



CORNERSTONE

PROFESSIONAL LIABILITY CONSULTANTS

A QUARTERLY NEWSLETTER

PROFESSIONAL CASUALTY ASSOCIATION (PCA)

MAKING AN IMPRESSION WITH PENNSYLVANIA PHYSICIANS

Since forming this new company the management team for PCA is impressed with it's success and the companies popularity with the physicians. PCA is committed to the physicians of Pennsylvania as well as fighting those frivolous lawsuits. PCA currently insures more than 300 physicians in the state. PCA is one of the many new carriers in the state and sets themselves apart from the rest due to a partnership with PMA Re for reinsurance coverage. This coverage ensures that PCA will be around for the long haul. Many of the new carriers in the state are Risk Retention Groups or do not have the added security of having reinsurance in place. If you are looking for an insurance company or know of someone who is, PCA might be an option.

AM BEST DOWNGRADES GE MEDICAL PROTECTIVE, THE DOCTORS COMPANY AND OTHER CARRIERS ...

Medical Protective's rating slips to an "A" from an "A+" and Doctors Company slips to an "A-" from an "A". Even though there has been some luster lost the ratings and the companies are still strong. Other insurance companies have taken worse hits. AM BEST also downgraded Princeton Insurance Company to a "B-" and PMSLIC was downgraded to a "B++". These downgrades are not surprising in this malpractice market today.

PHILADELPHIA DAILY NEWS ARTICLE: "ANALYSIS: LEGAL CLAIMS DRIVING MALPRACTICE COST"

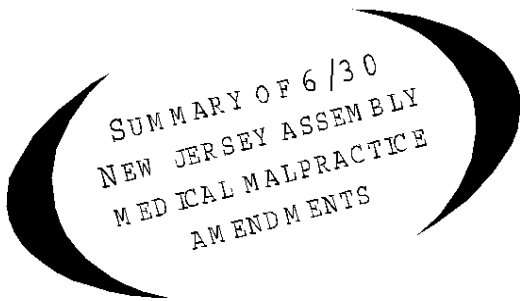
An article in the Philadelphia Daily News, by Michael Hinkelman, talks about how two new reports indicate it's not greedy insurance companies driving Pennsylvania's dire malpractice insurance crisis. "Malpractice insurers actually have lost more than \$67 million in PA since 1999, according to an analysis by the state Insurance Department." "The insurers last made a profit in the state in 1998." "The analysis, which covers a 10-year period from 1992-2002, seems to support arguments made by doctors that money paid out by insurers in legal claims is the major factor driving the rise in medical liability insurance premiums." "Medical

groups have argued that some med-mal damages should be capped." "Since 1992, money paid out in claims has almost tripled while premiums more than doubled. Investment income declined 33 percent over the 10-year period." "Dr. Edward H. Dench, Jr., President of the Pennsylvania Medical Society, said the Insurance Department's findings constituted "mounting evidence" that a "broken tort system" was chiefly responsible for the increase in premiums." "The Insurance Department findings mirror a recently issued report by the General Accounting Office, the congressional watchdog, which found that cash payments made by insurers to plaintiffs in Pennsylvania jumped almost 71 percent since 1998."

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The following is a brief summary of the Amendments the NJ Assembly passed on 7/1/03.

TORT LIABILITY REFORMS:



Statute of Limitations: The amendments provide that actions by minors for medical malpractice for injuries sustained at birth are to be filed prior to the minors 11th birthday, unless the minor did not know or should not have known about the malpractice or injury.

Mediation: The amendments require referral of a medical malpractice action to a complimentary dispute resolution mechanism if the court determines, within 30 days after the discovery end date, that such referral may encourage early disposition or settlement of the action.

Affidavit of Noninvolvement: The amendments provide that a health care provider named as a defendant in a medical malpractice action may file an affidavit of noninvolvement with the court that will result in dismissal of the claim if the provider states he or she was misidentified or otherwise not involved in the alleged malpractice.

Expert Witnesses: The amendments establish heightened qualifications for expert witnesses in medical malpractice actions requiring an expert to have the same type of practice and possess the same credentials, as applicable, as the defendant health care provider, unless waived by the court. The amendments also prohibit expert witnesses from testifying on a contingency fee basis and provides for penalties for expert witnesses who intentionally misrepresent the applicable standard of practice or care.

Structured Payments for Noneconomic Damages:

With respect to the payment of medical malpractice judgments, the amendments provide that in any medical malpractice judgment in which the noneconomic damages (those for pain and suffering) exceed \$1 million,

unless otherwise agreed to by the parties, 50% of the money damages are to be paid immediately, with the costs and attorney's fees paid from that amount and the remaining 50% of the judgment is to be paid over 60 months in the form of a structured payment agreement.

Standard of Review: Further, in order to provide the court with discretion to modify jury awards, the amendments modify the standard of review to be used by the court in reviewing the amount of a

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DAILY NEWS ARTICLE (Continued from page 2)

“Losses on medical malpractice claims appear to be the primary driver of increased premium rates in the long term,” the GAO report said. “Such losses are by far the largest component of insurer costs.”

“Pennsylvania was one of seven states the GAO examined. Only in Mississippi did insurers see a higher percentage increase in their costs.”

“The state insurance department said its report was made in response to a request from the state Senate’s Insurance and Banking Committee.”

“In 2002, losses on claims, money paid out to victims of medical malpractice—accounted for more than 61 percent of all insurer costs in Pennsylvania.”

“Last year, med-mal insurers in the state lost more than \$18 million despite writing almost \$500 million in premiums and earning more than \$46 million on their investments.”

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jury award to require the court to consider the evidence in the light of most favorable to the non-moving party in view of the nature of the medical condition or injury that is the cause of action or because of passions or prejudice by the jury.

HEALTH CARE SYSTEM REFORMS

SUMMARY OF 6/30 ASSEMBLY MALPRACTICE AMENDMENTS

• **Good Samaritan Immunity:**

The amendments expand the State's "Good Samaritan" law to provide immunity from civil damages to licensed health care professionals, paramedics and emergency medical technicians whose duty does not require a response to a patient emergency situation, who in good faith, responds to a life-threatening emergency or responds to a request for emergency assistance in a life-threatening emergency within a hospital.

• **Reporting to Board of Medical Examiners:**

The amendments strengthen reporting requirements by physicians to the State Board of Medical Examiners to ensure that the board is promptly informed of any pending criminal charges or convictions.

• **Medical Error Reporting System:**

The amendments establish a medical error reporting system for healthcare facilities that seek to minimize the occurrence of errors, as well as, to detect those that do occur. Also, the system incorporates mechanisms to continually improve the performance of facilities to enhance patient safety. Specifically, the amendments require all licensed health care facilities in the State to develop and implement a patient safety plan. This plan includes a patient safety Committee, for the purpose of improving the health and safety of patients at the facility. A health care facility would be required to report to the Department of Health and Senior Services every serious preventable adverse event that occurs in that facility. The amendments also provide that a health care professional or other employee of a health care facility is encouraged to make anonymous reports to the department.

The NJ Senate will convene in the near future to review the NJ Assembly Amendments.

WHAT'S GOING ON WITH MCARE?

Since September 15 came and went without legislation enacted concerning the Governor's plan for the forgiveness of Mcare assessments, Mcare has decided to work on the premise that the legislation will be enacted and has asked the carriers to bill the assessments for all those physicians that have policies effective 1/1/03 and after. The invoices coming from the carriers will reflect 100% of the assessment. A letter from the state accompanies the invoice and outlines what is to be paid. Physicians in the top 4 specialties with Mcare

- codes of 070,080, 090 and
- 100 - orthopedic surgery,
- neurosurgery, ob/gyn
- (including certified nurse
- midwives) and general surgery
- will not have to pay Mcare and
- all other specialties will have to
- pay 50% of the assessment
- charged. Corporate entities
- are not included in this
- forgiveness. Corporate entities
- will have to pay what is
- reflected on the invoice from
- the carrier. It is important to
- note that if legislation is not
- passed concerning the
- Governor's proposal for the
- forgiveness of Mcare then the
- carriers are required by law to
- collect the outstanding
- assessment. If you have any
- questions concerning what you
- are to pay please contact your
- account manager.

GE MEDICAL PROTECTIVE FILES FOR AN OCTOBER 1ST NJ RATE INCREASE

A letter was recently sent to all Medical Protective insureds in New Jersey explaining that the company has filed for a rate increase effective Oct. 1st. ***You will be contacted by your producer as soon as your renewal premium is received from Medical Protective.***

**MEDICAL MALPRACTICE
LIABILITY INSURANCE
REFORMS:**

Conflicts of Interest: To avoid the appearance of any conflicts of interest, the amendments prohibit any person who is an officer, director or board member of a professional association for health care providers (e.g. Medical Society) to serve, simultaneously, as an officer, director or board member of a State-domiciled medical malpractice liability insurer that is issuing policies in the state.

Joint Purchasing

Alliances: For the purpose of negotiating a reduced medical malpractice liability insurance premium, the amendments would permit physicians to join together, by means of a joint Insurance Purchasing Alliance.

Deductibles: Another provision to provide premium relief to health care providers is the requirement that every medical malpractice liability insurer shall offer individual or group medical malpractice liability insurance policies with a deductible of at least \$5,000 per claim and up to \$1 million per claim and may require the insured to provide collateral for the deductible amount to the insurer.

CEO Certifications: To provide increased oversight of medical malpractice insurers, the amendments require that every annual statement by an insurer in this State shall include a certification by the chief executive officer or chief financial officer that the rates for every category, subcategory or risk classification are adequate to cover expected losses and expenses of insurer.

Notice of Renewal and Nonrenewal: The amendments require insurers to provide at least 60 days notice to the insured for policy renewals and nonrenewals.

Also, the insurer shall provide the reason for any nonrenewal.

DOBI Approval of

Rates: The amendments provide for oversight by the Commissioner of Banking and Insurance with respect to rates in excess of 25%, and provides that the insured may petition the commissioner to investigate and, if appropriate, to conduct a hearing into whether the rates are excessive.

DOBI Oversight of Capitalization and Reserve

Requirements: The amendments also direct the

commissioner, subject to standards adopted by the National Associations of Insurance Commissioners, to review the current capitalization and reserve requirements applicable to medical malpractice insurers, and to modify those requirements, as necessary, to ensure the solvency of those insurers and the availability and affordability of medical malpractice liability insurance in the State.

Premium Installment

Payments: The amendments require medical malpractice liability insurers to offer it's insureds the option to make premium payments in installments, as prescribed by the commissioner, by regulation.

Notification of Med-Mal

Settlements and Awards: In addition, DOBI would be notified of every medical malpractice judgment, settlement and award involving a physician or podiatrist licensed in this State. The notification to the commissioner is to enable the commissioner to compile data about medical malpractice payouts.

Recalculation of Premiums:

The amendments permit health care professionals to request their medical malpractice insurer to recalculate their premium to reflect any cost saving provisions of the amendments.

Finally, the amendments established a 33-member "Medical Care Availability Task Force: to study among other things the advantages and disadvantages of establishing limitations on non-economic damages. The task force would have a year to report its findings to the Legislature.

The NJ Senate will convene in the near future to review the NJ Assembly Amendments.

