



## **Medical Malpractice Act 2011**

Since the New Mexico Medical Malpractice Act was enacted in March 1976, the New Mexico Trial Lawyers and New Mexico Medical Society have agreed that before any attempts are made to amend the Act, the Liaison Committee of the New Mexico Bar and Medical Society would meet to attempt to resolve any differences before introduction of legislation. In 1992 and 1993 the committee met and agreed to increase both the overall limit of liability, from \$500,000 to \$600,000, as well as the lower limit (that part paid by the liability carrier), from \$100,000 to \$200,000. The committee further agreed to increase the Patient Compensation Fund (PCF) contribution, to allow the Superintendent of Insurance to set the rates, to increase the limit of payment to the medical review commission, and to have an independent actuarial review of the PCF conducted every two years.

Over the past three years, the Liaison committee has met and discussed amendments to the Act and these discussions have been shared with the membership along the way, including special newsletter inserts dedicated solely to dissecting the issues, debates at county medical society visits, informational newsletter and website articles, and of course discussion at meetings of the membership. The end result is that, as radical as it may first appear, the NM Medical Society will submit a Bill to revise the Medical Malpractice Act. Society leadership has taken an active role in shaping the Medical Malpractice Act Bill for the 2011 legislative sessions; revision points and wording have been vetted by the Executive Committee and the Council at each meeting this past year, resulting in a Bill that received unanimous approval and support at the January 2011 Council meeting.

A précis of how we reached this turning point would have to start in late October 2009 when the Superintendent of Insurance issued a bulletin declaring that contributions for medical corporations would no longer be accepted due to the definition of corporations in the Act. Litigation was pursued and a temporary restraining order was issued thus maintaining the status quo; corporations were kept under the Act and corporation contributions continued to be collected. In January 2010, NMMS introduced legislation (HB-188 and SB-213) to amend the medical practice act by allowing the NM Medical Board to license medical corporations, thus addressing the DOI concerns without opening the Medical Malpractice Act. Despite overwhelming legislative support, last minute maneuvers stalled out the Bills, thwarting the attempt at the legislative “fix.”

The NM Medical Board unanimously adopted revisions to the Medical Practice Act [16.10.1 NMAC]. These changes took effect on July 1st. The revised language resolves the question about whether or not medical corporations are covered by the NM Medical Malpractice Act. Section 16.10.1.13 now reads in part “... a business entity formed pursuant to the laws of the state of New Mexico is authorized to provide healthcare services in the state of New Mexico if the healthcare services are provided by or under the direction of persons who are duly licensed to engage in the practice of medicine pursuant to the provisions of the Medical Practice Act...this

Section is intended to be a clarification and therefore, it necessarily operates retroactively, as well as prospectively, and is expressly so provided”.

At this point, the corporation definition has been clarified in regulation but not legislation. There are other challenges to the Act, including several court cases challenging the constitutionality of the Act, which need to be addressed. The most prudent, thorough way to deal with the challenges is by updating, clarifying, and augmenting the MMA head on and on our own terms. To accomplish this, the Society hired Ben Roybal JD to draft necessary amendments which were approved unanimously by the NMMS Executive Committee and Council. The executive committee asked that the Bill be presented to the NM Trial Lawyers Bar Association for their consideration. The proposed Bill:

- a. Amends the definition section to bring the definition of corporation up to date.
- b. Amends the definition section to include all licensed health care providers.
- c. Sets up an independent Hospital Compensation Fund
- d. Increases the limit of liability for Hospitals to \$1.5M with underlying limit of \$600,000.
- e. Increases the limit of liability for Health Care Providers to \$700,000.
- f. Limits punitive damages to two times that of an award.
- g. Increases the amount of money the Medical Review Commission may receive annually.
- h. Changes the name to the “New Mexico Medical Professional Liability Act.”

The outlined amendments are projected to result in a 0-3% rate increase for physicians. Alternatively, if amendments are not made and the corporation definition is not solidified in statute, the impact to a medical practice purchasing \$1/3M coverage outside of the MMA for a corporation would be premium increases for solo practices of 17-24% depending on specialty and of 24-26% for large practices depending on size and specialty. Bear in mind that for large practices with typical assets, a million dollars of coverage is not adequate coverage.

As vital partners in the New Mexico community, NMMS will ask for changes to the MMA that fairly balances the risks and costs to providing health care, with the goal being to maintain access to quality care in all corners of the state. Please encourage your legislators to support the efforts of NM Medical Society in this comprehensive and crucial change to the Medical Malpractice Act. The Act has stood the test of time so well; these changes will help to ensure this continues.