

A Partial Solution to the Professional Malpractice Suit Crisis

William L. Stewart, MD
Springfield, Illinois

Malpractice suits against physicians in the state of Illinois had been increasing annually in an almost geometric progression, as they had in virtually every state. This was accompanied, of course, by a concomitant annual increase in the cost of malpractice insurance for physicians. A number of these suits were determined to be without merit and were decided in favor of the physician. Nevertheless, whether or not the suit was decided in his/her favor there was a further increase in the malpractice insurance premium the next year for the physician involved.

With this background in mind, the Illinois State Medical Society decided in 1975 that passive acceptance of these facts should be abandoned in

favor of a more aggressive policy, particularly with respect to frivolous suits. It was acknowledged that expert advice would be necessary in order to make a determination that a suit was, in fact, made without proper investigation of the facts by the plaintiff's attorney. It has already been determined by the courts that, prior to initiating a malpractice suit, the attorney for the plaintiff has an obligation to properly investigate the validity of a complaint. However, only another attorney can advise as to whether it appears as though a proper investigation has really been conducted to protect the rights of the accused. It was decided that the Illinois State Medical Society would have to retain attorneys in order to obtain this type of expert advice and counsel. To accomplish this the society voted to levy a special assessment on all of its members, and physicians who felt that they had been sued without proper investigation were encouraged to seek the advice of the attorneys retained by the Society. This service is provided free of charge to the individual member, and the attorney conducts an in-depth analysis of the case and then advises the physician as to whether or not he/she thinks there is a basis for a countersuit.

The results of this program have been rather remarkable. The number of cases under investigation for possible countersuit reached over 80 in one year. The total number of countersuits against attorneys in the state of Illinois from all sources has more than doubled in 1976, but — even more important — the number of professional liability suits against physicians in Cook County dropped 36 percent last year, according to the Cook County Jury Verdict Reporter. A total of 691 suits were filed against physicians last year, as compared to 1,077 in 1975, and there has been a similar decline throughout the State. The decrease in numbers of professional liability suits in the course of one year is even more remarkable when it is noted that in previous years there had been a marked annual increase. Equally encouraging is a 59 percent decline in the number of suits seeking one million dollars or more.

It is certainly not proposed that the action taken by the Illinois State Medical Society is the only or total solution to the ever increasing number of professional malpractice suits. However, it does appear that this is an effective method of reducing frivolous, malicious, or improperly investigated suits.

From the Department of Family Practice, Southern Illinois University, School of Medicine, Springfield, Illinois. Requests for reprints should be addressed to Dr. William L. Stewart, Department of Family Practice, Southern Illinois University, School of Medicine, PO Box 3926, Springfield, IL 62708