

# Inside Medical Liability

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2017 THIRD QUARTER

**New Tactics  
for Lowering  
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MACRA**

# INTERVIEW WITH... SARAH E. PACINI, JD



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## ***At the 40th Anniversary of the Cooperative of American Physicians' Mutual Protection Trust: A Conversation with Its CEO, Sarah E. Pacini, JD***

*This year, the Cooperative of American Physicians' (CAP's) Mutual Protection Trust (MPT) is celebrating a major milestone: its 40th anniversary. To explore some of the unique history of CAP and its MPT, Inside Medical Liability spoke with its CEO, Sarah E. Pacini, JD. We wanted to learn, for example, how the concept of a cooperative arrangement and mutual protection trust structure for medical professional liability (MPL) originated, and the evolution of the role of reinsurance in CAP. Pacini offered numerous insights and illuminating facts about CAP, its MPT, and the organization's vision for the future.*

*This interview is one in an occasional series of talks with the leaders of PIAA's members, both in the U.S. and around the world, to gain from them their personal insights into the current status of the MPL/HPL sector, and find out how their organization is evolving to manage current and emerging risks and to deal with other new realities of the evolving healthcare environment.*

**Inside Medical Liability:** Where did the idea of a cooperative arrangement for MPL come from, and how has the concept changed over time? Similarly, what was the origin of the mutual protection trust structure? How was the relationship between these two entities defined—by a contract? Joint ownership? Other arrangement?

**Pacini:** The relationship between CAP and MPT is governed by California law. CAP was formed first, in 1975, using the “consumer cooperative” structure of the California Corporations Code. Once CAP was established, its leaders supported a new provision in the

California Insurance Code to allow for inter-indemnity arrangements for physicians. According to the statute, the participants in the risk-sharing inter-indemnity arrangement must be members of a California cooperative corporation whose members consist only of California-licensed physicians. Following this prescription, MPT began operating in 1977.

**IML:** How did California's MICRA law make CAP possible?

**Pacini:** MICRA provides the same benefits for CAP physicians and their patients as it does for the other MPL providers in

California: It enhances access to medical care by setting reasonable limits on non-economic damages, while providing unlimited remedies for economic damages. MICRA helps keep millions of dollars within the medical care system; these savings benefit patients statewide. We keep our members well informed about the benefits of MICRA, and we provided weekly member updates when MICRA's opponents attempted to upend the law in 2014. That voter initiative, Prop. 46, failed at the ballot box by a 2-1 margin. CAP is a longtime partner in the efforts of PIAA and other national groups to enact federal MICRA-like legislation.

**IML:** How was the original amount needed to fund MPT determined, in the absence of loss data?

**Pacini:** The legislative threshold for the initial trust corpus, \$10 million

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(and a minimum of 500 participating members) was established in MPT's governing statute, as required by California law AB 1898, which passed the Legislature in 1976. MPT has earned an A+ (Superior) financial rating from A.M. Best in 2017 for the eleventh consecutive year, in recognition of its stability and sound financial management.

**IML:** How was marketing done in the early years of CAP? Were there some significant challenges to growth?

**Pacini:** Marketing was carried out by the original members, who presented the idea to their colleagues. It was almost entirely word-of-mouth for the first few years. The underwriters were also the service personnel, and they were the ones who answered questions for prospective members. A formal membership development (sales) department was not created until the late 1980s. CAP has since established a full-time Membership Development department staffed by 12 sales and support professionals, and a Marketing and Corporate Communications department staffed by six professionals. Today, CAP, MPT, and the other CAP business lines are presented to the market through the full spectrum of

terms than was currently available in the marketplace. This has turned out to be a successful strategy, as this captive insurance subsidiary has evolved to provide insurance coverage to CAP, reinsurance support to the insurance carrier in the CAPAssurance Risk Purchasing Group program, and key reinsurance support to MPT. It also carries an A- (Excellent) rating from A.M. Best. In addition to the captive insurer, MPT maintains a robust reinsurance program with a diversified slate of reinsurers, rated A and above in the U.S. and European markets.

Collectively, the total reinsurance structure has over time proven successful in making it possible for the organization to manage loss volatility and maintain stability in its operating results.

**IML:** In what ways was gaining membership in PIAA in 1997 a milestone for CAP?

**Pacini:** As alternative-funding vehicles became more common within healthcare, and as it became obvious that MPT was a highly viable and successful physician-owned and -governed MPL option, an invitation to membership just seemed natural. Soon after that, the company joined, and several of our senior

simultaneously responding to changing circumstances. It is imperative to adapt to changes and capitalize on the opportunities they present. One new paradigm is that every day, Americans now participate vigorously in the debate over how healthcare is best delivered. CAP believes that physicians should welcome the public's involvement in this dialogue. We work together with our physician members to ensure access to quality medical care.

The MPL business is rapidly evolving through a period of more intense competition and consolidation. We expect that to continue for the foreseeable future. To confront these challenges, CAP has diversified its products and services to meet the ever-changing MPL protection needs of solo and small group physicians, mid-sized and large medical groups, and hospitals, clinics, and surgery centers—and to help increase their success.

At the same time, CAP continues its substantial commitment to its core comprehensive risk management education and services, including a 24/7 risk management hotline, the availability of an on-site risk analysis conducted by a highly trained risk management specialist, and online CME courses tailored according to medical specialty.

It is this ability to adapt to change, to diversify while at the same time strengthening core services and promoting access to quality healthcare, that will keep CAP a leading provider of MPL protection, risk management, practice management, and financial management services for a long time to come. Put another way, our 40

years of serving California's finest physicians provides a solid platform for looking at the future through fresh eyes. 

**Successful organizations know the importance of maintaining core values while simultaneously responding to changing circumstances. It is imperative to adapt to changes and capitalize on the opportunities they present.**

traditional and online sales and marketing channels.

**IML:** How has the role played by reinsurance in CAP's financial stability changed over time?

**Pacini:** As it does for many MPL providers, reinsurance has played a role for CAP in managing the inherent volatility in loss development, and CAP, like them, has to make decisions about how to balance the cost of reinsurance versus the benefits provided.

CAP established a captive insurance subsidiary in 2002 to provide certain reinsurance coverage to MPT at more economical

staff chaired PIAA sections; and ultimately, our former CEO, Jim Weidner, was invited onto the Board, which he chaired from 2009 to 2013. Membership in PIAA gave CAP and MPT recognition within the MPL community and enabled us to participate in PIAA's Data Sharing Project and its public policy initiatives.

**IML:** What is your hope for CAP for the next 10 years—and maybe even, stretching your imagination a good bit—for the next 30 years?

**Pacini:** Successful organizations know the importance of maintaining core values while

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#### Footnote

The Cooperative of American Physicians, Inc. is licensed as a property and casualty broker-agent and surplus line broker (California license No. 0B72723). Insurance purchased through CAPAssurance is from a non-admitted or surplus line insurer that is not licensed by the state of California.