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Commentary: The Corporate Practice of Medicine and The Need for Physicians to Stay Engaged

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President & CEO



There is no question that more and more doctors are opting to earn their livings as hospital employees rather than private practitioners. The

Maine Hospital Association reported in 2006 that 42 percent of the active physicians licensed in Maine are employed by hospitals. Many believe that that ratio will exceed 50 percent when the MHA revisits the question with a new survey this coming year.

Why? Embarking on their new careers with debt up to one hundred thousand dollars or more for their education, young doctors simply cannot afford the start-up costs, nor the ramp-up time associated with opening a private independent practice. Thus they are increasingly choosing the security of a regular paycheck. Yet, it is not just recent medical school graduates who are choosing the route of hospital employment. In more and more instances, experienced specialists who have practiced privately for years are choosing to move their practices to their local institutions. For the latter, it's the continued reduction in reimbursements and significant increases in overhead that constantly threaten the economic viability of the practice. Couple that with the enviable prospect of

shedding additional business-related hassles that take away from patient care like meeting payroll, dealing with staffing issues, managing benefits and savings plans and the decision becomes easy.

Dual Perspectives, Dual Concerns

The choices are all personal and they all make sense. They are simply part of an undeniable and fast-growing trend in our healthcare system — one that concerns me in two ways. First, as a physician who has seen major shifts, advances and challenges in the medical industry over the past 40 years, I'm concerned that the voices of physicians may be lost when it comes to shaping the future of the healthcare system. Second, I've noticed that as more and more physicians shed the burdens of the business side of practicing medicine, they also abdicate their role in advocating for their own interests, particularly when it comes to their own medical professional liability coverage.

How to Stay Engaged

It is important that we not withdraw from the kinds of discussions that shape the direction of healthcare policy when it comes to things like payer issues, legislative issues, and, yes, liability insurance. And while it's each individual's prerogative, I am using this forum to urge physicians, especially those who have become employed by hospitals, to stay

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engaged in the issues of your industry — the issues that affect you and your patients. Be active in your state medical associations or societies, as well as your specialty societies. They play important roles in forming policies on myriad healthcare issues, some discreet, some far-reaching, some local, and others national.

The thing is, if you are a doctor, whether employed or in private practice, you are bright, educated and informed on the state of healthcare by virtue of your day-to-day practice and interaction with patients. You owe it to yourself and to your patients to be a leader in the cause and to make sure your voice is

heard on the issues of the day. I know that hospital CEOs welcome your leadership and partnership and they know their physicians are the life blood of our healthcare system.

Liability Insurance and the Importance of Maintaining Your Voice

From the Company's standpoint, you simply owe it to yourself to learn about choices when it comes to medical professional liability insurance. It is not a commodity. Different companies take different approaches to handling claims, underwriting, risk management and legislative initiatives like tort reform. You

don't want your first insight into these differences to come when you are facing a lawsuit. If you're at an institution that does not have the protection of Medical Mutual, help us help you by talking to your hospital administrators about the benefits of our program — and more importantly, how they differ from others.

The long and the short of it is that the way you make your living as a physician is your decision. But, as a physician, whether you choose private practice or hospital employment, please remember that you also have a voice in shaping decisions on healthcare policy and, yes, your professional liability insurance.

Medical Mutual to Sponsor Deposition Preparation Program

As a practicing physician, the odds are you'll be deposed in response to a claim against you, your institution or another physician at some point in your career. That's why Medical Mutual is sponsoring a special series of Deposition Preparation seminars in 2008.

Working with the Maine Medical Association, the New Hampshire Medical Society and the Vermont Medical Association, Medical Mutual hopes to be able to offer CME credits to program participants. The seminars, which are scheduled to be held in all three states, will feature presentations and mock depositions by Medical Mutual's lead defense attorneys.

In addition to the Medical Mutual-hosted presentations, the Company is also making the program available for presentation to any medical specialty society in Maine, New Hampshire or Vermont, as well as any large member-insured physician group or hospital.

For more information, or to schedule either this Deposition Preparation program or a customized case-based learning program, contact John Doyle, Medical Mutual's Vice President of Marketing and Corporate Communication, at (800) 942-2791 or via email at jdoyle@medicalmutual.com.

Mador Named New Risk Manager



Jackie Mador, RN, comes to Medical Mutual from St. Mary's Regional Medical Center located in Lewiston, ME.

Jackie Mador, RN, recently joined Medical Mutual as a Risk Manager. Jackie brings a wealth of experience to her job of advising policyholders in Maine on operational and clinical risk management issues. Her education includes a Bachelor of Science Degree in Business Management and a Master's Degree in Health Services Administration. She comes to the Company from St. Mary's

Regional Medical Center in Lewiston, where she was the Manager of Nursing Education. Jackie has also held a number of nursing leadership positions in Maine and Nevada and is certified in emergency and critical care nursing.

Medical Mutual Brings Hospitals Together

Company explores unique coverage and claims issues related to Deemed FQHC's and shines a spotlight on handling medical errors

Hospital administrators, medical directors and risk and quality managers representing institutions throughout the state gathered for Medical Mutual's inaugural Hospital Education seminar August 28 at the Woodlands Club in Falmouth.

Titled, *Disclosure and FQHC Exposures: What every hospital needs to know*, the morning seminar featured a presentation by the law firms of Norman, Hanson & DeTroy, LLC and Paul Frank + Collins, PC that explored unique coverage and claims issues related to Deemed Federally Qualified Health Centers. The program also included a viewing and subsequent discussion of *When things go wrong*, a video produced by CRICO/RMF, the professional liability carrier for the Harvard medical community, that presents patient perspectives on medical errors in the hospital environment.

In an impromptu peer-to-peer moment fostered by the program's group discussion, attendees also benefited from the firsthand account by Roy Hitchings, Jr., FACHE, President and CEO of Penobscot Bay Medical Center, of a sentinel event that occurred at the hospital several years ago. Hitchings' powerful description of the event and the subsequent steps he and the hospital's management team took to address the situation was a tremendous learning opportunity that provided unique insight into the multi-dimensional issues and challenges of responding to fatal medical errors.

Feedback from evaluation forms filled out by attendees showed enthusiastic support for the annual hospital education seminar concept, citing the pertinence of the material, the quality of the presentations and the convenience of the half-day format as strengths of the program.



Roy A. Hitchings, Jr., FACHE, Chief Executive Officer of Penobscot Bay Medical Center, provided a powerful firsthand account of the multi-dimensional issues and challenges he and his management team faced in the wake of a sentinel event that occurred at the hospital several years ago.

Suggestions for future presentations included training on how to handle sentinel events and step-by-step recommendations for investigation and follow-up of equipment-related incidents. Should you have an idea for a topic to highlight at next summer's Hospital Education Program, contact John Doyle, Vice President of Marketing and Corporate Communications at (800) 942-2791 or via email at jdoyle@medicalmutual.com.

And Vermont Makes Three

Just in time for the year's first renewal notices, Medical Mutual recently announced that the Company's rates for both physician and hospitals in Vermont would remain unchanged for the coming year. The announcement was made in a letter from Company President and CEO, Terrance Sheehan, MD, to all Vermont policyholders on October 5, 2007.

Sheehan said, "I have always believed that Vermont's claims activity would level off, allowing (members there) to experience

the same kind of rate stabilization that has already occurred in our other two states. Thankfully, that day has arrived in time to impact your renewal rates for the upcoming year."

The announcement came on the heels of the Company's completed rate evaluation for Vermont. With this latest rate announcement, all three states Medical Mutual serves will now see flat rates for the current policy year.

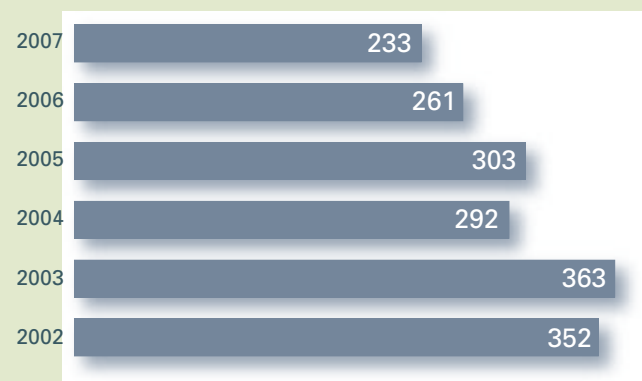
Medical Mutual Reports 2007 Third Quarter Operating Results

With solid gains in operating income and an improving loss ratio, the Company is on track to exceed year-end projections

In the midst of a remarkable cycle that is yielding improvements in claims frequency, Medical Mutual delivered another quarter of solid operating results for the period ending September 30, 2007. The \$5,724,000 increase in 2007 operating results over the same period last year is primarily due to a \$2,536,000 decrease in loss adjustment expenses and a \$2,063,000 reduction in losses incurred. Comparing the high watermark for new claims activity during the first nine months in 2003 with the same period in 2007, new claims activity has been reduced by 36 percent. True to form, the ultimate loss costs to the Company were highly correlated with the number of filed claims.

Commenting on the operating results, Dom Restuccia, the Company's Executive Vice President and CFO said "I am incredibly pleased with the financial performance of the Company. In an industry like ours that historically goes through periods of peaks and valleys, the past few years have truly been unprecedented. Should the current trend of moderated claims activity hold for the remainder of the year, its actuarial impact on future rates, or our ability to declare another dividend, can only be positive."

New Claims Filed (first nine months)



Although claims activity is not consistent year-to-year, the Company has now experienced almost four years with new claims activity significantly below levels seen in 2003 and 2002.

"Should the current trend of moderated claims activity hold for the remainder of the year, its actuarial impact on future rates, or our ability to declare another dividend, can only be positive."

— Dom Restuccia,
Executive Vice President and CFO

Highlights and significant results for the first nine months of 2007 include:

- **Pre-Tax Income:** Income before taxes was \$4,694,000. This compares to \$2,779,000 for the same period in 2006.
- **Pre-Tax Operating Income:** Pre-tax operating income (ignoring capital gains/losses) was \$8,512,000, a \$5,724,000 improvement over the \$2,788,000 reported for the same period in 2006.
- **Dividend Declaration:** The dividend, paid out in the form of premium credits to eligible policyholders in Maine, New Hampshire and Vermont, reflects one of the greatest benefits of a mutual company like ours – the ability to return excess premiums collected to member insureds when claims activity proves to be better than expected.
- **Net Earned Premiums:** Net earned premiums rose slightly to \$32,081,000 from \$31,819,000 reported in the same period in 2006.
- **Losses on Claims:** Losses were \$13,191,000, a 13.52% decrease from the \$15,254,000 reported in the same period in 2006.
- **Insurance Operations:** The Company reported a \$2,857,000 underwriting gain in 2007, reflecting a \$4,768,000 improvement over the \$1,911,000 underwriting loss for the same period in 2006.
- **Investment Income:** Higher average balances invested due to positive cash flows from operations coupled with higher yields were the primary factors driving a 20.34% increase in investment income to \$5,655,000.
- **Surplus:** Surplus has increased by \$5,461,000 since year-end 2006 because of positive net operating results for the nine month period, an increase in the net unrealized capital gains in the equity portfolio and a reduction in non-admitted assets.

Physicians and Hospitals Should be Alert to the Issues Related to Participation in Electronic Medical Record Systems

In August, 2006, CMS published rules creating an exception under Stark allowing certain arrangements between physicians and hospitals (and other DHS facilities) for the provision of electronic health records (EHR). The Office of the Inspector General adopted similar rules creating a safe harbor under the Anti-kickback statute. Since the adoption of the rules, New England physicians have begun to see opportunities for participation in programs to receive electronic medical records programs from facilities. Before entering into these programs, physicians and hospitals should be aware of the rules that govern them and carefully evaluate the proposals to ensure compliance. Both the Stark exception and the Anti-kickback safe harbor require, among other things, the following elements:

- Hospitals may offer physicians non-monetary remuneration, including software, information technology and training services. Please note that the rules do not allow for the provision of hardware including hardware used to connect to the EHR system.
- The software must be certified as interoperable within 12 months prior to the date it is provided to the physician, and the hospital can take no action to restrict the use, compatibility or interoperability with other EHR systems. We recommend a copy of the certificate of interoperability be attached as an exhibit to the contract.
- Before receiving the items or services, the physician must pay 15% of the hospital's cost. The hospital may not loan these funds to the physician.
- Receipt of the EHR cannot be a condition of doing business with the hospital.
- The physician's eligibility to receive the EHR items or services cannot be determined in a manner that takes into account the volume or value of services between the parties.
- There must be a written agreement between the parties setting forth the hospital's costs and the amount of the physician's contribution. The written agreement must cover all of the EHR items and services to be provided.
- The hospital must not have knowledge of the fact that the physician possesses items or services equivalent to those being provided through the agreement. The contract may require a representation by the physician that he or she does not already have equivalent items or services.

- The hospital cannot take action to limit the physician's ability to use the EHR items or services for any of his or her patients.
- The hospital cannot provide staffing in the physician's office as part of the EHR services.
- The EHR items or services cannot be primarily intended to conduct the physician's personal business or business unrelated to the medical practice.
- The EHR software must contain electronic prescribing capability.

In addition, physicians and hospitals should also carefully assess the operational aspects of the system particularly the issues related to privacy to ensure the requirements of HIPAA are met. For many physician practices, this will require a revision to the Privacy Notice. Both parties should also be fully apprised of the mechanisms for transitioning out of the EHR to another system upon termination to be certain there will be continuous access to patient records during the transition period and after termination.

Cinde Warmington, a partner in Sulloway & Hollis, PLLC's Health Care section, represents providers in a wide range of business and regulatory matters.

Company Looks to Member-Insureds to Opt In to Email Database

In an effort to enhance the Company's communications with member-insureds and to reduce its carbon footprint, Medical Mutual is embarking on an effort to gather email addresses for all institutional and practice contact people, as well as covered healthcare professionals. The new initiative will save paper, speed the dissemination of special announcements and improve communications on all matters related to your insurance coverage from Medical Mutual.

The Company will mail a brief email registration form in January 2008 to all member-insureds asking them to opt in to Medical Mutual's secure email address database. Individuals will have the choice of filling out and returning a business reply card or visiting the Medical Mutual web site to provide or update their contact information.

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