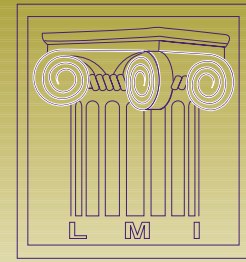


# M.I.M.

## REPORTER



*The Review of Medical Information Management For Litigation*

PUBLISHED AS AN EDUCATIONAL SERVICE TO THE CORPORATE, INSURANCE, AND DEFENSE LEGAL COMMUNITY BY LITIGATION MANAGEMENT, INC.

Volume III, Number 4

December 2000

## MEDICAL INFORMATION MANAGEMENT IN NURSING HOME LITIGATION

### Pressure Ulcers (Part II of II)

By: *Elizabeth B. Juliano and James R. Fell*

#### *Introduction*

The previous issue of *The M.I.M. Reporter* introduced several elements of the nursing home medical record which should be reviewed as part of the preparation of the medical defense in a lawsuit involving a pressure ulcer. In this edition, the authors will further identify how the medical record and other documentation may impact strategic planning in these lawsuits.

Complete analysis of the nursing home pressure ulcer case requires more than a review of the evidence contained in the medical record. When preparing the case analysis, the reviewer should evaluate nursing home services actually delivered to the pressure ulcer plaintiff against benchmarks derived from peer-reviewed and professionally-accepted clinical standards of care. This article will present some of these standards and discuss their application in the pressure ulcer lawsuit.

#### *Additional Elements of the Review*

Federal requirements stipulate that nursing homes employ a **Resident Assessment Instrument (RAI)**

to evaluate the comprehensive medical and functional status of each resident. Although core elements of the RAI are specified by the Department of Health and Human Services, individual States have the latitude to extend assessment provisions beyond the minimum requirements. Detailed information on the RAI is available in the Version 2.0 Manual, with instructions for its application, via the Internet at the Health Care Financing Administration (HCFA) web site, [www.hcfa.gov/medicaid/mds20](http://www.hcfa.gov/medicaid/mds20).

Because the RAI provides a standardized framework for assessment of the resident's functional capacities and health status, it is often the source of some of the most valuable information in the pressure ulcer lawsuit. A complete RAI is comprised of the following:

**Minimum Data Set:** The Minimum Data Set (MDS) consists of a core set of screening and assessment factors, plus coding categories and definitions, which form the basis of the comprehensive assessment of the resident. The Background Face Sheet of the

MDS must be completed upon the resident's admission to the nursing facility. While this abbreviated portion of the MDS provides a summary of the overall functional capacities of the resident, it typically will offer little direct information regarding the resident's skin integrity.

The Full Assessment Form of the MDS must be completed by the 14th day of the resident's admission, based on a retrospective analysis of the resident's health status over the prior seven (7) days. Within the Full Assessment, several subsections provide information relevant to the pressure ulcer case. For example, Section G evaluates the resident's mobility and level of nursing assistance required, which has predictive value in establishing risk for pressure-related injuries. Section H describes the resident's continence status. This also has predic-

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- ❖ Medical Information Management in Nursing Home Litigation Involving Pressure Ulcers
- ❖ Should Law Firms Outsource Medical Information Management?

This newsletter was prepared by the Corporate Communications Division of Litigation Management, Inc. For more information about any of the articles in this newsletter please contact James Fell, Editor, at (440) 484-2000 or 1-800-778-5424; Fax: (440) 484-2020. Questions may also be directed to the newsletter e-mail address at [contactmim@litigation-mgmt.com](mailto:contactmim@litigation-mgmt.com).



## From the President:

Dear Readers:

This issue of *The M.I.M. Reporter* opens with the second part of Litigation Management, Inc.'s (LMI) nursing home litigation series on pressure ulcer cases. The feedback we have received indicates that the information contained in Part I was useful to a number of our readers. After reading our pressure ulcer article, several of you contacted LMI to undertake medical reviews on your nursing home cases. We hope that our expertise has proven helpful in the preparation of your defense in these cases.

LMI's Business Development Director, Sharon Comet-Epstein, and I have identified outsourcing of medical information management functions as a viable alternative for corporate and insurance counsel. This issue was recently addressed by writer Huck Qavanaugh in *Ohio Lawyers Weekly*, and I was pleased to have been interviewed as part of his research. We requested special permission to reprint this work for this edition of *The M.I.M. Reporter*.

In December, we will be attending the Fifth Annual Drug and Medical Device Litigation Conference sponsored by the American Conference Institute. If you will be present at this meeting, please stop by the Litigation Management, Inc. exhibit to discuss the medical information challenges confronting your law firm or corporation.

The *M.I.M. Reporter* is completing its third year of publication, and the growth in readership has been exciting. This printing of our newsletter will be read by over 3,200 corporate, insurance, and defense attorneys. *The Reporter* is designed to assist you in your medical litigation practice, and therefore, if any readers have comments regarding *The M.I.M. Reporter* or suggestions for articles you would like to see developed, please feel free to contact me by telephone at (440.484.2000) or by email at [ebjuliano@litigation-mgmt.com](mailto:ebjuliano@litigation-mgmt.com).

Very truly yours,  
Elizabeth B. Juliano  
President

tive value because pressure ulcer risk increases in skin areas which are kept continually moist from urine or stool. Section I lists diseases presently afflicting the resident. Certain disorders such as cerebrovascular accident (CVA or "stroke") and various musculoskeletal conditions can limit the resident's capacity to shift body positions and thus relieve pressure-prone sites. Item 2 of Section I also notes the pre-existence of any wound infections.

Section M appraises the resident's skin condition. If present, skin ulcers are "staged" according to severity (see Part I of this series) and differentiated as to type of ulcer, either pressure or stasis. This information will prove especially important in lawsuits in which a pressure ulcer is alleged if in fact the lesion noted is a stasis ulcer. The etiology of a stasis ulcer is poor circulation, which is more related to resident's predisposing anatomy and physiology, rather than negligent care. Additional valuable information contained in Section M details the resident's pressure ulcer history, other skin problems and lesions, skin treatments, and foot problems and care.

Section AD of the Face Sheet and Section R of the Full Assessment provide spaces for the signature of persons completing the evaluations, and most importantly, the Registered Nurse MDS Assessment Coordinator. Federal requirements specify that this latter professional must certify the assessment as complete. For nursing homes with limited RN personnel, this directive can be met by hiring an MDS nurse expressly to review and validate MDS assessments.

**Triggers and Resident Assessment Protocols:** Triggers are "red flag" elements of the MDS which target specific medical risk management issues for the resident. The Resident Assessment Protocol (RAP) Summary, Section V, lists potential medical and functional problem areas for a given resident. For each "triggered" RAP, guidelines contained in Appendix C of the HCFA RAI Manual will define areas requiring further assessment, which then should be used in decision-making as staff develop the Nursing Care Plan (NCP). The Care Planning Decision column of the RAP Summary must be completed within seven (7) days of completing the RAI (MDS and RAP's).

A pressure ulcer RAP will be triggered if the MDS assessment reveals the presence of one or more of the following risk variables in the resident:

- ❖ Current pressure ulcer,
- ❖ Bed mobility problem,
- ❖ Bedfast state,
- ❖ Bowel incontinence,
- ❖ Peripheral vascular disease,
- ❖ History of previous pressure ulcer,
- ❖ Skin desensitized to pain or pressure,
- ❖ Daily trunk restraint.

The pressure ulcer RAP advises that the resident be carefully evaluated if the MDS reveals one of the following risk-associated disorders:

- ❖ Diabetes,
- ❖ Alzheimer's Disease,
- ❖ Dementia,
- ❖ Edema.

Further notations in the pressure ulcer RAP state that administration of antidepressant, anti-anxiety, and hypnotic medications can contribute to reduced mobility and other problems, which can in turn contribute to pressure ulcer formation. The pressure ulcer RAP recommends that care providers review the resident's medical condition, medications, and other risk factors to verify the appropriateness of the interventions defined in the care plan and if these specified interventions are actually being implemented.

**Quarterly Assessment:** The Quarterly Assessment documents health status of the resident between comprehensive assessments. HCFA requirements stipulate that this type of review be completed no less frequently than once every three months. The 2.0 Manual notes that at a minimum, three (3) quarterly reviews and one (1) full assessment are required in each twelve (12) month period. Section M of the Quarterly Review includes assessment items relative to pressure ulcer evaluation. These parameters are similar to those found in the admission MDS.

**Annual and Comprehensive Reassessment:** A complete Annual Reassessment is required within twelve months of the most recent full assessment. However, a Comprehensive Reassessment can also be initiated before this time if a major change occurs in the resident's health status. In the case of pressure ulcers, the RAI 2.0 Manual notes that the emergence of a Stage II or greater pressure ulcer, when no Stage II or greater ulcers were previously in evidence, will necessitate a Comprehensive Reassessment.

A number of other documents in the medical record will contain information regarding pressure ulcer assessments and treatment:

**Interdisciplinary Team Meeting:** The Interdisciplinary Team (IDT) meeting brings together health professionals representing medical, nursing, social, physical therapy, and other services to ensure that the resident is receiving coordinated, wholistic care. Notes and plans resulting from IDT meetings should be a component of the medical record. In the case involving a pressure ulcer, the IDT meeting should ensure that treatment and rehabilitation objectives are clearly formulated. Care planning should be reflective of concerns identified in the pressure ulcer RAP and should also take into account the input of the resident and family members.

**Nursing Care Plan:** Pressure ulcer assessments derived from the MDS and RAP's provide the basis for devel-

opment of a nursing care plan to address this problem. Per federal requirements, this plan should be developed within seven (7) days after completion of the RAI assessment. Although review of medical records may reveal that the facility relied on standardized NCP's, these plans still should be individualized to address the particular care requirements of a given pressure ulcer situation and resident. The resident's care plan should reflect that it was reviewed and updated as necessary on each occasion that a RAI comprehensive assessment was completed.

**Treatment Records:** Treatment records are used by nursing homes to record the delivery of routinely administered nursing care. These records typically take the form of sign-off sheets indicating when pressure ulcer assessment, cleansing, and dressing applications were dispensed. Treatment records may also document the provision of medical devices (i.e. special beds) for pressure ulcer care, which should be reconciled against other documentation in the medical record, such as pressure ulcer assessments in nursing notes.

**Turning Schedules:** The medical record may contain documentation of a positioning and turning schedule for the resident, as well as validation of the extent to which this schedule was followed. The typical bedfast resident should be turned and repositioned in anatomically-correct placement every two (2) hours.<sup>1</sup> Nursing notes may reflect variables which impacted adherence to the turning schedule. For instance, a resident may have been regularly turned by caregivers, but through his own actions may have favored the immediate return to one particular position that would predispose him to pressure ulcer development. Muscle contractures may also have limited the extent to which nursing staff could comfortably reposition a resident.

**Photographic Evidence:** Some medical records may contain photographs documenting the deterioration or healing of the pressure ulcer. Such evidence is a useful, graphic supplement to the written medical record.

**Nursing Notes:** Properly written nursing notes should not be repetitious of other standardized pressure ulcer assessments, but should contain information which complements these evaluations, such as when the nurse noted that the condition of a pressure ulcer changed and the physician was notified. Issues relating to patient compliance with pressure ulcer protocols may be documented, as in the situation where a resident refuses to accept a particular treatment, such as a dressing change. Nursing notes may reflect content of information communicated to family members and evidence of concern, or lack thereof, for the welfare of the resident and his problem with skin breakdown.

**Laboratory Reports and Medication Records:** Because a pressure ulcer is an open skin wound, it will typically

be colonized by common bacteria such as *S. aureus* or *E. coli*. It is important to note that colonization is not synonymous with the pathological state of infection. While wound cultures will almost always indicate the presence of bacteria, to properly ascertain if an actual infection is present, the complete medical picture must be evaluated. Elevation of the serum white blood cell count should be a cause of clinical concern, as is the onset of a febrile state. Documentation which reveals the pressure ulcer is draining material that smells and appears purulent is another such indication. Under these conditions, culturing ulcer drainage may reveal high bacterial colony counts and in these cases antibiotic medications are indicated. Sensitivity tests performed on these cultures will indicate if the appropriate antibiotic was ordered by the physician or if the bacteria were resistant to the medication. Pressure ulcer infections that go untreated can develop into a cellulitis of soft or connective tissue, which can then lead to sepsis throughout the body.<sup>2</sup>

**Radiographic Reports:** As an infected pressure ulcer deepens it may reach the point where the bones are involved and become infected. This osteomyelitis is a serious condition and is difficult to successfully treat due to the somewhat limited vascularity of bone tissue. In such cases, antibiotic therapy may extend four to six weeks. An unresolved osteomyelitis involving a leg may ultimately necessitate amputation of that extremity. Elderly residents may first be evaluated for osteomyelitis via a plain film x-ray, but this may or may not be sufficient. MRI and bone scanning provide a more definitive assessment.

Severe pressure ulcers may extend much deeper into soft tissue than visual inspection of the skin reveals. In this “tip of the iceberg” situation, a deeply-infected sinus tract may be present. Ultrasound and a CT scan may be required for complete evaluation of these soft tissue cases.<sup>3</sup>

**Telephone Records:** The medical record may contain telephone slips documenting occasions when nursing staff contacted the physician to report on deterioration of the resident with a pressure ulcer. Such entries evidence the timeliness of nursing assessments and interventions in these cases, as well as the physician response.

**Physical and Occupational Therapy Notes:** Functional impairments elevate the risk of pressure ulcer development in nursing home residents, and concerns in these areas will be evaluated in ongoing physical and occupational therapy notes. Very often these notes are quite detailed and can be consulted as a cross-check of pressure ulcer assessments recorded in nursing notes.

**Nutritional Records:** Nutrition and hydration play significant roles in prevention and treatment of pressure ulcers. Sections “J” of the MDS Full Assessment Form and “K” of the MDS Quarterly Assessment Form denote weight gain/loss and hydration status. Section “K” of the Full Assessment identifies nutritional problems presented by the resident’s condition. In addition, certain laboratory studies may provide evidence of a decreased nourishment status. For instance, a serum albumen level of less than 3.3 gm/dL points to problems with nutritional intake in the pressure ulcer resident<sup>4</sup>. Intake and output (I&O) sheets contain documentation relating to a resident’s consumption of food and oral supplements, as well as oral and intravenous fluids. Dietary records also tabulate the amount and types of food ingested by the resident.

**Vital Signs:** Graphics sheets chronicle trends in the resident’s temperature, pulse, respirations, and blood pressure, and should be reviewed in the pressure ulcer case. Bergstrom and Braden (1992) note that low diastolic blood pressure and increased body temperature will increase the risk for pressure ulcer development.<sup>5</sup> As previously noted, once a pressure ulcer has actually developed, elevated temperature may signal the presence of an infectious process.

### *Sources of Other Documents*

**Billing Records** list special items received by the resident for the prevention and treatment of pressure ulcers. Billing records are not a component of the typical medical record and must be acquired separately. Examples of billable medical devices for pressure ulcers are convoluted foam bed pads, sheepskin pads, protective heel pads, elbow protectors, alternating pressure mattresses, water mattresses, low-air-loss beds, and air-fluidized beds. Normal saline solution, povidone-iodine, hydrogen peroxide, gauze pads, hydrogel dressings, and hydrocolloid dressings are examples of materials which will be billed as part of a wound treatment program. Billing records can support a defense attorney’s contention that every reasonable nursing measure was implemented to prevent/treat the plaintiff’s pressure ulcer.

Nursing homes should have a Registered Nurse or equivalent individual designated as the infection control officer. Responsibilities of this position include the monitoring of community-acquired and nosocomial (institution-acquired) infections, and the subsequent analysis of trends in various classes of infections. These **infection surveillance reports** should be reviewed as part of case preparation in the pressure ulcer lawsuit to provide a perspective of the nursing home’s standards and management of infection prevention.

BNA PUBLISHES REZULIN ARTICLE – Is your law firm engaged in the product liability defense of the diabetes drug, Rezulin? In the September 11, 2000 edition of *Product Safety & Liability Reporter*, The Bureau of National Affairs published LMI’s article describing the medical information management aspects of these cases. If you missed this issue, please contact James Fell, Editor, at 440-484-2000 to receive a free copy, or send us a message via [contactlmi@litigation-mgmt.com](mailto:contactlmi@litigation-mgmt.com).

Trauma can contribute to the formation or exacerbation of skin breakdown. For example, skin may have been abraded during a resident's fall, with subsequent poor healing and development of infection. This situation does not constitute a pressure ulcer case. When a patient event takes place, such as a fall, that constitutes a departure from the normal course of daily care, nursing home staff will complete an **incident or accident report**. This document is not a component of the resident's medical record, but instead is a separate internal risk management report. Review of any incident reports written during the course of the plaintiff's residence in the nursing home may bring clarity to the true etiology of the alleged "pressure ulcer."

### *Clinical Standards - Internal*

The facility's nursing **policy and procedure manual** should be obtained and reviewed before undertaking an evaluation of the resident's medical record. In the case of a single facility, this document will be specific to that particular institution. On the other hand, a more generic, network-wide policy and procedure manual may be in place for a nursing home corporation. Policy and procedure manuals establish internal clinical practice benchmarks against which nursing care of the pressure ulcer patient should be evaluated. Defense strategy is enhanced when it can be verified through the medical record that nursing staff adhered to institutional guidelines for the prevention and treatment of pressure ulcers.

Nursing department **orientation and training** materials also contain information pertinent to in-house clinical standards. Objectives and protocols defined in these documents relative to pressure ulcer care identify institutional expectations for assessment, documentation, prevention, and treatment of skin breakdown. Training files of nursing staff may contain orientation "check off" sheets that document instructional mastery of these particular items. In addition, employee **continuing education records** will evidence the nursing home's commitment to ongoing training of its personnel in pressure ulcer prevention and care. All these staff development records can be used to advantage by the defense attorney to refute allegations that care administered by poorly trained nursing staff resulted in a resident's pressure ulcer.

### *Clinical Standards - External*

There are other published clinical standards for the prevention, care, and treatment of pressure ulcers in addition to the ones discussed in this article. The web site of the National Guideline Clearinghouse™ (NGC), located at [www.guidelines.gov](http://www.guidelines.gov), provides one such helpful resource. Sponsored by the Agency for Healthcare Research and Quality in partnership with the American Medical Association and the American Association of Health Plans, the NGC site enables one to easily search for published, evidence-based clinical practice guidelines in a wide variety of subject areas. A query for "pressure ulcer" yielded the following guidelines:

1. "Prevention of Pressure Ulcers," produced by the University of Iowa was adapted from the 1992 guidance on pressure ulcers published by the Agency for Health Care Policy and Research (AHCPR). Intended for use by nurses, this resource characterizes patients at risk for pressure ulcer development and defines interventions to prevent skin breakdown.<sup>6</sup>
2. "Treatment of Pressure Ulcers," developed by the University of Iowa was based upon 1992 and 1994 guidance of the AHCPR. Treatment protocols to promote healing of pressure ulcers are outlined, along with interventions that clinicians should avoid.<sup>7</sup>
3. "Pressure Sores," is published by the American Society of Plastic and Reconstructive Surgery (ASPRS). This guideline defines the parameters and diagnostic tests that a physician should consider when performing a history and physical examination in a pressure ulcer case. Operative and non-operative strategies for both the outpatient and inpatient setting are outlined.<sup>8</sup>
4. "Pressure Ulcers," authored by The American Medical Directors Association (AMDA), offers guidelines derived from those of the AHCPR and presents detailed clinical algorithms for the recognition, diagnosis, management, and monitoring of this condition.<sup>9</sup>
5. The "Pressure Ulcer Therapy Companion," re-

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New York Marriott Financial Center  
85 West Street  
New York City**

leased by the AMDA in 1999, addresses additional details of pressure ulcer management and monitoring not contained in "Pressure Ulcers."<sup>10</sup>

### Survey Reports

Regulatory and certifying agencies can be an additional source of information relating to nursing homes and quality of care issues. Although such inspection reports will not address the specific situation of an individual resident, they do provide the attorney with a gauge of the quality of nursing care in a given facility. Nursing home inspection reports can be obtained from State survey agencies or from the nursing home itself. Deficiencies in the attainment of regulatory standards are cited in these reports, along with the facility's corresponding plan of correction.

One on-line resource for portions of these reports is Nursing Home Compare. This is a searchable web site found at <http://www.medicare.gov/nhcompare/home.asp> and is provided as part of the Federal government's Medicare information program. This website has the capability of generating similar statistics on a given nursing home and its population for such medical problems as urinary incontinence, behavioral symptoms, restricted joint motion, unplanned weight gain or loss, etc.

To illustrate the utility of this web site, suppose an Ohio nursing home is named in a pressure ulcer lawsuit. The defending attorney must determine if this case is an isolated situation or if conditions in the facility are such that the larger resident population is at special risk for pressure ulcer development. A search of Nursing Home Compare yields a graphic representation indicating that 10% of patients in the defendant nursing home have pressure ulcers, compared to the Ohio average of 6% and a national average of 7%. However, as the Nursing Home Compare web site indicates, this information must be carefully critiqued before drawing conclusions regarding quality of care in a given nursing home. In institutions where high percentages of residents are afflicted with pressure ulcers, substandard care may be an issue, or conversely, the home may have special expertise in care of pressure ulcer residents and may actually be a referral site for treatment of these patients.

One drawback of Nursing Home Compare is that this source only provides reports on nursing homes which are Medicare or Medicaid certified. For information on other elder care facilities and to obtain complete inspection reports, attorneys should contact the appropriate State survey agency. Addresses and phone numbers for these offices can be located at <http://www.medicare.gov/Contacts/Home.asp>.

### Summary

This series of articles on medical information management for pressure ulcer litigation has revealed that a number of variables must be addressed in the analysis of these cases. Nursing home pressure ulcer claims must be first reviewed to determine if the case truly involves a pressure versus another type of skin ulceration not correlated with issues of nursing care neglect. Additionally, a comprehensive review should establish the degree to which skin breakdown may have occurred in the plaintiff before admission to the defendant nursing home, all predisposing medical factors, and the extent to which nursing and medical care deficiencies are implicated in pressure ulcer formation/exacerbation. Most importantly, analysis of the medical evidence must enumerate how pressure ulcer progression has impacted the overall physiologic and emotional integrity of the claimant.

Claimants may allege the development of other adverse medical conditions while residing in the long or short-term care environment. Litigation associated with these disorders can pose serious financial, certification/regulatory, and public relations threats for nursing homes. In future editions of *The M.I.M. Reporter*, the authors will examine the unique medical information management aspects of nursing home litigation related to resident falls, nosocomial pneumonias, malnutrition, and dehydration.

- 1 *Merck Manual of Geriatrics*. (online version) Chapter 14.
- 2 *Ibid*.
- 3 Fauci AS, et al. *Harrison's Principles of Internal Medicine, 14th Edition*. New York: McGraw-Hill, 1998: 825-6.
- 4 *Merck Manual of Geriatrics*. (online version) Chapter 14.
- 5 Bergstrom N, Braden B. A prospective study of pressure sore risk among institutionalized elderly. *J Am Geriatr Soc*. 1992;40(8):757.
- 6 BA Folkedahl, RA Frantz, C Goode. Prevention of pressure ulcers. Iowa City: University of Iowa Gerontological Nursing Interventions Research Center, 1997.
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- 8 American Society of Plastic and Reconstructive Surgeons Guidelines Committee (VL Lewis, lead author). Pressure sores. Arlington Heights, IL: American Society of Plastic and Reconstructive Surgery, 1996.
- 9 J Feinberg, J George, G Grossberg, J Johnson, L Lawhorne, S Levenson, J Ouslander, S Pettey, G Taler. Pressure ulcers. Columbia (MD): The American Medical Directors Association, 1996.
- 10 J Dimant, J Gruber, D Adams, N Bang, D Brickley, B Harrison, D Horton, V Reifsnnyder, P Stevenson, G Taler, J Thompson. Pressure ulcer therapy companion. Columbia (MD): The American Medical Directors Association, 1999.

Note to our readers: If you missed Part I of this series and would like to obtain a free copy of this article, please contact the Editor of The M.I.M. Reporter at 440-484-2000.

# INDEPENDENT RECORDS MANAGEMENT PRAISED

## Attorneys Relinquish Paperwork, Not Control

By Huck Qavanaugh

Special from Ohio Lawyers Weekly

Facing 450 cases set for trial on the same day? Handling products liability claims by hundreds of plaintiffs scattered around the county? Otherwise overwhelmed by voluminous medical records and evidence? Perhaps it's time for records management by a third party.

Such companies assist corporations, their insurers and their attorneys with the management of medical data in personal injury litigation by acquiring, storing, tracking, abstracting and analyzing records and claims.

They also can offer consultation and training to legal staff, furnish expert witnesses on numerous subjects, review medical and scientific literature, and develop potential witness lists and deposition questions.

Some attorneys express trepidation over hiring a records management company - even for a limited purpose. "The initial impression that lawyers get is that they're going to lose control of this process, but that is not the case," said Mary Jo Middelhoff, a litigation associate at Cincinnati's Dinsmore & Shohl. Her firm's use of Cleveland-based Litigation Management, Inc. (LMI) began with the Dow Corning breast implant litigation and continues today in other matters.

"Any concern that lawyers have (a) that they're going to lose control of the process, (b) that they're not going to get good work product or (c) that it's going to be overpriced, is without foundation," said Middelhoff.

In fact, it may be more likely that a law firm will lose control of the litigation if it tries to handle records on its own: In the Dow Corning case, LMI managed over 1.5 million pages of medical records, much of it handwritten.

### *Track Record*

Maria Kortan-Sampson, head of the asbestos department at Weston, Hurd, Fallon, Paisley & Howley and the general defense liaison counsel for Cuyahoga County, said her need for a litigation management vendor grew out of the "full work up" of cases in the early days of asbestos litigation.

At that time, she explained, "volumes of medical records would come out...and when the federal court was involved, we would have 450 cases set for trial. That obviously means a lot of records to look through and summarize," Kortan-Sampson said.

She said that records management services became very important to the firm's defense lawyers who were struggling to get a handle on the claims against their client, what sort of medical claims the plaintiffs had in the past and how both types of claims related to asbestos exposure.

"[The presiding judge] would group individual cases together and set them for trial," she continued, "and it was almost unheard of that any lawyer could handle that kind of a trial setting on their own." According to Kortan-Sampson, the number of cases the judge grouped together went from 30 at a time to 50, then to 150, and then to 450 twice a year. "The numbers are phenomenal," she said.

When asked how one tries 450 cases at one time, Kortan-Sampson replied, "You don't. That's why he did it. Because the cases would then resolve themselves." Even today, she added, there are very few trials regarding asbestos claims.

A records management service helped Kortan-Sampson's firm summarize the records and lend a medical perspective to the evaluation of the claims.

### *Record Tracking*

Middelhoff's firm was regional counsel for Dow Corning in its silicone breast implant litigation.

In the Dow Corning litigation, Middelhoff said, her firm collected the medical records of numerous plaintiffs throughout the country. "We forwarded them to LMI for organization, summarization, analysis and follow up," she said.

The procedure, she suggested, was a boon. The vendor would open a file on an individual whose records Dinsmore & Shohl were collecting. As records were forwarded to the vendor, it would review the file to make sure all the records were complete for a given provider.

The vendor would read the documents, obtaining information such as additional providers mentioned in the body of the records that the plaintiff did not herself disclose to the attorneys.

"When it was fairly clear that most of the information was complete on a given individual," said Middelhoff, "they would sit down, again review in detail and summarize for us in a chronological fashion the medical records of a given patient."

This article was originally published by *Ohio Lawyers Weekly* in its August 7, 2000 issue and been reprinted with the kind permission of its publisher. Founded in 1997, *Ohio Lawyers Weekly* reports legal opinions from all the state and federal courts in Ohio and other news vital to attorneys. Read by thousands of attorneys and hundreds of judges each week, *Ohio Lawyers Weekly* provides comprehensive, timely coverage of all 12 districts of the Ohio Courts of Appeals- including thousands of decisions that are not included in the OSBA Report.

The records management company used by Middelhoff performs medical record acquisition on its own. A full-service vendor, she said, can generate medical record releases, send them to doctors and receive diverse records ranging from X-rays and CAT-scan films to pathology slides and tissue blocks.

"It's much more than just document management," said Middelhoff. Such a service can maintain proper custody of records and evidence, she noted, easing authentication and chain of custody arguments at trial.

According to Middelhoff, this process was "tremendously helpful" for several reasons.

First, she explained, medical records can be very difficult to understand if the attorney does not work with them frequently.

"There are a lot of abbreviations, handwriting tends to be difficult to interpret, and sometimes if you're not familiar with medical records generally you can just get lost in them," she illustrated. She said that keeping track of dates, and jumping from narrative summaries to diagnostic test results to correspondence becomes "overwhelming."

That type of job in a law firm, she indicated, would take an enormous amount of time and manpower.

"Just having someone to follow up on loose ends would probably be a full-time job in a law firm," surmised Middelhoff. "Knowing you have someone doing that for you is a great comfort, and it frees people up in the law firm to do other things."

Middelhoff said she valued the "significant experience" vendor personnel had with regard to the working of medical records departments, state laws pertaining to the collection of medical records, and other roadblocks and landmines that await attorneys trekking into unfamiliar territory.

For example, Middelhoff said some states provide that medical records [releases] expire and must be signed every 30 days, while others have restrictions imposed upon psychiatric records, and the federal government protects HIV information.

### *Purse Strings and Reins*

Middelhoff said the records management service collaborated with the attorneys to obtain their input on how the work product should look in order to facilitate the search of records for desired information. She said the attorneys could dictate whether the data would be furnished as a straight summary, a chronology, a breakdown by provider or a breakdown by subject matter - such as a summary of all breast examinations or all mammogram results.

That way, Middelhoff explained, it was simple to search for specific data such as, say, Mrs. Smith's first mammogram results after her breast implants were inserted.

Elizabeth B. Juliano, LMI's president, said her clients vary in terms of their familiarity with medical records and their style of thinking. The latter, she said, means some people prefer outlines, some prefer narratives, some prefer spreadsheets and some prefer chronologies.

The work product she produces purportedly attempts to "mimic the client's way of thinking."

"Attorneys want control to extend to cost and have the service tailored to meet budgetary constraints," said Juliano.

"Everybody says that cost containment and budgets are important - and they are," she continued. "For some clients, however, there are more constraints than there are for other clients."

As an example, Juliano cited the litigation over the diet drug, Fen-Phen. In that case, LMI performed two waves of review. The first wave was designed to inexpensively identify only those cases - less than 5 percent - for which further investment of time and money was warranted. The service furnished the information that the client considered necessary to make its own determination of which cases were "serious."

She said a "collaborative effort" involving the client generated the criteria by which individual claims would be evaluated.

### *All In Good Time*

Middelhoff suggested that taking the attorney out of the records custody loop can speed up the data collection process as well as the other processes to which the attorney is consequently able to direct his or her full attention.

According to Middelhoff, turn-around time is quick with a qualified records management service.

"When we were managing for Dow Corning all of their medical records for all of their litigation worldwide," Juliano said, "we were serving the needs of over 90 local law firms around the country. And they would call literally on a Monday and say, 'A deposition was just set for Thursday morning, and we are sending you 6,000 pages of medical records.' We needed to develop a way to turn that work product around and get it into their hands by the night before."

At that time, the company instituted three shifts.

They also developed a cross-training program among its personnel so that work could at any time be disseminated to those employees who can handle it most expeditiously.

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