

Philadelphia Medicine



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editorial

Liability insurance reform: prepare for a long war

As we go to press no one is certain what the status will be in early May of professional liability insurance reform. Some variables are: Governor Rendell's Task "Farce" report, efforts to unite the many medical organizations and staffs, days or weeks of exercising our constitutional right to protest government inaction, "we care" events for the benefit of our patients, war in Iraq and its impact on us.

Regretfully, we are certain that the liability insurance problem will not be solved. We are equally certain that frustrated and angry physicians will need to recommit themselves to a long, hard war against strong opposition.

Several thoughts come to mind. First, physicians need informed, professional advice on such matters as what action is needed to reform the system and why it is needed. They need proof that such action has been successful elsewhere and will be successful here—advice on how to identify and understand pertinent proposed bills in the legislatures, how to contact appropriate legislators and how to convey the message, and advice on how to protest government inaction, such as, how to close a medical practice without abandoning patients.

This includes insuring that emergency care is provided, notifying patients and educating them on our point of view. Physicians need to be united and consistent in their message so that the public, patients and legislators are not confused.

Very few physicians have the time or the ability to research these issues and to document reliable conclusions. Fortunately, they do not need to do so.

Organized medicine has done it for them. Volunteer physicians and professional staff at the national, state and local levels have drafted and refined such documents.

The Pennsylvania Medical Society has published on its website and distributed in hard copy many related documents. The Philadelphia County Medical Society has distributed hundreds of them at medical staff meetings and has mailed copies to presidents of medical staffs throughout the City. We have included a list of some of them and have reprinted one of them in this issue of *Philadelphia Medicine*.

We urge you to access them either through the PMS website at www.codebluecentral.org or call the Philadelphia County Medical Society on 215-563-5343, Ext. 102 and we will mail you a copy. We urge you to study them and be guided by their advice.

—The Editorial Board

Five reasons the worst is yet to come

1. Premiums will continue to escalate.
2. Physicians who are now charged a reduced early-year claims-made rate will move up to the substantially higher mature rate.
3. Primary carriers will implement increased limits factor in 2006 and 2009 due to phase out of Mcare Fund.
4. Mcare Fund "tail" coverage will revert to the primary carriers and be reflected in premiums beginning in 2006.
5. The mass conversion to claims made coverage will transfer a large portion of the Mcare Fund unfunded liability to the primary carriers.

www.codebluecentral.org

Many physicians might close their offices now and in the future to exercise their constitutional right to protest government inaction to effect tort reform. The Pennsylvania Medical Society has established Code Blue Central to support physicians as they plan grassroots efforts to draw public attention to the need for medical liability insurance reform. Check the website above regularly for resources and updates. Here are some of the documents available through the website.

- *Talking points: Protecting patient care through the First Amendment:* These talking points are for physicians petitioning the government on the need to solve the medical liability crisis. This is presented on page 2 of this newsletter.
- *Availability and coverage during the protest:* Steps that physicians should consider to avoid licensure and other problems should they elect to close their offices during a protest.
- *Closing your office: list of considerations:* A list of considerations for physicians choosing to close their medical practices or offices to participate in the political protest.
- *Sample newspaper ad to announce office closing: Sample phone messages: Office closing due to protests:* Use these scripts to record messages notifying patients of office hours and closings due to the Code Blue emergency.
- *Employment law issues and office closures:* A Q&A on employment issues for physicians planning to close their offices during the protest.
- *The facts on caps:* For patient education. Why your doctor thinks caps are the best medicine.
- *Why every Pennsylvanian should support HEALTH Act:* For patient education. Information for patients about the federal bill to reform medical liability in the U.S.
- *The facts about medical liability reform:* For patient education. You've probably heard the myths about medical liability reform. Now read the facts.

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Talking Points

Protecting patient care through the First Amendment

- The First Amendment of the U.S. Constitution: *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.*
- While there have been some positive steps in the past year by the state to resolve the liability insurance crisis, doctors worry that not enough has been done and patient care is being jeopardized as each day passes. Since doctors do not want to see healthcare deteriorate, doctors are petitioning government to protect patients.
- You may hear people calling this a "work stoppage" or other similar words. But, it's not. There's a fine line between a work stoppage and a person's right to petition government. But, nonetheless, there is a line. Healthcare is not shut down. Patients continue to receive care that they need. Physicians are simply expressing their opinions through the First Amendment that more needs to be done to preserve patient care. The Pennsylvania Medical Society wants our government to know that if this crisis isn't resolved soon, patient care will be jeopardized.
- As physicians attend events to raise awareness of this liability insurance crisis, they have made arrangements for patients to receive care. If an emergency happens, such as an accident in the home or maybe chest pains, patients are best served by going to the emergency rooms, which are fully staffed.

Tips

- This is a patient access issue. Always put the patient first by talking about access issues.
- Use public opinion friendly words and do not lose sight of the prize at the end. Ultimately, the public will vote to accept placing limits on noneconomic awards. If possible,

avoid using the following words: "strike," "work stoppage," "teach patients what it would be like," "slowdown," "white flu," etc.

- Treat all reporters as you would your mother. Respect them. Do not get into a fight with a guy that buys ink by the barrel. Make your points clear, but do not argue, curse, or show anger.
- Use real examples of access issues. Anyone can twist statistics. We've seen this by many so-called "consumer groups." But you win with real stories. Show how patient care is jeopardized by lawsuit abuse through real examples.

Additional facts:

- Despite having less than 5% of the national population, Pennsylvania's total medical liability insurance payouts (awards and settlements) in 2000 according to the National Practitioner Databank was nearly 10% of the national total. Pennsylvania's total was the second highest in the country—\$352,309,905.
- According to an analysis of data from the National Practitioner Databank by the Pennsylvania Medical Society's Health Services Research Institute, the average medical malpractice payment in 1991 was \$208,000. By 2001, that increased 93% to \$402,000. That ranks Pennsylvania third in the country for highest average.
- According to an analysis of data from the National Practitioner Databank by the Pennsylvania Medical Society's Health Services Research Institute, the number of \$1 million plus settlements between 1991 and 2002 increased significantly. In 1991 there were 43 payments at or above \$1 million. For the first nine months of 2002, there were 153 such payments.
- According to an analysis of data from the National Practitioner Databank by the Pennsylvania Medical Society's Health Services Research Institute, the number of paid

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jury awards of \$1 million or more also increased significantly between 1991 and 2002. In 1991, there were zero such award payments. For the first nine months of 2002, there were 15 such award payments.

- According to Jury Verdict Research, the median jury verdict between January 1994 and August 2001 in Philadelphia was \$972,909. For the rest of the state excluding Philadelphia, it was \$410,000.
- Personal injury lawyers often pocket 40% of jury awards and 33% of settlements, in addition to costs.
- When personal injury lawyers aren't winning big, they're losing often. In fact, personal injury lawyers have a 70% error rate in their pursuit of the jackpot jury award. According to the Physician Insurers Association of America seven out of 10 medical malpractice claims between 1985 and 2000 were dropped, dismissed, withdrawn, or found in favor of the defendant.
- But, even when the personal injury lawyers are losing, they're robbing patients of access to doctors, and driving up healthcare costs. According to the Physician Insurers Association of America, the median cost to defend and win a case in front of a jury in 1995 was \$46,603. By 2000, that increased 43.27% to \$66,767—money wasted that only siphons off resources from patient care.
- The ultimate trickle-down effect is that our out-of-control tort system deprives Pennsylvanians of healthcare, while driving up what consumers pay for care.
- A 2002 study by the American Association of Health Plans conducted by PricewaterhouseCoopers says that litigation is responsible for 7%, or \$5 billion, of new healthcare costs—equivalent to the price of health insurance for two million Americans.
- Another 2002 study by Common Good and conducted by Harris Interactive shows that defensive medicine is extremely high (91% of the survey participants have noticed

other physicians practicing defensive medicine, and 79% say they themselves do so because of liability worries). No one is debating that defensive medicine drives up the costs of healthcare.

- This all confirms a 2001 study by the Pennsylvania Medical Society that discovered 89% of doctors are practicing defensive medicine.
- The Pennsylvania Medical Society's 2001 study also indicated that 72% of doctors have deferred the purchase of new equipment or the hiring of new staff due to the skyrocketing medical liability insurance costs.
- Of course, there are numerous anecdotal stories about doctors retiring early, giving up high-risk procedures, or moving out of the state as a result of the liability insurance crisis.
- Using state-provided data from March 2002, a survey during the summer of 2002 by the Pennsylvania Medical Society to high-risk specialists found that 17% of ob/gyns and 18% of neurosurgeons have either changed to non-operative, changed to part-time surgery since 2001, decided to move the majority of practice out of state, left Pennsylvania totally, or retired early. A survey by the Pennsylvania Orthopaedic Society found similar results for orthopedic surgeons.
- Ultimately, Pennsylvania needs to learn what Californians learned in the 1970s—limiting attorney contingency fees on a sliding scale and placing a reasonable limit to noneconomic awards after a person has been fully compensated for financial losses is necessary to keep trauma centers open, hospital units functioning, ambulance crews operating, and simply to preserve healthcare. According to Californians Allied for Patient Protection, between 1976 and 1999, U.S. premiums increased 420%. But in California, they increased only 168%, even after being held hostage by the court system for a decade. This is a direct savings from medical tort reform

that preserves access to care. In addition, these reforms benefit injured patients because the time to settle in California is 23% shorter than states without a cap—therefore allowing the injured patient to receive appropriate compensation faster. (In addition, the cost to settle is 53% lower.)

Public wants lawsuit abuse reform

- In a November 2002 survey of 1,237 Pennsylvanians who are members of the Patient Advisory Board at the Pennsylvania Medical Society, 91.67% said that we need to have standards to limit awards to reasonable levels.
- According to a February 2003 report from the Office of Strategic Initiatives at the White House, 83% of Americans see too many lawsuits in America; 80% say personal injury attorneys take too much of their clients' awards; and 76% believe medical liability lawsuits threaten access to quality healthcare for families.
- According to a February 2003 report from the American Tort Reform Association, 83% of Americans think that too many lawsuits and greedy personal injury lawyers are to blame.
- According to a February 2003 Quinnipiac University poll, 72% of Pennsylvanians surveyed support a limit on the amount of money awarded for pain and suffering in medical liability cases.

Solutions

Greedy personal injury lawyers in pursuit of jackpot jury awards cause lawsuit abuse and have caused Pennsylvania to have one of the highest medical liability insurance payouts in the country. As a result, greedy personal injury lawyers are responsible for ...

- higher healthcare costs including health insurance;
- depriving patients access to care they deserve and need;
- interfering with patient safety.

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pcms people



Michael H. Levy, MD, PhD, Vice Chairman of the Department of Medical Oncology with the Fox Chase Cancer Center in Philadelphia, was recently

honored for his work as a national champion of palliative medicine, pain management, and hospice care by Samaritan Hospice at its 21st Annual Celebration of Life Gala.



Richard C. Wender, MD, is the new chair of the Department of Family Medicine at Jefferson Medical College. Dr.

Wender is best known for his work in cancer prevention and screening guidelines and has worked with the Centers for Disease Control, Cancer Research Foundation of America and the National Colorectal Cancer Roundtable to develop ways to reach more Americans with preventive services.

Change of address?

Call 215-563-5343, Ext. 102 with any change of address, phone or fax number or e-mail address.



Stephen L. Schwartz, MD, PCMS President, has made presentations in recent weeks to medical staffs at Drexel (MCP), Chestnut Hill Hospital,

Roxborough Memorial Hospital and Albert Einstein Medical Center. He emphasized tort reform activities. He remains available to address other physician groups on various topics.



Lila Stein Kroser, MD, First District Trustee to the PMS Board of Trustees, represented Philadelphia at the 2003 statewide code blue

emergency program at Toftrees Resort at State College on April 30, 2003. This was the kick off to the week-long protest by physicians against government inaction on tort reform.



George L. Mayo, MD, is completing his ophthalmology residency at the University of Texas Health Science Center at San Antonio. He will

begin a Vitreo-Retinal Fellowship at the Scheie Eye Institute this summer.

PCMS Board of Directors invites you:

President's Ball & Awards Night Annual Meeting

Sheila Moriber Katz, MD, MBA will be installed as the Society's 142nd President

Friday, June 20, 2003

Park Hyatt at the Bellevue
Broad & Walnut Streets

Reception: 6 PM

Program, Dinner & Dancing: 7 PM

Guests Invited • Black Tie Preferred

Cost: \$90 per person;
residents and students \$50

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To end law-suit abuse and to save access to care, Pennsylvania should...

- designate a reasonable amount of money that can be awarded for noneconomic damage after a person has received full compensation for economic loss (past, present, and future);
- allow injured patients to receive the majority of awards by placing a sliding scale on contingency fees charged by personal injury lawyers.

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