

Improving American Health Care: The Importance of Physician-Attorney Relationships

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Physician-Attorney Tension

- Real
- Both specific and free-floating
- Emotion often crowds out reason
- *Not* a new dynamic
- Patient/client/public interests often get forgotten

Negative Ramifications of the Interprofessional Tension

- Impact on *Availability* of Care
 - Affects physician specialty distribution
 - Affects physician geographic distribution
 - Affects physician employment/organizational choices
 - Affects what services physicians will provide (i.e., limitation of practice to avoid of high risk diseases, procedures, patients, and situations [e.g., ER call])
 - Affects how physicians spend their time (i.e., *not* on patient care)
 - Affects availability of institutional and agency providers in certain specialties and geographic areas

- Impact on *Affordability* of Care
 - Cost of liability insurance premiums
 - Defensive practice
 - Impossible to quantify precisely, largely because of definitional ambiguity
 - Impact on medical decisions and costs is somewhere between non-existent and all-encompassing
 - Whether well-founded or exaggerated, physicians' legal anxieties are sincere and deeply held.
 - “Good” defensive practice v. “Bad” defensive practice

- Impact on *Quality* of Care
 - Positive impact:
 - Documentation
 - Communication with patients or surrogates
 - Patient safety activities
 - Negative impact:
 - Overtesting and Overtreatment
 - Undertreatment (e.g., insufficient pain management, skewed risk/benefit calculus)
 - Interference with continuity of care (e.g., information exchange inhibited by fears about breach of confidentiality)

- Negative impact (cont.)

- Reluctance of impaired physicians to admit they need, and to obtain, help for their substance abuse or other problems negatively affecting care they provide

What to Do About Negative Ramifications?

- Lots of good ideas from organizations with their own perspectives
 - More law
 - Less law

FSU Center for Innovative Collaboration in Medicine & Law (2010)

- Collaboration of College of Medicine and College of Law, seeking involvement of other interested FSU, professional, and community units and individuals
- Mission
 - Innovative
 - Collaboration (Interprofessional)
 - Patient/client/public interest focus
 - Mixing real world grounding with the objectivity of the academic ivory tower

- Education

- Medical students and law students
- Post-graduate trainees
- Continuing professional education

- Scholarship

- Applied research and dissemination to improve public policy and professional practice
- Therapeutic jurisprudence focus
- Subject summaries and reviews
- Formulating future research agendas

- Public and Community Service
 - Public (s) education (lay and professional)
 - Policy-maker briefings
 - Press consultation (lay and professional)
 - Organizational consultation
 - Honest broker for putting people in the same room

- Types of Activities and Partnerships
 - Center-initiated and directed, with involvement of others
 - Consultative to other scholars and organizations

Likely Impact of Federal Health Care “Reform”/“Deform” Legislation

- Lost opportunity for meaningful debate and action about tort system changes
- Demonstration grants to states
- Short-Term Impact—Negative
 - Change is stressful
 - Physicians will be asked to provide more care for less \$
 - Physicians will be apprehensive about government standard-setting through “clinical effectiveness” panels
 - Attorneys will accelerate lawsuit filings as response to uncertainty
 - Political battles regarding implementation

- Long-Term Impact—In unintended ways, possibly positive
- As government, esp. at federal level, becomes increasingly dominant in health care financing and delivery, *either*:
 - Government will evade difficult political choices and
 - Health care \$\$ will increase, reducing tensions
 - Government standard-setting will not happen **OR**
 - Government will have a stake (enterprise liability) in controlling health care costs, including those attributable to physician/attorney tension and will
 - Limit damage awards
 - Promote and facilitate ADR
 - Implement administrative alternatives to tort litigation

- Alternative Future

- Congress and the state legislatures will continue to reject or avoid reform of the legal system and instead

- Continue to focus on waste and inefficiency

- Regulate the insurance industry even further into public utility status

Conclusion