Spring 2005 Volume 15 Number 2 OPHTHALMIC MUTUAL INSURANCE COMPANY

Ophthalmic Risk Management Digest
OMIC DIGEST

Surviving the Aftershocks of Malpractice Litigation

By Sara C. Charles, MD

Sara C. Charles, MD, is Professor of Psychiatry (Emerita) at the University of Illinois School of Medicine in Chicago and the author, with Paul Frisch, JD, of the Oregon Medical Association, of *Adverse Events, Stress, and Litigation: A Physician's Guide* (Oxford University Press, 2005).

Earthquake experts tell us that the larger the main shock, the larger and more numerous are the aftershocks, those small earthquakes that can continue over a period of weeks, months, or even years. The aftershocks associated with adverse medical events, such as a bad outcome, or with a subsequent lawsuit may vary in severity. These life-altering events, borne within the physician, are hidden from public view, shaking the foundations of our personal and professional lives. One fledgling ophthalmologist who was sued while in residency admits that the experience continues to influence his care of patients even many years later:

> "The lawsuits really did shake me up. The first one was an unavoidable surgical outcome during residency. Just before beginning my first job after fellowship, I was notified of the litigation by the hospital's attorneys. It made me feel terrible. I even called to resign a job I hadn't even started. I was very green and didn't realize the preponderance of lawsuits. Fifteen years later, even though my actions were remote from the sphere of litigation, I still feel it was very problematic and I worried until I was dropped from the lawsuit. In talking with my peers, I know that litigation tears up lives and does, I think, result in a thickened skin and greater distrust of patients in general."

Like many other physicians undergoing similar trauma, this ophthalmologist felt isolated and unsure of where he could find a helping hand. For most physicians, the adverse event triggers an avalanche of practical details associated with the investigations, regulatory demands, and legal processes. In addition to the disruption caused by participation in these activities, most physicians say that the event itself and the

continued on page 4

MESSAGE FROM THE CHAIRMAN

I am often asked by colleagues what sets OMIC apart from other medical malpractice insurance companies. Like most other physician-owned carriers, OMIC grew out of the malpractice crisis of the 1980s when million dollar judgments put many commercial carriers out of business and forced multispecialty carriers to increase premiums for ophthalmologists disproportionate to our risk exposure. Many of us felt that ophthalmologists were unfairly paying the bill for higher risk specialties and that the only way to bring premiums down to reasonable and fair levels was to form our own insurance company and manage rates over the long term that reflected the actual risk of ophthalmology.

At the time OMIC was formed in 1987, ophthalmic-specific claims data did not exist, and for several years, OMIC, like other insurance carriers, relied on data from "similar risk classes" to forecast loss trends and set premium rates. Today, OMIC, the largest malpractice insurer of ophthalmologists in the United States, leads the industry in ophthalmic medical-legal data collection, which allows OMIC to set premiums that are actuarially sound and reflective of the loss experience of ophthalmologists.

continued on page 2

IN THIS ISSUE

2 Eye on OMIC
OMIC Leads Industry in Financial Benchmarks

3 Policy Issues
Notify OMIC of Changes in Your Practice

6 Closed Claim Study
Early Reporting and Investigation of Potential Claim Averts a Lawsuit

7 Risk Management Hotline
Cooperation Essential as Physicians Leave a Practice

8 Calendar of Events
Risk Management Seminars

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.

OMIC, not the Academy, is solely responsible for all insurance and business decisions, including coverage, underwriting, claims, and defense decisions.

OMIC
655 Beach Street
San Francisco, CA
94109-1336

PO Box 880610
San Francisco, CA
94188-0610

Phone: 800-562-6642
Fax: 415-771-7087
Email: omic@omic.com
Web: www.omic.com

Timothy J. Padovese
Editor-in-Chief
Paul Weber, JD
Executive Editor
Linda Radigan
Managing Editor
Anne Menke, RN, PhD
Associate Editor
Kimberly Wittchow, JD
Associate Editor
Stoller Design Group
Production

OMIC Leads Industry in Financial Benchmarks

For the seventeenth consecutive year, OMIC has posted positive year-end earnings and retained its A- (Excellent) rating from A.M. Best. OMIC's year-end 2004 financial results exceeded industry averages in several key areas and showed a significant improvement over the prior year's results. Direct premiums written increased 17% to $45 million, while after-tax net income more than tripled from $2 million in 2003 to $6.6 million in 2004.

Driving OMIC's favorable results was a combined ratio of 90.4%, an operating ratio of 76.2%, and a loss and loss expense ratio of 73.4%. Rating agencies look for ratios below 100 as an indication of an insurer's financial health and ability to generate underwriting and investment profitability after claims losses and expenses are taken into account. OMIC's ratios have steadily improved in recent years and surpassed those of other physician-owned carriers in 2004.

Efforts to control operating costs brought OMIC's expense ratio down by nearly 4 points last year, even as the Company grew by another 302 policyholders. Admitted assets increased 23% to $128.8 million during 2004, while surplus grew by $7 million to $32.3 million. OMIC continues to focus on increasing its policyholder surplus level to ensure that it keeps pace with premium growth and provides adequate protection against unexpected losses and the increased risk that accompanies a larger policyholder base. While double-digit policyholder growth and high retention rates have caused net written premium to grow faster than surplus in recent years, the reinvestment of net income into the Company has allowed OMIC to close the gap rapidly over the past two years.

In reaffirming OMIC's A- (Excellent) rating, A.M. Best cited the Company's conservative management, adequate capitalization, and "strong leadership position within the ophthalmic professional liability market." This recognition by A.M. Best validates OMIC's history of fiscal conservatism, prudent underwriting, effective risk management, and aggressive claims handling, which has resulted, year after year, in better-than-average loss experience. As a result, OMIC has been able to remain solvent, turn a profit, and provide a superior and stable insurance program for ophthalmologists at a competitive price at a time when the medical malpractice industry as a whole continues to struggle and faces a negative outlook.

Ricci A. Rascoe
OMIC Controller

Message from the Chairman

continued from page 1

In addition to rate-setting, OMIC uses this data to develop ophthalmic-specific underwriting guidelines, claims support services, and risk management programs that are unparalleled in the industry. OMIC has collected a significant library of information pertaining to ophthalmic risk management and patient safety issues, which it shares with member-insureds through the OMIC web site, risk management seminars, the *Digest*, *E-Bulletin*, and other publications. It is this extensive knowledge and expertise in ophthalmology that sets OMIC apart from multispecialty carriers and that contributes, in large part, to our better-than-average loss experience and consistently strong financials, as reported in this issue's **Eye on OMIC**.

OMIC's reputation as the industry expert in ophthalmic risk has never been more solid. My colleagues who make up OMIC's Board and Committees collectively bring to their governance of the Company decades of experience in the practice of ophthalmology, while the OMIC staff is unequaled in its knowledge of insuring ophthalmic risks. Ophthalmology as a whole may benefit from OMIC's collection and interpretation of ophthalmic medical-legal data, but only the member-insureds of OMIC are represented and served by the most committed and experienced team of ophthalmology and insurance professionals in the industry.

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

Notify OMIC of Changes in Your Practice

By Kimberly Wittchow, JD
OMIC Staff Attorney

It is important to OMIC that our insureds remain adequately protected from liability, especially during times of change and transition. By accepting your OMIC policy, you agree that the statements you made in the application are true. Most insureds supply accurate and thorough information both on the written application and in follow-up correspondence with their underwriter. However, after the underwriting process is complete and the insured is accepted for professional liability coverage, insurance may not be at the forefront of his or her mind. Nevertheless, it is important that insureds continue to communicate with their underwriter about any changes that occur in their practice.

Change in Practice Activities, Arrangements and Locations

The policy requires that insureds promptly inform OMIC, in writing, of any changes to the representations they made in their application. And insureds warrant, when signing the application, that they will update the information supplied on the application as necessary. This ensures that the coverage you have and the premium you pay correspond to your risk exposures.

- For instance, if you begin to perform a new refractive surgery procedure, you must complete and submit a supplemental questionnaire for this procedure. If OMIC grants your coverage request, your policy, which excludes coverage for all refractive surgery procedures, will be endorsed to provide coverage for the particular approved procedure.
- If you hire an optometrist or certified registered nurse anesthetist or bring in a locum tenens, you will want to ensure that he or she has his or her own insurance, or else is accepted for coverage by OMIC under your policy.
- You must alert OMIC when your practice arrangement changes, for example, if you join another practice, form a partnership with others, incorporate your practice, or allow outside utilizers to use your surgery facilities. You and your underwriter can discuss what options you have for deleting, adding, or otherwise changing your entity coverage and what limits are available or required for you to maintain.
- You must notify your underwriter if you significantly reduce your hours, eliminate certain surgical activities, or discontinue surgery altogether, so that your coverage can be amended and premium discounts, if any, can be applied.
- You must notify OMIC if you move or begin to practice in additional counties or states because your premium may need to be adjusted.

Claims, Complaints and Medical Conditions

While you already know to contact OMIC to report claims covered under your OMIC policy, you also must advise us of any claims filed against you that are covered by another carrier. Additionally, you must notify OMIC if a professional conduct complaint is filed against you, and as soon as you become aware of any proceedings or status changes regarding your license to practice medicine; your BNDD (drug) license, privileges at a hospital, HMO, or other medical facility; or your certification by or membership in a medical association, society, or board.

You are required to notify OMIC when certain life changes occur, for instance, if you have been treated for any medical condition that might impair your ability to practice, if you have been diagnosed with any mental illness, or if you have experienced any alcohol or drug dependency problems. If you are taking time off from your practice for maternity or paternity leave, you will want to alert OMIC because you may be eligible for a suspension in coverage.

Policy Endorsements and Coverage Reviews

While OMIC attempts to accommodate its insureds and their practice needs, changes requested by insureds are not always approved due to underwriting considerations. If requests are not made in a timely manner, there is no guarantee that we will retroactively amend your policy. Please remember that only endorsements or revised policy declarations, not simply notice, can waive or change the terms of your policy.

Under certain circumstances, changes that the insured notifies OMIC of may result in the insured being reviewed for continued insurability by OMIC. When certain increases in hazard are apparent or when membership criteria are not met (for example, if an insured loses his or her license or is no longer a member of the American Academy of Ophthalmology), OMIC may discontinue providing coverage to the insured.

The consequences of not notifying OMIC of changes will vary depending on the nature of the omission and the circumstances under which the omission is noted. These range from simply updating the information in your OMIC underwriting file to possible denial of a claim, or, in extreme cases, cancellation of your policy. Our goal is to encourage our insureds to notify us of changes to information we have about them in a complete and timely fashion to avoid any gaps in coverage.

Surviving the Aftershocks of Malpractice Litigation

continued from page 1

subsequent lawsuit also cause significant emotional and physical symptoms. Such experiences should not be borne alone.

Treating the Defendant as a Person

Few insurers do as good a job as OMIC in paying attention to the people involved in a claim. Although some risk managers, claims personnel, and attorneys understand the human dimension of being a defendant, their primary concern must be the management of adverse events and lawsuits. As defendants, we doctors often feel very alone and worn down by the burden of defending our own integrity. Feelings of isolation and vulnerability are reinforced and complicated by the common legal admonition "not to talk to anyone" about what has happened.

For most of us, confusion rather than clarity follows the serving of the complaint. We feel abandoned as we try to manage our conflicting feelings and restore equilibrium to our lives. We are often unfamiliar with the litigation process and so we are not sure that anything, short of the suit being dropped, would help us feel better. Emotionally upset and naïve regarding the legal process, we do not even know how to find or profit from whatever support may be available. To whom do we turn? What are the important questions to ask? We must nonetheless prepare ourselves to take on, however reluctantly, the new and difficult challenge of defending ourselves against the lawsuit that looms before us.

Web Site for Sued Physicians

A new web site has been established by an advisory group of physicians, lawyers, and insurance personnel as a resource for physicians feeling the aftershocks of adverse events and the repetitive traumas associated with litigation. This site (**www.physicianlitigationstress.org**) provides physicians and other health care professionals with easy access to resources to help them understand and cope with the personal and professional stress set off by involvement in an adverse event that may result in litigation. Designed both to lessen the feelings of being alone and to provide the information needed to respond to the situation, the site adheres to the philosophy that most physicians function well and can accept and successfully implement suggestions about how to help themselves.

Being sued, or being caught in the backwash of a bad outcome, can generate sleeplessness and other physical symptoms, such as headache, gastrointestinal disturbances, or chest pain. We may also experience anger and depression or find ourselves so preoccupied that it interferes with our daily life. The web site is not a substitute for the professional counseling that may be indicated in some situations, or the support groups offered by some medical malpractice insurance companies, or other ad hoc groups. Rather, the web site offers resources for the majority of physicians who, given sensible support and an understanding of what to expect, how to cope, and when to seek help, can manage the stress associated with these events successfully.

What to Expect If Sued

On the first page of the web site, physicians can download "Coping with the Stress of Litigation" (*West J Med* 2001; 174:55-58). This affords an overview of what to expect if sued and offers suggestions on how to cope with the experience. Based on surveys, interviews, and extensive clinical data, this article acquaints readers with the typical reactions of more than 95% of sued physicians who experience at least temporary periods of emotional disruption at some time during their lawsuit. The article briefly reviews the feelings and symptoms that defendants can expect during the different stages of what is often a lengthy process.

It also explains why we feel the way we do about being sued. Many physicians possess, at least in part, obsessive-compulsive personality traits, which can cause us to constantly examine ourselves, doubt ourselves, experience feelings of guilt, and possess an exaggerated sense of responsibility. Current tort law requires that negligence be alleged in order for compensation to be awarded. Merging these psychological fault lines – a legal accusation of fault against a person who is already self-critical and has lofty personal expectations – causes the emotional earthquake of a medical malpractice suit. This accusation of negligence is the fundamental assault that challenges a physician's core feelings of integrity and, more than any other factor, causes the profound psychological tremors that accompany lawsuits.

The article also lists a number of coping strategies. These include, as a first step, being aware of how we react to any trauma and, secondly, paying attention to and understanding emerging feelings and behaviors that are essential to effective coping. Our feelings often overwhelm us so that we have difficulty isolating exactly how we feel. Rather than succumb to confusion, we need to take the time to settle down, listen carefully to ourselves, and identify exactly how we feel by naming the feeling. Do I feel angry, sad, depressed, or hurt? Am I preoccupied, distracted, and self-concerned to the point that my work is suffering? Asking and answering such questions strengthens our ability to deal successfully with the experience.

Malpractice Litigation Literature

Because lawsuits occur within a cultural and legal context and the climate of litigation and trends within the insurance industry are constantly changing, we help ourselves by placing our own lawsuit into perspective as we deepen our familiarity with the literature about litigation. The web site advisory group, in order to make such information available to physicians, carefully reviewed and compiled a bibliography of references on litigation stress and medical malpractice litigation. These references are listed, generally with abstracts, and cover the subjects of stress, disclosure, malpractice litigation, risk management, and adverse events.

The web site advisory group also reviewed a number of books, including the newly available *Adverse Events, Stress, and Litigation: A Physician's Guide* published by the Oxford University Press, as useful resources for physicians on litigation-related subjects. Links to publishers and booksellers are provided.

This resource also provides links to other web sites, including the American Medical Association's "Medical Liability Reform Now!" document (**www.ama-assn.org/ama1/pub/upload/mm/450/mlrnowdec032004.pdf**). This is a regularly updated overview of the current climate of medical malpractice litigation, including the status of federal and state tort reform legislation. It also presents well-documented information that counters many of the popular misunderstandings and accusations commonly made in arguments for and against tort reform.

In addition, many of the physician-owned insurance companies, specialty societies, and physician magazines offer web-based resources and articles supportive of sued physicians. OMIC, for example, features a number of downloadable products on its web site that physicians find especially helpful during litigation, including "Responding to Unanticipated Outcomes," in the **Risk Management Recommendations** section, and the *Deposition and Litigation Handbooks*, available in the **Claims** section at **www.omic.com**.

Support During a Lawsuit

It is one of the most difficult and perplexing aspects of a lawsuit that lawyers advise physicians not to "talk to anyone about this." Involvement in a significant adverse event, especially one that leads to a lawsuit, is often a traumatic life experience. The natural and healthy urge after any traumatic event – whether it is a divorce, the sudden death of a loved one, an unanticipated natural disaster, or the death of a patient – is to talk about it. Yet in this instance, we are cautioned that doing so may jeopardize our ability to defend ourselves should a lawsuit develop. Attorneys do not want us to say anything that may be interpreted as assuming responsibility for the event. Such a strict prohibition may be sound legally but it is not good psychologically. Many lawyers and claims professionals agree that it is possible to share our feelings about the event without violating the spirit of the advice of legal counsel.

This web site offers just such an approach: *We can talk about our feelings regarding the event but not the specifics of the event itself. We can accept the discipline of not talking about the specifics while still expressing our dismay and anger about the event*. The physician who refrains even from telling a spouse about the fact of the lawsuit is likely to be a more symptomatic and less effective defendant than the physician who can share feelings with trusted confidants while refraining from discussing the facts of the case. Many factors affect our choice of a confidant: our level of comfort with and confidence in the person is essential. We need someone with whom we can truly be ourselves and someone who is trustworthy and understands and respects the legal constraints imposed on us.

When Ordinary Support is Insufficient

The support offered by family, friends, and peers is sometimes insufficient. If physical and emotional symptoms persist, consultation with an appropriate professional may be indicated. We may develop physical symptoms that are highly suggestive of a diagnosable condition. We may observe certain dysfunctional behaviors in ourselves that complicate our lives, such as excessive drinking or lack of attention to paperwork. We may experience symptoms that signal a clinical depression or other psychological disorder. The web site offers suggestions about when consultation is warranted as well as what ordinary resources may be helpful. It also reviews some of the impediments, some self-imposed, that we, as physicians, are likely to encounter in our effort to obtain professional help.

The resources of this new web site provide information about the experience of an adverse event, lawsuits, and the stress that accompanies litigation. This information is not considered risk management or legal advice because technical advice related to individual cases should come from one's own attorney, risk manager, claims professional, or other advisor. Its overall goal, instead, is to help average physicians with their litigation experience and to decrease the likelihood that any practitioner will be left alone when involved in or facing the threat of medical malpractice litigation.

Closed Claim Study

Early Reporting and Investigation of Potential Claim Averts a Lawsuit

By Ryan Bucsi, OMIC Senior Claims Associate

ALLEGATION

Negligent upper and lower blepharoplasties, resulting in pain during surgery, lid ptosis, loss of eyebrow hair, and scarring.

DISPOSITION

No lawsuit was filed and the case was closed without an indemnity payment.

Case Summary

An elderly female patient presented to the OMIC insured with a chief complaint of ptosis affecting her vision. The patient did not wear glasses and visual acuities were 20/30 OD and 20/20 OS, uncorrected. Upon physical examination, the insured diagnosed right and left upper lid dermatochalasis, acquired myogenic ptosis, and brow ptosis with superior visual field impairment OU. Surgical options were discussed and two months later, the insured performed therapeutic right and left upper lid blepharoplasties and external levator resection ptosis repairs with direct brow lifts. There were no noted operative complications. During several postoperative visits with the insured, the patient's complaints included lid redness, lid asymmetry, lashes in the visual field, skin bags nasally with soreness, skin above the lids pushing the eyelids down, and pain when rubbing the eyelids. She also complained for the first time of experiencing pain during surgery. She continued to express her displeasure with the results of the surgery on subsequent visits, complaining of baggy skin by the bridge of her nose, loss of eyebrows, and occasional irritation to her eyelids. Her visual acuities were unchanged at 20/30 OD and 20/20-2 OS.

The insured informed the patient that the strongest local anesthesia had been used during her surgery and that in-patient surgery with general anesthesia might offer better pain management, but she would have to wait a minimum of three months before undergoing any repeat procedure. The insured also informed the patient that her lids were still healing and that the final benefits of surgery might not be seen for four months after surgery. Subsequently, the patient phoned the insured and informed him of additional procedures she had scheduled in another state. This was the insured's last contact with the patient, nearly five months after her initial surgery. Eventually, the patient requested that the insured pay her $100,000 for her dissatisfaction with her outcome. The insured promptly referred the matter to OMIC.

Analysis

OMIC's Claims Department has access to several ophthalmology consultants who are able to provide a detailed standard of care review within a relatively short time frame. With the insured's permission, the patient was contacted by OMIC and informed that her case could be reviewed by a board certified ophthalmologist to determine if there were issues related to the care provided by the insured physician. She accepted the offer. The reviewer felt that the surgery was definitely indicated based upon the physical findings outlined in the chart, that the technical aspects of the surgery were properly performed, and that the postoperative care was appropriate. Furthermore, the reviewer indicated that several of the patient's complaints were outside the scope and purpose of the surgery, in particular, the complaint of fullness and heaviness in the glabellar region with a crowding of the skin in the nasal quadrants of the upper eyelid. Since the only purpose of the surgery was for visual improvement, correction in this area should not have been anticipated by the patient. OMIC openly discussed these points with the patient, including the fact that the reviewer found the insured's care to be completely within acceptable standards. The patient decided not to pursue a lawsuit and the case was closed after the statute of limitations expired.

Risk Management Principles

OMIC cannot always avert a claim or lawsuit. Ultimately, it is up to the patient and his or her attorney, if one is involved, to decide whether or not to pursue a complaint. However, if an insured is proactive and reports a potential claim when a patient has voiced significant dissatisfaction, the Claims Department may be able to intervene and conduct an early investigation of the claim. If the reviewing ophthalmologist's opinion on the standard of care is supportive, patients can sometimes be dissuaded from pursuing lawsuits. Conversely, if the consultant cannot support the insured on the standard of care, a settlement might be reached prior to the patient obtaining an attorney and filing a lawsuit.

Risk Management Hotline

Cooperation Essential as Physicians Leave a Practice

By Anne M. Menke, RN, PhD
OMIC Risk Manager

Physicians leave practices for many reasons, including illness, retirement, changes in employment status, and personal or family needs. Both the individual ophthalmologist and the practice need to take steps to promote continuity of care, prevent allegations of abandonment, and ensure that all involved physicians have access to the medical records in the event the care is ever called into question. A successful transition, therefore, requires the cooperation of all involved parties. Strained relationships put everyone at risk and must be carefully managed to avoid patient harm, business disputes, and malpractice lawsuits. This article will address difficulties with patient notification and record sharing; for a discussion of other related issues, see "When Physicians Leave a Practice" in the **Risk Management Recommendations** section of the OMIC web site (**www.omic.com**).

Q I am leaving my current practice arrangement, and the medical director won't allow me to notify my patients. Am I at risk for an allegation of abandonment?

A Yes, both you and the other physicians in the practice are at risk. Patient abandonment occurs when a physician fails to provide for necessary medical care to a current patient without adequate justification. In general, once a physician-patient relationship is established, a physician has an ongoing responsibility to the patient until the relationship is terminated. In order to terminate the relationship, the physician must notify the patient sufficiently in advance for the patient to secure the services of another physician. Physicians are generally aware of the need to notify patients when they will no longer provide care for them (e.g., when discharging patients from the practice or retiring). Questions arise when a physician leaves to practice elsewhere. Whose patient is it? What if the patient wants to follow the doctor? Or stay with the practice? While some of these issues may be spelled out by the employment agreement, it is nonetheless prudent to notify patients that the ophthalmologist is leaving and give them the choice to continue seeing the physician if he or she plans to remain in the area.

Q Which patients should I notify?

A There is no need to notify every patient in the practice or those patients whom you saw only occasionally while covering for another physician. Rather, inform those for whom you had primary responsibility. Send a letter **by certified mail, return receipt requested**, to all of your "high-risk" patients, and one **by regular post** to "active" patients who are not considered "high-risk" (see web document for examples). To notify patients who will *not* be receiving a letter – or for general notification purposes if you did not have primary responsibility for any patients – place a notice in the local newspaper with the largest circulation, put a sign up in the lobby, or prepare a patient handout. Also remember to provide a script for receptionists of what they should say to your patients who call after your departure and how they can contact you.

Q What should the notice say if I am staying in the area?

A Notify patients that you are leaving the practice but are still available to care for them. Explain that they have the choice of staying with the practice or continuing to see you in your new location. Instruct patients who choose to follow you that, upon written authorization, a copy of their medical record will be forwarded to you. Consider including an authorization form with the letter to expedite the transfer of records. If your practice charges the patient for the cost of photocopying the medical record, inform the patient of this fee.

Q Who gets to keep the chart if I am still treating the patient?

A Any material related to patient care should be considered part of the medical record and provided to the departing physician. Both the practice and the departing physician should keep a copy of the medical records. A written agreement should determine who keeps the original and who pays the cost of copying the records. The departing physician and the practice need to come to a written agreement about who is the custodian of the records, and the conditions under which the departing physician will be granted access to the records of the patients he or she treated. The custodianship agreement should verify whether patient authorization is needed for the departing physician to access his or her former records or to obtain a copy of those records for his or her healthcare operations (such as a medical malpractice allegation). If not specified in the agreement, state law may determine whether patient authorization is needed for the departing physician to access or copy these records. Generally, physicians should be allowed access to the records of patients they treated. The records provided should reflect care up to and including the day of the physician's departure.

Calendar of Events

OMIC continues its popular risk management courses in 2005. Upon completion of an OMIC online course, audioconference, or seminar, OMIC insureds receive one risk management premium discount per premium year to be applied upon renewal. For most programs, a 5% risk management discount is available; however, insureds who are members of a cooperative venture society may earn a 10% discount by attending a qualifying cosponsored event (indicated by an asterisk). The courses are listed below and on the OMIC web site (**www.omic.com**). CME credit is available for some courses. Please go to the AAO web site (**www.aao.org**) to obtain a CME certificate.

Online Courses

- *EMTALA and ER-Call Liability* addresses liability issues surrounding on-call emergency room coverage and EMTALA statutes. Frequently asked questions on both federal and state liability are answered, and a test reinforces the risk management principles covered in the course.
- *Ophthalmic Anesthesia Risks* offers an overview of anesthesia risks and provides actual case studies supporting the issues addressed in the overview.
- *Informed Consent for Ophthalmologists* provides an overview of the doctrine of informed consent as it applies to various ophthalmic practice settings. Examples illustrate practical ways that ophthalmologists can support the consent "process" to foster more effective patient/provider communications as well as improve the defense of malpractice claims.

Audioconference CDs

- *Research and Clinical Trials: Patient Safety and Liability Risks.* Nationwide audioconference held August 11, 2004.
- *Responding to Unanticipated Outcomes.* Statewide audioconference cosponsored by California Academy of Ophthalmology and OMIC.*
- *Responding to Unanticipated Outcomes.* Statewide audioconference cosponsored by Louisiana Ophthalmology Association and OMIC.*
- *Responding to Unanticipated Outcomes.* Statewide audioconference cosponsored by Washington Academy of Eye Physicians and Surgeons and OMIC.*

Order forms for these CDs can be downloaded from the OMIC web site at www.omic.com/resources/risk_man/seminars.cfm.

Upcoming Seminars and Exhibits

August

17 *Lessons Learned from Settlements and Trials of 2004*
OMIC nationwide audioconference
Originates from the OMIC office in San Francisco
2-3:30 pm PDT
$40 for all registrants
Register with Linda Nakamura at (800) 562-6642, ext. 652

28 *Responding to Unanticipated Outcomes**
Florida Society of Ophthalmology
Boca Raton Resort and Club, Boca Raton, FL
7:30-8:30 am
Contact the FSO to register at (904) 998-0819

October

15-18 *Academy/OMIC Insurance Center*
Annual Meeting of the American Academy of Ophthalmology
Exhibit Booth 2657, McCormick Place, Chicago, IL

16 *OMIC Forum: Noncompliance and Follow-up Care Issues*
Annual Meeting of the American Academy of Ophthalmology
Regency Ballroom, Hyatt McCormick, Chicago, IL
10 am-Noon
Register with Linda Nakamura at (800) 562-6642, ext. 652

16 *ASORN Seminar: Responding to Unanticipated Outcomes*
ASORN at the Annual Meeting of the American Academy of Ophthalmology
Hyatt Regency, Chicago, IL
4-5 pm
Register with ASORN at asorn@aao.org

18 *AAOE Seminar: Claims, Lawsuits, and LASIK*
AAOE at the Annual Meeting of the American Academy of Ophthalmology
Time and location TBA
Register with AAOE at aao.org/aaoesite/

This schedule is subject to change. To confirm dates and times, or if you have questions about OMIC's risk management offerings, please contact Linda Nakamura at (800) 562-6642, ext. 652 or via email at lnakamura@omic.com

OMIC
OPHTHALMIC MUTUAL INSURANCE COMPANY
(A Risk Retention Group)

655 Beach Street
San Francisco, CA
94109-1336

PO Box 880610
San Francisco, CA
94188-0610