

Medical Assurance Company of Mississippi

MONITOR

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MESSAGE FROM THE PRESIDENT AND CEO

In the May 1982 issue of the *MMFES Newsletter*, the forerunner of this publication, Dr. C. G. (Tanny) Sutherland wrote an editorial attempting to explain how the judicial system worked. Dr. Sutherland was Chairman of MACM's first Claims Committee and the first Medical Director. Space does not allow us to reprint all of his thoughts on the subject; however, below is a reprint of the first few paragraphs. Amazing how some things change and some things stay the same!

by C. G. (Tanny) Sutherland, MD
Medical Director, MMFES

In civil law, our judicial system guarantees all of us free access to the courtroom where, theoretically at least, our grievances may be resolved in a fair and equitable manner after all arguments have been heard. In recent years, this philosophy has resulted in a tremendous increase in the number of lawsuits filed. Our court system has been inundated, and the backlog of cases waiting to be adjudicated has increased by leaps and bounds.

Generally speaking, if we assume that each side in a lawsuit believes its cause to be right, then it follows that each side believes that justice will prevail only by winning. Since the usual litigant is not versed in judicial proceedings, attorneys are engaged to go forward with the development and presentation of the arguments and demands of their clients. When the conflict reaches the courtroom, rest assured that both sides are there to **win** — and as one cynic has observed, “truth is whatever you can convince the jury of” and “justice is when you win.” Of course, these proceedings are carried out within certain legal and ethical parameters. The judge acts as a referee to see that these parameters are observed as each side attempts, by whatever acceptable means, to convince the jury that their cause should prevail. In an effort to convince the jury, a given attorney (for either side) may employ tactics that include theatrics, histrionics, quotations from the Bible, Shakespeare, Aristotle, or even Ann Lander's column, if he thinks it will help his client's cause. The attorney believes

in the righteousness of his client's cause, and he plans to win if he can —albeit “nothing personal.”

As an example, at common law, the defendant was entitled to reply like this to the plaintiff who claims that his cabbages were eaten by the defendant's goat:

*Plaintiff did not have any cabbages;
If he did, they were not eaten;
If they were eaten, it was not by a goat;
If a goat ate them, it was not my goat;
But, if it was my goat, he was insane.*

During the trial, a casual observer would think that the attorneys for the opposing sides must be mortal enemies — but after the trial, they may be friendly, have coffee together, and laugh over the fact that one or the other had been *sandbagged* during the court proceedings. They may be close personal friends outside the courtroom — in other words, “nothing personal.”

As physicians, it may be difficult for us to understand or accept this philosophy. As a rule, physicians follow a supportive philosophy in which we tend to offer assistance to our fellow physicians. Trial attorneys use the adversary system in the courtroom whereby their aim is to tear down and destroy the credibility of the other side in an effort to win the case and, hence, secure “justice” for their client. An analogous situation, from the physician's standpoint, might be one in which the patient on the operating table

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(the defendant physician) finds that one-half the personnel in the operating room (courtroom) is trying to save his life, while the other half is trying to do him in — albeit “nothing personal.”

It would seem that this failure to understand what the adversary system is all about explains to some degree the anxiety produced in the average physician when he is sued for malpractice, and the emotional trauma that he experiences in the courtroom. In the courtroom, the average physician is playing a game he doesn't understand, and the attorneys have the home court advantage! But, whether or not we understand or agree with the concept of the adversary system, reality dictates that it is here to stay. It would behoove all physicians to better understand it; whether or not you choose to find it acceptable is a matter of personal choice.

The adversary system basically is a system which is designed to settle a dispute in which the disputants have different versions as to what happened. In a medical malpractice suit, the plaintiff accuses the defendant physician of omissions or commissions (which a reasonable, prudent physician allegedly would not have done under similar circumstances) and as a result, injury occurred to the patient. In other words, the physician is accused of negligence which directly caused injury, and the patient demands to be made “whole again” via monetary compensation. When the issue is not resolved otherwise, the dispute is taken to a court of law for resolution by a judge or jury. The judge or jury reaches a decision after

presentations by both sides in an attempt to present their version in such a way that the final decision is favorable to them.

The adversary system, then, is a system whereby each side presents its version in a self-serving manner that is designed to augment its arguments and to bring into question the credibility of the other side. Each side will attempt to exclude testimony which might enhance the arguments of the opposition. Basically, this is the reason for the use of objections in the courtroom — which the judge may or may not sustain.

The most important weapon in the hands of either side, in a medical malpractice suit, is the testimony of the expert witnesses. Rarely will the doctrine of *res ipsa loquitur* (no expert needed — “the thing speaks for itself”) be of significant importance in a suit against an insured with MMFES — if for no other reason than that we do admit liability at times and do recommend settlement in approximately 15 percent of our cases. Probably the next most important weapon in the hands of either side is the medical record, which is used to substantiate or refute either party's version.

Continued. . . .

If you are interested in reading the entire editorial, please contact our Marketing Department at info@macm.net or 601.605.4882.

ANNUAL REVIEW AND REPORT OF MACM TRIALS: 2012

By Charles M. Dunn, III, VP – Claims and COO

During the calendar year 2012, 60 MACM cases were originally set for trial. An all-time record 21 MACM cases subsequently reached trial in Mississippi state court venues.

Defense Verdicts were rendered in 17 cases. Two trials resulted in Plaintiff Verdicts. Two other cases resulted in declarations of Mistrials due to irreconcilable deadlocks in the jury votes.

Trial #1: EMERGENCY MEDICINE STROKE / NEUROLOGICAL DEFICIT / DEATH

This lawsuit against an Emergency Medicine physician and hospital was based upon allegations of failure to diagnose and timely treat the stroke of the 41-year-old male patient, resulting in the demise of the patient. Following one week of trial, the jury returned a Defense Verdict of 9 to 3 in favor of all of the Defendants. The Plaintiffs did not file an Appeal.

Trial #2: OBSTETRICS SHOULDER DYSTOCIA / ERB'S PALSY

This lawsuit alleged that an Obstetrician was negligent in failure to diagnose a large fetus, resulting in shoulder dystocia and moderate Erb's Palsy of the Minor Plaintiff. Following one week of trial, the jury returned a Defense Verdict of 10 to 2 in favor of the Defendant. The Plaintiffs did not file an Appeal.

Trial #3: OBSTETRICS FETAL DISTRESS FROM MVA TRAUMA / CEREBRAL PALSY

This lawsuit alleged that an Obstetrician was negligent in failure to diagnose fetal distress related to a motor vehicle accident, resulting in developmental delay and permanent neurological deficits of the Minor Plaintiff. Following one week of trial, the jury returned a Defense Verdict of 11 to 1 in favor of the Defendant. The Plaintiffs did not file an Appeal.

Trial #4: UROLOGY CIRCUMCISION / URETHRAL LACERATION

This lawsuit against the Urologist alleged improper performance of a therapeutic circumcision for treatment of redundant prepuce and phimosis. Following one week of trial, the jury returned a verdict of 10 to 2 in favor of the Defendant physician. No appeal was filed.

Trial #5: GENERAL SURGERY CHEST TUBE / SPLENIC PUNCTURE

This lawsuit alleged improper performance of a chest tube insertion, allegedly causing an iatrogenic injury to the spleen. Following one week of trial, the jury returned a Plaintiff Verdict by a vote of 11 to 1 in the total amount of \$250,000. The case was subsequently resolved for a confidential, substantially-reduced amount.

Trial #6: FAMILY MEDICINE CELLULITIS / INFECTION / DEATH

This lawsuit against the Family Medicine physician was based upon allegations of delay in the diagnosis and failure to timely treat the cellulitis and infection of the 61-year-old male patient, resulting in the demise of the patient. Following one week of trial, the jury returned a Defense Verdict of 9 to 3 in favor of the Defendant. The Plaintiffs did not file an Appeal.

Trial #7: OBSTETRICS FETAL DISTRESS / CEREBRAL PALSY

This lawsuit alleged that an Obstetrician and the local hospital were negligent in delay in the diagnosis of fetal distress and failure to perform a timely Cesarean Section, resulting in developmental delay and permanent neurological deficits of the Minor Plaintiff. During trial, the hospital is reported to have reached a confidential settlement with the Plaintiffs in the estimated sum of \$2.4 Million.

Following two weeks of trial, the jury returned a Defense Verdict of 11 to 1 in favor of the Defendant. The Plaintiffs have filed the Notice of Appeal. The appeal of this case has been assigned to the Mississippi Court of Appeals.

Trial #8: OBSTETRICS MATERNAL TRANSMISSION OF HEPATITIS

This lawsuit alleged that an Obstetri-

cian was negligent in the performance of a manually-assisted delivery of the Minor Plaintiff, allegedly resulting in the transmission of maternal hepatitis to the infant. Following one week of trial, the jury returned a unanimous Defense Verdict in favor of the Defendant Obstetrician. The Plaintiffs did not file an Appeal.

Trial #9: NEUROLOGY / OBSTETRICS FETAL VALPROATE SYNDROME / CONGENITAL ANOMALIES / DEVELOPMENTAL DELAY

This lawsuit against a Board Certified Neurologist and Board Certified Obstetrician alleged improper management of pregnancy and lack of informed consent related to the treatment of a pregnant patient with a severe seizure disorder, allegedly resulting in Fetal Valproate Syndrome, congenital anomalies, and developmental delay of the Minor Plaintiff. Following two weeks of trial, the jury returned a unanimous Defense Verdict in favor of the Defendant physicians. No appeal was filed.

Trial #10: PULMONARY MEDICINE CORONARY DISEASE / DEATH

This lawsuit against the Board Certified Pulmonary Medicine physician alleged improper management of the 68-year-old male patient's coronary disease. This lawsuit eventually reached trial in the United States District Court for the Southern District of Mississippi in 2012. Following one week of trial, the jury returned a unanimous 7 to 0 Defense Verdict (Federal Court) in favor of the Defendant physician. No Notice of Appeal was filed.

Trial #11: FAMILY MEDICINE SEPTIC CHOLECYSTITIS / DEATH

This lawsuit against the Family Medicine physician alleged delay in the diagnosis and treatment of septic cholecystitis, resulting in the eventual demise of the 76-year-old male patient. Following

one week of trial, the Circuit Judge rendered a Bench Verdict in favor of the Defendant physician and there was no appeal.

**Trial #12: EMERGENCY MEDICINE
RESPIRATORY FAILURE / DEATH**

This lawsuit against an Emergency Medicine physician and hospital was based upon allegations of failure to diagnose and timely treat the respiratory failure of the 3-month-old male patient, resulting in the demise of the patient. Following one week of trial, the jury returned a unanimous Defense Verdict in favor of all of the Defendants. The Plaintiffs did not file an Appeal.

**Trial #13: OBSTETRICS
VBAC/RUPTURED UTERUS/FETAL DEMISE**

This lawsuit alleged that the Obstetrician and hospital were negligent in delay in the diagnosis of fetal distress and failure to perform a timely Cesarean Section of a VBAC patient with multiple prior Cesarean Sections, resulting in uterine rupture and fetal death. Following one week of trial, the jury returned a Defense Verdict of 11 to 1 in favor of the Defendant OB-GYN. The Plaintiffs did not file an Appeal.

**Trial #14: GENERAL SURGERY
LAPAROSCOPIC CHOLECYSTECTOMY /
BOWEL INJURY / DEATH**

This lawsuit alleged that the General Surgeon was negligent in the performance of a laparoscopic cholecystectomy, despite converting to an open surgical procedure due to dense adhesions. The case alleged that the 65-year-old female patient developed peritonitis, sepsis, and eventually expired following a prolonged hospitalization. Following one week of trial in Circuit Court, the jury was hopelessly deadlocked and a Mistrial was declared. No new trial date has been established.

**Trial #15: NEUROLOGICAL SURGERY
LUMBAR LAMINECTOMY**

This lawsuit against a Neurosurgeon involved a lumbar laminectomy procedure for spinal stenosis. The law-

suit alleged that the Neurosurgeon was negligent in the performance of the procedure and the delay in the diagnosis of an adjacent bulging or herniated lumbar intervertebral disc. Following one week of trial, the jury rendered a Defense Verdict, by a vote of 10 to 2 in favor of the Defendant Neurological Surgeon. The Notice of Appeal was filed by the Plaintiffs.

**Trial #16: NEUROLOGY
FAILURE TO DIAGNOSE RUPTURED
CERVICAL DISC**

This lawsuit against the Neurologist alleged delay in the diagnosis and treatment of a ruptured cervical spine disc. Following one week of trial in Circuit Court, the jury remained hopelessly deadlocked and a Mistrial was declared. No new trial date has been established.

**Trial #17: ORTHOPEDIC SURGERY
PROSTHETIC KNEE JOINT – POSTOPERATIVE
INFECTION**

This lawsuit alleged that the Orthopedic Surgeon was negligent in the performance of a Total Knee Replacement procedure and delay in the diagnosis and treatment of a wound infection. Following one week of trial, the jury returned a Defense Verdict by a vote of 9 to 3. The Plaintiffs have filed a Motion for a New Trial with the Circuit Court.

**Trial #18: ONCOLOGY
LUNG CANCER / DEATH**

This lawsuit against the Board Certified Oncologist alleged improper management of bilateral metastatic lung cancer of the 64-year-old male patient. Following one week of trial, the jury returned a unanimous Defense Verdict in favor of the Defendant physician. No Notice of Appeal has been filed.

**Trial #19: OBSTETRICS
SHOULDER DYSTOCIA / ERB'S PALSY**

This lawsuit alleged that an Obstetrician was negligent in failure to diagnose a large fetus, resulting in shoulder dystocia and moderate Erb's Palsy of the Minor Plaintiff. Following one week of trial, the jury returned a De-

fense Verdict of 9 to 3 in favor of the Defendant. The Plaintiffs did not file an Appeal.

**Trial #20: ANESTHESIOLOGY
CORONARY DISEASE / DEATH**

This lawsuit against the Anesthesiologist and Certified Registered Nurse Anesthetist (CRNA) alleged improper performance of general endotracheal anesthesia, resulting in the dislodging of a tooth of the 7-year-old Minor Plaintiff. Following one week of trial, the jury returned a 10 to 2 Defense Verdict in favor of the Defendants. No Notice of Appeal has been filed.

**Trial #21: EMERGENCY MEDICINE
RASH / CHEMICAL BURN**

This lawsuit against an Emergency Medicine physician, ER group, and a local pharmacy, was based upon allegations of improper treatment and failure to instruct the 15-year-old male patient regarding specialized topical treatment for a rash. The Mother of the Minor Plaintiff obtained the specialized solution from a pharmacy and then applied the topical solution generally, instead of applying small dabs of the solution with a Q-tip to each specific skin lesion. The Plaintiff experienced epidermal chemical burns and skin discoloration.

Prior to trial, the Defendant pharmacy settled with the Plaintiff for a substantial amount.

Following one week of trial, the jury returned a Plaintiff Verdict in the total amount of \$3.5 Million. The jury awarded \$1.5 Million Economic Damages and \$2.0 Million Non-economic Damages. The jury then apportioned 75 percent of the liability to the Emergency Medicine physician, resulting in a total net Judgment of \$2.625 Million. The Defendants have filed multiple Post-trial Motions in expectation of an Appeal.

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HAVE YOU SIGNED UP FOR THE MEMBERS ONLY SECTION ON THE MACM WEBSITE?

An addition to the Medical Assurance Company of Mississippi website (www.macm.net) now gives insureds the ability to access information regarding their professional liability coverage at their fingertips! A new *Members Only* section of the MACM website was launched in the Fall of 2012 and is receiving positive feedback from those insureds that have already signed up. In this section, insureds can review current policy information, check their Equity Account, request Claims Histories and Certificates of Insurance, and update changes to policy and contact information.

The *Members Only* section can be accessed from a link on the Home Page of the MACM website. For insureds that have not signed up and are interested, please contact the MACM Underwriting Department at (601) 605-4882 for a User Name, Initial ID and PIN number.

“We hope that you will find this *Members Only* section useful. In addition to the options currently available through the site, we have plans to expand in the future to give you more access to your coverage and the staff at MACM. Do not hesitate to let me know any feedback and any options that you would like to see added in the future,” Kevin Fuller, Director of Underwriting and Marketing, said.

MISSION STATEMENT

Medical Assurance Company of Mississippi is an organization of physicians dedicated to providing sound, stable insurance products, and quality related services to physicians and other health care providers practicing in the state of Mississippi.



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