

## Reminders for Physicians in the Event of a Lawsuit or Claim

Being the target of a claim or lawsuit can be a life-altering experience. In the event that any legal action is taken against you, there are a few immediate steps that every Insured should keep in mind to help yourself and MEDICAL MUTUAL as we prepare to defend you.

- Report any incidents to MEDICAL MUTUAL immediately by calling our toll free number at 800-492-0193 and informing the operator that you are an insured Physician reporting a new case. If you have an online account with MEDICAL MUTUAL, you can report your claim online by visiting [www.weinsuredocs.com](http://www.weinsuredocs.com).
- Do not ignore any papers that you receive pertaining to

a lawsuit. Time is of the essence. Forward all materials to MEDICAL MUTUAL as soon as possible.

- Do not talk about the case with anyone until you have consulted with your attorney and claims representative.
- Do not attempt to contact the patient filing the lawsuit in any way.
- Do not alter the patient's medical record in any way.

Following these few tips will help allow our Claims staff to hold initial meetings and investigations with fewer undue disruptions to your practice and personal life.

# Notes

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

## FROM THE CHAIR OF THE BOARD

July 2009  
ISSUE

- Judge Rules Maryland Damages Cap Does Not Apply
- Changes Made to Individual Experience Rating Plan
- Board Member Thomas J. Rohe III Retires
- Important Reminders in the Event of a Claim

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# Notes

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## FROM THE CHAIR OF THE BOARD

### HEADLINES

#### Circuit Judge Rules Maryland Damages Cap Does Not Apply

Ruling says specific language of law applies non-economic damages cap only to arbitration cases.

#### Modifications Made to Individual Experience Rating Plan

Changes to the program that reviews Policyholders' claims experiences will be effective 1/1/10.

#### 2008 Annual Report Now Available

The MEDICAL MUTUAL 2008 annual report has been mailed to all Insureds.

#### Risk Management Program Reminder

Learn how to minimize your liability risk and save 5% on your renewal policy.

#### Original Board Member Announces Retirement

Thomas J. Rohe III, member of the MEDICAL MUTUAL Board of Directors since 1975, has retired.

#### Important Reminders in the Event of a Claim

Make sure you know the immediate steps to be taken if you are the target of a claim or lawsuit.

July 2009

Dear MEDICAL MUTUAL Member:

In a recent and unexpected turn of events, a circuit court judge in Rockville refused to apply the state's longstanding cap on non-economic damages in a malpractice lawsuit involving a MEDICAL MUTUAL insured Physician.


The judge ruled that state law only allows the non-economic damages cap to be applied in cases that have gone through arbitration via the state's existing arbitration process.

This ruling could have a major impact on all Maryland Doctors, hospitals and their malpractice insurance companies because, historically, claims rarely go through the arbitration process. In fact, since the law allows the plaintiff and the defendant to unilaterally decide whether to use the arbitration process, the judge's ruling enables the plaintiff to skirt the cap on non-economic damages by avoiding arbitration.

This outcome is clearly contrary to the intent of the General Assembly when it acted to help Doctors by strengthening the cap and stabilizing malpractice insurance premiums in an effort to maintain citizen access to health care. However, as a result of this ruling, claims costs will probably increase without the protection of a non-economic damages cap. And higher claims costs will ultimately lead to higher malpractice insurance premiums. Unfortunately, this can result in reduced access to quality health care for patients as Doctors may be forced to flee to more stable states; retire and close their practices; change specialties; avoid risky procedures, and take similar steps to limit their liability risks and insurance premiums as they seek ways to cope with a deteriorating legal environment.

Appeals of the judge's ruling have been filed. Because of the broad implications for Maryland citizens, health care providers and insurers, the appeal likely will attract considerable interest and support from other affected parties. Additional information on the ruling and related issues are included in this newsletter. MEDICAL MUTUAL will keep you informed as the situation develops.

Sincerely,

  
George S. Malouf, Jr., M.D.  
Chair of the Board

## Judge Rules Maryland Damages Cap Does Not Apply

A judge refused to apply the state's longstanding cap on non-economic damages in a medical liability case that was tried in the Circuit Court for Montgomery County. The April 20 decision by Circuit Court Judge John W. Debelius III could have a major impact on Maryland citizens, Physicians, hospitals and their insurers. Elimination of the non-economic damages cap, currently set at \$665,000, creates the environment for higher jury awards and higher professional liability insurance premiums for health care providers. In addition, the loss of the cap could exacerbate the growing shortage of Doctors in Maryland, especially in high-risk specialties and rural areas, reducing citizen access to quality health care.

Judge Debelius decided that the plain language of the law only provides a non-economic damages cap to claims that go through the state's existing arbitration process at the Health Care Alternative Dispute Resolutions Office (HCADRO). This has the practical effect of taking away from health care providers the limited protection provided by the non-economic damages cap. The law allows the plaintiff, the defendant or both parties to opt out of HCADRO. Consequently, plaintiff attorneys can unilaterally opt out of arbitration to avoid the non-economic damages cap and proceed directly to the circuit court with no cap limitation.

The judge explained the Maryland General Assembly created this situation when it revised the damages cap during the 2004 Special Session to modify application of the cap in certain cases involving multiple plaintiffs. That legislative change reduced the amount that could be recovered from health care providers in those types of cases. However, the judge's ruling did not just void changes made in the Special Session. It affects the application of the cap in **all** cases. Taking away the non-economic damages cap means claims costs will likely increase. Not applying the cap to the lawsuit at issue resulted in a judgment that was more than \$2,000,000 higher than what the cap would allow. It is recognized that higher claims costs result in higher malpractice insurance premiums.

Maryland has had a cap on non-economic damages for more than two decades. In the 2004 Special Session, the Maryland General Assembly very clearly indicated its intention to maintain the non-economic damages cap in the state and, in fact, made it stronger in certain cases.

This case has been appealed to the Maryland Court of Special Appeals. However, both the defendant and the plaintiff have asked that the case be moved to the Maryland Court of Appeals for ultimate resolution. Because of the broad implications for other health care providers and organizations, MEDICAL MUTUAL anticipates "friend of the court" briefs will be filed in support of our position.

### Questions & Answers on the Judge's Ruling

#### **I have a suit coming to trial soon. How does this ruling affect me?**

This ruling has the potential to affect all claims that come to trial until such time as the judge's decision is overruled by the Appeals Courts or the General Assembly addresses the issue. Until and unless changes are made, judges are going to be asked by plaintiffs to follow Judge Debelius' reasoning.

#### **Will my policy premium go up as a result of this ruling?**

This ruling has no immediate impact on your current policy premium. However, the loss of the cap on non-economic damages will likely increase claims payouts. If the judge's ruling is not overturned on appeal, or the law corrected through legislation by the Maryland General Assembly, the expectation is that payouts will increase and so will the premiums that are needed to pay for claims.

## Changes Made to Individual Experience Rating Plan

MEDICAL MUTUAL has made some minor modifications to our Individual Experience Rating Plan. This loss exposure evaluation program reviews the claims experience of Insureds to determine the appropriate discount or surcharge to be applied to each policy. These changes are meant to improve the overall functionality of the program and make it more beneficial for our Policyholders. The changes include:

- Physicians who are claims free for the most recent five-year period will be eligible for a 15% up-front claims-free credit. The two-year "waiting period" requirement will be eliminated. This claims-free credit is not available to Physicians receiving a "New Doctor" discount.
- Two new levels have been added to the loss exposure evaluation program. A 7.5% discount level was added between the 15% claims-free and no discount/surcharge. This new 7.5% discount is available to Physicians with limited claims experience. Additionally, a 15% surcharge level was added between no discount/surcharge and a 25% surcharge. This will ease the transition for Physicians who experience claims activity.

The effect of these modifications is overwhelmingly positive for MEDICAL MUTUAL Policyholders. As a result of our new plan, most Insureds will have some level of claims-free discount or experience no surcharge whatsoever. The new plan received approval from the Maryland Insurance Administration on 5/11/09 and will be effective as of 1/1/10.

## 2008 Annual Report Now Available

The MEDICAL MUTUAL 2008 annual report, "*Making a Difference for Maryland Doctors*," is currently available. In addition to presenting the company's condensed financial statements for 2008, the report highlights MEDICAL MUTUAL's more than 30-year commitment to protecting and defending the Doctors of Maryland. A copy of the annual report has been mailed to all MEDICAL MUTUAL Policyholders. A digital version (PDF format) is also available on our web site, [www.weinsuredocs.com](http://www.weinsuredocs.com).

## Risk Management Program Reminder

There is still time for you to register for one of our informative and instructive risk management educational programs available in 2009. By attending one of these programs, MEDICAL MUTUAL Insureds can earn CME credits and a 5% discount on their MEDICAL MUTUAL 2010 professional liability policy renewal. Six different topics are offered, including: "Medical-Legal FAQs II: Dealing with the Difficult Patient," "Communication and Teamwork – What's New?," "Dealing with MRSA," "Recognizing and Treating Allergic Disease in Pediatric Practice," "Intraoperative Neuromonitoring," and "Specialty Specifics." If you haven't done so already, please register today to ensure that you get the topics, date and location of your choice. Don't miss this chance to better manage and reduce your liability risk.

## Board Member Thomas J. Rohe III Retires

Thomas J. Rohe III has retired from the MEDICAL MUTUAL Board of Directors after 34 years of service to the Company. The last of the original Board members, Mr. Rohe attended the first Board of Directors meeting on May 19, 1975 and was a consistent and lasting presence on the Board until his recent retirement. MEDICAL MUTUAL wishes to recognize Mr. Rohe for his valuable contributions to the Company as a member of the Board of Directors and for his tireless dedication to the Physicians of Maryland.