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TOPICS OF INTEREST

Plaintiffs Circumvent Medical Indemnity Fund

The Appellate Division, Second Department which covers the counties of Richmond, Kings, Queens, Nassau, Suffolk, Westchester, Dutchess, Orange, Rockland, and Putnam, in a recent decision (*Sence v. Atoynatan*), paved the way for the Plaintiff's bar to effectively circumvent the Medical Indemnity Fund (MIF). The Medical Indemnity Fund was established in 2011 to provide a funding source for future health care costs associated with birth-related neurological injuries. Enrollees of the Fund are plaintiffs in medical malpractice actions who have received either court-approved settlements or judgments deeming the plaintiffs' neurological impairments to be birth-related.

This concerning decision stems from a case (not involving Academic insureds) in which a jury in Brooklyn returned a verdict for the infant plaintiff of almost \$25 million on grounds that appeared to be highly questionable. The allegations were that the infant plaintiff had sustained brain damage secondary to hyperbilirubinemia. The jury awarded \$4 million for past pain and suffering (from birth to verdict). The appellate court reduced this sum to \$2 million. However, the jury also awarded \$7,015,000 for future pain & suffering (a period of 61 years). The appellate court chose not to reduce this award and left it fully intact despite the fact that prior to this case, the highest award sustained in an infant's case for total pain & suffering was \$4.25 million (*Flaherty v Fromberg*, Suffolk County, 2007).

Pain & suffering awards are not subject to the Medical Indemnity Fund (MIF). The Plaintiff's bar will undoubtedly look to utilize this decision as a hammer in settlement negotiations and will likely make reasonable settlements in such cases far more difficult to obtain.

Collaboration between Urgent Care Providers and Pediatricians

With the recent increase in the use of urgent care centers, particularly for pediatric patients, there has been growing concerns regarding communication between the urgent care providers and the child's primary pediatrician. Such communication is often vital in light of the fact that pediatric patients may not always be able to accurately provide their medical history or current complaints.

The American Academy of Pediatrics has affirmed that urgent care centers should be used as a “safe, effective adjunct to, but not a replacement for, the medical home or emergency department.” The Academy further states that it encourages collaboration between the urgent care center and the primary pediatrician and recommends that urgent care centers not provide continuity care to children and should avoid acting in such a way that the urgent care center would appear to patients to be a viable replacement for the primary care pediatrician. Rather, the Academy recommends that urgent care centers should function essentially as referral centers for patients with acute medical issues.

The Academy suggests that urgent care centers notify primary care physicians of their patient encounters and ensure timely patient follow-up with the primary doctor. Coordinated care would also clearly require HIPAA compliant sharing of medical records. Coordinated care could also be enhanced if the primary pediatrician were to be employed by, or affiliated with urgent care centers. This would enable primary care physicians to have complete access to patient records. As medical care options continue to broaden, communication and coordination amongst a patient’s healthcare providers will become an increasingly important issue for the healthcare field.