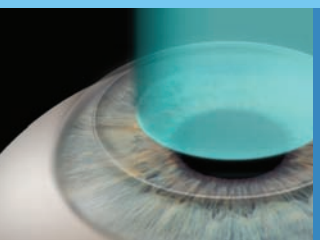

Eye on OMIC

OMIC

The Ophthalmic Risk Management Digest is published quarterly by the Ophthalmic Mutual Insurance Company, a Risk Retention Group sponsored by the American Academy of Ophthalmology, for OMIC insureds and others affiliated with OMIC.

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Why Are Dilating Drops in the News?

A medication used routinely by ophthalmologists—dilating drops—was the subject of a recent ruling in the Massachusetts Supreme Court, which in turn occasioned an ASCRS Member Alert. The court opined that if a physician does not warn of the possible side effects of a medication or treatment, he can be held liable not only to his patient but to all those "forseeably put at risk for a failure to warn."

While this case was triggered by a motor vehicle accident, OMIC has also dealt with malpractice allegations involving falls after dilation. Indeed, we recently settled such a case, and were already editing articles on risks related to dilating drops for this issue of the *Digest* (see **Closed Claim Study** and **Risk Management Hotline**) when we were contacted by policyholders in response to the ASCRS Alert. It is important to reiterate OMIC's long-standing recommendations on an ophthalmologist's duty to warn patients about the effects of dilating drops.

We first suggested such a practice in 1992, when former OMIC committee member Richard A. Deutsche, MD, advised ophthalmologists to "Discuss Potential Side Effects of Eye Drops" in the AAO's *Argus,* and we provided a sample consent document for dilating drops in 2002.

At the 2007 AAO Annual Meeting, the OMIC Forum on "Medication Safety and Liability" focused attention on two other high-risk medications that play a role in ophthalmic liability: anticoagulants and steroids. Policyholders who were not able to attend the forum may order a complimentary copy of the CD by calling Linda Nakamura at (800) 562-6642, ext. 652. Insureds are also encouraged to consult "Hemorrhage Associated with Ophthalmic Procedures" and our sample consent form for triamcinolone acetonide (Kenalog™), both available at www.omic.com.

Message from the Chairman

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three experts strongly defended the care of our insured. With this level of strength in our medical experts, we made the decision to proceed to trial, even though our defense counsel placed the potential jury verdict at $2,500,000 to $4,000,000. In the months prior to the scheduled trial, we held several discussions with the plaintiff attorney to educate him on the fine points of the ophthalmology involved in this case. After many sessions, we convinced him that our experts could discuss the disease process in such depth that his experts would not be able to respond adequately. Ultimately, the plaintiff's attorney decided not to go up against us at trial and the case was dismissed.

OMIC faced a different challenge in the case of a young child who lost an eye following a severe injury from broken glass penetration. The child was brought to the local ER by her parents and was seen by the ER physician and our insured ophthalmologist. Our insured did not want to risk repair surgery in the ill-equipped ER and recommended transferring the child to a nearby hospital that had the appropriate specialists and equipment. En route to the hospital, the patient experienced an expulsive choroidal hemorrhage; unfortunately, the eye could not be saved by subsequent surgery.

Liability revolved around the accuracy of the ER diagnosis and the decision to transfer the child to another facility. Even though OMIC found excellent experts to testify that the eye was unsalvageable when the child entered the ER, the case was worrisome because of the extreme jury appeal of a small child who had lost an eye. OMIC ran a mock trial survey to quantify risk exposure. The mock jury confirmed our suspicions by coming in with an 80% plaintiff orientation and a suggested verdict in the millions.

Since the indication was that if we took the case to trial, there would be a large plaintiff verdict, and with the plaintiff demanding policy limits to settle, the insured asked that we settle the case to avoid putting his personal assets at risk. After tedious negotiations, including several expert depositions supporting our insured and strengthening our negotiating stance with the plaintiff, the case was reasonably settled well within the insured's policy limits.

In both cases, OMIC's expertise in ophthalmic liability and claims defense enabled us to confidently and knowledgeably present the ophthalmic facts, find the best experts to support our insured, and use advanced litigation technology to assess our risk exposure and bring about the best possible result.

Joe R. McFarlane Jr., MD, JD
OMIC Chairman of the Board