

From my perspective

One of the most enjoyable and enlightening aspects of my job is visiting the chapters of the College and having the opportunity to learn about the issues that are affecting surgeons in their home states. At this point, I have visited more than 40 chapters and have continued to see evidence that one of the biggest problems surgeons are dealing with at the state level is professional liability.

While federal legislation would be extremely beneficial to surgeons who are having difficulty obtaining reasonable malpractice coverage or who are finding themselves involved in frivolous lawsuits, it may be quite a while before Congress will pass a meaningful reform bill. Until then, the state legislators and court justices will continue to have the most profound effect on the liability crisis.

Pennsylvania surgeons react

Most recently I participated in the Eastern Pennsylvania Chapter meeting. Access to affordable professional liability insurance and the tort system in Pennsylvania have been out of control for some time. In talking with our Fellows, I learned that they are being sued for minor and, indeed, frivolous reasons by very aggressive trial lawyers who are not appropriately regulated. Quite frankly, the numerous advertisements that appear in local newspapers and magazines and that are seen on television and heard on the radio give a good indication of how favorable the environment is for trial lawyers. As a result, all but one of the state's professional liability insurance carriers have exited the market, and there are very few physicians who are not involved in some form of litigation. The combination of these two factors has led to exorbitant malpractice insurance premiums in the state.

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Pennsylvania are not taking this situation lying down. They are pulling together and working to resolve the problem. For instance, the Eastern Pennsylvania Chapter is merging with the Central Pennsylvania Chapter to form a new Keystone Chapter of the American College of Surgeons. Potentially, chapters in the western portion of the state may be joining as well. The consolidation of the chapters will allow surgeons

in Pennsylvania to speak to these and other issues with a more unified voice. The officers of both the Eastern Pennsylvania and Central Pennsylvania Chapter are to be commended for their efforts, particularly the two Presidents at the time of the merger, Drs. Robert John Sinnott and Narayan Deshmukh, respectively.

In addition, the surgeons in this chapter and others throughout the state have been working with the Pennsylvania Medical Society (PaMS) to secure passage of professional liability reform legislation.

Mixed results

During this last legislative session, the Pennsylvania General Assembly passed and Gov. Mark Schweiker signed two liability reform laws. One piece of legislation, which was very recently enacted, limits the ability of plaintiffs and lawyers involved in malpractice lawsuits to file claims in or move trials to counties with a history of allowing large jury awards. Under this new law, cases may be filed only in a county where the cause of action occurred.

The other malpractice reform law enacted in Pennsylvania—the Medical Care Availability and Reduction of Error (MCARE) Act—includes a range of pros and cons. On the positive side, it modifies the collateral source rule, permits periodic payment of future damages for medical and related expenses, and imposes an absolute seven-year limitation on the time period for filing a lawsuit. However, the legislation excludes other necessary tort reforms, such as a cap on jury awards for noneconomic damages and limits on attorneys' contingency fees. It also contained one provision that physicians in the state adamantly oppose: the act replaces the state's existing excess liability fund with an MCARE fund. Physicians who are licensed and practice in the state must carry a minimum of \$500,000

in liability insurance in addition to the \$500,000 they must purchase through the MCARE fund. Needless to say, this mandate has become a real point of contention for physicians in Pennsylvania.

Next steps

Obviously, surgeons in Pennsylvania have a long road to travel before practicing in the state will again be tenable and before all the aftershocks of the crisis will be stabilized. For example, as a result of the environment in Pennsylvania, several obstetrical and trauma units have closed. Surgeons have been moving out of the state to practice elsewhere, and many surgeons I have spoken with are actually changing their practice patterns so that they may no longer be performing operations but simply following patients in their offices. Still other surgeons are retiring far earlier than they had expected to. It's going to take some time for these negative results to be reversed.

Even so, I was really impressed with how many surgeons in Pennsylvania are aggressively tackling the professional liability crisis. They are becoming much more proactive and are working together and with other physicians to promote meaningful tort reform. I believe this stance and unification of the medical community will allow for a more powerful advocacy effort on the part of the surgeons of Pennsylvania.

To help spread the word about their hard work and what they trying to accomplish, the Keystone Chapter plans to create an expanded Web site and to publish a newsletter in order to reach out to the various counties that have been incorporated into the newly formed chapter. In addition, the administrative support of the larger chapter will be effective in helping members to interact with legislators and to monitor the activities of the Pennsylvania Supreme Court,

which, in the past, has broadly applied its ability to overturn meaningful liability reform laws.

Power of patients

Of course, Pennsylvania is not the only state with a Supreme Court that has proven to be averse to legislation that limits the ability of trial lawyers to bring frivolous or inappropriate lawsuits against physicians. A recent editorial in the *Wall Street Journal* noted that tort claims in Mississippi “are so rampant that doctors are fleeing and 71 insurance companies have stopped writing policies in the state.” The editorial asserts that a Mississippi Supreme Court justice, whom voters denied the privilege of becoming chief of the court during last month’s elections, was a large part of the problem because his rulings had made the state “a honey pot for out-of-state trial lawyers.”

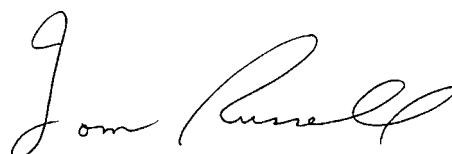
What this example demonstrates is that the American public is waking up to the problems associated with lawsuit abuse. I believe the citizens of the state of Pennsylvania and other hard-hit states will rapidly become more aware that it is becoming more difficult to receive appropriate care and that a major contributor to that problem is the fact that physicians simply can’t afford to buy malpractice insurance, which allows them to practice medicine. When the access situation reaches significant proportions, legislators will take the appropriate action and judges with biases toward the trial lawyers will lose their power.

Chapter involvement important

It is truly sad to think that our patients may be the ones to shoulder this burden before constructive steps toward solving the problem will be taken. However, I would like to think that if surgeons and the rest of the medical community can work together and with the public, we may

be able to remedy the problems associated with lawsuit abuse and the malpractice insurance crisis before they prove catastrophic to our patients.

Resolving surgeons’ concerns about liability and other issues in a productive way is precisely what the surgeons in Pennsylvania are trying to accomplish. Their efforts demonstrate the value of the College’s chapters, particularly as we attempt to address local issues through local engagement and activity. I would encourage other chapters to follow their lead.



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If you have comments or suggestions about this or other issues, please send them to Dr. Russell at fmp@facs.org.