

Better Safe Than Sorry – Your Duty to Report



By Matthew Bauer, JD

Physicians receive a plethora of correspondence during the normal course of their medical practice. Occasionally, physicians receive pre-suit demand letters or lawsuits (i.e., Summonses and Complaints) from patients and their attorneys. These legal papers require special attention as they typically require a response within a specified time frame. Additionally, under SVMIC's Policy, "[i]f a claim is made or lawsuit is brought against an **insured**, **insured** shall immediately forward to the Company every demand, notice, summons, or other process that he/she/it or his/her/its representative receives." Importantly, the failure or delay to report receipt of a claim or lawsuit could lead to a denial of coverage under SVMIC's Policy. Like any general rule, an insured's duty to report seems obvious and requires no explanation. However, as we shall see in the closed claim below, the devil is in the details regarding an insured's duty to report under SVMIC's Policy.

A sixty-year-old male patient with a history of mental health problems filed a Complaint with a Tennessee Circuit Court *pro se* (i.e., by himself without the assistance of an

attorney). The Complaint named seventeen physicians as defendants and was handwritten, poorly formatted, and mostly incoherent. To the untrained eye, the Complaint could easily have been viewed as an angry, rambling letter rather than a medical malpractice lawsuit due to its abnormal appearance. However, the Complaint did allege the physician defendants failed to treat the patient and prescribe him medication causing injury, and the patient filed the Complaint with the court clerk, thereby successfully commencing a lawsuit.

Surprisingly, all the physician defendants named in the Complaint happened to be SVMIC insureds. Of these seventeen physician defendants, thirteen called SVMIC to report the Complaint while four did not contact SVMIC. In fact, one of these four physicians was planning to write a responsive letter and send it to the Court. This letter could potentially have been construed as an Answer to the Complaint, and any affirmative legal defenses not asserted in the Answer could potentially have been waived. Some defenses have to be brought to the Court's attention in the initial pleading in response to the Complaint or they will not be considered by the Court at all. Due to the unusual circumstances of the lawsuit, SVMIC contacted these four physicians regarding the Complaint before the expiration of the deadline to file an Answer and before the one physician sent the responsive letter to the Court. SVMIC does not typically contact its policyholders regarding a new Complaint because doing so may waive procedural defenses if the policyholder has not been provided with proper notice or service of process. Furthermore, SVMIC does not usually know about newly filed lawsuits until they are reported by its policyholder(s).

SVMIC promptly hired defense attorneys for the seventeen physician defendants after the lawsuit was reported. The Complaint was defective both procedurally and substantively because (1) no pre-suit notice letters were sent to the physician defendants as required by statute, (2) the Complaint failed to state a claim upon which relief could be granted, and (3) no certificate of good faith was attached to the Complaint. Consequently, the defense attorneys filed a Motion to Dismiss based upon these procedural and substantive deficiencies, and after a hearing, the Court entered an Order dismissing the Complaint "as to all Defendants, on the merits and with prejudice" (meaning the Complaint could not be refiled).

Under SVMIC's Policy, insureds have a duty to promptly report claims and lawsuits to SVMIC. While this rule seems obvious, physicians do receive correspondence and legal papers from patients and their attorneys that may be difficult to understand and that may not be easily recognizable as a lawsuit. For this reason, SVMIC encourages its insureds to call the Claims Department with any questions they may have, and to report any correspondence or legal papers they may receive. By doing this, a claims attorney can discuss the situation with the insured, review the documentation, and appropriately handle the situation. SVMIC can be reached at 800.342.2239.

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