

MEDICAL MALPRACTICE INSURANCE, AN UPDATE

William M. Sage, who is both a doctor and lawyer, is Principal Investigator for the Project on Medical Liability in Pennsylvania. Professor Sage's work is supported by a grant from the Pew Charitable Trust.

Professor Sage reported on many of his conclusions in March of 2005. Professor Sage noted that physicians failed to grasp the "centrality" of insurance reform to malpractice reform "because they unquestionably regard malpractice carriers as allies." Sage makes the interesting argument that malpractice problems are largely a product of medicine's success, not its failure. "In addition, long standing safety problems in health care have been recognized and quantified, and new ones have arisen." Recognizing high error rates in medicine are the result of private employers and insurance companies insisting on applying standard industrial techniques of quality measurement and management to health care. This has been destabilizing to the medical community which likes to act as the Lone Ranger.

Sage, quoting other authors, notes that at worst malpractice premiums and self-funded reserves equal less than 2% of national health care expenditures. Others have written that the amount is under 1%. The exquisitely footnoted study points out that "jury determinations of liability are generally accurate." There is rampant under claiming in spite of unexpectedly high rates of medically caused injuries and negligence.

In a companion article a number of authors, including Sage, review state-operated patient compensation funds such as Pennsylvania's MCARE Fund. The professors were critical of such funds because they do not promote patient safety, loss prevention or good claims management. The conclusion was that there should be incentives for injury deterrence. One is to experience-rate premiums.

Unfortunately state funds have not been a major focus of public policy debate. They are small organizations in very limited markets. The proper design of such a fund is without question a key in their proper operation.

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