

MEDICAL MALPRACTICE CASES CONTINUE TO DISAPPEAR

An announcement by the Pennsylvania Supreme Court on May 18, 2011, shows that medical liability claims continue to disappear in spite of a high number of serious events and incidents reported by hospitals to the Pennsylvania Patient Safety Authority.

In 2010 there were 1,491 filings, representing a 45.4% decline from the “base years” 2000-2002. In Philadelphia, for example, the decline has been by nearly 70% during the same period. In Lycoming County the decline in the number of filings has gone from 16 in 2000 to 3 in 2010. Three is the lowest number in recorded history in Lycoming County and represents a drop of 84.3%.

In comparison to earlier years, 2010 had the fewest number of jury verdicts. The tables issued by the Pennsylvania Supreme Court showed that more than 80% of the verdicts were for the defense.

In May of 2010 the Pennsylvania Patient Safety Authority, established by the Mcare Act of 2002, issued its report. The report of the Pennsylvania Patient Safety Authority showed approximately a quarter of a million incidents and serious events reported to the Patient Safety Authority. While all of these reports are not negligence, the state has absolutely no idea how many of these “adverse events” are avoidable. More importantly, the number of reports has increased while the Pennsylvania Patient Safety Authority tacitly acknowledges that full reporting by all those in the state required to report is not yet optimum.

The report of the Pennsylvania Patient Safety Authority can be found online at _____ . Likewise the report of the administrative office of the Pennsylvania Courts can be found online at _____ .

North Central Pennsylvania shows among the highest reporting of adverse events. Does this mean that there are more problems with medical health care in North Central Pennsylvania or merely that the hospitals in this region are more honest about reporting problems? No one knows.

What we do know is that virtually all of the literature issued by the medical community shows increasing problems with medical care at very high cost to the public.

The Institute of Medicine, for example, has estimated that the cost of preventable medical errors in American hospitals range between \$17 and \$29 billion. If medical errors could be reduced, all of our problems concerning health care costs would disappear overnight.

The Institute of Medicine and the New England Journal of Medicine, among others, have published report after report about the problems in American hospitals and need to establish a culture of safety.

There are many fine professionals in the medical and legal profession working together to reduce adverse events in hospitals, but there is still tremendous resistance in the medical community to both transparency and critique. For example, institutions throughout Pennsylvania advertise their “health grades” utilizing sophisticated ad campaigns. The companies that “rate” these hospitals are organizations like Thomson Reuters, essentially a publishing company, and other unregulated companies such as Health Grades. However, hospitals steadfastly oppose reporting data collected by the Pennsylvania Patient Safety Authority on a per hospital basis as opposed to regionalized reports. Hospitals and the health care industry in general oppose any compilation or release of comparative data that the consumer can utilize in assessing who are the best doctors and hospitals. The medical health care industry has always opposed online information about background, education and problems encountered by specific doctors and hospitals.

Some insurance companies and government organizations are experimenting with paying doctors and hospitals not for complications but rather for success. Other hospitals still give doctors bonuses based upon how much money they make for the institution and that money is predicated upon the number of procedures performed and tests utilized. Unnecessary testing and surgical procedures are driven by the desire to make money, not the hobgoblin of what the industry likes to call “Defensive Medicine.”

The largest advertisers in newspapers, on billboards and TV are not the less than 100 lawyers in the Commonwealth of Pennsylvania who will handle a medical liability case but rather hospitals, doctors, clinics, tertiary treatment care facilities and those promising cures for conditions such as breast cancer, prostate cancer, and the like.

There is virtually no regulation as to what hospitals and doctors can say to puff their services to a nervous public.

Peer review, an investigation of doctors and hospitals, is virtually impossible to obtain in Pennsylvania. The Act of creating the Pennsylvania Patient Safety Authority drapes the Authority with very strong protections against releasing information that would be useful to the public.

Doctors and hospitals continue to seek immunities from legitimate lawsuits. What happens when you remove the cop from the beat? Crime soars. That is exactly what has happened with medical and hospital liability.

The number of claims, thanks to artificial barriers created in the last ten years, have all but made serious medical liability claims disappear. The response has been an absolute catastrophe of soaring medical errors equivalent to two 747s crashing each month with the loss of all life aboard. That is not the allegation of some plaintiff's trial lawyer but rather data from legitimate medical organizations such as the Institute of Medicine.

What of the medical industry in general? Virtually every survey of future jobs encourages people to go into health care because of the amount of money spent on that sector of the economy. A report by the state measuring Pennsylvania physician and physician assistant workforce and data from the Insurance Commissioner shows that in virtually every year since 1976 the number of doctors in Pennsylvania has grown. The number of nurse practitioners and physician assistants has grown even more. During the same time period the population of the state has dropped so that the number of health care professionals per 100,000 Pennsylvanians has dramatically increased. Doctors are not leaving the state but rather are anxious to work for us. Obtaining high quality medical care in rural areas has always been and will continue to be a problem even though those areas have virtually no lawsuits filed against doctors and hospitals.

One of the greatest problems in American hospitals is infections. Almost 10% of all hospitalizations will result in preventable infections. Pennsylvania, thanks to Act 52, is trying to get a handle on the number of infections, their cause and elimination. Infections rarely give rise to lawsuits because of the legal principal that the "mere"

acquisition of a hospital infection is not necessarily negligence. Proving what caused the infection is typically impossible. As the United States Supreme Court in a different context, when the constable stumbles the bad guy will go free.

In order to reduce medical health care errors, thereby ensuring the viability of our health care system, we need more transparency in the medical industry, and legitimate avenues of recovery to those who are seriously harmed by the inexcusable neglect of others.

The Seventh Amendment right to trial by jury, like lots of nice things in the old Soviet Constitution, has become merely a matter of words rather than reality. Perhaps the new attitude in Washington and Harrisburg, we can restore the right to the people which will protect their interests and secure our economic viability as a nation.

CAR/srb

Clifford A. Rieders, Esquire
Rieders, Travis, Humphrey, Harris,
Waters & Waffenschmidt
161 West Third Street
Williamsport, PA 17701
(570) 323-8711 (telephone)
(570) 323-4192 (facsimile)

Cliff Rieders, who practices law in Williamsport, is Past President of the Pennsylvania Trial Lawyers Association and a member of the Pennsylvania Patient Safety Authority. None of the opinions expressed necessarily represent the views of these organizations.