Medical Professional Liability (MPL) claims frequency has trended upward in West Virginia since 2009. According to an analysis of the West Virginia State Treasurer’s Medical Liability Fund Report, 2012 is trending 20-35 percent higher in total claims filed in the state. This trend is concerning.

As we move into the age of the Affordable Care Act (ACA), experts predict the additional patient volume that may enter the healthcare delivery system may give rise to an increase in exposures which could lead to frequency in medical professional liability malpractice claims. Your Mutual will continue its vigilance and advocacy on behalf of our physician owners as this law continues to evolve.

Elsewhere in this issue, you will find that medical liability claims frequency has been increasing in West Virginia since 2009. This increase is occurring after several years of low frequency following the passage of tort reform legislation in 2001 and 2003. This increase includes all healthcare providers in our state: physicians, hospitals, midlevel providers, nursing homes, etc. However, due to a combination of excellent work by you and your Mutual’s Underwriting and Risk Management teams, you, our owners/insureds, have not experienced such an increase, fortunately.

During our C.A.R.E. presentations, I usually make mention of the fact that the entire state of West Virginia has been listed in the top five “Judicial Hellholes Report” compiled by the American Tort Reform Association. West Virginia has been in the top five since the annual listing has been in existence. This being the case, it is apparent that as physicians, we face unique challenges in our state, whether it be the overall health status of our population, which report after report shows we are one of the unhealthiest states in the country, or, the reality that the rural nature of our state sometimes makes it difficult for patients to physically get to a healthcare provider they need quickly. Hence, we West Virginia Mutual Insurance Company insured physicians need to continually improve our skills as we work to provide safe, quality healthcare to the population we serve. As the CEO of your Company, my pledge to you is that your Mutual will constantly strive to improve and will be a leader in our specialty: providing you a reliable, long-term solution for your medical liability needs.

However, we collectively face some significant external challenges in the next few months. The trial bar has become noticeably more aggressive in promoting legislation designed to undo our very successful civil justice reforms now that their efforts to overturn them at the state Supreme Court level have failed. Indeed, a total of seven bills were introduced during last year’s legislative session at the behest of the “Association for Consumer Justice.” Furthermore, there are two open seats up for election to the Supreme Court of Appeals on November 6. After the election, the court will look very different than when our hard-fought reforms were put in place and when they were upheld just last year.

For your part, I challenge you to support those candidates that share your interests. I ask you to support their campaigns financially and, most importantly, by voting on Election Day. Our advances in the past decade have led to improvement in the public health in our state and we can’t afford a return to the ‘bad old days.’ It is important we remain united, informed and continually strive to be better for our patients and for our state.

Your Mutual is, and will continue to be, Physicians Insuring Physicians.
Health Information Breaches Becoming More Common

According to The U.S. Department of Health and Human Services (HHS), as of mid-September 2012, there have been nearly 490 breaches affecting 500 or more individuals. The Breach Notification Rule became effective nearly three years ago and the number of breaches affecting 500 or more individuals. Healthcare providers that become aware of compromised patient data should act as quickly as possible to mitigate harmful to the patient. Ignoring these incidents, big or small, can drastically increase fines and penalties over the long run. The Mutual would strongly encourage you to contact your personal attorney when these incidents occur to ensure the proper steps are followed and the required reports are submitted to HHS. The Mutual also has resources available to help you identify areas of risk that could increase your chances of suffering a data breach. The Mutual has added coverage to help reimburse you for some of the costs associated with mitigating a data breach. You are encouraged to contact your agent or the Mutual to further discuss this coverage and available resources.

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's why your Mutual utilizes West Virginia lawyers experienced in medical professional liability defense where a policyholder is faced with a claim. Out-of-state, third-party claims 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 the specific communities of our state.

Understanding the Administrative Defense Endorsement

Administrative defense coverage provides legal expense benefits for non-medical malpractice proceedings against a physician. These issues can arise out of your medical practice. The Administrative Defense Endorsement* may reimburse legal expenses incurred resulting from administrative proceedings up to $25,000 and is subject to a $1,000 deductible.

Examples of these types of proceedings could be:
- governmental or regulatory proceedings alleging non-violations of Medicare or Medicaid regulations related to reimbursements for services;
- professional review actions by a professional review body of a healthcare entity of clinical privileges, etc.

However, this coverage does not include expenses incurred in defense of a criminal prosecution, tax authority or any civil lawsuit. The Administrative Defense Endorsement attached to your policy stipulates coverage and limitations.

* The endorsement is a part of the insurance contract and supersedes any language contained in this publication.

Missouri Court Rejects Non-economic Damage Caps

In August, The Supreme Court overturned its own precedent, overturning a 20-year-old decision and in the process nullifying that state’s cap on non-economic damages in medical liability cases. The case involved a $1.45 million non-economic damage award in a birth injury case which was subsequently reduced to $350,000 in accordance with state law. (Physicians Insurers Association of America, August 2012)

Jury in Colorado Awards Record $15 Million to MPL Case

A Colorado Springs jury returned a verdict of $15 million in a medical professional liability case filed against a Colorado Health System and physician. According to Jury Verdict Reporter of Colorado, this is the largest medical malpractice verdict on record in the state. The case involved a patient who was discharged from the emergency room after arriving with severe pain and numbness in his arms and legs. Subsequently, the patient was found to have a herniated disk. Under Colorado law, the plaintiff can receive only $300,000 of the $10 million portion of the award for pain, suffering, impairment, and disfigurement. (Denver Business Journal, August 2, 2012)

NPDB Data Show Sharp Drop in Oklahoma MPL Judgments

The number of Oklahoma medical liability judgments has come down sharply in the past two years and is at the lowest level of the decade, according to statistics from the National Practitioner Data Bank (NPDB). Figures from the NPDB show 14.4 MPL payment reports in the state in 2011, down 28 percent from the level for 2009; the year Oklahoma lawmakers passed what was described at the time as a landmark lawsuit-reform law. (Tulsa World, July 31, 2012)

California Court Rules Against Doctor in MPL Case

A California jury has concluded that a medical error by a San Francisco cardiologist caused the death of a 59-year-old woman a month after heart surgery. After a one-month trial, the Superior Court jury voted 11-1 last week to find that negligence by Dr. Peter Curran was a “substantial factor” in the August 2009 death of Michelle Wios. Jurors awarded Wios’s daughter $130,000 for medical costs and funeral expenses and $1 million for emotional distress. That amount will be reduced by $750,000, however, because California law limits damages to $250,000 for pain and emotional harms caused by medical liability. (San Francisco Chronicle, September 14, 2012)

Texas Appeals Court Upholds MPL Damages Cap

In a victory for healthcare providers, a Texas appeals court has upheld as constitutional the state’s $250,000 non-economic damages cap in medical professional liability cases. The decision is the first time an appellate court has validated the limit under the state’s constitution. A federal court in March upheld the cap under the U.S. Constitution. The ruling strengthens Texas’ 2001 tort reform package and protects doctors from high insurance premiums, said Rocky Wilcox, vice president and general counsel for the Texas Medical Association. The court also found the non-economic damages cap valid. (medshow.com, September 24, 2012)