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## Background

The American Dental Association periodically receives requests for information on trends in the frequency, cost and causes of dental malpractice claims. Usually, the request comes from an individual who is researching dental malpractice – perhaps in comparison to the problems being experienced by physicians and hospitals. Sometimes the request comes from foreign dental associations that are trying to determine if the experience of American dentists will be replicated in their countries. These individuals are often surprised to learn that the Association does not have access to these statistics.

Statistics on dental malpractice claims are available only from the insurance companies that underwrite dental professional liability insurance. But these companies do not publicly disclose the data they collect, most likely for competitive reasons. While the National Practitioners Data Bank (NPDB) does have some information, it is also not publicly available. Moreover, the NPDB's data only includes claims for which a payment was made. It does not include information on claims that were resolved in the dentist's favor.

The Council on Members Insurance and Retirement Programs believes that information on trends in dental malpractice claims has utility beyond that of being a point for comparison of professions or as a possible indicator of future global trends. Malpractice claim statistics can also indicate where risk management educational efforts can be most effectively directed to improve the quality of care. A collateral benefit would be that as the quality of care is improved, the cost of dental professional liability insurance should decline.

For these reasons, the Council sought to develop a survey of the professional liability insurance industry on dental malpractice claims. In making this decision, the Council was mindful that there would be problems in persuading insurers to share data as well as in aggregating the information gathered from different companies. It further accepted that much of the information it was interested in obtaining would not be available in statistical form and that anecdotal information or opinions from insurance company claim adjudicators, underwriters or risk management directors would have to suffice.

With respect to its ability to obtain information from the insurance industry, the Council noted that the American Dental Association is uniquely positioned. The Association neither endorses nor recommends a particular insurance company. Thus, it presents no competitive challenge to insurance companies that are not endorsed. While this is also true of some constituent dental societies, they do not have the contacts within the insurance industry that have been developed by the Council since the former ADA-sponsored insurance program was terminated in 1996. The Council meets with at least one company each year to discuss claim trends and market conditions. Over the past ten years, it has met with each of the major companies active in the dental market. These personal contacts were to prove helpful in encouraging insurers to participate in the survey.

More problematic would be the quality of the data the Council could expect to receive. Based upon the Association's involvement with a sponsored professional liability insurance plan between 1970 and 1996, the Council knew that claim data is not always collected in ways that are useful for risk management purposes. For example, an insurer might collect statistics on broad categories of dental procedures that are involved in claims, such as periodontics, endodontics, etc. However, such statistics might not indicate how many of the "periodontal claims" were reported by periodontists and



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how many by general practitioners. Moreover, the cause of the claim might have nothing to do with the dental procedure. It could be the result of a communications or record keeping issue. Despite the limitations of a survey dependent upon the voluntary submission of data by insurance companies and the limited ability of those companies to provide the information requested, the Council concluded that useful information could still be obtained. If nothing else, it could indicate where future dialogues with insurers might be focused.

## **Methodology**

The Council contacted every insurance company it knew to be underwriting dental professional liability insurance companies to determine their willingness to participate in the survey. Ultimately, 15 insurance companies, insuring a total of 104,557 dentists, agreed to participate. They were the American Association of Orthodontists Insurance Company, the Cincinnati Insurance Company, the CNA Insurance Company; the Dentists Professional Liability Trust of Colorado; the Dentists Benefits Insurance Company; the First Professionals Insurance Company, the Medical Liability Mutual Insurance Company, the GE Medical Protective Insurance Company, the Northwest Dentists Insurance Company, the Oral and Maxillofacial Surgeons Insurance Company, PIC Wisconsin, the Professional Insurance Exchange, ProAssurance, the Redwoods Group and The Dentists Insurance Company. To maintain the confidentiality of the data provided by insurance companies, the Council agreed that only the aggregate responses of all companies would be made public.

Of the companies that participated, some could not respond to all of the questions because they do not collect the data the question required. Some of the statistics provided by certain insurers were best guess estimates, while others provided exact numbers generated from their claim data bases.

When the answers to a question were statistically based, each insurer's data was weighted by its share of the total population of dentists represented. For example, if an insurer's policyholders were 10% of the total dentists represented by the aggregate data, its statistics comprise 10% of the total used to calculate the average response.

Some of the questions in the survey sought information on the causes of claims and errors made by dentists in record keeping and communications. The answers to these questions were not statistically based. They reflected the judgments of the insurance companies' claim adjudicators, underwriters and/or the directors of their risk management departments.

The survey covered claims reported during the five-year period between 1999 and 2003. The statistics reported should be viewed as a "snapshot" of the claim experience of those years as viewed during the first half of 2005. Owing to the nature of professional liability claims, which may involve long periods of discovery, negotiations and/or litigation, the ultimate number and cost of claims arising from treatments rendered in a particular calendar year may not be determinable for decades. However, the Council does not believe that this reduces the utility of the survey as an indicator of trends in the quality of dental care and causes of malpractice allegations.

## **Trends in the Incidence and Severity of Dental Professional Liability Claims**

The survey posed three questions that sought to determine whether there were any discernable trends toward an increase in the incidence (i.e., the number) of malpractice allegations against dentists or in the severity (i.e., cost) of those claims.



**Question:** *If the “incidence” of professional liability claims is defined as the total number of reported claims divided by the total number of your company’s dentist policyholders, and if a “claim” is defined as an occurrence in which a patient demanded damages from the insured, please provide your best estimate of the following:*

Incidence of Claims			
Year	Incidence of claims for which a payment is made	Incidence of claims that are closed without payment	Total Incidence of Claims
2003	.89%	1.97%	2.86%
2002	.92%	2.25%	3.17%
2001	1.00%	2.37%	3.37%
2000	1.24%	2.64%	3.88%
1999	1.36%	2.60%	3.96%

These incidence statistics reflect the claim experience of 12 professional liability insurance companies that together insure 97,416 dentists, of whom, 85% are general practitioners.

It should be kept in mind that the incidence statistics will rise with the passage of time as additional claims are reported and those currently being adjudicated are settled; and that as the claim experience matures, it is probable that the variation among the policy years will narrow.

**Question:** *If the “severity” of professional liability claims is defined as the total incurred loss (amount paid to the patient plus defense costs) divided by the total number of claims, please provide your best estimate of the following:*

Severity of Claims			
	Weighted Average	Highest	Lowest
2003	\$14,458	\$30,128	\$ 943
2002	\$17,363	\$28,000	\$2,839
2001	\$16,550	\$37,795	\$4,366
2000	\$18,365	\$38,688	\$2,489
1999	\$17,803	\$27,000	\$1,219

These severity statistics reflect the claim experience of 13 professional liability insurance companies that together insure 101,144 dentists, of whom, 82% are general practitioners.

Some dentists may be surprised to find that the average cost of dental malpractice claims is so low, since it is commonly recommended that dentists purchase policies providing at least \$1 million of coverage for a single claim. However, it should be kept in mind that the above statistics also include claims for which no payment is made to the patient. Their cost is primarily represented by defense attorney fees. Another argument for high coverage limits is that the potential for claims of catastrophic severity, although low, does exist. This is illustrated by the response to the next question.



**Question:** *Of the claims paid on behalf of your company’s dentist policyholders, either by jury award or pretrial settlement, approximately what percentage falls into the following ranges?*

<b>Severity of Claims in 2003</b>	
Less than \$10,000	57.2%
\$10,000 - \$24,999	16.6%
\$25,000 - \$49,999	11.8%
\$50,000 - \$99,999	7.6%
\$100,000 - \$249,000	5.0%
\$250,000 - \$499,999	1.2%
\$500,000 - \$999,999	.5%
\$1 million or more	.1%

The severity statistics reflect the claim experience of 13 professional liability insurance companies that together insure 105,344 dentists, of whom, 78% are general practitioners. The statistics suggest that the cost of dental professional liability insurance is primarily driven by claims alleging relatively minor injuries or the need for corrective treatments. Less than 2% of paid claims involve costs (payments to patients plus loss adjustment expenses) of more than \$250,000. The cost of professional liability insurance policies having high coverage limits probably reflects the low probability of such claims occurring.

**Claim Experience of General Practitioners**

The following questions sought to obtain information on the factors giving rise to claims reported by general practitioners.

The first question focused on the treatment that was being rendered when the incident occurred that gave rise to the malpractice allegation. The question was answered by eleven insurance companies, which together insured a total of 77,837 general practitioners. The statistics gathered by the survey did not include the number of these general practitioners on whose behalf claims were paid or the number of claims paid. That approximately 21% of claims were reported in a catchall “other” category reflects the limitations of insurers’ claim databases.

**Question:** *For your policyholders who are general practitioners, what do you estimate are the percentage of paid claims arising while the following treatments were being provided:*

<b>Treatments Involved in Paid Claims</b>	
Crown & Bridge	21.8%
Root Canal Treatment	20.0%
Simple Extractions	13.6%
Dentures	6.7%
Surgical Extractions	5.7%
Oral Exams	5.1%
Implants	2.9%
Orthodontics	2.0%
Periodontal Surgery	1.4%
Treatment of TMJ	.2%
Other	20.6%
	100%



These results might be evaluated by comparing the percentages of claims with the type of treatments typically provided in a general dental practice. For example, while 21.8% of paid claims among general practitioners involved crown and bridge treatments, this may not mean crowns and bridges are the “riskiest” procedures from a malpractice perspective. Instead, it may reflect the fact that crowns and bridges are a comparable percentage of the treatments provided in a general dental practice.

The next question focused on the adverse treatment outcome that occurred in the alleged claim of malpractice. It was answered by eight insurance companies which insure a total of 74,434 general practitioners.

**Question:** *For your policyholders who are general practitioners, please indicate the approximate percentage of paid claims that involved adverse outcomes in the following categories:*

<b>Adverse Outcomes Involved in Paid Claims</b>	
Corrective dental treatment needed	30.7%
Failed root canal	14.3%
Parasthesia/nerve injury	8.3%
Swallowed object	5.5%
Lost tooth or teeth	5.3%
Periodontal disease	5.0%
Extraction of wrong tooth	3.8%
Adverse drug reaction	2.9%
Mental anguish/pain	2.9%
Bite difficulty	2.7%
Implant failure	2.6%
Tumor/cancer	1.6%
Cuts and/or bruising	1.4%
Temporomandibular joint problem	1.3%
Broken/fractured tooth	.6%
Disfigurement	.5%
Brain damage/paralysis	<.1%
Other	10.1%
	100.0%

The high percentage of claims for which the need for corrective dental treatment is the alleged adverse outcome might explain why the average cost of dental professional liability claims is not very high. Such claims may be among the least serious in the sense that the problem experienced by the patient was either reversible or could be ameliorated.

The next question focused on the alleged error or omission made by the dentist. The question was answered by eight insurance companies which insure a total of 74,434 general practitioners. The high percentage of claims reported in a catchall “other” category is primarily a result of one insurance company’s limited data. However, if this company’s data is subtracted, the relativities among the categories of allegations do not change significantly.



**Question:** For your policyholders who are general practitioners, please indicate the approximate percentage of paid claims that included the following allegations:

<b>Allegations Involved in Paid Claims</b>	
Failure to diagnose	12.3%
Inappropriate procedure	11.7%
Failure to obtain informed consent	8.5%
Failure to refer	5.4%
Treatment of wrong tooth	4.8%
Anesthesia complications	2.9%
Poor communications with patient's specialist	2.7%
Failure to appropriately treat medically compromised patients	2.6%
Equipment failure	2.4%
Alteration of treatment records	2.3%
Inadequate health history	2.0%
Tumor/cancer	1.6%
Employee performance causing claim	1.4%
Abandonment	1.3%
Incorrect prescriptions	1.2%
No X-ray or incomplete X-ray	1.2%
Assault/excessive force	.8%
Sexual harassment	.4%
Guarantees	.3%
Breach of confidentiality	0%
Other	34.2%
	100%

The standout results to this question are the percentage of claims alleging failures to diagnose and the percentage alleging inappropriate procedures. The conditions that were allegedly undiagnosed, and the types of treatment which most frequently involved allegations of inappropriate procedures, might be the subject of future surveys.

### **Claim Experience of Specialists**

The survey was unable to collect statistical data on claim trends among specialists as a group independent of general practitioners. This is because specialists represent a small percentage of most insurers' policyholders and thus produce a proportionately small percentage of claims. With the exception of oral surgeons, specialists usually pay the same premiums as general practitioners as shown by the response to the following question.

**Question:** Please indicate which of the following dental specialties are rated in the same risk classification as general practitioners.



The responses to this question are from 12 insurance companies that insure both general practitioners and specialists. Some of these companies do not presently insure some specialties but indicated how they would rate these dentists if they should be insured.

Premiums Paid by Specialists as Compared to General Practitioners			
Specialty	Number of Companies		
	Same Rating as GPs	Separate Specialty Rating	Have None Insured
Endodontists	10	2	0
Oral and Maxillofacial Pathologists	1	1	10
Oral and Maxillofacial Radiologists	0	0	0
Oral and Maxillofacial Surgeons	0	7	5
Orthodontists	11	1	0
Pediatric Dentists	10	2	0
Periodontists	10	2	0
Prosthodontists	11	1	0
Public Health Dentists	2	2	8

There are only two insurance companies that charge specialists, other than oral surgeons, premiums that are different than those of general practitioners. Possible reasons for this might be that the incidence and severity of claims of most specialists is not materially different than that of general practitioners, that there is insufficient data to justify different premiums for specialists or that there are insufficient numbers of specialists to justify a separate rate filing with insurance regulators. Since it was not possible to obtain statistics on the alleged errors or omissions that resulted in claims against specialists, the survey sought the insurers' opinions as to cause of claims. Some insurers did not answer these questions as they do not insure some specialists. No insurers provided information on claims reported by public health dentists, oral and maxillofacial radiologists or oral and maxillofacial pathologists.

**Question:** *Please provide the two most frequent alleged errors or omissions in your company's paid claims against specialists during the five-year period from January 1, 1999 to December 31, 2003.*

**Endodontists:** Eight insurers responded to this question. Four said that "treatment failure" was either the most frequent or the second most frequent alleged error or omission in claims reported by endodontists. It is presumed that these insurers meant that a failure to meet the standard of care, given an adverse treatment outcome, was the alleged error. Two insurers cited "broken file" and two cited "treatment of wrong tooth" as being either the most frequent or second most frequent errors. The remaining answers included "inadequate precautions to prevent injury," "parasthesia," "inappropriate procedure" and "broken file."

**Orthodontists:** Nine insurers responded to this question. Although the companies used different terminology, it would appear that allegations that the treatment did not meet the standard of care, given dissatisfaction with the treatment's outcome, was the most frequent cause of claims. Two insurers cited "inappropriate procedure" while others cited "treatment failure," "dissatisfaction with the treatment outcome," misdiagnosis," "compromised result" and "failure to properly treat." The second most frequent alleged errors or omissions were "wrong treatment," "inadequate precautions to prevent injury," "failure to diagnose," "root absorption," "lack of informed consent," "foreign body," and "employee performance."



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Oral Surgeons: Five insurers responded to this question. “Treatment of wrong tooth” was said by one company to be the most frequent alleged error and two companies said it was the second most frequent error. Others cited “negligent interpretation of diagnostics,” “inappropriate procedure,” “errors resulting in parasthesia” and “errors in placing implants.”

Pediatric Dentists: Six insurers responded to this question. “Inappropriate procedure” was said by two companies to be the most frequent error and by one company to be the second most frequent error in claims reported by pediatric dentists. “Failure to diagnose” was cited by one company as the most frequent alleged error and by another company as the second most frequent. Other common errors were “inadequate precautions to prevent injury,” “treatment of the wrong tooth,” and errors in “composite/amalgam restorations.”

Periodontists: Six insurers responded to this question. “Errors in placing implants” was said by two companies to be most frequently involved in periodontists’ claims and a third listed such errors as the second most frequent. The next most common answers were “inappropriate procedure” and “failure to diagnose,” both of which cited by two companies as being the most frequent or second most frequent allegations. Other common errors were “lack of informed consent,” “negligent gingival graft,” “surgical complications” and “anesthesia complications.”

Prosthodontists: Seven insurers responded to this question. In the opinion of five companies, allegations that the prosthodontist failed to meet the standard of care based upon dissatisfaction with the treatment outcome was the most frequent allegation. The two remaining insurers cited “inadequate precaution to prevent injury” and “equipment failure.” Two companies said that bridges were the treatments that were the most frequently involved in claims and a third company said that bridges were the second most frequent treatment involved in claims.

**Question:** *Please provide the two most frequent adverse outcomes involved in your company’s paid claims against specialists during the five-year period from January 1, 1999 to December 31, 2003.*

Endodontists: Seven insurers responded to this question. As in the previous question, it would appear that a less than satisfactory treatment result was the most common adverse outcome in claims reported by endodontists. Specifically, two insurers said that “corrective treatment required” and two said that “failed root canal” were the most common adverse outcomes. The second most cited problem was “parasthesia,” which was said by one insurer to be the most frequent adverse outcome and by two others to be the second most frequent. Other common adverse outcomes among endodontists’ claims were aspirated and broken files.

Orthodontists - Eight Responses: Allegations of a less than satisfactory treatment result was the most frequent adverse outcome in claims reported by orthodontists. Three insurers reported “corrective treatment needed” as being the most frequent adverse outcome and a fourth reported it as the second most frequent. “Dissatisfaction,” “failure to properly treat” and “prolonged treatment” were cited as most frequent alleged adverse outcomes by three other insurers. The remaining two insurers reported that “root absorption” was the most frequent adverse outcome in orthodontists’ claims.

Oral and Maxillofacial Surgeons – Four Responses: “Treatment of the wrong tooth” and “parasthesia” were each cited by one of the companies as being the most frequent adverse outcome and by two companies as being the second most frequent. “Corrective dental treatment required” and “failure to properly treat” were the next most common.

Periodontists – Five Responses: “Corrective treatment required” was said by two of the five insurers to be the most frequent adverse outcome involved in claims reported by periodontists. The other



three cited “parasthesia,” “bone loss” and “(injury caused by a) failure to properly treat.” “Tooth loss” was said by two insurers to be the second most frequent adverse outcome. The other three insurers cited “swallowed object,” “periodontal disease” and “implant failure.”

Prosthodontists – Four Responses: Three insurers indicated that a less than satisfactory treatment result was the most frequent adverse outcome in claims reported by prosthodontists. One insurer cited “swallowed objects.” Among the adverse outcomes cited as being second most frequent were “denture fit” and “tooth loss.”

Pediatric Dentists – Four Responses: No single adverse outcome was cited by more than one insurer as being either the most frequent or second most frequent adverse outcome in claims reported by pediatric dentists. They reported “corrective treatment required,” “swallowed object,” “unnecessary treatment” and “failure to properly treat” as being the most frequent adverse outcomes. The second most frequent adverse outcomes were “adverse drug reaction,” “extraction of wrong tooth” and “undiagnosed conditions.”

**Recordkeeping Issues**

Professional liability insurance companies have long asserted that errors or inadequacies in the patient record prevent them from successfully defending some dentists against unfounded allegations of malpractice. To identify where there is the greatest need for improvements in record keeping, the Council sought to determine the relative severity of various errors. The following question was posed to the insurers with respect to both general practitioners and specialists.

*Please indicate the degree to which your company has noted the following types of problems with its insureds’ patient records (whether or not the problem was a primary cause of a paid claim.)*

To quantify the responses to this subjective question, a value of ten was assigned to any problem that was indicated as being “very common.” If a problem was “fairly common,” it was assigned a value of five. If the insurer said that the problem was “not common,” it was assigned a value of zero. The average scores for each problem, reflecting the opinions of fourteen insurers weighed equally, are listed below:

<b>Insurers Views as to the Frequency of Various Record Keeping Errors</b>	
<b>Type of Error in Descending Order of Frequency</b>	<b>Average Score</b>
Treatment plan is not documented	6.5
Health history is not clearly documented or updated regularly	6.1
Informed consent is not documented	5.9
Informed refusal is not documented	5.0
Assessment of patient is incompletely documented	4.9
Words, symbols, or abbreviations are ambiguous	4.9
Telephone conversations with patient are not documented	4.6
Treatment rendered is not clearly documented	4.5
Subjective complaints are not documented	4.1
Objective findings are incompletely documented	4.1
Treatment plan is not supported by documented subjective and objective findings	4.0
Reasons for deviation from the original treatment plan are not documented	3.9
Patient non-compliance or failed appointment(s) are not documented	3.7



Records are not legible	3.7
Routine full-mouth periodontal probing not documented	3.4
Insufficient records given the complexity of the issue	3.2
Post-operative instructions are not documented	3.2
Referral to or consultation with another practitioner or physician is not documented	2.8
Comments about the cost of treatment and the patient's payment history	2.6
X-rays were inadequate for the procedure	2.3
Prescription orders are not documented	2.2
Deletions, additions, or corrections are not made properly	2.0
Risk management notations included in the chart	1.4
The name and relationship of the person who gave consent is not documented for minors or patients who are incapacitated	1.4
Alteration of records	1.1
Lost records/X-rays	.7
Records are not written in ink	.7
Record contains notations relating to discussions with an attorney or insurer regarding a possible malpractice lawsuit	.4
Critical or subjective personal comments about the patient in the chart	.4

These results indicate that, in the opinion of professional liability insurance companies, it is fairly common to find that their dentists that have presented claims are not adequately documenting treatment plans, the patient's medical history and the informed consent/refusal process. Whether this result is indicative of the need for improvement in record keeping among all dentists is conjectural. However, the Council believes all dentists should review their own record keeping practices to identify whether any of the issues shown in the survey need to be addressed.

### **Communications Issues**

Another set of factors that can impact the ability of an insurer to defend a dentist against an unfounded allegation of malpractice, is the quality of communications between the dentist and patient. To evaluate the frequency of problems in patient communications, the final part of the survey asked the insurers to answer the following question with respect to both general practitioners and specialists.

*“Please indicate the degree to which your company has noted the following types of problems involving communications (whether or not the problem was a primary cause of a paid claim.)* As with the previous question, a value of ten was assigned to any problem that was indicated as being “very common,” a value of five if the problem was “fairly common,” and a value of zero if the problem was “not common.” The average scores for each problem, reflecting the opinions of fourteen insurers weighed equally, are listed below:

<b>Insurers Views as to the Frequency of Various Dentist/Patient Communication Issues</b>	
Critical comments of the insured's work made to a patient by another dentist(s)	7.7
Professional liability claim filed in retaliation for a billing dispute or collection problem	6.7
Lack of or poor communication between a primary dentist and a specialist	4.1
Reliance upon a signed release form in lieu of a discussion with a patient in order to obtain informed consent	2.0
Lack of or poor communication between a dentist and a physician	1.5



Professional liability claim filed subsequent to a peer review hearing	1.2
Inappropriate comments made to patients by dental office staff	.9
Lack of or poor communication between a dentist and a patient's pharmacy	<.1
Poor communication between dentist and patient	<.1

The standout results to this question are the high score assigned by insurers to the issue of intra-profession criticisms and to claims filed in retaliation to billing disputes. They assigned higher scores, on average, to these issues than to other communications and record keeping problems. This may indicate a need by some dentists for more guidance in handling these sensitive matters.

### **Conclusion**

The Council has not sought to compare the results of this survey with information that may be available with respect to professional liability claim patterns among other professions. In fact, such information may not even be available. Thus, the Council does not offer judgments that the incidence and/or severity of claims among dentists is or is not favorable. The survey does indicate that, in recent years, the incidence and severity of dental professional liability claims has not been changing materially. This seems to be supported by the fact that premiums for dental professional liability insurance policies have not been rising significantly for dentists having acceptable claim histories. The markets for dental professional liability insurance remain competitive and dentists with good claim histories have a wide choice of insurers. The Council has no information that would suggest these favorable conditions are likely to change in the foreseeable future.

The Council views the primary value of the survey as an indicator of where there are opportunities to improve the quality of patient care. In this respect, it suggests that it may be beneficial to address the issues of when and how comments should be made to patients about the quality of another dentist's care. Dentists may also welcome guidance in handling the communications aspects of billing disputes. In addition, the survey suggests that continued focus on improving record keeping, particularly with respect to documenting the treatment plan, updating patient medical histories and documenting the informed consent/refusal process may be helpful to some dentists.

The Council wishes to express its appreciation to each of the insurance companies that agreed to participate in this survey. It also wishes to extend its gratitude to the following individuals from the professional liability insurance industry that offered guidance on the construction and/or the execution of this survey: Ms. Robyn Crimmins, Vice President of Risk Management, The Dentists Insurance Company; Mr. Ken Ludwig, Executive Vice President, OMS National Insurance Company; Ms. Kathleen Roman, Risk Management Education Leader, The Medical Protective Insurance Company; and Dr. John Vaselaney, Assistant Vice President, CNA HealthPro. This article was written by Mr. David Dwyer, director, Council on Members Insurance and Retirement Programs and approved by the Council.