West Virginia’s Medical Liability Crisis

Southern Access Program

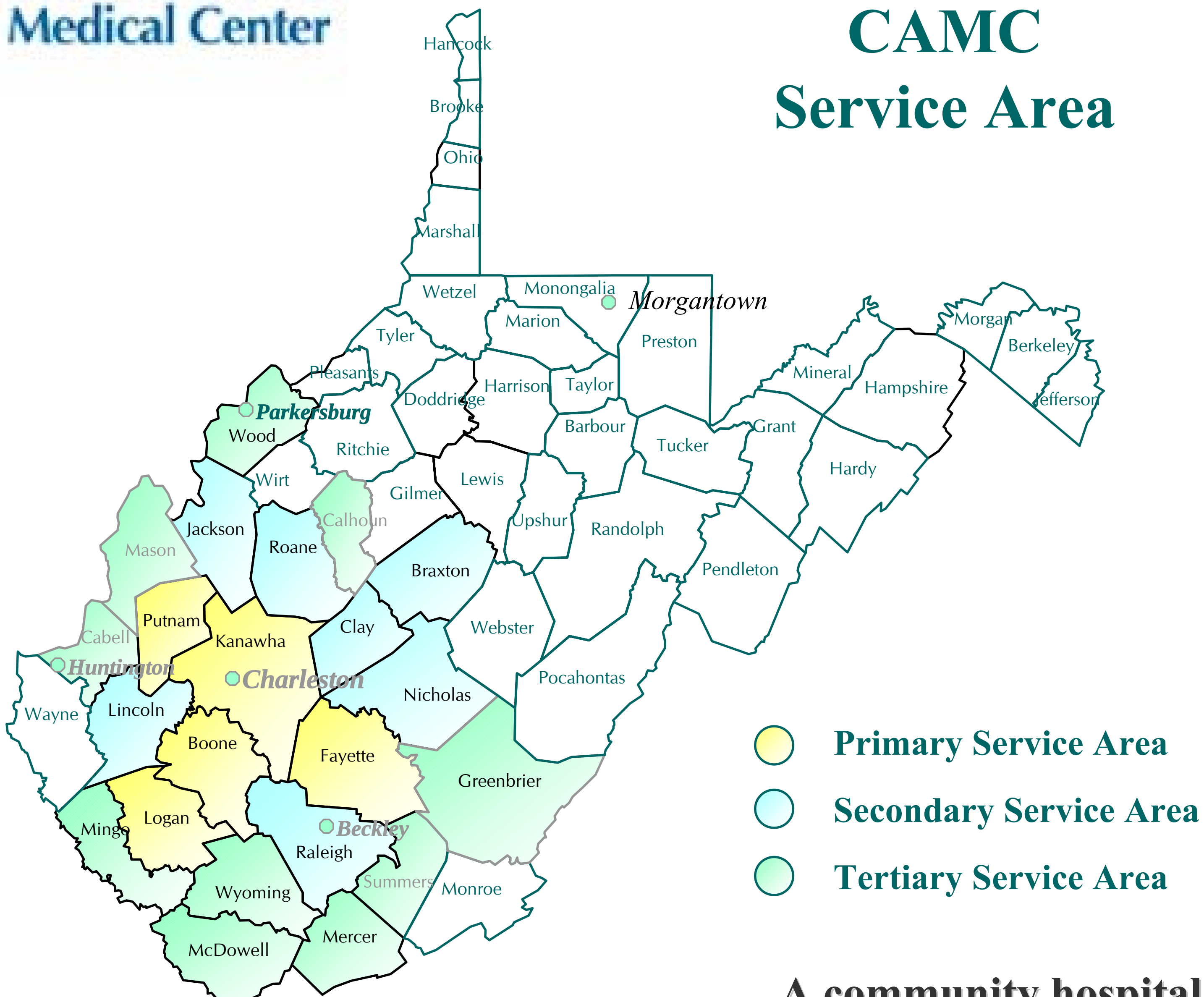
Spring 2003 Grantee Conference

April 24, 2003

David L. Ramsey, President and CEO
Charleston Area Medical Center
Charleston, West Virginia

Charleston Area
Medical Center

CAMC
Service Area



A community hospital and a tertiary referral center.

So long, and thanks for the coverage

St. Paul's decision to drop healthcare may leave many without malpractice insurance

BY MICHAEL ROMANO

An estimated 42,000 physicians and 750 hospitals around the country could lose their medical malpractice coverage after last week's announcement that the nation's second-largest provider of malpractice insurance plans to get out of the business.

The St. Paul Cos. is dropping its healthcare division altogether after losing more than $700 million in the past four years.

St. Paul announced last week that it will exit the medical malpractice business by not renewing policies as they expire. The company said it will record $900 million in pretax charges in the fourth quarter of 2001, $600 million of which is to bolster medical malpractice reserves.

"The actions we announce today are the product of our careful review of each of St. Paul's business operations and address the challenges the company has faced over the past several years, which in certain cases have been exacerbated by recent market trends," Jay Fishman, chairman and chief executive officer, said in a written statement accompanying the announcement.

The company said its medical malpractice business will generate a 2001 underwriting loss of $940 million.

"It's been a rumor for a while that they're just going to wipe their hands of the business," said Jack Lewin, M.D., CEO of the 34,000-member California Medical Association.

St. Paul's departure from one of its core businesses would affect an estimated 42,000 physicians in 50 states, forcing those doctors to scramble for coverage from another carrier likely to charge far more for annual premiums.

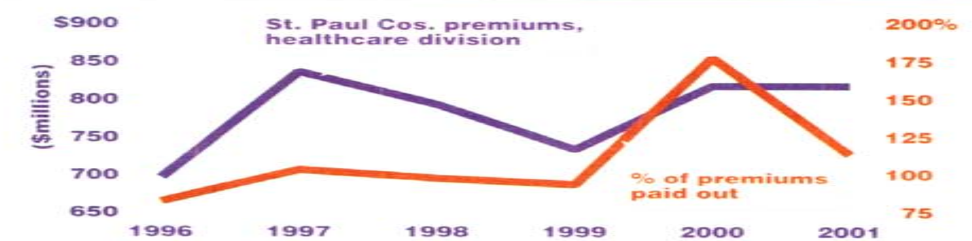
The multibillion-dollar company, which also provides insurance for 750 hospitals and hospital systems, announced its decision before its investor/analyst conference last week.

"Healthcare is one of a number of areas of the company that has, over the last couple of years, been identified as an area where results haven't been good and where we need to take some corrective action," said St. Paul spokesman Pat Hiringoyen.

The Minnesota-based insurer, which ranks No. 222 on the list of *Fortune* 500 companies, boasts consolidated revenue of about $8 billion and employs more than 10,000 people worldwide. Yet its 70-year-old healthcare division represents only about 10% of the company's overall premium revenue. It ranks as the second-largest insurer of doctors after the Medical Liability Mutual Insurance Co., which provides coverage "in excess" of the 42,000 doctors carried by St. Paul, an official from MLMI said.

St. Paul's departure from the business could be a serious blow to physicians who have struggled for years with sharply increasing medical malpractice premiums. State governments might have to step in to help stabilize the market—as the Legislature in West Virginia did earlier this month, creating a temporary, state-run insurance plan after many doctors complained they

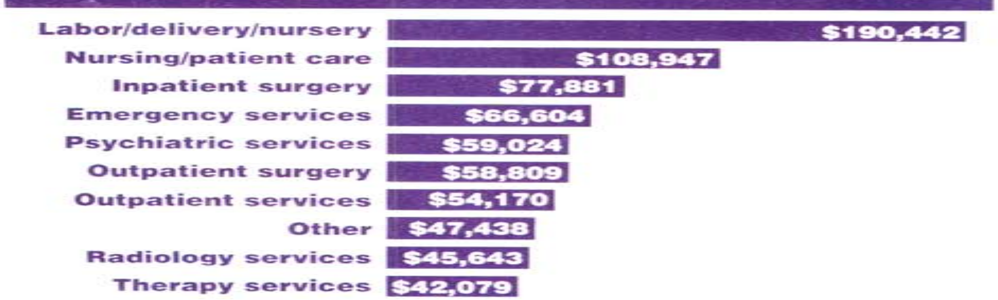
Ups and downs



Source: The St. Paul Cos.

MH/John Hall

Average losses for top 10 hospital claim categories



Data summarizes claims made against hospitals insured by the St. Paul Cos. from July 1999 to June 2001.
Source: The St. Paul Cos.

MH/John Hall

A State of Crisis Background

All insurance companies left West Virginia except one. . . and the one remaining company is “cherry-picking”.

In 2002, the legislature established a state-operated insurance program for physicians and rural hospitals through the Board of Risk and Insurance Management (BRIM) through HB 601.

- Over 1,000 physicians are now enrolled.
- 18 rural hospitals are insured through BRIM.

The legislature, especially the Senate, wanted West Virginia out of the insurance business.

Background (continued)

West Virginia was on the AMA's list of "states in crisis."

Impact on West Virginia:

- Physicians left the state; some went across the border to neighboring states.
- Inability to retain residents.
- Jackson General and Putnam General Hospitals closed their OB programs.
- Loss of orthopedic and neurosurgeons – more than 10 statewide.

Walkout of surgeons in Northern Panhandle.

The Week in Healthcare

MALPRACTICE *Michael Romano*

West Virginia docs walk off the job in malpractice dispute

Protest on New Year's Day shows rising frustration with high cost of malpractice insurance coverage

A small town in West Virginia's panhandle has become ground zero in a rapidly escalating national debate over the costs of medical malpractice insurance.

While the malpractice controversy has touched off protests, rallies and political demonstrations in cities across the nation, more than two dozen physicians at hospitals in Wheeling, W.Va., voiced their disapproval in a far more demonstrative way on New Year's Day: They walked off their jobs, following through on threats to begin 30-day leaves of absence at the two hospitals.

'These doctors just decided they've reached the end of their patience and decided this was what they needed to do.'

—Donald Hofreuter, M.D., chief executive officer, Wheeling Hospital

The walkout, one of the most dramatic and combative actions in a growing nationwide crisis over malpractice insurance, led to a cancellation of all elective surgeries and forced the city's busiest facility—276-bed Wheeling Hospital—to transfer several patients to Morgantown, W.Va., and Pittsburgh.

"These doctors just decided they've reached the end of their patience and decided this was what they needed to do," said Donald Hofreuter, M.D., Wheeling Hospital's chief executive officer, who voiced support for the physicians but expressed concern about patients' needs as well.

In addition to focusing attention on the issue, the walkout of orthopedic, thoracic-cardiovascular and general surgeons also may attract notice from the Federal Trade Commission, which has investigated similar job actions as illegal boycotts in the past. In 1991, for instance, a Florida obstetrician settled charges with the FTC that he led an illegal boycott by about 20 colleagues who refused to accept on-call emergency room duty unless the hospital provided malpractice insurance.

Mitchell Katz, an FTC spokesman in Washington, said the agency does not publicly comment on even an informal investigation into such practices.

An FTC lawyer, however, noted that this walkout—unlike the one in Florida—does not involve doctors who joined together to force a third party to provide them with some immediate economic benefit. This action, he said, appears to be more of a "political effort" to trigger long-term changes in the state's tort reform system. Antitrust laws may not be the best response to such efforts, he added.

The angry doctors, who began their leaves on New Year's Day, dismissed any suggestion of an illegal boycott, saying that they are simply exercising their right to take a break and look for a new job elsewhere if the legal climate does not quickly improve in West Virginia.

Dante Marra, M.D., an orthopedic surgeon who joined the walkout along with about 20 colleagues from Wheeling Hospital, said the situation has become "intolerable" in West Virginia, where premiums for many surgeons have jumped 40% or more in the last year. Marra and his fellow physicians said they will be forced to relocate unless the Legislature enacts sweeping tort reform laws.

The West Virginia State Medical Association, which supports the walkout but was not directly involved in it, is pushing a tort reform package that features a $250,000 limit on noneconomic damages.

"We're desperately in need of tort reform," Marra said. "Our response to this question about an illegal boycott is that we are individual physicians making individual decisions that we cannot go on like this. We cannot afford to practice like this any longer."

The doctors announced the mass leaves of absences last week at the area's two largest hospitals—Wheeling Hospital and 369-bed Ohio Valley Medical Center. Despite a frantic effort by hospital officials, local lawmakers and the gover-

POLICY *Jeff Tieman*

Expectations high over Frist

As the nation read stories about Sen. William Frist, M.D., hopping out of his vacation car to treat traffic accident victims in Florida last week, Washington insiders pondered whether the new majority leader's "physician first" attitude will translate into aggressive healthcare policy or the latest rendition of gridlock.

Frist, a Tennessee Republican whose family fortune is built on the nation's largest for-

Background (continued)

2002 West Virginia Elections

- Healthcare was the #1 issue.
- Republicans won several new seats.
- Long-term politicians defeated.

National Reform

- President Bush supports malpractice tort reform.

The Herald-Dispatch
www.herald-dispatch.com

LOCAL

Friday, August 9, 2002 1C

CAMC forced to transfer trauma cases

By BOB WITHERS
The Herald-Dispatch
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HUNTINGTON — A lack of physician coverage at Charleston Area Medical Center Thursday forced the hospital to transfer orthopedic trauma cases to St. Mary's Hospital here or Ruby Memorial Hospital in Morgantown.

"We are pleased to be of service to CAMC in this time of need," Michael G. Sellards, St. Mary's president and CEO, said. "However, this situation is a strong indicator that the malpractice crisis is having an ever-increasing effect on hospitals' ability to provide advanced services to the people of West Virginia."

Increases in medical malpractice premiums for West Virginia physicians have been directly connected to the decrease in the number of orthopedic surgeons in Charleston. The decrease means there are fewer physicians to cover orthopedic cases for CAMC's trauma services.

"We've run into a situation this month where we don't have 24-hour coverage by orthopedic surgeons for our Level One Trauma Center," said CAMC spokesman Andy Wessels. "We've been stretching these surgeons pretty thin for quite some time."

Wessels said two orthopedic surgeons had to be out of town or otherwise unavailable Thursday — and it will happen again Aug. 17, 23 and 24.

On the Web

To learn more about health programs at area hospitals, visit www.st-marys.org, www.cabellhuntington.org, www.olbh.com, www.va.gov and www.kdmc.com.

Please see **TRAUMA/3C**

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the Charleston Gazette

THE STATE NEWSPAPER

Thunderstorms
High 83, low 65
Details, 11A

CAMC loses trauma status

People with serious, multiple injuries to go to Morgantown, elsewhere

By Dawn Miller
dawn@wvgazette.com

As of 8 a.m. Tuesday, Charleston Area Medical Center will no longer be a Level 1 trauma center, meaning anyone with more than one serious injury will be sent elsewhere, the state Department of Health and Human Resources announced late Friday.

CAMC will be a level III facility instead, meaning the hospital has a trauma surgeon on call, but not specialists who can handle emergency bone or brain and spinal injuries.

The change affects treatment of people with serious injuries, not treatment for people who need emergency care for a sickness or medical problem, such as a heart attack, stroke or high blood sugar, said Dr. Glenn Crotty, CEO of CAMC Health System.

CAMC had to send three patients to other hospitals last week because the hospital did not have the needed specialists, Crotty said. One went to Morgantown, one to Huntington and one to St. Francis Hospital.

Huntington is a level II trauma center, which means it has all the specialists of a level I center but does not do trauma research or community education, Crotty said.

Patients will also be sent to Lexington, Ky., or Charlottesville, Va.

State officials reviewed the hospital on Friday because of the problem.

CAMC officials have been worrying over the possibility for more than a year.

High malpractice insurance costs have driven doctors away, CAMC officials have said.

"We can't recruit or retain physicians," said CAMC spokeswoman Elizabeth Pellegrin. "We're so thin on coverage. The docs we have have been working seven days a week every day of the month to try to keep coverage."

In April, CAMC decided to give surgeons who work on brain, spine and neck injuries $2,000 a day to offset their medical malpractice insurance costs and costs of treating uninsured and underinsured patients.

In July, the hospital had trouble scheduling orthopedists.

The hospital has also had trouble keeping plastic surgeons and anesthesiologists on call.

"Our real concern here is for people in deeper Southern West Virginia who would have ordinarily had to travel to Charleston but now have to travel farther," Pellegrin said.

CAMC has been a level I trauma center since 1990.

Staff writer Tara Tuckwiller contributed to this story. To contact staff writer Dawn Miller, use e-mail or call 348-5117.

Background (continued)

CAMC:

- **Lost Level I Trauma Center Designation.**
    - $800,000 loss in September alone; ripple effect much larger.
    - Experienced 47 bypasses, 14 diversions, 4 transfers from August 27 – September 30, 2002.
    - Average HealthNet flight miles with a patient on-board increased from 48 to 79 minutes; total flight time increased from .96 hours to 1.58 hours.

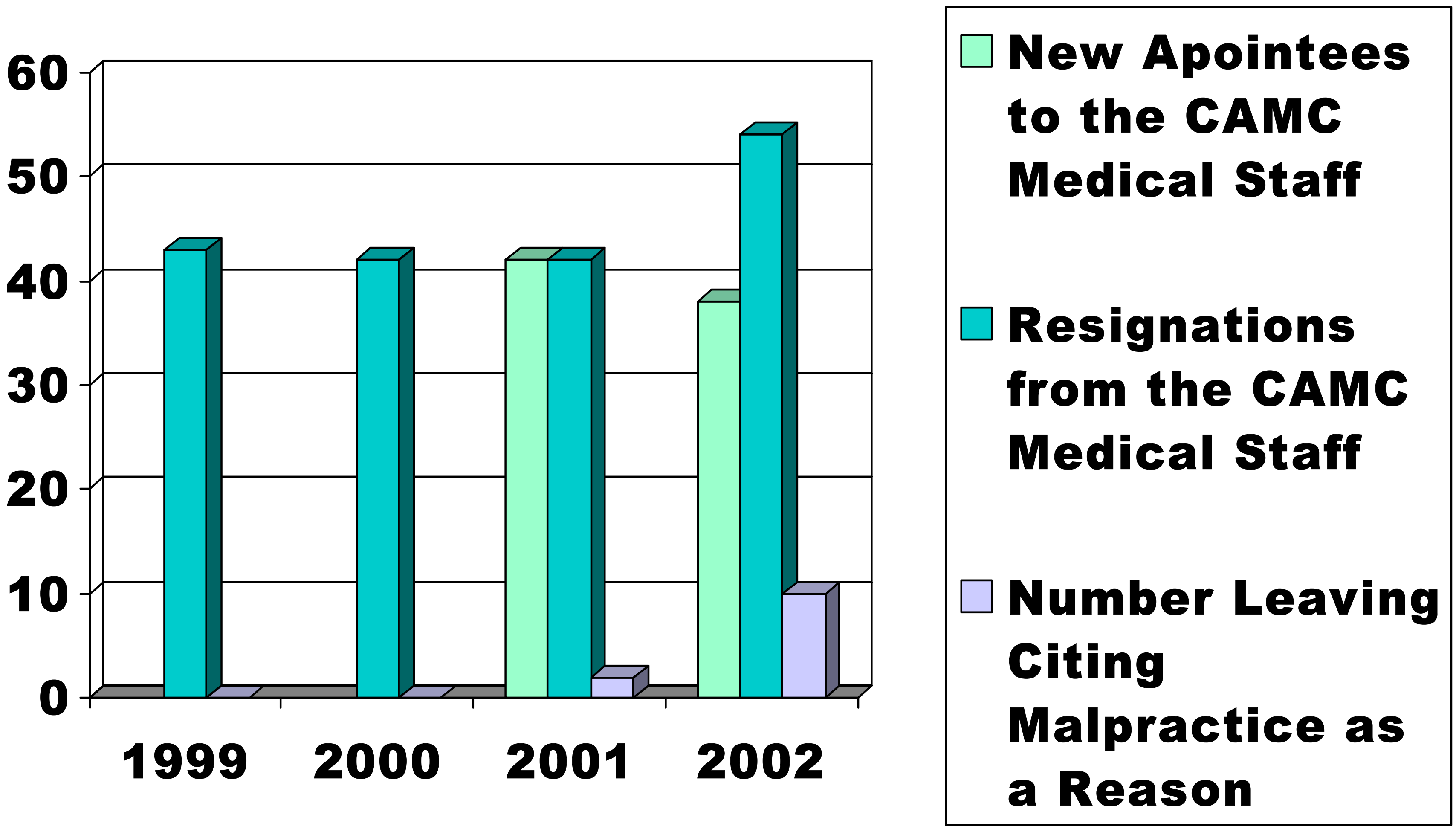
- **Medical Staff modified their privileges.**

- **Inability to recruit sub-specialists.**

- **Inability to retain our own residents (none retained in Pediatrics, General Surgery, OB/GYN).**

- **CAMC Residency Program International Graduates:**
    - 2000 5 (21%)
    - 2001 10 (38%)
    - 2002 15 (58%)
    - 2003 13 (50%)

CAMC Medical Staff



Source: CAMC Medical Affairs
Prepared by the CAMC Planning Department January 7, 2003

Goals of HB 2122

First Priority

Keep our doctors in West Virginia by passing significant tort reform.

Second Priority

Establish a physician mutual.

Third Priority

Provide financial relief to physicians.

Tort Reform
Key Provisions

Cap on non-economic damages

- $250,000 per occurrence regardless of the number of plaintiffs or defendants.
- In cases where plaintiff proves malpractice results in wrongful death, permanent physical deformity or loss of limb or permanent physical or mental injuries, the cap could slide up to $500,000.

Trauma Center Cap

- $500,000 for lawsuits filed as a result of good faith care for an emergency condition provided at a designated trauma center. "Emergency condition" is defined as any traumatic injury or acute medical condition which involves a significant risk of death, significant complications or disabilities or significant risk to an unborn child.

Tort Reform
Key Provisions

Individual liability equal to percent of fault

- Eliminates the current rule where any defendant who is greater than 25% at fault can be required to pay the entire verdict (joint liability) and replaces it with individual liability equal to percent of fault (several liability). This rule takes effect upon the creation of the patient injury compensation fund (which will not be in place before the 2004 Legislative Session).

Collateral payments to plaintiffs reduced by amounts paid

- Collateral sources include both private and governmental payers of medical and hospital expenses such as payments from worker's compensation, insurance or Social Security Disability benefits which are obtained from the same injury. Collateral sources will be offset from the final verdict.
- There are some exceptions if the policy was individually purchased or if the collateral source has right of subrogation.

Tort Reform
Key Provisions

Patient Injury Compensation Fund

- Committee will develop recommendations on the feasibility of creating a patient injury compensation fund to cover economic damages that exceed the $500,000 trauma cap or due to the elimination of joint liability.

Expert Witness Qualifications strengthened

- Expert witnesses must spend 60 percent of their time in active practice or teaching in the same specialty for which they wish to render an opinion.

Loss of Chance provision

- Requires reasonable degree of probability that if the physician had followed the standard of care, it would have resulted in greater than 25% chance that the patient would have had an improved recovery.

Tort Reform
Key Provisions

Physician Financial Assistance

- A credit on the provider tax of 10 percent of premiums (including tail insurance) in excess of $30,000 or
- A credit on provider tax of 20 percent of premiums (including tail insurance) in excess of $70,000

Liability through theory of "ostensible agency" eliminated.

- Eliminates the doctrine of "ostensible agency" as long as the provider carries $1.0 million in professional liability insurance

Other Provisions of HB 2122

Physicians' Mutual Initial Capitalization

- $24 million from Tobacco Settlement Fund
- One time assessment on insurance carriers ($3.0 million)
- One time $1,000 assessment on all physicians ($3.2 million)
  - Exempted: faculty, residents, physicians working in FQHCs and Armed Services

Governance of Physician Mutual

- 11 directors consisting of current BRIM Board plus Dean of WVU Medical School and five physicians

Transfer of assets and liabilities

- Physician book of business will be transferred from BRIM to the physician mutual
- Critical Access Hospitals will be allowed to remain with BRIM. Larger rural hospitals will need to form their own captive.

CAMC already sees recruiting benefit from malpractice law

By John Heys
johnheys@wvgazette.com

Only four weeks have passed since Gov. Bob Wise signed medical malpractice legislation into law, but the director of Charleston Area Medical Center's physician recruitment effort said Wednesday she's already seeing a positive response among doctors.

Shannon White-Metz shared a report on physician recruitment in 2003 with CAMC's board of trustees at their monthly meeting. Ten new doctors have signed contracts in 2003, White-Metz said, and four more have verbally committed. In 2002, only 21 new physicians came aboard.

Five internal medicine physicians have either signed contracts or said they're coming to West Virginia. Other pending or signed commitments include two neurologists, a reproductive endocrinologist, and an orthopedic surgeon.

An ear, nose and throat doctor from Florida with 15 years experience will start practicing here in a few months and said he was impressed with how West Virginia handled the medical malpractice issue, according to White-Metz.

Since the start of the year, 93 physicians have sent their curriculum vitae, or résumés, to CAMC. The system received 180 during all of 2002. Thirty-four doctors have interviewed since January, compared to 92 during the past year.

Dr. L. Clark Hansbarger also reported good news on the medical education front. CAMC did well on March 21 — Match Day — when hospitals across the country chose residents based on a hospital needs and student preferences.

"Political activity probably persuaded some West Virginia students to stay in the state," said Hansbarger, associate

Please see **CAMC, 11A**

CAMC

Continued from 1A

vice president for health sciences and dean of WVU Charleston Division.

CAMC CEO David Ramsey said there were probably as many as 100 West Virginians finishing educational programs in the Mountain State or elsewhere every year who would consider calling the state home.

In other CAMC news:

▲ Despite fewer admissions than expected last month, CAMC made about $300,000 in February. The amount is less than the $1.5 million projected for the month. Larry Hudson, chief financial officer, said a 4 percent drop in admissions compared to February 2002 accounted for most of the difference.

The renovation of the emergency room at CAMC's General Hospital was one reason for the drop in admissions there, Ramsey said. The work should be done by June 1.

Other hospitals outside of CAMC have reported similar declines, Ramsey said.

▲ Trustees approved a motion in support of nine CAMC employees who have been called up to serve in the armed forces. Les Melton, vice president for human resources, said about 40 employees could be called up.

To contact staff writer John Heys, use e-mail or call 348-1254.

March 27, 2003
The Charleston Gazette

Questions?