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PROTECTING WHAT MATTERS THE MOST.

FOR BETTER AND WORSE, THE PRACTICE OF MEDICINE HAS CHANGED DRAMATICALLY. TECHNOLOGICAL ADVANCEMENT HAS OPENED NEW DOORS OF DIAGNOSIS AND TREATMENT AND FACILITATED RAPID ACCESS TO MEDICAL INFORMATION AND RESEARCH WORLDWIDE. BUT MOST PHYSICIANS WOULD AGREE THAT THE BUSINESS OF PRACTICING MEDICINE HAS BECOME MORE, NOT LESS, DIFFICULT. PHYSICIANS FACE AN UNPRECEDENTED ONE-TWO PUNCH OF REIMBURSEMENT REDUCTIONS AND LIABILITY THREATS.

A study published in June 2006 by the Center for Studying Health System Change indicated that physician income has decreased an average of 7% from 1995 to 2003. All specialties declined, including medical and surgical sub specialties.



Reimbursement has taken on a life of its own, with state and federal government as well as private payers imposing increasingly complex restrictions and documentation requirements. The federal government plans to cut Medicare payments to physicians by 37% over the next nine years, while the cost of caring for patients is expected to rise at least 22% over that same period of time.

Unfortunately, getting paid isn't the end of the story for a physician. In addition to the liability threats faced by every person, physicians also must contend with the ever-present

the asset protection, estate and income tax concerns that are unique to physicians, and the physician should be confident that the suggested plan is legal and 100% IRS and U.S. Treasury Department compliant.

Physicians are regularly solicited by individuals or firms touting various asset protection devices or financial services. Not all are created equal. Most physicians have a trusted attorney or CPA that they use for

business or personal matters. Any individual or entity presenting an asset protection plan should welcome the opportunity to sit down with the physician's advisors to explain the proposed plan. Like physicians, lawyers and CPAs usually have expertise in a particular field, and some may be more comfortable

than others in doing so. Future articles in this newsletter will discuss some of the wide variety of domestic and international asset protection tools now available to physicians.

A STUDY PUBLISHED IN JUNE 2006 BY THE CENTER FOR STUDYING HEALTH SYSTEM CHANGE INDICATED THAT PHYSICIAN INCOME HAS DECREASED AN AVERAGE OF 7% FROM 1995 TO 2003.

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{PHYSICIAN'S ASSET PROTECTION – A SIGN OF THE TIMES}

- written by Dr. Mark Morgan

threat of a medical malpractice lawsuit. Although specialties such as obstetrics and neurosurgery are most commonly associated with malpractice litigation, virtually any specialty is susceptible to an "extinction level event" malpractice judgment.

In the past, physicians were able to obtain sufficient affordable malpractice insurance to eliminate, or at least minimize the risk of, a catastrophic personal exposure. That is almost universally no longer the case. The core problem facing physicians, even those in traditionally lower-risk specialties, is that they cannot buy enough malpractice insurance to protect themselves against even a moderate-sized medical malpractice judgment.

By way of example, the average jury verdict in a medical malpractice case in Florida exceeds 1 million dollars, but most Florida physicians carry only the 250/750 coverage limits required by state law to maintain hospital staff privileges. Most physicians nationwide face an insurance gap that leaves their personal assets exposed to the claims of a malpractice creditor. Various "tort reforms" aimed at alleviating this medical malpractice crisis have been largely ineffective. For example, Florida passed a substantial tort reform package in 2003, yet malpractice insurance rates increased by an average of 19.3% in 2004 and 9.3% in 2005.

That hostile environment has made it increasingly important for physicians to "heal themselves" by engaging in meaningful personal asset protection. Many physicians have engaged in relatively "primitive" asset protection such as transfers of assets to a non-physician spouse, joint ownership of assets with a spouse, or formation of a professional PA or LLC. Some have used more advanced tools such as trusts or limited partnerships, but most have failed to integrate their asset protection strategy with estate planning and income tax planning. Cookie cutter plans almost never adequately address a physician's needs. A plan should simultaneously address



UNDERSTANDING UNDERWRITING

PHYSICIANS OFTEN WONDER WHO CAN POSSIBLY READ AND APPLY THE TWENTY-PAGE APPLICATIONS THEY COMPLETE EACH YEAR – PLUS, REVIEW THE LOSS HISTORIES AND OTHER DOCUMENTS MEDICAL PROFESSIONAL LIABILITY INSURERS REQUIRE. THIS ARTICLE WILL IDENTIFY WHAT AN UNDERWRITER IS AND THE ROLE THEY PLAY IN THE PROCESS OF ACQUIRING AND MAINTAINING MEDICAL PROFESSIONAL LIABILITY COVERAGE

Underwriting is defined in the insurance industry as; “the process of selecting, evaluating and pricing of medical professional liability risks.” The goal of underwriting is to collect enough money from the physicians selected to pay the losses and costs of claims and make a profit.

Underwriters help insurance companies make a profit by charging each physician adequate, reasonable and fairly calculated premiums. A large measure of medical professional underwriting deals with determining what rate-class to apply to a physician and then determining if the physician fitting the appropriate risk-class is an average, better-than-average or worst-than-average risk in that class. A rate classification is based on what a group of physicians do that is indistinguishable. An example is General Practitioners. These are doctors that have no specific specialty and are lumped into the same rate category. Another example would be a Heart Surgeon; a specialization which has a specific classification as compared to an Orthopedic Surgeon.

Physicians present a challenge to underwriters. Determining the ultimate cost of risk is made difficult if not impossible because claims take a very long time to develop. As physicians know, unexpected outcomes that become an incident can metastasize into a claim, then grow into a suit malignancy that lasts for years. Determining the rate

the investment yield is marginalized unlike traditional investments.

Underwriters must satisfy three conflicting interests to achieve success for their company. First, they must select risks with better than average loss profiles or what we call risks that are, “better-than-average” in terms of loss frequency and severity. The second interest is they must charge adequate premiums for the better than average risks selected. A better-than-average risk that does not pay an adequate amount for his or her risk of practicing medicine becomes an adverse risk. The third conflicting goal is to make certain that the risks selected and properly priced are monitored and maintained so that as their practice changes, the rates and terms of coverage adjust to reflect these changes.

PHYSICIANS, HAVE YOU HUGGED YOUR UNDERWRITER TODAY?

{MEDICAL PROFESSIONAL LIABILITY -
UNDERWRITING AND UNDERWRITERS}
- written by Bill Ford

to charge today for costs incurred years later requires a mixture of science and art. Underwriting may indeed be deemed a discipline of science practiced as an art.

Many times, underwriters are blamed with coverage restrictions and denials of risks,; restrictions on what a doctor can do in his or her practice and the huge premiums that seem to always circle around the use of the term. Agents frequently make underwriters scapegoats for these outcomes.

Underwriters are the last line of defense between the insurance company and losses. Even with all their skill and acumen, nearly seventy-five cents of every dollar they collect will ultimately be used to pay or defend a claim or incident involving their selected insured physician. Combine this with the costs and overhead of insurance companies and not much room for error remains.

Investment yields provide additional funding for insurers but are taxed as ordinary income. Investment options on premiums collected are regulated and controlled to provide security and liquidity of those funds. This means

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WAYS TO REDUCE MALPRACTICE LIABILITY

WHY PROPER MEDICAL DOCUMENTATION CAN PROVE NOT ONLY USEFUL, BUT EXTREMELY VITAL.

- Lisa Kairis Teruya MD, FACOG

IF YOU ARE A PHYSICIAN READING THE TITLE OF THIS ARTICLE, YOU PROBABLY HAVE THE SAME REACTION AS MOST DOCTORS. " DOCUMENTATION ? I DON'T HAVE TIME TO WRITE MORE AND SEE AS MANY PATIENTS AS I HAVE TO SEE IN A DAY", OR "I DON'T WANT TO SPEND MORE TIME WRITING THAN I DO SEEING PATIENTS."

Most physicians feel overwhelmed by the amount of paperwork the work of medicine now generates. The last thing most doctors want to do each day is to think about being sued while writing in patient charts. Nevertheless, a proactive approach will take you far in avoiding malpractice liability.

Physicians tend to write in the chart with the goal of communicating to themselves. While this may be helpful in effective patient care, it often does little to help you or your defense attorney. The goal of effective medical documentation is to establish proof of what you did and to summarize thought processes that led to your diagnoses, treatments and follow-up recommendations.

WRITE LEGIBLE NOTES

We have all heard it many times before; "write legibly", but the importance of doing so cannot be overstated. Equally important is writing in a format that looks credible. A couple of illegible scribbles on a page when blown up and projected in a courtroom will destroy your credibility in a heartbeat. Make sure your notes are organized. Whether you use a full H and P format or a SOAP note, make sure you use a format that conveys your thought processes in an organized fashion. Each page in the chart should have the patient's name, the physician's name as well as the



date and time the note was written.

NEVER IMPROPERLY ALTER THE MEDICAL RECORD

Improperly altering the medical record is a surefire way to ruin your credibility. An attorney will take every chance to persuade the jurors or arbitrator that the physician who altered the record improperly had "something to hide" or cannot be trusted.

If you make an error while charting, be sure to correct it properly. Draw a single line through the original incorrect entry and initial it. Write "error" above the original entry and be sure to leave the original entry legible. Do not use multiple crossed-out lines or white-out. Again, doing so will make it look like you have something to hide.

Delays in charting inevitably happen. Make sure to write "Late Entry" and include the date and time the additional information is written.

COMPLETE DOCUMENTATION

Complete Documentation does not have to be lengthy or overly time-consuming. It does involve changing your perspective on how and what you write. Do not write to communicate only to yourself. Write also to convey to anyone else reading your notes your thought processes, differential diagnosis, treatment plans and follow-up recommendations.

DOCUMENT YOUR ADVICE.

Do not just write under the plan "follow up prn". Write in the specifics. For example "Patient instructed to follow up in six weeks for repeat exam. Patient given

informational handout on her condition. Explained to patient the importance of a follow-up as well as the risks and alternatives of treatment."

WHAT NOT TO WRITE

Just as important as what you write is what **not** to write. Do not document opinions. Personal comments, personal opinions and conjecture should be kept out of the chart. Do not write "hypochondriac" or "litigious" or "patient is a friend of ___".

Refrain from blaming others in the chart. Do not write negative comments about nurses, other physicians or staff. Even if there was an error done by another medical professional, address those issues outside of the patient chart.

WHAT TO DO WHEN YOU HAVE AN ADVERSE OUTCOME

We have all had the patient who has had an adverse outcome and who we think might sue as a result. They may never do it, but what can you do when you think they might? First, as stated previously, NEVER improperly alter the medical record. You must resist the temptation to go back and add to the chart or "correct it". Instead, call your malpractice carrier and inform them that you had a case that you think might result in a lawsuit. Often the malpractice carrier will ask you to write a summary of the events which are separate from the chart that will then go to your malpractice carrier. In this, your recollection of the events is written down while they are fresh in your mind but are not included in the chart. Make sure no one else in your office can improperly alter the chart. You can create a separate locked drawer or cabinet in which to keep "high

risk charts" so that only you have access to make sure no improper changes to the chart are made or even worse the chart is lost.

Although we all may feel overwhelmed with paperwork, taking these few proactive steps can significantly reduce your medical liability. By just changing how we think about the medical record, we can help ourselves, our defense attorney and our patients.

REFERENCES

1. Davenport, John MD, JD "Documenting High-Risk Cases to Avoid Malpractice Liability", Family Practice Management, October 2000, Vol. 7, No. 9, pages 33-40.
2. Lee, Johnson JD "Malpractice Consult: What not to Document", Medical Economics, July 23, 2004.
3. Miller, Catherine RN,JD "Fixing the Medical Record After the Fact", Capsules, 1st Quarter

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LETTER FROM THE PRESIDENT

In the previous edition of *The Standard*, I mentioned softening market conditions and how we are beginning to see entries of new carriers into some states. These changes have continued and represent good news for physicians as a lessening of pricing disparity will occur.

Established companies are re-entering markets they previously exited serving to increase medical professional liability options for physicians. In addition, we are continuing to see a liberalization of underwriting with regards to specialties and territories.

Standard market carriers, having achieved rate relief (adjustments), are now, more often than not choosing to keep them flat and in some cases are even taking reductions. As insurance companies review their underwriting guidelines, a shift to a carefully screened book of business is allowing for more liberal pricing strategies. As a result of more aggressive underwriting and pricing strategies, some physicians who have had their coverage with surplus lines carriers are now moving to standard carriers. Soon, I believe we will begin to see a greater interest level in the quality of coverage, carrier financial stability, and claims handling. This truly represents a positive transition period.

With an ever-watchful eye on the market, Diederich Healthcare continues to focus on the needs of our physician clients with integrity. I am proud of our position in the marketplace and how we have been able to serve our physicians. We are here to make a difference.

In this 4th Quarter Edition of *The Standard*, we are pleased to have shed light on the process of underwriting, its role in pricing, as to well as to have presented information explaining how underwriters are not against us. As many physicians must concern themselves with protecting their assets, an article was provided to illustrate another perspective on, according to its author, what can be done to do so. Also included in this issue was an editorial on documentation that covered the need for better documentation, how to properly document work, and how doing so might save you in a malpractice lawsuit.

I hope you found this issue of *The Standard* an insightful resource to you and your colleagues.

Sincerely

Jeffrey M. Diederich
President & CEO

{ABOUT THE PUBLISHER}

JEFFREY M. DIEDERICH, A PROMINENT PHYSICIAN ADVOCATE AND PHILANTHROPIC-MINDED BUSINESS LEADER IS THE PRESIDENT & CHIEF EXECUTIVE OFFICER OF DIEDERICH HEALTHCARE, A PHYSICIAN ORIENTED AND SPECIALIZED DIVISION OF DIEDERICH INSURANCE AGENCY, LLC. DIEDERICH HEALTHCARE PROVIDES COMPREHENSIVE MEDICAL MALPRACTICE INSURANCE AND CONSULTING SERVICES TO OVER 13,000 HEALTHCARE PROVIDERS THROUGHOUT THE UNITED STATES, GUAM, AND PUERTO RICO. AS A LEADER IN THE INDUSTRY FOR ALMOST 40 YEARS THE COMPANY DELIVERS COST-EFFECTIVE QUALITY INSURANCE TO PHYSICIANS THROUGH ITS SIX U.S. REGIONAL OFFICES AND MULTIPLE SALES AND SERVICE CENTERS.



IN THE NEWS

- **FLORIDA** – *Medical Protective* lowers rates for Florida physicians.
- **MISSOURI** – Pursuant to House Bill 393 (2005), non-economic damages awarded for suits filed after August 28, 2005 will be limited to \$350,000. Cases filed before the August 28, 2005 deadline will be subject to an inflation-adjusted limit.
- **TEXAS** – The Texas Department of Insurance has made available a report “The Medical Liability Insurance Shopping Guide.”
- **WASHINGTON** – The Washington Department of Insurance has operated the Washington Casualty Company of Bellevue, Washington under a court-approved rehabilitation order for more than three years and now is proposing the sale of this company to FinCore, Inc. of Lansing, Michigan.
- **WISCONSIN** – *ProAssurance* closes on *PIC Wisconsin* effective August 1, 2006.



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