

# Notes

**MEDICAL MUTUAL**  
*Liability Insurance Society of Maryland*

## FROM THE CHAIR OF THE BOARD

### HEADLINES

#### **Malpractice Insurance Crisis Continues; MEDICAL MUTUAL Announces 2005 Rate Actions**

With claims payouts continuing at a high level and in the absence of meaningful tort reform by the Maryland General Assembly, MEDICAL MUTUAL is forced to take significant rate actions for next year. A request for a 41% rate increase on 2005 policy renewals has been filed with the Maryland Insurance Administration. In addition, the huge jump in claim payouts has eliminated the funding for a 2005 dividend credit.

#### **“Needs Assessment Survey” on Web Site**

Risk Management Department adds “Needs Assessment Survey” to web site to gather feedback on educational needs of our Policyholders.

#### **Litigation Survival Kit in Production for 2004**

MEDICAL MUTUAL is creating a Litigation Survival Kit to assist our Insureds with depositions, trial testimony, coping with the stress of litigation and many other claim-related areas.

July 2004

Dear MEDICAL MUTUAL Member:

*This is an important issue of Notes. Please review it carefully.*

The current medical professional liability environment in Maryland is extremely difficult for Physicians. Due to out-of-control jury awards, claim severity skyrocketed in 2003 resulting in a large rate increase for 2004. This higher level of claim payouts is continuing in 2004, regrettably, forcing MEDICAL MUTUAL to file a very significant rate increase request for 2005 with the Maryland Insurance Administration. In addition, the deterioration in claims experience also eliminates the ability to provide a dividend credit to Policyholders for 2005. The dividend credit is a byproduct of better than expected claims results from past years. The much worse than expected claims experience for 2003 and projected for 2004 means that the dollars that could have been distributed as dividend credits are being used to pay claims.

This rate increase is particularly painful. Unquestionably, Doctors are facing pressures from all sides. Declining or flat reimbursements, increased workloads, higher malpractice insurance premiums and other factors are taking a serious toll on health care providers and the health care system of our state. As a mutual insurance company we understand the hardship the boost in rates will cause. Unfortunately, these hard decisions are absolutely necessary in order to keep your insurance company financially viable for the thousands of active and retired Policyholders.

To help you understand the complexities of the malpractice insurance crisis, we have produced an expanded version of the *Notes* newsletter. If you need additional information about the crisis and how it is damaging our health care system, please visit the MedChi ([www.medchi.org](http://www.medchi.org)) or AMA ([www.ama-assn.org](http://www.ama-assn.org)) web sites and follow the links to “Liability Reform.”

During these challenging times we truly appreciate your understanding and support. For almost 30 years, as other insurers have come and gone, MEDICAL MUTUAL has been here to defend good medicine and protect your practice. Together, we can stand strong and press our state legislators for meaningful solutions to this state’s legal system.

Sincerely,



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

### Inside this Issue...

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## Deteriorating Claim Environment Causes 2005 Rate Increase Request

The relentless pressure caused by soaring claim payouts has forced MEDICAL MUTUAL to file a request for a 41% rate increase with the Maryland Insurance Administration. This increase will be effective with your 1/1/05 to 1/1/06 renewal policy.

### The National Impact of the Malpractice Insurance Crisis

"From 2000 to 2003, the premiums for a typical obstetrician-gynecologist more than doubled in Allegheny County, more than tripled in Lackawanna County, and almost doubled in Philadelphia County."

*Pennsylvania Medical Society*

"The Journal Record reports that Medical Protective Insurance Co. has requested and received approval for a 105 percent rate increase for their medical liability insurance premiums. The company is the third largest writer of malpractice insurance in the state."

*The Journal Record, Oklahoma newspaper*

"Physicians in the Bay State face their fourth consecutive double-digit increase in professional liability premiums on July 1."

*Massachusetts Medical Society*

"South Carolina physicians will start paying about 27 percent more for malpractice insurance in June. That compares to a 24 percent increase last year, says the S.C. Medical Association, a nonprofit group representing 6,000 doctors."

*The State, South Carolina newspaper*

"GE Medical Protective is seeking state regulator's approval for an 81 percent average increase in base rates for professional liability insurance. In addition, the company may discontinue writing professional liability coverage for Connecticut physicians by the end of the year."

*Connecticut Insurance Department*

While the overall rate increase is for 41%, it is not uniform over all policies. During the rate review it became necessary to make some changes to certain classes and territories due to the current volatile loss situation. Consequently, while most Insureds will see increases around 41%, a few Doctors will see increases that differ significantly. Going forward, we have combined certain primary care specialty classes. This change will create an increase to a few specialties like Psychiatry and Dermatology that could exceed 130% depending on practice location. The ER rate will also be increasing significantly beyond the overall increase to as much as 65% depending on practice location.

In addition to the 2005 rate increase, the inability to provide a dividend, which approximately three-fourths of our Doctors qualified for in 2004, will only add to the percentage increase of the price Doctors will actually pay. The 2003 dividend was 14%. The loss of this dividend for next year, combined with the 41% rate increase, will result in a 64% increase in 2005 over the amount actually paid in 2004. In the same manner, after the loss of the dividend, those few specialties receiving a rate increase in the range of 130% would actually pay approximately 170% more in 2005 than they did in 2004.

We regret the impact this increase will have on your practice, but the huge jump in claim payout leaves no other option at this time. MEDICAL MUTUAL is required by state statute to price its insurance coverage at a level justified to cover claim payouts and to keep the company financially viable for the long term protection of its active and retired Physician Policyholders.

The rate increases by MEDICAL MUTUAL reflect similar large increases already experienced by hospitals and nursing homes in Maryland, and by Physician policyholders of other insurance companies here and in other states. In the past two years, Maryland hospitals saw an average increase of 55 percent. Maryland nursing homes saw their malpractice insurance premiums increase 400% over the past four years.

The underlying cause of these huge jumps in medical liability insurance premiums, both in Maryland and in other states, is the surge in jury awards and out-of-court settlements. Although the claim frequency of our Insureds remains flat, the claim severity (*see Graphic 1*) began climbing significantly in 2003. After increasing only 2% from 2001 to 2002, the average paid

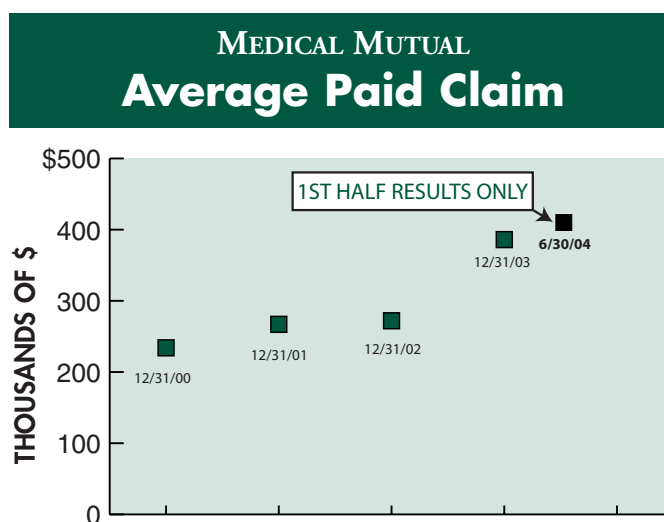
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claim experienced by MEDICAL MUTUAL spiked almost 42% from 2002 to 2003 and is continuing to climb in 2004. This pattern of escalating claim severity mirrors the experience of Maryland hospitals and institutions as well as many other medical malpractice insurance companies across the country, although it occurred in most other states prior to Maryland. This problem is compounded by the percent of claims closed with paid indemnity. Four years ago, MEDICAL MUTUAL paid indemnity on only one out of four claims. This has since increased to one out of three claims as of 2003.

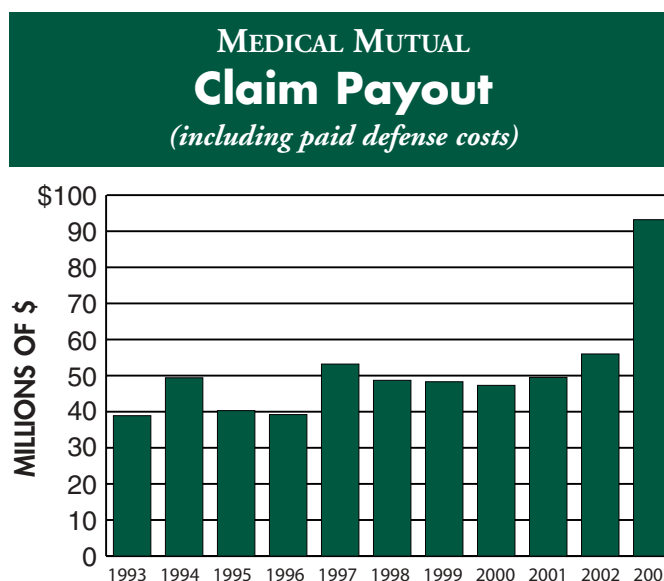
The result of the larger number of claims with paid indemnity, and the increase in the average amount paid per claim, is that MEDICAL MUTUAL's total claims payout, including paid defense costs, soared from \$56 million in 2002 to over \$93 million in 2003. This is a dramatic increase of more than 66% in one year (see *Graphic 2*). Based on the numbers for the first quarter of this year, we expect 2004 to end with a similarly high level of claim payouts.

In response to this crisis, MEDICAL MUTUAL joined with MedChi, the Maryland Hospital Association, the Maryland Nurses Association and other groups and formed the Alliance to Preserve Access (APA).<sup>\*</sup> The coalition turned to Steven Larsen, former Maryland Insurance Commissioner, to serve as the APA chairman. The APA worked with the Governor's office to help develop comprehensive tort reform legislation, and then, along with its members, lobbied extensively on behalf of these reforms. Despite this unprecedented effort by MEDICAL MUTUAL, MedChi, APA and other member organizations, and support by Governor Ehrlich, our legislators failed to produce meaningful results before the end of the session. Much of the stalemate in Annapolis is due to the determined efforts of the plaintiff attorneys, who fiercely oppose any attempts to change a legal system from which they benefit economically. The only solutions they have put forth are to suggest more "creative" ways for Doctors to continue to absorb ever-increasing litigation costs. Their ideas include huge deductibles and actuarially unsupported surcharges to specialties involving lower risk activities.

The coming months will bring even more turmoil and problems to the Maryland health care system. It is possible a special session of the legislature will be called to address this crisis. The Governor and the State Senate President have already named commissions to study the situation and draft potential legislation. In preparation, MEDICAL MUTUAL is intensifying its efforts to meet with our state's leaders and advocate for comprehensive tort reform or for state-funded rate relief for Maryland Physicians.



Graphic 1



Graphic 2

<sup>\*</sup> MEDICAL MUTUAL reviewed the 2004 session of the Maryland General Assembly and the efforts of the APA to develop and advance medical liability tort reform in a special issue of our *Notes* newsletter. This issue was mailed to Policyholders in May. If you would like to receive an additional copy, please contact our Customer Service department at 410-785-0050 or 800-492-0193. A digital version of the newsletter is also available and may be viewed online at [www.weinsuredocs.com](http://www.weinsuredocs.com).

## What is the cause of the malpractice insurance crisis and the resulting premium rate increases?

A comprehensive report on medical malpractice insurance prepared for Congress by the United States General Accounting Office in June 2003 states that “increased losses on claims are the primary contributor to higher medical malpractice premium rates.” MEDICAL MUTUAL’s data certainly shows that this is true in Maryland.



## Why are Maryland Physicians facing large rate increases for 2004 and 2005 when a number of other states are seeing smaller premium increases for this time period?

In short, the malpractice insurance crisis arrived in Maryland later than in some other areas. The cover story of the July 9, 2001 *Medical Economics* magazine said: “Malpractice: Why premiums are soaring again.” The deteriorating claim environment experienced in many states from 2000–2002 caused insurance carriers in those states to raise their rates repeatedly at that time to catch up with huge jumps in jury verdicts and settlements. Many of our neighboring states experienced rate level increases well in excess of 100% over just a few years. The AMA named 12 states in crisis due to this situation in 2002. Meanwhile, while other carriers were raising rates and publications were running story after story on this national crisis, the relatively stable trend of claim payouts in Maryland led MEDICAL MUTUAL to implement no rate increase for 2002 policy renewals. This all changed just a short time later when the crisis arrived in our state

with a vengeance. In just 12 months our claim payouts, including paid defense costs, skyrocketed from \$56 million to over \$93 million. The average paid claim that was \$267,000 in 2001 and \$272,000 in 2002, became \$386,000 in 2003. In order for the company to remain financially viable and for liability insurance to remain available for Maryland doctors, MEDICAL MUTUAL is now being forced to take drastic rate actions similar to those previously taken by many other insurers in the industry.

## What is MEDICAL MUTUAL doing to address this crisis?

MEDICAL MUTUAL has been a leader in Annapolis in the struggle for legislation to fix our legal system. Together with MedChi, the Maryland Hospital Association, Physician specialty groups and others, we worked tirelessly during the last legislative session to develop and promote medical liability legal reform. Despite these efforts, and the support of Governor Ehrlich, the General Assembly failed to pass any legislation to produce meaningful results. The battle continues, and will in fact intensify, when the legislature reconvenes and must once again grapple for solutions to this ongoing crisis. In the meantime, MEDICAL MUTUAL will continue its thorough and aggressive defense of good medicine and will fight as an insurer to remain financially viable as the long-term defender of Maryland Physicians.

## High-Risk Specialties Take the Brunt of the Malpractice Insurance Crisis

Three of the specialties hardest hit by the malpractice insurance crisis are obstetrics, neurosurgery and emergency care. The American College of Obstetrics and Gynecology says 76% of its members have been sued at least once. The American Association of Neurological Surgeons reports that in a recent survey 43% of neurosurgeons say they are no longer performing high risk surgery due to a lack of coverage. The AMA says 45% of hospitals reported that the professional liability crisis has resulted in the loss of physicians and/or reduced coverage in emergency departments.

Unfortunately, despite the practice of good medicine in many instances, these high risk specialties attract considerable interest from plaintiff attorneys because of the big dollars associated with these types of claims. Thus, when claims payouts in these areas do occur, they are usually higher than the amounts paid for claims in other specialties. The frequency and severity of claims within these specialties, and the correspondingly high price of professional liability insurance, is deterring medical school graduates from pursuing careers in these vital areas. None of the graduates of the University of Maryland School of Medicine, for example, opted for a residency in obstetrics last year.

The effects of this situation extend far beyond the Physicians and Surgeons involved. Basic patient access to critical care is being threatened. Hospitals are shutting down emergency rooms and obstetrical units. In some areas, severely injured trauma victims must be transported long distances to available neurosurgeons.

There is no easy solution to the problem. Plaintiff lawyer proposals to subsidize these specialties by raising the rates of other Insureds simply shift the burden to Physicians who are already reeling from the effect of premium increases on their own practices. In order to address the needs of legitimate malpractice victims, as well as to preserve patient access to emergency care, neurosurgery and obstetrics, the government needs to radically change the way malpractice claims are resolved, or it must fund the system in a manner other than collecting ever-higher premiums from Physicians. The alternative is today's crisis, one that involves the absence of quality health care in critically-needed areas.



### Observations on the malpractice insurance crisis by the American College of Obstetricians and Gynecologists

"Obstetrics-gynecology - considered a 'high risk' specialty by insurers - is always one of the hardest-hit professions in times of liability insurance problems. The number of lawsuits against all physicians has been rising over the past 30 years in an increasingly litigious climate, and ob-gyns remain at the top of the list of doctors affected by this trend."

About 15 percent of 2,185 ACOG members surveyed nationwide last year stopped practicing obstetrics because of malpractice litigation risks - 11 percent gave up delivering babies due to medical liability insurance costs.

More than 76 percent of ACOG members surveyed had a medical malpractice claim filed against them - half of them sued within the last four years.

## Profile of MEDICAL MUTUAL

In the past year, MEDICAL MUTUAL has added almost 1,400 Policyholders. Most of this total were Doctors in need of medical professional liability coverage after their insurers left Maryland due to the ongoing malpractice insurance crisis. To assist these Physicians who may not be as familiar with our company, we offer this brief corporate profile.



**History:** MEDICAL MUTUAL Liability Insurance Society of Maryland was created in 1975 by the Maryland legislature in response to the disappearance in Maryland of the commercial medical malpractice market for Physicians. MEDICAL MUTUAL was established as a private insurance entity and directed to operate for the most part as any other licensed mutual domestic carrier. The state statute creating the company specified the composition of the Board of Directors and its membership in the Joint Insurance Association and the Property and Casualty Insurance Guaranty Corporation. During the years after its creation, MEDICAL MUTUAL became the primary medical malpractice carrier for Maryland Physicians.

**Philosophy:** As a Physician-owned and directed insurance company, MEDICAL MUTUAL is dedicated to the long-term and aggressive defense of your practice. We are, in fact, the only medical professional liability insurer continuously protecting Maryland Physicians since 1975 and we have unmatched experience in the Maryland legislative and judicial arenas. In addition to

a Physician as our Chair of the Board, there are MMLIS-insured, Maryland Doctors making decisions on our Board of Directors and offering important guidance on our Claims, Risk Management and Underwriting Advisory Committees.

**Structure:** MEDICAL MUTUAL is a mutual insurance company and the owners are its Policyholders, the Physicians of Maryland. Since there is no stock, the company is not operated to return quarterly profits to stockholders. Instead, dividends are distributed to Policyholders in the form of renewal credits when and if better than expected claim results occur.

**Financials:** MEDICAL MUTUAL has a long-term history of careful, fiscally-responsible management and currently has a rating of "A-" (Excellent) from A.M. Best, the world's oldest and most authoritative source of insurance company ratings.

## News • Information • Updates

### 2004 Risk Management Programs Well Received

MEDICAL MUTUAL's 2004 Risk Management program, Protecting Your Practice, has been well received by Insureds. As of June 15, more than 1,600 Physicians and 200 medical office staff have attended one of the seminars. The "Communication--Plus" seminar, in particular, has proven to be extremely popular. If you have not yet attended one of our seminars, please register now to ensure you get the topic, location and date of your choosing. Remember, Physicians can earn CME credits and a 5% premium discount on 2005 renewal policies by participating in one of the valuable Physician programs. For your convenience, you can register via mail or online at [www.weinsuredocs.com](http://www.weinsuredocs.com).



### Risk Management Program "Needs Assessment Survey" on Web

Let us know how we can better meet your educational needs! MEDICAL MUTUAL's Risk Management Department is offering a needs assessment survey on our web site. This survey asks you to name the "top risk management concerns that you would like to see addressed through an educational activity" along with related questions in a brief, five-question format. Please take a few moments to give us your feedback so that we can design even better educational programs for you and your medical office staff.



### A.M. Best Reaffirms MEDICAL MUTUAL Rating

The A.M. Best Company, the nation's leading premier independent rating agency, has reaffirmed its "A-" (Excellent) rating for MEDICAL MUTUAL. This rating is given to companies that have an excellent ability to meet their ongoing obligations to policyholders.



### Majority of Policyholders Take Part in Reapplication Process

MEDICAL MUTUAL uses a reapplication process in order to help us update the underwriting records of our policyholders. If you were involved this year in this time-consuming but necessary process, please accept our sincere thanks for your timely cooperation.



### Litigation Survival Kit in Production

MEDICAL MUTUAL is producing a "Litigation Survival Kit" for distribution to Policyholders who have received a claim. This comprehensive kit will contain a variety of informative articles to explain the technical aspects of malpractice litigation in Maryland, as well as offering practical, how-to information to assist you in dealing with depositions, testifying at trial, coping with the stress of being sued and much more. It is expected that the Litigation Survival Kit will enter use in the Fall of 2004.



# New Risk Management Seminar Added for 2004

MEDICAL MUTUAL is pleased to offer a new three-hour seminar for all Physicians. The Lifewings Risk Management Seminar will be presented by Crew Training International, one of the nation's leading aviation training companies.

This special educational program provides aviation principles to effect behavioral change in high-stress medical situations where the use of teamwork is essential. The focus of this dynamic and interactive seminar is using teamwork and effective communication to catch lapses and slips before they become fatal mistakes.



The Lifewings seminar will be held on Thursday, October 7, 2004 at the Cherry Hill Park Conference Center in College Park, Maryland. Registration and a light dinner will be held from 5:30 until 6 p.m.

The program will run from 6–9 p.m. The fee is \$75 per person and includes a light dinner. If you have already attended a MEDICAL MUTUAL risk management seminar in 2004 the price for this additional seminar is only \$25! Participants will earn 3.0 CME credits. This seminar will also satisfy the requirement to obtain the annual 5% risk management discount on your renewal policy.

*(Note: Only one Risk Management discount can be earned each year.)*

**For more information or to register, please visit our web site at [www.weinsuredocs.com](http://www.weinsuredocs.com)**

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