

The Chinese Curse

The Chinese curse “May you live in interesting times” is upon us. Indeed, we live in interesting times, in times of crises. A war of unfathomed dimensions looms large on the near horizon and may be under way by the time this letter is published. Given a stagnant if not floundering economy, our deficit will reach near-crisis proportions. The security of our previously safe nation has been breached. Yet another crisis, perhaps not equal in magnitude to those already cited, has raised its ugly head and promises to impact our lives significantly. The crisis that affects us as physicians today is the matter of outrageously increasing professional liability insurance premiums.

The reasons for this emerging crisis are not as readily apparent as insurance companies would have us believe. Surely, there have been unreasonably large judgments, especially in the area of punitive damages. This is especially true for States that have not passed tort reform legislation. These unreasonable jury awards have had a downstream effect on pretrial settlements. These settlement amounts have increased sharply because plaintiffs have threatened to hold out for large jury awards. Clearly, it is imperative that federal legislation be enacted to curb huge jury awards that have no real basis in fact. President Bush's initiative is a step in the right direction, but it is only one step of many that must be taken.

More than 70% of all medical malpractice cases are withdrawn, dismissed or found in favor of the defendant. Clearly, there is a need to punish lawyers for bringing frivolous cases to the courts. The contingency fee arrangement – frowned upon as unethical in much of the rest of the world – is a clear and present inducement to bring frivolous law-suits if for no other reason than to force a defendant into a settlement to avoid high litigation costs and unpredictable jury awards. In most cases, thirty or more percent of the settlements or awards go to the lawyers. Barriers to bringing litigation without merit must be established.

But not all the problems lie with lawyers and the legal system. Insurance companies, through their economic behavior, have contributed significantly to the problem. It is interesting to note that a number of the periodic sharp increases in premiums have followed downturns in the stock market. Our current problem of vast premium increases is due to no small degree to the enormous losses insurance companies have incurred as a result of the stock market's sharp declines in the most recent past. While the St. Paul Group has blamed the adverse judicial climate as the reason for its departure from the medical malpractice insurance scene, one need only to look at the firm's market losses to understand the decision.

It appears that, among other necessary changes, revision of the reserve requirements needs to occur.

Our own MICA, formed in the 70's through the cooperative efforts of Arizona physicians and with the financial backing of ArMA at a time when liability insurance companies were fleeing the state, has been steadfast and reliable insurer of the Arizona physicians, but even MICA has announced a rather large 12.5 percent rate increase.

Finally, we must look at our own culpability in this crisis. As a profession, we have failed, to a large degree, to rid our ranks of those of our colleagues who have consistently and persistently violated the principles of our profession. We all know colleagues to whom we would not refer patients because of the poor quality of their care, but we do nothing about them until a major catastrophe has happened. Even then, we are reluctant to intercede forcefully and appropriately through our established watchdog organizations. Let us take the right, although painful, steps to police ourselves lest others step in to do it for us.

There are many ways in which we can work to alleviate the present difficult situation. First and foremost, we need to stand as one and demand that our legislators initiate tort reform and place caps on the non-economic damages. For example, California's 1975 Medical Injury Compensation Reform Act has been instrumental in reducing the magnitude of malpractice insurance premium increases. Further, legislation must be passed to dissuade lawyers to bring frivolous malpractice suits.

It is essential that we contact our State and federal representatives with regard to State and national tort reform. The problem appears to lie primarily with the United States Senate who has traditionally failed to pass tort reform legislation the House agreed upon. President Bush's tort reform package that would limit non-economic damages to \$ 250,000 and has provisions to make awards proportional to the degree of fault, is indeed a step in the right direction. Let us urge our Senators to pass this legislation by contacting them as often as possible by mail, fax, telephone or e-mail.

They can be reached as follows:

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