

What Malpractice Insurance Crisis?

Insurers Complain, But Claims Are Down and Profits Are Up

By ABBOTT S. BROWN

THERE is a campaign being waged in New Jersey against the victims of medical malpractice. The malpractice insurance industry seeks legislation that will deprive malpractice victims of their day in court. The supporters of so-called tort-reform point to the fact that New Jersey's second-largest medical malpractice insurer, the Medical Inter-Insurance Exchange, known as MIIX, announced last week that it plans to cease operations in its present form. As a result, there is only one insurance company in New Jersey, The Princeton Insurance Company, willing to write malpractice coverage.

Insurance rates are increasing, and doctors in New Jersey say they must abandon their practices because of the cost of malpractice insurance. However, there is no legitimate reason medical malpractice insurance is not available and affordable in New Jersey. The number of malpractice suits in the state declined from 2,200 in 1994 to 1,613 in 2001, a decrease of more than 25 percent. This decrease is the result of a law passed in 1995 requiring that a medical expert swear under oath at the beginning of every case that the claim has merit.

The decline in cases is confirmed by the Princeton Insurance Company, which says in its annual report that it tried only 366 medical malpractice cases to a conclusion in New Jersey in 1998, only 347 such cases in 1999, and only 274 in 2000. Furthermore, despite recent claims by malpractice insurance companies of "jackpot jury awards," a study of more than 8,000 cases by MIIX demonstrated that in New Jersey "physicians usually win cases in which the physician's care was deemed to meet community standards." MIIX also determined that "the amount of payment correlated closely with the severity of the injury," and that "unjustified payments" were uncommon.

Similarly, the federal government has reported that during a period of over 10 years ending December 2000, there were only 5,556 medical malpractice payments by physicians in New Jersey. The median payment was \$115,000, ranking New Jersey 13th among the states.

These statistics explain why the Princeton Insurance Company stat-



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ed in its most recent annual report that it has enjoyed three "stellar" years in a row. In fact, in 2000, the last year for which figures are available, Princeton reported net profits of nearly \$30 million, an increase of 22 percent over the year before.

MIIX had recently reported that it has lost huge amounts of money in other states, and therefore it intended to "focus Company operations on New Jersey ... where there is a history of profitability." MIIX plans to pay off any remaining claims, and be reborn as a new insurance company focused on the New Jersey market. However, because of the absence of competition, Princeton and the reborn MIIX will dominate the market in New Jersey. There is no doubt that the two malpractice insurance companies are intent on raising rates.

Those pending rate increases have created a false sense of a crisis. The insurance companies now are using this manufactured crisis to ask the State Legislature to deprive the victims of malpractice of fair compensation.

However, eliminating accountability for medical mistakes would only reduce the incentive for doctors to be careful. Many medical procedures and hospital practices have been made safer as a result of lawsuits. Additionally, New Jersey recovers over \$5 million a year in reimbursement for medical bills paid to victims of personal injury claims. If we eliminate malpractice claims, these sums would not be paid by the person who caused the injury, but rather by the taxpayer.

However, the best way to reduce the cost of malpractice insurance is to reduce the amount of malpractice, not to deprive the victims of malpractice of fair compensation for their injuries. Rather than inflicting more punishment on victims, we must identify and eliminate the bad doctors. Multiple studies in other states have shown that a relatively

small number of doctors are responsible for a disproportionate number of lawsuits.

What we need in New Jersey is regulation of the medical malpractice industry. The insurers should be required to obtain approval from the Department of Insurance to increase premiums, just like other insurance companies. We should also reinstate the Medical Malpractice Liability Insurance Act of 1976, which provided for a fund to write medical malpractice insurance for doctors who could not obtain it on the open market.

Finally, if we really want to lower the cost of malpractice insurance over the long term, it is essential that we finally require full disclosure of all medical mistakes. In New Jersey, knowledge of most malpractice is buried with the patient. Every hospital in New Jersey claims a so-called privilege of self-critical analysis, which allows it to refuse to disclose to a patient's family that their loved one was the victim of malpractice. However, when the Veterans Administration Hospitals decided to promptly and fully disclose medical errors nationwide, and then offer fair compensation, litigation costs were dramatically decreased.

To err is human, and to forgive divine. But burying medical malpractice mistakes should be a crime.

New Jersey

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