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A model designed to return any excess premiums:

The Healthcare Underwriters Group of Florida (HUFL) physician non profit ownership model is designed to return excess premiums to its owners in the form of policyholder/subscriber dividends.

Although policyholder/subscriber dividends can never be guaranteed, you can be assured that your HUFL Subscriber Advisory Committee (Board), comprised of owner/physicians like you, and the HUFL management team are committed to distributing policyholder/subscriber dividends as soon as it is financially prudent.

Any HUFL policyholder/subscriber dividend must be approved by the HUFL Subscriber Advisory Committee and the Florida Office of Insurance Regulation.

If you have a colleague that you think might qualify for HU, use the enclosed "Fax Back" referral form to make

HU'S RISK MANAGEMENT

PERSPECTIVES

Your Partner for effective risk management.

INDEPENDENT MEDICAL EXAMINERS (IME) ISSUES

Occasionally, our insured doctors are asked to be IME's—almost always for a defense firm. They are asked to examine the Plaintiff to confirm the status of the Plaintiff's damage claim and to refute or diminish those claims when appropriate. Obviously, the IME designation is somewhat of a misnomer because only Court-appointed examining physicians are truly "independent". However, common usage has evolved into the IME term describing any physician hired for the specific purpose of determining the extent of a Plaintiff's claimed damages. The IME is expected to provide a report which will give an independent evaluation of the claimed damages.



The usual examination takes place at the IME's office and after the appropriate evaluation, including review of any relevant prior medical records, x-rays and the like, a report is prepared and submitted to the hiring attorney. In some states, litigation has held that the Plaintiff's attorney may accompany the Plaintiff to the examination and make recordings—both auditory and video in some situations. Allowing the presence of the Plaintiff's attorney and video crews was thought to equalize the situation in which the Plaintiff-patient was perceived as being at an emotional and situational disadvantage when the IME and staff were the only other persons present. Cases had alleged certain comments and history by the Plaintiff were being deliberately omitted from the records by some IME's because the information was perceived as possibly being "helpful" to the Plaintiff and not favorable to the Defendant whose attorney had hired the IME. Audio and/or video recording of the complete session eliminated such possibilities.

Many IME's felt uneasy that their examination was being done in "front of the cameras", but most Courts held from past testimony that by recording the session, deliberate bias would be avoided and the ultimate trier of fact—the jury—would be in the position to decide whose position was the more credible.

In addition to opening up the process for jury evaluation, the Courts have also held that IME's have a duty to their examinee the same as they have to any patient for whom they provide medical services. This means that other conditions that the IME might reasonably discover during the course of the examination should be handled in an appropriate way: for example, should an orthopedic surgeon IME hired to determine the extent of back pain following an alleged negligently performed surgical procedure also observe a large thyroid mass (clearly visible), it would be the duty of that IME to put the patient on notice of the presence of the mass, record the information in the medical record, and to advise the Plaintiff-patient to seek further medical evaluation by the family physician. Should the Plaintiff-patient relate a medical history reasonably suggestive of a treatable medical condition, the IME has the duty to record the information in the record, and, again, advise the patient that further medical evaluation is necessary.

The bottom line is that being an IME is not construed as an isolated examination of one particular aspect of the patient's body to the exclusion of the recognition of the importance of casual history suggestive of other illness and/or the actual observation of lesions or masses.

Being an IME is an important responsibility and should help the jury to decide the merits of a claim.

John R. Tanner, MD, MS, JD
Director of Risk Management

DISCLAIMER: This information is not provided in lieu of appropriate legal advice based on the particular facts of a specific situation. Legal advice should be obtained by consulting with a qualified attorney in your community.

Lawyer pays for doctor's defense

HUFL was proud to announce the recent receipt of a check that confirms an important victory in HUFL's ongoing campaign to stop nuisance claims against Florida doctors.

The original victory came on August 12th, 2005 when a Broward County Circuit judge ruled in favor of an HUFL insured doctor by dismissing a medical malpractice claim and ordering the **plaintiff's attorney** to pay the defense attorney's fees and costs.

The plaintiff's attorney initially appealed the decision, and then withdrew the appeal. In keeping with an agreed upon payment plan, the last check from the plaintiff's attorney was received and payment has been made in full.

This is good news you will want to share with your colleagues. For copies of the full article contact csherlock@hugroups.com.

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Our Website

If you've never visited HU's website, check it out at www.hugroupfl.com. Be sure to check HU's website often for updates, news items and several tools and options to help us serve you better.

Disclaimer

HU does not endorse in any way the medical references herein, nor does HU suggest that any of the practice information be followed by our insureds. Your methods of patient care are always determined by you.

COMMUNICATION — LET'S NOT HAVE A PROBLEM WITH ORAL COMMUNICATION

Our current theme for the risk management (error prevention) seminars has been proper communication between our insureds and their patients. In 1957, two quite interesting objective findings about the functioning of human communications were described in the literature. First, it was shown that about 25% of the information presented at seminars such as we are doing is retained during the first two weeks after the presentation. At 6 months, that percentage of retention drops to about 5%!

Second, the reason for such disappointing results was shown to be primarily related to the speed with which the speaker speaks and the speed at which the listener listens: these were determined on average to be speaking at 100 words per minute and listening at 400 words per minute.

The discrepancies between the rates of speaking and listening allow for the listener to attach his/her thoughts to a speaker's "buzz-word" and drift off on that speaker's subject while no longer actually hearing the rest of the speaker's intended information. This effect is the basis for great sales' pitches in which the seller presents the desired word to intrigue the listener who can then follow the seller's desired line of thought. It works in sales, but can be a disaster in the medical setting when a patient who is relating the chief complaint and history at 100 words per minute happens to launch a word or brief thought that derails the listening doctor onto the wrong path.

The doctor who understands this process, is well advised to not permit such diversion, but to listen to the patient's entire story. The reverse is true when the doctor speaking at 100 words per minute inadvertently "strikes a chord" with the listening patient who then follows that cue and fails to grasp the whole of the information the doctor is trying to present. We can control the communication channels when we know how they work and the potential pitfalls. The bottom line is less confusion, better direction-following, and certainly less likelihood of subsequent claims.

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SELECTED MEDICAL/SURGICAL REFERENCES

ACUTE RENAL FAILURE RISK INCREASED WITH NSAID USE

A recent study reported in the American Journal of Epidemiology found that there appeared to be an increase in renal failure particularly in current new users and that renal function studies within 2 weeks of starting the drugs should be entertained. More review is necessary according to the author.

AM J EPIDEMIOLOGY 2006;164:881-889

HEART FAILURE RISK MAY BE RAISED WITH NSAID USE

Recent studies have demonstrated increased risk of first hospitalization for heart failure thought to be due to NSAID use. The use of these drugs may also cause worsening of preexisting heart failure.

HEART 2006;92:1610-1615

SIDS MAY BE LINKED TO ABNORMAL FUNCTION OF THE SEROTONINERGIC BRAIN SYSTEM

Finally, there appears to be objective, confirmed evidence of biological neuro-chemical abnormality in the function of the brain which interferes with the normal 5-HT mediated drive of blood pressure, respiration, airway reflexes and arousal. [In the past many mothers may have been erroneously accused of killing their babies because of our lack of knowledge of the real causes of these sudden deaths, JRT].

JAMA 2006;296(17):2124-2132,2143-2144