



500 Virginia Street, East
Suite 1200
Charleston, WV 25301

(304) 343-3000
(304) 342-0985 fax
(888) 998-7642

www.wvmic.com

BOARD OF DIRECTORS

R. Austin Wallace, M.D.
Chairman, President and CEO

John W. Neville, Jr., M.D.
Vice-Chairman

Michael A. Stewart, M.D.
Treasurer

Hans G. Dransfeld, M.D.
Secretary

Dara Aliff, D.O.

B. Frederick Becker

Joseph V. Funderburk, III

Robert L. Ghiz, M.D.

Tamara D. Huffman, CPCU
Executive Vice President and COO

Bruce R. Martin, CIC

Luke W. Martin, M.D.

MAIL PERMIT
GOES HERE

QUARTERLY COVERAGES

FEBRUARY 2020



(888) 998-7642 • www.wvmic.com

Letter from the Chairman: A Jury of Our Peers?



As many of you already know, it is been my pleasure and privilege to be a member of the Medical Professional Liability Association Board of Directors since 2012. This organization, which underwent rebranding last year from its previous name, the Physician Insurers Association of America, to reflect a more diverse membership including international member companies, has many excellent educational programs for its member companies and their board members and employees. One such offering was a meeting put on by the Regional Member Roundtable, a group of similar regionally focused companies for which I act as co-chair, as a part of a larger MPL Association meeting this past March. Our main speaker was Claire Luna, who is CEO of JuryImpact, Inc., an Irvine, CA based company that provides deposition prep to defendants in medical liability lawsuits along with jury consulting for their counsel. She and her firm did a survey of more than 500 jury-eligible people recently that revealed what I found to be some very interesting and occasionally very troubling findings about the attitudes of potential jurors in general (and millennials in particular.) Millennials, often defined as those born between from around 1980-1982 until the mid-1990s, now represent the largest jury-eligible age group in the U.S. The positive response percentages in the survey are noted below, with those attributable to millennials shown in parentheses:

Litigation:

- ~67%: If a case gets to the courtroom, it must have merit (80%)
- ~65%: There is a mechanism in the legal system to throw out frivolous lawsuits (74%)
- ~27%: Filing a lawsuit is too hard (40%)
- ~35%: Filing a lawsuit is too easy (15%)

Disregard for the law/instructions:

- ~43%: Would let sympathy affect verdict even if forbidden (55%)
- ~34%: Would decide cases based on fairness rather than the law (46%)
- ~19%: Would consider [awarding] attorney fees even if told not to (46%)
- ~14%: Would do Internet research even if the judge forbids it (44%)

Damages/responsibility:

- ~77%: Hospital is responsible if a person is released in worse condition than when they arrived (consistent across generations)
- ~43%: Would award money for medical bills even if no fault [is found] (62%)
- ~39%: Would award more than plaintiff demand to "make sure plaintiff is taken care of" (52%)
- ~26%: Would award more money if defendant is large hospital chain/medical system (42%)
- ~12%: Would increase award with knowledge that insurance would pay for it (22%)
- ~44%: Punitive damages claim increases likelihood that mistake was made (consistent across generations)

A quick review of the statistics reveals that there is definitely more bad news than good in these survey results. It is apparent that millennials are overall significantly more likely to be generous with jury awards, and I found it somewhat shocking that simply having a lawsuit get to the courtroom means that it has validity to potential jurors and that merely making a claim for punitive damages increases their concern about a mistake being made in all generations surveyed. It is a given that our respect for the rule of law has defined Americans for the entirety of the existence of our great country, and trials before juries of our peers are essential to this process. We physicians not infre-

quently complain that a jury of lay people does not represent a true jury of our peers. However, even though the above statistics are often somewhat startling, we need to be very careful about what we wish for, as our own physician peers can be much more critical of medical liability defendants' actions than lay people. Dr. Robert Ghiz, our founding Chairman of the Board at the Mutual, called this the "Grand Rounds Effect" when he spoke at our CARE risk management seminars, and I picked up the term from him. During our training as physicians, we are conditioned to look at medical care with a very critical eye as part of the very necessary performance quality improvement process for residents, interns, and attendings. However, this critical eye does not translate at all well to the legal arena. One of my CEO colleagues in another state remarked to me once that the physicians there had to ditch the state's physician medical review panel process because the physicians on the pre-suit review panels tended to be much harder on their colleagues being sued than lay jurors in actual trials.

Therefore, despite its flaws, as evidenced by a number of the attitudes of potential jurors demonstrated in the survey done by Claire Luna and her company, a trial by a jury of our (lay) peers remains the best option for us physicians, in my humble opinion, and it continues to stand the test of time despite societal changes. Please be assured that your Mutual will continue to monitor trends such as these that affect you, as we are **Physicians Insuring Physicians**.

R. Austin Wallace, MD

Physician Strong Today and Tomorrow

Physicians Insuring Physicians

500 Virginia Street, East
Suite 1200
Charleston, WV 25301

304.343.3000

www.wvmic.com





Do not alter, correct or change a medical record. It is best to add information or clarification to a medical record through a dated addendum. It is much easier to explain an addendum than to explain an alteration or a change to a medical record.



If you receive a notice of claim, immediately sequester the patient's chart. Do not add or delete anything in the medical record. Immediately contact our Claims Department at (888) 998-7642.

Licensing Board Complaints



The consequences of receiving a licensing board complaint can be far reaching. Complaints that are filed with the Board of Medicine or Board of Osteopathy can be filed by patients, their family members, other healthcare providers, or anyone who interacts with a physician. In some cases, these complaints are filed anonymously.

Complaints are serious matters. They need to be responded to appropriately and within the timeline established by the specific licensing board. Disciplinary action can include: a reprimand, restrictions on a physician's practice, continuing medical education, probation, license suspension or revocation. It is important that a response to any complaint is timely, complete, factual and non-emotional.

Federal law also requires that disciplinary actions be reported to the National Practitioner Data Bank and hospitals check for licensing board complaints during credentialing. Depending on the alleged offense and the board's conclusion, a physician's reputation and livelihood may be affected.

Do not take any type of complaint lightly. If a Board of Medicine or Board of Osteopathy complaint is received, immediately contact the Mutual's Claims Department at 888-998-7642. While not guaranteed, the Mutual will review the complaint to determine if it is appropriate for the Mutual to assist in developing your response.

Local Representation is a Vital Component of a Quality Defense

When faced with a claim, a physician needs the support of professionals that have the experience and expertise to properly evaluate the true exposure they face. By using local, experienced legal representation you gain access to their ability to appropriately evaluate the various factors involved in determining exposure, value, and the strengths and weakness of both sides of a case.

That is why your Mutual utilizes local law firms experienced in medical professional liability defense. When a policyholder is faced with a claim out of state, third-party claim administration firms often bring attorneys into West Virginia venues who do not have a true understanding of its unique qualities, the local personalities involved in managing a case and your specific community.

How to Report a Claim

When a physician receives notice of a medical malpractice claim, it can be devastating.

If a written demand for damages or notice of claim is received, there are strict legal guidelines that must be followed to ensure a proper response.

For example, if a lawsuit is not formally answered within twenty days, a default judgment might be entered which will not allow a defense to be presented. So that we may provide the best service possible, we encourage physicians to contact the Mutual's Claim Department regarding any of the following:

- Contact from any attorney about care provided to a patient
- Request for an interview or meeting from anyone regarding care
- Receipt of a letter from an attorney
- A deposition notice or a request for a deposition from anyone regarding treatment of a patient
- Receipt of any subpoena

- Any request to appear in court or trial
- Notice of Claim and/or Certificate
- Receipt of a lawsuit

Please be prepared to provide the following:

- Patient's name, gender, age, marital status
- Patient's address and employment status
- Names of all physicians or medical providers involved
- Names of any involved hospitals, clinics, etc.
- Chronology of medical treatment
- Information available regarding the nature of the claim

Policyholders should also contact the Mutual if asked to provide a deposition in a pending legal matter, even if the policyholder is not named in the case, to determine if legal counsel needs to be assigned prior to the deposition. To reach the Mutual Claims Department call 888-998-7642.



If you are contacted to provide a deposition in a pending legal matter, even if you are not named in the case, contact the Mutual so we can determine if you need legal counsel prior to your deposition.



Do not keep documents received from your attorney or the Mutual in patient's charts. Keep these types of documents and correspondence in a separate folder.

2020 C.A.R.E.® and Loss Control Seminar Schedule

FEBRUARY	2/6 - WHEELING, WV	Wheeling University, Erma Ora Byrd Center
	2/13 - MORGANTOWN, WV	Mon Health Center, Hazel Ruby Cain Conference Center
MARCH	3/4 - BECKLEY, WV	Mountaineer Conference Center
	3/11 - CHARLESTON, WV	Holiday Inn South Charleston
APRIL	4/2 - KEYSER, WV	Candlewyck Inn
	4/8 - HUNTINGTON, WV	Guyan Country Club
MAY	5/6 AND 5/13 - CHARLESTON, WV	Holiday Inn South Charleston
JUNE	6/4 - BLUEFIELD, WV	Quality Hotel & Conference Center
	6/10 - PARKERSBURG, WV	Blennerhassett Hotel
SEPTEMBER	9/2 - HUNTINGTON, WV	Guyan Country Club
	9/9 - PRINCETON, WV	Princeton Community Hospital
OCTOBER	10/8 - CHARLESTON, WV	Holiday Inn South Charleston