



FLORIDA'S SOURCE FOR IMPORTANT PHYSICIAN INFORMATION

The Florida MAGnet brings you information you can use to better manage your practice, make wise decisions about your insurance needs and keep you abreast of legal and political decisions affecting medical providers. MAG Mutual's role for the past 20 years has been one of advocating physician causes and offering the best insurance products and services money can buy. When you buy a policy with us, you are an owner in the largest physician-owned mutual medical professional liability insurance company in the Southeast.

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Look for Stability When Choosing a Medical Professional Liability Insurer

Medical professional liability insurance is a product that you don't think about until you need it. However, it is probably one of the most important buying decisions you will make. One claim against you or your practice could affect your livelihood and your family's security. Therefore, it is imperative that you choose a medical professional liability insurer that will be there for the long-term and have the funds to pay your claims, should they occur.

Here are some facts about the recent, negative trends in claims payments.

- The national average indemnity payment in medical malpractice suits, for both settlements and jury trials, has grown from \$199,300 in 1995 to \$279,800 last year

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BREAST CANCER UNTIL PROVEN OTHERWISE

by Catherine S. Andrews, M.D.

Delay in diagnosis of breast cancer is the most common clinical scenario resulting in malpractice in the United States.¹ It is also the leading source of indemnity payments issued.² Breast cancer is the most frequently litigated condition and proportionately has twice as many lawsuits as its incidence in the general population.³ In a recent study of cases tried, obstetricians and gynecologists were involved in the greatest number, followed by family practitioners, internists, general surgeons and radiologists.⁴

As a physician who assumes the primary responsibility for a patient's breast care, **it is imperative that the diagnosis of breast cancer is assumed until it is either RULED IN OR RULED OUT.**

Your goal is to ensure that your patient does not have breast cancer or, if she does, that the diagnosis is made **PROMPTLY AND WITHOUT DELAY.**

Classic symptoms are:

- Clinically occult mammography abnormality
- Breast mass (lump, etc.)
- Asymmetrical breast thickening
- Spontaneous nipple discharge
- Skin dimpling
- Nipple scaling
- Skin erythema and/or thickening
- Focal breast pain⁵

The most common presentation of breast cancer is a palpable abnormality, most often discovered by the woman herself. Some women are able to sense that

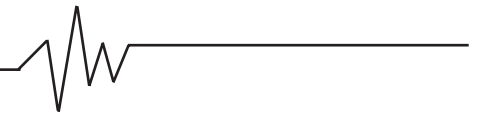
something is wrong in a particular location of the breast, a perception that cannot always be confirmed by the examiner.⁶ **Do not ignore or minimize a woman's concerns that something is wrong just because your examination has negative findings. You should continue your efforts to rule out cancer until you and your patient are satisfied that cancer is not present.** Breast cancer detection is a team effort.

Most malpractice litigation involving patients with breast cancer involves relatively young women, usually younger than 50. The plaintiff most often discovered her own mass, which was incorrectly diagnosed by the physician as fibrocystic disease.^{7,8} The highest awards have been given to younger patients.⁹

In addition to allegations of misdiagnosis, litigation against physicians often stems from the allegation of a DELAY IN DIAGNOSIS even if the diagnosis of breast cancer is made eventually. Public education by healthcare advocates has convinced the public that early detection is the essential element for a patient to have a chance for a favorable prognosis or cure. To attempt to argue against this position is imprudent. Additionally, the public upholds the theory that the longer the delay in diagnosing malignancy, the less likely a possible cure.

When unresolved breast symptoms or nondiagnostic clinical breast examinations require serial

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examinations, follow-up must be clearly defined and well-documented. Treatment plans should be discussed with the patient so they understand what they can expect and what options they may have for further care and treatment. A specific follow-up visit should be scheduled at an appropriate interval. Instructing patients who have a suspicious lesion to return if not improved is ambiguous and may seem

to have placed excessive medical decision-making responsibility on the patient.¹⁰ Develop a "tickler file." If a test or referral is ordered for a patient and you do not receive the result by a certain date, you are then alerted to contact the patient.

Finally and most importantly, do not fail to refer any unresolved or undiagnosed breast abnormality, despite a negative mammogram.

- 1 Zylstra Samuel, et al. A statistical model for predicting the outcome in breast cancer malpractice lawsuits. *Obstetrics and gynecology* 1994;84(3):392-398
- 2 Brenner RJ. Breast cancer evaluation. *Cancer Supplement* 1994;74(1):486490
- 3 Kern Kenneth A. Medicolegal analysis of the delayed diagnosis of cancer in 338 cases in the United States. *Arch Surg* 1994;129:397-404
- 4 Kern Kenneth A. Causes of Breast Cancer Malpractice Litigation. 1992 *Arch Surg*;127:542-547
- 5 Osuch Janet R, Bonham Vence L. The timely diagnosis of breast cancer. *Cancer Supplement* 1994;74(1):271-278
- 6 Ibid.
- 7 See note 1 above
- 8 Mitnick Julie S, et al. Malpractice litigation involving patients with carcinoma of the breast *Journal of the American College of Surgeons* 1995;181:315
- 9 See note 1 above
- 10 Dewar Marvin A, Love Neil. Legal issues in managing breast disease. *Postgraduate Medicine* 1992;92(5):137-151

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- In 1999, the median medical liability jury award reached \$800,000. More and more, juries are awarding \$1 million-plus verdicts

Some of the reasons for these inflated verdicts are public anger at managed care, sympathy for the plaintiffs and the much publicized lottery mentality throughout America.

All professional liability insurers are subject to these market forces. The good ones hang in there with the physicians and weather the storm with progressive risk management programs and aggressive claims defense. We at MAG Mutual Insurance Company are here for the long run. If you have any questions, please call MAG Mutual at 404-842-5600 or 800-282-4882.

Physician Feedback on Internet Usage

Early this year, MAG Mutual Insurance Company sent an Internet survey to our policyholders. We requested information concerning Internet usage among physicians and their staff, and solicited comments and suggestions for our Web site. Nearly 70 percent of the respondents were physicians, 30 percent were office staff.

Physicians indicated a greater Internet activity rate, with 69 percent responding that they use the Internet at least once a day, while office staff usage was at 43 percent. Subjects that physicians selected as primary reasons for online activity were: healthcare, financial and specialty information. Office staff indicated that healthcare, billing and coding, and legal/insurance had the most relevance to their online activities.

Regarding our Web site, many respondents requested enhancements to our customer support. As a result of this sur-

vey, we have added a customer service section to our Web site that will give our insureds the ability to communicate with us at all hours of the day. Physicians and office staff can now request certificates of insurance, address changes and more through our Web site at a time that's convenient to them.

Another common topic was that of risk management. MAG Mutual Insurance Company has taken your suggestions and developed an electronic version of our risk management handbook. These state-specific handbooks will soon be available on CD, giving the user the ability to search the entire book for a certain phrase.

Please visit our Web site today at www.magmutual.com, and let us know what you think. Visit often, as we make changes based on your feedback.

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