

YOUR PROFESSIONAL LIABILITY BROKER,



is pleased to be sending you, our *Cornerstone Summer Newsletter Edition*.

Many of your colleagues may be in need of our assistance. Please have them give us a call at 800-508-1355.

Thank you,
Chris Zuccarini
President



CORNERSTONE

PROFESSIONAL LIABILITY CONSULTANTS

A QUARTERLY NEWSLETTER

A POTENTIAL PROBLEM FOR EVERY PENNSYLVANIA PHYSICIAN

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The authors of this article are Barton L. Post, Esq., malpractice defense attorney; Joe Brady, CPCU, and Timothy McGuire, CPCU, both with extensive experience in handling the defense of malpractice claims as long time claims managers of major malpractice insurance companies. Bart, Joe, and Tim are part of the management team of PCA.

Background: Prior to 2002, State action for suspension/revocation of license was predicated on serious medical violations such as criminal behavior, addictions, sexual assaults, etc. Relatively few actions were pursued. Act 13 call for the report of every malpractice claims to the State Board of Medicine or the State Board of Osteopathic Medicine. The State has hired a large group of individuals to investigate all claims (and indeed, there are indications they are reviewing all old claims as well) and decisions are being made whether to bring actions (Rules To Show Cause) against physicians to suspend or revoke their license to practice medicine. A number of such claims have been brought to date and there is the danger that many more will be pursued. Indications are that thousands of malpractice actions are being reviewed (including plaintiffs' expert reports) for decisions as to whether action should be brought to suspend/revoke.

Danger: First, there is a real danger of a bureaucracy being created wherein lawyers/ investigators (query the extent of their medical knowledge) make a career out of investigating physicians, i.e. the more cases that are brought, the more secure their jobs. Second, as far as is known, the Medical Board has not formally adopted appropriate Rules and Regulations preserving a physicians' right to due process, the basic right to a fair and impartial hearing. As of recent date, the only standards were a set of guidelines that were set up, possibly by the investigating personnel, which give enormous discretion to the investigators. For example, an action can be predicated on one alleged act of malpractice.

Solution: Steps should be taken by physicians, medical organizations and all entities interested in preserving the medical community in Pennsylvania to assure that a Medical Board acts responsibly to protect the public but at the same time, in a reasonable fashion to preclude persecution of physicians.

PCA's Interest: As a malpractice insurance carrier we are concerned that if ACT 13 is not properly administered; 1- more physicians will be encouraged to leave Pennsylvania (completely contrary to the purpose of Act 13); 2 – physicians will be pressured to settle malpractice claims that should not be settled and at figures higher than reasonable (to avoid suspension/revocation dangers); and 3 – competent, young medical graduates will not want to come into a State wherein there is danger of license revocation based on malpractice allegations. This is especially true in high-risk specialties.

IDENTITY THEFT: A GROWING PROBLEM

*Reprinted with the express permission of the Medical Liability Monitor
By Barbara Worsley – Vice President of Risk Management for The SCPIE companies*

When a Tennessee internist discovered that a former employer had obtained his Medicare billing number and used it to submit more than \$2 million in bogus claims, he started to worry that his entire career was in jeopardy. The physician became even more concerned when he learned he was being investigated by the US Department of Health and Human Services.

The internist had fallen victim to one of the newest and most devastating crimes to come down the information superhighway: identity theft. Physicians may not be at greater risk than anyone else for having their identities stolen, but they are appealing and vulnerable targets for crooks familiar with the medical industry's billing and payment practices.

For example, California's Bureau of Medi-Fraud and Elder Abuse uncovered several elaborate schemes in which thieves stole patients' and physicians' identities and used them to defraud Medi-Cal of millions of dollars. *(continued on page 2)*

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Federal agencies target identity theft

Identity theft (also known as identity fraud) usually involves two victims. One is the person whose personal and/or financial information is stolen. The other is a commercial victim that is cheated out of services, merchandise or money. Violations of the federal Identity Theft and Assumption Deterrence Act are prosecuted by the Department of Justice. Identity theft can be investigated by any federal investigative agency including the United States Secret Service, the Federal Bureau of Investigation, and United States Postal Inspection Service and the Office of the Treasury Inspector General of Tax Administration. In most cases, the crime carrier a maximum term of 15 years' imprisonment, a fine and forfeiture of any personal property used, or intended to be used, to commit the offense.

Recently a medical technician at the Seattle Cancer Care Alliance was sentenced to 16 months in prison and ordered to pay \$15,000 restitution to a cancer patient whose identity the thief used to obtain credit cards and make purchases. The technician was the first person to be criminally persecuted for violating the privacy provisions of the Health Insurance Portability and Accountability Act (HIPAA). Most identity theft cases involve an employee's stealing personal information from a company database, according to a 2002 study by Trans-Union Corp. The Federal Trade Commission reports that many thefts are committed by individuals who are legitimately on company property, but who should not have access to sensitive data. Some thieves become temporary workers just so they can steal personal information. In other cases, long-term employees sell personal data to organized crime rings, which then use them to commit fraud.

"Phishing" – one of the newest scams in identity theft-cost victims more than \$1.2 billion between April 2003 and April 2004. Identity thieves send e-mails that appear to be from nationally known businesses and other legitimate-sounding entities, asking the recipients to verify such personal information as their user names, account numbers and access codes. The thief then uses this information to gain access to the victim's accounts over the internet.

Protect your practice

Here are some actions physicians and their staffs can take to minimize the risk of identity theft –

- * Run background checks on all current and potential employees and implement internal financial controls.
- * Ask patients to tell you if they receive statements from insurers for medical services attributed to your practice but which were not performed.
- * Keep prescription pads in a safe place
- * Protect Medicare, Drug Enforcement Administration and employer tax numbers
- * Shred documents containing personal information as soon as they are no longer needed.

Protect your Social Security number

- * Give it out only when absolutely necessary.
- * Leave your Social Security card at home. It does not need to be carried in a wallet or purse.
- * If you feel uncomfortable giving a business (or anyone else) your Social Security number, ask why the business needs it and if a different form of identification is acceptable.
- * If a government agency requires a Social Security number, the agency must disclose the legal authority underlying the request as well as what the agency will do with the number.

For more information about protecting Social Security numbers, go to www.ssa.gov/pubs/10002.html#protect

Anyone who believes an identity thief is using his or her Social Security number should call the Social Security Administration's Fraud Hotline at 800/269-0271.

PRINCETON INSURANCE COMPANY IS MAKING A COME BACK 2004 YEAR IN REVIEW

Princeton's fundamental objective is the same as their policyholder's: to ensure that each patient in New Jersey receives outstanding patient care. New Jersey's doctors and hospitals in the foreground, Princeton Insurance supporting them in the background.

A strong business partnership is evidenced by the desire to continue to do business together over time. In the midst of a competitive marketplace, Princeton retained the vast majority of its hospitals and individual policyholders during 2004. Over 14,400 individual and institutional policyholders chose to renew their coverage with Princeton in 2004 – a renewal retention rate of just under 90%.

As an active member of the Physician Insurers Association of America (PIAA) as well as the American Tort Reform Association (ATRA), Princeton supports efforts to achieve meaningful tort reform. Owned and operated by doctors and hospitals, PIAA is the voice of medical liability insurers. It is an association whose members represent 775,000 healthcare providers worldwide and whose mission is to advocate on behalf of physicians, dentists, hospitals and other healthcare providers in the areas of legislation, education, risk management and research. ATRA, a broad based, bipartisan coalition of more than 300 businesses and organizations that support liability reforms, was formed in order to end lawsuit abuse while bringing great fairness to the civil justice system.

The core of a medical malpractice policy is the company's promise to defend you when a claim is made and to pay others on your behalf when a medical error has occurred. Protection – it is the essence of the product Princeton provides to you. The first line of defense for policyholders is a well-staffed expert claims department dedicated to policyholder protection. Beyond claims work, Princeton has stepped up efforts to group surplus funds, reduce expenses and take other steps as needed in order to maintain financial strength over the long-term. As other companies have come and gone, our dual focus on claims expertise and financial strength makes for sound insurance protection. In 2004, Princeton's surplus grew 23% from \$136 million to \$167 million.

Cornerstone will be watching the amazing progress Princeton Insurance is making.

MEDICAL ERRORS STILL CLAIMING MANY LIVES

BY ELIZABETH WEISE, USA TODAY WED MAY 18, 2005

As many as 98,000 Americans still die each year because of medical errors despite an unprecedented focus on patient safety over the last five years, according to a study released today. Significant improvements have been made in some hospitals since the Institute of Medicine released a landmark report in 2000 that revealed many thousands of Americans die each year because of medical mistakes. But nationwide, the pace of change is painstakingly slow, and the death rate has not changed much, according to the study in The Journal of the American Medical Association. The researchers blame the complexity of health care systems, a lack of leadership, the reluctance of doctors to admit errors and an insurance reimbursement system that rewards errors - hospitals can bill for additional services needed when patients are injured by mistakes - but often will not pay for practices that reduce those errors. "The medical community now knows what it needs to do to deal with the problem. It just has to overcome the barriers to doing it," says study co-author Lucian Leape of Harvard's School of Public Health. (continued on page 5)

NEWS RELEASE

BERKSHIRE HATHAWAY AND GE COMPLETE MEDICAL PROTECTIVE TRANSACTION

OMAHA, Neb., and KANSAS CITY, Mo., July 1, 2005 -Berkshire Hathaway (NYSE:BRK) and General Electric (NYSE:GE) today announced that GE Insurance Solutions' sale of Medical Protective Corporation to Columbia Insurance, a unit of Berkshire Hathaway, became effective yesterday. The sale price was \$825 million.

With more than \$700 million in annual premium and \$2 billion in statutory assets, Medical Protective (www.medicalprotective.com) is a national leader in primary medical professional liability coverage and risk solutions for primary healthcare providers. As the nation's first provider of medical professional liability insurance, Medical Protective has been protecting the assets and reputations of physicians, dentists and other primary providers of health care for more than 100 years. Its products are underwritten by The Medical Protective Company, which holds Standard & Poor's highest rating, AAA, and are distributed through a nationwide network of employee market managers and appointed agents. Berkshire Hathaway and its subsidiaries engage in a number of diverse business activities among which the most important is the property and casualty insurance business conducted on both a direct and reinsurance basis. Common stock of the company is listed on the New York Stock Exchange, trading symbols BRK.A and BRK.B.

GE (NYSE:GE) is Imagination at Work - a diversified technology, media and financial services company focused on solving some of the world's toughest problems. With products and services ranging from aircraft engines, power generation, water processing and security technology to medical imaging, business and consumer financing, media content and advanced materials. GE serves customers in more than 100 countries and employs more than 300,000 people worldwide. For more information, visit the company's Web site at www.ge.com

State doctors practicing 'defensive medicine' to avoid lawsuits, study says
Pennsylvania doctors regularly order "clinically unnecessary" tests, send patients to specialists and avoid complicated cases altogether out of fear of lawsuits, a study in the Journal of the American Medical Association. Ninety-three percent of 824 doctors in six high-risk specialties said that they practiced defensive medicine which, according to the study, can have a detrimental impact on costs and access to care. The study was conducted for the Project on Medical Liability in Pennsylvania by an associate professor at the Harvard School of Public Health and a professor at Columbia Law School. Further details and a link to the JAMA study are available at www.medliabilitypa.org.

Pennsylvania Insurance Commissioner makes recommendation concerning limits for 2006....

A press release published on July 8, 2005 from Diane Koken, the Pennsylvania Insurance Commissioner released her recommendation not to increase the limit of liability for private carriers from \$500,000 to \$750,000 effective January 1, 2006. Although this recommendation is coming from the insurance commissioner it is still subject to legislative review. Cornerstone will keep our Pennsylvania doctors informed as new details emerge for 2006. For more information please visit the department of insurance website: www.ins.state.pa.us or call Cornerstone at 800-508-1355.

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The institute, a public policy organization, pushed key health care organizations to focus on patient safety, the new report says. As a result, reductions as much as 93% have been made in certain kinds of error-related illnesses and deaths. Computerized prescriptions, adding a pharmacist to medical teams and team training in the delivery of babies are among the improvements medical centers are making, the study finds. But “we have to turn the heat up on the hospitals,” Leape says. For example, 5% to 8% of intensive-care patients on ventilators develop pneumonia, the study says. But by strictly following a simple protocol of bed elevation, drugs and periodic breathing breaks, those outbreaks can be reduced to almost zero. “A little hospital in DeSoto, Miss., called Baptist Memorial did it, so it doesn’t take a big academic medical center,” Leape says. Hospitals that eliminate infections should receive bonuses, Leape says. “If insurance companies paid 20% more for patients in (intensive-care units) where there were no infections, they’d cut costs substantially. “We really need to rethink how we pay for health care. What we do now is pay for services, but what we should do is pay for care and outcomes.”

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