

# PROFILES AND PRECEDENTS

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*This is the third biannual report of Pajcic & Pajcic.*

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NOTE: The accounts of recent trials, verdicts and settlements contained in this newsletter are intended to illustrate the experience of the firm in a variety of litigation areas. Each case is unique, and the results in one case do not necessarily indicate the quality or value of any other case.

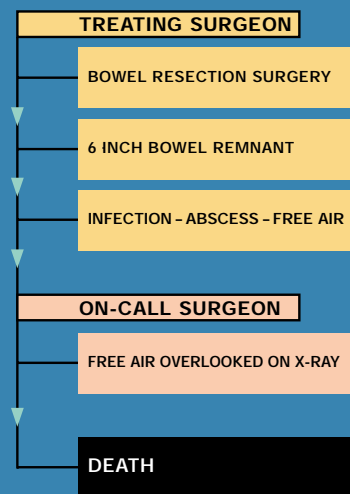
## Jury Finds Both Doctors Negligent in Death Case

Anna Maria Barton worked as a data processor in a Jacksonville skyscraper, but she lived in the backwoods of Glen St. Mary with her farmer/househusband and two young children. Maria was a cancer survivor. Radiation had eradicated all traces of her cervical cancer, but had left her with damaged intestines which required repeated surgery to unblock them.

After the third operation in December 1994, the treating surgeon thought he had cured Maria's intestinal problems, but on Sunday afternoon, February 5, 1995, Maria had to be rushed to the emergency room. The surgeon who was on-call for the treating surgeon admitted Maria to the hospital, but deferred any surgical procedure.

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### CHAIN OF EVENTS



## Verdict in Motel Security Case Affirmed

Shelly Maus and David Simonetti were engaged to be married and planning to move to Florida. On their way to Tampa, they checked in at the Airport Days Inn in Jacksonville. When they could not get their room door to lock, David went back to the front desk to get another room.



*At trial, Pajcic & Pajcic presented the video deposition of the robber taken in prison.*

As soon as David was out of sight, one Patrick Witcher shoved the door open and pointed a .357 Magnum at Ms. Maus. When David returned Witcher bound and gagged both of them and stole their cash, jewelry and identification. Discovery revealed that the motel had failed three recent quality assurance inspections because of poor maintenance. At trial, Pajcic & Pajcic presented the video deposition of Witcher taken in prison, in which he testified that he targeted Days Inn because of their poor security. Pajcic & Pajcic's investigation disclosed that Witcher had robbed guests on two occasions at a Days Inn in Gainesville several weeks earlier. Witcher admitted to having committed 80 to 100 robberies of hotel guests throughout the southeast. The jury returned a verdict of \$239,000, almost double the \$125,000 for which the couple had offered to settle. Days Inn appealed, but in January of 1998 the First District Court of Appeals affirmed. Unfortunately, because of the emotional strain from the incident, Shelly and David were never able to realize their plans for marriage and a Florida home. The recovery has provided some financial assistance, but more importantly has allowed them some closure with a sense of justice done.

## Sherry Bevis

*Pajcic Profile*



During the 20 years she has been with Pajcic & Pajcic, Sherry Bevis has always been willing to be whatever the firm needed – which in the early years meant bookkeeper, runner or receptionist and sometimes all three. Sherry increased her value to the firm by going to school at night and attaining a B.S. in accounting from the University of North Florida in 1987. For the past eight years Sherry has served as office manager, as well as overseeing financial matters. Outside the firm Sherry also has her hands full as the primary caregiver for her 83-year-old mother and chief babysitter for her nine-year-old granddaughter. But she does not plan to take either of them on her upcoming trip to Hawaii, the destination she has selected for the trip the firm awards to employees on their twentieth anniversary.

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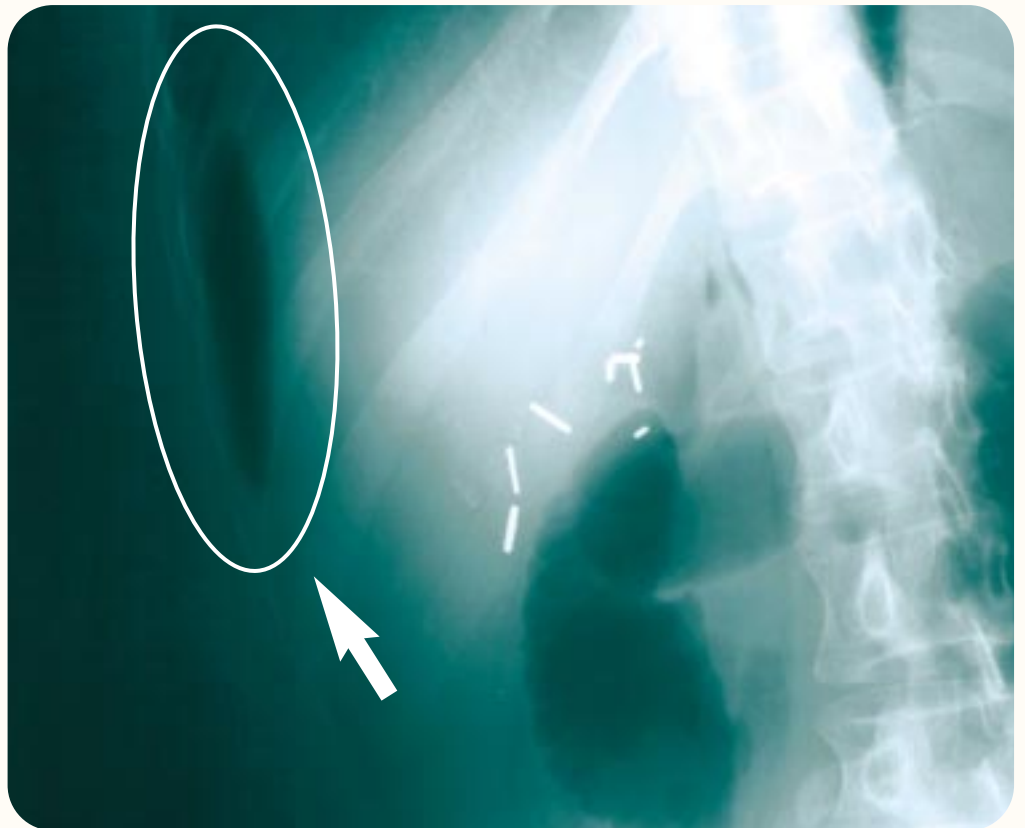
When the treating surgeon came in on Monday morning, he examined Maria and saw an x-ray that showed “free air” or gas in her abdomen outside the walls of the intestine. Since this was an indication of serious abdominal infection, the treating surgeon operated immediately. When he opened up Maria, the treating surgeon found a piece of infected cut-out bowel which had been left behind in the December surgery. By the time he removed it, the intestinal infection had spread to other organs. Maria never recovered.

Pajcic & Pajcic first sued the treating surgeon for leaving the bowel remnant in Maria. After suit was filed it was discovered that, contrary to indications in the medical records and testimony, the x-ray showing free air had actually been taken Sunday afternoon. Pajcic & Pajcic then added the on-call surgeon as a defendant for failing to operate on a timely basis.

The treating surgeon’s defense was that leaving the remnant behind was not negligent because of the complexity of the surgery and that the remnant was not the source of the infection. The on-call surgeon’s defense was that the free air was hard to see, surgery was problematical, and Maria was a very sick person in any event.

The size of the remnant became a major issue in the case as the treating surgeon attempted to minimize it. The critical evidence on this point came from the pathology report which measured the remnant to be 4" which, after expected shrinkage, supported the 6" claimed by Pajcic & Pajcic rather than the 2" claimed by the treating surgeon.

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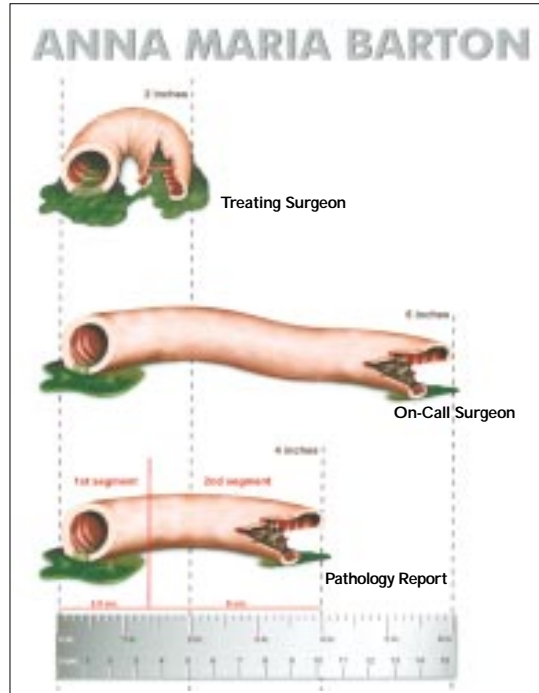


*The jury could clearly see the “free air” which the on-call surgeon overlooked.*

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Pajcic & Pajcic argued that both the treating surgeon and the on-call surgeon had Maria's fate in their hands – the treating surgeon when he held the cut-out bowel remnant, and the on-call surgeon when he looked at the x-ray. If either doctor had only looked carefully enough at what he had in his hands, either one could have saved Maria. Pajcic & Pajcic relied on contradictions between the two doctors' testimonies to rebut their defenses. Pajcic & Pajcic led off the trial with the treating surgeon's video deposition and called the on-call surgeon as their next witness.

The jury agreed with Pajcic & Pajcic and found each doctor 50% at fault. Although the verdict of \$658,000 was less than Pajcic & Pajcic asked for, it was more than the pretrial offers of the defendants. Pajcic & Pajcic settled on a confidential basis with one of the defendants while the jury was out and with the second defendant while its motions for costs and *additur* were pending. The recovery has made it possible for Maria's husband Bobby and her two children to stay on the farm and has given Bobby the freedom to continue to be the farmer and father he was before.



*The size of the bowel remnant became a major issue in the case.*

## First Pajcic Scholar Graduates Early

Tanisha Bowens is the first Pajcic scholar to graduate from the University of North Florida. The valedictorian from Paxon continued her academic success at UNF where she had a 3.54 GPA in the Honors Program and graduated a semester early. Tanisha majored in Spanish and plans to go into international law. Tanisha's parents and grandparents proudly attended the graduation of the first family member to graduate from college. In the past few months three more Pajcic Scholars have graduated, and 25 others are currently enrolled.

*Tanisha congratulated by Gary & Steve & UNF President Adam Herbert who has since become Chancellor for the State University System of Florida.*



## Jeanne Raso

*Pajcic Profile*



In the 18 years she has been with Pajcic & Pajcic, Jeanne Raso has worked as an assistant to Kathy Brown, to Gary and to Steve and served as the worker's compensation specialist. She is the most unflappable person in the office and the best liked by clients. Five years ago when working for Steve, Jeanne decided

to devote more time to her religion and asked for a three-day work week. As punishment for deserting him, Steve asked Jeanne to oversee all written discovery for the firm which she continues to do without complaint and without error.

It is awfully tedious work, however, especially for someone with an exotic former life like Jeanne, who was born in Hong Kong during the Communist rebellion and met her husband Sal while teaching dance in New York City.

## Harvetta Jackson

*Pajcic Profile*



She was working in a prime spot to be recruited by Gary Pajcic — at a golf course. At Gary's suggestion, Harvetta Jackson joined Pajcic & Pajcic a year ago and has quickly progressed to be in charge of the mail room and kitchen. Harvetta's ten years of experience as a cook and caterer prepared her well for mediation catering, and her assertive and outgoing personality makes it easy for her to supervise the runners. She did not have the same success controlling her horse at the annual firm party this year, but did lead the wives to victory over their husbands in beach volleyball.

Her athletic prowess continues during softball season when she bats clean-up for her Mayport team, but she successfully delegates most of the clean-up responsibilities at the office.

## \$1.5 Million Recovery When Recycling Truck Backs Over Surveyor

Chad Flick was a 19-year-old surveyor with movie-star good looks and an athlete's physique. As surveyors can be required to do, he was standing in the middle of the road shooting an angle with co-employees. Chad saw the Waste Control recycling truck coming and made eye contact with the driver. After the truck passed, he went back to focusing on his instrument. After going about half a block further down the road, the truck driver realized he had missed a house and started backing toward it. Before Chad realized what was happening the truck backed over him and dragged him 60 feet. The accident mangled Chad's right arm and hand, burned and crushed his chest and scraped the skin off the right side of his face. Chad has had 16 surgeries with medical bills of almost \$100,000. Pajcic & Pajcic discovered company documents which showed that, although the truck driver had been with the company less than one year, he was already known as a "problem employee" with numerous safety violations and disciplinary warnings, including two prior incidents of improper backing. In fact, at the time he was hired the driver did not meet Waste Control's standards. It was a baffling mystery as to why this driver was ever hired and then never fired. Then Pajcic & Pajcic's investigation revealed that he was the son-in-law of an influential

politician. The case settled just as Pajcic & Pajcic was preparing to amend its complaint to seek punitive damages and to ensure the admissibility of all this compelling evidence by adding a count against an individual supervisor for negligent hiring and retention. The structured settlement provided lifetime benefits to Chad with an expected payout of over \$3 million and a present value of \$1.5 million. Chad is preparing to go back to college and remains close to his high school sweetheart, who has stood by him steadfastly despite all his scarring and disabilities.

### DRIVER WORK HISTORY

10/16/95	DATE OF EMPLOYMENT; LIED ON APPLICATION
10/16/95	BACKED TRUCK INTO MAILBOX
02/29/96	LOWER BACK STRAIN
03/25/96	FAILED TO WEAR REQUIRED BACK SUPPORT
04/26/96	WORE TENNIS SHOES TO WORK
06/03/96	1ST WARNING: PRODUCTIVITY
06/19/96	BACKED TRUCK WITHOUT SPOTTER
06/21/96	SPRAINED ANKLES
06/29/96	FINAL WARNING WITH LIST OF VIOLATIONS
07/22/96	2ND FINAL WARNING: TOOK UNAUTHORIZED HELPER
07/22/96	3ND FINAL WARNING: PUNCHED OUT AND LEFT JOB
09/11/96	BACKED TRUCK WITHOUT SPOTTER RESULTING IN ACCIDENT WITH CHAD FLICK

*Pajcic & Pajcic used a number of exhibits to highlight the egregious liability.*

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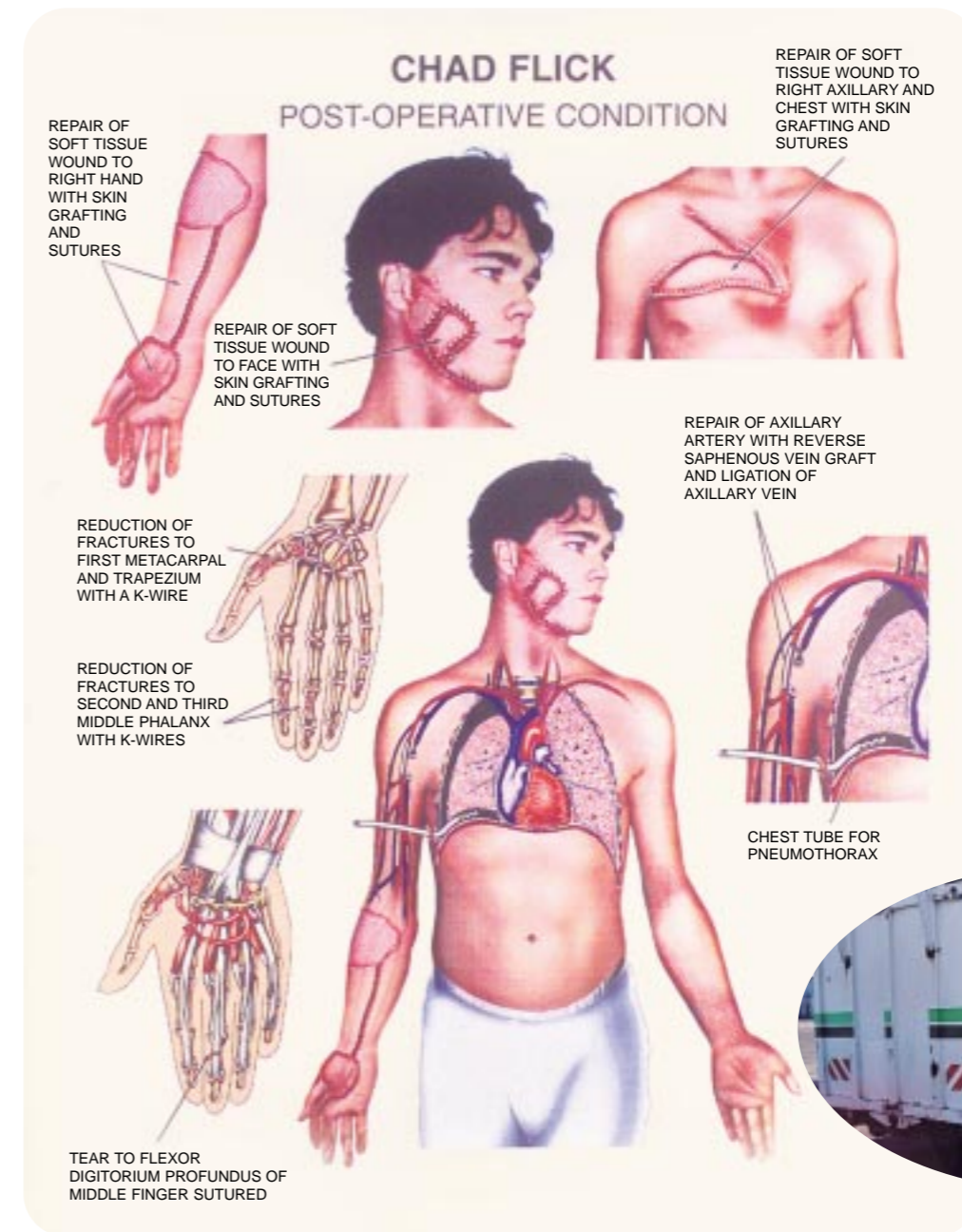
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## Elizabeth Rykert

*Pajcic Profile*



Elizabeth Rykert came to Pajcic & Pajcic with Tad Griffin five years ago. Her steady work ethic and ready smile hide a wild side which seeks out roller coasters and hot air balloons. At home she cross stitches and lives with her two cats, Coco, the kitten, and Rocky, the housemaster of 16 years. This peaceful domestic scene will soon be even brighter when Elizabeth marries her high school sweetheart, Donnie Barrett.



*One of several exhibits which graphically illustrated Chad's injuries*



*The recycling truck backed over Chad and dragged him 60 feet.*

## Steve Pajcic Honored to Speak at Appellate Seminar



Steve Pajcic was honored to be asked to speak at the annual appellate practice seminar sponsored by the First District Court of Appeals in January 1998. Steve, who addressed civil law, and Bill Sheppard, who spoke on criminal law, were the first practicing lawyers to be asked to share in the judges' presentation. Steve told the seminar that oral argument is a lot like a press conference — the most important thing is to be prepared for the tough questions. However, unlike a press conference, in oral argument you should actually try to answer the question.

## Painting the Town for Habijax

In his younger days Tad Griffin was known for “painting the town,” but nowadays he really paints the town. Like many other businesses in Jacksonville, Pajcic & Pajcic has been giving its employees the option to take a Friday in June to help Habijax provide decent housing for the needy. Habijax sometimes has extra volunteers. Tad suggested that we also repaint older houses in the Habijax neighborhood for deserving owners. This year, in addition to pounding nails at the Habijax home sponsored by the Jacksonville Bar Association, the Pajcic & Pajcic volunteers also painted two houses on Evergreen Street selected by the Jacksonville Sheriff’s Office.



*Pajcic & Pajcic volunteers with grateful homeowner.*

## Be Real Careful When You Visit a Factory

Over the years Pajcic & Pajcic has had almost as many cases involving injuries to visiting workers at factories and plants as it has had cases involving the much more numerous employees of plants.

The frequency of accidents to visitors seems to be the result of visiting workers not being as aware of dangerous conditions as plant employees and of the more dangerous occupations of visiting workers who are involved in construction and maintenance work.

*During the first half of 1998, Pajcic & Pajcic reached confidential settlements in three third-party liability cases involving visiting workers for total settlements of \$1.5 million.*



## Do Not Get Sick on the Weekend

An alarming number of the medical malpractice cases handled by Pajcic & Pajcic throughout Florida and other southern states have involved negligent medical care on the weekend and holidays. Many cases involve patients sent home from the emergency room after a failure to appreciate and diagnose a

serious illness. Several other

cases have involved on-call

physicians who have

either failed to

respond promptly or elected to defer urgent surgery until after the weekend. Still other cases have involved hospital staff that have been inattentive to a patient's deteriorating condition during a weekend or holiday stay in the hospital. Perhaps the most egregious cases have involved attending surgeons who have abandoned their patients on Friday afternoon. Some rules we have learned: first, try not to get sick on the weekend. If you must, second, call your personal physician instead of relying on an on-call physician.

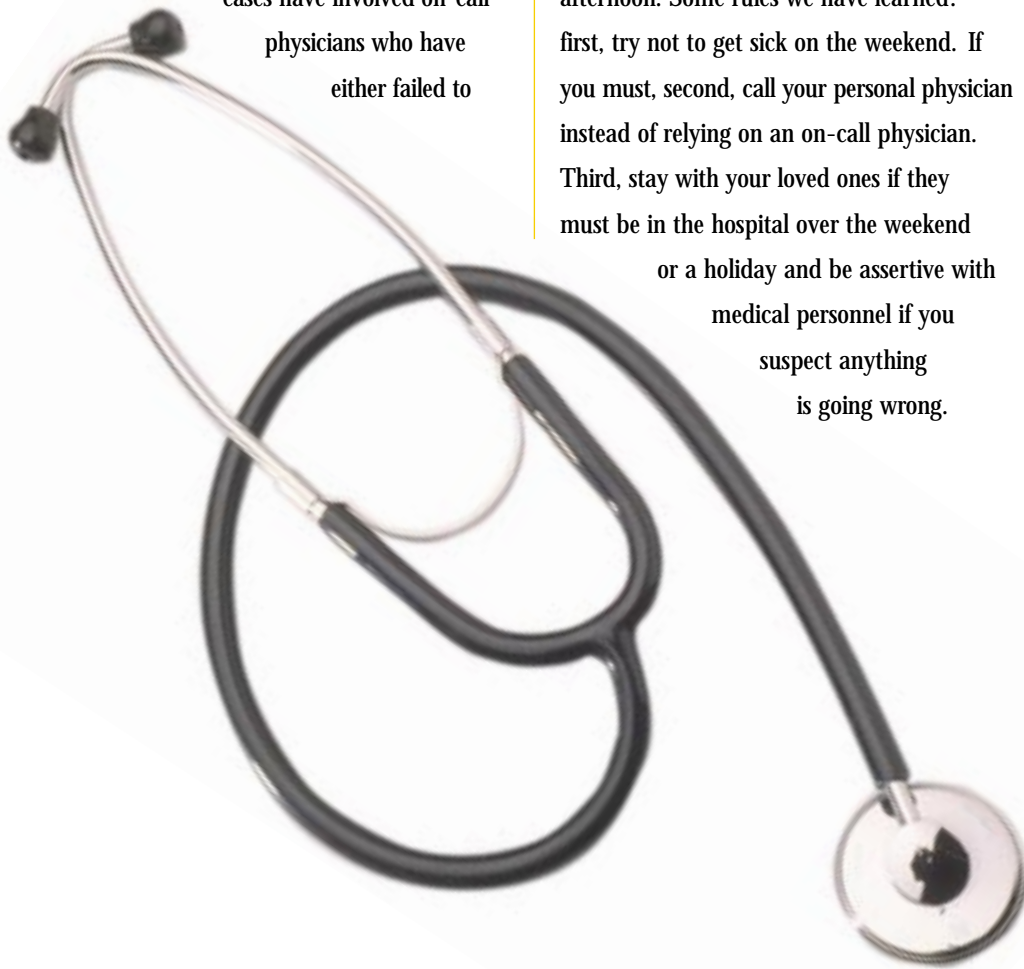
Third, stay with your loved ones if they must be in the hospital over the weekend

or a holiday and be assertive with

medical personnel if you

suspect anything

is going wrong.



## \$2.5 Million in Confidential Malpractice Settlements During First Half of 1998

Most of Pajcic & Pajcic's malpractice settlements now contain confidentiality provisions which prevent us from sharing the educational details of the cases. During the first half of 1998, Pajcic & Pajcic resolved six such cases for total settlements in excess of \$2.5 million. We regret that we cannot reveal the variety of tragic scenarios, but our clients' interests were best served by agreeing to the confidential settlements.

## Kathy Brown

*Pajcic Profile*



Kathy Brown has been with Pajcic & Pajcic so long that she can remember handling family and criminal law matters. Her extensive experience and trenchant judgements make her the best predictor of case value in the firm. Her wry wit also helps everyone keep things in perspective. Kathy got her education in the Northeast at Smith, Princeton and Boston University. She did have one year at the University of Florida, but her objective and dispassionate demeanor kept her from ever becoming a true Gator. Kathy and her husband Harris have two daughters, Julie and Diana. Julie's accomplishments as a star soccer player and long-distance runner have made those of us familiar with Harris' golf swing suspect that Kathy must have kept her own athletic genes well hidden all these years.



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