Malpractice and Family Medicine

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We are presently witnessing the ascendency of the specialty of family practice founded on increasingly excellent training programs and enhanced by the American Board of Family Practice with its recertification and the Academy of Family Physicians with its requirement for continuing medical education.

Some feel our speciality is the "medical apple" of the political eye, and there is some truth to that sentiment. Let none of us believe, however, that these same politicians do not wish to subjugate us with the rest of medicine.

In this struggle, our specialty has more than held its own, but now our entire program of providing broadly trained, competent family physicians is under great pressure from an entirely new direction. The malpractice crisis may succeed in stifling the growth of our specialty where other pressures have failed. Most pervasively, the dollar rate differential between classes of insured physicians will change the nature of family practice. Many of our colleagues will give up procedures they are capable of performing to keep liability insurance cost down, because our rates for obstetrics and surgery are the same as specialties in these fields, even though our number of cases and exposure is less. Procedures such as anesthesia, obstetrics, surgery, and ultimately, if the crisis accelerates, even minor surgical procedures will be sacrificed. Newly trained family practice residents will be reluctant to perform the procedures we have so steadfastly struggled to teach them. Ultimately, the attraction of quality students to our programs will thereby be decreased.

Secondly, we are losing and will continue to lose many of our members to early retirement or choosing salaried positions in Emergency Rooms, Kaiser and/or other institutions.

We must, therefore, realize that this problem in the long term affects family medicine more deeply than many other specialties and each of us must encourage our patients, friends, legislators, and peers to promote an equitable solution to the problem.

Any reasonable analysis of the malpractice litigation and professional liability insurance problems makes it apparent that the present tort law method of settlement of such grievances is slow, costly, and mostly inequitable. Much time, effort, and money are expended to determine fault and too little of the insurance dollar ends up compensating the "injured patient." Probably most important, the skyrocketing cost of the insurance is rapidly increasing the direct and indirect cost of medical care to the patient.

The solution to this problem seems to lie first in modifying by statute the present tort law system with:

1. Stricter definition of medical negligence versus unforeseeable complications of medical therapy.

2. Admission as evidence in the court of other sources of payment and income available to the "injured party." This should be coupled with a state or federally funded mandated catastrophic health insurance.

3. Structured awards including reversionary trusts.

4. Modification of statute of limitations to two years, with seven years from birth for infants.

5. Equitable legal fees, especially by eliminating excessive contingency fees.

These five changes would stabilize the present tort law system while a more deliberate solution could be developed with consideration of:

1. Arbitration panel interposed between the bringing of the suit and a court trial with results of arbitration admitted in evidence to the court in event of trial.

2. Consideration of changing the premium burden from the provider to the consumer, possibly coupled with some type of no fault system.

Both of these more profound changes should be combined with restructuring of medical discipline by:

1. Strengthening local hospital staff discipline.

2. Quality physician peer review and medical audit.

3. Relicensure every seven years with automatic relicensure to those who:

   a. Have either been recertified by their specialty board or society, or have completed a specified amount of postgraduate education.

   b. Have had no significant disciplinary action brought against them during this time period. This would allow the Board of Medical Examiners to carefully review and screen the small percentage of physicians who did not meet these criteria prior to relicensure without overtaxing its ability or its budget.

4. Strengthening of the Board of Medical Examiners and supporting it with both money and staff.

5. Continuing study of malpractice suits as to cause and prevention.

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