



**FLORIDA'S SOURCE FOR IMPORTANT PHYSICIAN INFORMATION**  
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## Withdrawal of Medications from the Market

Following the withdrawal of Vioxx® from the market by its manufacturer on September 30, 2004, physicians across the country have been contemplating appropriate steps to protect the safety of their patients. Physicians who have prescribed any medication recalled or withdrawn from the market would be prudent to establish simple and proactive plans of response. Above and beyond discontinuing prescriptions, physicians may consider the following:

- Identify patients who have been prescribed the drug and determine the clinically appropriate response for their particular medical condition, including factors like the length of time the patient has taken the drug
- Post notices in the waiting room and, if feasible, contact affected patients by letter to inform them of the drug's withdrawal
- Develop a follow-up protocol and ask patients to contact you for alternative medications or treatments, as appropriate
- Physicians, nurses, physician's assistants or other qualified personnel should be trained and utilized to respond to patient inquiries
- Place a message on your phone system
- Refer patients to [www.merck.com](http://www.merck.com), [www.vioxx.com](http://www.vioxx.com) or [www.fda.gov](http://www.fda.gov) for detailed information on the Vioxx withdrawal

These considerations could apply to any prescription medication that has been withdrawn from the market by its manufacturer. If a patient alleges you were in any way negligent by prescribing Vioxx, or any other medication, please contact MAG Mutual Insurance Company's Claims Department. If you would like more information on an appropriate response to drug recalls or withdrawals, please contact MAG Mutual's Risk Management Department at 800-783-8455. ●

## Florida Constitutional Amendments

In the November elections, the people of Florida approved three state constitutional amendments that may have a significant impact on physicians. All three merit comment.

- Amendment No. 3 is a measure of Tort Reform, providing that an injured medical malpractice claimant who enters into a contingency fee agreement with an attorney is entitled to no less than 70% of the first \$250,000 in all damages received, and 90% of damages in excess of \$250,000, exclusive of reasonable and customary costs. This amendment acts as a cap on plaintiffs' attorneys' fees.
- Amendment No. 7 creates a public right to review records of physicians, hospitals and other health care providers' adverse medical incidents. Proponents argue it will provide the patient important information when selecting a healthcare provider, but opponents note that it may eliminate peer review and quality improvement activities in Florida. Before the election, the Florida Hospital Association filed a lawsuit seeking to enjoin enforcement of this amendment. On December 7, 2004, a Florida circuit court judge dismissed that lawsuit, saying relief from enforcement of Amendment 7 would have to be "pursued in the individual courts with jurisdiction over the persons in interest." In other words, through a case involving a physician or hospital whose records have been requested. Thus, physicians may soon begin receiving requests for records of adverse incidents. This amendment presents many risk management challenges (e.g., to which records does it apply; how to maintain patient confidentiality; and to what extent should peer review activities continue). Until the courts or legislature clarify the amendment's applicability and scope, our defense attorneys recommend physicians should continue to keep patient adverse incident information confidential by objecting to requests for such information on grounds of patient confidentiality. They further recommend contacting an attorney – or MAG Mutual – immediately upon receiving a request for such records or upon discovering an adverse incident of any magnitude, to obtain specific direction on the investigation and handling of relevant records. Physicians should also be aware that peer review records arguably are subject to this amendment, so their confidentiality cannot be assured.

*(continued on page 2)*



## Did you know?

Employment Practices Liability (EPL) insurance is needed as soon as you hire employees. EPL provides protection for an employer against claims made by employees, former employees and even potential employees. It covers wrongful termination, sexual harassment, discrimination and other employment-related allegations.

Cases against employers are on the rise. Medical practices are finding that they are vulnerable from the pre-hiring process through the exit interview, even if the employee was never hired, or only worked at the practice for a few days.

The EPL insurance policy\* available through MAG Mutual Insurance Agency covers losses that would not normally be covered by General Liability coverage. If you would like more information, please call Chip Goen at 800-294-1735.

\*Coverage underwritten by MAG Mutual Insurance Company. Refer to the policy for precise terms, conditions and exclusions.

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- Amendment No. 8 prohibits physicians who have been found to have committed (i.e., court judgment, agency decision or binding arbitration decision) three or more incidents of medical malpractice from being licensed to practice in Florida. On November 15, 2004, a circuit court judge issued an injunction barring enforcement of this amendment, finding that a statutory framework would be required for it to be effective. The injunction will remain in force until the earlier of the effective date of any implementing legislation or adjournment of the 2005 Florida Legislature without implementing legislation having been enacted.

If you receive a request for records or otherwise have questions about maintaining records in light of Amendment No. 7, please contact Carol Wiseheart at 800-783-8455 or visit [www.magmutual.com](http://www.magmutual.com). If you have any questions about the impact of Amendments 3 and 8 on a pending claim, please contact Michael Meyer at 800-783-8455. •

## HIPAA – Reporting Claims to MAG Mutual

As a result of the HIPAA Privacy Rule and the medical community's heightened focus on patient confidentiality, some physicians have expressed reservations about disclosing patient information to MAG Mutual when reporting claims-related incidents. **Please be assured that HIPAA does not prohibit such disclosure.**

One key element of the HIPAA Privacy Rule is that physicians may disclose protected health information (PHI) to others without patient authorization for the purpose of conducting certain healthcare operations. The term "healthcare operations" includes such things as applying for professional liability insurance, engaging in risk management activities, arranging for legal services and reporting claims to medical professional liability insurers. Physicians may disclose PHI to MAG Mutual without obtaining patient authorization when reporting claims-related incidents. On the same basis, physicians may disclose PHI to MAG Mutual without patient authorization for insurance underwriting and risk management activities.

In February 2003, MAG Mutual Insurance Company mailed HIPAA Business Associate Agreements (BAA) to our policyholders. We currently include a copy of the BAA with new and renewal insurance policies issued and have posted a copy on our website at [www.magmutual.com/mmhc/articles/Hipaa-BAA.pdf](http://www.magmutual.com/mmhc/articles/Hipaa-BAA.pdf). This Agreement provides contractual assurance as to what we will and will not do with PHI we receive from our policyholders. Our policyholders should keep a copy of the MAG Mutual BAA with other documentation that proves their compliance with the HIPAA Privacy Rule.

Physicians should carefully evaluate the impact of applicable state laws and HIPAA Privacy Rules on any disclosure of PHI, but it is merely a myth that patient authorization is required for any and all disclosures of PHI under HIPAA. For information on reporting potential claims or incidents to MAG Mutual, please contact our Claims Department at 800-783-8455. •

**Need to file a claim? Call our Orlando Office at 800-783-8455.**

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