



NAP POLICY STATEMENT ON THE MALPRACTICE MESS: FUTURE DIRECTIONS 2006

Summary

Representing the "elite" of ten health professions, the elected practitioners and scholars of the National Academies of Practice are uniquely qualified to see and comment on the end result of this nation's current legal malpractice system. In sum, the current system adversely affects the ability of providers to render optimal care.

Why? Because the costs of malpractice insurance create access problems. Physicians and other providers drop out of their field, or stop caring for complex, "risky" patients or those who are uninsured. Because threats of litigation mean otherwise unnecessary and costly tests and treatments must be ordered. Because the adversarial relationship between providers and patients with lawyers in the middle does not lead to the kind of procedural system change within healthcare institutions that is the basis of most errors. Because the threat of suits reduces the likelihood of developing innovative approaches to care, leading to standardization that may not work for individual patients.

The NAP makes recommendations for system change involving the patient relationship, the legal system, and Federal investment priorities.

Background

The National Academies of Practice considered the results of an extensive bibliographic search, and listened to the views of six speakers in a November, 2005 Conference which focused on pain management and malpractice. Speakers included experts in the physiology of pain, the classification system possibilities for pain, providers outlining "hucksterism" in health care practice which often precedes malpractice claims, and experts from the legal and malpractice insurance field.

Findings and Conclusions

Of course, all health care providers can make mistakes, some with adverse patient consequences. However, as pointed out in the Institute of Medicine's Report "To Err is Human," most mistakes are not intentional. Many if not most are related to or caused by internal system error. The current malpractice

system focuses only on punishment. In contrast, serious reduction in healthcare errors requires an investment in quality system improvement.

The current malpractice debate makes it seem as if errors affect only doctors, lawyers, and injured patients. In fact, the effect of our current malpractice non-system is to lower access to needed care for many patients because costs and the threat of litigations drive many doctors from the field, and make health professions students unwilling to enter risky specialties. Any solution to the malpractice mess must keep its focus on the needs of ALL patients, not just those in immediate distress.

The current malpractice system assumes that all pain and suffering are measurable and quantifiable, making the award of damages clean and simple. In fact the opposite is the case. Pain is a good example of a complex condition where no agreed measurement method is defined. And there are no clear guidelines to give to juries on this matter. And so it is with awards, generally. They vary by region, by type of case, by lawyers and judges. Any solution to the malpractice mess must take account of the state of science and measurement, and the need for uniform standards.

Recommendations

1. Reframe the debate: The overarching issue is quality improvement, not who is more at fault and richer-doctors or lawyers.
2. Make an investment: The Federal government should increase its investment in quality improvement, applying it not only to hospitals, but to provider practices as well.
3. Enact Tort Reform: The Congressional stalemate on malpractice caps is a good example of how public policy should NOT be made. The savings from Tort Reform could be used to fund care for the uninsured, as well as reducing or eliminating provider flight from their healthcare fields.
4. Support System Research to Standardize Measurement: There is no question that pain and other conditions need to be better measured to improve patient care. Standardization of descriptions needs to be the first step in standardizing terminology, and awards in malpractice cases.
5. Support Evidence-based Research to Cull Out Lucrative, but Unproven Treatments. Dentistry is not the only profession in which this problem exists.
6. Oppose Extension of the Malpractice Insurance Liability to Animals: It does not work for humans. Do not impose it on the Veterinary profession.

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