

## **PENNSYLVANIA ECONOMY LEAGUE AND MEDICAL MALPRACTICE**

The Pennsylvania Economy League, which touts itself as a bi-partisan public information organization, has published a number of op-ed pieces on the medical malpractice system particularly in Pennsylvania. For the Pennsylvania Economy League to call itself non-partisan stretches credulity. The Board of the Pennsylvania Economy League is made up of major corporations and banks such as Mellon Bank, Verizon Corporation, Thomas Jefferson University Hospital, a few large universities and some very big corporate law firms. Precisely what the agenda is of the Pennsylvania Economy League is not clear but it speaks to a constituency, which certainly does not include any consumers.

The latest independent research on medical malpractice is dramatic indeed. According to Health Affairs copywrited by project Hope, the cost of defending U.S. malpractice claims is estimated at only 0.46% of total health spending. “Two most important reasons for higher US spending [on health care] appear to be higher incomes and higher medical care prices”. The United States spends more on health care than any other country in the world. In the United States we pay higher prices for pharmaceuticals, hospital stays and physician visits. The study by Health Affairs was written by authors affiliated with the Bloomberg School of Public Health at Johns Hopkins University. The health care experts examine in great detail the charge that medical malpractice litigation is the reason for higher U.S. health spending. The authors studied a number of different countries and included as follows:

Surprisingly, U.S. malpractice payments (including both cases that resulted in a judgment for the plaintiff and cases resulting in a settlement) were lower, on average, than those in Canada and the United Kingdom.

Johns Hopkins experts also looked at the claim that doctors engage in defensive medicine. The medical society has made much of this charge in order to deflect from its members the use of high cost pharmaceuticals and tests in order to enrich the medical health care industry. The Congressional Budget Office was unable to prove that so-called “defensive medicine” increases health care cost in this country.

Major costs factor in our medical health care bills, aside from pharmaceuticals, seems to be the cost of medical errors. The Pennsylvania Patient Safety Authority at its public meeting on July 11, 2005 was presented with testimony from Karen Wolk Feinstein, PhD who is chairperson of the Pittsburgh Regional Health Care Initiative and President of the Jewish Health Care Foundation. She stated for the record, “it’s all about quality.” Dr. Feinstein noted that errors are “embedded in the system.” The analogy Dr. Feinstein gave is that trying to reduce errors in hospitals and among doctors is like trying to teach fish how to swim in a murky, dirty fishbowl instead of cleaning the fishbowl. Dr. Feinstein and others have attempted to assess the cost of infections given the extraordinarily high cost of new antibiotics. Losses which hospitals bare due to infections is, in many cases, the single highest cost factor in medical care.

The Pittsburgh regional official pointed out that one half of all health care people have never heard of the report “To Err is Human,” published by the Institute of Medicine in 1999 which pointed out that approximately 180,000 Americans per year die in hospitals from preventable medical errors. This blockbuster report has had tremendous ripple effect, which unfortunately has not yet been translated into safer medicine.

Dr. Feinstein had another startling statistic. She said that twenty percent of pap smears are not taken in the “right zone” so that the test would be negative when in fact cancer might exist. There needs to be

coordination between people who perform the tests, the doctors who read them and the physicians who must rely upon them.

Why is patient safety so difficult to achieve? Dr. Feinstein said that “nurses learn to function in dysfunction”. Doctors believe “it’s all about their personal genius.”

Dr. Feinstein’s observations are well documented by many other studies. According to a comprehensive article written in the business publication, Forbes, 61% of doctors wash their hands before examining a patient only if they know someone is watching. The article points out that 3% or more of hospital patients are hurt by medical errors. 1 in 300 patients die from such mistakes. In the United States aviation industry only one in five million flights ends in a deadly accident. 24% of people say they or a family member have been harmed by a medical error. 90,000 people die of hospital acquired infections annually. More than half of those deaths may be preventable. Dr. Feinstein and others are only now beginning to evaluate and assess the vast cost of preventable medical errors. Dr. Feinstein believes that now that health care providers are beginning to realize that their own errors are driving the cost of medical health care, a culture of safety may become enhanced.

According to a report from the health care reform program at Boston University School of Public Health one-half of health care spending goes to clinical administrative waste, excess prices and staff. This is shocking to the public but not to health care specialists studying the problems.

Public Citizen, in its 2004 report on medical malpractice, noted that the number of medical malpractice awards in Pennsylvania and nationwide have been dropping, especially relative to inflation, population and the growing number of physicians in the country. The number of doctors in states such as Pennsylvania has risen relative to the population and is restricted only by American Medical Association

policies intending to restrict enrollment in medical schools in order to keep physician wages high.

The bottom line is that medical errors are endemic and costly while clearly not nearly enough money is going to injured victims of medical malpractice. The money just does not exist in the system to compensate all those who deserve to be compensated. In present dollars, the cost of the medical malpractice system is less than one-half of one percent of the nation's health care bill. A recent example will suffice. According to the Pennsylvania Patient Safety Authority, there have been over 154,000 reports of incidents and serious events in the year 2004. Yet in Pennsylvania, after eliminating for some double counting, there have only been between twelve and fifteen hundred lawsuits filed for the same time period.

It is time to shift the focus from those who are hurt from medical malpractice to those who are creating errors and bureaucratic waste.

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