Beware the Recent Tactics of the Personal Injury Lawyers  
by David Sousa, JD, MBA, Senior Vice President and General Counsel

Last fall, we were contacted by many insured physicians who, fortunately, saw a “red flag” rise in response to the conduct of a personal injury lawyer. The lawyer contacts were all of the same nature, occurred across the state, and were initiated by personal injury lawyers, all from different firms. The coincidence was alarming. We spoke of the details at every one of our Community Board meetings held throughout North Carolina in December and January. Our Board members unanimously felt that we should similarly advise all of our insureds. So, here is what we discovered:

Facts:
1. In each instance, our insured was contacted verbally and/or in writing by a lawyer representing a patient in a medical malpractice suit. That lawyer wanted to meet with our insured to discuss his care of that patient.
2. Our insured was involved in the care of that patient either before or after the treatment at issue in the suit.
3. Our insured was rightfully concerned that the lawyer may be “fishing” for information, and would then add the insured as a defendant to the same suit.
4. When our insured reported the lawyer contact to us, we immediately retained defense counsel to protect his interests (in two instances the insured already had counsel because of the likelihood of his involvement in the suit), and to assure that our insured was not subjecting himself to liability exposure by speaking with the personal injury lawyer.
5. The personal injury lawyer was advised by our insured (or by counsel for the insured) that he was represented by counsel.

(continued on page 2)

How to Select an EMR
by Jennifer Lewis, Director of Marketing, A4 Health Systems

Whether it’s streamlining workflow, saving providers and staff time, or improving a practice’s bottom line, the benefits of Electronic Medical Record (EMR) systems have been widely documented and go beyond enhancement of patient care. Physicians have realized that paper charts are mired in inefficiency, and the choice to implement an EMR is no longer a matter of “if,” it’s a matter of “when.”

If you’ve decided now is the time to retire your patient charts, the leap to an Electronic Medical Record system is no small undertaking. As with any major process change or technology purchase, practices need to dedicate time, resources and due diligence to the selection and implementation processes. To help you get started with selecting an EMR, here are some key points to consider:

• Work together to commit to an EMR and stick with the decision. The most successful practices collectively decide to make the switch to an EMR and evaluate and plan as a group. By working together, all members feel empowered and contribute to the project’s overall success.

• Define your practice’s needs and set a budget. Where is there room for improvement in your current processes? What will you need out of a system and how much can you afford? Keep in mind the financial benefits that an EMR will return when developing a budget. Some practices recouped their full EMR investment in just one year.

• Create a list of reputable vendors and request information about the company and its products. Peers, industry associations, trade publications and conferences are a good place to start when pulling together a list. Screen vendors by looking at the following characteristics:
  • Healthcare technology experience—there are many new EMR vendors now in the market, so make sure you find a company with years of development and implementation experience.
  • Financial strength—a profitable company with visible growth and financial staying power is critical.
  • Good reputation and trustworthiness.
  • Strong support and service, 24/7/365.
  • A full-solution provider— it’s comforting to know an EMR vendor can provide a full-suite of technology solutions for you to choose from, if needed.

• Take a test drive. View demonstrations of the products and ask yourself the following questions:
  • Is the system flexible and easy to use? Choose a product that is easily customizable and user friendly.

(continued on page 2)
(Beware the Recent Tactics of the Personal Injury Lawyer, continued from page 1)
The PI Lawyer’s Tactics (Response):
1. The lawyer in each instance advised our insured that his client (the patient) had nothing but the highest regard for our insured; that his client had no interest in suing our insured, and; that, since the lawyer was representing that to be so to our insured, the law would prohibit the patient from ever bringing suit against our insured.
   True or False? False!

2. The lawyer told our insured that HIPAA prevented our insured from discussing anything about his care and treatment of the patient with us as his liability insurer, and with the insured’s own defense counsel.
   True or False? False!

3. The lawyer told our insured that it would not be appropriate, or even legal, for defense counsel to be present when they met, and that defense counsel would know that to be the law.
   True or False? False!

4. The lawyer told our insured that he needed to be aware that the physician who was a defendant in the malpractice suit was already pointing his finger at him, and blaming him for the problems of the patient.
   True or False? False!

What Should You Do?
1. Anytime a lawyer contacts you and says he represents a patient in a medical malpractice case and wants to speak with you about your care of that patient, STOP AND CALL MEDICAL MUTUAL. We have seen too many instances where the agreement to meet and share information has put that physician at risk. The lawyer telling you that he can not sue you after telling you that you are not a target is not true.
2. HIPAA does not preclude you from ever speaking with us, or with your own counsel, about any aspect of any patient’s care—ever—period.
3. Your right to counsel, and the presence of your counsel—whenever you chose—is as fundamental of a concept as any that exists in the civil justice system. We believe it to be a clear ethical violation for any lawyer to speak with a person about any matter, when that lawyer knows the person is represented by counsel for that matter.
4. Do not allow any personal injury lawyer to curry favor from you by suggesting that some other physician already “has it out for you.” More times than not, such an assertion is false.

The zealousness of personal injury lawyers in chasing the dollars available in a winning malpractice claim can be unconscionable. Do not fall prey to their zeal. Call our Claims Department at the “first sign” of any such conduct. We will protect you, and your practice.

(How to Select an EMR, continued from page 1)
• Does the system provide strong, core functionality? Sure, sizzle and spice look nice, but remember the vital features your practice needs foremost before investing in bells and whistles.
• Will the EMR interface with other technology systems? How well a vendor integrates with and is willing to integrate with other systems is vital.
• Will patient information be secure? In addition to standard data security, a vendor should provide your practice with disaster recovery service and proactive technical support, such as hardware and system monitoring to minimize downtime and protect patient information.
• After narrowing the field to a few top choices, conduct site visits and call references. Talk to users of the product, ask questions and view first-hand how the EMR works in a similar practice setting.
• Reach a consensus.

Putting forth due diligence when selecting an Electronic Medical Record system will ensure your practice chooses the right system with a vendor that will provide a successful partnership long-term. And, remember to apply the same dedication and group commitment after selection because according to Louise Collins, RN, BSN, Product Manager for A4 Health Systems®, “success with an EMR is 90 percent attitude and 10 percent aptitude.”

Visit http://www.a4healthsystems.com/ for more information.

The following revised applications can be found on our website under What’s New? (http://www.medicalmutualgroup.com/mmg/pages/what’s_new/what’s_new.html):
• Physician Application
• Entity Application
• Non-Physician Application
• Retired Volunteer Application
• Locum Tenens Application

If you have questions regarding these applications, please contact our Underwriting Department at (800) 662-7917.
Alliance Medical Ministry: Caring for the Uninsured Working Poor in Wake County
by Marina Calabrese, Communications Specialist

How many times do you pick up a newspaper, turn on the news, or listen to the radio and read or hear a good story about the medical profession? Not often enough! The medical profession has had its fair share of controversial press in recent years. Physicians are subject to expectations and a set of standards that make it difficult to be successful. At Medical Mutual, we believe that there are numerous untold stories of physicians making a positive difference in our community. The following is one such story; how Alliance Medical Ministry and physician volunteers serve the underserved.

The medical staff at Alliance (a faith-led, non-profit medical ministry) is dedicated to serving the uninsured working poor in need of affordable primary care in Wake County. As a result of their commitment to patients in the community, thousands of individuals who do not have health insurance and cannot afford the cost of health care are currently being treated. Ninety-eight percent of their patients have an annual household income of less than $25,000. Typically, these patients work a job that does not offer health insurance. Alliance currently serves over 4,000 patients and anticipates providing care for 12,000 patient visits this year. There are twelve employees on staff and approximately 250 volunteers who keep the clinic operating on a daily basis.

Recently, I sat down with Susan T. Weaver, MD, Executive Director for Alliance Medical Ministry, to learn more. Dr. Weaver grew up in Greenville, N.C. A graduate of Duke University and Duke University School of Medicine, she completed her residency at Massachusetts General Hospital. Dr. Weaver has been in practice for over ten years, is board certified in Internal Medicine, and has experience in “opening” new clinics. She is an active member at Edenton Street United Methodist Church. She has been involved in indigent care and free clinics for a number of years.

Dr. Weaver and her staff are deeply concerned about the difficulties faced by the patient population of the clinic. They recognize that their patients struggle for the routine things that everyone else takes for granted. She and her staff are happy to provide a small portion of what they need. Their patients are working but not in salaried positions. If they are sick, they do not receive their hourly wage. Very often, there are ten more people waiting in the wings to take their jobs. Most of these patients are compliant and count on the assistance of Alliance to maintain their health so they can stay employed and provide for their families. Dr. Weaver believes that keeping their patients healthy and at work is beneficial to everyone. Staying healthy often means taking medication regularly. The cost of medication is prohibitive to their patients. Alliance is able to provide prescription medicines at little or no cost. Currently, there are no programs for over-the-counter medications so they rely on donations from various organizations.

In September 2005 during the aftermath of Hurricane Katrina, Alliance Medical Ministry opened a Katrina Clinic. The Saturday clinic provided primary medical care to families who relocated to the Triangle following Katrina. These families had nowhere else to turn for their urgent medical care. The clinic provided acute and chronic medical care, laboratory testing, radiological procedures, medications and the coordination of ancillary services for 154 patient visits. The success of the Katrina Clinic motivated the staff at Alliance to offer a Saturday clinic option to their currently enrolled patients on February 18th of this year. Because it is a working population, it is difficult for their patients to visit the clinic during the regular work week between the hours of 8:00 a.m and 5:00 p.m. Healthcare providers who are unavailable to volunteer during the week due to full-time jobs, can now do so on the weekend which will increase, significantly, the services provided for Alliance’s 4,000 patients.

Clinical and non-clinical volunteers are needed to help with the Saturday clinic from 9:00 a.m. to 12:00 p.m. If you are interested in volunteering at Alliance Medical Ministry, please contact Loree Idol at (919) 250-9254. If you have questions regarding your professional liability coverage when volunteering, please contact the Underwriting Department at Medical Mutual at (919) 872-7117.

Dr. Susan Weaver in the supply area of the Alliance Clinic where over-the-counter medications are stored for their patients.

Contact Information
Medical Mutual Insurance Company of North Carolina
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Phone: (800) 662-7917 or marina.calabrese@mmicnc.com
Contractual Shifting of MD Liability Still Looms as an MD Problem: Do Not Place Yourself in a Position of Practicing Without Insurance Coverage
by David Sousa, JD, MBA, Senior Vice President and General Counsel

We continue to see situations in which our insureds are executing agreements or contracts, primarily with hospitals, wherein physicians are accepting personal responsibility and, thus, potential liability, for the actions of others.

A. Our professional liability policy has three different categories of insureds whose actions are covered by the policy when the insured is rendering patient care: (1) the individually named physicians of the group practice; (2) the group practice, and; (3) the employed ancillaries rendering patient care: (1) the individually named physicians of the group practice; (2) the group practice; (3) the employed ancillary health care providers of the group practice. Someone else’s nurses, physicians, residents or administrative personnel are NOT covered under your MMIC policy. Do not undertake contractual obligations which make, or could make, you responsible and liable for conduct of someone else’s employees.

B. If asked to be responsible (whether compensated or not) by an entity other than your own group practice for the supervision, direction and operations of people and a facility outside of your own group, which responsibilities are beyond the care of your own patients, do not do so unless that entity agrees to insure you and indemnify you for such exposures.

When confronted with a situation presented in either A. or B. above, insist that the contract or agreement contain language similar to the following (this language is taken directly from a Medical Director Agreement that a NC hospital recently offered to a General Surgeon asked to be Medical Director of its OR):

“Insurance. Hospital shall maintain professional liability coverage through ___________ for its applicable employees in the department (referring to the department or area of Hospital you are servicing under this Agreement) with limits not less than $1,000,000/$3,000,000. It is understood and agreed that with respect to the duties of Physician as described in Exhibit A, Hospital shall obtain and maintain, for as long as this Agreement is in effect, insurance coverage applicable to Physician equivalent to the coverage applicable to other administrative and supervisory Hospital Employees. Upon request, Hospital shall provide to Physician a certificate or other evidence of the foregoing coverage.

Indemnification. Hospital agrees to indemnify and hold harmless Physician and his employees and representatives, for any liabilities, cost, damage or expense (including attorney fees) incurred by Physician and his employees and representatives, arising out of or relating to any acts, omissions or errors in judgment committed by Physician and his employees and representatives in fulfilling any of his duties set out in this Agreement and Exhibit A attached hereto.

Such indemnity shall not extend to the medical negligence of Physician, his employees and representatives committed while treating his patient.”

Our insureds frequently believe and suggest that no hospital or other entity would agree to the terms above. We find that responsible and knowledgeable third parties understand that to do so is simply the correct and fair way to do business and to treat its medical staff – and do so routinely. Protect yourself and your practice by insisting on similar agreements.

Tort Reform Update
by Stephanie Hawco, Executive Director, Protect Health Care Now

The battle for medical liability reform took an important step forward in April. The House Select Committee on Health Care voted to introduce four medical liability reform bills during the legislative session that began in May. The committee proposed the following reforms:

- **Periodic Payment of Damages**, a key element of California’s successful MICRA reforms, would allow future economic damages to be paid over time rather than in a lump sum.
- **Bifurcation of Trials** would separate the issues of liability and damages in medical malpractice trials.
- **Appeal Bond Reform** would ensure that physicians do not have to pay out of pocket to appeal runaway jury verdicts.
- **Mandatory Reporting** by insurers and plaintiff’s attorneys on the number of medical malpractice verdicts and settlements per year, the amount of damages paid, and the distribution of money paid between the plaintiff and the plaintiff’s attorneys.

These reforms alone will not solve North Carolina’s medical liability crisis, but they will offer some relief while we pursue our long-term goal of securing comprehensive medical liability reform. Protect Health Care Now is working to pass meaningful MICRA-style reforms that include a cap on non-economic damages, a sliding scale on plaintiff’s attorney fees, and collateral source reform. PHCN and our physician members are in this fight for the long haul. We will continue to demand the comprehensive MICRA reforms that have been proven to bring the medical liability crisis under control in other states.

These four reforms could come to a vote during the legislative session that started on May 9th. Call your House and Senate members today and tell them to vote for periodic payment, bifurcation of trials, appeal bond reform, and mandatory data collection. Better yet, meet with your legislators and tell them how the medical liability crisis is impacting health care in your community.

PHCN can arrange a legislative meeting for you, provide you with talking points, and even attend the meeting with you. Call us at (800) 970-PHCN (7426) if you want to become a grassroots advocate for medical liability reform. You can log on to www.protecthealthcare-now.org to find out who represents you, or to learn more about Protect Health Care Now’s mission to secure medical liability reform.
Medical Mutual: The Difference is Significant
by Steve Parker, Professional Liability Account Executive

As a recipient of Mednotes, you have already made the choice of Medical Mutual as your professional liability insurance carrier (and we thank you for entrusting us with your confidence). Clearly, you believe that Medical Mutual is a superior partner, and offers you unmatched protection in an environment increasingly hostile to physicians. We thought that you might like to know that this Company continues to distance itself from our competitors so that now -- more than ever -- the difference between Medical Mutual and other companies is significant.

We believe that when you assess the quality of your professional liability carrier, your first consideration should be the financial strength of that carrier. The medical malpractice landscape has been littered, in recent years, with the remains of companies that have either become financially inviable or been forced to drastically reduce their market presence due to financial pressures. Due to this contraction within the market, the protection purchased by many physicians was imperiled. The unpleasant lesson learned by many was that physicians must be ever vigilant in ensuring that their insurance partner remains on solid financial ground.

You might know that A.M. Best is the largest and most respected insurance company financial rating source in the United States. We are pleased that Medical Mutual carries an A.M. Best rating of “A (Excellent),” with a “stable ratings outlook.” We are proud to be one of only a handful of medical malpractice specialty companies in the US which carries this rating. With this rating, you can be assured that Medical Mutual is financially strong and well-poised to protect you in the future. In addition to our A.M. Best rating, we would encourage you to compare the following financial benchmarks with those belonging to any other carrier:

• Capitalization: Medical Mutual maintains strong capitalization by industry standards, possessing a net written premium to surplus ratio of 99.3%.
• Combined Ratio: Medical Mutual’s combined ratio (claims and expenses v. earned premiums) is 85.1%, which is far below the industry average.
• Operating Expense Ratio: Medical Mutual is a good steward of our physicians’ premium dollars. Our expense in running the company is 8.4% -- among the lowest, if not the lowest, in the medical malpractice insurance industry.

While financial strength is a primary consideration in choosing a carrier, the actual “nuts and bolts” of the insurance you are purchasing runs a close second. Here, too, Medical Mutual distinguishes itself, through:

• Aggressive Claims Defense: Our claims philosophy is extremely defense-oriented and success-driven. Year after year, we try more cases than any other carrier, and have a compelling record of success (85% of tried cases won; 87% of all claims closed without payment). We also have relationships (many exclusive) with an unrivaled list of top-tier medical malpractice defense attorneys.
  • Strict Underwriting Standards: Our position in the market means that we can be highly selective in choosing our members. We diligently seek to insure only those physicians who we believe are quality-oriented and patient-focused. While we have grown year after year, our growth is smart and targeted.
  • Innovative and Forward-Thinking Policy Features: Our policy coverages are comprehensive and are supplemented frequently to protect physicians from the emerging risks and challenges which arise in the quickly-changing medical field.
  • Substantive and Specialty-Specific Risk Management: Our Risk Management efforts consist of more than a RM handbook and an occasional seminar. Our cornerstone RM program, our in-office Risk Management Assessment, provides physicians with a comprehensive look at strengths and weaknesses within their own practices, with prioritized recommendations designed to help them reduce their risk of a malpractice lawsuit. In 2005 alone, the practices of over 400 physicians received the in-office assessments of one of our clinical Risk Consultants.
  • A Comprehensive Approach to your Needs: While professional liability remains our primary product, Medical Mutual assists physicians with most of their coverage and service needs – from employee benefits to commercial coverages to retirement planning. Our offerings in each area are specifically tailored for the needs of physicians and their practices.
  • Responsiveness to our Members: Medical Mutual is eternally mindful of the fact that we are beholden to no one – no stockholders in far away places, no parent company which produces widgets – no one, other than the physicians who wholly own this company. Accordingly, we strive to offer our owners the exceptional service to which they are entitled. Moreover, this is truly a physician-directed organization, ensuring that we remain committed to promoting your success. Through our Board of Directors and our Community Physician Advisory Boards, over 63 physicians have leadership roles within Medical Mutual. Through them, we stay highly attuned to the evolving challenges faced by physicians in this current climate, and with their guidance we affirmatively assist physicians in responding to those challenges.

Woven together, the benefits cited above point to this singular fact: the difference between Medical Mutual and our competitors is, indeed, significant. We are so pleased to be your partner, and hope that you take justifiable pride in ownership of what is unquestionably one of the foremost professional liability insurance companies in the country.
Emergency Medicine Update
by Amy Young, Risk Manager

Medical Mutual claims data shows that 55% of all Emergency Medicine physicians insured for ten or more years have been sued. A sobering statistic, to be sure, but one that can be mitigated through proactive risk management. In order to help our members decrease their liability exposure, the Risk Management Department recently sponsored a seminar targeted to Emergency Medicine physicians. The seminar was conducted by David Sousa, Vice President and General Counsel at Medical Mutual.

The presentation drew from both national and local malpractice claims data to illustrate real cases and risk management issues facing Emergency Medicine physicians. The seminar allowed physicians to hear and comment on the patient safety issues relevant to each case, and to discuss ways to reduce risk in their everyday practice. Additionally, trends in malpractice premiums for Emergency Medicine physicians were reviewed. Finally, Mr. Sousa presented an update on the state of the medical liability reform effort in the North Carolina General Assembly and gave a peek into the “new tactics” of Personal Injury Attorneys.

The physicians in attendance enjoyed the presentation. They praised the speaker and wrote that the program was “a great lecture” and an “excellent presentation.”

Each attendee at the seminar was asked to write down the “top 4 issues that you believe put you at risk during the course of your daily work in Emergency Medicine.” The responses show that a large majority of physicians feel that “too many patients and not enough resources” put them at risk. Others stated that the public’s perception from TV shows that “diagnoses can be made easily in one hour” creates liability exposure in the Emergency Department. See the graphic for an overview of all responses.

Medical Mutual plans to continue working with our Emergency Medicine physicians in 2006 to address risk exposures in their practice.

What do Emergency Medicine physicians feel are their greatest risks?

Do you prescribe anticoagulant drugs (i.e., Coumadin®) that require monitoring?

If you do, visit our website at www.medicalmutualgroup.com for our patient education material and consent form found in the Risk Management section.

If you would like to be placed on the list to receive our Anticoagulation Therapy Toolkit, available in July 2006, call the Risk Management Department at 1-800-662-7917. Inside our Anticoagulation Therapy Toolkit, you will find tools to help you reduce one of the largest medical malpractice risks facing physicians today. It includes ready-to-use consent forms, sample policies and procedures, tracking system examples, and more!

Commercial Insurance Update: Is your 401(k)/pension plan covered?
by Teri Breci, Commercial Account Manager

MMIC Agency, Inc. can provide you with an ERISA/Fidelity bond with Selective Insurance Company.

Fidelity bonds protect businesses against the loss of money, securities and other property caused by a dishonest employee.

If your business needs protection to provide employee dishonesty coverage for Pension and Profit Sharing Plans required by the Employee Retirement Income Security Act (ERISA), on an individual, scheduled or blanket basis, call our Agency.

If you are a current policy holder with us and have your business insurance with Selective, this coverage could be added to your existing policy, depending on the limits of coverage being sought, or we can obtain a separate bond for you.

For additional information please contact our Commercial Account Manager, Teri Breci, at 800-662-7917, extension 7587.
**NCMGM Announces Medical Mutual's Administrator of the Year: John S. Nosek, Greensboro Orthopaedics**

John S. Nosek, MPA, CMPE is the recipient of the 2006 North Carolina Medical Group Managers (NCMGM) Administrator of the Year Award. John is the Executive Director of Greensboro Orthopaedics and has been with the practice for approximately 12 years. He is a graduate of the University of Baltimore where he received a B.S. Degree in Business Administration and Accounting and his Masters Degree in Public Administration in Health Care. John holds professional affiliations with the Medical Group Management Association and the American College of Medical Practice Executives. He serves on the National Education Committee of BONES (an Educational Society for Orthopaedic Administrators). He is a certified Medical Practice Executive. John is the fifth recipient of this prestigious award.

The NCMGM guidelines state that, “The award recognizes a medical group practice administrator who exhibits exceptional leadership management proficiency and enhances the effectiveness in the delivery of health care in his/her practice and community through a recent noteworthy achievement.” Medical Mutual sponsors the Administrator of the Year Award; however, the nominating committee is comprised of practice administrators who assess the nominations and, subsequently, chose the winner.

To learn more about NCMGM, visit www.ncmgm.org/.

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**Mott P. Blair, IV, MD Joins Medical Mutual's Board of Directors**

Mott P. Blair, IV, MD began his three year term as the newest member of the Medical Mutual Board of Directors on April 22, 2006. Dr. Blair is owner and President of Blair Family Medicine in Wallace, North Carolina. He is a graduate of East Carolina University School of Medicine and has been practicing family medicine since 1990. Dr. Blair is a member of the North Carolina Medical Society (NCMS), the North Carolina Academy of Family Physicians (NCAFP), and the American Academy of Family Physicians (AAFP). He is a delegate to the NCMS House of Delegates, Chairman of Adolescent and Obesity Project and Chairman of Health Promotion and Disease Council for the NCAFP. He is an Adjunct Instructor at UNC School of Medicine, Department of Family Medicine at the University of North Carolina at Chapel Hill. Dr. Blair is also Chairman of the AAFP Subcommittee on Disparities and Underserved Populations in Leawood, KS.

He was born in Kinston, NC, is married to Jennifer Tyndall of Grifton, NC, and has three children, Cece, Ivey, and Parks.

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**Asset Protection for Physicians: Preparing for the Unnatural Disaster**

A PDF version of this informative booklet is now available to members of the Medical Mutual Group website at http://www.medicalmutualgroup.com/mmg/pages/what’s_new/what’s_new.html
WEB UPDATE: www.medicalmutualgroup.com

We have a new look!

What’s new @ www.medicalmutualgroup.com?

• 2006 Professional Liability Applications (under What’s New? on our front page)

• 2005 Annual Report (under What’s New and Publications on our front page)

• Web Site Satisfaction Survey (please take a few moments to fill it out...we are interested in your feedback)

• Three New Portals to Member Company sites (Physicians, Dentists, Employee Benefits/Commercial Insurance)

• Asset Protection Strategy Booklet (under What’s New? on our front page and the Claims section of the Medical Mutual Insurance Company of North Carolina site)

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