There Is Another Approach to Medical Malpractice Disputes

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Patricia Legant's article, "Oncologists and Medical Malpractice" details the main issues facing us as oncology clinicians in our current environment—especially delay in diagnosis, chemotherapy dosing, pain control, and informed consent—and how these perceived or alleged actions lead to malpractice claims and litigation. Here, we contrast the prevailing approach with an approach that we have developed.

Traditional responses by medical practitioners, medical liability insurers, and malpractice attorneys to malpractice claims is to temporize, to refuse to admit blame, and to reduce defense costs by settling. Few would argue that the traditional "deny and defend" approach has been ineffective. In 2001, the University of Michigan Health System (UMHS) committed to openness and honesty with regard to the investigation, defense, and settlement of potential malpractice claims. Our principles included (1) willingness to compensate quickly and fairly when inappropriate medical care causes injury, (2) vigorous defense of appropriate medical care, and (3) commitment to reduction of patient injuries by learning from mistakes.

Key to our approach was the ability to distinguish between inappropriate and reasonable medical care, and recognizing when a patient suffers due to unreasonable care. Practical changes began immediately in our office of risk management, with careful claims evaluation, sensible open disclosure, and engagement of patients and their attorneys before they sued the UMHS and its medical staff. This approach required increased investment in the UMHS' Risk Management Department as the primary resource for responding to and intervening in patient injury crises, in prelitigation claims investigation, and most importantly, in bridging patient claims with patient safety initiatives and staff education.

As a result of these changes, claims numbers have dropped dramatically. Opening-to-closing times for claims are down, from an average of 21 months in 1996 to 10 months in 2003. Defense costs per case have more than halved. This trend persists despite the skeptics, and has now begun to affect actuarial projections of future malpractice costs, favorably yielding palpable financial benefits.

The issue of liability and potential litigation affects all of us. In a recent survey of UMHS faculty, 87% of respondents indicated that threat of litigation affects their satisfaction with the practice of medicine. Recent analysis of cases proceeding through to trial or stopping just short of trial at UMHS showed that UMHS physicians spent an average of 88 hours with trial lawyers per case—a large burden for the already busy clinician. A recent survey of UMHS medical faculty demonstrated almost unanimous support for our new approach. More than half (55%) admitted that the approach favorably impacted decisions to remain on the UMHS faculty.

Interestingly, a different survey of medical malpractice plaintiff's lawyers in southeastern Michigan revealed that almost 60% declined to file cases they believed they would have filed before the change in approach. Almost all acknowledged that their costs were dramatically lower, and 71% admitted that they accepted less in settlement than they would have had they litigated the case.

Patient concerns with safety, sparked by continued national media attention and governmental reports, will continue to be high. Therapeutic and technological advances are increasing public expectations to anticipate uniformly excellent outcomes, regardless of type of disease or injury. The therapy that serves our patients and ourselves alike incorporates solid claims management, improved patient and staff communications, and an open, forthright approach to addressing patient safety issues and injuries.

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