THE MONITOR
MACM
Fall 2019

A MESSAGE FROM THE PRESIDENT & CHIEF EXECUTIVE OFFICER

MACM: WE ARE HERE FOR OUR INSUREDS!

By Robert M. Jones

One of the great things about working at Medical Assurance Company of Mississippi is that we get to interact with physicians and healthcare providers on a daily basis. Because MACM is a local company, our 2,500 insured physicians and their clinic managers have quick and easy access to claims, underwriting, risk management, and other MACM staff.

LET US HELP YOU!

Although I am usually tied to my desk, I recently had the pleasure of going on a clinic visit with Anne Everett, one of our Senior Risk Management Consultants. I wanted to get a better understanding of what MACM Risk Management does for our insured physicians during an onsite clinic survey. We spent the entire day at the medical clinic of a MACM physician. Anne examined the adequacy of documentation in medical records, inquired about clinic processes, and observed patient interaction. During the visit, we addressed how to manage risks in the medical practice and answered questions about MACM and its operations.

It was encouraging to watch the physician compassionately respond to her patients' concerns and deal with their frustrations. I was not surprised in the least. MACM's staff regularly communicates with the physicians, nurses, and healthcare providers insured by MACM; thus, we know that you are dedicated to your patients.

Because MACM is local, we expect and want physicians and clinic managers to contact us if you have any questions. Don't ever apologize for calling us! It is our job to respond to your inquiries. Every department has employees with decades of experience available to assist you. We are here to advise and protect you!

ELECTIONS ARE IMPORTANT

The elections this year are important to ensure that the Mississippi Legislature

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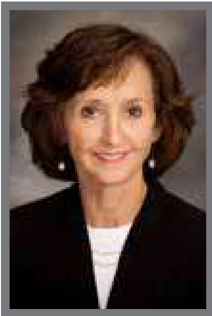

HOUSTON'S HANDOFFS

CASE STUDY

WHAT TO DO (AND WHAT NOT TO DO) IN COMMUNICATING A MEDICAL MISADVENTURE

By Gerry Ann Houston, MD, Medical Director

A 56-year-old male was seen by a neurosurgeon for left arm pain. MRI confirmed a herniated disc at C6/C7. After conservative measures failed, an anterior cervical discectomy was recommended. The surgery was done without problems, and the patient was discharged to return to the office in six weeks. At the time of the office follow-up, the patient was still complaining of pain; x-ray was obtained showing that the surgery actually had been performed at C7/T1.

WHAT IS THE BEST WAY TO HANDLE THIS UNTOWARD EVENT?

1. Do not tell the patient that an error was made. Pretend it never happened and let your nurse practitioner see the patient at the next visit.

2. Tell the patient about the error but explain that it is definitely not your fault.

3. Tell the patient that you are sorry that this happened and offer to perform the correct surgery or transfer care to another neurosurgeon. Consider waiving the charges.

4. Tell the patient you made an error and write a personal check before the patient leaves the office.

Believe it or not in similar circumstances MACM has seen physicians react in all of these ways.

The only correct answer is 3.

Special thanks to Vice President of Claims Todd Savell for his assistance with this article.

MACM Claims Department
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As children we are taught to say "I'm sorry'" when we did something we should not have done, but as physicians, it is often very hard to do this after a medical misadventure. We have been led to believe that saying we are sorry or offering an apology is an acknowledgment of wrongdoing and puts us at risk for a medical negligence claim. Past review of claims has shown that one of the primary reasons a patient or family member pursues a claim is the failure of the medical provider to effectively communicate following this untoward event. Many times the physician fails to take the necessary time to spend with the patient or family, discuss the event in detail, and answer questions about what happened. This lack of dialogue may be construed by the patient or family as an effort to cover up a possible medical error or to show a lack of concern by the physician. The patient and family need to feel that even with an unexpected outcome that they are supported by the physician, both clinically and emotionally.

Following an adverse outcome, the physician involved should immediately talk with the patient and/or family. At this time he should be empathetic and express concern that this complication happened, but he should not admit that it was his fault or that of anyone else who might have been involved. The physician should answer questions as honestly as possible to the extent that answers are available and offer to follow up with them once more information is available or an investigation has been done.

And, as always, documentation of the event, along with the conversation with the patient and family, should be done.

The physician involved with the untoward event must talk with the patient or family. And it must be the physician, not his nurse, nurse practitioner, physician assistant, or partner, who has to do it. Sending someone else only reinforces the perception that the physician is trying to avoid the situation because he did something wrong.

Often times what is felt to be medical negligence is a known complication that was discussed in the informed consent process. This can be brought up in the conversation to help the patient and family understand that this was not a medical error.

There is always the question of whether or not to tell the patient that he does not have to pay the bill. This is not an admission of guilt and may be appropriate to consider.

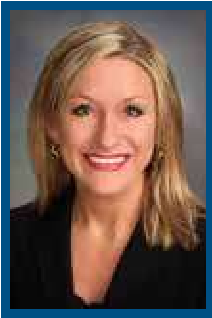
Following a medical misadventure, no one knows whether the patient will contact an attorney to pursue a medical negligence claim. But as soon as the event occurs, the physician should report the incident to the MACM Claims Department and submit whatever the Claims Representative requests. If things go well, there may never be a lawsuit, but the MACM staff will be ready in case one is filed.

There is the situation when, after a bad outcome, the physician wants to deny and defend his actions, but there is also the other extreme when a physician immediately tells the patient that it is all his fault and offers to write a check to pay for any damages. In every situation when there has been an unexpected outcome, the physician must be careful to make sure he does not leave the impression that the "mistake" was the result of his medical negligence when in fact it was a known complication of an acceptable medical treatment. A physician can express concern after an event and explain as much as possible but should not try to provide a legal determination of the actions of the medical personnel involved. And, the physician certainly should not write a personal check to pay for what he feels was his mistake as some have been known to do.

It is hoped that offering an apology and acknowledging that an unexpected event has occurred will avoid the risk of a medical negligence claim. Whether it does or not, it is the correct thing to do and will help the patient and family deal with the event and continue to trust in their doctor-patient relationship.

WHEN AN ADVERSE ADVENT OCCURS

- Immediately after the complication initiate a conversation with the patient and/or family.
- Do not leave this conversation to someone else.
- Be empathetic and transparent, but do not admit guilt.
- If appropriate, remind the patient that this was a potential complication discussed during the informed consent process.
- Consider waiving charges, which is NOT an admission of liability.
- Notify insurance company.
- Follow up with the patient as information becomes available.
- Document details of event and conversation.



COLLABORATION QUANDARIES:

CALL MACM WITH QUESTIONS

By Stephanie C. Edgar, JD, General Counsel

We're often asked about whether there is liability associated with collaborating with a nurse practitioner. The answer is, as with most things in life, "it depends". If you're collaborating with a nurse practitioner that you directly employ, you or your corporation are vicariously liable for anything this person does. However, the stickier situation arises when you collaborate with a nurse practitioner that you don't employ.

Before we go any further, understand that anyone can be sued for anything. However, that doesn't mean that the case will go anywhere. What we're talking about here is whether a case against a physician arising purely out of a collaborative relationship with a mid-level provider will ultimately be successful. Complicating this question is the fact that Mississippi case law on this precise issue is essentially non-existent. That said, applying existing medical malpractice law to this circumstance, we can hazard an educated guess about what the result would be.

Before we dig into this issue, it's worth a reminder that the Mississippi State Board of Medical Licensure has changed the rules insofar as collaboration is concerned. If collaborating with a nurse practitioner in a free-standing clinic, which is defined as a clinic that is more than 75 miles away from your primary office, you must first get board approval. You must also institute a formal quality improvement program (QIP) through which you must review 10 percent or 20 charts every month and meet once per quarter face-to-face. The nurse practitioner must also maintain a log, which uses identifiers for patient names and reviewer names as well as the date of reviews by the collaborating physician. You must also ensure that a backup collaborator is available in the event that you are unavailable.

If you're a primary care doctor collaborating with a primary care nurse practitioner, there are no mileage restrictions on this arrangement as long as you and the nurse practitioner have a compatible practice; you utilize EMR in your practice and as part of the QIP; and you practice within Mississippi at least 20 hours per week or 80 hours per month. Importantly, telemedicine practice is **NOT** considered practicing within Mississippi for purposes of this rule.

To prove a claim of medical malpractice, four elements are required. First, the plaintiff must show that there was a duty owed on behalf of the physician. Second, the plaintiff must prove that the physician breached that duty. Third, there must be proof that the proximate cause of the alleged injury was the physician's breach of duty. Fourth, the plaintiff must show injury and damages.

Thankfully, Mississippi's appellate courts have not extended the physician-patient relationship to every patient that sees a collaborating nurse practitioner. While not precisely on point because there was no collaborative relationship, the Mississippi Supreme Court has held in a case involving a pediatrician that transferred care to a neonatology nurse practitioner, that there was no liability on behalf of the physician for the nurse practitioner's actions.

Applying well-settled law to the issue at hand, it seems that the plaintiff would have to show that the physician was directly involved in the patient's care. "Direct involvement" doesn't necessarily mean that the physician saw and treated the patient. Rather, it may be that "direct involvement" in this context means that the nurse practitioner called, emailed, or otherwise consulted the physician about this particular patient. In other words, the physician was given the opportunity to change the course of treatment and failed to appropriately do so.

Yet another source for liability could be a situation in which a particular patient's chart is reviewed by the physician as part of the QIP, nurse practitioner errors are noted, and nothing is recommended to change the course of treatment. Consequently, don't simply go through the motions on chart reviews. Make sure you're reviewing the charts closely and making recommendations to improve care when warranted. Most importantly, make sure you're documenting your recommendations and following up with the nurse practitioner on these recommendations. While it's unlikely that the patient will ever know who her nurse practitioner's collaborating physician is during the course of treatment, if litigation is initiated, this is a simple matter that will

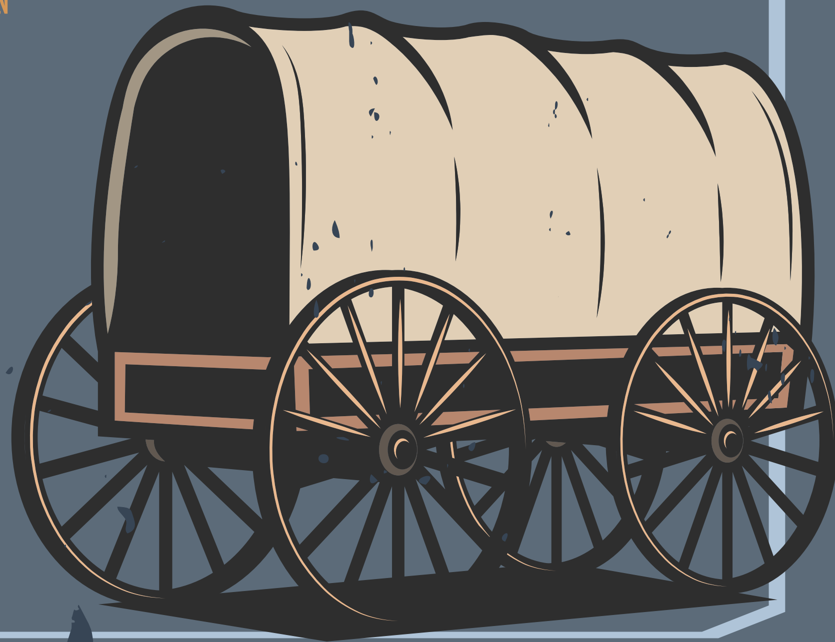
WHO ARE YOU HITCHING YOUR WAGON TO?

WHAT IS THE NURSE PRACTITIONER'S EDUCATION AND EXPERIENCE?

WOULD YOU HIRE THIS NURSE PRACTITIONER FULLTIME ON YOUR STAFF?

IS THE NURSE PRACTITIONER OPEN TO ADVICE AND CONSTRUCTIVE CRITICISM?

DOES THE NURSE PRACTITIONER HAVE ADEQUATE INSURANCE COVERAGE?



be learned during initial discovery. So while you may remain anonymous most of the time, it's not at all difficult to locate the man/woman behind the curtain if the need arises.

Recall that if you're collaborating with a nurse practitioner in a free-standing clinic, the MSBML rules require you to ensure backup collaboration when you're unavailable. There could be some liability in the event that you're unavailable, and you don't ensure backup. For example, let's say you're out of the country with poor cell service, and you don't arrange for a back-up collaborator. The nurse practitioner tries to reach you about a particular patient but is unsuccessful. He uses his best judgment, which turns out to be wrong, and sends the patient on her way. Presumably, the nurse practitioner will document in the chart his efforts to consult you, but even if he doesn't, this fact will surely come out in discovery. Assuming you would have advised the nurse practitioner to take a different course of action had you been available, this may well be enough for a jury to consider the case against you.

I hope these examples illustrate the point that any case against a physician arising out of a collaborative relationship will be extremely fact-specific as are most all medical malpractice cases. In other words, there is little chance that our courts will hand down a blanket pronouncement that a collaborating physician must be liable for anything and everything a nurse practitioner does; however, there are certainly situations where you could be held liable.

This brings us to the bigger picture. Make sure you know who you're agreeing to hitch your wagon to. Do you know what the nurse practitioner's education and experience is? Is this a person that if you had room within your practice you would consider hiring? Is the nurse practitioner receptive to advice and constructive criticism? Does the nurse practitioner have adequate insurance coverage?

If you collaborate with a nurse practitioner that isn't employed by your clinic, an endorsement is applied to your MACM policy, which will provide coverage for you as long as the nurse practitioner has professional liability insurance with limits of coverage of at least $1 million per claim. That said, it's imperative that you verify the nurse practitioner's coverage and that you notify the MACM Underwriting Department before you enter into a collaboration agreement. If you have any questions about the potential risks of collaboration, please call MACM.

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Robert S. Caldwell, MD, Award

recognizing excellence in patient care, documentation, and communication in a senior level resident at the University of Mississippi Medical Center

Congratulations to this year's award recipient!

Chelsea S. Mockbee, MD

Dermatology

Past Recipients

1982 Jack Foster, MD – Cardiology
1983 Martha J. Brewer, MD – Ob-Gyn
1984 Sam J. Denney, Jr., MD – Pediatrics
1985 William H. Coltharp, MD – Cardiothoracic Surgery
1986 Bobby L. Graham, Jr., MD – Medical Oncology
1987 Sam Newell, MD – Neurology
1988 Marc Aiken, MD – Orthopaedic Surgery
1989 W. Richard Rushing, MD – Ob-Gyn
1990 Charles G. Pigott, MD – General Surgery
1991 R. Glenn Herrington, MD – Ophthalmology
1992 Mark G. Hausmann, MD – General Surgery
1993 Gary L. Smith, MD – Anesthesiology
1994 Michael R. McMullan, MD – Cardiology
1995 Damea B. Benton, MD – Pediatrics
1996 Jeffrey D. Noblin, MD – Orthopedic Surgery
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2000 Ford Dye, MD – Otolaryngology
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2004 Kentrell Liddell, MD – Family Medicine
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2007 David L. Spencer, Jr., MD – Urology
2008 Lillian Joy Houston, MD – Psychiatry
2009 Shane Michael Sims, MD – Ob-Gyn
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2011 Leslie Mason, MD – Ob-Gyn
2012 Christopher M. Bean, MD – Urology
2013 Victor Copeland, MD – Ophthalmology
2014 Christina G. Marks, MD – Radiology
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2016 Rishi A. Roy, MD – General Surgery
2017 Michael T. Cosulich, MD – Dermatology
2018 Madison H. Williams, MD – Hematology/Oncology

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IT IS TIME FOR POLICY RENEWALS AT MACM!

Once again, the week of Labor Day kicked off the beginning of policy renewals for the MACM Underwriting Department. Between September and December, the Underwriting Staff renews over 3,000 policies for physicians and clinics. With this many policies, the more assistance and accurate information our insureds can provide through the online renewal process, the better for your coverage.

Following is a list of helpful hints to help make your renewal process a little easier:

- **Is the information correct?** One advantage of our online process is the ability to quickly update and verify the accuracy of the pre-filled information on your renewal application. Double-check information that could possibly have changed during the past year, *e.g.* satellite clinics, procedures, email address, etc. If anything has changed, please update.

- **Home Address.** Please verify your home mailing address, including zip code. If you have moved, you may type in your new address in that section.

- **Additional Documentation.** Provide any necessary supplemental documentation to satisfy a question that is asked. With the online renewal system, you can either type in your answer in the narrative section or upload a requested document directly to our renewal files.

- **Business Entity Standing.** Check the Secretary of State website (www.sos.ms.gov) and be sure your corporate business name (if applicable) is up-to-date and in good standing. If you have designated a professional consultant to renew your business license with the Secretary of State, please pass along this request.

- **Names of Ancillary Personnel.** In order to accurately send Certificates of Insurance, we need to have accurate information regarding the names and positions of your mid-level extenders, such as nurse practitioners, physician assistants, and CRNAs. Add, delete, and edit any changes that have occurred this year and are not accurately reflected on the pre-filled application. If you have a new Nurse Practitioner or Physician Assistant joining your practice whom you desire MACM to cover, please request an application from the Underwriting Department.

- **Submitting the Form.** Once you have completed the form and typed in the last 4 of your SSN (or Clinic ID Number for corporate policies), you must click the "Submit" button for the form to transmit to MACM. After you click "submit", allow approximately 30 seconds for the form to transmit. After that time, you may refresh your browser. If the form has transmitted, you will see the status change to "Application Ready For Review" which means MACM has received. (After you click "submit", if you have left questions unanswered, the form will prompt you to complete those questions. Once you answer those questions, you will need to click "submit" again.)

We believe the online renewal process has helped streamline your time and effort in the renewal process. If you have any questions about navigating through the form or setting up a Member Log In, please do not hesitate to call the Underwriting Department at (601) 605-4882 or (800) 325-4172.

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The Monitor is a publication of Medical Assurance Company of Mississippi.

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remains a branch of government that protects Tort Reform for the next four years. Candidates supported by your Mississippi Physicians PAC were successful in 13 out of 18 primary races. If you have any question about which candidate to support for Senator or Representative in the upcoming General Election on November 5, please contact us.

Looking ahead to 2020, please be aware that four of the nine justices of the Mississippi Supreme Court will be up for election next year. MACM's staff will provide information to you next year, and our Mississippi Physicians PAC will be involved in that election.

PREMIUM REDUCTION FOR 2020

On September 4, 2019, the MACM Board of Directors approved a recommendation from the Company's management to reduce physician base rates by 4.1 percent for 2020. This decision was made after the Board reviewed the analysis of a rate study which was presented by our independent actuary. Combined with last year's decrease, this is a premium base rate reduction of 10 percent for the past two years.

Also, our financial results are on target to end the year with another modest gain. This means a partial premium refund is likely again in December. A final decision as to the premium refund will be made at the December 5, 2019, Board of Directors meeting.

I hope you find this news as positive as we do. These rate decreases and premium refunds would not have been possible over the years without the passage of Tort Reform and the support of fair statewide and judicial leaders. As the November elections approach, we ask you to remember the past 15 years of positive medical-legal environment under Mississippi's conservative leadership before you cast your vote.

THE GOOD NEWS

As we move toward the end of another year, there continues to be good news at MACM. Insurance rating company A. M. Best reaffirmed MACM's "A" rating, and our assets and surplus are at an all-time high. You may also take comfort in knowing that MACM senior management has a combined 146 years of experience with MACM! Your Board of Directors is engaged and properly overseeing company financial and insurance activities. It is indeed a good time to be insured by Medical Assurance Company of Mississippi!

BASE RATES REDUCED BY 4.1 PERCENT FOR 2020