimberly L. Boldt*

*Jesse Faerber, Rolando Diaz, Stuart N. Ratzan and Herman Russomanno*







*Presenter Stuart N. Ratzan*

“ In my 30 plus years as a member of the Florida Bar I have never attended a better, classier, network friendly, reasonably priced, significant take home value CLE program. You and your team outdid yourself and I can't wait for next year. Sign me up.

I also want to compliment you on your presentation *Jury Selection and Cross Examination*. I especially appreciated the Keith Richards influence. I'm in the middle of the book now. Once again congrats. I was truly impressed! ”

David Shulevitz  
Florida Mediations Now!

*Seminar attendees*





COME SEE THE 'CANES TATTOO THE BUCKEYES!

4th Annual Ratzan Law Group

# BIG GAME TAILGATE PARTY\*

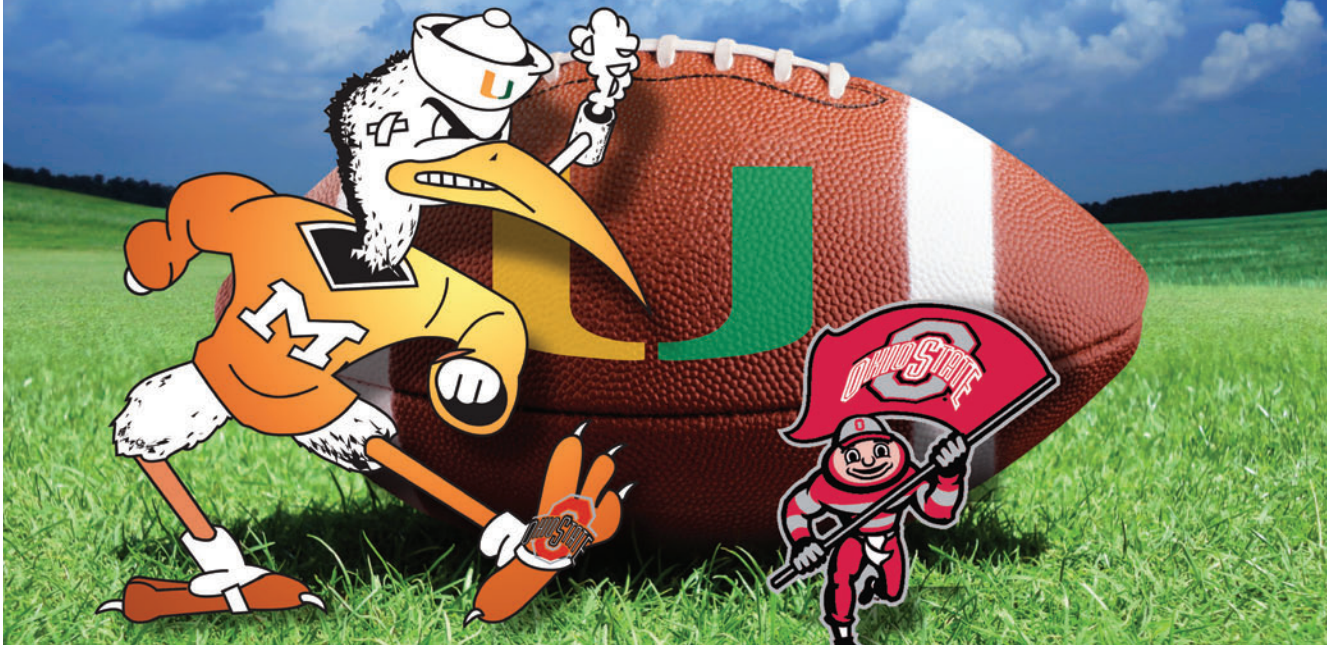
\*Does not include tickets to the game

SATURDAY, SEPTEMBER 17

*Time: 3 Hours prior to Kick-off*

SUN LIFE STADIUM

*East 30 parking lot*



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# LITIGATING MEDICAL MALPRACTICE CASES IN NUMEROUS STATES: PART 2

Ratzan Law Group is currently litigating and has recently settled birth trauma cases throughout the country. This article addresses the similarities, differences, and challenges of litigating medical liability cases in various states.

Ratzan Law Group has experienced attorneys licensed to practice law in Texas, Louisiana and Florida and are admitted pro hac vice in several other states.

## LOUISIANA

Advocating for an injured family in Louisiana is a unique experience. The other 49 states in the United States use common law. Louisiana operates under the 'Civil Law' system which is based on the Spanish Civil Code, French Civil Code, and ultimately Roman law. Louisiana does not have *stare decisis*.

Louisiana's Statute of Limitation (known in Louisiana as a 'prescriptive period') for medical malpractice cases is one year from the date the malpractice occurred not to exceed three years from the date of the discovery of the malpractice. The state has a mandatory pre-suit screening process called a Medical Review Panel which tolls the prescriptive period. The Medical Review panel process for screening medical negligence cases commences with the filing of a request to convene a Panel with the Division of Administration of the State of Louisiana. The request for the review panel must briefly lay out the facts against each of the proposed defendants. An Attorney Chairman is then appointed by the litigants to convene the panel.

The Medical Review Panel, once convened, consists of three licensed health care providers within the same sub-specialty as the proposed defendants. The plaintiff and the defendant can take depositions and do discovery to aid the parties in preparing the submission of evidence that is required by both sides and aid the Medical Review Panel in reaching its opinion. Once the Medical Review Panel convenes and renders an opinion as to whether there was a violation of the standard of care, the Attorney Chairman

will draft the opinion of the Panel. That Panel opinion is admissible and either party may call any member of the Panel as an expert witness in their case.

Once the claim leaves the Medical Review Panel, the case proceeds to trial in a manner consistent with other states. Medical malpractice claimants must prove the standard of care, breach of the standard of care and that the violation of the standard of care was a cause-in-fact ('proximate cause') of the harm, and damages.

Louisiana has imposed damage caps on pain and suffering in the amount of \$500,000 per claim regardless of the number of claimants and defendants. Future economic damages are paid out periodically, when consumed, or up front through a state run system known as the Louisiana Patients Compensation Fund, a fund that serves as a second layer or excess carrier for the health care provider.

The Louisiana Supreme Court has held that the limit on damages of \$500,000 plus future medical costs is constitutional. In particular, the Butler decision upholds the \$100,000 limit of each qualified health care provider, and makes it clear that such providers have no excess obligation after the payment of the excess up to \$500,000 by the Fund. The opinion includes a review of prior cases holding other parts of the Medical Malpractice Act to be constitutional. However, recent appellate court decisions have declared the caps unconstitutional (see 3rd District Court of Appeals decision of Arrington).

## TEXAS MEDICAL MALPRACTICE

In Texas, the pertinent law regarding Medical Liability cases is contained in Chapter 74 of the Texas Civil Practice and Remedies Code. In Texas, like many states, there is a detailed pre-suit procedure before a lawsuit can be filed based on medical negligence. Any person asserting a health care liability claim is required to give written notice of such claim by certified mail to each physician or health care provider against whom such claim is being made at least 60 days before the filing of suit. This notice must be accompanied by authorizations for release of medical records as all parties are entitled to obtain complete medical records. The Texas Code provides for a very specific Authorization Form that must be utilized. Once the pre-suit notice period

## Continued...

has ended, the plaintiff can move forward and file an Original Petition (Complaint), proceed through to discovery and ultimately trial in a manner consistent with most other states.

A plaintiff must serve, not later than the 120th day after the date of the original Petition was filed, expert reports and any objections to the sufficiency of such reports must be served by the defendant no later than 21 days after receipt. There is no limit to the amount of expert reports, but the reports, in totality, must address issues of liability and causation as to each health care provider whom the Petition is directed. Expert reports are not admissible in evidence, shall not be used in deposition, trial or other proceedings and shall not be referred to by any party during the course of the action for any purpose, yet this can be waived if a claimant uses the report for other purposes. There are stringent guidelines as to the qualifications of an Expert Witness and whether he or she can testify or not. Plaintiff's counsel must be certain the retained expert witness is qualified to testify or be prepared to suffer the potential consequences.

Like many states around the country, Texas provides for limitations on noneconomic damages. Noneconomic damages are limited to \$250,000 for each claimant, regardless of the number of defendant physicians or health care providers, other than institutions.

Noneconomic damages are limited to \$250,000 for each claimant, against a single defendant health care institution. In an action where there is final judgment against more than one health care institution, the limit for noneconomic damages for each health care institution is limited to \$250,000 for each claimant, and the limit for liability for noneconomic damages for all health care institutions shall be limited to an amount not to exceed \$500,000.

If future damages are at least \$100,000, the court must order periodic payment of future medical costs if the defendant requests it, and the court may order periodic payment of future damages other than medical costs if requested.

While rare, the Texas Supreme Court and other Texas appellate courts do recognize the theory of vicarious liability based upon actual agency or apparent/ostensible agency.



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## In Memoriam: Dr. Peter Cassileth



On June 6, 2011, Dr. Peter Cassileth, Stuart N. Ratzan's stepfather and a renowned physician, passed away after a lengthy battle with leukemia.

Dr. Cassileth was an emeritus professor of medicine and former division chief of hematology-oncology at Sylvester Comprehensive Cancer Center at the University of Miami. He is widely recognized as a gifted hematologist and academician, as well as superb physician, teacher, and mentor to generations of young physicians. He helped to define many of the basic tenets that are currently used in the modern management of acute myeloid leukemia (AML) and has authored more than 100 publications focused on clinical research studies, as well as several widely used textbooks in hematology-oncology.

With Dr. Cassileth being a medical professional and Stuart N. Ratzan being a plaintiff's attorney for medical malpractice cases, it would seem that the two would have a lot to debate about when it came to patient's rights. However, Stuart fondly remembers his stepfather as someone who was not afraid to challenge conventional thinking by rejecting tort reform and instead understood the challenges of the medical profession and believed in the justice system's ability to identify medical negligence.

Outside of his profession expertise, Stuart also recognized Dr. Cassileth for his incredible intellect and knowledge as well as his empathy and compassion.

"Peter was a genius at allowing himself to think and inquire into the mind of another. He knew that by doing this you could open up relationships, reach other people, and learn about others, life, and yourself," said Stuart. "He was a great doctor and scientist who knew how to learn. But most of all, he understood how to truly know other people. To truly know them is to have the courage to ask questions, to ponder what it was like to be them, to consider walking in their shoes and to truly empathize and understand them. It was his gift, and it separated him from anyone I have ever known."

In recognition of Dr. Peter Cassileth's extraordinary contributions, the Sylvester Comprehensive Cancer Center has established a yearly award recognizing the outstanding graduating fellow in hematology-oncology.



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