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PERSPECTIVES

Insurance Reform in Action

“The reported recent demise of medical practice as a result of rising malpractice premiums has been greatly exaggerated.” That is the conclusion of a long-term, quantitative study published in the May/June 2006 issue of the journal Health Affairs. The article, written by Suffolk University law professor Marc Rodwin, also notes that the American Medical Association member surveys show that doctors self-report that medical malpractice premiums are actually a small part of their total practice expenses.

According to the report, malpractice premiums accounted for just 7% of practice expenses in 2000. That was down from 11% in 1986.

While Professor Rodwin’s article provides tangible and objective data that should calm the churning waters of the malpractice crisis, it is true that there continues to be a problem. In our last issue, I discussed the importance of true and meaningful reform to ease the problem of increasing medical malpractice insurance rates that are, anecdotally, driving doctors out of the practice. Some of you have asked for specifics. Why aren’t caps the answer? What reforms would work? How do we know they will work? And are these reforms actually in place and working anywhere?

Damages Caps Aren’t the Answer

First, why aren’t damages caps the answer? Caps on non-economic damages seek to limit the amount of money available to compensate for injuries. Proposed caps do not limit the actual pain and suffering – they simply, and arbitrarily, limit a wrongdoer’s exposure. Caps will have a disproportionate impact on women, children, the elderly and the severely handicapped. Imposition of a damages

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Tips for a Safe Summer

Summer is packed with fun-filled outdoor activities but, according to the Consumer Products Safety Commission (CPSC), almost a million more product-related injuries show up in hospital emergency rooms in the summer months than in the winter months. Keep your family happy and safe by following some of these tips and adopting safe habits.

One of the best ways to avoid making a trip to the emergency room this summer is to make sure you and your children wear helmets and other safety gear while biking, skating, skateboarding, or when riding scooters, all-terrain vehicles and horses. Studies have shown that helmets can reduce the risk of head injury by as much as 85%.

Swimming in pools, ponds, lakes and oceans requires a conscientious attitude toward safety. The CPSC recommends

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cap may well result in injured people making greater use of government entitlement programs such as welfare and Medicaid.

It seems as if our representatives are beginning to understand that caps won't fix this real problem. On May 8, the United States Senate voted down a bill that would have imposed damages caps in medical malpractice cases. The issue, though, will be considered by the Congress in June.

There are two areas where reform will help. First to consider are reforms that clean up the way insurance companies do business. Second to consider are reforms to the legal system.

California's Insurance Reform Worked

To see the benefit of insurance reform in action, we can look to California. In the 1970s, California was in the midst of a self-declared "medical malpractice crisis." It was one of many that coincided with a downturn in the economy. To stem the crisis, the California legislature imposed damages caps in 1975. They did not work. In 1988, with rates still rising, the citizens of California voted for comprehensive insurance reform. Those reforms stemmed the increasing malpractice premium rates and actually caused them to fall. It was these meaningful and substantive insurance

reforms that led to medical malpractice premium savings in California. It was not the imposition of caps.

The California insurance reform, which became law through passage of Proposition 103 in 1988, was essentially a five point plan that, for the first time, held carriers accountable and allowed for some governmental and consumer oversight and input. Proposition 103 provided:

- A mandated rollback of insurance premiums by 20% from what they were on the date the referendum reform took effect.
- A mandated one year freeze of rates at the rollback rate.
- Allowed the insurance commissioner to approve and/or reject malpractice carrier rate increases.
- Allowed consumers to challenge insurance rate increase requests.

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- Allowed carriers to be sued in state court for anti-trust violations.

Between 1975, when caps came into California, and 1988, when insurance reform through Proposition 103 was enacted, malpractice premiums outpaced the U.S. average. Once insurance reform and transparency in medical malpractice underwriting was the law of California, those premiums dropped off significantly.

Indeed, between 1975 and 1988, medical malpractice premiums in California outpaced the national average and increased by 450%. In the years after insurance reform was enacted by the voters of California, medical malpractice premiums dropped below the national average, where they remained through the last data point we have, 2001.

The California experience is real-world validation for the good that transparency and oversight in the insurance industry can do.

Legal Reforms May Also Work

On the legal system reform side, Arizona has already done a lot to help. In 2002, the Legislature passed a bill which eliminated Elder Abuse claims against most healthcare providers. The law also dramatically shortened the time for bringing such actions – from seven to two years. In lobbying for the law, MICA, Arizona’s premier medical malpractice insurance company, made assurances that these measures would significantly reduce premiums.



In 2003, the Legislature passed the Affidavit of Merit Bill, which added strict requirements to the already existing protections for healthcare providers in medical malpractice cases. Patients must now present sworn affidavits from an expert witness – practicing the same sub-specialty as the defendant – stating that the case has merit and setting out the problems with the care. Again, MICA lobbied for this bill, stating that it would save millions of premium dollars.

It is too early to measure the impact these changes have had in Arizona. But the insurance industry believes that they will dramatically improve current conditions. Given what MICA has said, at the very least, premiums should not be increasing with these measures in place.

—Dev K. Sethi

FOR MORE INFORMATION:

- www.healthaffairs.org
- The Arizona Reforms are discussed in detail in “Don’t Let Them Steal Your Piece of Arizona,” a summary of the issues prepared by Fairness and Accountability in Insurance Reform. If you would like a copy of FAIR’s report, please get in touch with Dev Sethi at (520) 545-1663.

Arizona’s Newest Medical Records Law

If you’ve visited your doctor in the past several years, you’ve probably heard of “HIPAA.” That’s the federal law requiring certain healthcare providers to notify patients of their privacy rights regarding medical records. The practical outcome of this requirement is that signing a “notice of privacy rights” has become part of your check-in routine.

In late April, the Arizona legislature passed a new law requiring doctors and other health professionals to prepare written procedures for securely storing, transferring, and providing access to their patients’ medical records. A health professional who fails to develop these procedures may be subject to disciplinary action by the regulatory board.

What does this mean to patients?

Once the law takes effect later this year, if your doctor decides to retire or sell her practice, she will be required to tell you in advance where your records will be stored and how you can get copies. She’ll also have to tell you how long she will keep your records. (Arizona law generally requires that records be kept for 6 years after the date of last treatment.) After that time period expires, she will be required to make a good faith effort to contact you again before she destroys your records. Since your doctor faces possible disciplinary action if she does not fulfill these notice requirements, in all likelihood you’ll be asked to provide written confirmation that you’ve been given this information. Thus, more forms.

What are your medical records?

In Arizona, a medical record is any form of communication that is maintained for the purposes of patient treatment, including psychological records. This includes any records your doctor may have received from your other providers. Your doctor owns these records, but must promptly provide you a copy upon your written request. If you are not making the request in order to obtain health care, your doctor may charge you a reasonable fee for those copies.

For more information on the new law, go to <http://www.azleg.gov> and search for Arizona Revised Statute 32-3210 (formerly House Bill 2786). For more rules on medical records, take a look at <http://azmboard.org/FAQ>.

— Erica McCallum

Tips for Summer, cont. from page 1

“layers of protection” including the following:

- Closely supervise children in and around a pool, at the beach or at the lake.
- Place barriers completely around your pool and use door and pool alarms to prevent unsupervised access.
- Make proper use of flotation devices. Never board a boat or jet-ski without a life vest.
- Flotation devices are not a substitute for learning how to swim. Teach children and adults how to swim. If you have never learned to swim and plan to be around the water this summer, take swimming lessons.
- Finally, being prepared in case of an emergency means knowing how to perform CPR. The National Safety Council First-Aid Institute offers CPR training, and you can reach them at (800) 621-6244 to obtain more information.

Amusement parks are always a favorite summertime family destination and are generally well-organized, supervised and safe. But, you still need to be careful here too. The National Safety Council has advice for keeping track of your family amidst all the excitement:

- Designate a visible and easily accessible meeting place in case someone gets lost or separated from the group.
- Parents, carry photos of your children; children, carry photos of your parents.
- Be sure the children in your group know the first and last names of the adults who brought them to the park. “Mom,” “dad,” “grandma,” “teacher” or “coach” won’t help very much if someone is trying to track you down.
- Instruct children to go to a park employee if they are in trouble and remind children never to go with a stranger who is trying to lure them away from the park or to a secluded spot within the park.

With any kind of summer activity, staying well hydrated is critically important. Always make sure plenty of water is on hand during all summertime activities. Here in Arizona, we need to be particularly concerned with avoiding heat stroke and heat exhaustion. According to the Center for Disease Control, the warning signs of heat stroke



include high body temperature, red skin with no sweating, rapid pulse, headache, nausea or confusion. If you see these signs, call for medical assistance and cool the victim by moving him or her into the shade. Bathe the victim with cold water. Warning signs of heat exhaustion, which can lead to heat stroke, include heavy sweating, paleness, muscle cramps, weakness, headache, nausea or fainting. Help the victim cool down and seek medical attention if symptoms become worse. Drinking cold water can help bring body temperatures down and prevent heat exhaustion.

A word about the summer sun: it’s good and bad. You should

get 15 to 20 minutes of exposure to sunlight each day, so your body can make enough Vitamin D. But, as you know, too much sun is dangerous. That’s why everyone should apply sunscreen or sun-block after that vitamin D-making exposure. With so many brands out there it is hard to choose. You may want to look for preparations containing micronized titanium dioxide, which is invisible on the skin, but offers substantial protection against both UVA and UVB rays. Any sunscreen you select should offer maximum protection against both UVA and UVB rays. You also need to protect your eyes. Look for sunglasses with a label that specifically states the glasses offer 99% to 100% UV protection. Protecting your eyes can help lower your risk of developing cataracts later in life.

Remember these tips and put them into practice, and have a safe summer.

—Jim H. Dyer



“INSURANCE BAD FAITH”

What is it, and what can you do about it?

Your insurance company treats you badly. It refuses to pay your claim for property damage. It delays in providing you with a rental car. It gets cheap on your reimbursement for living expenses when your house burns. Your insurance adjuster makes promises but never delivers. You are sued for negligence in an automobile accident and you fear you may lose your nest egg because your insurance company will not settle the case within your policy limits. Are you at the mercy of the insurance company? Is there anything you can do when your insurance company treats you badly?

The answer is a resounding “yes!” To begin with, all insurance companies doing business in Arizona are regulated by the Arizona Department of

Insurance. Similarly, Arizona has adopted the Unfair Claims Practices Act, which requires insurance companies to respond to your questions in a timely fashion and to resolve your claims fairly. You should read it and refer to it when dealing with the insurance company. If you still feel you are not getting the

treatment you deserve, you should check out the Arizona Department of Insurance website: www.id.stat.az.us/consumer.html. This site has a ton of useful information about insurance and will even walk you through how to file a complaint. Often, an insurance department investigation will result in your receiving the fair treatment you deserve.

The Department of Insurance, however, is not the end of the road. The Arizona courts have long recognized that, regardless of how the Department of Insurance might view your complaint, if your insurance company knowingly treats you unreasonably in the investigation, handling or payment of your claims, the company can be found liable for the tort of “insurance bad faith.” You may have the right to sue your insurance company and recover damages for their bad faith treatment. These damages may include



not only the amount of the claim but also damages for emotional distress, impaired credit reputation, worsening of an untreated medical condition, interest, attorneys’ fees, and if the conduct by the insurance company is particularly nasty, punitive damages designed to punish the company.

No one should feel he or she is a helpless victim of mistreatment by an insurance company. If you think you are not being treated fairly or reasonably, learn your rights. If you have been harmed, contact the Department of Insurance and consider talking to a lawyer about insurance bad faith. You don’t have to be a victim.

—Ted Schmidt

The law requires insurance companies to:

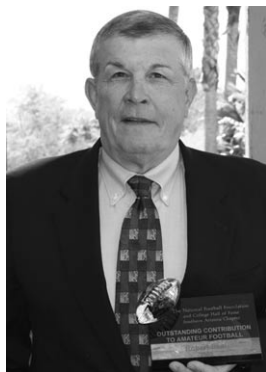
- treat you fairly and reasonably;
- comply with the Unfair Claims Practices Act, www.id.state.az.us. Read it and know your rights.

Questions and complaints are handled by the Arizona Department of Insurance at (520) 628-6370.

KBSDS in the Community



Ted Schmidt was recently chosen "Boss of the Year" by the National Association of Legal Secretaries (NALS) of Tucson and Southern Arizona. Nominated by his employees, he was then selected as the recipient of this year's award from a pool of several other nominees.

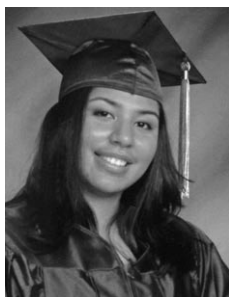


Bob Beal was honored by the National Football Foundation (NFF) and Collegiate Hall of Fame with the 2006 "Outstanding Contribution to Amateur Football" Award. The award recognizes Bob's three decades of NCAA football officiating and the innumerable contributions he has made to the

teaching and development of football officiating crews in Southern Arizona.

Congratulations **Alexandra Phillips** and her proud parents, our own Bea Flesher and husband Mark.

Alexandra graduated from Rincon High School this May. Throughout her high school career, she excelled in the arts, athletics, and academics. As a result, she earned well-deserved academic scholarships to attend the University of Arizona this fall where she plans to pursue a career in veterinary medicine. She also plans to try out for the Wildcat softball team and will be part of the Marching Band. Go Cats!



Welcome Erica McCallum!

We are very pleased to announce that Erica McCallum has become an Associate with our firm. Erica will focus her practice on personal injury law, pharmaceutical liability, insurance and employment litigation. She is a graduate of the University of Arizona, Rogers College of Law and of Smith College (Massachusetts), both as magna cum laude. For the last few years, she has been working in the Tucson office of Lewis and Roca. She is a past recipient of the prestigious Pima County Bar Association's John G. Hawkins Professionalism Award and also now sits on the editorial board of the Bar Association's monthly publication, The Writ. Erica is admitted to practice in Arizona's state and federal courts and in the 9th Circuit Court of Appeals.



Welcome aboard Erica. We're delighted to have you with us.

And goodbye Jessica...we will miss you.

As many of you know, Jessica Feingold has moved to Washington, D.C. to pursue a career with a government agency. Our loss is their gain so don't be surprised if, one day, we see Jessica on the 6 p.m. news standing up for the rights of the less-fortunate all across this country. Goodbye, Jessa, and thanks for everything.

We wish you well.

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