Once upon a time a relatively young, somewhat handsome rheumatologist was
served notice that he was being sued for malpractice. His first reaction was that of
disbelief followed soon thereafter by the fear that he had truly mismanaged a case
and all those haunting fantasies of clinical inadequacy would finally emerge as
reality.

The plaintiff alleged that there was an erroneous diagnosis of rheumatoid arthritis
resulting in improper treatment for many years. She stated that she consulted a
podiatrist who provided a simple measure to resolve her chronic foot pain, and as a result she expected to live happily ever after, as long as she could recover a large sum of money for pain and suffering. Meanwhile, back in the confines of his office, our rheumatologist nervously reviewed the record of this case and disbelief turned into outrage. Clearly the diagnosis was correct and if her condition had truly resolved, it would simply reflect a spontaneous remission, a phenomenon well recognized in rheumatoid arthritis. But, was he simply rationalizing in an effort to preserve his wounded ego?

After an initial flurry of contacts with a defense lawyer, time went by, first months and then years. Given his renewed conviction that his behavior was beyond reproach, it was very annoying to have a replay of this lady’s case come to mind during moments of quietude. Such intrusions into his conscious mind represented still another torment that could not be justified given the facts of the case. Or could
Finally, a date for trial was set and the tensions heightened. As the date grew closer, sleep disturbance and irritability became more frequent. His ability to concentrate was impaired because of the increased stress. A 10-pound weight loss was small consolation.

The day of the trial arrived and the principals assembled. The plaintiff came forward for her testimony wearing glistening black patent leather shoes with 3-inch spike heels. As she walked to the witness box, a hint of pain was suggested by her facial expression. On that day, at least, justice was served and the jury found in favor of the rheumatologist. A sense of vindication seemed totally inadequate, however, to compensate for the stress the physician suffered through the years. Nevertheless, he did feel that he would live happily ever after so long as he was not served with
another claim of malpractice. He quickly regained the 10 pounds and then some!

So what is the purpose of describing this fairy tale? It is meant to emphasize that there is good reason to recognize that physicians do experience emotional stress when being charged with malpractice, and that the relatively long periods required to resolve such claims only adds to the burden. During my tenure as Chief of Medical-Legal Affairs with the Permanente Medical Group in Walnut Creek, I reviewed 400 to 500 claims of negligence. Most cases were without merit, but invariably, my colleagues were distressed.

So what might be done to respond to the problem of litigation stress? There is extensive literature on the subject (mostly anecdotal) that recognizes the real potential for serious psychological trauma to occur in some physicians who face malpractice claims. Clinical depressions, flight from medical careers, increased risk
of divorce and in the extreme, suicide, are reported. One effective approach shown
to relieve litigation stress is that of counsel by one’s peer. Physicians with personal
experience, interest and training have often been successful in blunting the
emotional reactions arising from malpractice actions.

The ACCMA, in cosponsorship with Medical Insurance Exchange of California
(MIEC), sought to assess whether a litigation stress program would fulfill the needs
of the ACCMA membership. From a survey conducted last year, 92% of the
respondents (312) approved of such a program, and 70% indicated they would
make use of services if the need arose. A task force (Gary Nye, MD, Chair of the
Physicians’ Advisory Committee; Donald Waters, Assistant Executive Director of the
ACCMA: David Karp, Loss Prevention Manager, MIEC; and Ernest Sponzilli, MD,
Chair of the Litigation Stress Committee) organized training and orientation
meetings for those physicians who have volunteered to serve in the program.
During the development of the program it was soon recognized that there are other sources of similar stresses in the professional lives of physicians. Emotional distress may arise from investigation by the Medical Board of California, investigations by other governmental agencies, or by disciplinary actions of hospital committees. The problems related to stress in these circumstances are included in the scope of activities of the Litigation Stress Program.

The Litigation Stress Committee (LSC) represents a cross section of medical specialists; its members are appointed by the ACCMA (see box). Physicians who wish to avail themselves of this free benefit may call any of the volunteers listed and arrange for a personal meeting or telephone consultation. The primary intent of the meeting will be to advise our colleagues of effective methods to cope with the litigation/investigative experience and to assure that one's professional and family
life does not suffer. The subject physician will be encouraged to have a spouse or family member participate, as it is well recognized that litigation may affect the defendant physician’s family. Various phases of litigation or regulatory hearings will be reviewed, together with the nonlegal aspects of these processes. The LSC members have a variety of resource materials for distribution that will be useful as additional references.

The LSC is a confidential peer review committee of the ACCMA. Any discussions or meetings with the LSC member will be confidential. LSC members do not report the substance of these contacts to the ACCMA, the physician's liability insurer or the defense attorney unless the physician requests and authorizes such disclosures. No written record is made of the individual physician’s contact with an LSC member.

To ensure that meetings and discussions with an LSC member are not discoverable
in litigation, LSC members will not comment or offer opinions on the medical care that is the basis of the litigation or disciplinary action. Members are not allowed to review or discuss medical records, depositions, pleadings or other documents associated with the litigation. Although the proceedings are confidential under California law, only discussions that a physician has with his or her defense attorney, clergy, spouse or liability carrier representative receive the highest level of legal protection from discovery by outside parties. LSC members who consult with a colleague may not agree to testify as an expert on the colleague’s behalf. An LSC member who provides support to a colleague on behalf of the Committee may not participate in a review of a pending claim against the subject physician by the ACCMA Professional Liability Committees.

This program is another example of the ACCMA’s commitment to addressing issues of concern to the medical profession and to improving the quality of care in our
communities. I encourage you to make use of this program, and the committee welcomes any comments or suggestions you may have to improve the service.