

PROFESSIONAL LIABILITY DEFENSE FEDERATION



2013 ANNUAL MEETING AND CLE/CEU PRESENTATION

October 9-11, 2013
The Westin Michigan Avenue

"Please join us for fascinating discussions of developments in legal, medical, construction design, real estate agent/broker, dental, insurance agent/broker, accountant, and miscellaneous professional liability claims. Gain insights into best practices for preparing arrogant and other challenging clients for trial, and methods to perform social media, and avoid UCPA, investigations in the course of adjustment and defense of professional liability claims."



The Westin Michigan Avenue
909 North Michigan Avenue
Chicago, Illinois

- Substantive Law Presentations
- Defending Malpractice Claims
- Ethics Instruction
- Trial Tactics
- Emerging PL Claim Developments
- Board of Directors Election
- CLE/CEU Credits
- Social Hour and Dinner!

WELCOME PARTY!

Please join your member colleagues for a Welcome Party at The Westin, on October 9, 2013, beginning at 6:00 p.m., in the Grant Park Room on the third floor. This event is sponsored by:

Robson Forensic
Engineers, Architects, Scientists & Fire Investigators

THURSDAY PROGRAM



9:00 to 9:10 am

Welcome and Opening Remarks

Christine S. Jensen *PLDF Managing Director*

Peter Akmajian, Esq. *PLDF President*

9:10 to 10:00 am

Primer on Claims and Risk Management Issues for Real Estate Agents and Home Inspectors



Gawain
Charlton-Perrin,
J.D.



Christopher B.
Block, Esq.

This segment will discuss the emerging issues in real estate agent claims and potential damage exposure faced by real estate professionals. It will also survey risk management steps and procedures real estate professionals can take to prevent claims and reduce overall risk exposure. Home inspectors also are facing a surge in claims; successful defense themes and risk prevention steps will be suggested to protect your home inspector clients.

10:00 to 10:50 am

Emerging Arbitration Trends in Medical Malpractice and Long Term Care Litigation



Heather A. Neal,
Esq.



Peter Akmajian,
Esq.

Increasingly healthcare facilities are adding mandatory arbitration provisions to their residency and treatment agreements, resulting in hotly contested issues of unconscionability, reasonable expectations, lack of authority, limitations of damages, potential Constitutional right impingements, applicability to wrongful death claims, and Federal Arbitration Act procedure. The session will explore the advantages and obstacles of mandatory arbitration and how this specifically impacts litigation in the medical malpractice/long term care arena.

10:50 to 11:00 am

Refreshment Break

11:00 to 12:15 am

The Story Behind the Unhappy Client, and Ethical Issues You May Have Missed Along the Way

This program will feature a video presentation of a very unhappy client, followed by an interactive discussion of some common ethical and practice issues raised by the representation. Should you agree to take over a case mid-stream? Can you represent both an indemnitor and an indemnitee? What level of disclosure is required to obtain an effective conflict waiver? The panel also will discuss whether your communications with other lawyers in your firm, or with your malpractice carrier, are privileged from disclosure to the client in a subsequent malpractice action.



Erin K. Higgins,
Esq.



A. Michael
Furman, Esq.



Timothy J. Gephart,
CPCU

THURSDAY PROGRAM



12:15 - 1:00 pm

Luncheon

Sponsored by:

Sanders Warren & Russell LLP

Fee Smith Sharp & Vitullo LLP

Lind Jensen Sullivan & Peterson, P.A.

Biggs Ingram Solop & Carlson, PLLC

Eckenrode Maupin

Haight Brown & Bonesteel

Balestreri Potocki & Holmes

1:00 to 1:30 pm

Luncheon speaker Francine McKenna, C.P.A.

Writer: "Accounting Watchdog" (Forbes)

"Accountable" (American Banker)

www.retheauditors.com

"Is Private Litigation the Only Hope for the Accounting Profession?"

1:40 to 2:30 pm

Breakout I:



Ronald L. Green, Esq.

Impact of Unfair Claims Practices Acts in Professional Liability Claim Adjustment

UCPA violations may trigger state insurance commissioner investigations and fines, and in some states they permit claimants or insureds to recover money damages. This session will illustrate the key provisions of such acts as they have been applied in professional liability settings. It will also address the role of UCPA provisions in other statutory or bad faith causes of action.



Erik P. Crep, Esq.

The Social Network Investigation: Claimants, Witnesses, Jurors

Social media is ubiquitous and entices people who later become plaintiffs, adverse witnesses or jurors to enter content that can be exploited in the defense of claims. This segment will describe preferred search techniques and discovery practices, ethical pitfalls, and use of SM data in voir dire and other contexts.



Jay Barry Harris, Esq.

Home History: Realty Professionals and Stigma Disclosure

Real estate agents and brokers face all manner of disclosure requirements – witness the fine print and word count of today's purchase agreements. Sometimes horrible events occur within the home's walls. This segment will evaluate whether a duty to disclose those events can be imposed upon the sales agent or broker.

THURSDAY PROGRAM



2:30 to 3:20 pm

Emerging Issues in Professional Liability Claims Involving Insurance Agents & Brokers

The panel – which will include Nicholas A. Gumpel, J.D. of The Plus Companies - will discuss E&O claims developments affecting insurance agents and brokers, including as potential discussion points claims based on failure: to procure coverage, to address policy



Stephen D.
Straus, Esq.



Thomas
Paschos, Esq.



Sheila M. Burke,
Esq.

terminations, to recommend adequate limits, to assess coverage comprehensiveness, to manage additional insured requests and other claim criticisms. Policyholder obligations and fault, claims effects from natural disasters such as Superstorm Sandy, and observations about the defense attorney/claim handler relationship in managing claims will surely trigger discussion.

3:20 to 3:30 pm

Refreshment Break

3:30 to 4:20 pm

Breakout II:



Jonathan S.
Ziss, Esq.



Martin Terpstra,
C.P.A.

Fraud Detection: That's What CPAs Are Hired to Do, Right?

Even amongst attorneys and claims professionals, there is oftentimes a fundamental misunderstanding as to the responsibility of CPAs to detect and to prevent fraud. Whether preparing tax returns, working with financial statements, consulting, or even bookkeeping, CPAs are thought of as financial watch dogs. But is this an accurate perception? The panel will identify the relevant professional standards and will explain how fraud detection relates to public accounting.



Jeffrey L. Dunn,
Esq.

"Sorry" Seems to be the Hardest Word: Reducing Exposure Through Effective Contrition

When provided by the right person to the right person in a timely and authentic manner, an apology and admission of fault can dramatically reduce exposure and improve outcome, saving on both indemnity and costs. How do you determine the right situation? What factors should you consider before choosing to admit fault and apologize? What are the legal considerations? What should be said, who should say it and how should it be delivered? This session will help you assess the appropriate situations, the factors to be analyzed, the manner of delivery and the content of the apology.

THURSDAY PROGRAM



William T.
McCaffery, Esq.

When Your Civil Defendant is also the Subject of Criminal Charges

Special challenges can face an attorney representing a civil defendant who is simultaneously the subject of pending or potential criminal charges. Not only must the civil defense attorney be cautious to protect the client's interest from exposure in the civil action, but the attorney must also be sure to take no actions that would adversely affect the client in the context of the pending criminal action. This session will discuss important issues for an attorney to consider under such circumstances, such as insurance considerations, Fifth Amendment issues, discovery concerns, media inquiries, and conflicts of interest.

4:20 to 5:10 pm Trial Tactics: Preparing the Difficult Personality Client for Trial



J. Thaddeus "Tad"
Eckenrode, Esq.

Doctors, architects, accountants and other professionals, as well as corporate officers and other key personnel, are often critical witnesses in professional liability trials, either on their own behalf or as witnesses for their employer. How do you handle the "problem" witness, however? The egotistical and arrogant witness who can't stop talking. The insecure witness with a chip on the shoulder who desperately just wants to explain absence of fault. The emotional witness who sees a conspiracy around every corner and thinks each question posed is a potential trap. Preparing these witnesses for deposition and/or trial may take substantial effort. This session will examine the various types of problem witnesses and, through interactive discussions, we will brainstorm strategies that may be helpful in preventing testimonial disasters.

7:00 - 8:00 pm Member/Guest Social Hour

Osteria Via Stato
620 North State Street, Chicago, Illinois

Sponsored by:

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Galloway Johnson Tompkins Burr & Smith, PLC

8:00 to 10:30 pm Member/Guest Dinner

Osteria Via Stato
620 North State Street, Chicago, Illinois

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Starnes Davis & Florie LLP
Minnesota Lawyers Mutual Insurance Company
Goldfein and Joseph, P.C.

FRIDAY PROGRAM



8:00 to 9:00 am Committee Meetings

9:00 to 9:50 am Disability Laws Related To Construction Design: Lessons for Design Professionals



Larry G. Canada, Esq.

The ADA and FHA provide fertile ground for claims against design professionals for certain public and private projects. Many don't know that there are individuals, national groups and the Department of Justice who tour the country looking for projects that do not comply with the ADA and/or the FHA. Claims and lawsuits result in millions in remedial work and attorneys' fees. And in some instances, damages for those individuals who are aggrieved or harmed as a result of those compliance violations. This presentation will review the handling of such claims from the first contact through final disposition. The applicability of the FHA and ADA, their guidelines and design manuals will be discussed along with how these plaintiffs investigate and then instigate litigation against the design professional.

9:50 to 10:40 am Collateral Damage: Dental Professional Liability and License Discipline



William E. Manning,
Esq.

Not long ago, the typical comment about a dental malpractice case was "you're kidding?" With advances in technology, many general practitioners are performing treatment plans once the province of specialists, which can lead to unexpected injury. Hungry lawyers and even hungrier clients in difficult economic times mean no case is too small. Settling a dental malpractice case can result in significant adverse consequences for the dental licentiate. A defense to and including trial may be required to achieve a settlement or judgment less than the licensing agency reporting limits, to protect the dentist from the devastation of discipline. Explaining the "risks, benefits, and alternatives" to the dental practitioner, and obtaining informed legal consent, is vital.

10:40 to 11:00 am Refreshment Break

11:00 to 11:50 am Killing the Snake: Countering the Reptile Theory in Medical Malpractice Cases



Thomas M. Rockwell,
Esq.

This presentation will focus on addressing and countering plaintiff's "Reptile Theory". This relatively new theory with coordinating tactics represents a shift in the way many plaintiffs' attorneys have developed and tried medical malpractice cases with dramatic results. This inflammatory theory appeals to preconceptions and fears of the average juror for safety no matter the jurisdiction. Defendants must re-focus defenses and trial tactics to successfully counter this dangerous trend.

11:50 to 12:00 pm Board Elections and Adjournment

SEMINAR PRESENTERS



Peter Akmajian is a 1984 graduate of the University of Arizona College of Law. After clerking for the Hon. Frank X. Gordon of the Arizona Supreme Court, Peter started his practice in Phoenix with the firm of O'Connor Cavanagh, where he began defending medical and legal malpractice cases. After moving to Tucson in 1989 with O'Connor Cavanagh, he became a partner with the **Udall Law Firm in Tucson** in 1999. Peter has tried approximately 40 jury trials to verdict, and has been a Fellow of the American College of Trial Lawyers since 2006. He is President of PLDF.

Christopher B. Block is special counsel with **Marshall Dennehey Warner Coleman & Goggin** in the **Roseland, New Jersey** office. Chris defends professional negligence claims against lawyers, real estate agents and brokers, insurance agents and brokers, appraisers, architects and engineers. He graduated from Widener University School of Law (J.D. 1996) and from the University of Pittsburgh (B.S. 1993). Chris is admitted to practice in the state courts of New York and New Jersey, and the federal court in New Jersey. He is Vice Chair of PLDF's Real Estate Claims Committee.

Sheila M. Burke is Secretary of PLDF. After graduating from Ohio State University Sheila matriculated to Duquesne University School of Law and graduated cum laude in 1996. She joined **Burns White LLC** in its **Pittsburgh, Pennsylvania** office in 1997 and was elected to Member of the firm in 2004. She represents insurance agents and brokers, real estate agents and brokers, corporate directors and officers, and other professionals in the Pennsylvania state and federal courts, and in arbitration proceedings. In 2012 Sheila was selected by the National Diversity Council as among the "Most Powerful and Influential Women in Pennsylvania."

Larry G. Canada is a director of **Galloway, Johnson, Tompkins, Burr and Smith, PLC**, at its **New Orleans, Louisiana** and **Gulfport, Mississippi** offices. After receiving his B.A. and J.D. degrees from the University of Alabama, Larry became licensed to practice in Louisiana, Texas, Mississippi, and Alabama. His practice focuses on the defense of construction design and other professional liability cases, products, toxic tort and environmental claims. Larry is accredited by the American Institute of Architects, and the Louisiana Board of Engineers and Land Surveyors to provide continuing education coursework to those professions. Larry is a past chair of PLDF's Construction Design Committee, and was recently honored as a Super Lawyer® in professional liability defense and Best Lawyer in construction law.

Gawain Charlton-Perrin has a strong background in professional liability claims, ethics and risk management. With **Hanover Insurance Group** in **Itasca, Illinois**, Gawain manages claims against lawyers, accountants, architects and engineers, real estate brokers, property management firms, debt collectors and title agents. He holds degrees from the University of Illinois, DePaul, and ITT/Chicago Kent College of Law. Before joining The Hanover in November 2012, Gawain was a Consulting Director for CNA focusing on risk management for attorneys and law firms. Earlier in his career Gawain worked for the Illinois lawyer discipline commission.

Erik P. Crep graduated from Columbia University in 1999, and then matriculated to the University of Miami School of Law where he graduated cum laude in 2004. He then joined **Wicker Smith O'Hara McCoy & Ford, P.A.**, at its **Miami, Florida** office. As a partner in the firm, Erik has experience representing clients in matters involving medical malpractice, personal injury, professional liability, premises liability and commercial disputes. He is a member of the Florida Bar, the bar of the U.S. District Court for the Southern District of Florida, and is PLDF Treasurer.

Jeffrey L. Dunn is an equity shareholder with **Sandberg Phoenix & von Gontard, P.C.**, in **St. Louis, Missouri**. His primary practice focus is the defense of health care providers, particularly in the long-term care industry, including facilities, physicians, nurse practitioners and allied health professionals. Admitted to practice in state and federal courts of Missouri and Illinois, Jeff also defends professionals in administrative hearings before state licensing agencies. He is a graduate of the University of Illinois and the St. Louis University School of Law.

SEMINAR PRESENTERS



J. Thaddeus Eckenrode is a 1983 graduate of Washington University School of Law, and is the founder and managing partner of **Eckenrode-Maupin in St. Louis, Missouri**. Tad has extensive civil trial experience, handling complex personal injury, wrongful death, business tort and contract litigation. He has taken over 75 jury trials to verdict in Missouri, Illinois and federal courts, the majority of which were defending medical professionals. He is rated "AV" by Martindale-Hubbell, has been selected as a Missouri-Kansas Super Lawyer® for four straight years, and was recently selected as a "Best Lawyer" in the field of medical malpractice - defense.

A. Michael Furman specializes in the defense of lawyers, insurance agents and brokers, and other miscellaneous professionals in the state and federal courts of New York and New Jersey. A member of **Furman Kornfeld & Brennan LLP** in its **New York City** office, Mike is Chair of the Lawyers Professional Liability and Ethics Committee of the New York State Bar Association; he also is a chair of the state bar's bi-annual Legal Malpractice Seminar. He also authored "Professional Liability Insurance" for the bar's Insurance Law Practice text. Upon graduation from St. John's University, Mike entered the Brooklyn Law School and graduated in 1989.

Timothy J. Gephart, CPCU has served as Vice President of Claims for **Minnesota Lawyers Mutual** since 1985. He is an adjunct professor at the University of St. Thomas School of Law where he teaches a course on legal malpractice. After six years as a member of the Minnesota Lawyers Professional Responsibility Board, Tim served six years on the Minnesota Board on Legal Certification and was recently appointed to the Board on Judicial Standards. He is a frequent lecturer and has authored a number of articles on the topics of ethics and risk management for lawyers.

Ronald L. Green is a founder of **Green, Chesnut & Hughes, PLLP, of Lexington, Kentucky**. After graduating in economics from Murray State University, he attended the University of Kentucky College of Law. Ron is admitted to practice in the state and federal courts of Kentucky, and is a member of Kentucky Defense Counsel, the Defense Research Institute, and the National Association of Forensic Economists. He serves on panels involved with the appointment of federal magistrate judges, and is a member of the Kentucky Executive Branch Ethics Commission. In his professional liability practice, Ron represents attorneys, accountants, hospitals and physicians, financial professionals, insurance producers and realty professionals.

Nicholas A. Gumpel is the Vice President—Claims with **The Plus Companies** based in **Bridgewater, New Jersey**. A licensed attorney, he is a managing general agent specializing in non-medical professional liability insurance including lawyers, title insurance and escrow agents, and insurance agents and brokers. In addition, TPC provides third-party-administrator claims services both on behalf of programs it underwrites as well as others. Prior to joining TPC in 2008, Nick held claims management positions at various other insurance companies operating in the professional liability arena including Liberty International Underwriters, Inc. and Fireman's Fund/Interstate.

Jay Barry Harris is a member of **Fineman Krekstein & Harris, P.C., in Philadelphia, Pennsylvania**. After graduating magna cum laude from the University of Pennsylvania, Jay proceeded to Temple University School of Law and now is admitted to practice in Pennsylvania, New York and New Jersey. His practice spans a wide swath of defense concentrations including professional liability. Aside from his bar memberships, Jay is a member of IADC, FDCC, ABOTA, and DRI, where he served on its Board of Directors from 2006 to 2009. He is well known as a presenter and writer on subjects focused on defense and coverage litigation.

Erin K. Higgins is a partner with **Conn Kavanaugh in Boston, Massachusetts**. She is the Co-Chair of the firm's Professional Liability Practice Group and a former Co-Chair of the Boston Bar Association's Professional Liability Committee. She also serves as her firm's Risk Management Partner. Erin is a graduate of Georgetown University and Boston College Law School (J.D. cum laude 1991). Her PL practice includes the defense of attorneys in malpractice and disciplinary proceedings, and the defense of insurance agents and brokers facing E&O claims. Erin has been named a Massachusetts Super Lawyer® each year since 2004.

SEMINAR PRESENTERS



William E. Manning is of counsel to **Van De Poel, Levy & Allen, LLP**, in **Walnut Creek, California**. After graduating from the University of California at Berkeley, Bill continued his education at U.C.L.A. School of Law, graduating in 1985. He represents dentists, physicians, optometrists, nurses, and attorneys in malpractice claims, state board licensure and disciplinary matters, peer review and credentials inquiries, managed care disputes, discipline hearings for military medicine, and practice-related legal matters, including professional practice issues, practice sales, and transitions.

William T. McCaffery joined the attorney liability practice group of **L'Abbate, Balkan, Colavita & Contini, L.L.P.**, at its **Garden City, New York** office in 2001. After obtaining his B.A. from the University of Scranton, he entered St. John's University School of Law and graduated in 1996. From 1996 to 2001 Bill had a general practice experience that serves him well defending lawyers of varied specialties. He is admitted to the state and federal courts of New York, and has argued several professional liability appeals.

Heather A. Neal is a shareholder with **Renaud Cook Drury & Mesaros, P.A.**, in **Phoenix, Arizona**. Upon graduating from the University of Virginia, she obtained her law degree from the University of Pittsburgh in 2003. Heather practices in the fields of medical malpractice and healthcare, business transactions, personal injury and administrative law. She is a member of the state bars of Arizona and South Carolina, and she practices in the U.S. District Court for the District of Arizona. Heather serves as Vice Chair of PLDF's Medical Claims Committee.

Thomas Paschos leads the **Haddonfield, NJ and Philadelphia** offices of **Thomas Paschos & Associates, P.C.**, where he specializes in the defense of professional liability claims including medical and legal malpractice, agent and broker E&O, construction design and D&O fiduciary duty. After obtaining his B.S. degree from Drexel University and J.D. from Temple University, Tom was licensed in Pennsylvania and New Jersey. A member of Professional Liability Underwriting Society, he has spoken at PLUS events and programs sponsored by the National Business Institute. Tom is Chair of PLDF's Legal Claims Committee.

Stephen D. Straus is a partner with **Traub Lieberman Straus & Shrewsberry LLP** in **Hawthorne, New York**. Steve's professional liability clients include attorneys, accountants, and insurance agents and brokers. After obtaining a business administration degree from Boston University, he entered law school at St. John's University graduating in 1986. Admitted to practice in New York state and federal courts, Steve also serves as Vice Chair of the Insurance Agents and Brokers Claims Committee of PLDF.

Martin Terpstra is a consulting partner with **Plante Moran**, an audit, tax and consulting firm, at its **Chicago** office. He has a B.S. in Accounting (magna cum laude) and a Master of Accountancy (with distinction) from DePaul University. Marty is a leader with the firm's forensic and valuation services practice. He has directed hundreds of forensic investigations and provided expert testimony in numerous trials and arbitrations on the subjects of accountants professional liability, economic loss, fraudulent schemes, D&O roles in corporate failures, directing special investigations and otherwise.

Jonathan S. Ziss is a partner with **Goldberg Segalla, LLP** at its **Philadelphia** office. Licensed to practice in the federal and state courts of Pennsylvania and New Jersey, Jonathan graduated cum laude from Franklin and Marshall College, and was elected to Phi Beta Kappa. He then went on to the Villanova University School of Law where he served as a staff member of the Law Review. He specializes in professional liability, aviation litigation and commercial litigation, and has lectured accountants, architects, attorneys, bankers and other fiduciaries on errors and omissions law and professional standards. He is Vice President of PLDF, and is an active member of the Professional Liability Underwriting Society, the Claims and Litigation Management Alliance, and DRI.

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Haight

SEMINAR REGISTRATION



Fee: for the seminar for early registrants is **\$499.00** for PLDF members and **\$549.00** for non-members. After **September 26, 2013**, the fee is **\$549.00** for PLDF members and **\$599.00** for non-members. The fee includes programming, meals at the event venue, refreshments, CLE/CEU credits (in process), Welcome Party, and the members' Social Hour and Dinner. PLDF maintains a financial aid policy dated August 1, 2010 for those seeking registration fee accommodation based upon individual circumstances. Call PLDF for information pertaining to the program.

Registration: Mail your registration fee to Professional Liability Defense Federation, 1350 AT&T Tower, 901 Marquette Avenue South, Minneapolis, MN 55402.

Refunds: A full refund will be issued for cancellations received on or before **September 26, 2013**.

Questions? Call (612) 481-4169.

LODGING ARRANGEMENTS

PLDF's 2013 Annual Meeting and CLE/CEU Presentation will be held at The Westin Michigan Avenue, 909 North Michigan Avenue, Chicago, IL 60611, in the heart of the "Magnificent Mile". We have reserved a limited number of rooms on **October 9 and October 10** at a preferential daily rate of \$239.00 for this conference.

Call (312) 943-7200 for the PLDF rate and reservations.

Or login to The Westin's site at: <https://www.starwoodmeeting.com/Book/2013annualconf>. We encourage attendees to register early to secure space at The Westin. Thank you.

PLDF MISSION STATEMENT

"The mission of the Professional Liability Defense Federation is to enhance the stature and effectiveness of professional liability professionals through education, training, and the exchange of information."

CLE/CEU CREDITS



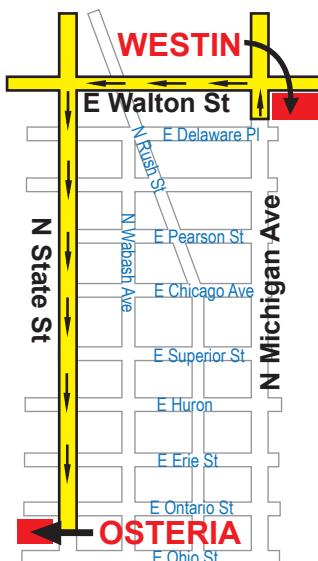
The manner in which state CLE accreditation rules determine the number of credits available from this seminar will vary, as they do for all seminars. We do expect each presentation offered at this seminar will receive credit, except perhaps for the luncheon presentation. Inasmuch as written materials or presentation slides frequently are not produced until shortly before the seminar, and some states wish to review the materials as part of the credit evaluation process, we will alert members from such states when the credits are determined after the seminar. We will receive many credit approvals in advance of the seminar and will have that information available to attendees at the meeting. We expect to receive approximately nine CLE credits for this program, including at least one ethics credit we will apply for.

Professional Liability Defense Federation is a registered provider of continuing education courses for agents and adjusters under the Texas Insurance Code (Provider Number 65013). We will submit this course for credit approval through the Texas Department of Insurance.

SOCIAL HOUR/DINNER!



Osteria Via Stato (312) 642-8450
620 North State Street, Chicago, Illinois



Q & A

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