

# Philadelphia Medicine



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## How to answer your patients' questions about the medical liability crisis

Patient access is being jeopardized by greedy personal injury lawyers. An out-of-control tort system is forcing liability insurance rates above what is affordable, therefore putting doctors in the most awkward situation of either practicing medicine illegally (without insurance), or by following the law and not practicing because they can't afford the insurance.

### Some quotes that may help you:

From the December 15, 2002, *Wilkes-Barre Times Leader*: "States with caps on damages saw smaller increases in malpractice premiums than other states in the preceding year."

From the October 2002 Trend Analysis Report of the *Medical Liability Monitor*: "Unless we get some meaningful tort and judicial reform, all we will be able to do to remain fiscally viable will be to continue to increase our rates and underwrite even more restrictively." —CEO of Medical Assurance Co. of Mississippi

- Despite having less than five percent of the national population, Pennsylvania's total medical malpractice payouts in 2000, according to the National Practitioner Databank, were nearly 10% of the national total. Pennsylvania's total was the second highest in the country—\$352,309,905.
- According to Jury Verdict Research, the national jury-award median for medical malpractice cases in 1994 was \$375,000. In 2000, that in-
- creased to \$1 million.
- The median jury verdict between January 1994 and August 2001 in Philadelphia was \$972,909. For the rest of the state, excluding Philadelphia, it was \$410,000.
- Personal injury lawyers often pocket 40% of jury awards and 33% of settlements.
- When personal injury lawyers aren't winning big, they're losing often. In fact, personal injury lawyers have a 70% error rate in their pursuit of the jackpot jury award. According to the Physician Insurers Association of America seven out of 10 medical malpractice claims between 1985 and 2000 were either dropped, dismissed, withdrawn, or found in favor of the defendant.
- Even when personal injury lawyers are losing, they're robbing patients of access to doctors, and driving up healthcare costs. According to the Physician Insurers Association of America, the median cost to defend and win a case in front of a jury in 1995 was \$46,603. By 2000, that increased 43.27% to \$66,767.
- Our out-of-control tort system deprives Pennsylvanians of healthcare, while driving up what consumers pay for care.
- A 2002 study by the American Association of Health Plans conducted by PricewaterhouseCoopers says that litigation is responsible for seven percent, or \$5 billion, of new health care costs—equivalent to the price of health insurance for two million Americans.
- The Pennsylvania Medical Society's

Please see How to answer on page 3

## PCMS membership increases by 20%

Total PCMS membership increased from 4,058 on December 31, 2001, to 4,832 on December 31, 2002. Increases were in all categories of practicing physicians, residents and medical students.

### Monthly Luncheons

The PCMS Past Presidents Council continues its series of monthly luncheons open to all members and guests.

The speaker on Thursday, February 6, 2003, at 12 noon, will be **Thomas M. Daulton**, CPA, Principal, Larson Allen. Topic: "Retirement and Estate Tax Planning."

The speaker on Thursday, March 6, 2003, at 12 noon, will be **Robert D. Reinecke**, MD, Professor of Ophthalmology, Jefferson Medical College of the Thomas Jefferson University, Director of the Foerderer Center at Wills Eye Hospital and Past President of the Philadelphia County Medical Society. Topic: "Why the albino doesn't see well."

Lunch and parking are free; parking entrance is from 21st Street. RSVP on 215-563-5343, Ext. 102 so we may provide enough lunches.

### Halt Medicare payment cuts; support Joint Resolution 3

Legislation to halt implementation of the 4.4% physician payment cuts was introduced in the US House on January 7, 2003. Urge US Senators and Representatives to co-sponsor and support House Joint Resolution 3.

### PA Senate Bill 50 would cap non-economic damage awards

SB50, just introduced, proposes a constitutional amendment to cap non-economic damage awards. Urge your State Senators and Representatives to support this bill.

# Philadelphia Medicine



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## editorial Quality medical care under siege

By Stephen L. Schwartz, MD



The continued existence of the practice of medicine in Pennsylvania in a way that we feel is quality care is vulnerable to going out of existence. In the wake of

doctors being unable to work in Scranton as well as the temporary closure of Abington Hospital's Trauma Center, Governor Rendell attempted to effect some short term relief. He has promised to fund the cost of the Mcare Fund for neurosurgery, obstetrics/gynecology, orthopaedics and general surgery at a 100% level for this current year and 50% for all other physicians for this current year.

He has also indicated that he will work with the State Supreme Court to have the Court issue a requirement that all medical liability insurance cases must obtain a certificate of merit indicating that the cases are not frivolous. These are two promises and we believe the Governor to be sincere.

However, we are not sanguine that the Governor will be effective. There has been a storm of protest against his plan for funding the Mcare portion of insurance by insurance companies.

We are somewhat more optimistic that the Supreme Court will view the certificate of merit requirement favorably. However, these two actions do not solve the problem beyond the next few months. The Governor's Task Force has until April 1 to report to the Governor on long-term solutions. We have heard that some creative and innovative suggestions have surfaced. These relate to a no fault concept, a workers' compensation approach and other nonjudicial alternatives for dispute resolution.

However, as we observe this problem nationally, the only long-term solution we are aware of is a cap on noneconomic damages. Governor Rendell is opposed to caps. The State Constitution in Pennsylvania prohibits a cap. Our best hope is to have the US Congress pass the Greenwood Bill and have caps established at a federal level

which would supersede all state laws.

This is a difficult task because 60 votes are needed to override a filibuster in the Senate. Also, as Pennsylvanians, we are not confident that Senator Arlen Specter would vote to support caps.

We will soon face a new deadline. Approximately 40% of all Pennsylvania physicians are due to renew their medical liability policies on July 1. Some weeks before that date, they will have to decide whether they can afford to pay the premium or leave the state.

We have seen in West Virginia what it takes to bring a state legislature to its senses. Similar action may be needed in Pennsylvania. To this end, many grassroots organizations have sprung up in the state. Among them are Physicians for Quality Care, begun in the Jefferson Healthcare System; The Politically Active Physicians Association (PAPA), initiated by Dr. James Tayoun; orthopedic and trauma physicians; and certainly the Scranton area physicians.

Coordinating these grassroots organizations with organized medicine is essential. The Philadelphia County Medical Society (PCMS) is actively involved in planning an overarching consortium for tort reform and medical liability insurance improvement (and do not think we've forgotten about reimbursement deficiencies in our state).

As we write this editorial, the discussion of the umbrella organization has just begun. You can be assured that PCMS will be a charter member. We are encouraging our neighboring societies in Southeastern Pennsylvania (Bucks, Chester, Delaware and Montgomery Counties) to join. We have asked our Trustees to convey this to the Pennsylvania Medical Society so as to ensure that it will also be vitally involved.

We may all need to go into the trenches to fight to preserve all that has been good in medicine.

*Dr. Schwartz is President of PCMS*

## Medical Savings Accounts: What are they? How do they work?

Medical insurance rates are rising everywhere. Businesses are scrambling to contain and cut costs. Employers are pressed to offer a variety of benefits to be competitive in the market and health insurance usually ranks high on that list of employee benefits. All businesses, from the self-employed to the largest establishments, are eager to save premium dollars.

Medical Savings Accounts (MSA) are a revolutionary new healthcare product. They promise to reduce healthcare costs as much as managed care plans but provide the same freedom of choice to patients as traditional "fee for service" plans.

MSAs promote savings and may be used to supplement income in retirement or in case of disability. They represent a move away from insurance company medical decision-making and toward patient-physician decision-making.

Certain criteria must be met in order to be eligible for an MSA. To qualify, you must be:

- An employee of a small company (50 or fewer) or self-employed
- Covered by a high deductible health plan (HDHP), with a deductible of at least \$1,500 for singles and a deductible of at least \$3,000 for families.

Don't confuse MSAs with FSAs (Flexible Spending Accounts). FSAs have a "use it or lose it" provision, whereas MSAs carry over from year to year and can be withdrawn at retirement. Both the employee and the employer can contribute to MSAs, while FSAs are employee contributed only. FSAs contributions can be as high as the employer's plan allows.

MSA contributions are limited based on the deductible of the adjoining health plan. FSAs can exist with any health plan. MSAs can exist only in conjunction with a high deductible health plan.

Few employers are likely to abandon their employees when it comes to health benefits. However, with costs

expected to rise significantly, it is not uncommon to ask employees to consider various plans and even pitch in and share costs.

Employers should discuss their employees' needs and their level of satisfaction with their current health plan. While providing a high-end health plan is generous, some benefits offered

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may be unnecessary and financially burdensome for the employer.

Most projections suggest that health insurance costs will continue to rise. Select an insurance broker that specializes in employee benefits to provide you with choices that may fit you and your business needs.

Working with an employee benefits specialist who can help you choose, as well as manage and administer your company's benefits, is important and will help you get the most from your health plan. You should also seek competent tax advice when designing your employee benefits program.

*Submitted by USI Colburn Insurance Service, the endorsed insurance administrator for the Philadelphia County Medical Society. If you would like more information, call USI Colburn at 610-833-1800 or 1-800-COLBURN.*

How to answer *from page 1*

2001 study shows that 72% of doctors have deferred the purchase of new equipment or hiring new staff due to the skyrocketing medical liability insurance costs.

- There are numerous anecdotal stories about doctors retiring early, giving up high-risk procedures, or moving out of the state as a result of the liability insurance crisis.
- Using state-provided data from March 2002, a survey during the summer of 2002 by the Pennsylvania Medical Society to high-risk specialists found that 17% of ob/gyns and 18% of neurosurgeons have either changed to nonoperative, changed to part-time surgery since 2001, decided to move the majority of practice out of state, left Pennsylvania totally, or retired early.
- Pennsylvania needs to learn what Californians learned in the 1970s: limit attorney contingency fees on a sliding scale and place a reasonable limit to noneconomic awards after a person has been fully compensated for financial losses.

*—Adapted from The Pennsylvania Medical Society's document on medical liability talking points*

### Procedures for 2003 Medicare claims

The AMA has learned of a troublesome new development with the 2003 Medicare payment update. The Centers for Medicare and Medicaid Services (CMS) issued instructions to the Medicare carriers about the process for physicians to enroll as either participating or nonparticipating physicians for 2003. These instructions indicate that the period of time for physicians to make their decisions about 2003 Medicare participation will run from January 9, 2003, through February 28, 2003.

The instructions further state, however, that the material carriers are now mailing to physicians was printed in October 2002, before Medicare announced the delay in the payment rule and its effective date of March 1, 2003. As a result, the dates on the printed material that physicians will be receiving in the mail this week will say that the participation decision period ended in December 2002.



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### PCMS people wanted!

Your colleagues would like to know what you're up to. Send news about academic or other appointments, achievements, awards, promotions, etc. to:

*Philadelphia Medicine*  
2100 Spring Garden Street  
Philadelphia, PA 19130

## pcms people

### PCMS Awards: we're looking for your nominations

#### Strittmatter Award

Since 1923, the Strittmatter Award has been regarded as being the most prestigious of PCMS. Presented to a physician who has demonstrated to the Society the most valuable contributions to the healing art, surgical or medical. Requirement: A physician should submit the nominating letter(s), and include the candidate's current cv.

#### Cristol Award

Presented to a PCMS member who has made valuable contributions to PCMS. Requirement: The letter of nomination should also include the candidate's activities in the Society.

#### Practitioner of the Year Award

Presented to a PCMS member for excellence in patient care and community service. Requirement: Letter of nomination, a current cv and should include examples of community service.

Please send your nominations to Award Chair, PCMS, 2100 Spring Garden Street, Philadelphia, PA 19130.

DEADLINE: February 21. All awards will be presented during the President's Ball scheduled for June 20, 2003. For information phone 215-563-5343 Ext. 113.

The Philadelphia County Medical Society Membership Committee cordially invites you and your family to attend our

### Ice Skating Social in Celebration of Doctor's Day

Saturday, March 29, 2003

7:30 PM – 10:00 PM (light buffet)

The Philadelphia Skating Club, 220 Holland Avenue  
Ardmore, PA

NO CHARGE for you  
and your guests

In order for us to make proper arrangements,  
RSVP the number of people that will be attending on  
215- 563-5343, Ext. 113.

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