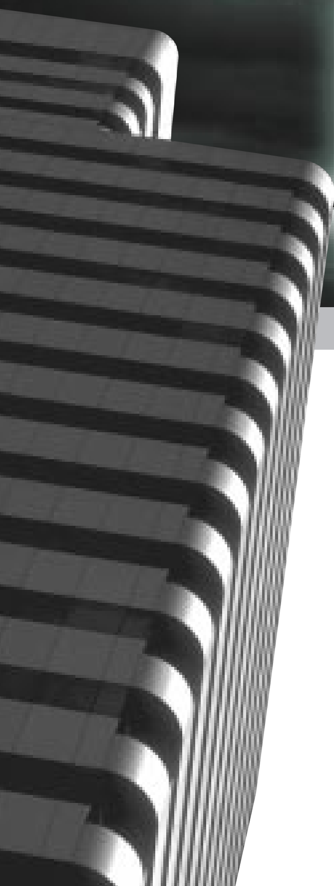
FRONT LINE

MEDICAL MALPRACTICE INSURANCE NEWS



RICK'S CORNER

There is a Silver Lining in all Those Dark Clouds!

Hardly a day goes by that my mail does not include at least two or three insurance or health care trade journals or a variety of related newsletters. I put those that do not grab my immediate attention in a stack on my back credenza for later reading. I hate to admit that I found stuff dated back over two months when I decided to catch up.

As I scanned through the pile, I was impressed by the large number of articles that had been written with a negative slant. As I thought about it, those who write for the insurance and health care industries are really no different than other journalists. It does not matter where we look, there is a deluge of messages of doom and gloom. Maybe it is because it is an election year. If it is not the politicians telling us we won't make it into the next century (a mere four years away) if we do not vote for them it is some special interest group telling us why everybody-else's' ideas are wrong for us.

The health care industry is being pummeled particularly hard. Some politicians want the government to control the delivery system by nationalizing health care. Special interest groups are promoting ballot initiatives which dictate the quant care services which must be provided. Solo practitioners are moving out of private practice and into large managed care organizations while consumers are longing for the attention of their personal physicians but at HMO prices. Plaintiff lawyers are mining the profits of HMO's by testing new theories of responsibility for malpractice. Self-designated experts are alerting health care providers to prepare for quantum increases in the cost of medical malpractice insurance. They are warning that the frequency and severity of malpractice claims are both on the rise (TRUE) while the commercial multiple line Goliaths of the industry are hammering down the price of malpractice insurance (ALSO TRUE) to levels that may threaten the competitive survival of many small monoline medical malpractice underwriters who are seeing their market share challenged.

"...companies struggle to preserve surplus and maintain their books of business, but in doing so continue to fall further behind their competitors. Given the industry's unsettled market conditions, almost all brokers, agents, risk managers, and re-insurance buyers are attempting to align themselves with companies perceived to be winners with a growing franchise or, at minimum, who will be survivors. This critical view of insurance buyers will make it increasingly more difficult for the struggling companies to recover and achieve success. The industry currently contains too many companies and has too much capital

continued on page 6

QUOTABLE QUOTES

"Down went the owners, greedy men whom hope of gain allured: Oh, dry the starting tear, for they were heavily insured.

~ W.S. Gilbert

Volume 1, Number 1

Fall 1996

SUZANNE E. STIPE

Brokers, Risk Managers Capitalize on

As risk managers in large companies have expanded their duties beyond the traditional insurance buying, they have expected their brokers to do more than just sell insurance by creating ongoing partnerships. This rise of the broker consultant now is filtering down to the mid- to small-sized companies.

Risk managers want brokers to provide consulting services to get added value from them and because their companies do not want to pay to have those services done in-house, says Susan Seilbach, vice president of Personal Lines Insurance Brokerage, San Francisco.

To be successful in this era of the broker consultant, brokers should build relationships, not just sell products, Seilbach says. "If a broker succeeds at building partnerships, there is nothing to sell because the groundwork was laid during the partnering process," Seilbach told attendees at the recent Risk and Insurance management annual conference, held in Toronto.

Developing the broker consultant role requires an investment in resources, either through acquisition or partnerships, says Edward Kiessling, national practice leader-risk management for the New York based Alexander & Alexander Inc. Brokers must offer solutions, even if it means partnering with vendors they don't own, Kiessling says.

And companies and brokers need to develop new commission structures, Kiessling says. Intel Corp., Santa Clara, Calif., has been using flat fees with compensation schemes, such as incentives, that reflect performance, says Diane Labrador, assistant treasurer for Intel.

The risk management department has a unique view of the company that is broader and more concerned about the overall liability of the company than the view from other departments, Kiessling says. For this reason, he suggests risk managers seize the company agenda.

But risk managers can run into trouble justifying their expanded duties because the department's charter may focus on handling the insurable risk of a company rather than the business risks. The risk department of Intel is reevaluating it's charter, Labrador says.

Brokers may be responding to market pressure and risk management expectations when adapting their duties, but the speakers say both sides have a responsibility to change.

Commercial Carrier Premium Growth

Commercial Medical Malpractice

Market Premiums in Millions

	1993	1995	GROWTH
AIG/American Home	181	234	29%
CNA/Continental	303	550	80%
MMI/ACIC/HPIC	161	210	30%
St. Paul/Athena	616	678	10%
Zurich/Steadfast	50	64	28%
Total	$1,311	$1,736	32%

Source: A.M. Best 1993; HCP for 1995

Commercial carriers appear to be gaining ground on the once nearly untouchable doctor owned mutual physician underwriter. Most notable in these figures is the fact that much of today's commercial carriers strength and growth is coming from accounts looking for large deductible plans, self insured retentions and services to allow them to participate more in the smaller losses and buy stop loss coverage above these anticipated levels. As groups grow, this trend will continue as size allows risk managers and CFO's along with their actuaries input to more accurately project anticipated losses and gain greater control over their risk financing programs.

More Lawyers Than Ever In Largest Law Firms

The legal marketplace is brimming. Led by America's giants of corporate practice - and some newly potent intellectual property juggernauts - the 252 largest firms are growing at a healthy clip, employing 71,918 attorneys, a 5.3% increase over the last year. That's the highest total of all time, eclipsing the mark of 68,397 set in 1991. This growth is substantially due to a mid-decade surge in intellectual property, mergers and acquisitions, employment, and telecommunications work.

Partnerships

PLI's Seilbach says brokers should:

- Clearly define the broker's role at the outset
- Propose a realistic scope of services and perform periodic reviews to ensure benchmarks are being met
- Adhere to the service contract, advise the client of changes as they become apparent, and remain flexible as needed.
- Listen to the client's needs and address them promptly
- Focus on the client and their organization and industry
- Be receptive to the client's needs and provide proactive solutions
- Be a resource to the risk manager for the myriad of issues that may come up in a given day
- Cover all of the external bases so the risk manager can concentrate on the internal needs of their company

Kiessling says the risk manager should:

- Seize the broader corporate agenda in coordinating the entire risk management agenda
- Develop broader skills than called for in the traditional risk management agenda
- Focus on financial statement impact, or the "big picture"
- Learn to partner with brokers versus "use" brokers, assuming they can earn that trust

As appeared in Best's Review P/C June 1996

The National Law Journal,
September 30

CLAIMS CORNER

Is California really the bell weather state?

	CA Average Large Loss*
1990	$811,280.00
1991	$997,343.00
1992	$734,665.00
1993	$623,131.00
1994	$818,400.00
1995	$957,717.00

*MIEC Large Loss Study

For a complete copy of MIEC's Large Loss Study (20 pages), please call or write HCP attention Ruth Ann Saine at (714) 990-4430 or email us at HEALTHPROS@aol.com.

***Managed Care Liabilities** article is an excerpt from MIEC Large Loss study. In its 22nd year, Medical Insurance Exchange of California report reviews claims data from a variety of sources and comments on same.*

U.S. Equal Employment Opportunity Commission-

Discrimination Cases on the Rise

The EEOC received 87,942 new charges of discrimination for fiscal year 1993 - a 21.6 percent increase from the previous year and 37.6 percent increase from the agency's 1991 charge receipts. The EEOC's 1993 charge receipts are the most charges ever received during any fiscal year in the agency's history.

Managed Care Liabilities

Most insured Californians now receive their health insurance through a managed care program. The percentage of California's insured population enrolled in an HMO has risen steadily in recent years and is approaching 50% in some areas of the state. Most other insured individuals are in a PPO or other employer negotiated health care system which limits choice of physicians and hospitals in some way, and requires utilization management. This change is now also coming to Medicare and Medi-Cal enrollees.

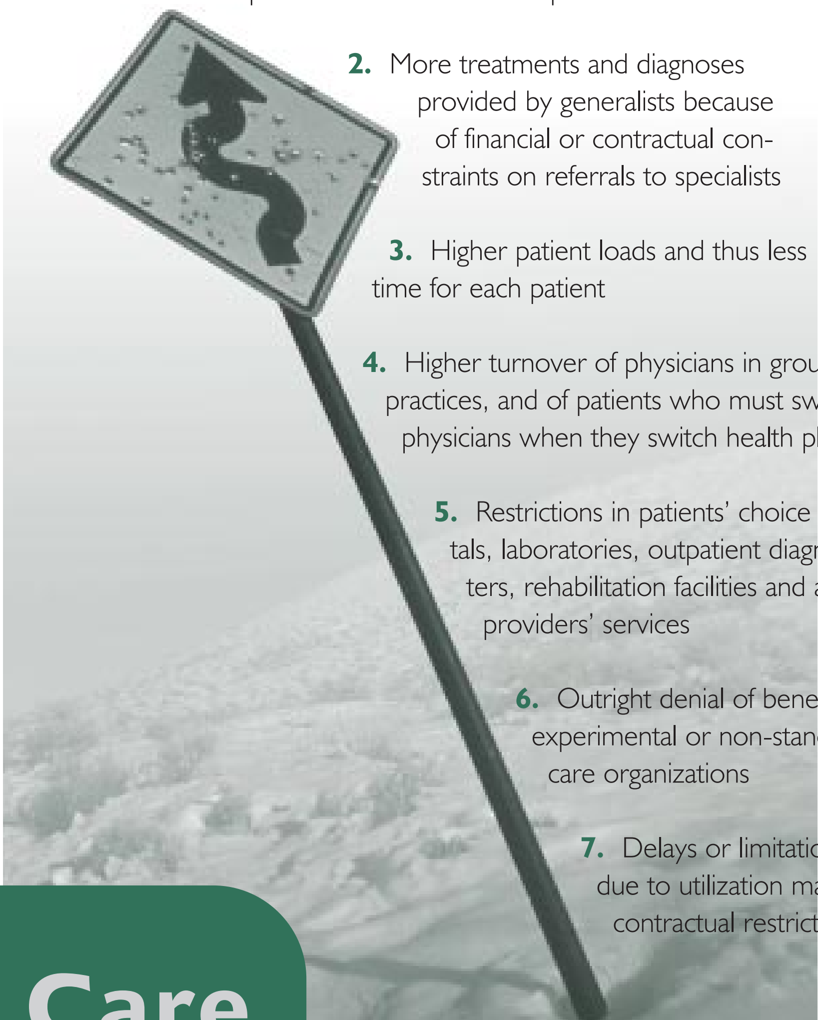
Health care providers are increasingly assuming risk under capitated contracts with HMO's where the medical group, hospital, IPA or other provider organization receives a fixed monthly fee per enrolled "member" in exchange for providing defined services. Providers can increase their incomes or receive year end bonuses by keeping the rate of utilization below anticipated norms for a given population. These arrangements are commonly called "risk" contracts.

Cases Involving Managed

Defendant	Allegation
California Physician	*medical malpractice: failure to promptly perform surgery for slipped capital femoral epiphysis*
California HMO	*failure to provide health benefits: autologous bone marrow transplant for breast cancer*
Idaho HMO	*failure to provide health benefits: liver transplant*
California HMO	*failure to provide health benefits: 9-year-old cancer patient*
California Medical Group/HMO	*medical malpractice: failure to diagnose fetal posterior urethral valve blockage in pregnant patient: failure to refer to specialist*
California HMO/Hospital	*medical malpractice: failure to give Pneumovax 14 booster to asplenic teenager*

This fundamental change in the method of physician and hospital compensation presents new and emerging "managed care related" liabilities which will arise from:

1. Restrictions to traditional referral patterns through use of contractually mandated or economically encouraged networks of "preferred" or "exclusive" providers



2. More treatments and diagnoses provided by generalists because of financial or contractual constraints on referrals to specialists

3. Higher patient loads and thus less time for each patient

4. Higher turnover of physicians in group practices, and of patients who must switch physicians when they switch health plans

5. Restrictions in patients' choice of hospitals, laboratories, outpatient diagnostic centers, rehabilitation facilities and ancillary providers' services

6. Outright denial of benefits considered experimental or non-standard by managed care organizations

7. Delays or limitations of health benefits due to utilization management or contractual restrictions.

When any one or a combination of these factors appears to cause or contribute to a patient's injury or death, the risk of lawsuit is great and growing. Attorneys are learning how to argue cases involving managed care restrictions. Physicians, particularly subspecialists are more willing to testify for plaintiffs in cases where a failure to refer is alleged. Jurors, long exposed to media reports of billion dollar mergers and acquisitions among giant for-profit health care enterprises, multi-million dollar compensation packages of their executives, and stories of cold hearted attitudes towards sick patients, have no trouble awarding injured plaintiffs millions of dollars in compensatory and punitive damages when they perceive that health care was compromised, denied or delayed, particularly when evidence of profit motive is present.

These verdicts are just beginning to emerge because of court congestion and inherent delays of complex litigation. We found references to managed care issues in seven of the 133 cases reviewed for this year's Large Loss Trend Study. The issues included failure to provide needed treatment (2 cases), failure to refer to a more appropriate specialist for treatment or diagnosis (2 cases), failure to diagnose conditions because of communication breakdowns related to a multiplicity of providers seeing the same patient on different visits (2 cases), and failure to follow up on an abnormal test result (1 case).

For the past two years we have collected news articles of verdicts, arbitration awards or fines which involved managed care liability issues. Below are the summary descriptions of six cases. They occur all over the country, not just California. We will see many more in coming years.

Care

Description	Type of Award/Action
13-year-old patient was enrolled in HMO which required doctor to submit surgery request in writing. He failed to emphasize urgency of surgery, resulting in delay and further injury due to fall. Required five surgeries to repair.	Jury award $750,000
38-year-old patient with breast cancer denied health benefits for bone marrow transplant on grounds it was experimental. HMO execs' bonuses were allegedly tied to reductions of costly medical procedures. These benefits had been approved for earlier patients.	Jury award *(including $77 million punitive)* $89,100,000
Patient diagnosed with cirrhosis of liver was denied coverage for liver transplant. Bad faith alleged because sales brochure said transplants were covered.	Jury award *(including $25 million punitive)* $26, 852, 917
9-year-old patient had rare, life threatening kidney cancer (Wilm's tumor). HMO refused to authorize surgery by experienced specialist. Patient forced to pay for specialist. HMO later paid, but was fined by California Department of Corporations.	Fine $5,000,000
Pregnant patient was member of HMO. She was referred to a medical group and saw six different obstetricians for prenatal care. Infant delivered with non-functioning kidney; failure to refer to OB specialists influenced by capitation. Permanent kidney damage.	Jury award $2,884,144
19-year-old patient's HMO primary care doctor had heavy case load and forgot patient was asplenic. Patient died from infection after onset of fever; internist couldn't see her due to busy schedule; delay in getting to ER.	Arbitration award $105, 500

continued from page 1

Silver Lining

"parked" on the sidelines to permit all the struggling companies to succeed. Today's efficient and discerning capital markets guarantee virtually unencumbered growth for the successful companies. Conversely, struggling insurers have a hard time accessing capital and face punitive restrictions and high costs.

So, the slow, but steady, industry shake-out will continue with the stronger getting stronger and the struggling either pulling off miraculous recoveries, or merging, or contracting and restructuring into smaller and different companies than they once were. At this industry turning point, the actions companies have taken in the recent several years, and more importantly, the actions they take in the next several years are critical. At stake is their ultimate success: Will they make the roster of companies that will compete into the year 2000?"

The preceding was an excerpt from the January 1996 Best's Review "Review & Preview" article entitled "The Industry at a Turning Point - Medical Professional Liability Aligning With Winners" (page 94).

From my corner of the liability insurance world, I see a glass half full of opportunities waiting to be filled by those health care providers who have the vision and the guts to ignore the nay sayers and take advantage of the conditions which are stifling the actions of others. Never, at any time in the history of the insurance industry, has there been so much capital available through so many different insurance companies competing for a share of the medical malpractice insurance market. This silver lining of opportunity is fueled by intense competition and health care providers, large and small, should harvest the fruit of increased profits while it shines so brightly.

The ability to compete has always been, and always will be, the final arbiter in deciding who will fail and who will prosper in the market place. There is no reason to believe that providers will ever again be faced with the scarcity of affordable malpractice insurance which precipitated the 1975-76 malpractice insurance crisis. Today, there are over 60 A.M. Best Rated A commercial and provider owned underwriters in the market. Even if the number is reduced by attrition and mergers, over 50 would have to leave to market before providers would be confronted with oligopolistic conditions similar to those which preceded the crisis. And should prices be allowed to rise beyond reasonable profit levels, new underwriters will enter the market and drive down prices just as they are today. According to California Physician Magazine's September 1996 issue, "Today, there are more than 100 admitted insurers, risk-retention groups (group self-insurers or captives that cover their owners' liability), surplus-lines insurers (for which coverage lines need not be filed with the State), and offshore captives currently providing medical malpractice insurance covering all segments of the California health care community."

My advice? Do not wait for the renewal of your present insurance to go shopping. You may just be able to save some money now by calling the specialists at HCP.

For a complete copy of either the Best's Review or California Physician Magazine articles, call or write us.

Trivia Q&A

QUESTIONS

1. Which state boasts the lowest class III physician medical malpractice rates at $1 million/$3 million mature rates?

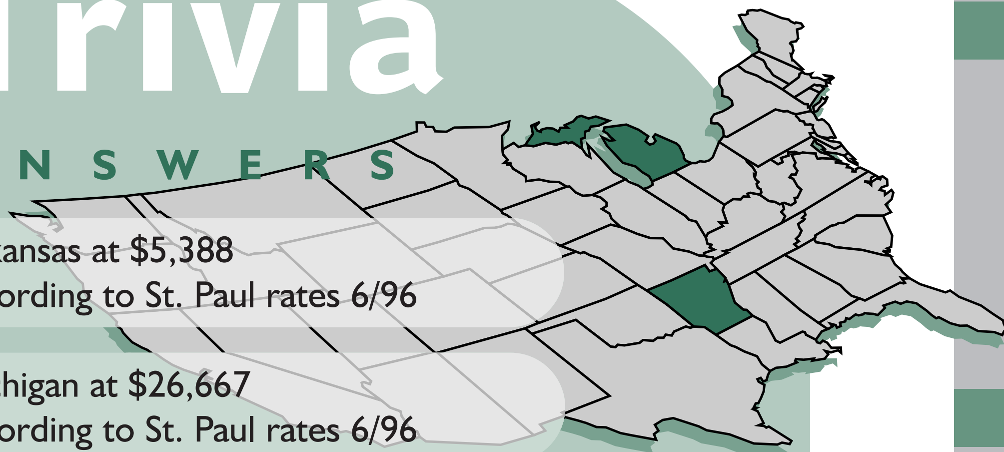
2. Which state has the highest?

3. How many A rated by A.M. Best carriers are competing for California physician business today?

Answers on back page.

Trivia

ANSWERS



1. Arkansas at $5,388 according to St. Paul rates 6/96

2. Michigan at $26,667 according to St. Paul rates 6/96

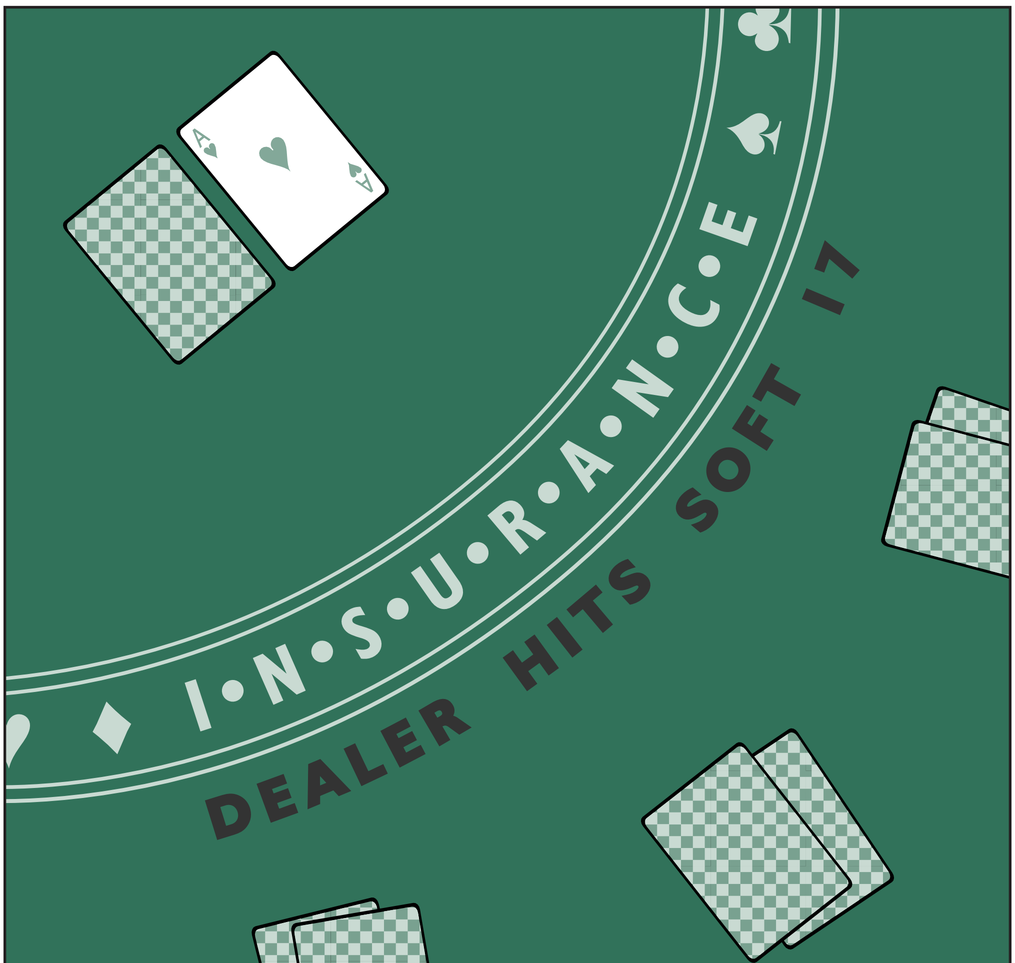
3. We came up with twenty-two

Next Issue:

Listing of top 50 physician medical liability insurance underwriters by premium volume and lead state.

Employment Related Practices Liability growing financial threat in medical groups today.

Claim trends per 100 physician on the rise; Are we heading for another premium hike similar to 1988-89?



INSURANCE: An ingenious modern game of chance in which the player is permitted to enjoy the comfortable conviction that he is beating the man who keeps the table.

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