

Notes

MEDICAL MUTUAL
Liability Insurance Society of Maryland

FROM THE CHAIR OF THE BOARD

HEADLINES

General Assembly Ends 2004 Session with No Action on Malpractice Insurance Crisis

Despite the introduction by Governor Ehrlich of comprehensive tort reform legislation, the Senate and the House refused to offer the support needed to pass the bill.

Study Group Formed to Study Med-Mal Issue

The State Senate President has named a commission to conduct a broad study of medical malpractice issues. The House and the Governor may set up their own study groups. The Governor has also said that he may call lawmakers into a special session if the crisis worsens.

Huge Claim Payouts Continue; Rate Increase Expected for 2005

With claim payouts soaring 66% in 2003 and continuing at a high level in 2004, and with no tort reform passed by the legislature, MEDICAL MUTUAL fully expects to file for a rate increase for 2005.

SPECIAL ISSUE

May 2004

Dear MEDICAL MUTUAL Member:

“First, do no harm.”

This wise counsel has guided Physicians for thousands of years. Next year, or sooner, our legislature will reconvene in Annapolis to explore potential solutions to the ongoing malpractice insurance crisis in Maryland. We can only hope that our legislative leaders are similarly motivated and make sure the proposals they consider don't do more harm than good to the struggling health care system of this state.

The recent 2004 session of the General Assembly ended with no change in the way Maryland's judicial system handles medical professional liability claims brought against Doctors, hospitals and other health care providers. Despite an unprecedented effort by MEDICAL MUTUAL, MedChi, the Maryland Hospital Association and others to encourage the restoration of balance and fairness to our legal system, our legislators failed to produce meaningful results before the April 12 close of the session.

Prior to the 2004 session, a coalition called the Alliance to Preserve Access (APA) was created to develop and promote medical liability legal reform so as to restrain the burgeoning costs of the judicial system. In addition to MEDICAL MUTUAL, the APA membership included MedChi, the Maryland Hospital Association, the Maryland Nurses Association, various Physician specialty groups and other health care provider organizations. The APA hired Steven Larsen as its chairman. Mr. Larsen formerly served as the Maryland Insurance Commissioner and has considerable experience with the issues involved.

Governor Ehrlich was quick to understand the far-reaching ramifications of the crisis and to embrace the need for responsible solutions as a key part of his 2004 legislative agenda. Working with the Governor's office, the APA and its members assisted in the development of comprehensive tort reform legislation. The bill introduced by the Governor included a reduction in the cap on non-economic damages (commonly called “pain and suffering”), adjustments to the calculations of damages to prevent windfall recoveries, mandatory periodic payments of future damages, and an offer of judgment provision.

The lack of results was particularly disappointing considering the many hours and dollars expended by MEDICAL MUTUAL on this effort. We understand the extreme hardship insurance premium rate increases are placing on our Insureds. We made the campaign for improving the environment in which medical malpractice issues are resolved in Maryland a major priority and spent countless hours explaining these

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complex issues to our state leaders in Annapolis and individual legislators. It is obvious to all of us that claim payouts can not continue at the current level without causing tremendous harm to the Doctors of this state.

Current legal system poses significant problems for juries

Our current legal system usually requires that juries listen to and evaluate the testimony of at least two dueling expert witnesses. Extremely technical information is presented. Although knowledgeable observers may note the use of “junk science” and medically unsupported conclusions by plaintiff attorneys, it is not as obvious to the laymen on the jury. Who do they believe? Under such circumstances, juries can be hard pressed to sort through complex evidence and make the right decision. Sympathy for the injured, even if the injury is not the fault of the Doctor, is often a factor. Some jurors may blame an innocent Doctor just so that the Doctor’s insurance can take care of the financial needs of the injured. As a result, too many malpractice suits are driven by bad outcomes and not by bad medicine. In the short-term we need additional tort reform to fix this broken legal system. However, long-term, in the best interests of patients and the health care system, we need to expand the scope of the discussion and explore new alternatives.

The essential components of the Governor’s legislation were designed to rein in the rapidly rising costs of paying for the judicial system. This is crucial because of the twin pressures at work in the health care delivery system. Doctors, hospitals and nursing homes are caught between stagnant or declining reimbursements, caused by government and health care insurance company efforts to reduce their health care expenditures, and escalating liability insurance premiums, caused by an out-of-control legal system.

Unless changes are made, these economic pressures will continue to restrict the ability of Maryland citizens to access quality health care as more and more of the available health care dollars are shifted into the judicial system instead of providing for the care of patients. The APA and its members took this important message and lobbied extensively on behalf of these reforms.

Despite substantial lobbying efforts, it became apparent early in the session that the leadership of both the Senate and the House were not prepared to enact the tort reform legislation proposed by the Governor. Some members of the legislature did indicate to us they were aware that a significant problem exists in Maryland. However, political pressure and disinformation by the plaintiffs’ lawyers dissuaded them from voting for the Governor’s tort reform bill.

In March, the Senate Judicial Proceedings Committee rejected the Governor’s proposed legislation. The House did pass a so-called tort reform bill, but it did not contain any provisions that would have actually had any positive effect on the system. This legislation also died in the Senate.

What is likely to happen now? In the absence of effective tort and legal reform, skyrocketing claim payouts will continue to push medical malpractice insurance premiums for health care providers even higher and our state’s health care system will suffer. The crisis will intensify here in Maryland, as it has in dozens of other states across the country. Juries will continue to face confusing choices caused by the presentation of unsupported and questionable “expert” opinions by plaintiff attorneys eager to maintain a system where a huge percentage of the claim payouts typically go directly into the pockets of the plaintiff attorneys.

As total claim payouts by malpractice insurers rise, Doctors will have to pay more to cover their professional liability exposure. This will cause even more Doctors to choose premature retirement, to move away from high-risk, high-insurance-cost specialties, or to relocate their practice to locations with a better legal environment. Patients will no longer have access to the best care.

Because of this, citizens will undoubtedly press their legislators for answers. It is likely that multiple task forces will be formed to look into the issue. State Senate President Thomas Mike Miller has already named a special commission of a dozen senators to conduct a broad study and draft legislation for the next session. Governor Ehrlich and House Speaker Michael E. Busch may form their own study groups. A spokesman for the Governor says that he might call the Assembly back into a special session if the malpractice insurance crisis worsens.

Last year, MEDICAL MUTUAL’s claim payouts and defense costs soared from \$56 million to over \$93 million. Based on a similarly high level of payouts that continued into the first quarter of this year, MEDICAL MUTUAL fully expects to have to file an additional rate increase request for 2005 to the Maryland Insurance Administration. The primary cause of the crisis has been a dramatic increase in the average indemnity payment made to close claims. These increased payouts, driven by a significant increase in multi-million dollar verdicts, make this rate increase inevitable.

We believe this state’s policymakers need to implement radical change in the manner used to resolve disputes between Doctors and patients, or they need to determine how to fund the current system in a manner other than by collecting ever-increasing payments for losses from Doctors. Without such changes, all of us in Maryland will be confronted with a decrease in the availability and quality of health care as more and more funds are diverted to pay for the medical liability system.

Now is the time for action. Your support is absolutely critical in the effort to find the best solutions to this crisis. Please see the article on the back page of this newsletter listing ways you can get involved.

Sincerely,

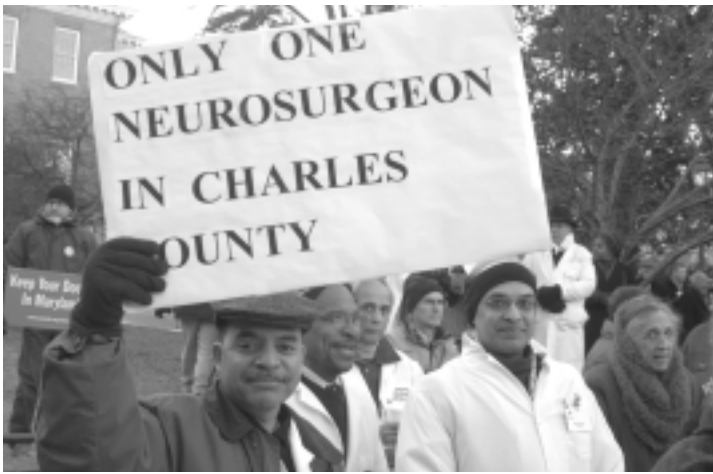


D. Ted Lewers, M.D.
Chair of the Board

Too often, malpractice suits are driven by bad outcomes and not bad medicine

“Although cerebral palsy, especially in cases related to birth asphyxia, is not known to be preventable by means now available, lawsuits brought against obstetricians for not preventing its development are a major contributor to the high cost of malpractice insurance and the disruptive consequences of the climate of litigation. The courts often permit unsupported ‘expert’ opinion to supersede the consistent evidence of randomized, clinical trials, meta-analyses, case-control studies, and population-based time trends.”

“Can We Prevent Cerebral Palsy?”
New England Journal of Medicine
10/30/03



Doctors rally for tort reform in Annapolis.

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The Malpractice Insurance Crisis

What can you do?

We need your help to fix the broken legal system and prevent the malpractice insurance crisis from undermining the health care delivery system in this state.

- Stay informed on the issues. The MedChi and the AMA have sections on their web sites devoted to the crisis.
- If you are not already a member, consider joining the MedChi or a specialty association and getting behind their efforts to promote effective tort reform.
- Let your state legislator know that Maryland needs to fix its broken legal system. And we need action NOW!

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