

Letters

DO MALPRACTICE SAFEGUARDS WORK?

Regarding “To protect and serve: Psychiatrists’ duty to patients” (Malpractice Verdicts, CURRENT PSYCHIATRY, December 2006, p. 149-54), Dr. Jon Grant missed the significance of the cited case.

The case is in appeal; many of the “unavailable facts” referred to actually strongly support the defendant’s position that no negligence or malpractice occurred.

Unfortunately, regardless of how well one follows the safeguards listed in the article, the nature of our tort system renders the facts presented in court irrelevant in the face of a jury’s emotional reaction.

The article fosters a potentially harmful idea that if the clinician is careful, he can avoid losing in court. Unless the medical community and the community at large confront how issues like this are resolved in court, we will continue to see larger awards based on spurious arguments.

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properly their diagnosis and treatment.

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Dr. Grant responds

Considerable research has addressed the tort system and whether juries or bench trials result in different outcomes. This research suggests that juries usually are not emotional and malpractice verdicts often are worse for defendants during a bench trial. I refer the author to: Deborah JM, Barry KA. Is the tort system in crisis? New empirical evidence, 60 Ohio St LJ 315 (1999) and Clermont KM, Eisenberg T. Trial by jury or judge: transcending empiricism, 77 Cornell L Rev 1124 (1992).

Because one cannot predict jury or bench trial outcomes and tort reform is a complex topic, clinicians should continue to document fully and