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

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Thank you,
Chris Zuccarini
President



CORNERSTONE

PROFESSIONAL LIABILITY CONSULTANTS

A QUARTERLY NEWSLETTER

McGREEVEY SIGNS LANDMARK LAW PROVIDING ACCESS TO QUALITY HEALTH CARE FOR NEW JERSEY'S FAMILIES

Press Release

Comprehensive Medical Malpractice Reform Puts Patients First

(TRENTON) -- June 7, 2004, Governor James E. McGreevey signed into law the "New Jersey Medical Care Access and Responsibility and Patients First Act" (A50), enacting comprehensive medical malpractice reform. The legislation provides for tort reform, health care system reform, and insurance reform, all in an effort to stem skyrocketing malpractice insurance premiums and ensure New Jersey's families have access to quality health care from the physicians they trust.

"Health care is one of the most important quality of life issues for New Jersey's families. That is why we have made access to quality health care a top priority," said Governor McGreevey. "Today is another good day for the health of New Jersey's families. Thanks to a focused commitment from all parties, this medical malpractice law is comprehensive, providing short-term relief and long-term reform. Our overriding priority is to ensure that patients have access to doctors and quality health care and this bill meets that objective in several ways."

The act reforms the Health Care System through the following: expanding the "Good Samaritan Law" to provide immunity from civil damages to a licensed health care professional who, in good faith, responds to a life threatening incident even though their duty does not require a response; strengthening reporting requirements of physician misconduct to the Board of Medical Examiners and to the health care facilities affiliated with physicians who have been disciplined. *(continued on page 2)*

THEFT OF PATIENT INFORMATION ON THE UPSWING

Thieves have discovered that, often with little risk, they can break into health care practitioners' offices and steal computers. Generally, they're not interested in the clinical information that the computers may contain-although that remains a concern. What they're hoping to steal is something they can use for a variety of criminal schemes: Social Security numbers and credit card numbers. And they're having a lot of luck.

Doctors have an ethical and legal responsibility to ensure both the security as well as the privacy of patient information. This includes the need to protect patients' from the possibility of identity theft.

The following suggestions may help prevent theft of patient information:

➤ Install security passwords on all computers in the practice. Enforce their use and periodic change by employees.

➤ In general, authorize as few people as possible to have keys to the office. Employees, who have access to the office, should have a key to the main door only. *(continued on page3)*

NEW DOCTOR'S GROUP FORMED TO PUSH FOR TORT REFORM IN CONGRESS WITH AD CAMPAIGN

A newly formed coalition of 230,000 specialty physicians is conducting a public awareness campaign urging US Senators to pass tort reform legislation. Doctors for Medical Liability Reform (DMLR) was created to urge US Senators to support federal medical liability reform that includes caps on non-economic damages awarded in medical liability cases. The legislation passed the US House last year but has consistently failed in the Senate.

"People are dying because of politics," said Gail Rosseau, MD, a neurosurgeon from Chicago and nations spokesperson. "Not because we don't have the technology, not because we don't have the doctors, but because astronomical medical liability insurance rates are taking doctors away from our patients at an alarming rate."

The group's members come from national specialty associations representing orthopedic surgeons, emergency medicine, thoracic and general surgeons, obstetricians and gynecologists, cardiologists, dermatologists, spine specialists and urologists.

Rosseau said national reform is essential to prevent more patients from losing access to healthcare. "As physicians we can no longer stand by and watch our patients be placed in such an unacceptable level of risk. We have a duty to them and to the profession we have chosen as our life's work, to lead a medical liability reform movement that will finally protect patients now." *(continued on page 3)*

*(continued from page 1)*The new law enacts Insurance Reforms by: prohibiting individuals from dual membership on the boards of medical malpractice insurers and professional trade associations; allowing physicians to form medical malpractice liability insurance purchasing alliances in order to negotiate a reduced medical malpractice liability insurance premium; requiring insurers to provide a reduced premium for policies that do not include a "consent to settle" provision; requiring insurers to offer policies with deductibles of at least \$5,000 per claim and up to \$1,000,000 per claim; prohibiting a carrier from increasing the premium of an insured if the insured is dismissed from an action alleging medical malpractice within 180 days of the filing of the action; requiring all medical malpractice insurers to certify to the DOBI as to adequacy of their financial reserves as a way to ensure the safety and soundness of insurers; allows the Commissioner to order a rate roll back if it is determined that a carrier's medical liability rates are not in compliance with the law.

In regards to Insurance Reforms, it also: requires medical malpractice insurers to offer its insureds the option to make premium payments in installments; requires medical malpractice insurers to notify the Medical Practitioner Review Panel and the commissioner of the Department of Banking and Insurance, in writing, of any medical malpractice claim settlement, judgment or arbitration award involving any practitioner licensed by the State Board of Medical Examiners and insured by the insurer or insurance association; requires physicians to maintain medical malpractice insurance coverage in the sum of \$1 million per occurrence and \$3 million per policy year; creates a 17-member task force to review relevant issues related to the medical malpractice affordability crisis and requires them to issue a report 24 months after the effective date of the bill; creates a 3-year, \$78 million fund to provide direct premium relief to doctors and self-insured hospitals, relief to hospitals, and a student loan forgiveness program for doctors in high risk specialties - the fund would be based on a \$75 assessment on certain professionals, such as

(continued on page 3)

(continued from page 2) doctors, dentists, lawyers, and a \$3 surcharge on all employers who are subject to the New Jersey "Unemployment Compensation Law."

Lastly, the law enacts Tort Reforms by: reducing the statute of limitations for birth injuries to age 13; providing for complementary dispute resolution to encourage early disposition of medical malpractice lawsuits; creating an affidavit of non-involvement mechanism to allow defendants who are misidentified or otherwise not involved in the care and treatment of the claimant to seek dismissal of action; establishing qualifications for expert witnesses for persons executing an affidavit of merit and for testimony in a malpractice action, providing for penalties for intentional misrepresentation; granting the court greater discretion to review awards; allowing for structured judgments - awards less than \$1 million dollars must be paid immediately, and awards exceeding \$1 million may be paid 50% immediately with 50% annuitized over 60 months.

"This new landmark law will ease the crisis in medical malpractice insurance rates that has forced doctors from the State, while keeping intact protections for injured patients," said Senator Joseph F. Vitale, D-Middlesex. "It represents a year and a half of negotiations to come up with the best compromise to get something done without overly burdening one group over another. This law will help doctors without unduly hurting someone else."

"The high malpractice insurance rates were causing a crisis in the access to health care, and we needed to act to protect patient safety," said Senator Raymond J. Lesniak, D-Union. "This law will provide the necessary relief to stem the exodus of specialty doctors from our State, and will ensure the high quality of health care that New Jerseyans have come to expect." *continued on page 4*

(continued from page 2) The organization ran print ads in national newspapers in February and is scheduled to run a half-hour television program in Washington and North Carolina. The group is focusing on the two states initially and will extend the campaign to other key crisis states including South Carolina, Georgia, Florida, Illinois, Nevada and Pennsylvania. *(continued on page 4)*

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➤ Do not authorize an employee to have a key to the office until that person has passed a probationary period with flying colors.

➤ Stipulate the return of keys from all employees, regardless of whether they quit or are fired. Employees who are fired should be required to turn in their keys, collect their personal belongings, and leave the office immediately upon termination. They should not be given the opportunity to access any patient or business-related information.

➤ When an employee is fired or leaves under less-than-ideal circumstances, consider changing office locks.

➤ Automatically change passwords whenever an employee quits or is fired.

➤ Backup disks, tapes, or reports should be kept under lock and key, preferably off site.

➤ No laptop computer should be used for clinical purposes unless it has complete password installation. Preferably, laptops should be removed from the office at day's end. If that is not possible, they should be locked in a safe or in some other secure site. Laptops with clinical information on them should not be left in cars, not even in trunks.

➤ Firewalls should be built into all office systems. Contractual arrangements with vendors should specify the security results the practice hopes to achieve with its security system.

➤ Consider installation of a security system. *(continued on page 4)*

(continued from page 3)

➤ Use only bonded cleaning staff. If you cannot control the cleaning process (i.e., you rent office space in a building that provides cleaning services), inquire about the security check that the company uses to screen potential hires. Depending on the setup of your office, you may need to ask the cleaning crew's employer to sign a Business Associate agreement to ensure HIPAA compliance.

➤ Ensure that access to clinical areas is locked during lunchtimes, hours when patients are not in the office, or if an employee is working late. If possible, main office doors should also be locked during these times.

➤ Report any suspicious activity, possible breach of security, or threats of violence from terminated employees (or disgruntled patients) to the police.

➤ Report any theft (prescription pads, drug samples, patient information, office materials, etc.) to the police.

➤ Report any breach of patient confidentiality to a GE Medical Protective claims representative at: (800) 348-4669

**July 2003 / Kathleen M. Roman,
Assistant Vice President, Risk
Management Education Services**

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For those physicians whose coverage is with another carrier report any breach of patient confidentiality to:
ProMutual Group claims representative at: (800) 225-6768
Princeton Insurance Company claims representative at: (800) 433-0157
Pennsylvania Casualty Association claims representative at: (610) 337-3374

(continued from page 3) Rosseau said the group is focusing on national legislation because, "we need access to care everywhere, not just in the few states that have implemented effective reforms."

One of the ads says "The House passes it, the president supports it, patients need it and doctors must have it. So why are a few US Senators holding liability reform hostage?" The other ad and the TV news magazines illustrate the negative impact a state's access-to-care crisis has on its economic development.

"As the crisis worsens and patients suffer from lack of care when they need it, a state's economic health suffers as well," Rosseau said.

The organization may be contacted at www.protectpatientsnow.org

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(continued from page 3) "This law represents nearly two years of efforts by the Assembly Democratic Caucus to provide doctors and patients with a fair and balanced solution to the medical malpractice crisis," said Assembly Majority Leader Joseph J. Roberts Jr.. "Doctors will get the financial relief they deserve and patients will get the quality care they need."

"The many constructive and progressive elements in this law will keep doctors on the job while protective a patient's right to sue," said Assembly Deputy Majority Leader Neil M. Cohen. "Our reform measure recognizes that doctors are under tremendous financial strain because of the paltry reimbursement policies of health maintenance organizations (HMOs) and the Medicare and Medicaid programs."

"We're striking a constructive balance between competitive professional interest groups while ensuring continued protection of patients," said Assembly Majority Conference Chair Loretta Weinberg. "These tort reforms will enable doctors to stop practicing defensive medicine and aggressively provide quality care to patients."

"Serious consequences await consumers, physicians, hospitals, insurers, and our state economy if the medical malpractice insurance issue goes unattended much longer," said Assemblyman John McKeon. "This law will be good for patients and the doctors who provide their care. It will promote stability in the medical malpractice insurance marketplace and our health-care system."

WE NEED A QUALITY-FOCUSED APPROACH TO RISK MANAGEMENT

By Kathleen Roman, Assistant Vice President, Clinical Risk Management Educations Services, GE Medical Protective. Reprinted with the expressed permission of the Medical Liability Monitor

The “medico-legal” approach to risk management hasn’t worked. With the best intentions, risk managers, defense attorneys and healthcare educators have taught several generations of clinicians that every patient is a potential plaintiff.

Doctors ask if they can require patients to sign pre-treatment liability contracts such as binding arbitration. Many practitioners confess they employ defensive strategies, because they fear legal repercussions.

“Never use the word ‘sorry,’” lawyers tell their clients. “Patients will think you’re apologizing for an error-even when that isn’t true.” The focus on what to say and what not to say has missed the point. Doctors are now conditioned to believe that buzzwords and documentation phrases will act as talismans to ward off legal actions.

Patient-as-plaintiff

A defensive approach to medicine places a wedge between doctors and patients. It is unlikely that an effective doctor-patient relationship will occur when trust and respect have given way to different agenda – avoidance of a lawsuit.

This evasiveness becomes apparent to patients when doctors are too couched in their clinical advice or won’t answer questions for fear of being misunderstood or misinterpreted. Patients react negatively to dismissive, uninterested or disrespectful behavior of their physicians.

Implement a more positive approach

Rather than dwell on the negative aspects of prevention, doctors should be taught to focus on the most basic elements of clinical care – patient safety and satisfaction. It’s time to shift the focus away from defensiveness – delicately know as the CYA approach to risk management. Doctors are more likely to succeed by investing their risk management efforts in quality/performance improvement.

This approach has been proven in numerous other industries and professions. It emphasizes the importance of inclusiveness as doctors, patients, and staff work together to address patients’ healthcare needs. It rejects the “disciplinary” approach to process improvement and focuses more on fixing flawed processes rather than on punishing culprits. And, perhaps most important, it relies on the collection and analysis of data as a means of identifying problems and implementing effective solution.

The quality-oriented approach to patient safety and satisfaction provides an additional benefit. Those who subscribe to this philosophy find that they’re having a whole lot more fun in their professions. This is especially important given recent reports that many physicians in their mid-50’s are planning to retire early or to leave clinical practice. Other studies have shown that elements of healthcare are so interwoven that problems in one area will cause stress throughout the system.

Areas of focus for risk management

Analyses of thousands of medical and dental malpractice lawsuits clearly show that pure defensive strategies don’t work. By focusing on patient safety and satisfaction, doctors can concentrate on doing what they do best, providing good care for their patients. They can stop being “backseat” attorneys. Patient safety and satisfaction should become the focus for all risk management education and processes. This approach should help doctors:

- **Stay clinically up to date.** Most physicians and dentist know that a great deal of their schooling soon becomes obsolete. Doctors who fall behind will have a difficult time providing adequate care for their patients. And, they’ll also have trouble proving that the care they provided was consistent with current medical or dental standards.
- **Build effective relationships.** Few schools do a good job of teaching healthcare professionals how to resolve professional disagreements. Research is showing that the ability to work in a collegial manner and to promptly identify communication problems is a critical factor in patient safety – and lawsuit prevention.
- **Pay attention to the business aspects of practice.** Financial mismanagements, poor human resources leadership, and failure to implement effective policies and procedures cause loss and frustration in any business environment. In healthcare, these may also play a key role in patient injury or dissatisfaction.
- **Use documentation as the framework for clinical practice.** Clinical excellence is of no value to future medical care if it hasn’t been documented. Lack of documentation may contribute to patient non-compliance, misunderstanding within the healthcare team, and errors.

The quality-focused approach

The negativity of current risk management education encourages doctors to think of patients as potential plaintiffs. This has been unsuccessful in helping doctors build more effective relationships with patients; it also hasn’t stemmed the flow of lawsuits. A more positive and quality oriented approach should be used to teach doctors to focus on their clinical and collegial accountabilities. Doctors who implement a quality-focused approach to patient care will also reduce their risk of liability. They will be practicing the best type of risk management.