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### **Ethical Issues: Malpractice Crisis**

Medicine is in crisis. Doctors, especially those in high-risk specialties like obstetrics and neurosurgery, are leaving their practices in response to ballooning malpractice costs. Malpractice rates for physicians are skyrocketing, and physicians are reacting—some by speaking out, and others by just leaving. The white coat rally this past Friday revealed physicians from all walks who will stand as one when the welfare of healthcare is at stake. Academic and private physicians, students, and residents rallied in knowing that Missouri is one of 18 malpractice crisis states, as rated by the American Medical Association. This rating means that malpractice premiums are so high that doctors are leaving the state and that services are becoming scarce or unavailable in some areas. This is a serious concern in a state where many are already underserved.

Two factors may contribute to this situation--lack of insurance carriers offering coverage and high jury awards in malpractice cases. In Missouri carriers offering coverage declined from 21 in 2000 to 16 in 2002, and 5 of those 16 ultimately withdrew from the market nationally. In 2002 only 2 carriers offered coverage to new applicants. Since January 1, 2003 however seven new insurance companies have been licensed in Missouri, which at face value is encouraging, but premium costs are still going up. In Missouri premiums rose 17.5% in 2001 and then 57.6% in 2002, while malpractice claims rose only 1.8%.<sup>i</sup>

With skyrocketing malpractice insurance premiums a natural assumption is that either more physicians are being sued, or there is growing healthcare inflation. Neither is the case. Medical malpractice insurance premiums have been rising faster than the rate of health care inflation over the last several years. Data from the National Practitioner Data Bank indicate the number of payments in malpractice cases in some regions has actually dropped by 40 percent over the past decade. Research shows that only a small number of victims of medical negligence file claims. A study in 1991 found that 98% of all adverse events due to negligence did not result in malpractice claims.<sup>ii</sup> A Harvard Medical Malpractice Study estimated that only one in eight negligently injured patients ever brings a claim.<sup>iii</sup> Less than 1% of the 5,570 Missouri medical malpractice claims from 1993 to 1995 resulted in payments of \$1,000,000 or more.<sup>iv</sup>

So why this massive increase in insurance premiums? It's the economy... Most insurance industry profits are derived from investment earnings, and when the investment market drops, as it did beginning in late 2000, so do profits. It's a simple market reality--to compensate for bad investment returns, insurance companies must raise premiums in order to make up for their losses—responsibility for corporate solvency being shifted to the backs of physicians and healthcare systems ultimately impacts the lowest common denominator. Patients pay the ultimate price, either out of pocket or with their lives and

welfare, as healthcare costs escalate to compensate for lost revenue, when services are eliminated due to nonaffordability, or when physicians simply leave because they can't afford to practice medicine anymore.

Some think that tort reform is the answer to our malpractice crisis, but this addresses only part of the problem. Doctors in Florida now face premium hikes of up to 45 percent despite a tort reform measures that promised to hold rate increases to an average of 7.8 percent. Insurance premiums continued to skyrocket in California for thirteen years after it passed malpractice award caps. The ideal of malpractice reform is only part of the solution for a very complex problem. Recently the Missouri Senate passed Bill 280, which addresses the issue of high malpractice payouts by limiting trial lawyers' fees and preventing plaintiffs from moving proceedings to larger cities, where damage awards are often larger. But this legislation is now stymied in the House where counter proposals argue that insurance reform is of equal importance and should be addressed along with tort reform legislatively in order to improve the likelihood of stemming the tide of Missouri's malpractice crisis.<sup>v</sup>

Good health policy, like good health care, must look at all aspects of the problem and focus on prevention as well as cure. But physicians must be cautious when advocating and negotiating for social change. It is a slippery slope indeed that promotes social good through economic reform that also results in personal gain. Physicians *qua* physician must avoid the temptation of placing personal needs and wants above those of patients. For us to be seen as credible when championing a worthy cause in society we must work, therefore, to sustain the integrity of the medical profession through interest in the welfare of our patients, not the business of healthcare. We should take this as a cautionary note as we sally forth and advocate for the sake of all that is good in healthcare!

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<sup>i</sup> Missouri Medical Malpractice Insurance Report 2002

<sup>ii</sup> A. Russell Localio et al. Relation Between Malpractice Claims and Adverse Events Due to Negligence: Results of the Harvard Medical Practice Study III. *NEJM*. 1991; 325:245-247

<sup>iii</sup> Patients, Doctors, and Lawyers: Medical Injury, Malpractice Litigation, and Patient Compensation in New York. *Harvard Medical Practice Study*. 1990

<sup>iv</sup> Missouri Department of Insurance Statistics Section, 1995 Missouri Medical Malpractice Insurance Report. Oct. 1996

<sup>v</sup> Bishop D. Malpractice crisis needs dual reform. *Kansas City Star*. 2-15-04