

Insurance Report



A Letter
from
John Keane

Welcome to another edition of the Keane Insurance newsletter.

Last year was perhaps the most challenging year we have faced at the Keane Insurance Group. As you know, the year brought dramatic increases in the rates charged by carriers for medical malpractice insurance.

In some cases, we reported increases as high as 70 percent. Many of our clients were understandably shocked and troubled by the size of the increases.

Because we have access to a wide range of carriers, we were able, in many cases, to hold the line against further or more dramatic increases.

Unfortunately, this year promises to be challenging as well. St. Paul, the nation's largest medical malpractice carrier, announced its intention to exit the market effective immediately. (It will still provide "tail" coverage as required by their policies.)

Obviously, St. Paul's departure will have a further affect on the types and costs of coverage available to our clients.

We do not intend to sit idly by while the market continues to contract. We have rededicated our firm to ensuring that we continue to have access to as many carriers as possible, and thus increase our chances of securing the best coverage for the best price.

We have also added a full-time claims service representative to serve as a crucial link between you and the carriers if and when a claim should arise.

Please accept my sincere gratitude for your business. I encourage you to contact me directly with any comments or suggestions.

John Keane
President

An Attorney's Perspective

Why Are Malpractice Rates on the Rise?

By: Robert C. Seibel
Attorney at Law
Seibel & Eckenrode, P.C.

Everyone concerned with the defense of medical malpractice cases is acutely aware of the recent turmoil involving increases in premiums and carriers pulling out of the market. It seems like a day does not go by in our office without a call from a worried client seeking direction on either renewing or replacing professional liability coverage. This environment has turned physicians into active customers, perhaps like never before. My understanding is that options are available, but may require, for instance, that physicians group together to purchase coverage. John Keane asked for our input on this issue facing healthcare providers today.

Q Are there more claims being filed than in the past?

A Our sense is that there are. The increase in the frequency of filed claims puts added demands on companies which are obligated to defend the claims, whether or not the claims have merit. Other than those cases which proceed to trial, there is probably not a great deal of difference in defense costs between those meritless claims that are eventually dismissed after discovery and those legitimate claims which tend to be resolved through negotiations at a comparable time during the suit. Since our system does not require the losing party to reimburse the prevailing party's fees and costs, these represent unrecoverable defense costs to the malpractice carrier.

Q Are claims more severe?

A Our general sense is that the answer here is also yes. This is particularly true with damage claims which may exceed the available policy limits. To avoid the possibility of liability beyond insurance, many physicians choose to demand that these cases be settled. When the insurance company honors those demands, the settlements represent significant sums, usually approaching \$1,000,000. Moreover, the ever-escalating cap on non-economic damages (i.e. pain and suffering) in Missouri (\$540,000 in 2001) also accounts for an increase in severity. There is no cap on pain and suffering awards in Illinois. We also are beginning to see some blurring of

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the distinctions between St. Louis City and St. Louis County verdicts. Plaintiff's lawyers, who often share their portion of the fee with referring counsel, are motivated to develop and maximize all features of their client's damage claims. As such, the combination of increased frequency and severity surely has an impact on the malpractice premiums healthcare providers are now being asked to pay.

Q Are defense costs themselves rising?

A Not really. Our standard rates for defending a malpractice claims have not changed for four years. While our staff has expanded considerably since we formed our firm four years ago, it has had more to do with the demands of our increasing caseload than anything else. Although our hourly rates are stable, there is a steady "creep" upward in the fees charged by expert witnesses. It does not appear, however, that the fees charged by defense counsel or experts account for the significant rise in the cost of defending medical malpractice cases.

I hope this brings an additional perspective to this issue. You are always free to contact us with any questions or concerns. It is our pleasure to be of service to the medical community in this area. ■

St. Paul Exits Malpractice Business

Access to Coverage Could Be a Challenge to Some

The St. Paul Companies announced in early December its decision to completely withdraw from the medical liability business. The company will immediately begin to non-renew current insureds as their policies expire.

Until last year, St. Paul was the largest writer of malpractice insurance, with more than six percent of the nationwide market. The company expects to report a loss of about \$940 million this year on its malpractice business, despite raising rates averaging more than 24 percent in 25 states.

The company provided liability coverage to 40,000 physicians, 72,000 other healthcare professionals, and 750 hospitals throughout the United States last year. Net written premiums for the year will be about \$530 million.

The company's decision rocked the industry, where St. Paul had been a leader and powerhouse. As some doctors might recall, St. Paul was one of the few companies to stay within the malpractice industry during the crisis

in the mid-1970s when many other carriers exited the business.

Access to Coverage

Because of the departure, and the shrinking of coverage availability, some experts are predicting still

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more rough weather ahead for the malpractice industry. According to Donald Palmisano, MD and secretary-treasurer of the AMA, St. Paul's

withdrawal will cause havoc in the professional liability market. Doctors will have "an immediate access problem as soon as their policies expire."

Others are sounding cautiously optimistic the market will withstand the storm, particularly in certain parts of the coverage. "There still remains a wide variety of companies eager to offer coverage, especially in the Midwest," says John Keane, president of the Keane Insurance Group. "We are more fortunate than those doctors in Pennsylvania and West Virginia where most, if not all, of the carriers are exiting the business." ■



THE FINANCIAL CORNER

Five Action Items for the New Year

Resolutions to your financial health

January 1, 2002 ushered in a “new age” of strategic estate and financial planning. Up to this point, there have been a great deal of basic blocking and tackling utilized to help clients achieve their financial goals, now many individuals are dusting off their plans and looking for opportunities.

The opportunities range from reducing the required contribution on behalf of employees to qualified plans to accelerating gifting schedules to protect one’s estate from creditors. We will attempt to summarize some of the most salient planning implications of this “new age.”

Last quarter we dedicated half of the article to the changes effecting retirement plans this year. The obvious highlights include raising the 401(k) salary deferral limits from \$10,500 to \$11,000 and increasing the deferral limits up to \$40,000 or 25% of salary (whichever is achieved first). Practically, this means that employers can reduce the amount of contribution contributed on the employee’s behalf and still hit the \$40,000 threshold.

In the past, many groups have employed a Money Purchase Pension Plan (Fixed Annual Defined Contribution) as a method of achieving the maximum contribution on the doctor’s

behalf. Now employers can defer more money with zero or minimal Fixed Contribution and greater flexibility.

The past two years have been a stark reminder for many clients that asset allocation is critical to

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investment success. According to Ibbotson Associates, 92% of investment return is derived from proper asset allocation, 6% from security selection and 2% from luck (market timing). Therefore, we are encouraging our clients to review their portfolios, both on an individual account basis, and collectively with all of their assets. In addition an asset allocation questionnaire can help frame the proper amount of risk within a given portfolio, including more aggressive strategies for reducing risk or improving returns.

In our opinion, proper estate planning is even more critical today, now that the landscape is changing on a fairly rapid basis. Increasing this year are the Unified

Credit Equivalent Exemption (the amount that you can leave your children effectively tax-free) and the annual gifting limits. These are just two of the many reasons why effective estate planning can impact your net worth and the net worth of your heirs. Still effective tools include an annual gifting plan to your children, charitable giving and utilization of an insurance trust. The most common mistake that we see is the improper ownership of an asset or an insurance policy - effectively undoing much of the rest of the estate plan.

Buy-Sell Agreements, like estate planning, are frequently only review after the death or retirement of a partner. The need for a properly drafted Buy-Sell can help shelter practice and personal assets from creditors as well as departing partners. The practice has a multitude of options to buy-out a partner from insurance, to a note payable to the former partner (or estate of the partner). The correct strategy depends on the size and cash flow of your practice.

If you have questions about any of the items explained in this article or any questions about acting upon these action items, please contact David S. Obedin, CFP, ChFC of Renaissance Financial at 314-569-2900. ■

Keane Welcomes Susan Starck as New Claims Service Representative

Susan Starck has joined the Keane Insurance Group in the newly created position of Claims Service Representative.

“Susan garnered extensive experience in the malpractice field while serving as a client service specialist with her previous employer,” says John Keane. “We are very pleased to welcome her to our staff.”

A 13-year veteran of Medical Protective Company, a major provider of medical malpractice insurance, Susan brings a wealth of experience in handling unique client challenges.

“As claims service representative, Susan will provide an important link between our clients and their insurance carriers,” says Keane. “It’s more important than ever to ensure that both sides are communicating effectively. Proper handling can be critical in the timely responses from the carrier and the appointment of legal representation.”

Susan is the mother of five children, ranging in ages from 11 to 31, and one granddaughter. She enjoys spending time with her family and bowling in her free time. ■



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