

## MEDICAL MUTUAL Celebrates 35 Years of Protecting Maryland Doctors

This year is an important milestone for MEDICAL MUTUAL, as it marks the company's 35th anniversary. For over three decades, MEDICAL MUTUAL has been the only professional liability insurer operating continuously in Maryland. Created by the state in 1975 as a response to a growing insurance availability crisis in Maryland, MEDICAL MUTUAL has become one of the oldest and most respected Doctor-owned and operated liability insurance companies in the country.

MEDICAL MUTUAL will continue to support Maryland Physicians, offering comprehensive and affordable coverage, personalized service and an unmatched commitment to the long-term defense of our Insureds' professional reputations and careers.



# Notes

**MEDICAL MUTUAL**  
Liability Insurance Society of Maryland

## FROM THE CHAIR OF THE BOARD

**February 2010  
ISSUE**

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# Notes

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## FROM THE CHAIR OF THE BOARD

**February 2010**

**Dear MEDICAL MUTUAL Member:**

A sure sign of a healthy organization is its ability to carry out an orderly and uneventful leadership transition. That's what MEDICAL MUTUAL is doing this month as David L. Murray, our President and Chief Executive Officer for the past 21 years, retires. David's successor, Jeffrey M. Poole, steps up after serving for the past 10 years as MEDICAL MUTUAL's Executive Vice President/Chief Operating Officer. We've been very pleased at how smoothly this changeover is proceeding.

As you know, David Murray played a vital role in building MEDICAL MUTUAL into one of the country's leading Doctor-owned and Doctor-directed medical professional liability carriers. We are proud of the aggressive way we defend our Policyholders, the efficient service we deliver and our sound financial position. So for all of us, I want to thank David for his strong leadership and tireless effort since 1988 on behalf of MEDICAL MUTUAL and the Physicians of Maryland.

Our new President and Chief Executive Officer, Jeff Poole, knows MEDICAL MUTUAL intimately. As COO, he runs the company's day-to-day operations and is responsible for our enhanced efficiency. I hope you take the opportunity to meet Jeff in the coming year so you can understand why the Board of Directors expects this leadership transition to be seamless to our Policyholders.

Although this is the "big news" in this newsletter, it is not the only noteworthy development since our last report to our Policyholders. You'll find a timely update on a court ruling of enormous importance to Maryland Doctors. Nearly a year ago, a Montgomery County Circuit Court judge refused to apply the state's longstanding cap on non-economic damages in a medical liability case. This decision was appealed. In early January, the state's highest court announced its unanimous opinion. Please take the time to read this important article and others in the current issue of *Notes from the Chair*.

Sincerely,

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

## HEADLINES

### **President and CEO Announces Retirement**

A special message from David Murray, recently retired President and CEO.

### **Jeff Poole Named New President and CEO**

Former Executive Vice President and COO has been appointed as new President and CEO.

### **Risk Management Education Program Now Available**

Reduce your liability risk and earn a premium discount with new program topics for 2010.

### **Damages Cap Ruling Favors MD Physicians**

Maryland Court of Appeals rules that damages cap applies to all health care claims.

### **MEDICAL MUTUAL Celebrates Anniversary**

2010 marks 35 years of service and support for Maryland Physicians.

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## Jeff Poole Named President and CEO of MEDICAL MUTUAL of Maryland

MEDICAL MUTUAL's Board of Directors has chosen Jeffrey M. Poole, M.B.A., C.P.C.U., as the company's new President and Chief Executive Officer. Previously, Jeff was MEDICAL MUTUAL's Executive Vice President and Chief Operating Officer.

Jeff came to MEDICAL MUTUAL in 1990 from Mutual Assurance (now ProAssurance) of Birmingham, Alabama, one of the nation's largest malpractice insurance carriers. He is a graduate of Auburn University and received his M.B.A. degree from the University of Baltimore. He holds the Chartered Property/Casualty Underwriter designation.



*"MEDICAL MUTUAL has a history of superior service to our Members. My job is to build on that legacy as we continue to focus on serving the Doctors of Maryland."*

## A Message from David Murray, Former President and CEO



For people who love what they do, retirement is no easy decision. Yet each person tends to know when the time is right. For me, that time is now.

I spent over 21 years at MEDICAL MUTUAL and had the privilege of working with some extraordinarily gifted Physicians and business leaders, talented managers and dedicated employees. I made many, many friends in the medical, insurance, legal and political worlds. It's been a wonderful journey.

Naturally, there were plenty of challenges along the way, but through them all the company emerged stronger and even more focused on its core mission of serving the Doctors of Maryland. I'm proud of my contributions and the many successes of MEDICAL MUTUAL. Please accept my sincere thanks for the support I received from everyone who made this possible.

Now I'm looking forward to new and different challenges. With Jeff Poole taking over the reins of MEDICAL MUTUAL, my mind is at ease. I know I am leaving behind a stronger company than the one I joined in 1988. I have full confidence Jeff and his excellent team of managers and employees will make the company even better in the years ahead. Best wishes and, once again, thank you.

## Risk Management Education Program Now Available

The 2010 risk management program, *Risk Management for the Unpredictable*, is now available for MEDICAL MUTUAL Physicians and their office staff members. Physicians can choose between two new topics or take part in the popular "Specialty Specifics" series, with updated case studies in seven different disciplines. Also new for 2010 is a take-home study course, "Case In Point." Office staff members have a new program, "ICD-10 Coding – What's New?" that examines the transition to new coding guidelines under ICD-10. By attending a Physician education program, MEDICAL MUTUAL Insureds can earn CME credits and a 5% discount on their 2011 professional liability policy renewal. If you haven't done so already, register today to ensure that you get the date and location of your choice. Don't miss your chance to better manage and reduce your liability risk. For more information, visit our web site at [www.weinsuredocs.com](http://www.weinsuredocs.com).

## Damages Cap Case Rules in Favor of Maryland Physicians

In a unanimous opinion the Maryland Court of Appeals ruled the state's longstanding cap on non-economic damages in fact does apply to all health care malpractice claims, including those for which arbitration has been waived.

This overturns an April 2009 decision by the Circuit Court for Montgomery County. At that time Judge John W. Debelius III stated 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 had the practical effect of taking away from health care providers the protection provided by the non-economic damages cap since plaintiff attorneys can unilaterally opt out of arbitration and proceed to circuit court.

The Court of Appeals agreed with Judge Debelius that the language in the law was plain. But, it said the plain meaning of the words do exactly what the General Assembly intended, which was to strengthen the cap, not do away with it as Judge Debelius had ruled. The language at issue was from changes made in the law passed in the 2004 Special Session. Those changes included freezing the dollar index to the cap for four years on all malpractice claims, and reducing the amount of non-economic damages that could be recovered in malpractice claims involving wrongful death.

"We applaud the decision of the Court of Appeals," said Jeff Poole, MEDICAL MUTUAL President. "If it had not been overturned, the Circuit Court ruling would have worked against the many actions the Maryland General Assembly has taken to control health care costs and make quality health care accessible for Maryland citizens."

## PROFILE

### The Challenge to the Non-Economic Damages Cap

- In March, 2007, a lawsuit was filed over a claim involving the diagnosis and treatment of a skin lesion.
- On November 14, 2008, after a trial in the Circuit Court for Montgomery County, a jury returned a verdict awarding \$5,805,000, including \$3,000,000 in non-economic damages. The court initially reduced the non-economic damage portion of the award to \$812,500, the cap limit applicable to this case.
- The plaintiffs moved the Circuit Court to reinstate the verdict, arguing the cap did not apply to unarbitrated claims.
- In an April 20, 2009 decision, the Circuit Court judge refused to apply Maryland's cap on non-economic damages in this case.
- The case was appealed to the Maryland Court for Special Appeals. However, both the defendant and the plaintiff asked that the case be moved to the Maryland Court of Appeals for ultimate resolution. The case was heard by the Court of Appeals on November 5, 2009.
- Because of the broad implications of the case for all Maryland Doctors, hospitals and their malpractice insurance companies, the case attracted considerable interest and support from other affected parties, including the MedChi, the Maryland Hospital Association and others, in the form of amicus curiae ("friend of the court") briefs. The message was made in these briefs about the importance of maintaining the cap, including that:
  - the loss of the non-economic damages cap would create an environment in Maryland for higher jury awards, and
  - a deterioration of the malpractice legal environment has the potential to exacerbate the growing shortage of Doctors in Maryland, especially in high-risk specialties and rural areas, reducing citizen access to quality health care.
- On January 12, 2010, the Maryland Court of Appeals reversed the lower court and ruled that the state's cap on non-economic damages does apply to all health care malpractice claims, including those for which arbitration has been waived.