

OUTLINE OF THE LIFE OF A KAMMCO CLAIM

1. Initial receipt and processing of claim

- Claims Coordinator receives initial contact from insured and completes report of claim/incident checklist.
- Attorney protection letter obtained from law firm retained by KAMMCO to protect entire claim file while we begin investigating claim.
- Insurance policy coverage for claim reviewed and confirmed.
- Claims Coordinator obtains insured's clinical records via secured transmission.
- KAMMCO MLA (Medical Liability Analyst) assigned to claim and initiates initial communications with insured provider(s).

2. Mandatory initial state and federal regulatory reporting completed (e.g., K.S.A. 40-3421 initial report of claim, notice of pro se claim to CMS/COBC, etc.)

3. Initial investigation of claim and support for provider

- If lawsuit, screening panel, or other trigger for immediate assignment of outside counsel, MLA assigns defense counsel (if applicable) in consultation with insured.
- For pro se demands, MLA immediately schedules initial personal meeting with insured.
 - *Legalese to English: "pro se" = someone not represented by a lawyer*
- MLA begins process of identifying claimant's relevant third party healthcare providers, obtaining releases, obtaining records, and conducting initial fact investigation.
- Personal meeting scheduled as soon as possible for the attorney, MLA, and insured to discuss the case and what to expect in claim/litigation process. A report on the meeting prepared for insured and the KAMMCO claim file.
- MLA discusses the KAMMCO Cares program with provider and offers to pair the insured with a peer litigation mentor.
- Medical Records Coordinator receives, organizes, sequentially numbers, catalogs, and securely stores records in KAMMCO records management system.

4. Setting claim reserves

- The "reserve" for a claim is the amount of money identified as the amount to be set aside for accounting purposes in order to ultimately pay individual claim expenses and projected indemnity payment. We set an expense reserve and an indemnity reserve for each claim.
 - *Claim indemnity = the amount we pay to the Plaintiff in either a settlement payment or a judgement in plaintiff's favor.*
 - *Claim expense = the amount we expend for a specific claim to defend the claim.*
- MLAs set initial reserves within 90 days of receipt of the claim, and this is updated throughout the life of a claim as we gain more information and analysis to inform the projections.
- Each reserve setting and reserve update is reviewed and approved/modified by the Claims Manager and/or Vice President.

5. Internal medical records review and analysis

- Nurse reviewer reviews medical records, prepares medical chronology summary memo linked to cataloged and numbered records.
 - Flags key issues and events in medical history and clinical care at issue.
 - Lists questions for attorney/MLA to clarify with insured provider.
 - Includes nurse reviewer's initial assessment of potential strengths and weaknesses of the case based on medical records and any medical literature research the nurse reviewer believes relevant to issues in case.
 - The medical chronology and memo is immediately provided to insured's defense attorney when complete.

6. KAMMCO confidential internal physician review process

- Confidential internal expert review(s) for all demands, lawsuits, or screening panel cases, utilizing secure Medplace expert review platform.
 - *Kansas physician reviewer within the insured's clinical specialty, but outside of the insured's geographical location.*
- These reviews are used for early expert clinical analysis for the benefit of defense team and insured prior to expert discovery phase of claim/litigation – these reviewer(s) are not used as a defense expert witness in the litigation.
- Reviewer reviews records, determines appropriate standard of care for relevant clinical specialty, provides confidential analysis of whether the insured deviated from the standard of care, and identifies strengths and weaknesses of allegations and potential clinical defenses.

7. KAMMCO litigation management and support

- MLA tracks litigation progress (see heading #9) and all significant developments to ensure proactive defense and provides appropriate KAMMCO resources to support legal defense team.
- MLA maintains contact and communication with both insured and outside counsel throughout litigation.
- MLA attends all depositions of parties and experts, as well as mediation and trial.
- KAMMCO assists defense counsel with identification of potential defense expert witnesses (KAMMCO maintains expert witness database) and preparing for depositions of plaintiff expert witnesses.
 - *KAMMCO keeps database of past expert witness depositions to provide to defense counsel when an expert who has previously testified is identified as a witness for plaintiff.*
- KAMMCO nurse reviewer supports defense counsel and defense experts with follow up medical literature research and incorporating additional medical records received during litigation into medical chronology and summary memo.
- Defense counsel required to complete comprehensive update report every 90 days (in addition to ongoing communications with MLA and insured).

8. KAMMCO confidential internal Claims Review Panel analysis and recommendations

- Panel composed of four experienced Kansas physicians and meets monthly.
- After sufficient fact investigation, depositions, and expert witness reports have been completed and/or claim is otherwise at a settle/defend decision point in advance of mediation or trial, MLA consults with insured and defense attorney and prepares thorough memo that summarizes all significant aspects of the case (including views of insured and defense attorneys) and makes initial recommendations about whether settlement should be authorized or case should be defended through trial.
- Panel reviews memo and meets with entire team of MLAs and Vice President of Claims to discuss claim and make settle/defend recommendations to KAMMCO Vice President of Claims.
- Panel recommendations are advisory only – settle/defend decisions are made collaboratively by KAMMCO and insured.

9. Pre-trial litigation process

- Generally lasts 1 to 2 years in medical malpractice litigation.
 - Most of this period is often referred to as “discovery” process.
 - May last significantly longer. COVID delays significantly extended this period in all cases.
- Initial responsive pleading and/or motions
 - Defense files “Answer” to allegations contained in the plaintiff’s Petition, and/or files pre-Answer motion(s).
 - *For example, pre-Answer motion to dismiss. The defendant asserts that, even if all the factual allegations in Petition were true, Defendant is entitled to judgment in his/her favor as a matter of law.*
- Interrogatories
 - Written questions, which must be answered in writing under oath by the opposing party.
- Requests for production of documents (“RFPs”)
 - Often a primary aspect of a case. All, relevant documents are fair game – not just the medical records: texts, emails, social media, metadata “hidden” within HER, such as audit trails.
- Designation of expert witnesses and production of expert reports
 - Medical professional liability causes of action must be supported by qualified expert opinion(s): (1) violation of clinical standard of care; and (2) medical injury caused by that violation.
- Depositions of fact witnesses, parties, and expert witnesses (most often in that general order)

- Deposition = mandatory sworn testimony under oath prior to trial. Both sides permitted to ask questions in recorded format – live and in person – of all parties and potential witnesses.
 - *Much broader scope of questioning than permitted for trial/evidentiary testimony. May ask about anything that could lead to relevant evidence. Lengthy and exhaustive – usually lasts most or all of a full day.*
- Motions to compel discovery or for protective orders to limit discovery
- Mediation
 - The parties confidentially present their respective evaluations of the case to a neutral third party attorney/judge selected by agreement. Often mandatory.
 - The mediator brings together both sides at the mediator’s office or another location to discuss potential (if any) for settlement. Then the two sides separate into different spaces within the location and the mediator acts as a go-between communicating settlement offers/positions of the parties, critiquing both sides of the case, and seeking to identify a mutually agreeable settlement *if both sides are interested in settling the case*. Everything discussed during mediation is privileged – settlement discussions cannot be used as evidence or referenced at trial.
- Summary judgment motions
 - Discovery period is closed and defense claims that plaintiff has not produced any evidence to support any essential element of their cause of action.
 - ***Essential elements of any tort cause of action, oversimplified:***
 - ***1. Legal duty (e.g., standard of care);***
 - ***2. Breach of that duty;***
 - ***3. Injury and damages caused by that breach.***
 - *If plaintiff fails to allege facts to support elements = pre-Answer motion to dismiss*
 - *If Plaintiff fails to produce any evidence that could support essential elements at trial = summary judgment motion*
- Pre-trial motions
 - Common example – “motions in limine” = motion to prevent other side from offering certain evidence/issues at trial.

10. Trial (and appeal, if applicable).

- Medical malpractice trials commonly last 1-2 weeks.
 - Jury selection, aka *Voir Dire* (legalese term stolen from French phrase “to speak the truth”) = approximately 1 day
 - *Court starts with a “jury panel” of 20-50 jurors. Panel is then narrowed through Voir Dire process down to 12 jurors and 1-2 alternate jurors. Each attorney has the opportunity to ask questions of the entire panel and individual jurors to determine whether jurors can be fair and impartial.*

- *“Raise your hand if you agree that patients and families sometime have tragic treatment outcomes even when all their physicians provide them appropriate care?”*
 - *“Juror number 18, Mr. Jones, I see you’re giving this serious thought. You hesitated a bit before raising your hand – what do you think about what I just said?”*
 - *“Who agrees with Mr. Jones?”*
 - *“What if the evidence shows _____, would that change anyone’s mind?”*

- Opening statements = half day
- Plaintiff’s evidence (“Plaintiff’s case in chief”) = 2-5 days
- Defendant’s evidence (“Defendant’s case in chief”) = 0-4 days
- Parties agree/debate jury instructions – i.e., the instructions on the applicable law that the Judge will give jury both orally and in writing = half day.
- Closing arguments = half day
- Judge instructs jury on law and the factual questions they must decide, then sends them to deliberate. Deliberation = 15 minutes to 2 days.
- If either side appeals verdict to Kansas Court of Appeals, appellate process commonly lasts 9 months to 3 years.

11. Mandatory final state and federal regulatory reporting completed

- If case ends in settlement paid to plaintiff by defendant or jury verdict against defendant, settlement/judgment must be reported to applicable licensing agency of defendant (e.g., Kansas Board of Healing Arts) and National Practitioner Databank.

12. KAMMCO closes claim

- We gather feedback from our insured about their claims experience, what went well, and what we could have done better.
- Total “life of a claim” from open to close = averages approximately 24 months
 - If the claim goes to trial, generally longer, commonly 2 to 3 years from first report of claim to closure of claim.