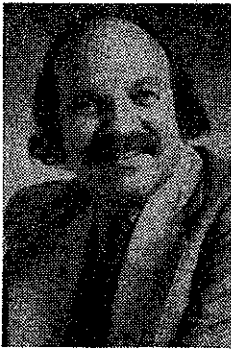


What Can WE Do Now About Malpractice Insurance

Many words have been spoken and written about malpractice insurance, and many local and state committees and agencies are appropriately involved in trying to find a reasonable answer to this difficult problem. These efforts should continue until an equitable solution is found. But, just in case this problem, like so many others in our society, defies easy solutions, it might be in the interest of each practicing physician to involve himself personally in shaping the solution. This article makes a few specific suggestions in this connection.

A few basic facts need to be re-established:



DR. BAR-LEVAV

1. The problem poses an acute and immediate danger to the welfare of patients and to the welfare of physicians. Many doctors are actually unable to find malpractice insurance in this area at any price, and are forced into having to abandon their practices, leaving the area or engaging in non patient-care activities. They are in fact deprived of their incomes and of their elementary right to practice their profession, without due process. Patients are deprived of needed medical care that is already somewhat scarce.

2. Independent and reliable reports published in the *Detroit News* and elsewhere confirmed that the problem is the product of a mentality that encourages people to expect something for nothing, as if the public pays no price when insurance companies are stuck with the bill. It requires that the active presence of unscrupulous lawyers, however, to start litigation. The introduction of no-fault car insurance deprived such lawyers of their questionable hunting grounds. Such lawyers usually work on a contingency fee basis that poses no risk to the litigant and encourages him to seek very large judgments, with the hope of getting at least moderately generous settlements.

Doctors have been exposed to this situation at first individually, and only recently have they united to seek common solutions. Having the State Medical Society sponsor malpractice insurance is better than nothing. Every doctor would at least be able to obtain insurance, even if at exorbitant rates. Spreading the risk among all patients, each of whom would be charged a small compulsory surcharge for malpractice insurance is likewise a reasonable suggestion. That government underwrite such insurance, as it insures deposits in banks, is another useful idea, but it does not yet place the responsibility where it belongs.

To err is human. Malpractice insurance was designed to compensate injured patients for malpractice and gross negligence, not for expected human errors. It was not designed to make people rich, but to compensate individuals for real losses, physical and emotional. The very principles of insurance are being abused by what is happening. The useful concept by which the many band together to underwrite the tragic losses of the few, is being prostituted, largely as a result of repeated unethical actions by unscrupulous lawyers.

The situation is not correctible except by means that aim at the root of the cancer. The legal set-up that permits such abuses must be changed to prohibit them. In addition to all the friendly persuasion that the medical profession, through its lobbyists, is capable of applying, the united power of physicians may have to be brought to bear so that the necessary changes are realized.

Physicians provide a basic service to the public. We earn a good living at it, but this does not change the fact that health care is a basic and needed commodity, no less important than the other basic necessities of food and shelter. *If the public wants our services it must protect us against gross abuse.*

The situation as it is costs the *public* billions of dollars in unnecessary procedures and tests that doctors and hospitals perform mainly out of fear of being sued, in higher fees to cover the high insurance costs, and in various expensive ancillary services that have become customary whether they are necessary in every case or not. It causes untold suffering to thousands upon thousands of individuals who might benefit from new and innovative medical techniques and procedures but are deprived of them because doctors and hospitals feel safest when they trod on proven ground.

The legal system must be changed as follows:

1. The contingency fee must be outlawed, at least as it relates to medical malpractice, but hopefully altogether.
2. Upper limits for claims must be fixed by law. These would be designed as reasonable payments for loss of life or limb and for physical and emotional suffering. Juries are now often whipped into siding with the poor sufferer whose lawyers use true suffering as a powerful weapon against the seemingly cold, careless and non-caring, rich and heartless physician. This usually is not a realistic picture, and such a demagogic appeal to emotions should be allowed to achieve results only within reasonable limits.
3. Proven malpractice, not simply human error, but the result of incompetence or gross negligence, should be punished by revoking the license of the physician, temporarily or permanently, and not by having insurance companies pay for the abuses. There are not too many physicians of this type, but the profession needs legal means to cleanse its house of the few that exist. Several physicians in Michigan have been chronic offenders. They usually are outside of organized medicine. When finally removed from hospital affiliation or medical association membership they usually find other communities where they are unknown, and start all over again. Their license to practice medicine should be revoked by law to protect the public.

Such changes in the law as the three suggested here would benefit the patient, the consumer, as well as physicians and insurance companies. It is in the public interest. But the public interest is not always defended by politicians who are supposed to defend it. Special interests are often very well organized, vocal and powerful. Many legislators are themselves lawyers by profession, and laws that aim at curbing abuses by the legal profession have been very difficult to pass at all.

We must be ready to press our demands. This editor believes that the County and State medical societies should sponsor a one-hour work stoppage on the part of all physicians except those who attend to true emergencies. Such work stoppage should be well publicized to elicit public support for our law reform proposals. Such action would clearly serve as a warning to legislators that longer work stoppages might occur unless such changes in the law are enacted within certain time limits. We would be criticized by those who might fail to recognize that this is an act in the public interest and in our patients' interest. We must have the courage of our convictions if we are to prevail.

Such a course of action is controversial. If you agree, make it your business to write in support of these ideas without delay. Write briefly but write now. Address your communication to the Editors of the Wayne County Medical Society News. The more support these suggestions receive the more they are likely to be seriously considered, and possibly adopted.

R. B. Levin M.D.