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## Peer Review

*Peer Review of members of the Cooperative of American Physicians, Inc. is a membership safeguard and a key element in this physician-directed organization. Peer Review fulfills a statutory and contractual responsibility to the members of Mutual Protection Trust (MPT) at large by evaluating, in the context of continued risk sharing, the qualifications of any physician or surgeon to continue to participate as a member of MPT.*

The Mutual Protection Trust (MPT) Peer Review process, required by our founding legislation, ensures that no member can be arbitrarily or unjustly terminated from membership. A careful, unbiased, and thorough evaluation of the issues causing concern must take place, via the Peer Review Process, before any member may be terminated from membership. This process prevents the Cooperative of American (CAP) physician from experiencing the unforeseen “notice of non-renewal” that his colleagues may have experienced with their insurance companies.

### How Does the Process Work?

Identification Candidates for Peer Review are identified for review when they have a frequency of claims greater than average for their specialty. Members are also referred to Peer Review for evaluation of continued and future risk if particular, but serious, circumstances or concerns arise about a member’s practice. These factors include, but are not limited to: loss history (i.e., nature, severity and or pattern and frequency of claims), Medical Board of California activity, or any other factor that unfavorably affects risk exposure.

### Peer Review Meeting

When closer scrutiny is necessary, the MPT Member is invited to a meeting with the Peer Review Committee, which includes no fewer than two physicians in the member’s specialty. Members have the option to be accompanied by their personal attorneys.

The Peer Review meeting is designed to be a dialogue among physician-peers. Through direct questions, the Peer Review Committee gains additional information that will assist in evaluating the member’s professional qualifications, clinical knowledge, practice skills, and judgment. This information is used to evaluate if continued risk sharing with the member is in the best interest of all CAP members who receive medical professional liability protection through MPT.

The Peer Review Committee’s deliberations do not end with an evaluation of cases or whether any particular case could be successfully defended. Even claims which can be successfully defended may reveal problems in a member’s medical practice which expose MPT to unreasonable risk



## Cover Story, continued

of future liability. Similarly, even cases of clear liability on a member's part may not justify termination when the facts, circumstances, and discussions indicate that MPT is not exposed to unreasonable future risk. That is why only physicians evaluate a member's risk.

### **Recommendations Reviewed by Board of Trustees**

Each Peer Review Committee recommendation is reviewed by the Board of Trustees before it is consummated. If the recommendation is for termination of membership, the recommendation, with supporting documentation, is forwarded to the Board of Trustees for consideration and action. The Board of Trustees has the authority to revise the recommendation. If, however, the Board of Trustees follows the recommendation for termination, the effective date of termination will be 45 days following the Board meeting.

A recommendation for continuation of membership is also forwarded to the Board of Trustees for consideration and action. The recommendation includes the following:

- (1) the Committee's assessment of the actual and potential level of perceived risk exposure to MPT created by continued membership;
- (2) recommendations for financial conditions to be applied;
- (3) recommendations for imposition of probationary status; and
- (4) conditions to be placed on the member, including the completion of any CME courses, attendance at the CAP risk management program, changes in office procedure, or, occasionally, specific limitations on the member's practice.

The Board of Trustees has the authority to revise the recommendation or return the matter to the Peer Review Committee. The member will be advised, in writing, of the action taken by the Board of Trustees.

### **Termination Provisions**

Under the terms of the MPT Agreement, MPT retains the obligation to defend and indemnify a physician whose MPT membership is involuntarily terminated through Peer Review for those claims arising out of the doctor's medical practice prior to the termination. The only monetary requirement for such continuing coverage is the former member's relinquishment of his or her initial trust deposit. Such members need not purchase special tail coverage for MPT to provide this coverage.

Members who disagree with termination of their membership may ask for a special meeting of MPT. In order to overturn a termination by the Peer Review Committee and the Board of Trustees, two-thirds of members voting at the special meeting – in person or by proxy – must vote in favor of retention.



### **Peer Review is a Key Process**

Notice of Peer Review does not automatically signal termination of membership. Over the past 24 months, 113 Members have attended Peer Review Committee meetings. Of those 113, only 21 members were recommended for termination via the Peer Review process.

The Cooperative of American Physicians, Inc. was established as a physician-directed organization. The Peer Review continues to be a key element of that mandate.

*Questions about this article may be directed to Randie Minovitz at 213-473-8748.*

# MPT Physician Closed Claims Review



*We also want to acquaint members with another part of the Peer Review structure the MPT Physician Closed Claims Review process. The MPT Physician Closed Claims Review process was instituted by the Board of Trustees in 2003 and is initiated with every claim closure. Review at this point allows MPT to identify claims trends as well as to evaluate members' claims frequency and severity issues.*

The MPT Physician Closed Claims Review process includes the following:

Identification criteria approved by the MPT Board of Trustees are used to screen each claim after its closure. This criteria includes payments made on behalf of the member and includes both indemnity (money paid to a plaintiff) and expense payments. Members frequently fail to appreciate the costs incurred in the defense of a claim. The amount spent by MPT to defend a member in a trial, even if a defense verdict is obtained or the case is dismissed, can be very expensive. Members may also be referred to the MPT Physician Closed Claims Review Committee if the member's claims frequency is greater than average for the specialty.

**MPT Physician Closed Claims Review Meeting**  
The MPT Physician Closed Claims Review Committee meets quarterly to consider cases when the above criteria indicate the necessity of a closer review. This Committee is made up of Chairmen of the four Peer Review Committees: Obstetrics, Orthopedics, Surgery and Medical Peer Review. The Committee considers, individually, the issues in each member's claim and his or her claims history. As with the Peer Review Committees, deliberations do not end with an evaluation of cases or whether a particular case could be successfully defended.

Even claims which can be successfully defended may reveal problems in a members' medical practice which expose MPT to unreasonable risk of further liability. Conversely, even when there is liability on a member's part, review of the facts and circumstances of the case may not indicate any increased future risk to MPT. That is why only physicians evaluate these issues and make recommendations.

After discussion, the Committee's recommendations to the Board of Trustees may include imposition of a surcharge on a member's assessment, co-payments on future claims, or other practice conditions. If the

committee feels that the member presents a greater risk to MPT, it may instead refer him or her to an in-person Peer Review meeting. The MPT Physician Closed Claims Review Committee, however, is not empowered to recommend termination of any MPT Member.

**Recommendations Reviewed by Board of Trustees**  
Prior to imposition of any of the above conditions, all recommendations are reviewed and considered by the Board of Trustees. The Board of Trustees has the authority to revise the recommendation or return the matter to the MPT Physician Closed Claims Review Committee for reconsideration. If the recommendations are upheld by the Board of Trustees, the member will be advised in writing of the action.

Members who disagree with the imposed conditions may submit a written letter of appeal for consideration by the committee at its next meeting. After review, the committee will uphold or reverse its original recommendation and communicate the changed recommendation to the Board of Trustees for its review and approval.

If the member disagrees with the reconsidered decision, the member may request a full in-person meeting with a Peer Review Committee.

## Timeframe of Conditions

Any financial conditions are fixed and remain in effect for a period of three years from the date implemented. However, members who have received conditions from the MPT Physician Closed Claims Review process may be referred to Peer Review if further claims or other negative activity warrants.

## Peer Review is a Key Process

Both Peer Review processes continue to be a membership safeguard and a key element in this physician-directed organization

*Questions about this article may be directed to Randie Minovitz at 213-473-8748.*

# Going Paperless? Keep Those Arbitration Agreements!

Whether paperless is a realistic goal, we know that many of the documents in physicians' offices, including medical records, can be assimilated into an electronic medical record (EMR). But, not all!

The CAP Risk Management Hotline is often asked, "Must the original arbitration agreement be maintained after it has been scanned into the EMR?"

The answer? "Yes" because submitting "secondary evidence" (e.g., a copy – even a color copy) instead of the original agreement creates a risk that the copy will be excluded from evidence. As a result, the case may not be permitted to proceed in arbitration. Schmid and Voiles attorneys must prove that the original arbitration agreement meets certain requirements. Those requirements include the red, 10-point type notice that advises the patient that he/she is giving up the right to a jury or court trial.

Another scenario occurs when the patient either does not remember signing the agreement, or denies having done so, and examination of the original signature is necessary.

Your EMR vendor may advise you that scanned signatures are legal and valid. While that is true, the best evidence to authenticate the arbitration agreement is still the original arbitration agreement. However, if the original is not available, a color photocopy or a nonerasable color optical image reproduction of the agreement may be submitted as secondary evidence.

Your office has expended considerable effort to discuss arbitration with patients and to collect and maintain the arbitration agreements. CAP suggests that, while you may color scan the agreements into your EMR, the hard-copy agreements should also be maintained. These agreements will occupy far less space than the medical records and could be filed alphabetically for easy retrieval.

*If you have further questions about arbitration agreements, please call CAP Risk Management & Patient Safety at 800-252-7706.*

## CAPsules

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