By now you should have received your 2003 Report to Members. I hope you took the time to read that very important publication - I know some trial lawyers were anxiously waiting to get their hands on one. They tend to ignore the comments and/or statistics that support our contention that abuse of the legal system is adversely affecting the healthcare delivery system in Mississippi. Instead, they like to select one phrase or number that, according to their interpretation, places the blame on bad doctors, greedy insurance companies, investment losses, increased reinsurance costs as a result of 9-11; anything but the real cause.

The trial lawyers occasionally get help in their efforts to mislead the public from news reporters who are not familiar with medical liability insurance. When a reporter or columnist writes a story about the medical liability situation or a medical liability insurance company (like MACM), and their sources are trial lawyers and consumer advocates, that story or column is going to be far from truthful or objective. Recently, MACM CEO Mike Houpt agreed to a brief telephone interview with a reporter from a small-town newspaper in the Delta who was doing a story on the availability (or lack thereof) of medical liability insurance in Mississippi. Mike explained to him that we had imposed our moratorium on writing new business in early 2003 because our surplus had dropped from $60 million to $46 million at the end of 2002, and we felt that this left us with insufficient capacity to support the type of growth in policyholders that we had experienced in 2001 and 2002. Even with the moratorium in place, we still added 228 new members, because we did continue to accept applications from physicians joining clinics that we already insured.

Mike also advised the reporter that we had posted a $10 million underwriting loss in 2003, despite a 54 percent rate increase that had gone into effect on January 1, 2003. Fortunately, the economy began to improve toward the end of 2003, and MACM was able to cover that underwriting loss with investment income. The reporter somehow interpreted that statement as “The economy, not lawsuits, is the main reason (MACM) quit writing new policies.” This misleading story was then picked up by the Associated Press and subsequently appeared in several other newspapers around the state.

We do not believe that the reporter mentioned above deliberately misinterpreted Mike, but his story could not have been more inaccurate. Mike has sent letters setting the record straight to the editors of the newspapers that we know printed the erroneous article. If you read that AP story in your local newspaper and have not seen Mike’s rebuttal, please let us know so that we can take action to correct any misunderstandings as to MACM’s official position regarding the medical liability crisis.

As Chairman of the Board and President, let me state, for the record, MACM’s position on this matter. While a robust economy and substantial investment income can mitigate the problems caused by incurred losses, at some point the real causes of those losses must be addressed. Our average indemnity payment has gone from $156,234 per claim in 2000 to $233,274 in 2003, an increase of almost 50 percent in four years. This has little to do with the economy and everything to do with an out of control legal system. The GAO reached the same conclusion in a report released last June. Ironically, the study was requested by a group of Democratic congressmen, including Ronnie Shows; however, when the report was issued, most Democrats were noticeably silent about its findings.

The moral of this story, therefore, is - just because you read it in a newspaper does not make it so.

Sincerely,

R. Faser Triplett, M.D.
President & Chairman of the Board
Practice location? Are you practicing outside of Mississippi?

Medical Assurance Company of Mississippi was originally chartered to insure only physicians who resided and practiced exclusively in Mississippi. Over the years, we allowed some exceptions to this restriction and approved some limited practice in counties in Alabama, Tennessee, Arkansas, and Louisiana that are contiguous to the physician’s primary location. In addition, we have provided coverage, depending on the circumstances, to physicians who resided in those counties but whose primary practice was in Mississippi.

Because of the recent changes in the legal environment in this state, we have had to return to more restrictive underwriting principles. Effective January 1, 2004, physicians who reside out of state who have not previously been approved to do so will no longer be covered by MACM, regardless of the location of their practice.

If you have any questions, please contact our Underwriting Department at 800.325.4172.

Mississippi Political Madness: Insight into tort reform and other political issues

by C. R. “Bob” Montgomery, Esq.
MACM General Counsel

As part of the annual March Madness we experience each year during basketball season, coaches often talk of “taking it to the next level.” This usually applies to the teams that are selected to participate in the NCAA tournament and the level of competition faced on the court.

This spring and summer in Mississippi, we are in the middle of Political Madness, and our challenge is to “take it to the next level” for meaningful Civil Justice Reform.

As always, our approach must be two pronged — legislative and judicial. Legislatively, the Senate has acted quickly and decisively with the passage of Senate Bill 2763 authored by Senator Charlie Ross, Chairman of the Senate Judiciary Committee, and supported by over 30 Senators and Lieutenant Governor Amy Tuck. However, an extreme challenge remains with the House leadership structure, even though 60 members co-authored a strong Civil Justice Reform Bill in the House. In the words of Governor Haley Barbour, this fight will be only won outside of Jackson when we adequately convince Mississippians to take part in destroying the Jackpot Justice mentality that has developed for the past 15 years. Healthcare and business opportunities have been severely damaged, and we must communicate this view directly to our legislators and other opinion leaders in our community. This effort will be difficult; however, history can be made in Mississippi in 2004. Communicate now with your legislators, employees, colleagues, newspapers, radio stations, church leaders, and civic leaders.

Personally, for years I thought appellate judges in our state were always fair and wanted to make the correct decision based upon the facts and the law. In reviewing decisions of the last several years, analyzing relationships and contribution reports, I now know that the playing field has been tilted toward plaintiffs and must be leveled. Personal injury attorneys have for too long unduly influenced the appointment and election of appellate judges.

2004 can be the single most important year in the history of judicial elections in the state of Mississippi. Four seats on the Supreme Court are open for election in November 2004. Justice George Carlson, Northern District; Justice Bill Waller, Jr., Central District; Justice James Graves, Central District; and an open seat in the Southern District upon the retirement of Chief Justice Ed Pittman. (The Governor will appoint someone to fill this position soon; however, that person will serve only until the end of the year unless elected in the election in November 2004.) Success in these elections will assure a balanced court for years to come. Your commitment must be without reservation, if we expect to succeed. Representatives of MACM’s PAC will be contacting you soon for your contribution to our future.

Professionally, philosophically, and financially, we are in a struggle for the well being and future of thousands of people and their ability to receive quality healthcare and to prosper in a stable business climate in Mississippi. Just as the players on the basketball court must do, let’s join together to “take it to the next level.”

Practice location? Are you practicing outside of Mississippi?

MACM General Counsel Bob Montgomery visits with Senator Charlie Ross at the State Capitol. Senator Ross serves as Chairman of the Judiciary, Division A, Committee and was the primary author of the Senate bill which proposed comprehensive tort reform for Mississippi. Senator Ross represents Rankin and Madison counties.
This case was taken from actual closed claims of Medical Assurance Company of Mississippi and is provided for the purpose of education.

A four-year-old female was to undergo a dental extraction at a major hospital. There was a history of two open cardiac procedures and the extraction was being performed for endocarditis prophylaxis. She was cared for by a board certified anesthesiologist. Upon induction of anesthesia with an inhalational agent, the child developed complete heart block and subsequent pulmonary edema. Attempts at resuscitation were unsuccessful, and the child died.

Upon review, there was a surprising lack of documentation. The medical record had no EKG recording and blood pressure measurements were not performed for a prolonged period in the anesthesia record. Experts were concerned that an overdose of an inhalational agent could present in a similar manner. The MACM insured felt that this did not occur and cited end tidal gas levels in support of his statement.

The first notice of this incident was the filing of a lawsuit. After prolonged discussion and despite numerous deficiencies in the medical record, it was decided to defend this case. The case was eventually dropped by the plaintiff after MACM had spent tens of thousands of dollars in defense costs.

All parties involved felt fortunate that the case was voluntarily dismissed. The lack of adequate basic medical records and the outcome (death of a child) could have been disastrous to the defense.

The medical learning potential of this case is not the focus of this article but is obviously immense. From an insurance perspective, the learning points overlay the standards of care for monitoring during anesthesia and the definition of an incident. Whatever was done during induction and attempted resuscitation of the patient cannot be documented except by the memories of the defendants. We have no useful record for this critical period of time. The absence of a record hampers the defense. It is better for us to have a bad record that is explainable than to have no record. The second teachable point is the lack of reporting. If ever an event was a reportable event this was one - “death of a child during a tooth extraction.”

Reporting incidents does not jeopardize your insurance. Reporting incidents does however lock in your insurance for that particular incident. In a claims made policy, this is very important. Reporting incidents allows your insurance company to gather information while it is fresh on the minds of those involved. This is very important in a legal world where cases go to trial three to four years, on average, following the incident. Defendants and witnesses have sometimes moved multiple times to distant states. It is easiest and cheapest and with the greatest accuracy to gather data near the time of the incident.

Please allow the MACM claims staff to help you. They are very professional and in most instances they can at least give your mind some relief. They have reviewed many claims, and it is likely that they have dealt with your kind of incident before.

Is your desk piled high with paperwork?

E-mail versions of the MACM Monitor and the Risk Manager are now available. If you are interested, please send a request to info@macm.net and we will gladly add you to our e-mail distribution list.

In early April, the A.M. Best Company advised Medical Assurance Company of Mississippi that its A- (Excellent) rating would be reassigned.
Recent Staff Changes and Additions Announced

Robert M. Jones has joined MACM as Legal Counsel and will be responsible for representing the Company in corporate, insurance, and related issues. Before coming to MACM, Jones was in private practice for 26 years, most recently as a partner in Montgomery, McGraw, Collins, Jones & Hembree, PLLC, a law firm having offices in Ridgeland and Canton, Mississippi. He received his B.A. from the University of Mississippi in 1975 and his Juris Doctor from the University of Mississippi in 1978.

Jones is a member of the American Bar Association, Mississippi Bar, Mississippi Defense Lawyers Association, American Health Lawyers Association and the American Association of Corporate Counsel.

Kevin R. Fuller has been promoted to Director of Underwriting and Marketing for MACM. In this new role, he will be responsible for supervising the daily activities of the Underwriting Department, as well as the Company’s marketing and business development efforts. In addition, he will continue to serve as Managing Agent for MACM Insurance Services.

Fuller graduated from Mississippi State University in 1996 and received his bachelor’s degree in Business Administration with an emphasis in Insurance and Risk Management. He holds his Mississippi resident and surplus lines licenses.

Beth Womack has been named Senior Risk Management Consultant for MACM. In this position, she will continue to work with the Company’s insureds in their risk management and education efforts.

Womack is a 1983 graduate of the University of Mississippi Medical Center with a degree in Medical Records Administration. She has been employed by Medical Assurance Company since 1998.

“MACM is fortunate to have a team of outstanding staff truly dedicated to the mission that has made our company special for more than 25 years,” R. Faser Triplett, M.D., President and Chairman of the Board, said, “I am glad to welcome Rob to MACM and proud of everything Kevin and Beth have accomplished.”

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Don’t wait! Space is limited!

Mississippi State Medical Association 2004 Golf Tournament During the 136th Annual Session

Date: Saturday, June 5, 2004
Time: Shotgun start at 12 Noon.
Place: Grand Bear Golf Course
(Approximately 10 miles North of I-10 on Highway 49)
Collared shirts and spikeless shoes required.

Format: Scramble, with a shotgun start.
Box lunch included.

Prizes: Pro shop gift certificates:
$300 - 1st place team
$180 - 2nd place team
$120 - 3rd place team

Hole-In-One Prize: 2004 Cadillac SRX-V8

Sponsors:
Medical Assurance Company of Mississippi
Ernst & Young
Montgomery, McGraw, Collins & Rand, PLLC
Mississippi Physicians Care Network
Grantham Poole, CPAs
Clements Cadillac of Jackson

Costs: $100.00 per player for green fees and cart rental
Deadline: May 10, 2004

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Name: ____________________________
Address: __________________________
Handicap or Average Score: _________

☐ My check for $100.00, made payable to Medical Assurance Company, is enclosed.
Please mail to: Medical Assurance Company of Mississippi
404 West Parkway Place
Ridgeland, MS 39157
Are You Making Changes In Your Medical Practice?
by Robert M. Jones, Esq.
MACM Legal Counsel

Are you considering restructuring the organization of your medical practice? If so, it is important that you consider how changes to your practice will affect your medical professional liability insurance coverage.

There are numerous reasons why you might be considering a change in the structure of your practice. Your accountant or tax attorney may be recommending a change for income tax benefits; you may be looking for a way to increase profits; you may be seeking additional liability protection; you may be in solo practice and adding another physician; or you may be considering the change because all of the physicians in your group cannot get insurance with the same medical malpractice insurer.

Your planned reorganization may involve the conversion of your clinic from one legal form to another or may include the creation of new legal entities. These new entities may include a professional corporation (PA or PC), professional limited liability company (PLLC), limited partnership (LP), or a combination of these. Regardless of the reason for the change, we suggest that you keep in mind the following:

Know Your Clinic. It is important that you and your clinic manager understand exactly how your practice is set up. We find that physicians and clinic managers sometimes think of their practice as simply the “Clinic” and do not have a good understanding of the legal entities involved and their respective names. Please inform MACM of the exact name and role of each of your legal entities. We want to be sure that your practice is properly insured.

Seek Professional Advise. You should always seek the advice of professionals when making changes to your practice. You should be satisfied that the accountant and attorney assisting with these changes are knowledgeable and have experience with respect to medical practices. Ask questions and give them as much information about your practice as possible.

Mandatory Orientation Program for New Physicians

Those physicians whose policy inception was on or after August 1, 2003 are required to attend. Failure to attend one of the programs scheduled in 2004 will result in a 5% or $1,000 premium surcharge, whichever is greater. Requirement Must Be Fulfilled Prior to the End of 2004. To Receive Credit for Attendance, Physicians Must Be Present For Entire Two Hour Program.

N4-4  July 13, 2004  5:30pm - 8pm**  GREENVILLE  Delta Regional Medical Center
N4-5  July 20, 2004  5:30pm - 8pm**  HATTIESBURG  Forrest General Hospital
N4-6  July 29, 2004  11:30am - 2pm*  JACKSON (UMMC)  Norman C. Nelson Student Union
N4-7  October 5, 2004  5:30pm - 8pm**  PASCAGOULA  The LaFont Inn
N4-8  October 12, 2004  5:30pm - 8pm**  JACKSON  Colonnades (MBMC)
N4-9  October 28, 2004  5:30pm - 8pm**  STARKVILLE  Oktibbeha County Hospital

**Evening programs: registration + refreshments & hors d’oeuvres from 5:30-6pm → Program is 6-8pm  
*Noon programs: registration + lunch served from 11:30am-12N → Program is 12N-2pm

If you do not receive written confirmation of your registration within two weeks, please resubmit.

Physician Name:__________________________________________________________________________
Physician/Clinic Address:___________________________________________________________________
Phone:________________________________ Fax:________________________________ E-mail:___________________________
I wish to register for Program #:____________ Place:__________________________ Date:________________________
Please Mail/Fax To:
Medical Assurance Company of MS  ■  Attn: Risk Management Department
404 West Parkway Place, Ridgeland, MS 39157  ■  Fax: (601) 605-8849

Making Changes continued on page 6
Please remember that it is extremely important to notify MACM’s Underwriting Department if you have made any changes to your practice.

For example:

- Have you changed locations?
- Are you now practicing in a new clinic?
- Have you left the practice of medicine and not ended your policy?
- Do you plan to add or delete procedures?
- Are you going to another community to see patients and perform procedures?

Please do not wait until the last minute to inform us of any changes. Call us prior to implementing changes in your practice to assure a successful transition of coverage.

Information contained in this publication is obtained from sources considered to be reliable. However, accuracy and completeness cannot be guaranteed. Information herein should not be regarded as legal advice.

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