The greatest fear most physicians have about malpractice litigation is the feeling of not having any control of the process. It is human nature to be apprehensive about things that fall outside our daily routine, however, with physicians and medical malpractice litigation, the fear of the unknown and lack of control of the litigation process is greatly magnified. The obvious thing that helps calm these fears is repetition and practice, but with malpractice suits, this is not a preferred option. Although physicians do not have much, if any, control over the legal process, they do significantly control the outcome of their case.

There are many factors involved in the successful defense of a medical negligence case, such as, exceptional expert witnesses, effective counsel, jury makeup, and fair, unbiased judges. Sometimes we forget about the most important member of the malpractice defense team—the defendant physician. It has been our experience that the most important witness, having the greatest effect on the outcome of the verdict, is the defendant physician.

Experts are necessary for both the plaintiff and defendant but, research has shown that juries rarely decide cases based on expert testimony. According to Linda Crawford, Harvard Law Professor and Jury Consultant, the most important testimony comes from the defendant, not the experts. We encourage our defense counsel to do whatever it takes to prepare our insured for their testimony, especially cross examination. In many cases, defense counsel will arrange to take the physician to the courtroom to sit in the witness stand to help get them acclimated to this strange environment. It is also not uncommon for defense counsel to videotape direct examination, and more importantly cross examination, to assist in preparation.

The most important attribute for a defendant physician is to be perceived as likeable and trustworthy by the jurors. Ms. Crawford’s research also found that going into a trial, jurors want to like and believe defendants. Jurors watch the defendant’s demeanor and make judgments about the

Preparation
Now that we understand how important the defendant’s role is in a successful defense, we must examine what tools can be used to assist the defendant physician in the litigation process. The first is preparation. Thorough knowledge of the medical records and pertinent facts of the case is essential. One must also be willing to commit the time and attention necessary to fully understand their defense. The defendant must cooperate with defense counsel and spend whatever time necessary to meet with defense counsel to prepare to defend the allegations. This does not apply only to preparation for trial testimony. Being prepared and performing well in the defendant’s discovery deposition can also impact the outcome of the case. Recently, a MACM insured performed so well in his deposition that the plaintiff’s counsel advised the doctor’s attorney that the case would be dismissed or he would be withdrawing.

Presentation
Second, presentation is also a key to a successful defense. To be an effective witness in a deposition or during trial one must not only have superior knowledge of the facts and medical records, but one must also know how to testify. Often, how the information is delivered by the defendant is as important as the content. Refining techniques through time spent with defense counsel has proved to be invaluable.
The most important thing it means, however, and what we physicians should not lose sight of, is that we, the doctors, are responsible. The patients hold us responsible. Ultimately, I think that is a good thing. To me it implies that we have the wherewithal to be in charge, to direct. If someone is going to hold us responsible, we should have control of the situation.

Look at this from the patients’ point of view. The patients have someone to look to; someone who cares; someone who seems responsible and is in charge. I know that the in charge part is not entirely correct. Lawyers, hospitals, insurance companies, government bureaucrats sometimes seem in charge to us and, ‘Lord knows’ they are difficult to combat, but still the patients look to us. We are their protectors. This fact gives us power if we but exert it.

In contradistinction, some practice environments do not allow for the civil liability of the physician. Is this good for the patient? In the long run, I think not. Many of you are familiar with these systems and understand the downside.

I point this out to reinforce the idea that it is good to be responsible; it is good to be able to be sued. It would be better if the patients and attorneys were held more responsible, I believe, but in the final analysis the patients are better off with a responsible doctor looking after them. I implore you not to give up. Do not be dismayed. Don’t fall for the comfortable seduction of letting other people take over your responsibility. In the end, that which is best for patients will be best for physicians.

BE NOT DISMAYED! OR, WHAT IT MEANS TO BE SUED

Michael D. Maples, MD, Medical Director

When a physician is put on notice that he or she is being sued, all manner of emotions erupt. MACM has dealt with most of them. Anger, fear, terror, paralysis, withdrawal, embarrassment…and the list goes on and on. Being sued is at best a frightening experience. A suit means a lot of work for many people. It can mean long hours, conflict, sleepless nights, self examination, and sometimes weeping and gnashing of teeth.

FROM THE DESK OF UNDERWRITING

By: Kevin R. Fuller, Director of Underwriting and Marketing

Frequently, the Underwriting Department receives requests for coverage from physicians who wish to provide cosmetic services and/or complementary medicine as part of their practices. Each request is evaluated individually based upon information provided. Although MACM’s goal is to provide physicians with insurance products which will help them in their practices, there are some risks which the Company cannot or should not cover. Some of the questions which are asked by the Underwriters in order to assess whether this is a risk which MACM is able to insure include the following:

- Is this service/treatment considered to be the practice of medicine?
- Are these services/treatments and expected results recognized by the scientific community as being valid, based upon reliable scientific inquiry?
- Is this an established practice of this specialty?
- What training has the physician received for this practice, e.g. residency training, accredited post-residency course, continuing medical education, etc.?
- Is the practice site appropriate, e.g. performed in the office/clinic or other medical arena?
- Is the physician involved in the assessment of the patient, i.e. patient selection?
- Who performs the services/treatments? Is this appropriate?
- What is the follow-up and how is it managed?
- How are complications or untoward results managed?
- Does the physician have call coverage?
- What is the documentation system?
- What communication takes place between this physician and the patient’s (client’s) primary care physician? Do you work only by referral for these services, or do you take walk-ins?

These are only a few questions which may need answers and, based upon the responses to the above questions, there may be others asked. As you can see, this can be a very involved process, but a necessary one to assure that the physician is adequately covered for a risk that MACM can responsibly assume.

Defense Success, continued from page 1

person’s competence, professionalism, apparent solicitude, and concern. The recurring theme in her jury evaluations is the need for compassion and concern. Juries believe that physicians who are concerned about their patients are more careful and thoughtful and more likely to make the best judgments. Jurors have difficulty finding against a physician defendant who is caring, competent, compassionate, and concerned. A physician who can relay these virtues to a jury and can reasonably explain their actions, thought processes, and judgment has a great chance of success in the courtroom.

There is no doubt that the prospect of being a defendant in a medical malpractice lawsuit will never be well received by physicians. Unfortunately, most physicians in our state will have to endure the stress, trauma, inconvenience, and uncertainty of such litigation. Although the physician defendant has little control of the perfunctory litigation process, the physician plays a crucial role…possibly the most important role in the successful defense of their case.
MANDATORY ORIENTATION PROGRAM FOR NEW PHYSICIANS

GUIDELINES

Newly insured physicians are required to attend an Orientation Program after their policy’s effective date with MACM. The program offers a history of the Company, as well as guidance on working with the various departments and staff. Insured physicians have one year from the month of policy inception date to complete this requirement, e.g., if policy effective date is November 3, 2010, the new physician must complete the requirement by November 30, 2011.

Failure to attend one of the programs scheduled within your one-year time frame will result in a 5 percent premium surcharge or $1,000, whichever is greater. Continued failure to attend through the next policy period will result in a 10 percent surcharge or $1,000, whichever is greater. If the requirement is not met within the third policy period, the physician will be considered for non-renewal.

To Receive Credit for Attendance, Physicians Must Be Present for Entire Two-Hour Program.

CME CREDIT

Medical Assurance Company of Mississippi is accredited by the Mississippi State Medical Association to provide CME for physicians. MACM takes full responsibility for the content, quality, and scientific integrity of this activity. MACM accepts no commercial support for its CME activities. Medical Assurance Company of Mississippi designates the Risk Management portion of this educational activity for a maximum of 1.0 AMA PRA Category 1 Credit™. Physicians should only claim credit commensurate with the extent of their participation in the activity.

Evening Programs: Registration and hors d’oeuvres from 5:30 – 6:00 PM; Program from 6:00 – 8:00 PM

2011 SCHEDULE

N11-1 January 27, 2011 5:30 PM – 8:00 PM Jackson St. Dominic Hospital
N11-2 March 8, 2011 5:30 PM – 8:00 PM Greenwood • Greenwood-Leflore Hospital
N11-3 April 19, 2011 5:30 PM – 8:00 PM Hattiesburg Forrest General Hospital
N11-4 June 28, 2011 5:30 PM – 8:00 PM Biloxi Biloxi Regional Medical Center
N11-5 August 23, 2011 5:30 PM – 8:00 PM Jackson NewSouth Neurospine
N11-6 October 11, 2011 5:30 PM – 8:00 PM Tupelo North Mississippi Medical Center
N11-7 October 20, 2011 5:30 PM – 8:00 PM Jackson NewSouth Neurospine

• This is a new program location which replaces the Oxford program.

Clinic Managers are invited to accompany their physicians. Please be sure to register. We strongly encourage new physicians to attend one of our programs at their earliest opportunity.

If you do not receive a fax or e-mail letter from MACM confirming registration within two weeks, please resubmit.

Name: ____________________________________________________________
Physician/Clinic Address: ________________________________________________
Phone: ____________________ Fax: ____________________ E-mail: ____________________

I wish to register for Program Number: __________ Place: __________ Date: __________

A fax or e-mail reminder will be sent to you approximately two weeks before each program.

Medical Assurance Company of Mississippi / Attention: Risk Management Department
404 West Parkway Place / Ridgeland, Mississippi 39157
FAX: (601) 605-8849
ARE YOU A HOSPICE MEDICAL DIRECTOR?
IMPORTANT INFORMATION FOR COVERAGE

All MACM professional liability policies contain a provision which excludes “any claim or lawsuit arising from your service as the medical director or administrator of a hospice facility or hospice program” (Section IV—Exclusions, Part CC). In order to be covered for your duties and responsibilities as a Hospice Medical Director, you must notify the Underwriting Department, prove the hospice has adequate professional liability coverage, and successfully complete a program provided by the Risk Management Department titled “Hospice Medical Directors: A Risk Management Update”. Coverage will then be added to your policy by amendatory endorsement. Information on this requirement will be provided when you request this coverage from the MACM Underwriting Department.

Wishing you the Happiest of Holidays!
The MACM Risk Management Department

Save the Date!
We are returning to New Orleans in 2011 for MACM CME! Make plans now to join us in the heart of the French Quarter at the Hotel Monteleone — September 9-10, 2011.
More details to come!